



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## THIRD SECTION

### **CASE OF NEPOMNYASHCHIY AND OTHERS v. RUSSIA**

*(Applications nos. 39954/09 and 3465/17)*

## JUDGMENT

Art 14 (+ Art 8) • Discrimination • Private life • Domestic authorities' failure to comply with obligation to respond adequately to homophobic statements made by state officials against members of the LGBTI community • Existing domestic legal framework capable in theory of offering protection against stigmatising statements, but in any event relevant legal provisions not applied to applicants' case • Domestic courts' failure to strike a fair balance between competing Art 8 and 10 rights in the criminal proceedings and to even engage in a balancing exercise in the civil proceedings

STRASBOURG

30 May 2023

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Nepomnyashchiy and Others v. Russia,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova, *President*,

Georgios A. Serghides,

Yonko Grozev,

Darian Pavli,

Peeter Roosma,

Ioannis Ktistakis,

Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 39954/09 and 3465/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals whose particulars are listed in the appended table (“the applicants”), on 13 May 2009 and 28 December 2016 respectively;

the decision to give notice of the applications to the Russian Government (“the Government”);

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), who were granted leave to intervene by the President of the Section;

the decision of the President of the Section to appoint one of the sitting judges of the Court to act as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see, for an explanation of the background, *Kutayev v. Russia*, no. 17912/15, §§ 4-8, 24 January 2023);

Having deliberated in private on 9 May 2023,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The case concerns alleged discrimination against the applicants as members of the LGBTI community on account of negative public statements by a regional governor and by a member of a regional legislature.

## THE FACTS

2. The Government were initially represented by Mr. M. Galperin, former representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

I. APPLICATION No. 39954/09 (NEPOMNYASHCHIIY AND OTHERS v. RUSSIA)

4. The three applicants are gay men and LGBTI rights activists.

5. On 16 May 2008 the *Komsomolskaya Pravda* national newspaper published an interview with the Governor of the Tambov region, Mr Betin. The journalist asked for Mr Betin's comments on the recent arrest of the Mayor of Tambov on suspicion of having kidnapped his former same-sex lover. The relevant parts of the published interview read as follows:

“We talked with Governor Betin frankly, straight man to straight man.

‘I am against perversions’, insisted the Governor, ‘Orthodox [Christian] principles must be sacrosanct. Politicians must have high moral values. [The mayor] brought disgrace upon the authorities. Upon the Russian authorities as a whole.’

That awful thought visibly tormented Betin.

‘This ... foul den must be cleansed. I have already made an official statement in this connection. The national media must also be cleansed by the way’, Betin looked at me searchingly, ‘You have plenty of queers among you!’ ...

‘But what about tolerance?’ I asked from the door.

‘What?’ Betin exclaimed and angrily paced towards me across the vast governor's office, **“Tolerance? Damn it! Homos must be torn to pieces. And the pieces thrown to the wind!”** (emphasis added, see below).

6. The applicants lodged a criminal complaint under Article 282 of the Criminal Code (“the CC”) (see paragraph 39 below) against Governor Betin. They argued that the statement in bold above amounted to a call for violence against gay people.

7. On 8 July 2008 experts commissioned by the Tambov Investigations Committee found that Mr Betin's interview did not contain any insults or foul language. Although it contained emotional evaluations and negative attitudes against people of a “non-traditional sexual orientation”, those statements did not fall under Article 282 of the CC because, according to social science, homosexuals were not a social group. Lastly, the experts also found that the interview did not contain any calls to violence because it did not name any specific persons or social groups who were to commit violence or any specific persons or social groups – homosexuals not being a social group – against whom violence was to be committed.

8. On 8 July 2008 the Tambov Investigations Committee refused to open criminal proceedings against Mr Betin. Relying on a report by experts in psychology, linguistics and sociology commissioned by the investigator, the Investigations Committee found that Mr Betin's statements did not fall under Article 282 of the CC because homosexuals are not a classic “social group”. It was also considered that the statements that abound in the interview did not constitute foul language, or amount to a call to violence; they were incapable of inciting violent actions because they were impersonal.

9. On 6 October 2008 the Leninskiy District Court of Tambov examined the applicant's complaint under Article 125 of the Code of Criminal Procedure ("the CCrP", see paragraph 42 below). The District Court found that the applicants had no standing to lodge a complaint under Article 125 as their interests had not been affected by the refusal to open criminal proceedings against Mr Betin.

10. The applicants appealed. They argued that Article 282 of the CC punished unlawful actions committed against a group rather than against a specific individual. Those actions therefore affected the interests of each member of the targeted group. Given that the applicants were themselves homosexuals, their interests were affected by a refusal to open criminal proceedings against a call to violence against homosexuals. The finding that they had no standing to apply to a court deprived them of any judicial protection against actions aimed at inciting hatred or enmity against them or violating their dignity on grounds of sexual orientation.

11. On 13 November 2008 the Tambov Regional Court upheld the decision of 6 October 2008 on appeal. It held as follows:

"It transpires from the case file that the applicants asked to open criminal proceedings against Mr Betin for inciting hatred or enmity against homosexuals as a social group. The actions falling under Article 282 of [the CC] are punishable only if they aim at inciting hatred or enmity or violating dignity on the grounds listed in the Article: sex, race, ethnic origin, language, background, religious beliefs or membership of a social group. Sexual preferences and the way of satisfying one's sexual needs do not constitute a ground for belonging to a distinct social group.

... the [District] Court's finding that the investigator's decision of 8 July 2008 does not affect the interests of the applicants, who do not belong to any distinct social group, is correct and is compatible with substantive and procedural law."

## II. APPLICATION No. 3465/17 (KRIKKERIK v. RUSSIA)

12. The applicant is a member of the LGBTI community and an LGBTI rights activist.

### A. The interview

13. On 3 November 2013 the St Petersburg office of an LGBTI support organisation was attacked by two people armed with baseball bats and pneumatic guns. The applicant was shot several times in the back. Another person, Ch., was shot in the eye and lost the use of it.

14. In a post on his social networking account Ch. blamed several well-known politicians, including a member of the St Petersburg Legislative Assembly, Mr Milonov, for his injury. He stated that by publicly claiming that homosexuals were perverts and inferior people, they stirred hatred and violence against them.

15. On 6 November 2013 a local news website, Fontanka.ru, published an interview with Mr Milonov. The interview read as follows:

“Journalist (J.): [Mr Milonov], [Ch.] who was wounded in the attack on the ‘LaSky’ office on 3 October believes that you are responsible for what has happened to him. Do you agree?”

Mr Milonov (M.): Unlucky person. I’ve heard about it ... I agree that the level of tension is very high. LGBT organisations are tiring with continuously eccentric escapades, rudeness and acts of provocation. And unfortunately, not everybody manages to stay calm, some behave inappropriately. But to say that some of our activists went with pneumatic guns to **a homosexual hellhole**. It’s a great pity that this guy got it in the eye, but I think it was a planned act of provocation. A sham firing from toy guns ... to draw attention ...

J.: But it is not the first time that people, including those who call themselves Orthodox Christians, have attacked members of the LGBT movement.

M.: I cannot remember such acts of aggression against these people. But **an idiot who dances on the Field of Mars with a banner which reads “Bring Sodom to every house” is asking for it**. It is a mistake to think that it was one of our activists who attacked [Ch.] **The worst they have ever done was to boot someone during a Gay Pride**.

J.: Do you think it is acceptable to boot someone?

M.: **When a foreign agent openly insults my family, I boot him as any Russian would do. These perverts** insult our children, it is not acceptable here. Do you want them to be able to say it openly?

J.: If it is acceptable to boot someone, where is the limit? Which acts of violence are acceptable and which are not?

M.: Where do you see violence? ... Who prevents them from living or practising sodomy? Do we go to gay marches? **They go to marches against normal society**.

J.: There have been [many] attacks ...

M.: Who has provoked these attacks?

J.: Provoked how? Do you think that gays have no right to participate in public assemblies?

M.: **A majority of [Russian] people think it. It is unacceptable in Russia to go public and display your perverted attitudes in front of children. Children must be protected from it ... These are not human rights, these are rights of sickos and perverts ...**

J.: Do you really think that a sexual act between two men is so much more attractive than Christian values that these values need legal protection?

M.: **It is as repulsive and disgusting as a murder, as lies, as any immoral act. Why should the advertising of alcohol and beer be prohibited, while the advertising in front of children of the merits of being gay and of the equivalences of same-sex families and normal families should not be? It is impossible to persuade any sane person to become gay. But a twelve-year-old child may be brainwashed, may be told that the best, the most successful actors and designers are gay. It is sufficient to get him drunk once and to rape or seduce him and that’s it, he is ripe for turning into an LGBT devotee.**

J.: It started with kicks. We have now come to firing pneumatic guns. What is next? How far may the confrontation go?

M.: What confrontation? **Go to the streets and ask people: 99 out of 100 will tell you that they do not support them.** No one supports them. You always see the same mugs doing it for money ...” (emphasis added, see below).

## **B. The applicant’s criminal complaint**

16. The applicant lodged a criminal complaint under Article 282 of the CC against Mr Milonov, arguing that the statements in bold above amounted to a call for violence against the social group of LGBTI people, and incited hatred and enmity and violated the dignity of individuals belonging to that social group.

17. The Investigations Committee of the Tsentralniy District of St Petersburg conducted a pre-investigation inquiry. The investigator questioned Mr Milonov, who confirmed that the journalist had telephoned him and had introduced himself as a reporter for the news website, Fontanka.ru. The journalist had not warned him that the interview would be recorded and published. Mr Milonov, however, stated to the investigator that he had assumed that the interview would be published on Internet. He further acknowledged having made the statements in question but claimed that they had been taken out of context. The word “to boot” had been used metaphorically. The other statements reflected his opinion about homosexual relations and did not aim to violate the dignity of individuals on grounds of membership of a social group.

18. On 30 January 2014 an expert commissioned by the investigator found that Mr Milonov’s interview contained humiliating descriptions and negative emotional evaluations of, and negative attitudes towards, a specific social group – homosexuals. It contained pejorative and insulting statements and statements inciting to act against homosexuals and justifying violence against them.

19. On 27 February 2014 the same expert compared the published text of the interview with the audio recording of that interview made by the journalist. The expert found that the printed interview was an abridged version of the recorded interview. In particular, the journalist had removed from the printed version Mr Milonov’s insults against specific individuals, his accusations against homosexuals of paedophilia and some particularly insulting expressions. The printed version faithfully reproduced the tenor and meaning of Mr Milonov’s statements.

20. On 24 March 2014 another expert commissioned by the investigator found that homosexuals could not be regarded as a “social group”.

21. On 31 March 2014 the Investigations Committee of the Tsentralniy District of St Petersburg refused to open criminal proceedings against Mr Milonov. Relying on the expert reports of 30 January and 27 February 2014, the investigator found that the text of Mr Milonov’s interview

contained humiliating descriptions, negative emotional evaluations, negative attitudes and intentionally insulting expressions in respect of people of homosexual orientation, as well as statements inciting to act against these people. However, Mr Milonov's actions did not fall under Article 282 § 1 of the CC because, according to the expert report of 24 March 2014, people of homosexual orientation could not be regarded as a "social group". Furthermore, it was not possible to prove that Mr Milonov had a direct intent to incite hatred or enmity against, or to violate the dignity of, homosexuals, given that the journalist had not warned him that the interview would be recorded and published verbatim in the press.

22. On 8 April 2014 a deputy Prosecutor of the Tsentralniy District of St Petersburg quashed the refusal to open criminal proceedings.

23. On 16 April 2014 an additional expert report commissioned by the investigator found that homosexuals could not be regarded as a "social group".

24. There followed a series of refusals by the Investigations Committee of the Tsentralniy District to open a criminal case against Mr Milonov, repeating verbatim the decision of 31 March 2014. Each time, the decisions were quashed by the prosecutor's office of the Tsentralniy District of St Petersburg.

25. On 16 June 2014 the Investigations Committee of the Tsentralniy District commissioned an additional expert report. The expert returned an undated report finding that homosexuals were a "group", but they could not be regarded as a "social group". Mr Milonov's statements could not therefore be regarded as humiliating descriptions of, or negative attitudes towards, a "social group". However, they contained highly negative emotional evaluations of homosexuals that could be described as homophobic. Mr Milonov's statements did not contain any direct calls to violence against homosexuals. Being ambiguous, they could be understood as a call to oppose the perceived negative influence of open manifestations of homosexuality on the moral values of young people. There were no reasons to consider that the statements in question amounted to an incitement to act against any "social group" or its members.

26. On 11 September 2014 the Investigations Committee of the Tsentralniy District issued a new refusal to open a criminal case against Mr Milonov. The decision read as follows:

"Article 282 of [the CC] provides for criminal liability for actions aimed at inciting hatred or enmity and violating the dignity of an individual or a group of individuals on the grounds of ... membership of a social group, committed publicly or through the mass media. It follows from the additional expert report ... that V.V. Milonov's statements did not contain any humiliating descriptions of, or negative attitudes towards, a social group or any individuals belonging to a social group. The impugned interview does not contain any statements inciting to act against a social group or any individuals belonging to a social group.



The case file also contains a sociological expert report finding that the text of V.V. Milonov's interview contains humiliating descriptions, negative emotional evaluations, negative attitudes and intentionally insulting expressions in respect of people of homosexual orientation, as well as statements inciting to act against these people. Despite that, V.V. Milonov's actions do not fall under Article 282 § 1 of [the CC] because, according to two sociological expert reports, people of homosexual orientation cannot be unquestioningly regarded as a social group.

Furthermore, the offence under Article 282 § 1 of [the CC] requires proof of direct intent. In this case no direct intent to incite hatred or enmity or to violate the dignity of an individual or a group of individuals on grounds of homosexual orientation, committed publicly or through the mass media, can be detected in V. V. Milonov's actions, that is in his telephone conversation with [the journalist]. It follows from the transcript of the audio recording of the conversation between [the journalist] and V. V. Milonov that [the journalist] did not warn V.V. Milonov that the conversation would be recorded, cited in a press article and published in the media. V.V. Milonov could not therefore foresee that the statements which, according to the experts, aimed at inciting hatred or enmity and violating human dignity would be cited verbatim in the press."

27. The applicant lodged a complaint under Article 125 of the CCrP, arguing that homosexuals were a "social group", as acknowledged by the Constitutional Court in its Ruling no. 24-P of 23 September 2014 (see paragraph 38 below). The applicant further submitted that Mr Milonov had an intent to incite hatred and enmity and violate the dignity of LGBTI people. Mr Milonov had confirmed to the investigator that he had made the statements in question and that he had assumed that they would be published on Internet.

28. On 26 June 2015 the Kuybyshevskiy District Court of St Petersburg rejected the applicant's complaint. It found that the investigator had competence to make the contested decision; the procedure prescribed by law had been complied with. The decision of 11 September 2014 contained reasons and gave an answer to all arguments raised by the complainant. The court had no reason to disagree with the investigator's findings. There was no evidence of a breach of the right to respect for the complainant's private life.

29. On 17 September 2015 the St Petersburg City Court upheld the judgment of 26 June 2015 on appeal. It held as follows:

"The [District] Court which examined the complaint [under Article 125 of the CCrP] correctly found in its judgment that the decision refusing to open a criminal case had been made by [the investigator] within his competence. The procedure prescribed by law had been complied with. The contested decision contains reasons. This has not been contested [by the applicant].

Article 282 of [the CC] provides for criminal liability for actions aimed at inciting hatred or enmity and humiliating the dignity of an individual or a group of individuals on the grounds of ... membership of a social group, committed publicly or through the mass media, including [on Internet].

It follows from the decision refusing to open a criminal case that the finding by forensic experts that people of homosexual orientation could not be unquestioningly regarded as a social group was not the sole ground for the investigator's finding that

V.V. Milonov's actions did not fall under Article 282 § 1 of [the CC]. The investigator was also unable to prove V.V. Milonov's direct intent to incite hatred or enmity or to humiliate the dignity of an individual or a group of individuals on grounds of homosexual orientation, committed publicly or through the mass media. In the absence of direct intent, criminal liability under Article 282 § 1 of [the CC] is ruled out. To substantiate that finding, the investigator argued that V.V. Milonov had no reason to believe that his statements made during his telephone conversation with the journalist would be published in the mass media. The investigator's finding is confirmed by the materials in the case file; the [District] Court had no reason to question it. It follows from V.V. Milonov's statements [to the investigator] that during his conversation with the journalist he had expressed his opinion that homosexuality and its public advocacy among minors were unacceptable.

In such circumstances the [District] Court had no reason to find that the investigator's decision refusing to open criminal proceedings had been unlawful or unjustified."

### **C. The applicant's civil claim**

30. Meanwhile, on 16 December 2014 the applicant lodged a civil claim against Mr Milonov, relying on Articles 150 and 151 of the Civil Code ("the CvC") (see paragraphs 43 and 44 below). She complained that the right to human dignity, to respect for private life and to freedom from discrimination – protected by Articles 19, 21 and 23 § 1 of the Russian Constitution (see paragraphs 35-37 below), by Articles 8 and 14 of the Convention and by Article 150 of the CvC – had been breached by Mr Milonov's statements in bold above. The applicant relied on expert reports of 20 January and 27 February 2014 and argued that LGBTI people were a vulnerable social group. Mr Milonov was a very well-known politician whose statements always drew much attention. He had made the impugned statements in an interview to a popular news website. Being an active LGBTI detractor, he should have known that the level of homophobia in society was high and should therefore have foreseen the risk of potential negative consequences of publicly stirring hatred against homosexuals. The applicant referred in that connection to the data compiled by Russian LGBT Network, showing that the number of violent homophobic attacks and the occurrence of bullying on social media had been increasing. Mr Milonov's statements were highly offensive for the dignity of LGBTI people and therefore affected every member of the LGBTI community. As a recent victim of a homophobic attack, the applicant had been deeply hurt by Mr Milonov's statements. The State had a positive obligation under Article 8 of the Convention to protect the right to respect for her private life.

31. On 26 June 2015 the Kirovskiy District Court of St Petersburg rejected the applicant's civil claim. It relied on the decision of 11 September 2014 refusing to open a criminal case against Mr Milonov and then held as follows:

"Having analysed the text of V.V. Milonov's [interview], the court does not agree with the claimant's and the representatives' argument that it contains statements justifying violence against the LGBT community, negatively describing members of

the LGBT community or affirming that members of the LGBT community are not entitled to basic human rights (freedom of expression and assembly).

Quite the contrary, V.V. Milonov expresses compassion for the victim [Ch.] and gives his opinion that the attack was an act of provocation.

Subsequent replies by V.V. Milonov to the journalist's questions express his personal attitude to the LGBT community as a whole rather than to the claimant in particular. The respondent does not hide his reprobation for the lifestyle and behaviour of these people who belong to the above-mentioned community, which in his opinion are contrary to [acceptable] principles, values and the notions of norm and deviation. The expressions used by the respondent, although intransigent and rude, do not amount to an interference with the private lives of the members of a specific group or to a negative statement against the LGBT community. They are attributable to the respondent's ... type of personality and his lack of good manners.

In such circumstances the court does not see any reason to allow [the applicant's] claim."

32. On 1 December 2015 the St Petersburg City Court upheld the judgment on appeal. It reiterated the reasoning of the District Court. It further added that Mr Milonov had expressed his personal opinion. His statements were not insulting and were not directed against the applicant personally.

33. The applicant's cassation appeal was dismissed on 13 May 2016 by a judge of St Petersburg City Court.

34. A further cassation appeal by the applicant was rejected on 29 June 2016 by the Supreme Court of the Russian Federation.

## RELEVANT LEGAL FRAMEWORK

### I. CONSTITUTION

35. The Constitution guarantees equality of rights and freedoms to everyone, irrespective of sex, race, ethnic origin, language, background, social status, employment position, place of residence, religious beliefs, convictions, membership of a public association or other circumstances (Article 19 § 2).

36. The Constitution also protects human dignity; it may not be diminished on any grounds (Article 21 § 1).

37. The Constitution guarantees to everyone the right to respect for his or her private life, personal and family secrets and the right to defend his or her honour and reputation (Article 23 § 1).

38. In its ruling no. 24-P of 23 September 2014 the Constitutional Court held that the right to respect for human dignity and private life guaranteed by Articles 21 and 23 of the Constitution covered freedom of sexual identity. Article 19 of the Constitution guaranteed equality of rights and freedoms to everyone, irrespective of sexual orientation. The State had an obligation to take measures to prevent discrimination on grounds of sexual orientation and to provide effective remedies for people who suffered such discrimination. In

particular, protection from discrimination on grounds of membership of a social group – ensured, among others, by provisions of criminal law – might apply to a group of people on the basis of their sexual orientation.

## II. CRIMINAL CODE

39. Article 282 § 1 of the CC (incitement to hatred or enmity and the humiliation of human dignity) punishes actions aimed at inciting hatred or enmity and humiliating the dignity of an individual or a group of individuals on the grounds of sex, race, ethnic origin, language, background, religious beliefs or membership of a social group, committed publicly or through the mass media, including on Internet.

40. Pursuant to Articles 24 and 25 of the CC, there are two types of criminal guilt: intent and negligence; direct intent (*прямой умысел*) requires proving that a person understands that his or her action or inaction is socially dangerous, anticipates that socially dangerous consequences may ensue or will inevitably ensue and wishes them to ensue.

41. The offence under Article 282 of the CC requires proof of direct intent and of an intention to incite hatred or enmity and violate the dignity of an individual or a group of individuals on the grounds of sex, race, ethnic origin, language, background, religious beliefs or membership of a social group.

## III. CODE OF CRIMINAL PROCEDURE

42. The CCrP provides that decisions by the inquiring officer, the investigator and the public prosecutor concerning a refusal to institute a criminal case or the termination of the criminal case, and other decisions and actions (or lack of action) on their part which are liable to inflict damage on the constitutional rights and freedoms of the participants in the criminal court proceedings or interfere with citizens' access to the administration of justice, may be appealed against before the district court (Article 125).

## IV. CIVIL CODE

43. The CvC lists honour, dignity, respect for private life and personal and family secrets among the intangible rights protected by civil law. If a person's interests so require, his or her intangible rights may be protected, among others, by a judicial acknowledgment of a breach of right, by publishing such judicial acknowledgment, by a banning order or an order to cease the activities breaching, or encroaching upon, an intangible right or creating a risk of a such a breach (Article 150).

44. If non-pecuniary damage (physical or moral suffering) has been inflicted upon an individual by acts violating his or her personal non-pecuniary rights or encroaching upon his or her other intangible rights,

as well as in other cases specified by law, a court may order the perpetrator to pay monetary compensation for the damage (Article 151).

## RELEVANT INTERNATIONAL MATERIAL

45. On 20 April 2005 a report was published on the visit to Russia by the Commissioner of Human Rights from 15 to 30 July and from 19 to 29 September 2004. Excerpts containing the Commissioner's observations on the situation of the sexual minorities read as follows:

“309. Homophobia has been growing alarmingly in the Russian Federation over the last few years. The statements made by the representatives of the Orthodox Church and other denominations, and the actions of Cossacks in the Southern Russia and other extremist groups target homosexuals in a particularly hostile way.”

46. In its Concluding observations on the sixth periodic report of the Russian Federation of 28 August 2018 (CAT/C/RUS/CO/6) the UN Committee against Torture held:

“32. The Committee is concerned at consistent reports that lesbian, gay, bisexual, transgender and intersex persons are subjected to violence because of their sexual orientation or gender identity, including physical attacks and other ill-treatment. The Committee is also concerned at reports that the hate crimes against such persons have significantly increased since the introduction of the federal law prohibiting “propaganda of non-traditional sexual relations” ...”

47. In the relevant part of its report on the Russian Federation, adopted on 4 December 2018 (CRI(2019)2), the European Commission against Racism and Intolerance (“ECRI”) noted:

“21. As concerns anti-LGBT rhetoric, ECRI notes that this has become one of the most common forms of hate speech. It is often manifested in expressions declaring homosexuality a disease, a sin or a crime ...

22. Particularly worrying is the fact that homophobic sentiment is being actively fuelled by the President of the Russian Federation and the Russian Orthodox Church. In June 2017, President Putin, in a prominent interview with writer and film-maker Oliver Stone, explained that his anti-LGBT policies (see the section on discrimination and intolerance vis-à-vis LGBT) stemmed from his duty as head of State to uphold traditional family values since same-sex relationships do not produce children. The Patriarch of the Russian Orthodox Church, who is a key supporter of anti-LGBT laws and policies, has a history of virulent anti-LGBT rhetoric, speaking out against same-sex marriage as a “very dangerous apocalyptic symptom”. As a result, stigma and intolerance against the LGBT community have inevitably taken root in public attitudes and LGBT people are reported to live in a “state of perpetual worry” or “anxiety bordering on fear” ...

32. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards violence but also because of the pernicious effects it has psychologically on those who are targeted and on social cohesion in general. Appropriate responses include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech ...

59. ... According to data collected by Russian LGBT Network, between 2012 and 2015 there were 139 hate crimes committed against LGBT persons. Other research based on an analysis of nearly 5 000 articles in both federal and regional newspapers, news websites and magazines, shows that from 2011 to 2016, the Russian media reported on at least 363 instances of crime against LGBT people, including attacks on gay clubs, domestic violence, extortions and violence during political demonstrations, and robbery. ECRI notes that the real numbers could be even higher, since LGBT victims are not open about their identity and unwilling to resort to law enforcement authorities. They fear outing (forced disclosure of their sexual orientation or gender identity) as well as humiliation by the police ...

109. Sexual orientation and gender identity are not explicitly enumerated as prohibited grounds in the relevant provisions of [the CC], such as Articles 282, 136 and 63 (see the section above on legislation). These Articles include a reference to “any social group” in their list of grounds and the Constitutional Court of the Russian Federation, in 2014, found that this term can apply to a group of individuals with a specific sexual orientation. However, this interpretation does not seem to be reflected in regular court practice and ECRI is not aware of any further case law in this respect. ... While the authorities informed ECRI that they do not see a need to name sexual orientation and gender identity expressly in the list of grounds of the above-mentioned Articles, ECRI always advocates for explicitly mentioning these grounds in order to avoid any legal uncertainty and to convey to the general public the clear message that these groups benefit from the protection afforded by these Articles ...

111. ECRI recommends that the authorities amend all existing legislation in order to include explicitly the grounds of sexual orientation and gender identity in the list of protected grounds, in particular in Articles 282, 136 and 63 of [the CC] ...”

48. In its Concluding observations on the eighth periodic report of the Russian Federation of 1 December 2002 (CCPR/C/RUS/CO/8) the UN Human Rights Committee held:

“12. The Committee reiterates its substantial concern about institutionalized discrimination and stigmatization of lesbian, gay, bisexual and transgender persons in the State party, including as a result of the 2013 law banning the dissemination of “propaganda” on non-traditional sexual relations among minors, as well as the amendment thereto, approved by the Parliament on first reading, to ban the “denial of family values” and the “promotion”, among persons of all ages, of non-traditional sexual orientations. It is concerned that lesbian, gay, bisexual and transgender persons are not recognized in the Criminal Code as a social group for the purpose of determining the aggravating circumstances of an offence, and by the consequent failure to provide such persons with an adequate protection against violence and attacks. It is also concerned about persistent harassment of lesbian, gay, bisexual and transgender organizations and their members, including excessive restrictions on their right to peaceful assembly, and the complete shutdown of their activities (arts. 2, 7, 9, 17, 19, 21 and 26).

13. The State party should:

(a) Take effective measures to combat all forms of social stigmatization and harassment of, and hate speech, discrimination and violence against, persons based on their sexual orientation or gender identity, including by providing adequate training for law enforcement officials, prosecutors and members of the judiciary; amending the Criminal Code to include lesbian, gay, bisexual and transgender persons as a group for

the purpose of determining the aggravated circumstances of an offence; and raising awareness to promote respect for diversity among the general public;

(b) Ensure that cases of discrimination and violence against lesbian, gay, bisexual and transgender persons are investigated, that perpetrators are prosecuted, and, if convicted, punished with commensurate sanctions, and that victims are provided with effective remedies, in accordance with article 2 (3) of the Covenant;

(c) Repeal the 2013 law banning the dissemination of “propaganda” on non-traditional sexual relations among minors and any other legislation stigmatizing or discriminating against lesbian, gay, bisexual and transgender persons;

(d) Ensure the full exercise of the freedom of expression and the rights to freedom of peaceful assembly and of association for lesbian, gay, bisexual and transgender persons.”

49. A report entitled “License to Harm: Violence and Harassment against LGBT People and Activists in Russia” published in December 2014 by the NGO Human Rights Watch reads:

“All over Russia there has been an increase in attacks by vigilante groups and individuals against LGBT people in the past two years. There has also been an increase in attacks on LGBT activists, and anti-gay groups have used the 2013 law to justify mounting campaigns of harassment and intimidation of LGBT teachers and other school or college staff to get them fired from their jobs.

Although Russian law enforcement agencies have the tools to prosecute homophobic violence, there appears to be no will to do so and no policy or instructions from the leadership to take homophobic violence seriously. Aside from several isolated investigations, the authorities have done little to hold assailants accountable.

Instead of publicly denouncing anti-LGBT violence and rhetoric, Russia’s leadership has remained silent. In some cases public officials have engaged in explicit anti-LGBT hate speech ...

LGBT people in Russia face stigma, harassment, and violence in their everyday lives, and most people who spoke with Human Rights Watch said that this intensified in 2013. In some cases they were attacked by anti-LGBT vigilante groups that sprang up in late 2012 across Russia ...

Although for the past decade activists involved in public LGBT gatherings have faced hostility from Russian authorities and anti-LGBT counter-demonstrators, almost all activists told Human Rights Watch that the number of attacks on public LGBT events had risen in the past two years and that in 2013 anti-gay activists had attacked just about every public demonstration in favor of LGBT equality of which they were aware.

The vast majority of LGBT activists interviewed by Human Rights Watch had been attacked at least once during public events in support of LGBT equality in 2012 and 2013 ...”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

50. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

## II. JURISDICTION

51. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore decides that it has jurisdiction to examine the present applications (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

## III. COMPLAINTS LODGED BY Mr ALEKSEYEV

52. On 14 March 2020 Mr Alekseyev informed the Court that he no longer wished to pursue any of his applications. The Court considers that this information must be examined in the light of Article 37 § 1 (a) of the Convention, which reads as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:

(a) the applicant does not intend to pursue his application; ...”

53. In the absence of any special circumstances regarding respect for the rights guaranteed by the Convention or its Protocols, the Court, in accordance with Article 37 § 1 (a) of the Convention, considers that it is no longer justified to continue the examination of the complaints lodged by Mr Alekseyev. Accordingly, it strikes out of the list of cases the part of application no. 39954/09 lodged by Mr Alekseyev.

## IV. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

54. The applicants complained that state officials’ negative statements discriminated against them as members of the LGBTI community and that the domestic authorities had failed to protect them from discrimination as required by Articles 8 and 14 of the Convention, which provide, so far as relevant:

### **Article 8**

“1. Everyone has the right to respect for his private ... life ...”

### **Article 14**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”



### A. Admissibility

55. The Government submitted that the applicants could not claim to be victims of the alleged violation as they had not been personally affected by the impugned statements.

56. The applicants submitted that the negative statements adversely affected not only LGBTI community as a whole, but also its individual members. Mr Nepomnyashchiy and Mr Bayev further submitted that they were well-known LGBT activists and therefore probable targets of homophobic attacks which could be provoked by the impugned statements. Ms Krikkerik submitted that she had been directly and personally affected by Mr Milonov's statements because she had been a victim of the homophobic attack commented on by him.

57. The Court has held that negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group, who therefore, although not directly targeted by the contested statements, can be considered victims within the meaning of Article 34 of the Convention (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, §§ 54 and 58, ECHR 2012).

58. As regards the level of seriousness to be attained by the contested statements for Article 8 to become applicable, the Court has held that in cases such as the present one, where the allegation is that a public statement about a social or ethnic group has affected the "private life" of its members within the meaning of Article 8 of the Convention, the relevant factors for deciding whether that is indeed so include, but are not necessarily limited to, (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position *vis-à-vis* society as a whole), (b) the precise content of the negative statements regarding the group (for example, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype), and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group's identity and dignity. It cannot be said that one of those factors invariably takes precedence; it is the interplay of all of them that leads to the ultimate conclusion on whether Article 8 is applicable. The overall context of each case – in particular the social and political climate prevalent at the time when the statements were made – may also be an important consideration (see *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, § 63, 16 February 2021, and *Behar and Gutman v. Bulgaria*, no. 29335/13, § 67, 16 February 2021).

59. Turning to the circumstances of the present case, the Court notes that it has already found that gender and sexual minorities required special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected (see *Lilliendahl v. Iceland* (dec.), no. 29297/18, § 45, 12 May 2020). Furthermore, given the history of public hostility towards the LGBTI community in Russia and the increase in homophobic hate crimes, including violent crimes, at the material time (see paragraphs 45-49 above) – indicative of serious tensions in society concerning issues relating to sexual orientation and gender identity – the Russian LGBTI community can be regarded as a particularly vulnerable group needing heightened protection from stigmatising statements.

60. The contested statements were openly homophobic and particularly aggressive and hostile in tone. Mr Betin explicitly proposed that any tolerance of homosexuality be forgone and that “homos [be] torn to pieces [and] the pieces [be] thrown to the wind”. Mr Milonov called homosexuals “sickos and perverts”, stated that a sexual act between two men was “as repulsive and disgusting as a murder”, claimed that it was acceptable to “boot” those of them who participated in gay pride marches and accused them of “brainwashing” children with the intention of converting them into homosexuals, including by getting children drunk and raping or seducing them.

61. The statements were made by influential public figures holding official posts. Mr Betin was a regional governor, while Mr Milonov was a member of a regional legislative assembly and a well-known politician. Moreover, the statements were published in popular newspapers with a large readership and could therefore reach a wide audience.

62. In view of the above, the Court concludes that the contested statements affected a core aspect of the identity and dignity of LGBTI people and were therefore capable of having significant impact on the feelings of self-worth and self-confidence of individual members of the LGBTI community. They therefore reached the “threshold of severity” required to affect the “private life” of members of the group. Article 8 of the Convention is therefore applicable. Given that the applicants are members of the LGBTI community and LGBTI rights activists, they may claim to be victims of the alleged violation of that Article.

63. Since, as found above, the facts of the present case fall within the ambit of Article 8 of the Convention, Article 14 is also applicable, and the complaint will also be examined in its light (see *Budinova and Chaprazov*, cited above, § 69, and *Behar and Gutman*, cited above, § 74).

64. Accordingly, the Court rejects the Government’s preliminary objection. It further notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

**B. Merits***1. Submissions by the parties***(a) The applicants**

65. The applicants submitted that the State bore responsibility for Mr Betin's and Mr Milonov's statements. Taking into account Mr Betin's high-ranking position as a regional governor, the fact that the interview had taken place in the governor's office and that Mr Betin had claimed to defend the interests of the authorities, and the absence of any disclaimer by the Regional Government after the publication of the statements in a leading national newspaper, Mr Betin may be considered to have acted in his official capacity when making those statements. Mr Milonov could not be dissociated from his official position as a member of a regional legislative assembly and was therefore perceived as a representative of the State. He had not said to the journalist that he had been expressing his personal opinion during the interview and the St Petersburg Legislative Assembly had not made any disclaimer as regards the impugned statements.

66. In the alternative, the applicants submitted that the authorities had failed to comply with their positive obligation to protect them from homophobic hate speech. They submitted that Russian law did not offer effective protection against homophobic hate speech, either through criminal or civil remedies, because Russian courts did not recognise the standing to lodge a civil claim or victim status in criminal proceedings to persons who were not personally targeted by hate speech. Moreover, the threshold of what would be considered hate speech within the meaning of Article 282 of the CC was excessively high. Furthermore, Russian law did not explicitly prohibit hate speech on grounds of sexual orientation or gender identity. The notion of "social group" within the meaning of that Article was too vague.

**(b) The Government**

67. The Government submitted that Mr Betin and Mr Milonov had not acted in their official capacity when making the impugned statements. They had expressed their personal opinions rather than the official position of the respective authorities.

68. The Government further argued that the domestic authorities had complied with their positive obligation under Articles 8 and 14 of the Convention. The domestic courts had upheld the refusals to open criminal proceedings against Mr Betin and Mr Milonov, finding that those decisions had been lawful and justified. The impugned statements did not fall under Article 282 of the CC because homosexuals could not be regarded as a "social group". Furthermore, Mr Betin and Mr Mironov had not made any statements against the applicants personally; the applicants had not therefore shown that their right to respect for private life had been affected. Mr Milonov had made

his statements in a private conversation. The text of the interview had not been submitted to him for approval prior to its publication, it had therefore been impossible to prove his intent to incite hatred or enmity and to violate human dignity, committed publicly or through the mass media.

69. Lastly, the Government submitted that the statements in question were protected by Article 10 of the Convention. The gist of Mr Milonov's statements was his concern to preserve traditional Orthodox Christian values among the young, rather than an attack against members of the LGBTI community. Read as a whole, Mr Milonov's interview could not be interpreted as containing any insults, calls to aggression or discriminatory statements against members of the LGBTI community. The impugned statements constituted his value judgments.

**(c) The third party**

70. ILGA-Europe submitted that it was well-established under international law that homophobic and transphobic statements were a form of hate speech and could therefore be made subject to administrative, civil and criminal restrictions without entailing a violation of the right to freedom of expression. Politicians had a particular responsibility to avoid disseminating statements stirring up intolerance as, due to their authority, they might encourage potential offenders in their intolerance and bias.

71. ILGA-Europe further submitted that many instances of violent hate crimes committed against LGBTI people were linked to a prior use of homophobic hate speech or occurred in a context of heightened dehumanisation and discrimination. However, even when not acted upon, homophobic and transphobic statements could have extremely serious repercussions for the enjoyment of the right to respect for private life and the right to freedom from discrimination. The use of hate speech could lead to those targeted by it feeling not only afraid and insecure but also ashamed and humiliated, leading to a loss of self-confidence and self-esteem. Moreover, those feelings can also result in physical symptoms such as loss of sleep and headaches, as well as mental and physical health problems of a more serious nature. As a result, such feelings could have consequences for every aspect of the life of those concerned, whether at work, school or home, but their impact on family relations and the willingness to participate in society was especially serious.

*2. The Court's assessment*

72. The Court does not consider it necessary to decide whether it would be more appropriate to analyse the case in the light of positive or negative obligations, since the boundaries between them under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance

which has to be struck between the competing interests; and in both contexts the State enjoys a certain margin of appreciation (see, among many other authorities, *Aksu*, cited above, § 62, and *S.H. and Others v. Austria* [GC], no. 57813/00, § 87, ECHR 2011).

73. In cases like the present one where the complaint is that rights protected under Article 8 have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 of the Convention. Thus, in such cases the Court will need to balance the applicants' right to respect for their private life against the public interest in protecting freedom of expression, bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles. In doing so, the Court must attach significant weight to the fact that the domestic authorities had identified the existence of conflicting rights and the need to ensure a fair balance between them (see *Aksu*, cited above, §§ 63 and 66). Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012). All of this presupposes that an effective legal system was in place and operating for the protection of the rights falling within the notion of "private life", and was available to the applicants (see *Aksu*, cited above, § 68).

74. The Court further reiterates that expression that promotes or justifies violence, hatred, or intolerance in its gravest forms falls under Article 17 of the Convention and is excluded entirely from the protection of Article 10. As regards less grave forms of "hate speech", although they do not fall entirely outside the protection of Article 10, it is permissible for the Contracting States to restrict them (see *Lilliendahl*, cited above, §§ 34 and 35). The Court has accepted that it may be justified to impose even criminal-law sanctions in cases of hate speech or incitement to violence (see *Budinova and Chaprazov*, cited above, § 90, with further references, and *Lilliendahl*, cited above, § 46).

75. It is of crucial importance that politicians, including parliamentarians, avoid making statements promoting hatred or intolerance in their public speech. Politicians must take particular care to defend democratic principles, as their ultimate goal is to take power (see *Erbakan v. Turkey*, no. 59405/00, § 64, 6 July 2006, and *Féret v. Belgium*, no. 15615/07, § 75, 16 July 2009; see also *Pastörs v. Germany*, no. 55225/14, § 47, 3 October 2019). This applies with at least equal force to high-ranking public officials whose public statements may be perceived as the State's official position.

**(a) Effectiveness of the legal system**

76. The Court will first examine whether an effective legal system was in place and operating for the protection of the rights falling within the notion of "private life", and was available to the applicants. It reiterates that, as

regards acts which encroach on an individual's psychological integrity, the obligation of an adequate legal framework does not always require that a criminal-law provision covering the specific act be put in place. The legal framework could also be made up of administrative or civil-law remedies capable of affording sufficient protection, possibly combined with procedural remedies such as the granting of an injunction (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, §§ 85 and 108, ECHR 2013, and, by contrast, *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 128, 14 January 2020, which, unlike the present case, concerned statements directed against the applicants personally and containing calls to make attacks on their physical integrity). The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is in issue (see *Von Hannover*, cited above, § 104, and *Söderman*, cited above, § 79).

77. The CvC provides for redress – in the form of injunctive relief and tort liability – for infringements of honour, dignity and private life (see paragraphs 43 and 44 above). The Constitutional Court held that the right to respect for human dignity and private life covered sexual identity (see paragraph 38 above). Furthermore, the CC makes it a criminal offence publicly to incite hatred or enmity and violate the dignity of an individual or a group of individuals on the grounds of, among others, membership of a social group (see paragraph 39 above). The Constitutional Court held that the term “social group” mentioned in the CC might be interpreted as covering a group of people on the basis of their sexual orientation (see paragraph 38 above).

78. Sexual orientation and gender identity are not explicitly mentioned in the relevant provisions of the Civil and Criminal Codes or in the equality clause of the Russian Constitution. In the Court's view, an explicit mention of sexual orientation and gender identity as prohibited grounds for discrimination may be beneficial for avoiding any legal uncertainty and to convey to the general public the clear message that these vulnerable groups are protected by law (see the report by the European Commission against Racism and Intolerance cited in paragraph 47 above). However, in the light of the State's margin of appreciation in respect of choosing legal instruments to ensure compliance with the Convention, and taking note of the Constitutional Court's ruling (see paragraph 38 above), the Court considers that the existing legal framework is capable – at least in theory – of protecting the applicants from homophobic hate speech. It however also notes that the Government failed to submit any examples of judicial practice applying the Constitutional Court's ruling and recognising a person's gender identity and sexual orientation as a protected aspect of their right to respect for human

dignity and private life under Articles 150 and 151 of the CvC or as an element of the offence of hate speech under Article 282 of the CC.

79. The Court concludes from the above that Russian law contains both civil-law mechanisms and criminal-law provisions for the protection of an individual's private life against stigmatising statements, including homophobic statements. It however has doubts about their effectiveness in practice, in view of the Government's failure to show the existence of settled domestic practice.

**(b) Examination of the applicants' cases by the domestic authorities**

80. All applicants lodged a criminal complaint under Article 282 of the Criminal Code; Ms Krikkerik later also lodged a civil claim under Articles 150 and 151 of the Civil Code. Given the gravity of the impugned statements, and a lack of a clearly established civil-law remedy under Russian law, it was not unreasonable for the applicants to use the criminal-law remedy available under the domestic law. The Court will therefore assess the proceedings as used by the applicants (compare *Lewit v. Austria*, no. 4782/18, 10 October 2019, where the Court examined both civil and criminal proceedings in a similar context; see also, in the context of defamation, *Sipoş v. Romania*, no. 26125/04, §§ 38-39, 3 May 2011, and *Egill Einarsson v. Iceland*, no. 24703/15, 7 November 2017; and in the context of a breach of the secrecy of correspondence by a private individual, *Buturugă v. Romania*, no. 56867/15, § 73, 11 February 2020). It will examine whether in those proceedings the domestic authorities balanced the applicants' right to respect for their private life against the public interest in protecting freedom of expression in the light of the principles resulting from the Court's well-established case-law (see paragraphs 73 and 74 above).

81. It is not the Court's task to rule on the constituent elements of the offence of hate speech under Article 282 of the CC. It is primarily for the national authorities, in particular the courts, to interpret and apply domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Beizaras and Levickas*, cited above, § 116). The domestic authorities did not embark on a balancing exercise between the competing Convention rights in the criminal proceedings. Without expressly ruling out that Mr Betin's and Mr Milonov's statements reached the threshold of hate speech within the meaning of Article 282 of the CC, they essentially considered that such statements did not fall under that provision because homosexuals were not a "social group". They did not give persuasive reasons for that finding. As noted above, sexual orientation and gender identity are not explicitly mentioned among the protected grounds in Article 282 which, however, include membership of a "social group". The refusal to recognise LGBTI people as a "social group" had therefore the effect of removing statements inciting hatred or enmity against them or violating their dignity from the scope of Article 282 of the

CC and thereby of denying the applicants the protection of that provision. The Court refers in this connection to the Constitutional Court's ruling – adopted after the facts of application no. 39954/09 and while the proceedings in application no. 3465/17 were pending – which held that the term “social group” mentioned in the CC could be applied to LGBTI people (see paragraph 38 above). By refusing to regard LGBTI people as a “social group”, the domestic authorities in the present case failed to acknowledge the applicants' right to respect for their private life and their right to be protected from discrimination on grounds of sexual orientation and gender identity.

82. The domestic authorities in application no. 3465/17 in addition found that it was impossible to prove Mr Milonov's direct intent to incite hatred or enmity or to violate the dignity of an individual or a group of individuals on grounds of homosexual orientation, committed publicly or through the mass media. They found that Mr Milonov could not foresee that his statements would be published in the media because the journalist had not warned him about it. The Court is not convinced by this argument. It notes that the journalist introduced himself as a reporter for the news website Fontanka.ru. It was never claimed that Mr Milonov had requested to speak off the record. Furthermore, Mr Milonov stated to the investigator that he had assumed that the interview would be published (see paragraph 17 above).

83. While being careful not to hold that each and every utterance of hate speech against a vulnerable group must, as such, attract criminal prosecution and criminal sanctions, the Court is unable to subscribe to the conclusions of the domestic courts in the present case. It finds that the domestic authorities in the criminal proceedings failed to strike a fair balance between the applicants' right to respect for their private life and the public interest in protecting freedom of expression in the light of the principles resulting from the Court's well-established case-law.

84. Turning now to the civil proceedings instituted by Ms Krikerik, the Court observes that it cannot be said that the Russian courts examined the case in the light of the principles embodied in Articles 8 and 10 of the Convention. The courts focused on protecting Mr Milonov's freedom of expression, emphasising that he had expressed his personal opinion. Although they acknowledged the vehemence of Mr Milonov's statements, they downplayed their capacity to stigmatise LGBTI people as a group and arouse hatred and intolerance against them. They disregarded the vulnerability of the LGBT community in Russia and their need for special protection. Nor did they assess a potential impact of the impugned statements, taking into account the scope of their reach to the public and Mr Milonov's status and position (see paragraphs 58-61 above). By finding that Mr Milonov's statements “[did] not amount to an interference with the private lives of the members of a specific group”, the domestic courts failed to recognise that the case involved a conflict between the applicant's right to respect for her private life and Mr Milonov's right to freedom of expression.



The domestic courts never reached the stage of conducting a balancing exercise between the competing Convention rights, as they essentially considered that the applicant was not personally affected by the contested statements. The domestic courts therefore never actually examined the core of the applicant's claim that Mr Milonov's statements affected her right to human dignity, to respect for private life and to freedom from discrimination.

85. In sum, even assuming that the domestic law provides for the protection of the private life of a social group's individual members against stigmatising statements about that social group, owing to the Russian authorities' approach, those domestic provisions were not applied in the applicants' case, and the requisite protection was not granted to them. The domestic authorities failed to comply with their obligation to respond adequately to discriminatory statements and to secure respect for the applicants' "private life". There has therefore been a breach of Article 8 of the Convention read in conjunction with Article 14.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

87. Mr Nepomnyashchiy claimed 100,000 euros (EUR) in respect of non-pecuniary damage. Mr Bayev claimed EUR 10,000 in respect of non-pecuniary damage. Ms Krikkerik also asked for compensation in respect of non-pecuniary damage and left it to the Court to determine the amount.

88. The Government submitted that the claims were excessive and unreasonable.

89. The Court awards EUR 7,500 to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

90. Relying on legal fee agreements, invoices and payment receipts, Mr Bayev also claimed EUR 3,750 and 290,000 Russian roubles (about EUR 4,084) for legal fees incurred before the domestic courts and the Court.

91. The Government submitted that the legal fees incurred before the domestic courts were not relevant to the present case. Mr Bayev did not submit any documents confirming that he had paid EUR 3,750.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that

these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award Mr Bayev the sum of EUR 7,834 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that it has jurisdiction to deal with the applicants' complaints as they relate to facts that took place before 16 September 2022;
3. *Decides* to strike the part of application no. 39954/09 brought by Mr Alekseyev out of its list of cases;
4. *Declares* the remainder of the applications admissible;
5. *Holds* that there has been a violation of Article 8 of the Convention read in conjunction with Article 14 of the Convention;
6. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 7,500 (seven thousand five hundred euros) to Mr Nepomnyashchiy, Mr Bayev, and Ms Krikkerik each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 7,834 (seven thousand eight hundred and thirty-four euros) to Mr Bayev, plus any tax that may be chargeable to him, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

NEPOMNYASHCHIY AND OTHERS v. RUSSIA JUDGMENT

Done in English, and notified in writing on 30 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Registrar

Pere Pastor Vilanova  
President

APPENDIX

List of cases:

No.	Application no.	Applicant Year of Birth Place of Residence	Represented by
1.	39954/09	<p><b>Kirill Sergeyevich NEPOMNYASHCHIY</b> 1981 Krasnoyarsk region</p> <p><b>Nikolay Aleksandrovich ALEKSEYEV</b> 1977 Moscow</p> <p><b>Nikolay Viktorovich BAYEV</b> 1974 Moscow</p>	<p>Mr E. DACI, Mr B. CRON and Mr D. BARTENEV</p>
2.	3465/17	<p><b>Sasha Maymi KRIKKERIK</b> 1991 St Petersburg</p>	<p>Ms G. IBRYANOVA</p>