

PROBLEMS IN LEGAL REGULATION OF SAME-SEX RELATIONSHIPS IN RUSSIA

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Abstract: The purpose of this article is to formulate a comprehensive view of the legal regulation of relations between people of the same sex and an attempt to develop a common worldview, which has been formed in the scientific doctrine. The Russian doctrine ambiguously approaches the perception of relations of people of the same sex as a phenomenon that is naturally developed in the world community and its emergence and formation in Russia. A special conceptual apparatus used in the scientific research is subject to analysis. Graduation of scientific presentations is made in five groups: conservatives, liberals, extreme liberals, radicals and extreme radicals. Attention is drawn to the key factors affecting Russian science: political, social, religious. The authors' arguments on all groups are generalized and systematized. The sociological data of Russia and the USA are subject to research. The authors come to the conclusion that ideologically, Russia is characterized by heteronormativity, that is, a worldview in which heterosexuality is understood as a social norm of sexual behavior of any person. Theoretical propositions and conclusions formulated by the authors can be useful for pedagogical purposes, popularization in the mass media, in the legislative, law enforcement practice and educational process.

Keywords: gender relations, people with non-traditional orientation, LGBT, rights of sexual minorities, same-sex marriages, marriage registration, adoption.

1 Introduction

There is an analysis of various opinions, which is often selective and does not give a complete picture of the worldview that has been developed in the doctrine in the scientific research of such Russian scientists as lawyers, sociologists, philosophers, political scientists.

The nature of the development of scientific research is also ambiguous. Social, political, and economic conditions often influence an increase or a decrease in the number of publications in the scientific publications, reports in the Russian and international conferences and round tables.

The scientific school in the field of researches of the rights of persons entering into same-sex relations starts to be formed gradually. The main research in the field of defining sexual orientation is the paper of A.Ch. Kinsey, who determined the scale of measuring people's sexual orientation. According to the author's theory, human sexual orientation is established from zero - exclusively heterosexual orientation to six - exclusively homosexual orientation (Kinsey et al, 1948; Mobbalegh Naseri et al, 2018). The discovery of the nature of sexual orientation made it possible to establish a classification of the discontinuity of homosexuality phenomenon, as one of their forms of a person's sexual orientation.

When generalizing the scientific works of domestic authors, one can meet an opinion that homosexuality is a disease or a deviation of physical, genetic levels, or it is one of their forms of manifestation of a person's sexuality, such as heterosexuality. However, the identification of this essence of human behavior gives us the conclusion that homosexuality does not allow a person entering into heterosexual marriage under Russian law.

Speaking about the development of relations between people of the same sex, special terminology begins to be formed. The following concepts and terms are used in the scientific articles: gender equality, rights of sexual minorities, people with non-traditional orientation, same-sex marriages, new forms of legitimate partnership, gender-family relations, LGBT.

There is often an abbreviation LGBT in the texts, which has appeared since 1990 in the USA, and which denotes the representatives of a community of lesbians, gays, bisexual and transgender people. In this case, there are varieties of this term associated with the development of a people's union on the basis of their sexual orientation and gender identity, for example,

LGBTQ, LGBTI, LGBTQI, etc (Maurice & Brown, 2013; Villalobos Antúnez, 2018).

A transgender is an umbrella term that describes people whose gender identity or gender expression is different from their gender, possibly, but not necessarily, as a result of surgery or hormone replacement therapy. Transgender people can also describe themselves as gays or lesbians.

2 Methodology

On the basis of Art. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, each citizen has equal rights regardless of gender, race, color, language, religion, political or other opinion, national or social origin, membership of a national minority, property, birth or any other signs. Similarly, Art. 12 of the Convention states that men and women of marriageable age have the right to marry and start a family in accordance with the national legislation governing the exercise of this right. The equality of citizens of the Russian Federation is guaranteed by Art. 19 of the Constitution of the Russian Federation.

On the basis of clause 12 of the Family Code of the Russian Federation, only men and women of marriageable age can be married in Russia.

Therefore, these relations can be considered in two aspects. Firstly, it is the development of social relations of people of the same sex and the ban on the promotion of non-traditional sexual relations among minors. According to Art. 6.21 of the Code of Administrative Offenses of the Russian Federation, the information aimed at the formation of unconventional sexual attitudes and attractiveness, distorted view of the social equivalence of traditional and non-traditional sexual relations, or the information on non-traditional sexual relations, causing interest in such relations shall not be disseminated by any person, by any means, including the use of mass media and/or information and telecommunications networks (including the Internet) among minors, if these actions do not contain a criminal offense.

Secondly, it is the impossibility of ensuring the protection by the state of a number of rights to persons actually entering into family relations with persons of the same sex.

1. Non-recognition of partners as family members and subjects of family legal relationships. Consequently, the norms of family law are not applied to this kind of relationships.
2. Impossibility of applying Art. 51 of the Constitution of the Russian Federation, giving the right not to testify against himself/herself, his/her spouse and close relatives, the circle of which is determined by the federal law. According to Art. 5, the spouse, parents, children, adoptive parents, adopted children, siblings and sisters, grandfather, grandmother and grandchildren are close relatives according to the Code of Criminal Procedure of the Russian Federation. The list of such persons is closed.
3. Refusal in adoption. According to family legislation, the adoptive parent can only be one person in a same-sex couple. Moreover, sub-clause 13 of Art. 127 of the Family Code of the Russian Federation prohibits adoption of persons who are in a marriage made between persons of the same sex, recognized as marriage and registered in accordance with the state's law, in which such marriage is permitted, as well as persons who are citizens of the said state and unmarried. It follows that the second partner in a homosexual couple cannot be recognized as a parent and has no rights and responsibilities in the child's upbringing.

We can name other consequences of the lack of legal regulation of the rights of persons who actually enter into family relations with persons of the same sex: refusal to grant custody of a minor child, emergence of the right to joint property of spouses, impossibility of inheritance by law, impossibility of obtaining

medical information, or impossibility of obtaining social benefits.

There are many consequences of not recognizing the same gender family-marriage relations, which suggests the right of everyone to these rights, which shall be guaranteed and protected by the state.

3 Results and Discussion

Having analyzed the opinions of Russian scientists on the development of relations between people of the same sex in a particular manifestation, one can conditionally divide their opinions into five groups: conservatives, liberals, extreme liberals, radicals and extreme radicals.

The conservatives that support the traditional marital relations, deny any manifestation of both legal and social relations between people of the same sex. At the same time, they do not come out with a statement about the prohibition of this kind of relations in Russia and abroad (Fabrikant and Magun, 2014). Some of them may even admit different development of gender relations in other countries.

This group also includes scientists who hold a neutral position in this matter, recognizing the possibility of any form of relations of the same sex, but not requiring any change in the regulatory and legal regulation of Russia. For example, Ocheretko E.A. writes that domestic legislation, by forbidding same-sex marriages, consolidates patriarchal traditions in the family law. Not recognizing the same-sex marriages of foreigners, Russia preserves the ethics of legal status of the Russian family (Ocheretko, 2017).

The liberals, supporting such relations in Russia and even allowing them being recognized at the legislative level. Most of them still recognize the need for legal recognition of the right to same-sex family, but in a limited form. In particular, Marinkin D.N. notes that it is necessary to recognize same-sex marriage in the Russian law. However, the conditions for the recognition of such marital relations require, firstly, a medical report of the impossibility of relations between persons of the same sex. Secondly, the recognition of such relations as marriage in a judicial procedure. After these conditions are met, the author allows registering the same-sex marriages in the marriage registration authorities (Marinkin, 2015).

The extreme liberals unequivocally advocate the recognition of not only any rights to the same-sex relations, but also require their legislative consolidation along with the civil marriage relations and granting them equal rights.

The main right that will open the possibility of changing the Russian legislation is the child's adoption by the spouses, and the adoption of the spouse's child.

Such statements are criticized by most scientists as being subject to the excessive influence of the world ideology on the legalization of relations between people of the same sex.

Most of the authors radically deny the possibility of developing relations between people of the same sex, negatively view the maintenance of gender relations in the world space, advocate any obstacle to their manifestation in our country, and in some cases require preventing all possible ways of spreading this phenomenon in the society at the legislative level. So, Kartseva L.V. argues that the transition to same-sex marriage destroys the centuries-old and unique culture of Russia with its social health, hinders both the preservation of public foundations and their strengthening (Kartseva, 2012).

Some authors not only critically speak about same-sex marriages, but also offer extremely radical measures to eliminate such a phenomenon in the society. Dyachenko A.P. and Tsymbal E.I. consider that the administrative and legal measures are needed to prohibit the propagation of sexual deviations, namely, to fix a ban on the adoption of children by citizens of those

countries where the marriages between people of the same sex are now permitted, as well as to ban teaching activities by persons with deviant sexual behavior in the Family Code of the Russian Federation and the Labor Code of the Russian Federation (Dyachenko & Tsymbal, 2013).

4 Summary

Sociological researches, regularly conducted in our country and all over the world, significantly influence the formation of the Russian doctrine about the perception of any manifestations of relations between persons of the same sex. Sociological data published by the All-Russian Center for the Study of Public Opinion (VCIOM) in 2015 state that Russian citizens are more categorical today to the marriage of gays and lesbians than 10 years ago: if in 2004 the right to formal registration of relations between persons of one gender was completely denied by 59%, today it is denied by 80% (Information Agency IA REGNUM, 2015).

If the sociological surveys conducted in Russia show that the negative attitude of our citizens about any manifestations of relations between people of the same sex is growing every year, then the world community not only recognizes the rights of such persons, but also consolidates them at the legislative level.

Although the USA does not lead in the position of legalization of the same-sex marriages in comparison with Western European countries, it is still focused on maintaining relations between people of the same sex. According to the Pew Research Center report, 63% of Americans said that homosexuality should be accepted by the society after the US Supreme Court legalized the same-sex marriages across the country in the USA in 2016 (Brown, 2017).

The doctrine often relies on the denial of the same-sex relations by the religion, reinforcing their positions in the scientific papers. Thus, K.A. Gorodnyanskaya believes that the low tolerance of Russian citizens is justified by the religious factors that do not belong to Western, Northern Europe and the USA (Gorodnyanskaya, 2016).

According to the Pew Research Center study, most Americans believe that religions that prevail in the USA (Muslim religion (84%), Mormon Church (83%), Catholic Church (79%) and Evangelical churches (73%)) are unfriendly to LGBT people. More loyal views on the relationship of people of the same sex have a Jewish religion and the main Protestant churches (Survey of LGBT Americans Attitudes, 2013).

5 Conclusions

The arguments of the opponents of the development of the "same-sex marriage" institution and the legal consolidation of any manifestations of relations of persons of the same sex can be formed as follows:

1. Traditional religious values of the peoples of Russia, public morality.
2. Depreciation of the "traditional" marriage institution and demographic growth.
3. Extramarital sexual relations and an increase in the number of abortions.

The main arguments of the representatives of the Russian doctrine are the religious beliefs and moral foundations of the society, as well as the historical development of Russia.

Essentially, the Russian doctrine of the relations of people of the same sex is the reaction of politicians, state representatives, officials of the state and municipal authorities, public figures and leaders of the social movements and associations.

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