

Minority Rights v. Traditional Values: Transnational Ethical Crisis or an Artificial Dichotomy?¹

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Russian 'anti-gay law' is commonly perceived by western media as a 'new, dark chapter in the history of gay rights in Russia',³ a law that 'demonizes and discriminates against Russian citizens who are lesbian, gay, bisexual or transgender'.⁴ Although its eventual 'chilling effect'⁵ on both legal status of sexual minorities (or persons with non-traditional sexual orientation)⁶ in Russia and the country's international reputation as the least protective country in Europe for LGBT citizens⁷ is undisputed, little is known about the law's original purpose, and even less – about its basis in Russia's international human rights obligations.

¹ Research for this paper was funded by the European Research Council (Advanced Grant: 323656-STC)

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³ Innokenty Grekov, 'Russia's Anti-Gay Law, Spelled Out in Plain English', 8 August 2013 <<http://mic.com/articles/58649/russia-s-anti-gay-law-spelled-out-in-plain-english>> accessed 15 March 2015.

⁴ The Council for Global Equality: Open Letter to President Putin on Russia's Discriminatory Anti-LGBT Laws, 15 November 2013 <www.globalequality.org/newsroom/latest-news/1-in-the-news/188--published-november-18-2013-civil-liberties-europe-human-rights-lgbt-rights-politics-russia-sogi-leave-a-comment-edit-tags-anti-gay-propaganda-law-bisexual->> accessed 15 March 2015.

⁵ Joshua Keating, 'The Chilling Effects of Russia's Anti-Gay Law, One Year Later' 9 October 2014, <www.slate.com/blogs/outward/2014/10/09/russian_lgbt_activists_on_the_effects_of_gay_propaganda_law.html> accessed 15 March 2015.

⁶ The Council for Global Equality: Open Letter to President Putin on Russia's Discriminatory Anti-LGBT Laws, 15 November 2013 <www.globalequality.org/newsroom/latest-news/1-in-the-news/188--published-november-18-2013-civil-liberties-europe-human-rights-lgbt-rights-politics-russia-sogi-leave-a-comment-edit-tags-anti-gay-propaganda-law-bisexual->> accessed 15 March 2015.

⁷ Both terms are used interchangeably in Russian legislation and literature.

⁷ In 2013 international non-governmental organisation ILGA-Europe (Equality for lesbian, gay, bisexual, trans and intersex people in Europe) rated Russia 49th of the 49 European countries as the least protective country in Europe for LGBT citizens <www.ilga-europe.org/home/publications/reports_and_other_materials/rainbow_europe/rainbow_europe_package_2013/score_sheet/russia> accessed 15 March 2015.

The main purpose of this paper is to deconstruct this law, its creation and application as one of the most recent examples of Russia's involvement in transnational processes, an example of 'combined functioning of public international law and domestic legal systems, and of their mutually regulated interaction'⁸ in one specific field of governance. I will argue that as a result of this interaction at judicial, social and political levels the dichotomy of LGBT rights v. 'traditional' (family) values has been artificially, albeit skilfully, constructed for political purposes and introduced into international human rights discourse.

In this paper I will indicate in what way is Russian 'anti-gay law' originally based on international treaties signed and ratified by Russia. However, before I move on to developing the main ideas of this paper, I will provide a brief description of the law and the legal, political and factual meaning of the key term 'propaganda' around which the law is constructed.

Russian 'Anti-Gay Law': a Summary of the Contents

The official title of the law suggests no discrimination whatsoever. The Federal Law 'On protecting children from information causing harm to their health and development' was adopted on 29 December 2010⁹ and amended on 29 June 2013¹⁰ to include prohibition of homosexual propaganda (or propaganda of non-traditional sexual relationships, in the language of the law) to minors.

⁸ Craig Scott, "Transnational Law" as Proto-Concept: Three Conceptions (2009) 10 German L.J. 8, 869.

⁹ Federal Law No. 436-FZ of 29 December 2010 'On Protecting Children from Information Causing Harm to Their Health and Development' <www.pravo.gov.ru> accessed 15 March 2015 (Russian Anti-Gay Law, the Law on Protecting Children).

¹⁰ Federal Law No. 135-FZ of 29 June 2013 'On Amending Article 5 of the Federal Law 'On Protecting Children from Information Causing Harm to Their Health and Development' and Other Legislative Acts of Russian Federation with the Aim to Protect Children from Information Promoting Renouncing of Traditional Family Values' <www.pravo.gov.ru> accessed 15 March 2015.

Article 5.2. lists eight types of information banned from distribution among children. Information ‘denying family values, promoting unconventional sexual relationships and forming disrespect for parents and (or) other family members’ is accompanied in the list by information encouraging children to commit suicide or otherwise intentionally harm their health; inducing them to try narcotics, tobacco and alcohol, to participate in gambling, prostitution or begging; substantiating or justifying violence or cruelty against people or animals; justifying unlawful behaviour; containing foul language; containing information of a pornographic nature; or allowing to directly or indirectly establish identity of a child victim in a crime. Distribution of advertisements, works of art, scientific and statistical materials containing this ‘harmful’ information is out of the scope of this Federal Law¹¹ as it is regulated by other acts of federal legislation,¹² while the task to distinguish one from another is left to the courts.¹³

Classification of materials containing prohibited information is carried out by state-accredited experts with the concerned party’s right to judicial appeal of the expert conclusion.¹⁴ To be accredited an expert must be an acclaimed specialist in child psychology or pedagogy and have no criminal convictions for crimes against personal integrity.

The list of experts and expert organisations is made accessible to general public on the website of the Federal Service for Supervision of Communications, Information Technology and Mass Media (*Roskomnadzor*), as are the outcomes of expert review

¹¹ *The Law on Protecting Children* (n 9) art 1.2.

¹² See, for example, the Federal Law No. 38-FZ of 13 March 2006 ‘On Advertisement’ (2006) 51 *Rossiiskaya Gazeta*; The Basics of Russian Legislation on Culture No. 3612-1 of 9 October 1992 (1992) 248 *Rossiiskaya Gazeta*; Federal Law No. 127-FZ of 23 August 1996 ‘On Science and the State Scientific Policy’ (1996) 167 *Rossiiskaya Gazeta*;

¹³ See, for example, Decision of the First *Arbitrazh* Appeal Court No. A79-2005/2013 of 10 September 2013 <<http://base.consultant.ru>> accessed 15 March 2015; Decision of the Third *Arbitrazh* Appeal Court No. A33-12521/2013 of 27 January 2014 <<http://base.consultant.ru>> accessed 15 March 2015 etc.

¹⁴ *The Law on Protecting Children* (n 9) art 17.

and documentation establishing its procedure and criteria.¹⁵ Two other federal authorities, besides *Roskomnadzor*, are responsible for supervision and implementation of the Federal Law: the Federal Service for Supervision of Consumer Rights Protection and Human Wellbeing (*Rospotrebnadzor*)¹⁶ and the Federal Service for Supervision in the Sphere of Science and Education (*Rosobrnadzor*),¹⁷ making application of this law one of the most supervised in Russian practice.

Moreover, the disposition of the Law on Protecting Children banning distribution of information denying family values and promoting 'non-traditional' sexual relationships among children is supported by administrative sanctions. In particular, propaganda of 'non-traditional' sexual relationships is punishable by an administrative fine 62 – 77 EUR for an individual (with administrative detention up to 15 days and deportation – for foreign citizens) and 12,300 – 15,400 EUR for an organisation with or without suspension of operations.¹⁸ Same activities performed via the Internet will result in higher administrative penalties: 770 – 1,530 EUR for an individual (with administrative detention up to 15 days and deportation – for foreign citizens) and 15,400 EUR or suspension of operations for up to 90 days for an organisation.¹⁹

At the moment it is hard to see how exactly can such a well-meant and well-guarded law bring about human rights violations, apart from the obvious restriction of freedom of mass communication and ban on censorship guaranteed by Article 29.5. of the Russian Constitution,²⁰ a limitation that can be justified by the need to protect public

¹⁵ Information on the activities of *Roskomnadzor* aimed at implementation of the Federal Law No. 436-FZ of 29 December 2010 'On Protecting Children from Information Causing Harm to Their Health and Development' <<http://rkn.gov.ru/mass-communications/p679/>> accessed 15 March 2015.

¹⁶ <<http://rospotrebnadzor.ru>> accessed 15 March 2015.

¹⁷ <<http://obrnadzor.gov.ru>> accessed 15 March 2015.

¹⁸ *Code of Administrative Offenses of Russian Federation* No. 195-FZ of 30 December 2001 (2001) 256 *Rossiiskaya Gazeta* (as amended by the Federal Law No. 41-FZ of 8 March 2015 (2015) 49 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015 art 6.21.

¹⁹ *ibid.*

²⁰ Constitution of the Russian Federation, as adopted by national referendum on 12 December 1993 (1993) 237 *Rossiiskaya Gazeta* (as amended by Federal Constitutional Laws on Amendments to the Constitution of Russian Federation No. 6-FKZ and No. 7-FKZ of 30 December 2008, (2009) 7

health and morals²¹ in the best interest of the family as one of constitutionally protected values of Russian society.²² The legitimacy of this limitation is presumed, as it has not been challenged in Russian Constitutional Court so far.

In an unusual surge of eagerness Russian courts and law-enforcement agencies started to apply the law and the accompanying administrative sanction not only to printed material or other visual media, such as children's games or books allegedly promoting tolerance of gay relationships,²³ but also in less obvious quotidian situations, from arresting picketing activists holding signs in support of gay rights to fining a newspaper publishing an interview with a teacher who said he was fired for being gay.²⁴

As a result, article 6.21. of Russian Code of Administrative Offenses, since its introduction in 2013, has triggered more than 140 cases²⁵ only in Moscow and Moscow Region, most of them unsuccessfully challenging decisions of local authorities whereby the Law on Protecting Children was applied in combination with the sanction of the Code to ban public meetings promoting LGBT rights, let alone gay prides. The connection between public meetings and 'distribution of information' grave enough to qualify for an administrative offense is, logically, rather remote, which brings us to the next question of what course of action can be regarded as 'propaganda of non-traditional sexual relationships' banned by the law.

Definition of 'Propaganda' in Law, Political Statements and in Practice

There is no consistency in defining the term 'propaganda' in Russian legislation. Even within one federal act – the Code of Administrative Offenses – the word is widely

Rossiiskaya Gazeta) <www.constitution.ru/en/10003000-01.htm> accessed 15 March 2015 (Russian Constitution).

²¹ *Russian Constitution* (n 18) art 55.3.

²² *Russian Constitution* (n 18) art 38.1.

²³ *The Chilling Effects* (n 5).

²⁴ *ibid.*

²⁵ <<http://base.consultant.ru>> accessed 15 March 2015.

interpreted to include actions of varying degree of involvement: from promotion, illegal advertisement (selling baseball caps with images of cannabis leaves in violation of the ban on propaganda of narcotics),²⁶ to public demonstration (of Nazi symbols and attributes).²⁷ The same word is used in the aforementioned Article 6.21. of the Code to denote 'promotion of non-traditional sexual relationships among minors, expressed in the dissemination of information aimed at developing unconventional sexual attitudes, attractiveness of non-traditional sexual relationships, distorted ideas about the social equivalence of traditional and non-traditional sexual relationships, or imposition of information on non-traditional sexual relationships, causing interest in such relationships'.²⁸

From the definition stated above one can suggest that 'propaganda' in terms of the Federal Law is in fact closer to the English word 'promotion' as an 'activity that supports or encourages a cause, venture, or aim; the publicising of a product, organisation, or venture so as to increase sales or public awareness; a publicity campaign'²⁹ and does not evoke the negative connotation attached in English language to the word 'propaganda' itself, as 'information, especially of a *biased or misleading* nature, used to promote a political cause or point of view'.³⁰ In this connection it can also be noted that the English word 'promotion' has no direct translation into Russian, therefore, it can be argued that 'propaganda' was chosen as the nearest equivalent.

This linguistic transplant adds to the inconsistency of the term 'propaganda' as a legal construct in Russian legislation. It is used in both encouraging and discouraging

²⁶ *Code of Administrative Offenses* (n 21) art 6.13; Decision of a Depute Chairman of Sverdlovsk Regional Court No. 4a-135/2014 of 17 February 2014 <<http://base.consultant.ru>> accessed 15 March 2015.

²⁷ *Code of Administrative Offenses* (n 21) art 20.3; Supreme Court of the Russian Federation Decision No. 64-AD11-1 of 8 February 2011 <<http://base.consultant.ru>> accessed 15 March 2015.

²⁸ *Code of Administrative Offenses* (n 21) art 6.21(1).

²⁹ Oxford Online Dictionary of English.

³⁰ *ibid* (*italics – MS*).

sense. Examples of the former include awareness raising about fire safety techniques,³¹ 'informing the public' about the social importance of blood donation and its components in order to attract potential donors,³² incentivising of knowledge about protecting people in emergency situations;³³ promotion of healthy lifestyle;³⁴ and more than 30 other instances. Selected examples of the latter could include a ban of 'propaganda of war' during campaigns for referendum,³⁵ ban of 'propaganda of exceptionality, superiority or inferiority of citizens based on their attitude to religion, social, racial, ethnic, religious or linguistic identity' during election campaigns,³⁶ or a ban on 'political propaganda and agitation' for justices of the Constitutional Court.³⁷

As to summarise, the usage of the term 'propaganda' in both positive sense as a synonym for promotion, informing or encouraging, and negative sense, when accompanied by the word 'agitation' (Rus.: *агитация*) as in 'arousing of public concern about an issue and pressing for action on it'³⁸ makes propaganda too vague a concept to be used as a basis for *corpus delicti* of an administrative offense.

Russian Constitutional Court in *Alekseev, Evtushenko and Issakov*³⁹ case made an attempt to distinguish propaganda as an illegal activity from mere informing.

³¹ Federal Law No. 69-FZ of 21 December 1994 'On Fire Safety' (1995) 3 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 25.

³² Federal Law No. 125-FZ of 20 July 2012 'On Donation of Blood and its Components' (2012) 166 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 6.

³³ Federal Law No. 68-FZ of 21 December 1994 'On Protection of Population and Territories from Emergency Situations of Natural and Man-Made Disasters' (1994) 250 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 21.

³⁴ Federal Law No. 61-FZ of 12 April 2010 'On Circulation of Medicines' (2010) 78 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 55.7.

³⁵ Federal Constitutional Law No. 5-FKZ of 28 June 2004 'On Referendum in the Russian Federation' (2004) 137-d *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 68.

³⁶ Federal Law No. 67-FZ of 12 June 2002 'On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation' (2002) 106 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 76.

³⁷ Federal Constitutional Law No. 1-FKZ of 21 July 1994 'On the Constitutional Court of Russian Federation' (1994) 138-139 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015, art 11.

³⁸ Oxford Online Dictionary of English.

³⁹ Russian Constitutional Court Decision No. 24-P of 23 September 2014 'On the Case of Constitutionality of Paragraph 1 of Article 6.21 of the Code of Administrative Offences in Relation to the Complaints by NA Alekseev, YN Evtushenko and DA Issakov' (2014) 226 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015.

According to the Court's position propaganda is explicitly aimed at 'shaping of preferences associated with the choice of non-traditional forms of sexual identity' and suggests

'targeted and uncontrolled dissemination of information that could harm the health, moral and spiritual development, to form distorted ideas about the social equivalence of traditional and non-traditional sexual relationships among minors who, because of age alone, are not able to critically evaluate the information received'.

Excluded from the scope of punishable actions should be, in the view of the Court, (1) presentation of the relevant information in a neutral (educational, artistic, historical) context that would (2) guarantee an individualised approach taking into account the child's particular mental and physiological development in a particular age group; (3) such information may be provided by specialists – teachers, doctors, psychologists.

Application of this test to the claimants in *Alekseev, Evtushenko and Issakov* led to accusing them of homosexual propaganda to children for holding signs during their pickets in different Russian cities: 'Gay-propaganda does not exist'; 'One does not become gay, one is born gay'; 'To be gay and to love gays is normal. To beat up gays and to kill gays is a crime'. As disproportional as it appears, interpretation of the term 'propaganda' as applied in this leading case remains the official position of Russian courts, although according to Vladimir Putin protest actions and propaganda are not quite the same thing.⁴⁰ All criticism of this position by international community⁴¹ is met

⁴⁰ Vladimir Putin: 'Protest actions and propaganda are after all two slightly different things. They are close enough but if we look at this from the legal point of view, a protest against a law is not propaganda of homosexuality itself or child sexual abuse.' President Vladimir Putin on the issue pertaining to LGBT-community (talking to world media on 17 January 2014) <<http://rusemb.org.uk/press/1436>> accessed 15 March 2015.

⁴¹ Committee on Economic, Social and Cultural Rights. Consideration of reports submitted by states parties under Articles 16 and 17 of the Covenant. *Concluding observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*, E/C.12/RUS/CO/5 (CESCR, 2011) <<http://uhri.ohchr.org/document/index/d1455a48-1e30-4fe5-9a5e-329339d0be3a>> accessed 15 March 2015; Human Rights Committee, Ninety-seventh session, 12-30 October 2009. Consideration of reports submitted by states parties under Article 40 of the Covenant. *Concluding observations of the Human Rights Committee: Russian Federation*, CCPR/C/RUS/CO/6 (HRC, 2009) Recommendation No. 27 <<http://uhri.ohchr.org/document/index/84e4c118-88bb-4d90-85b9-1be41e485af9>> accessed 15 March 2015; Human Rights Council Eleventh session, Agenda item 6: Universal Periodic Review. *Report of the Working Group on the Universal Periodic Review: Russian Federation*. A/HRC/11/19 (UPR, 2009)

by Russian justification of its necessity based on international treaties. I will now indicate the main lines of this argument.

In what way is the ‘anti-gay law’ originally based on international treaties signed and ratified by Russia?

I will answer this question on two levels: first, from the position of the legislator and, second, from a more conceptual viewpoint.

According to the Explanatory Note to the Law on Protecting Children⁴² the law is aimed at ‘fulfilling the state’s international obligations to protect children from the materials, harming his or her welfare and introducing necessary limitations on distribution of information containing violence, cruelty, promoting drug use or pornography’.⁴³ It also mentions that the law is prepared with consideration of best practices of legislative regulation of distribution of harmful information in foreign

Recommendation No. 28 <<http://uhri.ohchr.org/document/index/7147e458-2da3-4253-91ea-ae55f755545f>> accessed 15 March 2015; Committee against Torture. *Concluding observations on the fifth periodic report of the Russian Federation*, adopted by the Committee at its forty-ninth session (29 October-23 November 2012) CAT/C/RUS/CO/5 (CAT, 2012) Item 15 <<http://uhri.ohchr.org/document/index/9e31405c-d40f-4821-9025-29190970bff7>> accessed 15 March 2015; Human Rights Council, Twenty-third session, Agenda item 3. *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Mission to the Russian Federation (16 – 26 April 2012)** A/HRC/23/34/Add.1 (SR Cultural Rights, 2013) Items 101-104 <<http://uhri.ohchr.org/document/index/152149ac-b180-4773-8ccf-a7974f7d8277>> accessed 15 March 2015.

⁴² Archived materials on the Draft Federal Law on Protecting Children from Information Harmful to Their Health and Development No. 155209-5 <[http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=155209-5](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=155209-5)> accessed 15 March 2015.

⁴³ The Explanatory Note further lists the following international instruments: articles 13, 17, 34 of the UN *Convention on the Rights of the Child*, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990 <www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> accessed 15 March 2015; Council of Europe *Declaration on Freedom of Communication on the Internet*, adopted by the Committee of Ministers on 28 May 2003 <<https://wcd.coe.int/ViewDoc.jsp?id=37031>> accessed 15 March 2015; Council of Europe Recommendation No. R (89) 7 *Concerning Principles on the Distribution of Videograms Having a Violent, Brutal or Pornographic Content*, adopted by the Committee of Ministers on 27 April 1989 <[www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1989\)007&expmem_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1989)007&expmem_EN.asp)> accessed 15 March 2015; Council of Europe Recommendation No. R (97) 19 *On the Portrayal of Violence in the Electronic Media*, adopted by the Committee of Ministers on 30 October 1997 <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=568198&SecMode=1&DocId=582650&Usage=2>> accessed 15 March 2015; Council of Europe Recommendation No. Rec(2003) 9 *On Measures to Promote the Democratic and Social Contribution of Digital Broadcasting*, adopted by the Committee of Ministers on 28 May 2003 <<https://wcd.coe.int/ViewDoc.jsp?id=38043&Site=CM>> accessed 15 March 2015.

countries, namely, the USA, Canada, Australia, Germany, the United Kingdom, France, the Netherlands, Italy, Portugal, Romania, Poland and Japan.

The Explanatory Note further clarifies that the law takes into account jurisprudence of the European Court of Human Rights, particularly recognition of the right of the state to pass laws restricting dissemination of harmful information and ideas, including the right to impose sanctions up to criminal whenever necessary for the protection of morals and welfare of children in need of special care due to immaturity.

This law is one of the rare examples of the legislator taking up the initiative to pre-empt possible questions in the future by providing the necessary justification of the law according to international law, although there is no legal obligation to do so. Moreover, the legislator insists that this law is ‘aimed at unification and harmonisation of Russian legislation with international law and the laws of foreign countries.’⁴⁴

From a more conceptual standpoint, the Law on Protecting Children is only one piece of the legislative puzzle designed to restore public morality in Russia. In 2008 the lower chamber of Russian Parliament – the *State Duma*⁴⁵ – invited civil society representatives, academics and media to discuss the new Concept of public policy on spiritual and moral upbringing of children and protection of morality in Russia.⁴⁶ The Federal Law ‘On Protecting Children...’ described earlier in detail, was one of 16 normative acts envisaged by the Concept and justified by its goals and purposes. Although this Concept has never become a legislative act, it effectively triggered

⁴⁴ *Explanatory Note* (n 42).

⁴⁵ Official State Duma website, <http://www.duma.gov.ru/news/273/57336/>

⁴⁶ *Concept of Public Policy on Spiritual and Moral Upbringing of Children and Protection of Morality in Russia*, introduced by the State Duma Committee on the Issues of Family, Women and Children, the State Duma Committee on Culture, the State Duma Committee on Youth, the Russian Civic Chamber Commission on Social and Demographic Policy, Civil Council of the Central Federal District (Discussed in Moscow on 2 June 2008) <www.state-religion.ru/files/concept01.pdf> accessed 15 March 2015; Verbatim Report of the State Duma session where the Concept was introduced and discussed <www.detirossii.ru/13124.php> accessed 15 March 2015.

dramatic changes to realisation of the freedom of expression, freedom of consciousness and the legal status of LGBT people in Russia.

This Concept is an interesting example of a policy paper utilising a whole range of legal and political instruments aiming at providing a comprehensive grounding for one particular sphere of governance. The Concept refers to proportionality rules to justify the necessity to limit private entrepreneurial interests in favour of considerations of the best interests of the child; it claims to be based on the principles of protectionism and self-limitation of the society; it applies comparative analysis of similar regulation in foreign countries and stresses the priority of Russia's international obligations.

The key idea that unites all part of the Concept is promotion, restoration, preservation and protection of 'traditional values' intrinsic to the Russian society. According to the Concept only such approach can reduce the scale of the national moral catastrophe (drug addiction, the number of suicides of children, the extent of alcohol and tobacco consumption, the number of abortions among minors, the number of orphans, the level of violence in society), that is 'close to the point beyond which irreversible processes of spiritual, moral and physical degradation will begin and the actual degeneration of Russian people'.⁴⁷ Current state of the degrading process is believed to be severe enough to threaten national security,⁴⁸ and first of all it concerns dissemination of information in media that is harmful to the morals of children and is destroying traditional moral values of the peoples of Russia.

The deliberate process of constructing the idea of traditional values as an international legal notion that later will be used to substantiate the Russian Law on Protecting Children begins immediately after adoption of the Concept. In 2009, three

⁴⁷ *Concept of Public Policy* (n 42).

⁴⁸ *Strategy of National Security of the Russian Federation until 2020*, approved by Presidential Decree No. 537 of 12 May 2009 (2009) 4912 *Rossiiskaya Gazeta* <www.rg.ru/2009/05/19/strategia-dok.html> accessed 15 March 2015, item 81: 'Negative impact on the state of National Security... is reinforced by ... propaganda of the lifestyle based on permissiveness and violence'.

months after re-election for the second consecutive term to the Human Rights Council (HRC)⁴⁹ Russia introduces the first HRC Resolution 12/21 on 'traditional values' noting that the 'significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind'.⁵⁰ Although the Resolution is openly opposed by the 'western bloc', it is adopted on 12 October 2009 by 26/15 vote. Next year Russia organises and generously funds a workshop on traditional values at the HRC; the outcomes of the workshop are reported at the HRC 16th Session.⁵¹ Interestingly enough, the dichotomy of traditional values v. LGBT rights appears during this workshop in a statement by the delegate from the USA, who noted that 'the idea of traditional values had been misused by some to justify restrictive and unjust treatment of lesbian, gay, bisexual or transsexual communities.'⁵²

Before the second HRC Resolution on traditional values sponsored by Russia is adopted in 2011 by 24/14 vote⁵³ two importantly connected events happen within ten days period in October 2010: European Court on Human Rights adopts the ruling *Alekseyev v. Russia*⁵⁴ holding Russia liable for violation of Articles 11, 13 and 14 of the European Convention on Human Rights (ECHR) and the Law on Protecting Children enters into force. These two events are connected because LGBT activists in *Alekseyev* were banned from organising public meetings in Moscow on the same premises as the

⁴⁹ Results of the election 12 May 2009 <www.un.org/en/ga/63/elections/hrc_elections.shtml> accessed 15 March 2015.

⁵⁰ Human Rights Council, Twelfth session, Agenda item 8. Resolution A/HRC/RES/12/21 of 12 October 2009 on '*Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind*' <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/12/21&Lang=E>> accessed 15 March 2015.

⁵¹ Human Rights Council, Sixteenth session, Agenda items 2 and 8. Workshop on traditional values of humankind: Report of the United Nations High Commissioner for Human Rights, A/HRC/16/37 of 13 December 2010 <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-37.pdf>> accessed 15 March 2015.

⁵² *ibid*, item 42.

⁵³ Human Rights Council, Sixteenth session, Agenda item 3. Resolution A/HRC/RES/16/3 of 8 April 2011 on '*Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind*' <[http://daccess-ods-un.org/doc/RESOLUTION/GEN/G11/124/92/PDF/G1112492.pdf?OpenElement](http://daccess-ods.un.org/doc/RESOLUTION/GEN/G11/124/92/PDF/G1112492.pdf?OpenElement)> accessed 15 March 2015.

⁵⁴ ECtHR ruling *Alekseyev v. Russia*, Applications No. 4916/07, 25924/08 and 14599/09.

Law on Protecting Children is aimed at addressing – on the prohibition (undesirability – before the Law entered into force) of propaganda of homosexuality to children.

In the meantime, building up of the dichotomy continues after Russia's second term in HRC ends in 2011. At its 17th Session the HRC adopts by a 23/19 vote Resolution 17/19 on sexual orientation and gender identity⁵⁵ sponsored by the USA. This Resolution is aimed at initiating a study of discriminatory laws around the world affecting LGBT population,⁵⁶ which automatically triggers OHCHR's concern about the Russian Law on Protecting Children.

In response to the growing concern⁵⁷ Russia reinforces her positions by ratifying international treaties aimed at protecting children, including the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (with reservations)⁵⁸ and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.⁵⁹ The latter is particularly relevant as a tool to justify the Law on Protecting Children as it requires all state parties to the Protocol to adopt a holistic approach, addressing, inter alia,

⁵⁵ Human Rights Council, Seventeenth session, Agenda item 8. Resolution A/HRC/RES/17/19 of 14 July 2011 on *Human rights, sexual orientation and gender identity* <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/17/19&Lang=E>> accessed 15 March 2015.

⁵⁶ Human Rights Council, Nineteenth session, Agenda items 2 and 8. *Report of the United Nations High Commissioner for Human Rights: Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41 of 17 November 2011 <www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf> accessed 15 March 2015.

⁵⁷ 'UN rights experts advise Russian Duma to scrap bill on 'homosexuality propaganda' (OHCHR, 1 February 2013) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12964&LangID=E#sthash.TN2L2OpS.dpuf> accessed 15 March 2015.

⁵⁸ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No.: 201 <www.coe.int/t/dghl/standardsetting/children/Text_Convention_en.asp> accessed 15 March 2015; Federal Law No. 76-FZ of 7 May 2013 'On Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse' (2013) 99 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015.

⁵⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002 <www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> accessed 15 March 2015; Federal Law No. 75-FZ of 7 May 2013 'On Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' (2013) 99 *Rossiiskaya Gazeta* <<http://pravo.gov.ru>> accessed 15 March 2015.

‘irresponsible adult sexual behaviour’⁶⁰, and, especially, to ‘take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol’.⁶¹ This reference to the Protocol perfectly matches the purpose of the Law on Protecting Children with the only clarification that by ‘irresponsible adult sexual behaviour’ the Law understands, *inter alia*, homosexuality.

Conclusion

As a result of the two-fold process of ratification of the relevant treaties and promoting traditional and, later, family values⁶² at the HRC Russia has been able to formally respond to accusations of violation of LGBT rights in the past six years. Russia keeps insisting that the notorious ‘anti-gay law’ is not discriminative to LGBT population of Russia, but is aimed solely at protecting children from harmful information in accordance with the country’s traditional values of family, motherhood and the best interests of the child, as per international obligations Russia has committed to.

At the same time, state authorities deny registration to NGOs aiming at protection LGBT rights,⁶³ while public events targeted at raising awareness about discrimination of LGBT people in Russia are banned by the courts that accord to the prohibition of propaganda of homosexual relationships the widest possible interpretation,⁶⁴ despite

⁶⁰ *ibid*, preamble.

⁶¹ *ibid*, art 9.5.

⁶² Human Rights Council, Twenty-sixth session, Agenda item 3. Resolution A/HRC/RES/26/11 of 16 July 2014 on *Protection of the family* <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/086/78/PDF/G1408678.pdf?OpenElement>> accessed 15 March 2015; sponsored by Russia, adopted by a 26/14 vote.

⁶³ Moscow City Court Decision No. 33-39388 of 20 December 2010 <www.consultant.ru> accessed 15 March 2015: the court confirmed legitimacy of denial of registration of an NGO ‘For Equality in Marriage’.

⁶⁴ See, for example, Saint-Petersburg City Court Appellate Decision No. 33-6867/2013 of 22 May 2013 <www.consultant.ru> accessed 15 March 2015; Kostroma Regional Court Appellate Decision No. 33-1400 of 1 September 2014 <www.consultant.ru> accessed 15 March 2015; Moscow City Court Appellate Decision No. 33-18257 of 4 September 2014 <www.consultant.ru> accessed 15 March 2015 etc.

the ECtHR's position.⁶⁵ Moreover, support groups for children suffering from violence and discrimination because of their sexual orientation are becoming targets of the growing homophobic actions of the most adamant traditionalists.⁶⁶

The situation is not likely to change in the nearest future, since, as cynical as it may sound, the 'anti-gay' rhetoric is in fact a very profitable asset in any politician's arsenal. According to national surveys⁶⁷ homophobic tendencies in the country are only growing: 54% of Russian respondents have a generally negative attitude to people with 'non-traditional sexual orientation', while 42% believe that homosexuality should be a criminal offense. Number of people opposing the idea of same-sex marriage increased from 59% in 2005 to staggering 86% in 2013. Finally, 88% of respondents support the Federal Law banning homosexual propaganda to children, mostly because they believe that homosexual orientation is acquired under the influence of society (61%) rather than by birth (25%).⁶⁸

⁶⁵ *Alekseyev v. Russia* (n 54).

⁶⁶ 'Founder of "Kids-404" was found guilty in promoting non-traditional sexual relations' (2015) 3757 *Vedomosti* <www.vedomosti.ru/politics/articles/2015/01/26/zakryt-detej-za-propagandu> accessed 15 March 2015.

⁶⁷ 'The Law on Homosexual Propaganda: Pros and Cons', Russian Public Opinion Research Centre (WCIOM) (2013) 2320 <<http://wciom.ru/index.php?id=459&uid=114190>> accessed 15 March 2015.

⁶⁸ 'People are not Born Homosexual?' Russian Public Opinion Research Centre (WCIOM) (2012) 2022 <<http://wciom.ru/index.php?id=459&uid=112769>> accessed 15 March 2015.