



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

THIRD SECTION

CASE OF ROMANOV AND OTHERS v. RUSSIA

*(Applications nos. 58358/14 and 5 others –
see appended list)*

JUDGMENT

Art 3 (substantive and procedural) read in the light of Art 14 • Positive obligations • Degrading treatment • Discrimination • Failure to take effective preventive measures aimed at protecting members of LGBTI community from violent verbal and physical hate-motivated attacks by private individuals during demonstrations and to conduct an effective investigation into homophobic motives of counter-demonstrators
Art 5 § 1 • Unlawful arrest and detention prior to demonstration
Art 11 • Art 11 read in the light of Art 14 • Freedom of peaceful assembly • Negative obligations breached by preventing applicants' participation in public event through unlawful arrest • Failure to comply with positive obligations to duly facilitate the conduct of the planned event by deterring homophobic verbal attacks and physical violence by counter-demonstrators
Art 38 • Respondent State's compliance with its obligation to furnish all necessary facilities
Art 46 • Execution of judgment • Respondent State free to choose means by which to discharge legal obligation under this provision

STRASBOURG

12 September 2023

FINAL

12/12/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Romanov and Others v. Russia,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Yonko Grozev,

Georgios A. Serghides,

Peeter Roosma,

Andreas Zünd,

Oddný Mjöll Arnardóttir, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the six applications 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 eleven Russian nationals (“the applicants”) whose personal details and the dates when their applications were lodged are set out in the appendix;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Articles 3, 5, 8, 11, 13 and 14 of the Convention and to declare the remainder of application no. 7146/15 inadmissible;

the parties’ observations;

the comments submitted by third-party interveners, the Equal Rights Trust, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA-Europe”), the Russian Lesbian, Gay, Bisexual and Transgender Network (“the Russian LGBT Network”) and Human Rights Watch, which were granted leave to intervene by the President of the Section;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 11 July 2023,

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

INTRODUCTION

1. The case concerns the respondent State’s alleged failure to protect the applicants, all of whom are members of the lesbian, gay, bisexual, transgender and intersex (“LGBTI”) community, from homophobic acts of violence by private individuals and to conduct an effective investigation into the incidents. Some applicants also complained that they had been apprehended and detained unlawfully during peaceful demonstrations in support of LGBTI people.

THE FACTS

2. The names of the applicants' representatives are listed in the appendix.
3. The Government were initially represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

THE CIRCUMSTANCES OF THE CASE

A. Mr Romanov (application no. 58358/14)

5. On 17 May 2012 Mr Romanov took part in the "Rainbow flash mob" event in St Petersburg, which had been authorised by the local authorities and marked the International Day Against Homophobia and Transphobia. A group of people protesting against the event gathered nearby. The police were deployed to maintain public order during the event; however, they did not intervene when counter-demonstrators started insulting the participants in the event. The parties submitted no further information about any preliminary measures which had been put in place to protect the demonstrators.

6. During the event the applicant was holding a balloon with the inscription "Jesus Christ loves men and women equally", when one of the counter-demonstrators, Mr L., fired five times towards the applicant with a spray gun while shouting "sodomy is a mortal sin". As a result, the applicant suffered injuries in the form of chemical burns to the conjunctivae and cornea and a contusion in the area of the right cheekbone.

7. The police apprehended Mr L. after the attack and charged him with hooliganism under Article 213 § 1 (a) of the Criminal Code ("the CC"). In his statement of 17 May 2012, Mr L. explained that he had come to the event to "fight sexual minorities".

8. On 17 February 2013 an investigator questioned Mr L. According to the record of the interview, he was the founder of the "Sin-free City" movement, one of the aims of which was to fight the "propaganda of perversion", including homosexuality.

9. On 17 July 2013 the applicant requested the investigator to explore alleged motives of hate against LGBTI people. However, by a decision of 18 July 2012, the investigator dismissed the request for "lack of any evidence of hate motives" and indicated that the perpetrator had not insulted anyone, had come to the event by accident and his actions had been motivated by the blasphemous words on the balloon.

10. On 11 November 2013 the Petrogradskiy District Court of St Petersburg convicted Mr L. as charged and sentenced him to one year's imprisonment, conditional on one year's probation.

11. On 18 December 2013 the State Duma of the Russian Federation annested Mr L.

12. On 12 February 2014 the St Petersburg City Court quashed the District Court's decision and discontinued the case in accordance with the Amnesty Act.

B. Mr Lebedev and Mr Nasonov (application no. 7146/15)

13. On 11 January 2013 the applicants notified the authorities in Voronezh of their intent to hold a demonstration involving about fifty participants on 20 January 2013 against the enactment of the law banning "propaganda of non-traditional sexual relations". The authorities authorised the demonstration.

14. On 15 January 2013 a far-right organisation, "Separate Division" ("*Отдельный Дивизион*"), published on its website a call to disrupt the demonstration.

15. In connection with the demonstration, the applicants began receiving death threats on the Russian social media platform V Kontakte. On 17 and 19 January 2013 the applicants asked the police to open a criminal case under Article 119 of the CC and to grant them protection; they enclosed printouts of the threatening messages. The organisers of the demonstration notified the police of a counter-demonstration which was to take place at the same venue with the aim of obstructing the event. On 30 January 2013 the police refused Mr Nasonov's application to have an investigation opened.

16. On 20 January 2013 more than one hundred counter-demonstrators came to the site of the LGBTI demonstration, where six participants were present. They unfolded banners with homophobic slogans, called for violence against the participants in the demonstration, threw snowballs and paint balloons at them and tore up the participants' posters. At around 2 p.m. some of the counter-demonstrators beat the applicants. About forty police officers were present at the site but did not intervene. All the participants in the LGBTI demonstration had to stop the demonstration and leave.

17. The applicants requested that the police institute criminal proceedings against the attackers under Article 116 and Article 282 § 2 of the CC. The police opened two sets of criminal investigations.

18. On 25 January 2013 Mr Z. confessed to having attacked Mr Lebedev. He was charged under Article 116 § 2 (a) of the CC with battery (*нободу*) committed for disorderly motives. On 2 August 2013 a magistrate in the Central District of Voronezh convicted Mr Z. as charged. On 21 January 2014 the Central District Court of Voronezh upheld the magistrate's decision but Mr. Z was released from the obligation to serve his sentence on the grounds that the limitation period had expired.

19. The police suspended the criminal proceedings against other attackers of Mr Lebedev and Mr Nasonov owing to the impossibility of identifying the suspects.

C. Mr Starov, Ms Pitenova, Mr Fedorov, Mr Prokopenko and Ms Levina (application no. 25887/15)

1. Demonstration of 29 June 2013 and subsequent events

20. On 29 June 2013 Mr Starov, Ms Pitenova, Mr Fedorov and Mr Prokopenko took part in a demonstration involving about eighty participants in St Petersburg which was aimed at drawing attention to violations of the rights of LGBTI people in Russia. The local authorities had been notified of the event in advance and deployed 165 police officers to maintain public order at the site of the event.

21. A group of counter-demonstrators gathered next to the participants in the demonstration. They shouted homophobic slogans, called for violence against the participants and threw stones and smoke bombs at them. At around 3 p.m. one of the counter-demonstrators ran up to Mr Prokopenko and punched him in the face and hands. The police present at the scene did not intervene.

22. The other applicants decided to leave the demonstration. While they were walking away, about thirty counter-demonstrators ran up to them and started beating them. The police arrived about ten minutes later and took the applicants to the police station. The police called an ambulance three hours later.

23. According to medical certificates of 29 June 2013, the applicants sustained the following injuries: Mr Starov had contusion of the soft tissue on the head and face, contusion and haematoma of the thorax and closed abdominal trauma; Ms Pitenova had bruises on the left chest and lower back; and Mr Fedorov had abrasions on the back, shoulder and soft tissue of the head. No certificate was drawn up for Mr Prokopenko.

24. The applicants sought to have a criminal investigation opened into the homophobic attacks on them. The police questioned some of the participants who had been assaulted during the demonstration but never identified the perpetrators. Between July 2013 and December 2015 the police repeatedly refused to open a criminal investigation into battery committed for hate motives (Article 116 § 2 of the CC), citing a “hostile attitude of people of heterosexual orientation towards members of the LGBTI community”. The prosecutor quashed those decisions each time and ordered additional inquiries, emphasising the need to identify and question eyewitnesses of the attacks on the applicants. However, following the last decision by the police on 23 December 2015 not to initiate an investigation, they did not carry out the measures ordered by the prosecutor.

2. Demonstration of 12 October 2013 and subsequent events

25. On 12 October 2013 Mr Fedorov, Mr Prokopenko and Ms Levina intended to take part in a demonstration in St Petersburg to mark Coming Out Day. The facts relating to that event were the subject of the Court's judgment in *Berkman v. Russia* (no. 46712/15, 1 December 2020).

26. About 500 police officers were deployed to ensure public order during the demonstration. The applicants arrived at the site of the demonstration in advance and saw a group of counter-demonstrators. The latter shouted homophobic slogans, pushed the applicants and prevented them from proceeding to the venue. The police did not intervene.

27. At 1.55 p.m., five minutes before the demonstration started, the police began apprehending the participants, including Mr Fedorov, Mr Prokopenko and Ms Levina, on the grounds that they had used foul language. At 2.30 p.m. the police escorted the applicants to a police station, where administrative-offence reports were drawn up under Article 20.1 § 1 ("petty hooliganism" – *мелкое хулиганство*) of the Code of Administrative Offences ("the CAO"). The administrative-offence report in respect of Mr Fedorov was drawn up at 7.50 p.m. and he was released at 8 p.m.; the report in respect of Mr Prokopenko was drawn up at 4.05 p.m. and he was released at 7.05 p.m.; and the report in respect of Ms Levina was drawn up at 5.25 p.m. and she was released at 6.50 p.m.

28. On 13 November 2013 the Dzerzhinskiy District Court of St Petersburg discontinued the administrative-offence proceedings against Mr Fedorov and Ms Levina for lack of evidence. They complained that they had been apprehended and detained unlawfully, before the start of the authorised demonstration. On 26 February 2015 the Kuybyshevskiy District Court of St Petersburg dismissed their complaint. The decision was finally upheld in a decision given by the Supreme Court of the Russian Federation on 29 April 2016.

29. On 6 March 2014 the St Petersburg City Court discontinued the administrative-offence proceedings against Mr Prokopenko for lack of evidence. He brought a civil action seeking compensation for non-pecuniary damage caused by his being unlawfully apprehended and detained before the start of the authorised demonstration. On 10 February 2015 the Petrogradskiy District Court of St Petersburg awarded the applicant 2,000 Russian roubles (RUB – equivalent to approximately 27 euros (EUR)) in respect of non-pecuniary damage. On 9 June 2015 the St Petersburg City Court dismissed an appeal by the applicant and on 1 December 2015 a judge of the same court refused to refer a cassation appeal lodged by the applicant to the Presidium of that court for examination.

D. Mr Chechetkin (application no. 42395/15)

30. On 3 November 2013 the applicant attended the “Rainbow Tea Social”, a weekly event held to support LGBTI people, at an HIV prevention centre in St Petersburg.

31. At around 7.15 p.m. two young men in hoods armed with a baseball bat and an air gun entered the centre. They were stopped in the corridor by Ms P., one of the organisers of the event. The applicant was nearby. As soon as the applicant turned his head in their direction, one of the intruders shot him in the left eye, whereupon the applicant crouched down and tried to hide. One of the attackers shouted “where are you going, faggot?” at the applicant and then approached him and hit him in the shoulder and leg with the bat, following which the two men left the centre. The police and an ambulance arrived shortly thereafter. The police found and collected evidence, including three metal bullets, several shoe prints, palm prints and fingerprints.

32. After the incident the applicant underwent surgery on his eye. The pellet was removed but he lost sight in his left eye.

33. On 4 November 2013, at the request of Ms P., the police opened a criminal case in respect of the attack. The incident was classified under Article 213 § 2 of the CC as a disorderly act committed by a group.

34. Between November 2013 and February 2014 the police questioned the applicant, Ms P. and more than fifteen other participants in the “Rainbow Tea Social” event. All of them alleged that the attack had been motivated by hatred against LGBTI people. Ms P. noted that on the day of the attack a social network community, “Wolf-Homophobe” (“Волк-Гомофоб”), had published a post about the upcoming attack in St Petersburg on its webpage.

35. The investigator in the case identified and questioned several people who had participated in actions against the LGBTI community. None of their fingerprints matched those found at the scene of the events.

36. On 24 December 2013 the investigator refused an application by the applicant’s lawyer for the perpetrators’ actions to be classified under Article 111 § 3 (a) and (b) of the CC as actions committed by a group of persons for motives of hatred or enmity towards LGBTI people.

37. On 5 March 2014 the Leninskiy District Court of St Petersburg dismissed an appeal against the above-mentioned decision, holding that it was premature to decide on the legal classification of the offence at such an early stage of the proceedings. On 21 April 2014 the St Petersburg City Court upheld the District Court’s decision.

38. On 16 July 2014 the investigator suspended the investigation on the grounds that the attackers could not be identified.

39. On 6 March 2015 the same District Court dismissed an appeal by the applicant against the above-mentioned decision and a further application to have the perpetrators’ actions classified as motivated by hatred. On 7 May 2015 the St Petersburg City Court upheld the District Court’s decision.

40. Having not achieved any tangible results, the investigators suspended and resumed the investigation multiple times, most recently on 7 October 2017. The applicant has not received any further information about the progress of the investigation.

E. Ms Gromadskaya and Mr Martin (applications nos. 56617/19 and 56637/19)

41. On 14 October 2017 the applicants were in a bar in St Petersburg. At around 5 p.m. a man who was unknown to them noticed a rainbow bracelet on their friend's hand and approached them. He insulted them while referring to their perceived homosexuality and beat them, inflicting several bruises which were recorded by a doctor later that day.

42. On 15 October 2017 the applicants reported the incident to the police.

43. On 23 October 2017 the police refused to institute criminal proceedings as "the attack had amounted to an administrative offence under Article 6.1.1 of [the CAO]" ("battery"). On 15 February 2018 a prosecutor quashed that decision and ordered the police to carry out additional inquiries, notably to obtain video-recordings from webcams, identify and question witnesses and obtain the opinion of a medical expert.

44. On 3 March 2018 the police opened administrative-offence proceedings under Article 6.1.1 of the CAO.

45. On 19 March 2018 and 12 July 2018 the police refused to institute criminal proceedings, essentially reiterating the reasons given in their first refusal. On 29 May 2018 and 28 December 2018 respectively, a prosecutor quashed those decisions and ordered additional inquiries. No criminal investigation was ever instituted.

46. On 19 December 2018 the applicants' lawyer challenged the decision of 12 July 2018. On 15 January 2019 the Nevskiy District Court of St Petersburg discontinued the proceedings on the basis that the impugned decision had already been quashed. On 24 April 2019 the St Petersburg City Court endorsed the District Court's decision.

47. On 14 October 2019 the police discontinued the administrative proceedings on the grounds that the limitation period had expired.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal law

48. Article 63 of the Criminal Code provides the list of aggravated circumstances of a crime, which includes "committing a crime on the grounds

of political, ideological, racial, national, or religious hatred, or on the grounds of hostility or hatred towards any social group.”

49. Article 111 of the Criminal Code provides as follows:

“1. The intentional infliction of severe harm to a person’s health, the endangering of their life, or the causing of harm resulting in the loss of sight, speech, hearing or any organ or the loss of its functions, termination of a pregnancy, mental disorder, drug addiction or substance abuse, or harm resulting in the irreparable disfigurement of the face or causing a significant and persistent loss of general working capacity by at least one third or a complete loss of professional working capacity for the offender, shall be punishable by imprisonment for a term of up to eight years.

2. The same acts, if committed:

(a) against a person or their close relatives in connection with the performance of official duties by that person or the fulfilment of a public duty;

(b) against a minor or another person who is known to be in a helpless state as well as acts involving exceptional cruelty, mockery or torture of the victim;

(c) in a generally dangerous manner;

(d) for hire;

(e) for disorderly motives;

(f) on the grounds of political, ideological, racial, national or religious hatred or enmity or on the grounds of hostility or hatred towards any social group;

(g) for the purpose of using the organs or tissues of the victim;

shall be punishable by imprisonment for a term of up to ten years, with or without a restriction of liberty for a term of up to two years.

3. The acts provided for in the first or second part of this Article, if committed:

(a) by a group of persons, a group of persons upon prior conspiracy or an organised group;

(b) against two or more persons;

shall be punishable by imprisonment for a term of up to twelve years, with or without a restriction of liberty for a term of up to two years.”

50. Article 116 of the Criminal Code provides:

“1. The infliction of beatings or other violent actions causing physical pain but not resulting in the consequences specified in Article 115 of this Code shall be punishable by a fine of up to RUB 40,000, or by the seizure of the convicted person’s wages or other income for a period of up to three months, or by community service for a period of up to 360 hours, or by corrective labour for a period of up to six months or by imprisonment for a term of up to three months.

2. The same acts, committed:

(a) for disorderly motives;

(b) on grounds of political, ideological, racial, national or religious hatred or enmity or on grounds of hostility or hatred towards any social group;

shall be punishable by community service for a period of up to 360 hours, or by corrective labour for a period of up to one year, or by restriction of liberty for a period

of up to two years, or by compulsory labour for a period of up to two years, or by imprisonment for a term of up to six months or by deprivation of liberty for a period of up to two years.”

51. Article 282 of the Criminal Code provides as follows:

“1. Actions aimed at inciting hatred or enmity and humiliating the dignity of an individual or a group of individuals on the grounds of gender, race, ethnic origin, language, background, religious beliefs or membership of a social group, committed publicly or in the mass media, shall be punishable by a fine of from RUB 100,000 to RUB 300,000 or an amount equivalent to the convicted person’s wages or other income for a period of from one to two years, or by the withdrawal of the right to hold certain posts or carry out certain activities for a period of up to three years, or by community service for a period of up to 360 hours, or by corrective labour for a period of up to one year, or by compulsory labour for a period of up to two years or by deprivation of liberty of up to two years.

2. The same actions, if committed:

- (a) with the use of violence or the threat of its use;
- (b) by a person using his or her official position;
- (c) by an organised group,

are punishable by a fine of RUB 100,000 to RUB 500,000 or an amount equivalent to the convicted person’s wages or other income for a period of from one to three years, or by the withdrawal of the right to hold certain posts or carry out certain activities for a period of up to five years, or by community service for a period of up to 480 hours, or by corrective labour for a period of from one to two years, or by compulsory labour for a period of up to five years or by deprivation of liberty of up to five years.”

B. Administrative law

52. Until 3 July 2016 any form of “battery” had constituted a criminal offence (see paragraph 50 above). On 3 July 2016 the “non-aggravated” form of battery was decriminalised and reclassified as an administrative offence under a new provision, Article 6.1.1 of the Code of Administrative Offences, which provides:

“The infliction of beatings or the commission of other violent actions that cause physical pain but do not result in the consequences specified in Article 115 of the Criminal Code of the Russian Federation shall, as long as these acts do not constitute a criminal offense, entail the imposition of an administrative fine of from RUB 5,000 to RUB 30,000, or administrative detention for a period of from ten to fifteen days or community service for a period of from sixty to 120 hours.”

C. Case-law of the Constitutional Court

53. In accordance with the Constitutional Court’s ruling of 23 September 2014 on the constitutionality of Article 6.21 § 1 of the Code of Administrative Offences of Russia, the concept of “a social group” may apply to a group of people on the basis of their sexual orientation.

II. INTERNATIONAL MATERIAL

54. On 31 March 2010 the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination on grounds of sexual orientation or gender identity. In so far as relevant, it reads as follows:

A. “Hate crimes” and other hate-motivated incidents

“1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.”

55. In its report on the Russian Federation adopted on 4 December 2018 (CRI(2019)2), the European Commission against Racism and Intolerance (ECRI) noted:

“109. Sexual orientation and gender identity are not explicitly enumerated as prohibited grounds in the relevant provisions of the Criminal Code, such as Articles 282, 136 and 63 ... 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. The UN expressed its concern about the fact that Article 63 [of the CC] on aggravating circumstances does not appear to have ever been applied to cases involving violence against LGBTI persons, in spite of a high number of such incidents ... 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 Criminal Code ...”

56. In its concluding observations on the seventh periodic report of the Russian Federation of 28 April 2015 (CCPR/C/RUS/7), the United Nations Human Rights Committee noted:

“10. The Committee is concerned:

...

(c) That article 63, paragraph 1 (e), of the Criminal Code recognizing as aggravated circumstances the commission of an offence for reasons of, inter alia, ‘hatred or enmity’ or ‘hate or hostility towards a given social group’ does not appear to have ever been applied to cases involving violence against LGBTI individuals;

...

The State party should clearly and officially state that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons based on their sexual orientation or gender identity. It should also:

(a) Take all the steps necessary to ... ensure the investigation, prosecution and punishment of any act of violence motivated by the victim’s sexual orientation or gender identity and apply the provisions of article 63, paragraph 1 (e), of the Criminal Code to such acts.”

THE LAW

I. JOINDER OF THE APPLICATIONS

57. 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

58. 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION READ IN THE LIGHT OF ARTICLE 14

59. All the applicants, with the exception of Ms Levina, complained under Articles 3 and 8 of the Convention, taken alone and together with Articles 13 and 14, that the domestic authorities had failed to protect them from verbal attacks and physical violence motivated by their sexual orientation and/or to effectively investigate the attacks by establishing, in particular, a possible homophobic motive on the part of the attackers.

60. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018, and compare *Identoba and Others v. Georgia*, no. 73235/12, § 106, 12 May 2015), the Court finds it appropriate to examine these complaints under Article 3 read in the light of Article 14 of the Convention, which read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

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

61. As the Government did not raise any objections as to the admissibility of these complaints, the Court need not consider the matter of exhaustion of domestic remedies of its own motion (see *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, § 31, 7 December 2021, and *Dobrev v. Bulgaria*, no. 55389/00, §§ 112-14, 10 August 2006). The Court notes that the applicants’ complaints 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. The parties’ submissions

62. Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Ms Pitenova, Mr Fedorov and Mr Prokopenko contended that the police had failed to protect them from the hate-motivated verbal attacks and physical violence perpetrated by the counter-demonstrators during their peaceful demonstrations on 17 May 2012, 20 January 2013 and 29 June 2013.

63. In addition, Mr Romanov, Mr Starov, Ms Pitenova, Mr Fedorov, Mr Prokopenko, Mr Chechetkin, Ms Gromadskaya and Mr Martin submitted that the domestic authorities had failed to carry out an effective investigation of the attacks on them. In particular, the homophobic motive of the attackers had not been treated as an aggravating circumstance.

64. The Government did not submit any observations on the merits of the complaints lodged by Ms Gromadskaya and Mr Martin. With regard to the remaining applications, they pointed out that the police officers had been deployed in sufficient numbers at the demonstration sites and had taken all necessary measures to protect the applicants. The investigation into the applicants’ cases had been effective and the investigators had adequately examined the possibility that the attackers had had homophobic motives. According to the Government, the investigators could not be criticised for their allegedly incorrect legal classification of the offences.

65. The Equal Rights Trust, ILGA-Europe, the Russian LGBT Network and Human Rights Watch submitted information about domestic law and practice regarding hate crimes against LGBTI people. They noted that the motive of hatred based on the sexual orientation of a victim was not explicitly mentioned in Russian legislation. It was covered by the concept of “hatred against a particular social group”, as set out in Article 63 of the CC as an element that aggravated an offence. That provision, however, had never been applied to cases involving violence against LGBTI people. According to the Russian LGBT Network, no fewer than 139 hate crimes had been committed against LGBTI people between 2012 and 2015. None of those had been classified as a hate crime within the meaning of Article 63 of the CC.

66. The Government questioned the reliability of the data provided by the third parties. They referred to the absence of official statistics on hate crimes against LGBTI people.

2. *The Court’s assessment*

(a) **The severity threshold**

67. Ill-treatment must attain a minimum level of severity that involves actual bodily injury or intense physical or mental suffering if it is to fall within the scope of Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015). That includes treatment that humiliates or debases an individual, either in the eyes of others or in those of the victim, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance (see *Identoba and Others*, cited above, § 65, and, *mutatis mutandis*, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 220, ECHR 2011). Furthermore, discriminatory treatment can in principle amount to degrading treatment within the meaning of Article 3 where it attains a level of severity such as to constitute an affront to human dignity. Discriminatory remarks and racist insults must in any event be considered as an aggravating factor when considering a given instance of ill-treatment in the light of Article 3 (see *Sabalić v. Croatia*, no. 50231/13, §§ 65-66, 14 January 2021, with further references).

68. The Court observes that the ten applicants concerned (see paragraph 59 above) were subjected to vicious hate speech and physical violence during the attacks or clashes with the counter-demonstrators, facts which were not disputed by the Government (see, in particular, paragraphs 5-6, 13-16, 20-22, 26, 31-33 and 41 above). It is apparent from the material in the case file that the purpose of these verbal and physical attacks was to intimidate the applicants into refraining from publicly expressing their belonging to and support of the LGBTI community, such as by holding demonstrations or thematic meetings. In the cases of Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Ms Pitenova,

Mr Fedorov and Mr Prokopenko, the applicants' emotional distress must also have been further exacerbated by the fact that police protection was not provided in due time or adequately (see *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §§ 60-61, 16 December 2021; see also paragraphs 5-6, 16 and 21 above).

69. The Court therefore finds that the situations of the ten applicants concerned were incompatible with respect for their human dignity and reached the threshold of severity within the meaning of Article 3 of the Convention.

(b) Obligation to protect

70. Article 1 of the Convention, taken in conjunction with Article 3, imposes positive obligations on the States to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited by Article 3, including where such treatment is inflicted by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI). At the same time, for a positive obligation to arise it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 181-83, 2 February 2021; for the standard of proof applied, see *Women's Initiatives Supporting Group and Others*, cited above, § 69).

71. As regards the question of whether the authorities knew or ought to have known about the risks associated with the demonstrations of 17 May 2012, 20 January 2013 and 29 June 2013 in which Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Mr Fedorov, Ms Pitenova and Mr Prokopenko took part, the Court observes that the domestic authorities were well aware of these events and their subject matter. They should have foreseen all the risks associated with mass events related to the socially sensitive topic of supporting the LGBTI community, given hostile attitudes of parts of Russian society towards this issue (see *Berkman*, cited above, § 55). The authorities approved the demonstrations in advance and had time to take sufficient preparatory measures to protect the participants. Moreover, serious threats had circulated on social media prior to the demonstration of 20 January 2013, which were brought to the attention of the police (see paragraphs 14-15 above). In such a situation, the authorities were under an obligation to use any means possible, for instance by making public statements in advance of the demonstrations to advocate, without any ambiguity, a tolerant, conciliatory stance and to warn potential law-breakers of the nature of the possible sanctions (compare *Women's Initiatives Supporting Group and Others*, cited above, § 71).

72. The Court further notes that it is not disputed that police were present in sufficient numbers at the demonstration sites before the beginning of the incidents (compare *Identoba and Others*, cited above, § 73; see also paragraphs 5, 16, and 20 above). Specific information about prior threats had been transmitted to the police by the organisers of the 20 January 2013 demonstration (see paragraph 15 above). The police should have been aware in advance that there existed a real risk to the applicants' physical safety stemming from their manifesting of views that were unpopular with the counter-demonstrators, or should have reacted to such threats as they developed (see paragraphs 5, 16 and 21 above). Yet it does not appear that the police took steps to neutralise the threats in advance or to de-escalate the tension between the applicants and counter-demonstrators; instead, they allowed it to degenerate into physical violence (see, *mutatis mutandis*, *Association ACCEPT and Others v. Romania*, no. 19237/16, § 110, 1 June 2021). When the counter-demonstrators started insulting the applicants, throwing objects at them and physically attacking them, the police did not intervene immediately to stop the attacks and protect the applicants. The Government did not argue that the police officers had been outnumbered by the counter-demonstrators or that they had lacked the proper equipment to intervene. No explanation was provided as to why the police stepped in only after the attacks had already progressed and the applicants had had to stop their participation in the demonstrations.

73. In the light of the foregoing, the Court finds that the authorities were well aware of the risks to the applicants associated with the demonstrations in support of the LGBTI community on 17 May 2012, 20 January 2013 and 29 June 2013 and that they failed to take effective preventive measures aimed at protecting them against hate-motivated attacks by counter-demonstrators.

74. There has accordingly been a violation of Article 3 of the Convention under its substantive limb read in the light of Article 14, in respect of Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Mr Fedorov, Ms Pitenova and Mr Prokopenko.

(c) Procedural obligation

75. Article 3 of the Convention requires that the authorities conduct an effective official investigation into alleged ill-treatment, even if such treatment has been inflicted by private individuals (see *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 38, 28 January 2014). For an investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and – if appropriate – punishment of those responsible. This is not an obligation as to the results to be achieved, but the means to be employed. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable

expedition is implicit in this context (see *Bouyid*, cited above, §§ 116 and 119-23).

76. When investigating violent incidents such as ill-treatment, State authorities also have a duty to take all reasonable steps to unmask possible discriminatory motives for a violent act. They must examine all the facts that may be indicative of violence fuelled by hatred towards the victim, including possible homophobic motives. It is particularly important that the official investigation be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of such acts and maintain the confidence of minority groups in the ability of the authorities to protect them from discriminatory violence (see *Women's Initiatives Supporting Group and Others*, cited above, § 63; see also the Recommendation of the Committee of Ministers of the Council of Europe, quoted in paragraph 51 above).

77. Turning to the cases of Mr Starov, Ms Pitenova, Mr Fedorov and Mr Prokopenko, the Court notes that the investigators refused to open criminal investigations into the attacks on them (see paragraph 24 above). In the case of Ms Gromadskaya and Mr Martin, the police also refused to open criminal investigation but opened administrative-offence proceedings instead. Those proceedings were, however, opened five months after the incident and were eventually discontinued as the limitation period for the offence had expired (see paragraphs 43-46 above). In Mr Chechetkin's case, a criminal investigation was initiated immediately after the incident but was later suspended as the attackers could not be identified (see paragraphs 33, 38-40 above). Lastly, the Court notes that in Mr Romanov's case, where the perpetrator had been identified and convicted of hooliganism, he was amnestied shortly after his conviction (see paragraphs 7 and 10-12 above).

78. In the light of the limited and delayed investigative efforts employed in the cases of Mr Starov, Ms Pitenova, Mr Fedorov, Mr Prokopenko, Ms Gromadskaya and Mr Martin, the Court is not convinced that they could be regarded as "effective" within the meaning of Article 3 of the Convention. The Court, however, sees no need to examine in detail the proceedings conducted in Mr Chechetkin's and Mr Romanov's cases because, in any event, possible hate motives behind the attacks were not taken into account in any of the relevant proceedings. It was not disputed by the Government that the context of each of the attacks against the applicants was marked by *prima facie* indications of violence motivated, or at least influenced, by the applicants' being perceived as belonging to the LGBTI community or supporting it (see paragraphs 5-8, 20-22, 30-35 and 41 above). The applicants made repeated efforts to raise such allegations, relying on the legal framework which criminalises violence committed on the grounds of "hostility or hatred towards any social group" and lists the same as an aggravating circumstance (see paragraphs 48-51 above). The Court notes that the material in its possession indicates that the term "any social group"

mentioned in the Russian Criminal Code may be interpreted as a concept that covers the LGBTI community (see paragraph 50 above). In the light of the State's margin of appreciation in respect of choosing legal instruments to ensure compliance with the Convention, the Court considers that the Constitutional Court's ruling of 23 September 2014 (see paragraph 50 above) provided the Russian authorities with the possibility to consider hatred towards LGBTI people as an aggravating circumstance and to investigate and prosecute ill-treatment on the basis of hatred against LGBTI people.

79. Having said this, the Court observes that the investigating authorities repeatedly rejected the applicants' allegations in a summary manner, without properly addressing their complaints in that regard (see paragraphs 9, 24, 36-39 and 45 above). The Court notes with great concern that this appears to be common practice in dealing with hate crimes against LGBTI people (see paragraphs 55 and 65 above). As a result, the authorities failed to adequately address the homophobic overtones of the attacks and to subject them to a proper evaluation under the domestic law, in line with the requirements of the Convention (see *Association ACCEPT and Others*, cited above, §§ 123-25).

80. The Court thus finds that the domestic authorities have failed to conduct an effective investigation into the eight applicants' allegations of assault motivated by homophobia. There has accordingly been a violation of Article 3 of the Convention under its procedural limb read in the light of Article 14.

IV. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

81. In his comments on the Government's observations, Mr Chechetkin alleged that there had been a violation of Article 38 on account of the Government's failure to submit copies of documents requested by the Court. Article 38 reads as follows:

“The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

82. When giving notice of application no. 42395/15, the Court requested the Government to produce copies of the documents in the criminal investigation file. On 1 November 2017 the Government submitted their observations without the requested copies, indicating that those documents would be submitted after a procedural decision to that effect had been taken.

83. On 8 May 2018 the Government submitted the requested documents. The applicant was given an opportunity to comment on them.

84. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıku v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV).

85. Having regard to the above, the Court finds that the delay in the submission of the documents in the present case, although regrettable, has not amounted to a failure to comply with Article 38 of the Convention (see *Gaysanova v. Russia*, no. 62235/09, §§ 144-46, 12 May 2016).

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

86. Under Article 5 § 1 and Article 11 of the Convention, taken alone or together with Article 14, Mr Fedorov, Mr Prokopenko and Ms Levina complained that they had been apprehended and detained unlawfully on the grounds of their support of LGBTI people and that that had prevented them from participating in the public event (see paragraphs 25-29 above). The Government did not submit any observations on the admissibility of these complaints. The Court notes that even though the domestic courts in the civil proceedings found that Mr Prokopenko's deprivation of liberty had been unlawful (see paragraph 29 above), the amount of EUR 27 awarded to him in respect of non-pecuniary damage cannot be considered appropriate and sufficient redress for the alleged breach of the Convention (see, for example, *Gremina v. Russia*, no. 17054/08, § 66, 26 May 2020, with further references). Mr Prokopenko can therefore claim to be a victim of the alleged violation of Article 5 § 1 of the Convention.

87. The Court notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. In the light of its well-established case-law and having examined all the material before it, the Court finds a breach of the applicants' right to liberty under Article 5 § 1 of the Convention and a violation of the State's negative obligations under Article 11 taken alone (see *Berkman*, cited above, §§ 32-38 and 59-62). Having regard to these conclusions, it is not necessary to examine separately whether there has been a violation of Article 14 of the Convention in conjunction with Article 5 § 1 and Article 11 (*ibid.*, § 66).

88. Further, under Article 11 of the Convention, taken alone and together with Article 14, Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Ms Pitenova, Mr Fedorov, Mr Prokopenko and Ms Levina complained that the authorities had failed to duly facilitate the conduct of the planned demonstrations by deterring homophobic verbal attacks and physical violence by counter-demonstrators (see paragraphs 5-6, 16, 20-22 and 25-27 above). The Government did not submit any observations on the admissibility of these complaints. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. In the light of its well-established case-law and having examined all the material before it, the Court finds that the domestic

authorities failed to comply with their positive obligations under Article 11 of the Convention taken alone and read in the light of Article 14 (see *Berkman*, cited above, §§ 45-58, and *Women's Initiatives Supporting Group and Others*, cited above, §§ 79-84).

VI. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

89. 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.”

1. *Damage*

90. The applicants claimed various amounts in respect of non-pecuniary damage, which are indicated in the appendix.

91. The Government left this issue to the Court's discretion.

92. Having regard to its above findings and ruling on an equitable basis as required by Article 41 of the Convention, the Court awards the applicants the amounts indicated in the appendix in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. *Costs and expenses*

93. The applicants claimed the reimbursement of legal costs incurred at the national level and before the Court in the amounts indicated in the appendix. Mr Fedorov, Mr Prokopenko and Ms Levina asked that the award be paid directly into the bank account of Ms Kseniya Mikhaylova.

94. The Government left the issue to the Court's discretion.

95. Regard being had to the documents in its possession and its case-law, the Court considers it reasonable to award the applicants the amounts indicated in the appendix, plus any tax that may be chargeable to the applicants on them.

B. Article 46 of the Convention

96. Article 46 of the Convention, in so far as relevant, provides as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

97. Mr Lebedev and Mr Nasonov asked the Court to indicate to the respondent Government general measures to be taken to address discrimination against sexual minorities. Other applicants as well as third parties also pointed out the inability of the criminal justice system in Russia to unmask possible homophobic motives of the attacks on LGBTI people.

98. In accordance with Article 46 § 2 of the Convention, it falls to the Committee of Ministers to supervise the execution of the Court's judgments. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46, provided that such means are compatible with the conclusions and the spirit of the Court's judgment.

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. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 3 under its substantive limb, read in the light of Article 14 of the Convention, in respect of Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Ms Pitenova, Mr Fedorov and Mr Prokopenko;
5. *Holds* that there has been a violation of Article 3 under its procedural limb, read in the light of Article 14 of the Convention, in respect of Mr Romanov, Mr Starov, Ms Pitenova, Mr Fedorov, Mr Prokopenko, Mr Chechetkin, Ms Gromadskaya and Mr Martin;
6. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of Mr Fedorov, Mr Prokopenko and Ms Levina;
7. *Holds* that there has been a violation of the respondent State's positive obligations under Article 11 taken alone and read in the light of Article 14 of the Convention in respect of Mr Romanov, Mr Lebedev, Mr Nasonov, Mr Starov, Ms Pitenova, Mr Fedorov, Mr Prokopenko and Ms Levina;
8. *Holds* that there has been a violation of the respondent State's negative obligations under Article 11 of the Convention in respect of Mr Fedorov, Mr Prokopenko and Ms Levina;

9. *Holds* that it is not necessary to examine whether there has been a violation of Article 14 taken in conjunction with Article 5 § 1 and Article 11 of the Convention in respect of Mr Fedorov, Mr Prokopenko and Ms Levina;
10. *Holds* that the respondent State has not failed to comply with Article 38 of the Convention in application no. 42395/15;
11. *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 amounts indicated in the appendix to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants;
 - (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;
12. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 12 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

List of applications and just satisfaction claims

No.	Application no. Lodged on Represented by	Applicant Year of Birth Place of Residence	Non-pecuniary damage (EUR)		Costs and expenses (EUR)	
			Claimed	Awarded	Claimed	Awarded
1.	58358/14 11/08/2014 Dmitriy Gennadyevich BARTENEV	Boris Borisovich ROMANOV 1985 St Petersburg	12,000	12,000	8,250	3,000
2.	7146/15 29/01/2015 Olga Anatolyevna GNEZDILOVA	Pavel Vladimirovich LEBEDEV 1989 Voronezh	20,000	16,500	10,000 jointly to Mr Lebedev and Mr Nasonov	6,000 jointly to Mr Lebedev and Mr Nasonov
		Andrey Sergeyevich NASONOV 1989 Chalmyk	20,000	16,500		
3.	25887/15 15/05/2015	Sergey Aleksandrovich STAROV 1991 St Petersburg	12,000	12,000	8,250	3,000

ROMANOV AND OTHERS v. RUSSIA JUDGMENT

No.	Application no.	Applicant	Non-pecuniary damage (EUR)		Costs and expenses (EUR)	
	Dmitriy Gennadyevich BARTENEV	Anna Viktorovna PITENOVA 1989 St Petersburg	12,000	12,000	0	0
	Valentina Nikolayevna FROLOVA	Kirill Vladimirovich FEDOROV 1992 St Petersburg	10,000	10,000	3,037.50	3,000 (to be paid to Ms Kseniya Mikhaylova)
	Kseniya Andreyevna MIKHAYLOVA	Yevgeniy Aleksandrovich PROKOPENKO 1988 St Petersburg	10,000	10,000	5,400	3,000 (to be paid to Ms Kseniya Mikhaylova)
		Svetlana Dmitriyevna LEVINA 1974 St Petersburg	10,000	9,750	3,075	3,000 (to be paid to Ms Kseniya Mikhaylova)
4.	42395/15 17/08/2015	Dmitriy Olegovich CHECHETKIN			200,000 Russian roubles (approximately)	

ROMANOV AND OTHERS v. RUSSIA JUDGMENT

No.	Application no.	Applicant	Non-pecuniary damage (EUR)		Costs and expenses (EUR)	
	Svetlana Viktorovna GROMOVA Olga Pavlovna TSEYTLINA	1986 St Petersburg	Amount to be determined by the Court	23,000	EUR 2,835 at the relevant time)	2,835
5.	56617/19 14/10/2019 Kseniya Andreyevna MIKHAYLOVA	Severi Karlovna GROMADSKAYA 1984 St Petersburg	10,000	10,000	0	0
6.	56637/19 11/10/2019 Kseniya Andreyevna MIKHAYLOVA	Anton Vladimirovich MARTIN 1978 St Petersburg	10,000	10,000	0	0