



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

## THIRD SECTION

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

*(Applications nos. 8825/22 and 19130/22)*

### JUDGMENT

Art 14 (+ Art 8) • Discrimination on the basis of sexual orientation • Private life • Domestic authorities' failure to discharge positive obligation to respond adequately to the non-consensual dissemination of the applicants' private data, including information on their sexual orientation, by private individuals on social networks • Failure to investigate in an effective manner whether data dissemination was motivated by homophobic attitudes • Vulnerability of the LGBTI community in Russia and their need for special protection disregarded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 February 2025

*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 Bazhenov and Others v. Russia,**

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseyinov,

Andreas Zünd,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Úna Ní Raifeartaigh, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 8825/22 and 19130/22) 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 three Russian nationals, Mr Yevgeniy Bazhenov, Mr Aleksandr Semkin and Mr Artem Lapov (“the first applicant”, “the second applicant” and “the third applicant”, respectively), on the various dates indicated in the appended table;

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

the observations submitted by the applicants;

the comments submitted by the AIRE Centre (Advice on Individual Rights in Europe) and ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), who were granted leave by the President of the Section to intervene in the written procedure;

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 14 January 2025,

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

## INTRODUCTION

1. The case concerns alleged failures by the domestic authorities to comply with their positive obligation to respond adequately to homophobia-driven incidents of disclosure of the applicants’ personal data, including information about their sexual orientation, on social networks and thereby secure respect for the applicants’ “private life” and protect them from discrimination.

## THE FACTS

2. The applicants' details are indicated in the appended table.
3. The facts of the cases may be summarised as follows.

### I. BAZHENOV AND SEMKIN v. RUSSIA (APPLICATION No. 8825/22)

4. The applicants are homosexuals and are in a same-sex marriage registered in a European country. At the time of the events in question they owned a chain of shops selling board-games.

5. On 17 May 2020, the international day against homophobia, the applicants posted a message on their business account on the Russian social media platform VKontakte ("VK") expressing dedication to their customers regardless of their sex, gender identity or sexual orientation.

6. On 26 May 2020 a homophobic public group on VK called "*Один твой друг – гомонегативист*" (hereinafter – "OTDG"), which positioned itself as a "community militating for discrimination", published a post mentioning the applicants' publication of 17 May 2020 under a headline reading: "Board-games shops owned by two openly gay men in a same-sex marriage". The post contained the applicants' names, the first applicant's photograph and the addresses of the applicants' shops.

7. On the same day a notorious Russian activist positioning himself as a "gay basher" and "defender of traditional values", Timur Bulatov, reposted the above-mentioned text on his VK account calling for his supporters to leave "correct comments under the publication of two sexual perverts, who dared to promote social equality between faggots and healthy people".

8. On 27 May 2020 the first applicant submitted a criminal complaint to the Moscow Investigative Committee (via its website) in which he requested it to carry out an investigation into the unlawful dissemination of his personal data without his consent (Article 137 of the Criminal Code, breach of privacy). He considered the context of the post and commentary as offensive and inciting hostility and hatred towards the LGBT social group, as well as encouraging extremist actions. The applicant further expressed his fear that either he or his family could be subjected to a hatred-motivated crime because of the information about his private life that had been published without his consent. He attached screenshots of the relevant posts on VK to the complaint.

9. On the same day the first applicant sent a complaint to the Golovinskiy interdistrict prosecutor's office (via its website) about the insults by Mr Bulatov. He attached screenshots of the relevant post from VK to the complaint.

10. For several months the applicant and his lawyer tried to find out about the results of the inquiry into their criminal complaint, but the Investigative Committee refused to provide any information on the case.

11. On 26 August 2020 the applicant's lawyer challenged the Investigative Committee's inaction before the Presnenskiy District Court of Moscow.

12. On 15 October 2020 the Presnenskiy District Court rejected the above complaint, finding that the first applicant had been informed, by a letter of 11 June 2020 that had been sent to his email address, that his criminal complaint had been sent to the Golovinskiy interdistrict department of the Investigative Committee for an inquiry in accordance with Articles 144-145 of the Code of Criminal Procedure, and that he had been further informed, by letter of 26 August 2020 that had also been sent to his email address, that his criminal complaint was "subject to return due to a lack of information sufficient to resolve it"; the same letter also requested that he "make his arguments more specific and indicate the circumstances of the unlawful actions, namely the time, place and the method of the act committed".

13. The applicant appealed against that decision, pointing out the lack of evidence that the letters of 11 June and 26 August 2020 had actually been sent to his email address and arguing that those letters did not constitute an appropriate response to his criminal complaint. On 2 December 2020 the Moscow City Court rejected the applicant's appeal.

14. At the same time, the applicant's lawyer challenged the response contained in the letter of 26 August 2020 in the Koptevskiy District Court of Moscow.

15. On 2 March 2021 the Koptevskiy District Court discontinued the proceedings in view of a written request that the prosecutor had addressed to the Investigative Committee on the same date seeking that it eliminate violations of federal law following the prosecutor's detection of gross violations of criminal procedure by the Investigative Committee when receiving, registering and examining criminal complaints, which had led to the breach of reasonable deadlines for the examination of the first applicant's criminal complaint.

16. On 20 March 2021 an investigator of the Investigative Committee, without performing a single investigative measure, took a decision to refuse to open a criminal investigation into the applicant's complaint. Referring to Articles 137 and 138 of the Criminal Code, the investigator noted the absence of any objective information to the effect that the crimes of which the first applicant had complained had been committed.

17. On 15 April 2021 the first applicant was able to study the materials of the inquiry file. They included his criminal complaint of 27 May 2020; copies of the decisions of the domestic courts following his complaints; and a report dated 19 February 2021 stating that the actions of unidentified persons who had published his personal data and photograph disclosed signs of crimes under Articles 137 and 138 of the Criminal Code. The file also contained decisions of 20 February and 27 February 2021 extending the time-limits for the carrying out of the inquiry until 28 February and 20 March 2021, with

reference to the need to interview the first applicant and the person who had published his personal data.

18. On 17 May 2021 the Golovinskiy District prosecutor's office set aside the decision not to open a criminal investigation as premature and unlawful.

19. On 12 June and 16 June 2021, respectively, the investigator interviewed the first and the second applicants.

20. On 25 June 2021 the investigator again refused to open a criminal investigation. The decision repeated word for word the previous refusal of 20 March 2021.

21. On 7 July 2021 the Golovinskiy District prosecutor's office set aside that refusal.

22. As a part of the new round of inquiry, the investigator again interviewed the applicants and sent requests in order to find out whether they were under the supervision of either a psychiatrist or an addiction specialist (narcologist). The case file contains no further information regarding those requests or any eventual replies.

23. On 6 August 2021 the investigator for the third time took a decision to refuse to open a criminal investigation for lack of *corpus delicti* under Article 137 of the Criminal Code in the actions of unidentified persons.

24. On 17 August 2021 the prosecutor's office quashed that refusal, ordering the investigator to identify the user who had posted the first applicant's photograph on the "OTDG" public page.

25. On 13 September 2021 the investigator sent a request to VK LLC seeking to receive information about the personal and registration data of the network user who had published the first applicant's photograph.

26. On 12 October 2021, having received no response to his request, the investigator again refused to open a criminal investigation.

27. In May 2022 the limitation period for prosecution under Article 137 § 1 of the Criminal Code expired.

28. On 30 November 2023 the Supreme Court of the Russian Federation declared "LGBT international public movement" an "extremist organisation" and banned its activity on the territory of the Russian Federation. Pursuant to Article 282.2 of the Criminal Code, participation in an extremist organisation is punishable by up to six years' imprisonment.

## II. LAPOV v. RUSSIA (APPLICATION No. 19130/22)

29. The third applicant is a homosexual and is in a same-sex marriage registered in the United States of America. Being a lawyer, he collaborated with a number of human rights organisations providing legal assistance in high-profile criminal cases related to hate crimes against LGBTI individuals. In that connection his name regularly appeared in the media and on social networks between 2015 and 2022.

30. On 24 May 2020 a comment containing the personal data of several individuals connected with LGBTI activism, lawyers and leaders of human rights initiatives was published on the page of a group called “Against LGBT Propaganda” on VK. A similar comment was posted in the group “World Gets Better | LGBT | LGBT+”. The list of the individuals in question was entitled “Address list of LGBT activists, paedophiles and other LGBT perverts”. It was posted by the VK accounts of “Maksim Ivanen”. Similar comments were also posted from the VK account of “Vadim Ivanov” and “Yura Semenov”. The comments included the third applicant’s first name, patronymic and last name, as well as his registered address (where had lived in the past and where his parents still resided).

31. On 26 May 2020 the third applicant submitted a criminal complaint to the Moscow Investigative Committee (via its website), requesting it to carry out an investigation into the unlawful dissemination of his personal data without his consent (Article 137 of the Criminal Code, breach of privacy). Referring to section 18(4) of the Federal Law on Advocacy, he further submitted that publication of his private data in the context of his assistance to LGBTI people had put pressure on him with the aim of forcing him to renounce his professional activities protecting the rights of LGBTI people. He attached screenshots of the relevant VK pages to the complaint.

32. Having received no information about the results of the examination of his complaint after the expiry of the procedural time-limits, on 27 July 2020 the applicant challenged the Investigative Committee’s inaction before the Presnenskiy District Court of Moscow.

33. On 31 August 2020 the Presnenskiy District Court rejected the applicant’s complaint with reference to a letter of 25 June 2020, by which he had allegedly been informed of the referral of the inquiry to the Simonovskiy interdistrict department of the Investigative Committee on 23 June 2020.

34. The third applicant appealed against that decision of the Presnenskiy District Court, but on 21 October 2020 the Moscow City Court upheld the decision.

35. Meanwhile, on 11 September 2020 the applicant received the above-mentioned “response” dated 25 June 2020, which, according to the postage marks, had been sent on 8 September 2020.

36. On 21 December 2020 he lodged a challenge of the Investigative Committee’s failure to conduct an inquiry with the Simonovskiy District Court of Moscow, arguing that the Code of Criminal Procedure obliged the investigative authorities to conduct such an inquiry and to adopt a procedural decision, and to notify the applicant of it.

37. On 8 September 2021 the Simonovskiy District Court of Moscow upheld the applicant’s complaint and obliged the investigative authorities to conduct an inquiry in accordance with the Code of Criminal Procedure.

38. On 10 September 2021 an investigator interviewed the third applicant. He further sent a request to VK LLC seeking the personal data associated with the VK user account of “Maksim Ivanen”.

39. On 5 October 2021 the investigator took a decision refusing to open a criminal investigation, indicating as the reason the absence of a violation of the applicant’s privacy.

40. On 3 January 2022 the prosecutor’s office set aside the above decision as unlawful and unfounded and returned the file for an additional inquiry.

41. During the additional inquiry, on 10 February 2022 the investigator again sent a request to VK LLC seeking the personal data of the user registered under the name “Maksim Ivanen”.

42. On 11 February 2022, before receiving any reply to his request, the investigator issued a new decision refusing to open a criminal investigation.

43. On 28 March 2022 the above decision was set aside as unlawful and unfounded, and a new inquiry ordered. It was noted, in particular, that the necessary measures should be taken to establish the identity of the alleged perpetrator and to interview that person.

44. The third applicant was unaware of the outcome of the new inquiry at the time when he made his submissions to the Court, as he had never been notified of any new procedural decisions.

45. In May 2022 the limitation period for prosecution under Article 137 § 1 of the Criminal Code expired.

46. In the course of 2022 the applicant and his husband left Russia; they are currently residing in a European country as refugees.

## RELEVANT LEGAL FRAMEWORK

47. The Constitution of the Russian Federation guarantees the right to protection of private life, privacy of personal and family affairs, and one’s good name and honour (Article 23 § 1).

48. The Constitution prohibits collecting, keeping, using and disseminating information about the private life of a person without his or her consent (Article 24 § 1).

49. Under Article 137 § 1 of the Criminal Code, as in force at the relevant time, the unlawful collection or dissemination of information about the private life of a person without his or her consent was punishable by a fine, correctional labour, a custodial sentence of up to four months or imprisonment of up to two years.

50. Under Article 138 § 1 of the Criminal Code any breach of citizens’ right to the privacy of their postal, telegraphic, telephone or other forms of communication was punishable by a fine or correctional labour.

51. The Criminal Code provides a list of the aggravating circumstances that can accompany crimes, 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” (Article 63 § 1 (e)).

52. The Code of Criminal Procedure provides that every criminal complaint (report of a crime) must be accepted, verified and decided upon within three days by an inquiry officer, an inquiry agency, an investigator or a prosecutor. They may proceed, with the assistance of experts or on their own, to conduct documentary verifications, checks and examinations of documents, objects or bodies, and may issue compulsory instructions on the operational-search activities to be carried out (Article 144 § 1). The aforementioned period of three days may be extended to ten days, and, when it is necessary to conduct documentary verification, checks, forensic examinations or examinations of documents, objects or bodies, to thirty days (Article 144 § 3).

53. Following the examination of a report of a crime, the competent authority must decide to open a criminal case, to refuse to open a criminal case or to forward the criminal complaint to another law-enforcement agency with the relevant jurisdiction (Article 145 § 1). Under Article 145 § 2 the complainant may challenge whatever decision is taken.

54. The Federal Law on Advocacy provides that an advocate, his family members and their property are under State protection. Law-enforcement agencies are obliged to take the necessary measures to ensure their safety (section 18(4)).

55. The Plenary of the Russian Supreme Court issued guidance on the judicial application of criminal-law provisions for the protection of constitutional rights and freedoms in Resolution no. 46 of 25 December 2018. The guidance indicates that, for the purposes of Article 137 of the Criminal Code, the collection of information on a person’s private life must be understood as comprising the illegal obtaining of information by any means, such as surveillance, wiretapping, interviewing other persons, including with the use of audio, video and photorecording equipment, and copying, stealing or otherwise acquiring documents. Dissemination of information on a person’s private life consists of communicating or disclosing it to one or more persons orally, in writing or otherwise, including by means of handing over the materials or publishing the information on ICT networks, such as the internet.

## THE LAW

### I. PRELIMINARY ISSUES

#### **A. Joinder of the applications**

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

## **B. Jurisdiction**

57. 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).

## **C. Consequences of the Government’s failure to participate in the proceedings**

58. The Government did not comment on the admissibility or merits of the applications. However, their abstention from participation in the proceedings does not release them from their duty to cooperate with the Court, which is not prevented from continuing with the examination of applications over which it retains jurisdiction. The Court may draw such inferences as it deems appropriate from a party’s failure or refusal to participate effectively in the proceedings (Rule 44C of the Rules of Court; see also *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, §§ 25-27, 28 April 2023; *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023; and *Glukhin v. Russia*, no. 11519/20, §§ 42-43, 4 July 2023).

## **II. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION AND OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8**

59. The applicants complained under Article 8 of the Convention, taken alone and in conjunction with Article 14, that the domestic authorities had failed to discharge their positive obligation under Article 8 to ensure effective respect for their private life in the sphere of the relations of individuals between themselves. They also complained under Article 13 of the Convention that they had no effective domestic remedy at their disposal for their Convention complaints. The relevant Articles provide as follows:

### **Article 8**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

**Article 13**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

**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**

60. Given that the Government did not raise any objections as to the admissibility of the complaints, the Court need not consider the matter of exhaustion of domestic remedies of its own motion (see *Zarema Musayeva and Others v. Russia*, no. 4573/22, § 57, 28 May 2024, with further references).

61. The Court finds 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 applicants’ and third-party interveners’ submissions*

62. The applicants submitted that the disclosure without their consent of information about their private lives, in particular their sexual orientation, on the pages of homophobic public and individual accounts on VK had exposed them to elevated risks of harassment and made them fear for their lives and health, for the safety of their relatives and employees, and for their professional activities. It had been for the domestic authorities to afford their private lives adequate protection by responding to those incidents with an effective criminal investigation, having particular regard to the homophobic nature of the perpetrators’ actions. However, that had not been done. The applicants suggested that the authorities’ superficial inquiries and refusals to open a criminal case had been motivated by their special attitude towards the LGBTI community and their problems. They referred in that connection to the decision of the Supreme Court of 30 November 2023 labelling the “international LGBT public movement” as extremist, prohibiting LGBT activism and leading to further persecution of LGBT community.

63. The third-party interveners, the AIRE Centre and ILGA-Europe, submitted that the sharing of personal information, including sexual orientation, should be an individual’s choice and that there should be safeguards to prevent the disclosure of such personal data. Additional

safeguards should be implemented where an individual may have justifiable reasons for choosing not to share aspects of their identity publicly or not to have identifiable data disseminated. They noted in that context that, since the above-mentioned 2023 decision of the Supreme Court, groups supporting LGBTI rights have been shut down and there has been an increase in police raids on gay clubs and on places and events associated with LGBTI; in incidents of self-censorship; in convictions of individuals displaying rainbow flags; in instances of LGBTI websites being blocked by the authorities; and in hate crimes and hate speech against LGBTI people, as well as more frequent requests for legal advice. The national authorities have a positive obligation to conduct an effective investigation into an alleged interference with an individual's private life, and a person's sexual orientation should form part of the authorities' considerations.

## 2. *The Court's assessment*

### (a) Preliminary remarks

64. The Court considers that the authorities' duty to protect the applicants' private life by adequately addressing the allegedly homophobia-driven incidents of disclosure of their private data by third persons and investigating the existence of any possible discriminatory motive behind those incidents can fall under the State's positive obligations enshrined in Article 8 of the Convention, but may also be seen as forming part of the authorities' positive responsibilities under Article 14 of the Convention to secure the fundamental values protected by Article 8 without discrimination. Owing to the interplay of the above provisions, issues such as those arising in respect of the present case may indeed fall to be examined under one of these two provisions only – with no separate issue arising under the other – or may require simultaneous examination under both of these Articles. This is a question to be decided in each case in the light of its facts and the nature of the allegations made (compare to, in the context of hate-motivated violence, *Association ACCEPT and Others v. Romania*, no. 19237/16, § 96, 1 June 2021, with further reference).

65. Given the particular circumstances of the present case, in particular the homophobic nature of the public groups and pages where the applicants' private data had been disseminated and the general attitude towards LGBTI community in Russia (see paragraphs 6, 7, 30 and 63 above), and in view of the applicants' allegations that the incidents of which they had been victims had been driven by homophobic attitudes that had been completely disregarded by the authorities, the Court finds that the most appropriate way to proceed would be to examine the applicants' complaint under Article 14, taken in conjunction with Article 8 of the Convention (see *Association ACCEPT and Others*, cited above, § 97, with further references).

**(b) General principles**

66. The relevant principles established under Article 14 of the Convention have been reiterated in *Molla Sali v. Greece* [GC], no. 20452/14, §§ 133-37, 19 December 2018 (references omitted):

“133. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations ... In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical.

134. However, not every difference in treatment will amount to a violation of Article 14. Only differences in treatment based on an identifiable characteristic, or “status”, are capable of amounting to discrimination within the meaning of Article 14 ... In this context, the Court reiterates that the words “other status” have generally been given a wide meaning in its case-law ... and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent ...

135. The Court also reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. For the purposes of Article 14, a difference of treatment is discriminatory if it ‘has no objective and reasonable justification’, that is, if it does not pursue a “legitimate aim” or if there is not a ‘reasonable relationship of proportionality’ between the means employed and the aim sought to be realised ...

136. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background ...

137. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the latter was justified ...”

67. The Court has repeatedly held that, just like differences based on sex, differences based on sexual orientation require “particularly convincing and weighty reasons” by way of justification. Where a difference in treatment is based on sex or sexual orientation, the State’s margin of appreciation is narrow. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States. Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 114, 14 January 2020, and *Association ACCEPT and Others*, cited above, § 99).

68. The Court has consistently held that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its

application unless the facts at issue fall within the ambit of one or more of them (see *Molla Sali*, cited above, § 123).

69. The notion of “private life” within the meaning of Article 8 of the Convention is a broad concept which does not lend itself to exhaustive definition. It covers the physical and psychological integrity of a person and can therefore embrace multiple aspects relating to personal identity, such as a person’s name, image and personal data, including gender identification, sexual life, sexual orientation, civil status, and so on. It covers personal information which individuals can legitimately expect should not be disclosed without their consent (see *Fedotova and Others*, cited above, §§ 141-43; *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; and *Beizaras and Levickas*, cited above, § 109).

70. The Court further makes reference to the general principles developed in its case-law regarding the State’s positive obligations inherent in effective respect for private or family life under Article 8 of the Convention, which may involve the adoption of measures even in the sphere of the relations of individuals between themselves. It is for the competent domestic authorities to determine the most appropriate means to secure their compliance with Article 8 in such cases, the Court’s task being limited to reviewing under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (compare to *Alković v. Montenegro*, no. 66895/10, § 67, 5 December 2017).

**(c) Application of these principles in the present case**

71. Turning to the circumstances of the present case, the Court finds it clear that the non-consensual disclosure by third parties of the applicants’ private data – including their names, sexual orientation, the fact that they were in same-sex marriages, and photographs (for details in respect of each applicant see paragraphs 7-8 and 31 above) – on the social media platform VK fell within the sphere of the applicants’ private life under Article 8 of the Convention. Hence, Article 14, in conjunction with Article 8, is applicable to the circumstances of the case.

72. The Court observes that domestic law provided for a criminal-law remedy against the unlawful dissemination of information about the private life of a person without his or her consent (see paragraphs 49 and 55 above), to which the applicants had recourse. The domestic law also listed grounds of hostility or hatred towards a social group among the aggravating circumstances that could accompany a crime (see paragraph 51 above). The Court notes that the applicants’ private data, including information about their sexual orientation, had been spread in homophobic public groups and personal accounts aimed at intimidating LGBTI activists and inciting intolerance, hatred and violence towards LGBTI people. It further notes that when filing his criminal complaint the first applicant explicitly indicated that the context of the post and commentary had been offensive and incited

hostility and hatred towards the LGBT social group, as well as encouraging extremist actions. The first applicant further expressed his fear that either he or his family could be subjected to hate crime because of the information about his private life that had been published without his consent (see paragraph 8 above). The third applicant submitted that publication of his private data in the context of his assistance to LGBTI people had put pressure on him with the aim of forcing him to renounce his professional activities as a lawyer protecting the rights of LGBTI people (see paragraph 31 above).

73. In these circumstances, the Court finds that the domestic authorities were confronted with *prima facie* indications that the above-mentioned acts of disclosure of the applicant's private data without their consent, including information about their sexual orientation, were driven by discriminatory attitudes against LGBTI community. This required an effective investigation capable of elucidating the homophobic motive behind the breach of the applicants' privacy and of identifying and, if appropriate, adequately punishing those responsible (see *Association ACCEPT and Others*, cited above, § 114). The Court will therefore examine whether the Russian authorities, in dealing with the applicants' cases, complied with their positive obligations under Article 14 of the Convention taken in conjunction with Article 8.

74. The Court notes that the investigative body initially refused to consider the applicants' criminal complaints within the framework of the criminal procedure and that the applicants had to challenge its inaction several times before the courts. In particular, following the applicants' complaints, gross violations of criminal procedure by the Investigative Committee were found to have been committed in the way it received, registered and examined the criminal complaints, which led to the breach of reasonable deadlines for the examination of those complaints (see paragraphs 10-16 and 32-37 above). As a result, the inquiries into the criminal complaints lodged in May 2020 were started only in February and September 2021 (see paragraphs 17 and 38 above).

75. Once the inquiries had started, the investigators failed to take the obvious investigative steps necessary to secure evidence relating to the incidents, such as interviewing the applicants, identifying and questioning the perpetrators and sending requests to that end to the VK social networking service. The first decision refusing to open a criminal investigation in the case of the first and second applicants was taken by the investigator without performing a single investigative measure. After that decision was set aside as premature and unlawful, and three subsequent rounds of inquiries conducted between May and October 2021, which consisted in interviewing the applicants, the investigator issued new decisions refusing to open a criminal investigation. The Court notes with particular concern that during one of those new rounds of inquiries the investigator made requests in order to obtain information as to whether the first and second applicants were under

the supervision of either a psychiatrist or a narcologist. The Court cannot discern how, in the absence of any reasons adduced by the domestic authorities, this measure could be justified in relation to the investigation of the complaint that the applicants' personal data had been unlawfully disseminated. Before issuing the last refusal the investigator had sent a request to VK LLC seeking to receive information about the personal and registration data of the network user who had published the photograph of Mr Bazhenov, yet he proceeded with the decision to refuse to open a criminal investigation without receiving a reply to his request (see paragraphs 17-26 above). The inquiry into the criminal complaint by the third applicant was handled similarly: the two refusals to open a criminal case were taken by the investigator exclusively on the basis of an interview with the applicant. Although on two occasions requests were sent to VK LLC seeking the personal data of the user registered under the name "Maksim Ivanen", the investigator issued the refusals before receiving any replies (see paragraphs 38-43 above). At no point in the proceedings did the investigation have regard to the homophobic motive behind the breach of the applicants' privacy, despite the applicants' arguments to that effect (see paragraph 72 above).

76. The Court observes that the applicants were not informed of any subsequent procedural decisions concerning their criminal complaints and that in May 2022 the limitation period for prosecution under Article 137 § 1 of the Criminal Code expired.

77. The Court notes in this context that it has previously found that gender and sexual minorities require special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected. The Russian LGBTI community can be regarded as a particularly vulnerable group needing heightened protection from stigmatising statements (see *Nepomnyashchiy and Others v. Russia*, nos. 39954/09 and 3465/17, § 59, 30 May 2023).

78. In the light of the foregoing, the Court concludes that the authorities failed to discharge their positive obligation to respond adequately to the non-consensual dissemination of the applicants' private data, including the information on their sexual orientation, by private individuals, and to investigate in an effective manner whether the dissemination of the data in question had been motivated by homophobic attitudes (see, *mutatis mutandis*, *Beizaras and Levickas*, cited above, § 129). They disregarded the vulnerability of the LGBTI community in Russia and their need for special protection (see paragraphs 28 and 63 and 77 above). It thus considers it established that the applicants suffered discrimination on the grounds of their sexual orientation.

79. There has therefore been a violation of Article 14, taken in conjunction with Article 8 of the Convention.



80. In view of its findings above, the Court considers that it is not necessary to examine separately whether there has also been a violation of Articles 8 and 13 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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**

82. The applicants claimed 7,000 euros (EUR) each in respect of non-pecuniary damage.

83. The Court awards the applicants the amounts they claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

#### **B. Costs and expenses**

84. The applicants did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that it has jurisdiction to deal with the applications as they relate to facts that took place before 16 September 2022 and that the Government’s failure to participate in the proceedings presents no obstacles for the examination of the case;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 8 of the Convention;
5. *Holds* that there is no need to examine the remainder of the complaints;
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, EUR 7,000 (seven thousand euros)

each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 4 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Ioannis Ktistakis  
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
1.	8825/22	Bazhenov and Semkin v. Russia	03/02/2022	<b>Yevgeniy Igorevich BAZHENOV</b> 1985 Moscow Russian  <b>Aleksandr Aleksandrovich SEMKIN</b> 1984 Moscow Russian	Anton Igorevich RYZHOV
2.	19130/22	Lapov v. Russia	01/04/2022	<b>Artem Yevgenyevich LAPOV</b> 1988 Moscow Russian	Anton Igorevich RYZHOV