

Traditional Values and Human Rights of LGBTI in the Framework of the UN and Council of Europe: International Legal Aspects

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Doi:10.5901/mjss.2015.v6n4s4p315

Abstract

Having started at the universal level with the idea of protecting lesbians, gays, bisexuals, transgenders and intersex persons (LGBTI) from violent acts of discrimination, the United Nations Organization (UN) has quietly moved to propagating LGBTI way of life as normal and entitled even to family rights. The Council of Europe (CoE) is committed to promote and ensure respect for the human rights and dignity of every individual. The CoE has adopted a number of texts on combating discrimination on grounds of sexual orientation. The article considers the contemporary stance of the UN and CoE law in respect of traditional values and human rights of LGBTI. It also reveals the role of the Russian Federation in promoting the protection of traditional values, among which the primary significance belongs to the concept of traditional family. The paper consists of introduction, literature and methodology review, discussion parts elaborating on human rights of LGBTI and traditional values, respectively, illustrating the arguments and conclusions of the authors and the part, devoted to the efforts and activities undertaken by Russia in the sphere under discussion as one of the key states contesting against the promotion of human rights of LGBTI at the expense of traditional values' protection.

Keywords: international law, human rights, traditional values, LGBTI, discrimination, education, right to education, Council of Europe, European Court of human rights.

1. Introduction

At present one can witness a conflict of values between the Russian Federation and the Western states. The core of the conflict is a different attitude towards traditional values of mankind, primarily, towards family values. In this article the authors research the UN documents that were adopted with the goal of promoting LGBTI rights and equalizing LGBTI unions with traditional families. Besides that, analysis of the European Court's of Human Rights practice concerning LGBTI is presented. The aim of the analysis is to answer the question whether the protection of LGBTI from discrimination, to which every one is entitled irrespective of one's sexual orientation, transforms into the propaganda of LGBTI and discrimination of non-LGBTI, especially children in cases of adoption.

The topic of lesbian, gay, bisexual, transgender and intersex persons' discrimination is regularly raised with authorities in the CoE member states. While the phenomena of LGBTI is known throughout the human history, its legalization and attempt to equalize it with heterosexuality is quite recent. We can trace it at least for half a century. On the other hand, traditional values have always been a basis for legal regulation. Their immanent character for law was and is being comprehended through correlation between law and morals. While LGBTI seek full enjoyment of human rights, traditional values help to grasp the very idea of human rights protection.

Human rights are applicable to any person on basis of the same principles and taking into account all kind of differences that are present among human beings. However, human rights idea(l) depends on our understanding of what a human being is, understanding of normalcy and deviation. A deviation needs affirmative actions while normalcy needs only protection. Traditional values help to understand what is normal. For instance, a child differs from an adult, as it is indicated in the preamble of the Convention on the rights of the child, 1989 (Convention on the rights of the child, 1989. P. 3.), with reference to the Declaration of the Rights of the Child (Resolution 1386, 1959), "by reason of his physical and mental immaturity". It means that a 'normal' human is the one who is physically and mentally mature. Otherwise a person

"needs special safeguards and care" (ibid).

A disabled person, as it follows from the definition of Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1994 (Resolution A/RES/48/96, 1994), is a person with "different functional limitations" (ibid. Para. 17). Or, "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (Convention on the rights of persons with disabilities, 2006. P. 3). It means that a 'normal' human is a person without 'different functional' 'impairments'. Otherwise a person needs assistive devices or adapted or specialized products, environments, programmes and services (*mutatis mutandis*) from definition of 'universal design' as given in art. 2 of the same Convention.

From this point of view, if we speak about human rights of LGBTI we take them different from others. They are equal with 'normal humans' in everything, but a sphere of sexuality and reproductive sphere. Reproduction of humankind generally occurs through the institution of family. LGBTI couples (two gay men, two lesbians, etc.), from biological point of view, are incapable of reproduction. In case, being a LGBTI is a choice, family rights are voluntarily waived by LGBTI. In case, being a LGBTI is biologically predetermined but a person wish to marry and found a family (and a family can be founded by a man and a woman as stated in numerous treaties), international law protects the right.

2. Literature Review

In the Russian international legal literature the issues related to the protection of traditional values in the light of gender aspects in particular in the framework of the Council of Europe received rather little attention. In this connection it is worth mentioning the collection of articles "Gender aspects and traditional values in the light of public international law" published in 2015 as a result of two scientific conferences held at the Peoples' Friendship University of Russia, which contains a number of articles on various aspects of the problem in question: as well as separate publications on the subject, for example, Kartashkin V.A. Universalization of human rights and traditional values of mankind, 2012; Semenova N.S. Preservation of traditional values and international obligations of the Russian Federation under the right to education, 2014; Alisievich E.S., Ilyashevich M.V. The role of the UN High Commissioner for Human Rights in protecting LGBTI from discrimination, 2014; Alisievich E.S. Non-traditional look at the traditional values in the case-law of the European Court of Human Rights, 2014; Ponkin I.V. Development of family values in education system, 2004.

In the foreign international legal literature, in contrast, there is a substantial number of publications devoted to the protection of the rights of LGBTI in particular in the framework of the Council of Europe, for example: David E. Newton Gay and Lesbian Rights: A Reference Handbook, 2009; Rose K. Diverse Communities: The Evolution of Lesbian and Gay Politics in Ireland, 1994; Clapham A. Homosexuality, a European Community Issue: Essays on Lesbian and Gay Rights in European Law and Policy, 1993; Gessen M. The Rights of Lesbians and Gay Men in the Russian Federation: An International Gay and Lesbian Human Rights Commission Report, 1994; Wintemute R., Mads Tønnesson Andersen. Legal Recognition of Same-sex Partnerships: A Study of National, European and International Law, 2001; Toner H. Partnership Rights, Free Movement, and EU Law, 2004; Mooney Cotter A.-M. Ask No Questions: An International Legal Analysis on Sexual Orientation Discrimination, 2010; Discrimination on grounds of sexual orientation and gender identity in Europe, CoE Commissioner for Human Rights, Report, 2011 - 2nd edition; Combating discrimination on grounds of sexual orientation or gender identity - Council of Europe standards, 2011; Johnson P., Homosexuality and the European Court of Human Rights, 2013, etc.

3. Methodology

During the preparation of present paper the authors used common scientific and special methods of inquiry. In the paragraphs 5.1 and 5.2, in the first place, they used the method of analysis, as well as the principle of objectivity, which allowed to consider the problem of discrimination of LGBT persons, including some aspects of their intersection, from the opposite points of view. Among the special methods of inquiry, especially in paragraph 5.2 and 5.3., has been widely used the comparative method of inquiry aiming to identify changes in the ECtHR case-law towards traditional values and human rights of LGBT. In addition, especially in the paragraph 5.3, was used the historical method, which made possible to conduct a study of social phenomena and concepts (such as traditional values, family, etc.) in their development and change, as well as in association with each other.

4. Results

It is possible to submit four main theses as a result of the discussion to be presented further in the paper.

1. The Council of Europe's standards and mechanisms seek to promote and ensure respect for the human rights of every individual. Discrimination on grounds of sexual orientation or gender identity is not compatible with Council of Europe standards. However combating discrimination and violence on the grounds of sexual orientation or gender identity and promoting LGBTI rights are from different orders. Although traditional values and human rights of LGBTI both are at the heart of understanding human rights, generally they give an opposite understanding of human rights ideal and, thus, mutually exclude each other to a great extent.
2. LGBTI rights are lobbied fiercely within the CoE while traditional values are promoted quite modestly, if not ignored.
3. The CoE standards are based on recommendations of the Council of Europe's Committee of Ministers and Parliamentary Assembly and on judgments of the European Court of Human Rights (ECHR).
4. Lobbying rights of LGBTI at the UN and CoE levels leads to interference with internal affairs of states and thus violates a state's right to self-determination. As a part of the democratic choice, a society is entitled to voice in favour of traditional values, family values in the first place, and, as a result, prohibit the propaganda of same-sex and other non-traditional relations among children.

5. Discussion

5.1 *Universal involvement in combating discrimination of LGBT persons*

Many states have enacted legislation criminalizing same-sex relations. In addition, in society remains a high level of general rejection of such relations, resulting in cases of violence and even death due to hatred caused by the sexual orientation of the victim. This situation is unacceptable for a civilized community, the highest value of which is to protect human rights equally for all, especially when it comes to the right to life, health and human dignity. In this regard, international community continues to undertake attempts to develop international law provisions aimed at protection of LGBT from discrimination, as well as from the use of violence against them. However, we should also admit that the contemporary stance is that the protection of human rights for all transgresses into the propaganda of non-traditional relations and obtrusion of LGBTI's way of life on others depicting it as a sort of norm.

Now there is still no agreement of universal character in international law, the object of which would be, specifically, protection of LGBT from discrimination. However, many international intergovernmental organizations, especially the UN, are actively working in this direction. A special role in this process belongs to the human rights mechanisms, functioning within the framework of the United Nations – especially the UN High Commissioner for Human Rights and United Nations treaty bodies on human rights.

A number of initiatives undertaken within the framework of the Office of the UN High Commissioner for Human Rights undeniably made a great contribution to the solution of the issues under discussion. Within the framework of the Office a large number of workshops, meetings and discussions are being held in order to increase tolerance towards the LGBT in modern society. At the initiative of the UN High Commissioner for Human Rights, N. Pillay, in July 2013 there was launched a wide information campaign named Free & Equal, aimed at protection of LGBT from discrimination. To inform the society about the problems of violence, torture and inhuman treatment applied to LGBT, as well as about all difficulties faced by LGBT in everyday life in general there have been developed and published special training and reference materials. These include the brochure "Born free and equal", which deals with international legal obligations of states on protection of LGBT from discrimination and provides specific recommendations to the states on how to strengthen guarantees of the LGBT's rights in everyday life. The importance of such initiatives was expressed by N. Pillay: "Homophobia along with racism and misogyny are the prejudices engendered by ignorance. And, as in all such cases, the most effective way to deal with them is to inform and educate ". However, it should be noted that the denial of family rights in respect of LGBTI unions is backed not by homophobia, but by the democratic choice of citizens in favour of developing their state in accordance with traditional values. Necessity of legislative prohibition of non-traditional values propaganda is a collateral of this choice.

In addition, within the framework of the United Nations many documents are being developed to protect LGBT from discrimination. These documents are not legally binding in nature, but reflect strong determination of the Organization in achieving success in this process, as well as, apparently, represent a positive step forward in the adoption of legally binding documents.

In the absence of an international agreement of universal character the obligation of states to protect human rights equally regardless of sexual orientation is often justified by the provisions of the various international legal instruments. First of all, it refers to the Universal Declaration of Human Rights of 1948. Exempli gratia, the United Nations Human Rights Council in its resolution 17/19 of 14 July 2011 recalls "... about the universality, indivisibility and interdependence of human rights enshrined in the Universal Declaration of Human Rights and further developed in the other human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other relevant core human rights treaties", and that "... it is affirmed in the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in this Declaration, without any distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

The initiatives generated in the UN Human Rights Council and the UN treaty bodies on protection of human rights in this specific area are also of importance. Within the framework of their competence committees make recommendations to the states regarding the adoption of necessary legislation by national parliaments in order to protect the LGBT from discrimination. A good example of such activity is the Resolution of the UN Human Rights Council 17/19, "Human rights, sexual orientation and gender identity" adopted on July 14, 2011. In the Resolution the UN High Commissioner for Human Rights was requested to prepare a report on the study of the national legislation containing provisions relating to discriminatory practices and use of violence against individuals because of their sexual orientation and gender identity. The report prepared on the basis of the Resolution was presented to the Council on November 17 in 2011.

According to the recommendations of the UN High Commissioner member states should conduct a proper investigation of all crimes committed on basis of hatred for LGBT, regardless of the subject and place they occurred, as well as implement a special accounting system of such crimes; grant an asylum to individuals persecuted on basis of their sexual orientation and/or gender identity; develop and adopt legislation to eradicate discrimination based on sexual orientation and/or gender identity; carry out the special training in law enforcement and other enforcement agencies, as well as public information campaigns in society, etc.

The UN Human Rights Council practice in considering the national reports of states in accordance with the Universal Periodic Review (UPR) procedure requires a separate assessment. The Report of Belgium of 2012 contains a chapter named "Information on non-discrimination and equality and on effective remedies", which considers the legal status of LGBT in Belgium. The report also contains references to the Belgian statute on legal cohabitation, which equated same-sex unions to 'traditional couples' from the legal point of view. This process was completed in 2003, securing for LGBT the right to enter into a civil marriage, and eventually in 2006 the right to adopt children. This is an example of what steps the states governments make in the process of securing the rights of LGBT in family law. It can be argued that many states now are already at a particular stage of completion of this process.

Thus, we can see that implementation of the corresponding recommendation results in legalization of same-sex unions and entitling them to adopt children. Such approach is absolutely unacceptable to states societies that organize their life in accordance with traditional values. The said above confirms that the protection of LGBTI from discrimination evolves into equalizing LGBTI unions' rights with the rights of traditional families.

The Resolution of the UN Human Rights Committee emphasizes the existence of obligations of states to protect individuals from discrimination on grounds of sexual orientation, which includes the provision for unmarried same-sex couple's equal treatment and provides them with the same legal benefits as unmarried opposite-sex couples. Moreover, the UN Human Rights Committee urged states to adopt national legislation recognizing the institute of civil partnerships. The right to enter into same-sex partnerships is already provided in the legislation of many states, for example, in Germany, where the right to the establishment of such partnerships was enshrined in a statute passed in 2001.

Moreover, in the report of the UN Committee on Economic, Social and Cultural Rights, containing the recommendations made after review of the national report of Slovakia, paragraph 10 states: "The Committee is concerned that the same-sex couples are not recognized under the law and that there is no legal framework for the protection of such pairs (article 2). The Committee recommends to the member states to consider the possibility of adopting laws recognizing same-sex marriages and regulating property relations of individuals in such unions".

Thus, the UN makes efforts to influence directly the choice of the society of each and every state in respect of equaling rights of same-sex unions with those of the traditional families. Such approach contradicts para. 7 Art. 2 of the UN Charter, which reads that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state".

Moreover, in its own policy, the UN also adheres to the line for the protection of LGBT against discrimination. In 2014 it was announced that the UN is changing its approaches to the categorization of its personnel and in this regard

expands opportunities for the same-sex couples so that they could use same benefits as heterosexual couples.

Having thus revealed the distressing practice of the universal level, we pass to analyzing the regional European level.

5.2 *Human rights of LGBT as the Council of Europe focal point for work on sexual orientation and gender identity issues*

Different activities aimed at the protection of LGBT against discrimination are also being actively conducted at the regional level in the framework of existing inter-governmental and non-governmental international organizations.

Very proactive stance on this issue traditionally has been the Council of Europe. The European Convention for the Protection of Human Rights and Fundamental Freedoms in Art.14 establishes a prohibition of discrimination on any grounds whatsoever. Also the provisions containing the prohibition of discrimination on grounds of sexual orientation are contained in the Council of Europe Convention on preventing and combating violence against women and domestic violence, which entered into force on 1 August 2014. The Art.4 Para.3 of the Convention explicitly provides: "The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status".

Also the Committee of Ministers of the Council of Europe in March 2010 has developed and adopted the Recommendation to member states to eradicate discrimination based on sexual orientation and gender identity. The Recommendation contains several sections: the right to life, security and protection from violence; freedom of association; freedom of expression and peaceful assembly; right to private and family life; employment; education; health; housing; sports; the right to asylum; national human rights mechanisms; discrimination on a variety of features. The Recommendation in each section also contains a list of measures, which are to be undertaken by member states to guarantee the rights and freedoms for everyone regardless of sexual orientation and gender identity.

This document formed a basis for a special project of the Council of Europe in this area, which was implemented in 2013. First of all, the Council of Europe, among others actively supported the Government of Poland and Italy, etc. to take measures to combat discrimination based on sexual orientation and gender identity. In addition, one of the main goals of the project was the implementation of the Recommendation of 2010 in the national legislation of the member states of the Council of Europe. This process requires the passage of number of stages with the active participation of the national authorities of the member states, as well as non-governmental organizations in it. For this purpose, there have been organized many seminars, conferences and discussions at the intergovernmental level. This process resulted in a growing number of States legally recognizing same-sex partnerships. Among the latter was Croatia, which in July 2014 adopted the statute giving legal status to same-sex partnerships.

Thus, at the regional level the struggle against discrimination and violation of human rights, common to all, of LGBTI has also led to legalization of normalcy of the latter's way of life, that cannot be considered as a correct consequence of combatting discrimination. In fact, the states are being pressed to accept the unacceptable for them way of thinking, at least, at the example of the Russian Federation.

5.3 *The European Court of Human Rights' contribution in the area of LGBT human rights*

In the XXI century the case-law of the European Court of Human Rights (hereinafter - ECtHR) was significantly enriched with cases on violation of human rights of LGBT people and transgender community. For a long time the ECtHR commented on this issue very carefully, mainly referring to the lack of consensus in Europe on such sensitive issues as well as the principle of «a wide margin of appreciation». However, an array of applications to the ECtHR, consistently stimulated supervisory body of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the ECHR) to take a position on the subject more specifically.

Cases relating to the violation of human rights of LGBT can be divided into three groups: right to freedom of assembly and association, freedom of expression; rights of same-sex couples and representatives of the LGBT community; transgender people who appealed to the ECtHR.

Freedom of assembly and association, freedom of expression. In several cases on the prohibition of public events in defense of the rights of LGBT persons the ECtHR has found a violation of Art. 11, 13 and 14 of the ECHR: judgments concerning cases "Bachkovsky and Others v. Poland" (2007) and "Alekseyev v. Russia" (2010).

Applicants in the case "Bachkovsky and Others v. Poland" were the Foundation for Equality, five of its members

and other NGOs acting on behalf of homosexual persons. The applicants were going to organize in the framework of the campaign "Equality Days" held 10-12.07.2005, the Fund equality march in Warsaw in order to attract public attention to discrimination against women, persons with disabilities and minorities. Also planned rallies on 7 squares of the city against the discrimination against women and minority groups.

The applicants were refused by the representatives of the mayor's office, because they failed to provide the authorities with the "traffic management plan" required under Art. 65 (a) of the Rules of the road. Another reason for the denial was the position of the Act on Assembly (1990), that the meetings should be held away from the road. However, a rally against the discrimination of women in the same day has been enabled. All demonstrations against the adoption of children by same-sex couples and same-sex partnerships were also allowed.

However the forbidden march did take place with the participation of about 3,000 people, protected by the police. The court of Appeal overturned the decision of the authorities as an insufficiently motivated, recognizing it illegal. The announcement was made only after the date of the demonstration.

The applicants stated violation of the right to freedom of assembly, pointing out that, unlike other organizations that have not received a final decision before the date of the planned demonstration.

The ECtHR noted that the state's positive obligation to protect the right to freedom of assembly is particularly important, when touched unpopular views, minorities, since the probability of violation of their rights is particularly great. The Court also found the risk of applicants, because although the demonstration was held as scheduled, at any time, an official ban could be applied. The ECtHR found that the national court sought to prevent the applicant from participating in unsanctioned events due to lack of safeguards to march against aggressive opponents. And such a situation can not be corrected by means of human rights provided by the applicant, since the decision was made after the planned date of the event. The Court found a violation of the applicants' rights guaranteed by Art. 13 and 14 in conjunction with Art. 11 of the ECHR.

According to the circumstances of the case «Alekseyev vs. Russia» the applicant was one of the organizers of a series of marches planned in Moscow in 2006, 2007 and 2008 to attract public attention to the discrimination of gays and lesbians in Russia, as well as to enforce tolerance and respect for human rights. The organizers of the mayor's office notified its intention to hold processions and pledged to cooperate with law enforcement agencies to ensure safety and public order, as well as the limitations of noise. However, their claims were rejected on the grounds of public order after receiving petitions opponents processions. According to the authorities' position, there was a threat of violent reaction that can lead to disorderly conduct and rioting. Organizers subsequently notified the mayor's office of the intention to hold short pickets instead of marches, but again they were denied permission. The applicant unsuccessfully challenged before the national courts the decision to ban marches and pickets, and then lodge an application to the ECtHR.

The ECtHR noted in the judgment that by itself, the threat that the demonstration would cause unrest, is not sufficient if every possibility of friction and overheated exchange of views among the various groups demanded a ban, the society would be deprived of an opportunity to hear the point of view on issues that affect the feelings of the majority. In addition, any threat or incitement to violence against marchers can be adequately overcome by the prosecution of those responsible. Instead, by prohibiting processions authorities effectively endorsed the intentions of persons, clearly and consciously sought to prevent a peaceful demonstration against the law and public order. In response to the argument of the respondent State that such activities should be prohibited, as promotion of homosexuality is contrary to religious teachings and morals, and can damage children and vulnerable adults, the ECtHR noted that the implementation of minority rights guaranteed by the ECHR, with the consent of most of this would be incompatible with the fundamental values of the ECHR. The purpose of marches and picketing was to promote ideas of tolerance towards sexual minorities. There was no intention to demonstrate nudism, provocative sexual behavior or criticism of public morals or religious views. The authorities indicated that their claims were not caused by behavior or clothing of participants, and the fact that they were willing to openly admit commitment to homosexuality or lesbianism, individually and as a group. ECtHR stressed that only through fair and public debate society can resolve such complex issues as gay rights, which, in turn, would contribute to social cohesion, since all views to be expressed. Accordingly, the decision to ban these measures were not based on an acceptable assessment of all relevant facts, did not meet the pressing social need and, thus, were not necessary in a democratic society. Thus, the ECtHR found a violation of Art. 11 of the ECHR.

Thus, the positions of the ECtHR are as follows:

- A contradiction between the views of the majority and the values that are designed to defend the peaceful public event, can not justify the prohibition of such an event;
- One of the basic principles of democracy - the opportunity to express on controversial issues various positions in a peaceful and legal means;
- Protection of demonstrators from violent counter-demonstrators - the duty of the state;

- Reasons for the decision to ban homosexual demonstration personal opinion of the representative power of inadmissibility of such demonstrations contrary to the norms and principles of the ECHR.

In other words, the ECtHR directly pointed that the prohibition of open demonstrations by LGBTI contradicts the ECHR. However, this position of the Court contradicts the democratic choice of the Russian citizens in favour of prohibiting the propaganda of non-traditional relations between children. The forbidden demonstration was exactly the propaganda of normalcy of same-sex relation that violates the cultural choice of the state. And every state has a sovereign right to regulate legally the issues of upbringing its citizens. It seems that the ECtHR exceeds its competence when 'instructing' a state which cultural choice to make.

Rights of same-sex couples and representatives of the LGBT community. ECtHR considered a number of cases in the field of employment relations focused exclusively on the applicant's work in the public service. In its four judgments the ECtHR considered the dismissal of homosexuals because of their sexual orientation from the armed forces. This are the cases "Lustig-Prine and Beckett v. The United Kingdom", "Smith and Grady v United Kingdom" (1999), "Perkins and R. against Great Britain" and "Beck, Copp and Basel against Britain" (2002). The Court found violations of Art. 8 of the ECHR.

In the case of "Smith and Grady v United Kingdom" the applicants stated that the reason for their dismissal of the UK Royal Air Force was their homosexuality, and claimed that it violates Art. 8 in conjunction with Art. 14 of the ECHR. In addition, the applicants perceive a violation of Art. 3 and 10 in conjunction with Art. 14 of the ECHR in the UK Ministry of Defense policy towards homosexuals military service. The applicants also pointed to the lack of effective domestic remedies for such violations (Art. 13 of the ECHR).

The Court concluded that the validity of the applicants and found violations of Articles 8 and 13 of the ECHR.

Considering the cases of same-sex couples, the ECtHR has to assess the conformity of national regulation of such relations (absence / presence of legal recognition of homosexual permanent relationship) to the principles of non-discrimination and respect for family life enshrined in the ECHR analyzed with the different situations: the lack of recognition of same-sex partners living together as family relationships; refusal to give the corresponding rights of one partner after the death of another; deportation of one partner, despite having had a permanent relationship, a family with another partner in the state.

Initially, the ECtHR did not recognized same-sex relationships within the scope of family life protected under Art. 8 of the ECHR, and the applications of this type were declared inadmissible. For example, considering the first such case - «X. and Y. against Britain" (1983), the European Commission declared: "Despite the modern evolution of the perception of gay", gay couples are in law to respect for privacy, but not family. In this way the deportation of one of the applicants was not considered as a violation of the principle of respect for private life, as it is not the impossibility of living together couples anywhere else, and communication with deporting State can not be considered an essential element of the relationship. In subsequent cases on the Immigration of homosexuals («W. J. and DP against Britain" (1986.), «C. and L.M against Britain" (1989.) and «Z. B. v. The United Kingdom" (1990.)) the Court held a similar position.

The ECtHR has evolved significantly in cases where state support inheritance rights to same-sex partner of one another property after his death. In 1986, the first application of this kind, «S. against Great Britain", was declared inadmissible. It was noted that same-sex relationships are still, despite the change in public perceptions of homosexuality, outside the scope of the right to respect for family life. As to the right to respect for home (Art. 8 of the ECHR), the refusal to lease a dwelling, remaining after the death of the tenant partner, was acquitted legal norms, but makes an exception for "persons living together as husband and wife", so that government intervention "was necessary to protect the contractual rights of the lessor for the return of property after the termination of the lease." For similar reasons the Court dismissed the application "Rëézli against Germany" (1996) and noted that the purpose of German law is protection of family, which can not be considered homosexual relationships.

However, with the case "Karner v Austria" in 2003, the position of the ECHR has dramatically changed. The situation was similar to the described above, but in this case, the ECtHR found a violation of Art. 8 of the ECHR in conjunction with Art. 14. ECHR. The Court noted that:

- elimination of discrimination requires, first, to study the legitimate aim difference in treatment, and, secondly, a reasonable proportion of the means to achieve goals;
- discretion of states in matters of sexual orientation has limits, so excuse the differences requires a particularly good reason, namely to demonstrate that the achievement of a legitimate aim necessarily implies the exclusion from the scope of the legislation of homosexual couples. However, the government failed to substantiate such a need.

This position is reflected in the Court's judgment on the case of "Kozak against Poland" (2010) where the ECtHR noted: maintaining the balance between falling within the scope of the ECHR protection of the family and the rights of

sexual minorities, States should take into account the changes taking place in society. To protect a traditional family is not necessary complete exclusion from inheritance lease rights of persons living in homosexual couples.

For a long time the ECtHR considered as an intrusion into family life various government actions against partners of same-sex couples. But in 2010, in two decisions the change in its position has been reflected. In connection with the case "Schalk and Kopf v. Austria" (the refusal of the state to recognize same-sex marriage) violation of Art. 12 of the ECHR has not been ascertained due to the wording of this provision and the lack of consensus among European countries in this regard. At the same time, the ECtHR noted that since 2001 (case "Mata Esteves against Spain") in many countries the public attitude to same-sex couples has changed significantly, which is reflected even in some of the provisions of EU law: given this evolution, the Court believes artificial to assert that in contrast to the opposite-sex couples same sex can not lead a family life in the sense of Art. 8. Consequently, the applicant, cohabiting same-sex couple living in a stable de facto partnership shall be included in the concept of family life, as would be included in it and the relationship Hetero Couples in a similar situation. A similar argument contains a ruling on the case «P. B. and JS v. Austria », where discrimination in the state actions - the refusal to grant the right to coverage of one of the partners of homosexual to another despite the fact that heterosexual partners are granted a similar right.

So the ECtHR determined that it changed its position in respect of same-sex unions and included the possibility of protecting them in accordance with Art. 8 of the ECHR on basis of the fact that in many countries the public attitude to same-sex couples has changed significantly. However, even if the attitude has changed in some states it does not mean that the ECtHR was granted the right to interpret the ECHR in accordance with new views of several states.

Cases of human rights violations, where the applicant is a same-sex couple or one of the spouses of the same-sex couples are generally cases of discrimination in comparison with the different sex couples. In most cases it is about couples whose union for whatever reason, is not officially registered. It is important to note that the ECtHR recognizes the right but not the duty of the States to allow the registration of same-sex couples. The ECtHR has clearly formulated its position on the issue in the judgment of the 14th July 2014 concerning the case «Hemeleinen Heli (Heli Hämäläinen) vs. Finland».

The applicant was a man, who made a sex change operation in 2009. As a man, he was married. In 2002, the family had a child, who at the time of trial was 10 years old. After surgery the Hemeleinen tried unsuccessfully to legally change the documents confirming her new identity. She said that while she - as a man - is married, is not possible, because in Finland same-sex marriages are not allowed, however, civil marriage are possible. Hemeleinen's wife insisted that their religious beliefs do not allow them a divorce, and that in accordance with the laws of Finland civil marriage does not give them the same privileges as the registered marriage. The case was referred to the ECtHR. The decision in the case of the ECtHR stated that civil marriage is a sufficient form for the legalization of same-sex relationships. The ECtHR recognized «the fundamental right of men and women to marry and found a family» and «the traditional concept of marriage as the union of a man and a woman».

With regard to unregistered same-sex couples the ECtHR traditionally demonstrates its commitment to the principle of non-discrimination, giving it a high priority, regardless of how it relates to traditional family values. The most significant judgments of the ECtHR on the issue are: «Karner vs. Austria» July 24, 2003: the case of the possibility of a person to live with the same-sex partner and continue to rent a dwelling after the death of the official tenant; «J.M. vs. the United Kingdom» September 28, 2010: the principle of reducing the size of the child support when a parent enters into a new relationship should be applied as to same-sex couples; «Schalk & Kopf vs. Austria» June 24, 2010 and «P.B. and J.S. vs. Austria» July 22, 2010: the ECtHR has not revealed any violations of the ECHR but considering the matter in the context of Art. 8 of the ECHR found that the relationship of cohabitation same-sex couples, de facto living in stable partnerships falls under the concept of «family life»; «Vallianatos and Mylonas vs. Greece» and «C.S. and others vs. Greece» November 7, 2013: the ECtHR ruled that Greece has violated the ECHR, eliminating the possibility of same-sex couples for a «civil marriage» and preserving the opportunity only for heterosexual couples. Such approach shows that the ECtHR exceeds its competence when dictating states specific attitude towards same-sex unions. Acceptance or rejection of same-sex unions from the point of law is the sovereign prerogative of a state. This prerogative was not passed to the ECtHR. This is especially true in respect of Greece where the Orthodox Christianity is stated in law as a state religion. According to world outlook based on the religious norms of Orthodox Christianity, same-sex cohabitation is immoral and unacceptable. As a result, a same-sex union may not be granted the same rights as a traditional family.

Another category of applications in the ECtHR case-law is related to the implementation of parental rights by the same-sex couples. It is these things tend to cause considerable public outcry. ECtHR mainly comes from the equality of heterosexual and homosexual couples in matters of child-rearing. Violations revealed by the ECHR in this category of cases, usually associated with the adoption of children by same-sex couples: the very possibility of adoption, equal conditions and procedures for adoption compared to opposite-sex couples/spouses, as well as the adoption of a child of

one of the cohabitants second cohabiting same-sex couples. As example the case «E.B vs. France» January 22, 2008 and «X and Others vs. Austria», February 19, 2013).

Transgenders. The CoE has adopted a number of documents, considering the complex problem of discrimination of transgender people. The ECtHR's position on this issue is stated in the judgment on the case «P.V vs. Spain», 30 November 2010: the list of grounds on which, in accordance with Art. 14 of the ECHR no one shall be discriminated, includes transsexuality.

In the judgment in the case «B. vs. France» from 25 March 1992 the ECtHR for the first time admitted that lack of legal recognition of a transsexual gender identity in the state constitutes a violation of the right to respect for private and family life (Art. 8 of the ECHR). The position of the ECtHR has undergone significant changes in the past 15 years.

Initially the ECtHR did not consider the refusal of the authorities to give transsexuals new birth certificate indicating the newly acquired gender as a violation of the ECHR, citing the lack of consensus on this issue in the States Parties of the ECHR. The position of the ECtHR has changed dramatically in 2002 in connection with the case «Christian Goodwin and I. vs. United Kingdom». The ECtHR ruled that the state has positive obligations, among them - the adoption of measures that would recognize the change of sex postoperative transsexuals.

A separate category of applications in the ECtHR case-law are cases covering the cost of sex reassignment surgery because of «medical necessity». So, in the case «Schlumpf vs. Switzerland» the ECtHR found that the refusal of the insurance company to cover the cost of sex reassignment surgery clients in connection with non-compliance with the requirement of two years of observation to establish the existence of «true transsexualism» violates Article 8 of the ECHR. There are two significant cases on the issue: «Van Kuk vs. Germany» June 12, 2003 and «Shlyumpf vs. Switzerland», January 8, 2009.

The analysis of the ECtHR case-law concerning where applicants are representatives of the LGBTI community and transgender people shows that, although the ECtHR regularly appeals to traditional values, as in the «Heli Hemeleinen (Heli Hämäläinen) vs. Finland», seeking to emphasize the immutability for example, marriage as the union of the classic men and women, the legal positions expressed by the ECtHR in the vast majority of cases in this category, most show a very specific, «non-traditional» view of the ECtHR that is actually a traditional value for modern society.

6. Conclusion

According to the results of the study it is possible to conclude that within the Council of Europe the most obvious tendency today is not just protecting the rights of LGBT from discrimination in various spheres of everyday's life, but active promoting of this way of life in order to impose ideas on the legality of the claims for LGBT equality with traditional majority, especially in the areas of family creation, birth and upbringing of children and education.

In view of the aforesaid, the international legal study on gender aspects of the protection of traditional values is of relevance, challenging and scientifically significant. Nevertheless, the present study reveals only certain aspects of the issues, which certainly implies the need for further research activities in this sphere.

7. Acknowledgement

Support of the Russian State Science Foundation on the basis of the provided research grant "Gender aspects of international protection of traditional values" (No. 14-33-01040).

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