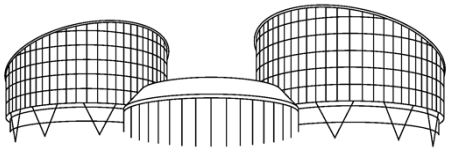

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KLIMOVA AND OTHERS v. RUSSIA

(Applications nos. 33421/16 and 6 others –
see appended list)

JUDGMENT

Art 8 • Private life • Collection by the security services of user data from the social networking platform related to one applicant's networking account and the social networking community she administered in the framework of administrative-offence proceedings for promoting homosexuality among minors • Lack of sufficient safeguards against abuse • Collection of large amounts of personal data, including sensitive data, over an extended period, rendered interference intrusive and was capable of having a chilling effect • Interference not "necessary in a democratic society"
Art 10 • Freedom of expression • Convictions for an administrative offence in connection with content published by some of the applicants (authored by them or others) in social networking groups or communities they administered and/or the blocking of their websites or webpages for "promoting homosexuality among minors" • Principles set out in *Macatė v. Lithuania* [GC] applied • Unjustifiable restrictions based solely on considerations of sexual orientation • No basis to consider the publications to be inappropriate or harmful to children's growth and development • Impugned measures incompatible with Art 10 in so far as they sought to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships • Convictions of two applicants for an administrative offence for content posted by users, without prior content moderation, in social networking groups or communities they created and administered, based on expansive and unforeseeable interpretation and application of domestic law • Relevant legal provision did not allow applicants to foresee, to a

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reasonable degree in the circumstances, the consequences of a failure to delete third-party content published • Interference not “in accordance with the law”

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 Klimova and Others v. Russia,

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

Ioannis Ktistakis*, President*,
Peeter Roosma,
Lətif Hüseynov,
Darian Pavli,
Andreas Zünd,
Diana Kovatcheva,
Úna Ní Raifeartaigh*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 33421/16, 8156/20, 32416/20, 39855/20, 10497/21, 33277/21 and 46226/21) 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 the six Russian nationals listed in the appended table ("the applicants"), on the various dates given in the appended table;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the alleged violations of the applicants' right to freedom of expression and their right not to be discriminated against on the grounds of sexual orientation in all applications; of the right to a fair hearing in applications nos. 39855/20, 10497/21 and 33277/21; of the right to respect for one's private life in application no. 39855/20; and of the right to an effective remedy in application no. 46226/21; and to declare the remainder of the applications inadmissible;

the observations submitted by the Government in applications nos. 33421/16, 39855/20 and 10497/21;

the observations submitted by the applicants;

the comments submitted by the Sphere Foundation, a Russian LGBTI rights non-governmental organisation, which was granted leave to intervene by the President of the Section in applications nos. 8156/20, 32416/20, 33277/21 and 46226/21;

the decision to grant anonymity in application no. 32416/20;

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 Rule 29 § 2 of the Rules of the Court by analogy (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 the applicants' convictions for an administrative offence and/or the blocking of their websites or webpages on social networking sites for "promoting homosexuality among minors". One application (no. 39855/20 (Ms Tsvetkova)) also concerns the collection by the security services of user data related to the applicant's personal social networking account and to the social networking community administered by her.

THE FACTS

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

3. The facts of the case may be summarised as follows.

I. KLIMOVA v. RUSSIA (APPLICATION No. 33421/16)

4. The applicant Ms Klimova is a journalist and the founder of an online support project for LGBTI teenagers "Children-404. LGBT teenagers" ("*Дети-404. ЛГБТ-подростки"*). The name refers to the internet error message "Error 404 - Page not found" and alludes to the invisibility of LGBTI adolescents and their particular problems in the LGBTI-intolerant environment of Russia. She was the administrator of the project's internet site and of a dedicated online community on the social networking site VKontakte (VK) which provided a space for teenagers to discuss LGBTI issues and support each other.

5. In her capacity as the VK community's administrator the applicant posted, after pre-moderation, "letters" received from community users on the community public webpage and she was responsible for moderating comments published by users after they had been posted.

6. The community rules stated that the discussion or promotion of the act of engaging in any sexual behaviour, whether traditional or non-traditional, was prohibited. Posting comments belittling others' emotions or victim blaming was prohibited, as was making homophobic, transphobic, misogynistic, ageist or xenophobic statements; using foul language or insults; making calls for violence; trolling (causing distress deliberately); or inserting any hyperlinks. The rules also stressed that it was not a dating community, and dating advertisements or proposals to meet up were therefore prohibited.

A. Administrative-offence proceedings against the applicant

7. On 18 November 2014 the Russian telecoms regulator (Roskomnadzor) charged the applicant with an administrative offence under Article 6.21 § 2 of the Code of Administrative Offences ("the CAO", see paragraphs 87 and 88 below). Roskomnadzor said that it had received more than 130 complaints from citizens and associations, including from the Young Guard (the youth wing of the pro-government party United Russia), about the VK community "Children-404. LGBT teenagers". They claimed that the community's public webpage, which was administered by the applicant, contained material aimed at the promotion of homosexuality among minors. In particular, it contained:

– a letter from a young man describing his teenage experience of self-identification and of how he had learnt to be proud of being gay and of having a boyfriend;

– a video showing a young man saying that he was proud of being gay and that gay teenagers were special;

– a letter from a teenage girl describing the experience of her first romantic date with a girl;

– users' comments criticising a mother who had scolded her gay teenage child and advising that child to disregard or to make fun of her negative comments about his homosexuality;

– a user's comment wishing happiness to a gay teenager who had moved to the USA and stating that equal rights in the USA had been gained rather than given;

– a user's comment stating that gay people did not have to justify themselves by saying that they had not chosen their sexual orientation: sexual orientation was a private matter and no one had a right to reproach others for being different;

– users' comments advising a gay teenager who felt guilty about her sexual orientation because it was incompatible with her religious beliefs to renounce her religious beliefs; saying that religious beliefs could be chosen while sexual orientation could not be; and that a God who punished love was unworthy.

8. On an unspecified date, the administrative offence file was sent to a justice of the peace for adjudication. The file contained an expert report dated 6 December 2014 by a psychologist, Ms M., which had been commissioned by the Young Guard. Ms M. found that the material described in paragraph 7 above aimed to persuade gay people to accept themselves and to give them hope for a happy life and the support of the LGBT community. It contributed to the prevention of suicide attempts, which were common among the target audience. Although its aims were good, the means it used to put its message across were inadequate because they included elements of the explicit and implicit promotion of homosexuality. The report said the material was very

dangerous because it tried to present homosexual relationships as a variant of the norm and to "legitimise the sin". It encouraged gay people to try to expand the limits of what was considered socially acceptable in order to overcome their social rejection. Furthermore, the material could arouse children's and teenagers' interest in non-traditional sexual relationships and make them develop a non-traditional sexual mindset. It presented a positive image of gay people and of homosexual relationships. It also created a distorted image of traditional and non-traditional sexual relationships as socially equivalent. Lastly, it described the LGBT community as consisting of "normal, intelligent and educated people" and therefore more attractive than the rest of the society.

9. The applicant filed an expert report dated 18 December 2014 by a psychiatrist, Mr V., with the Justice of the Peace. Mr V. found that the material described in paragraph 7 above did not contain any erotic or pornographic content, suggestions of sexual relations, promotion of sexual relations between minors, or distorted information about sexual or gender identity, sexual development or gender role identification. Nor did it contain any promotion of homosexuality, such as ideas that non-traditional sexual relationships were better than traditional ones. The authors of the disputed letters and the comments on them asked for, and gave, emotional and psychological support in connection with struggles related to their sexual orientation and gender identity and to homophobic intolerance from others. The VK community "Children-404. LGBT teenagers" promoted the ideas of respect for differences, human rights, and mutual support. It urged troubled teenagers to seek help from peers or professionals and provided ways of seeking such help, including through online psychological consultations. It therefore contributed to the prevention of suicide among teenagers, especially in remote regions where professional psychological help was not easily accessible.

10. When questioned at the hearing, Mr V. confirmed his findings, adding that the community's page did not contain any comparisons between traditional and non-traditional sexual relationships or any statements that it was better to be gay than straight. "Children-404. LGBT teenagers" was the only online project in the Russian language specialising in providing psychological support to LGBTI teenagers in difficulty. Because of its undoubted social usefulness, it was very important to maintain that project.

11. The applicant also filed the following expert reports with the Justice of the Peace, which contained similar findings as in paragraph 9 above:

- a report dated 22 December 2014 by a psychiatrist, Mr I.;
- a report dated 6 February 2015 by a psychologist, Ms T.; and
- a report dated 10 March 2015 by a panel of three psychologists.

Ms T. particularly stressed that the disputed material did not contain any discussions of sexual relations and was focused on the emotional and psychological struggles of gay teenagers. The material being examined did

not contain any information promoting the attractiveness of non-traditional sexual relationships. Mr I. and Ms T. also observed that, far from claiming that homosexual relationships were better than heterosexual ones, the material in question, on the contrary, showed the difficulties with which gay people were confronted, such as intolerance and discrimination. Lastly, the panel of expert psychologists found that the authors' motivation was to seek psychological support for their difficulties with self-acceptance and with being accepted by their families and peers, and that they did not appear to have any intention of convincing others to become gay.

12. On 3 August 2015 the Justice of the Peace of the 5th Court Circuit of the Dzerzhinskiy District of Novyy Tagil found the applicant guilty of the administrative offence of "public activities aimed at the promotion of homosexuality among minors" (Article 6.21 § 2 of the CAO, see paragraphs 87 and 88 below) and sentenced her to a fine of 50,000 Russian roubles (RUB) (about 757 euros (EUR) at the time). It found that the applicant, in her capacity as the administrator of the VK community "Children-404. LGBT teenagers", had published users' posts and had failed to delete users' comments promoting homosexuality. Relying on an expert report of Ms M. (see paragraph 8 above), the Justice of the Peace found that the material described in paragraph 7 above gave a positive image of non-traditional sexual relationships. It was capable of evoking in children the idea that it was good to be gay and that non-traditional sexual relationships were superior to traditional ones and were more important than religious beliefs. The material in question therefore aimed at creating in minors a non-traditional sexual orientation, promoting the attractiveness of non-traditional sexual relationships and creating a distorted image of traditional and non-traditional sexual relationships as socially equivalent.

13. The applicant appealed. In her grounds for appeal she said, among other things, that the Justice of the Peace had not attempted to draw a distinction between "providing information" on LGBT issues and the "promotion" of homosexuality, as required by the Constitutional Court's ruling of 23 September 2014 (for a summary, see *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, § 25, 20 June 2017). The VK community in issue provided a space for LGBTI teenagers to discuss difficulties with which they were confronted; it did not promote homosexuality. Nor had it been proven that she had had an intention to promote homosexuality (see the Constitutional Court's ruling of 23 September 2014, cited in *Bayev and Others,* cited above, § 25). Her intention had been to provide psychological support to troubled LGBTI teenagers.

14. On 30 November 2015 the Dzerzhinskiy District Court of Nizhnyy Tagil upheld the conviction on appeal, finding that it had been lawful, well-reasoned and justified. The court added that the applicant should have understood that the simple act of giving information about homosexuality could have elements of "promotion". The expert reports she had filed could

not prove that there had been no *corpus delicti* in her actions. They simply showed that there were different opinions in society about what actions could be considered as amounting to the promotion of homosexuality.

B. The blocking of the VK community and of the website

1. The blocking of the VK community

15. On 7 May 2014 the Barnaul prosecutor applied to a court for a ban on the contents of the webpage of the VK community "Children-404. LGBT teenagers" and four unrelated VK webpages (including a gay dating web page and a gay pornography web page) from dissemination in Russia. The prosecutor claimed that the webpages promoted homosexuality among minors. He enclosed 146 pages of screenshots taken from those webpages.

16. On 7 August 2015 the Tsentralnyy District Court of Barnaul banned the contents of the five VK webpages referred to by the prosecutor, including the webpage of the VK community "Children-404. LGBT teenagers" from dissemination in Russia for promotion of homosexuality among minors. Without a separate examination of the contents of each of the five webpages, the District Court found that they contained photographs of genitalia and of men having sex with men. They also contained proposals for same-sex dates and homosexual sex, as well as statements like "it is ok to be gay". Access to the webpages was unrestricted and they were therefore accessible to children. Even a single exposure to such information was harmful to children's sexual identity and psychological and moral development. The court relied on section 15.1 of the Information Act (see paragraph 90 below).

17. The applicant was not informed about the hearing and learned about the decision only on 21 September 2015, after the webpage had been blocked. She lodged an appeal. Her grounds for appeal included that she had not been informed about the proceedings and had not been able to participate in them. She further claimed that the 146 pages of screenshots submitted by the prosecutor did not contain any screenshots from the "Children-404. LGBT teenagers" webpage or any other information about the contents of that webpage. The District Court had not in fact examined the contents of that webpage and had not specified what information published on that webpage it considered problematic and in what way it promoted homosexuality among minors.

18. The applicant submitted the following expert reports:

- a report of 6 February 2015 by a psychologist, Ms T. (see paragraph 11 above);
- another report, of 10 March 2015, by a panel of three psychologists (see paragraph 11 above); and
- a further report, of 20 December 2015, by a psychiatrist, Mr V.

Mr V. essentially reiterated his conclusions as described in paragraphs 9 and 10 above.

19. On 13 January 2016 the Altay Regional Court upheld the judgment of 7 August 2015 on appeal, finding it lawful, well-reasoned and justified. It held, in particular, that the case file contained one screenshot from the webpage of the VK community "Children-404. LGBT teenagers", and that that screenshot contained information promoting homosexuality among minors. The Regional Court did not give any further details. It also found that the judgment of 7 August 2015 had not affected the applicant's rights, including her rights as the administrator of the webpage in question, and had not imposed any obligations on her. Given that, the District Court had not been required to involve her in the proceedings or invite her to the hearing.

20. The applicant submitted a copy of the screenshot from the case file that the Regional Court had referred to. The screenshot contained the following description of the "Children-404. LGBT teenagers" project:

> "When browsing the internet, you may sometimes receive a message "404 – Page Not Found". Our society believes that LGBT teenagers do not exist, as if gay, lesbian, bisexual and transgender people came from Mars as adults. Meanwhile there is an LGBT child growing up in one in twenty Russian families: they are invisible 404-children.
>
> Hatred from homophobic people around them makes teenagers' lives hell, psychologically traumatises them and sometimes simply kills them.
>
> LGBT-teenagers are the most vulnerable invisible victims of homophobia. People, stop. Listen to them. They are your children. Who knows, maybe you will see a letter from your child here."

It also contained the contact details of psychologists and lawyers and the rules of the VK community (see paragraph 6 above).

21. On 15 June 2016 a judge of the Altay Regional Court refused to refer a cassation appeal lodged by the applicant to the Presidium of that court for examination.

22. On 25 July 2016 a judge of the Supreme Court of the Russian Federation refused to refer the applicant's cassation appeal to the Civil Chamber of the Supreme Court for consideration, finding that no significant violations of substantive or procedural law had influenced the outcome of the proceedings.

23. The VK community "Children-404. LGBT teenagers" remains inaccessible in Russia.

2. The blocking of the website

24. On 5 November 2015 the Barnaul prosecutor applied to a court with a request to ban the contents of "Children-404. LGBT teenagers" internet site from dissemination in Russia, claiming that it promoted homosexuality among minors.

25. The applicant submitted the following expert reports to the court:

- a report of 29 March 2016 by a psychologist, Ms T.; and
- a report of 22 March 2016 by a psychiatrist, Mr V.

These reports contained the same findings as the previous expert reports (see paragraphs 9-11 and 18 above).

26. During the hearing the applicant asked the prosecutor to specify the information which promoted homosexuality among minors. The prosecutor replied that all the information on the internet site in question did that.

27. On 13 April 2016 the Tsentralnyy District Court of Barnaul banned the contents of "Children-404. LGBT teenagers" internet site from dissemination in Russia for promoting homosexuality among minors, by reference to section 15.1 of the Information Act (see paragraph 90 below). The court found that the information published on that internet site was harmful to the development of children's sexual identity and psychological and moral development because it could make them develop a non-traditional sexual mindset. It did not provide any further reasoning or specify what information published on that internet site it considered problematic.

28. On 22 June 2016 the Altay Regional Court upheld the District Court's judgment on appeal, finding that it had been lawful, well-reasoned and justified. Contrary to the applicant's arguments, the case file contained one screenshot from the disputed internet site. That screenshot contained information promoting homosexuality among minors. The Regional Court did not give any further details about the content of the screenshot. It further noted that the website was accessible to all and did not require any registration or password.

29. The applicant lodged a cassation appeal. She argued, *inter alia*, that the only screenshot in the case file contained a description of the "Children-404. LGBT teenagers" project stating that its aim was to give support to LGBT teenagers and that professional psychologists and lawyers worked for it. The information simply told LGBT teenagers in trouble where they could seek help and did not promote homosexuality.

30. On 20 January 2017 a judge of the Altay Regional Court refused to refer a cassation appeal lodged by the applicant to the Presidium of that court for examination. The fact that the District Court had not specified what information it considered problematic did not mean that its judgment was unlawful. The District Court had analysed the contents of the website before deciding the case.

31. On 28 June 2017 a judge of the Supreme Court of the Russian Federation refused to refer the applicant's cassation appeal to the Civil Chamber of the Supreme Court for consideration, finding that no significant violations of substantive or procedural law had influenced the outcome of the proceedings.

32. The "Children-404. LGBT teenagers" website remains inaccessible in Russia.

II. YEDEMSKIY v. RUSSIA (APPLICATION No. 8156/20)

33. The applicant Mr Yedemskiy was the founder and owner of the www.gay.ru website, one of the oldest and largest LGBTI-themed websites in Russia, which was created in 1997. According to the applicant, it had attracted over 160,000,000 unique visitors, with up to 40,000 views per day. The website included sections such as "Society", "Art", "People", "Science", and "Lifestyle", where it published news, comments, and reviews on political, social and cultural life. It also featured news from the LGBTI community and information on the gay rights movement. The website was marked with an "18+" content rating.

34. On 16 October 2017 the Khakassiya prosecutor applied to a court for the contents of www.gay.ru website to be banned from dissemination in Russia under section 15.1 of the Information Act (see paragraph 90 below) and section 5(2) of the Protection of Children Act (see *Bayev and Others*, cited above, § 32). The prosecutor claimed that it promoted homosexuality among minors. In particular, it contained "information about the possibility of getting involved in same-sex relationships" that could arouse interest in children and teenagers and create a distorted image of traditional and non-traditional sexual relationships as socially equivalent. It could create a desire in minors to get involved in same-sex relationships which would present a real risk to their health. It was also harmful to their psychological, moral, spiritual and physical development and undermined family values. The information was accessible to all and could be copied and shared without any restrictions. The ban on disseminating that information was necessary to protect the foundation of the constitutional order, morals, health, the rights and legitimate interests of minor children and national security. The prosecutor filed two screenshots of the website featuring news headlines about the "Side by Side" LGBTI film festival and a review of the most frequently discussed topics.

35. On 15 November 2017 the Altayskiy District Court of Khakassiya banned the dissemination of the contents of the www.gay.ru website in Russia for promoting homosexuality among minors, by reference to section 15.1 of the Information Act (see paragraph 90 below). It found from the materials in the case file that the prosecutor had discovered information promoting homosexuality among minors on the gay.ru website. That information was accessible to all. It could facilitate the commission of unlawful acts and administrative offences and thereby harm the public interest and the rights of children by undermining their physical, intellectual, psychological, spiritual and moral development. The decision did not provide any further reasoning or specify what information published on that website it considered problematic.

36. The applicant was not informed about the hearing and learned about the decision on 29 March 2018, after the website had been blocked. In his

grounds for appeal he claimed that he had not been notified about the hearing date and had been therefore unable to participate. He further argued that the court had not examined any expert reports or other evidence showing that the website promoted homosexuality among minors. Nor had it attempted to draw a distinction between the neutral "provision of information" on LGBT issues and "promotion" of homosexuality, as required by the Constitutional Court's ruling of 23 September 2014 (for a summary, see *Bayev and Others*, cited above, § 25). Furthermore, banning of the entire contents of the website had been disproportionate and therefore incompatible with Article 10 of the Convention, as the court had not distinguished between illegal material and material that had not been found to be illegal. The applicant also argued that the website was clearly marked with an "18+" content rating as required by domestic law.

37. On 19 July 2018 the Supreme Court of the Khakassiya Republic examined the applicant's appeal and upheld the judgment, finding that it had been lawful, well-reasoned and justified. Having examined the screenshots filed by the prosecutor, the court found that the information provided was not "neutral": it demonstrated contempt for traditional sexual relationships, promoted a homosexual lifestyle and aimed to arouse interest in same-sex relationships. The fact that the information being considered promoted homosexuality was so obvious to the court that an expert report was not necessary. The court also rejected the applicant's argument that the ban had been disproportionate and incompatible with Article 10 of the Convention as unconvincing. It held that it was permissible to limit human rights and freedoms where their exercise would breach the rights and freedoms of others. It was insufficient to mark the content with "18+" age restriction sign as that sign was in the same place as the content. The applicant had not been informed about the hearing because his contact details could not be found on the screenshots available in the case file.

38. In his cassation appeal the applicant claimed, among other things, that the District and Supreme Courts had not specified what information published on the website they considered problematic.

39. On 15 January 2019 a judge of the Supreme Court of the Khakassiya Republic declined to refer the cassation appeal the applicant had lodged to the Presidium of that court for examination.

40. On 1 August 2019 a judge of the Supreme Court of the Russian Federation declined to refer the applicant's cassation appeal to the Civil Chamber of the Supreme Court for consideration, finding that no significant violations of substantive or procedural law had influenced the outcome of the proceedings.

41. The website in question remains inaccessible in Russia.

III. V.C. v. RUSSIA (APPLICATION No. 32416/20)

42. In 2008 the applicant V.C. created a group in VK called “Gay Chelny”. This was a public group open to all. Its members could publish their own content, including dating advertisements. According to the applicant, he had been the administrator of that group until 2010, when he ceased to be a member. The group continued to function without his involvement through user-generated content. However, his contact details remained in the “Contacts” section, by an oversight.

43. In 2009 he created another VK group “Gay Chelny RGC”. This was a closed group: it was necessary to apply for membership and the administrator could accept or reject the application. The content was visible only to approved members. According to the applicant, as the administrator of the group he accepted membership applications only from individuals who were over 18 years old. He also moderated the VK group by regularly monitoring it and removing insulting or pornographic user-generated content.

44. According to the applicant, the aim of the groups was to provide a platform where gay people could meet and interact with each other.

45. On 15 August 2019 the Naberezhnye Chelny prosecutor charged the applicant with an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below). He claimed that material promoting homosexuality among minors had been on both groups’ webpages. In particular, the “Gay Chelny” webpage carried "hookup" advertisements either from young men between fifteen and seventeen years old, or addressed to young men between sixteen and twenty-two years old. It also had photographs and images of genitalia and of people in non-traditional sexual relationships, and was accessible to all.

46. On 30 September 2019 the Justice of the Peace of the 6th Court Circuit of Naberezhnye Chelny found the applicant guilty of an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below) and sentenced him to a fine of RUB 50,000 (about EUR 714). On the basis of the material in the case file she held that the “Gay Chelny” group was open to all. It had 291 members of whom eleven were under eighteen years old. It contained "hookup" advertisements either from young men between fifteen and seventeen years old or addressed to young men between sixteen and twenty-two years old, as well as sexually explicit content. “Gay Chelny RGC” group had 279 members of whom nine were under eighteen years old. Among other posts, it contained the following: “Hello everyone, I want to know your opinion. How would you feel if there were a themed club for LGBT in our city? Share your opinion in the comments” and “Stop homophobia, we ask the opposition to support the protection of LGBT rights in Russia.”. Those publications undermined traditional spiritual, moral, and family values and promoted the attractiveness of non-traditional sexual relationships. As the administrator of those groups, the applicant should have

known that "information" about homosexuality might in some cases be equivalent to "promotion" of homosexuality and that the content could be accessible to children.

47. The applicant appealed. He complained that the Justice of the Peace had rejected his request for an expert report on whether the VK groups in question contained material promoting homosexuality among minors. He further argued that he had ceased to be a member of the "Gay Chelny" group in 2010 and had therefore not been an administrator of it since then. "Gay Chelny RGC" was a closed group whose content was only visible to its members and was not intended for children. He rejected membership applications from people under 18 years old. However, he had no technical means of verifying whether the age given on the membership application was correct as he could not check identity documents. It was therefore technically impossible to exclude people under 18 years old if they lied about their age when they made their membership application, and they could then change the age they claimed after the application had been accepted. Although the Justice of the Peace had found that some of the members were under 18 years old, she had not checked whether the age given was correct. There was therefore no proof that some of the members of the group were under 18 years old. Furthermore, the Justice of the Peace had not specified what information published on the webpages amounted to the promotion of homosexuality. The mere fact of creating an online group uniting homosexual people did not amount to an administrative offence. The applicant had been found liable for content published by other people. Although he moderated posts on the "Gay Chelny RGC" webpage after they had been published, he could not always remove questionable content immediately, for lack of time. In any event, publication of dating advertisements did not amount to the promotion of homosexuality.

48. On 30 October 2019 the Naberezhnye Chelny Town Court upheld the conviction on appeal, finding that it had been lawful, well-reasoned and justified.

IV. TSVETKOVA v. RUSSIA (APPLICATIONS Nos. 39855/20 AND 10497/21)

A. The first set of administrative offence proceedings

49. The applicant Ms Tsvetkova is an LGBTI and women's rights activist. She had a personal public VK account called "Yulya Tsvetkova" and administered a public VK community "The Last Supper – LGBTQIAP+on-Amur" (literally translated from Russian as "Clandestine Supper").

50. She published the following, among other things:

– a post criticising Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below) as being discriminatory and stating that the promotion of homosexuality could not work because homosexuality was not a choice, nor was it a disease or deviation;

– two posts informing the readers about the launch of a project to monitor discrimination against LGBTI individuals in the Khabarovsk region, explaining its aims and inviting victims of homophobic hate crimes or discrimination to fill in an anonymous questionnaire;

– a coming-out story written by a teenager from a small remote town;

– two posts about the goals of the VK community "The Last Supper – LGBTQIAP+on-Amur": to give information and exchange views on LGBTQIAP+ issues; to announce events of interest to that community; to promote safety, visibility and acceptance; to support LGBTI individuals including by creating an online safe space for peer-to-peer support; and to monitor discrimination against LGBTI individuals in the Khabarovsk region;

– a guide for teachers confronted with homophobic discrimination;

– a video by a psychologist explaining how to help an LGBTI teenager to accept himself and survive social rejection and how to prevent suicide.

51. On 8 April and 23 May 2019 the Khabarovsk Regional Office of the Federal Security Service ("the FSB") performed operational-search activities to establish the identity of the administrator of VK communities mentioned in paragraph 49 above, who was suspected of promoting homosexuality among minors. The FSB successfully identified the administrator of those VK communities as the applicant and established her home address.

52. On 30 May 2019 the FSB asked the VK company to supply a range of user information linked to the applicant's personal VK account and to the VK accounts of eleven members of the "The Last Supper – LGBTQIAP+on-Amur" community. The request included the IP addresses used to access these accounts for as long as records had existed, any reports of unauthorised access, technical support queries, account restrictions imposed, and any changes to user details, namely telephone numbers, email addresses, family names, first names and passwords. They also asked for information about what online communities had been created and administered by these users; what communities, including private ones, they were members of; and all the content published on their account walls. Additionally, the FSB asked for the user details of the creators and administrators of the VK community "The Last Supper – LGBTQIAP+on-Amur", its member list mentioning each member's user details, and all the content published, specifying the time, IP address, and user ID associated with each publication. The request cited section 10.1 of the Information Act (see paragraph 89 below) and the Operational-Search Activities Act, although it did not specify which provision of the latter act was being referred to.

53. The VK company complied with this request on 7 June 2019, providing data from between July 2011 and June 2019. The data about the communities the applicant belonged to and the content published on her account walls revealed, *inter alia*, information about the applicant's personal interests, political and other beliefs, her professional and artistic activities and her civic and political activism.

54. The FSB obtained two expert reports about the material described in paragraph 50 above, dated 9 and 25 September 2019 and given by a panel of two psychologists and a philologist. The experts concluded that the disputed material promoted homosexuality among minors. In particular, it drew attention to the LGBT community. It contained clear and specific instructions on how to defend the interests of members of the LGBT community. Furthermore, the abbreviation "LGBT" was repeated many times. It presented homosexual relationships as a variant of the norm and claimed that this was accepted by the entire world except backward countries, implying that Russia was "backwards" because homosexuality was not considered normal there. It also promoted the LGBT online community "The Last Supper – LGBTQIAP+on-Amur", which provocatively used Biblical references in its name. All the material under examination, when considered as a whole, had the potential to shape inappropriate (homosexual) sexual attitudes and behaviour in minors and to undermine their family values and the value they attached to their own lives and health. Given that teenagers were psychologically unstable, the material in question could unbalance them and contribute to the formation of a neurotic personality. In particular, it could arouse interest in a homosexual lifestyle. It was clear from its content that the disputed material was addressed to, *inter alios*, minors.

55. On 21 November 2019 the FSB transferred the file to the police, asking them to institute proceedings against the applicant for an administrative offence. On 22 November 2019 the police charged the applicant with an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below) and then transferred the case to a justice of the peace.

56. On 13 December 2019 the Justice of the Peace of the 33d Court Circuit of the Tsentralnyy District of Komsomolsk-on-Amur found the applicant guilty of an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below) and sentenced her to a fine of RUB 50,000 (about EUR 714). She found that the applicant, in her capacity as the account holder of the VK account "Yulya Tsvetkova" and the administrator of the VK community "The Last Supper – LGBTQIAP+on-Amur", had published material promoting homosexuality among minors, as described in paragraph 50 above. She relied on the expert reports summarised in paragraph 54 above. The Justice of the Peace said however that the material disseminated by the applicant had not been aimed at forcing information about non-traditional sexual relationships onto people or at arousing interest in such relationships.

57. On 22 January 2020 the Tsentralnyy District Court of Komsomolsk-on-Amur upheld the conviction on appeal, finding it lawful, well-reasoned and justified. It added that to commit the offence under Article 6.21 § 2 of the CAO it was sufficient to disseminate unlawful information. It was not necessary for the dissemination to lead to adverse consequences, so there was no need for any proof that it had led minors to have a non-traditional sexual orientation or a distorted image of traditional and non-traditional sexual relationships as socially equivalent. The court accepted that the Justice of the Peace had not cited any specific passages promoting homosexuality. It held however that that had not been necessary, because the Justice of the Peace had relied on expert reports which had established that the disputed material promoted homosexuality. The applicant understood that an unlimited number of teenagers could access the material disseminated by her.

B. The second set of administrative offence proceedings

58. In July 2019 the applicant published two posts on the webpage of VK community "The Last Supper – LGBTQIAP+on-Amur", having 18+ age restriction sign:

– a post expressing support to "young subscribers" who were falling in and out of love, learning about themselves and their sexuality and who were having a hard time living in a homophobic society, afraid of being renounced by their families and bullied by their peers. The post stated that such young people were not alone and called upon them to be brave, be themselves and to not despair;

– a post stating that the community "The Last Supper – LGBTQIAP+on-Amur" was open to all irrespective of their sex, age, sexual orientation and gender identity and that it stood for inclusiveness and against discrimination.

59. On 2 July 2020 the applicant was charged with an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below).

60. The police then transferred the case to a justice of the peace. They submitted an expert report dated 19 June 2020 by a panel of psychologists and linguists. The experts found that the VK posts described in paragraph 58 promoted homosexuality among minors. In particular, the first post was explicitly addressed to "young subscribers", that is, to minors. The material in question presented non-traditional sexual relations as normal. It therefore had the potential to shape inappropriate (homosexual) sexual attitudes and behaviour in minors and to undermine their family values and the value they attached to their own lives and health.

61. The applicant argued before the Justice of the Peace that, among other things, her conviction would breach her right to freedom of expression and would be discriminatory. She also argued that Article 6.21 § 2 of the CAO

was vaguely formulated and unforeseeable in its application. The community webpage had an 18+ age restriction sign, and she had therefore made it clear that the information on it was not aimed at children. Moreover, she was not trying to promote homosexuality and she knew that homosexuality was not a choice. Her aim was to discuss the problems with which LGBTI people were confronted and to offer support.

62. The applicant gave the Justice of the Peace an expert report dated 6 July 2020 by a psychologist Ms G. Ms G. found that the VK posts described in paragraph 58 did not promote homosexuality among minors. The material promoted tolerance and inclusiveness without discrimination. It aimed at showing support to "young" LGBTI people who were particularly vulnerable in the hostile homophobic society. Such support was important to prevent psychological trauma, self-harm and suicide attempts frequent among them. Read together with the 18+ age restriction sign clearly visible on the community webpage, it was obvious that the material in question was aimed at the audience older than 18 years old. People are considered "young" until 23 years old.

63. On 13 July 2020 the Justice of the Peace of the 33d Court Circuit of the Tsentralnyy District of Komsomolsk-on-Amur found the applicant guilty of an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below) and sentenced her to a fine of RUB 75,000 (about EUR 937 at th time). Relying on the expert report summarised in paragraph 60 above, she found that the applicant in her capacity as the administrator of the VK community "The Last Supper – LGBTQIAP+on-Amur" had published material promoting homosexuality among minors, as described in paragraph 58 above. That material aimed to lead minors into a non-traditional sexual orientation, presenting non-traditional sexual relationships as attractive and creating a distorted image of traditional and non-traditional sexual relationships as socially equivalent. She found that the disputed material was addressed to, *inter alios*, minors because "young" was commonly understood as designating a minor child. There were also calls to join the community irrespective of age, which could include minors. Despite the 18+ age restriction sign, the webpage was accessible to everyone. By contrast, the other material on the webpage, such as calls to support same-sex marriage, were not addressed to minors and did not therefore amount to the promotion of homosexuality among minors. The Justice of the Peace also found that there had been no interference with the applicant's right to freedom of expression, as her right to disseminate neutral information about homosexuality among adults was not restricted. The Constitutional Court had found that Article 6.21 § 2 of the CAO was compatible with the Russian Constitution.

64. The applicant appealed. She said, among other things, that by adding a clearly visible 18+ age restriction sign, she had made all possible effort to prevent dissemination of the disputed material among minors. VK did not

provide a technical means of restricting access to adults only. The material in question was addressed to young people between 18 and 20 years old who were confronted with problems specific to them relating to their self-identification and to bullying by their peers in higher educational institutions. Family rejection could occur, and was emotionally painful, at any age. Referring to those problems did not mean that the material was addressed to minors.

65. On 20 August 2020 the Tsentralnyy District Court of Komsomolsk-on-Amur upheld the conviction on appeal, finding it lawful, well-reasoned and justified. It reduced the fine to RUB 50,000 (about EUR 575).

V. GORSHKOVA v. RUSSIA (APPLICATION No. 33277/21)

66. In August 2014 the applicant Ms Gorshkova created a VK group called "Rainbow Ekb/LGBT Yekaterinburg". She was the group's administrator. The group was initially public: anyone could post their profile there. It invited people over fourteen years old to post their profiles with the aim of seeking communication, friendship or relationships.

67. On an unspecified date the applicant converted it into a closed group and put a visible "18+" age restriction sign and an introduction which read as follows:

> "If you are under 18, please leave this page. You proceed at your own risk. Profiles of users under 18 will be REJECTED.
>
> We do not promote anything in this group. This group is only for adults who are looking to meet new people and connect."

After the group became closed, users could no longer post their profiles directly; the applicant, as the group's administrator, was responsible for posting profiles submitted by users. She said that she rejected profiles of users under 18 years old.

68. At the end of September 2020, the applicant deactivated the group and removed all content from the webpage.

69. On 28 October 2020 the applicant was charged with an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below). The police found that she had posted profiles of LGBT people under 18 years old looking for friends and partners for non-traditional sexual relationships in a publicly accessible VK group with 258 members. She had therefore promoted homosexuality among minors. The police enclosed screenshots of profiles belonging to teenagers between fourteen and sixteen years old.

70. The police also enclosed reports from a teacher, B., and a psychologist, I., who had examined the screenshots from the case files and considered that they promoted homosexuality among minors. Viewing profiles of LGBT individuals under 18 could give children a misleading impression that there were a lot of homosexual people, that homosexual

relationships were normal, and that LGBT people could become their friends or romantic partners, leading to conflict with society and rejection of the traditional family. This could aggravate teenage problems, undermine self-esteem and impede identity formation, potentially leading to suicide. Viewing such profiles could therefore result in "incorrect" life attitudes and have a negative impact on mental health.

71. The applicant provided the Justice of the Peace with reports from a teacher, A., and a psychologist, Z., who considered that the screenshots from the case file did not promote homosexuality among minors. They did not advocate, let alone try to impose, any ideas or lifestyles. There were no comparisons between heterosexual and homosexual relationships. It followed from the profiles that their owners sought support, friendship or romantic relationships with people of their own age. They did not hide their age, which excluded any deception. It was important to create platforms and other forums where children belonging to minorities could feel understood and accepted.

72. The applicant also asked the Justice of the Peace to order an expert examination of the screenshots, pointing to contradictory specialist reports in the case file (see paragraphs 70 and 71 above). The Justice of the Peace rejected her request, finding that an expert examination was not necessary.

73. On 19 November 2020 the Justice of the Peace of the 6th Court Circuit of the Verkh-Isetskiy District of Yekaterinburg found the applicant guilty of an administrative offence under Article 6.21 § 2 of the CAO (see paragraphs 87 and 88 below) and sentenced her to a fine of RUB 50,000 (about EUR 555). Relying on screenshots of the webpage in the case file, the Justice of the Peace found that the "Rainbow Ekb/LGBT Yekaterinburg" VK group, which was created and administered by the applicant and was accessible to all, invited people over fourteen years old to post their profiles with the aim of finding communication, friendship or relationships and that it contained profiles of children between fourteen and sixteen years old which had been published by the applicant. Relying on reports from B. and I. (see paragraph 70 above), the Justice of the Peace held that in posting those profiles, the applicant had been promoting homosexuality among minors, as she had disseminated information aimed at leading minors into non-traditional sexual orientation, promoting the attractiveness of non-traditional sexual relationships and creating a distorted image of traditional and non-traditional sexual relationships as socially equivalent.

74. The applicant appealed, claiming, in particular, that her conviction had breached her rights under Articles 6, 10 and 14 of the Convention. She argued that the publication of profiles of people under eighteen years old who sought to make new acquaintances and friends did not amount to the promotion of homosexuality among minors. The profiles had been published with the consent of those concerned. The VK group was not advertised and could be found only by those who specifically searched for it. Furthermore, the judgment did not specify what posts the Justice had considered

problematic. Nor did it establish that the posts had been published by the applicant.

75. On 14 December 2020 the Verkh-Isetskiy District Court of Yekaterinburg upheld the conviction on appeal, finding that it had been lawful, well-reasoned and justified.

VI. SERGEYEV v. RUSSIA (APPLICATION No. 46226/21)

76. The applicant Mr Sergeyev is a gay man and an LGBTI rights activist. He is a member of an unregistered public movement, the "Union of Straight and LGBT People for Equality" created in 2012. He is also the administrator of a VK group with 30,000 members ("straights_for_equality") dedicated to the same aims as that movement. The VK webpage contained thousands of posts, many of which had been created by the applicant.

77. The aim of the public movement was stated on the VK group webpage as follows:

> "We are a public movement that unites straight people who support the fight for LGBT equality, as well as LGBT individuals themselves. We come together to say "NO!" to discrimination and harassment of our fellow citizens, friends, and loved ones. We believe that all citizens of Russia should have equal rights, regardless of their sexual orientation and gender identity.
>
> We invite all concerned individuals to join our initiative, both in real life and online. We welcome those who can and want to participate in the work of the Union to attend our meetings. We are open to everyone who shares our position. We especially welcome friendly and tolerant straight people who sympathise with the LGBT community in its fight for equality and against discrimination. Of course, we also invite LGBT individuals to join with us."

78. The applicant said that the materials published within the group were purely informative and educational, addressing issues such as the violation of rights of LGBT individuals and persons from other vulnerable social groups, the protection and psychological support of LGBT people, and hate crimes against them. The content also covered topics related to history, culture, and art, including the history of human rights movements. The group also focused on monitoring the effect of Russian legislation, such as family law and legislation on public events. The group also provided a forum for its subscribers to discuss LGBTI-related topics.

79. On 11 December 2019 the Metallurgicheskiy District Court of Chelyabinsk banned the contents of the VK group the "Union of Straight and LGBT People for Equality" from dissemination in Russia for promotion of homosexuality among minors by reference to section 15.1 of the Information Act (see paragraph 90 below) and section 5(2) of the Protection of Children Act (see *Bayev and Others*, cited above, § 32). The court relied on a report of 24 October 2019 by the prosecutor of the Metallurgicheskiy District of Chelyabinsk on discovery of information promoting homosexuality, lesbianism, bisexuality and transgenderism and creating a positive image of

public order offenders and a negative image of law-enforcement officials on the group's webpage. The report said that the webpage was publicly accessible and did not require any registration or password. Its contents could be copied or hyperlinked without restriction. The information contained in the report was confirmed by screenshots. The court therefore found that the webpage in question, being publicly accessible, clearly promoted homosexuality among minors, in breach of the domestic law. It did not provide any further reasoning or specify what information published in the VK group it considered problematic.

80. The applicant was not informed about the hearing and learned about the decision on 19 March 2021 after the webpage had been blocked. The applicant's request to study the case file was rejected by the District Court on 9 June 2021 because he was not a party to the proceedings.

81. The applicant appealed against the District Court decision on the grounds that the blocking of the VK webpage had violated his right to freedom of expression, as he was the administrator of the webpage and the author of much of its content. The examination of the case in his absence had been unlawful. He did not know what evidence had been examined by the court because he had been denied access to the case file. The court had not relied on any expert reports or other evidence showing that the webpage promoted homosexuality among minors. The court's findings had been therefore unsubstantiated. Nor had the Court attempted to draw a distinction between "providing information" on LGBT issues and "promotion" of homosexuality, as required by the Constitutional Court's ruling of 23 September 2014 (for a summary, see *Bayev and Others,* cited above, § 25).

82. On 14 December 2021 the Chelyabinsk Regional Court quashed the judgment of 11 December 2019 because the applicant had not been informed of the hearing date.

83. On 11 March 2022 the Metallurgicheskiy District Court of Chelyabinsk made a new judgment banning the contents of the VK group the "Union of Straight and LGBT People for Equality" from dissemination in Russia for promotion of homosexuality among minors. It repeated almost verbatim the judgment of 11 December 2019 (see paragraph 79 above).

84. The applicant appealed, and on 21 June 2022 the Chelyabinsk Regional Court dismissed the appeal and upheld the judgment, finding it lawful, well-reasoned and justified. The appellant's arguments about the lack of expert reports and the absence of any previous convictions for the administrative offence of promotion of homosexuality among minors in connection with the publications on the webpage did not justify reconsideration of the judgment. After examining the screenshots, the court found that the webpage in question contained invitations to join and participate in meetings of individuals who supported non-traditional sexual relationships.

85. The VK group the "Union of Straight and LGBT People for Equality" remains inaccessible in Russia.

RELEVANT LEGAL FRAMEWORK

86. For a summary of the domestic law on the promotion of homosexuality, see *Bayev and Others* (cited above, §§ 25, 26, 32 and 33).

87. Article 6.21 § 1 of the Code of Administrative Offences of the Russian Federation (the CAO, as in force at the material time) provided that the promotion of non-traditional sexual relationships among minors – by the dissemination of information aimed at creating in minors a non-traditional sexual orientation, promoting non-traditional sexual relationships as attractive, creating a distorted image of traditional and non-traditional sexual relationships as equivalent, or imposing information about non-traditional sexual relationships, arousing interest in such relationships, if these activities did not contain acts punishable under criminal law – was punishable by an administrative fine ranging from RUB 4,000 to RUB 5,000 for citizens, from RUB 40,000 to RUB 50,000 for officials, and, for legal entities, a fine ranging from RUB 800,000 to RUB 1,000,000 or the suspension of their activities for up to 90 days.

88. Article 6.21 § 2 of the CAO provided that promotion of non-traditional sexual relations among minors, as defined in Article 6.21 § 1, which was carried out through the mass media or through telecommunication networks including the internet, if not punishable under the criminal law was punishable by an administrative fine ranging from RUB 50,000 to RUB 100,000 for ordinary citizens, from RUB 100,000 to RUB 200,000 for officials, and, for legal entities, a fine of RUB 1,000,000 or an administrative suspension of their activities for up to 90 days.

89. Section 10.1 of Law no. 149-FZ of 27 July 2006 on Information, Information Technologies and Protection of Information ("the Information Act") defines an "internet communications organiser" (ICO) as a person or entity that ensures the functioning of information systems and (or) programmes for electronic devices, with the aim of receiving, transmitting, delivering and (or) processing electronic communications on the internet (subsection 1). An ICO must store on Russian soil all communications data generated by internet users for a duration of one year and the contents of all communications for a duration of six months. This obligation covers electronic communication by internet users of text messages, images, sound, video-recordings or other material, whether those communications are received, transmitted, delivered or processed by those users (subsection 3). An ICO must submit any information referred to in subsection 3 to the law-enforcement authorities or security services where the law requires it (subsection 3.1).

90. Section 15.1 of the Information Act, as in force at the material time, established an Integrated Register of domain names, webpage references (URLs) and network addresses of websites featuring content which was banned in the Russian Federation (subsections 1 and 2). The telecommunications regulator, Roskomnadzor, was responsible for updating the Integrated Register (subsection 3). There were two grounds on which content could be found to be illegal and added to the Integrated Register: first, where the relevant executive body had decided that the material fell under any of five categories of illegal content, such as child pornography, the manufacture or use of narcotics, or methods of suicide; and secondly, where a "judicial decision ... identified particular internet content as constituting information the dissemination of which should be prohibited in Russia" (subsection 5). The decision to list the website could be challenged in a court by the owner of the website, the service provider hosting the website or the internet service provider (subsection 6). Within twenty-four hours of receiving notification that a website had been listed, the hosting service provider had to inform the owner of the website and ask him or her to remove the unlawful content (subsection 7). If the owner failed to react, the hosting service provider was to block access to the website within twenty-four hours (subsection 8). In the absence of any reaction from the hosting service provider and the website's owner, the website's IP address was added to the Integrated Register (subsection 9) and internet service providers were to block access to it within twenty-four hours (subsection 10).

THE LAW

I. PRELIMINARY ISSUES

A. Joinder of the applications

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

B. Consequences of the Government's failure to participate in the proceedings in applications nos. 8156/20 (Mr Yedemskiy), 32416/20 (V.C.), 33277/21 (Ms Gorshkova) and 46226/21 (Mr Sergeyev)

92. The Court further observes that the respondent Government, by failing to submit any written observations, manifested an intention to abstain from participating in the examination of the applications. However, the cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies. Consequently, the Government's failure to engage with the proceedings

cannot constitute an obstacle to the examination of the applications (see *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023).

C. The Court's jurisdiction

93. The Court observes that the facts constitutive of the alleged interferences with the applicants' Convention rights 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, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, §§ 75-76, 6 June 2023).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN APPLICATION No. 39855/20

94. The applicant in application no. 39855/20 (Ms Tsvetkova) complained that by asking the VK company for user data related to her personal VK account and to that of the VK community administered by her the Federal Security Service had violated her right to respect for her private life as provided in Article 8 of the Convention, which reads as follows:

> "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."

A. Admissibility

95. The Court first needs to ensure that the application was lodged within the time-limit established in Article 35 § 1 of the Convention, even where the Government have not made an objection to that effect. The application of the time-limit is a public policy rule which the Court has jurisdiction to consider of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 28-31 and 40, 29 June 2012).

96. The Court notes that the applicant did not make any complaints to the domestic authorities about the collection of her personal data by the FSB. The Government did not raise a non-exhaustion objection. Nor did they otherwise claim that any effective remedies were available to the applicant (see also paragraphs 116 and 117 below). The six-month time-limit (as applicable at the relevant time) should be therefore counted from the day when the applicant learned about the collection of data. It appears from the documents in the case file that she learned, sometime between 22 November and

13 December 2019, that the FSB had collected user data related to her personal VK account and to the VK community administered by her (see paragraphs 55 and 56 above). The calendar six months therefore expired between 22 May and 13 June 2020, that is, during the COVID-related extension period (16 March to 15 June 2020). The applicant therefore had an additional three months to lodge her application with the Court (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, § 59, 1 March 2022). She lodged her application on 22 August 2020. She therefore complied with the six-month time-limit.

97. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

98. The applicant submitted that the operational-search activities had breached her right to respect for her private life. The interference had been unlawful because the domestic law did not meet the quality-of-law requirements. In particular, the interference had not been authorised by a court. The authorities had asked for her personal data from the VK company in order to pursue her for publishing statements in defence of LGBT rights.

99. The Government submitted that the FSB had asked for the user data of the VK community that was administered by the applicant within the framework of operational-search activities. The aim had been to establish the identity of the user who had promoted homosexuality among minors and hold her to account under domestic law. That measure had not breached the applicant's right to respect of her private life.

2. The Court's assessment

(a) Existence of an interference

100. The Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition. It can embrace multiple aspects of the person's physical and social identity. It is not limited to an "inner circle" in which the individual may live his or her own personal life without outside interference, but also encompasses the right to lead a "private social life", that is, the possibility of establishing and developing relationships with others and the outside world. It does not exclude activities taking place in a public context. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 87-88, 17 October 2019).

101. In determining whether the personal information retained by the authorities involves any private-life aspects, the Court will have due regard to the specific context in which the information at issue has been recorded and retained, the nature of the records, the way in which these records are used and processed and the results that may be obtained (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 67, ECHR 2008). The right to protection of personal data is guaranteed by the right to respect for private life under Article 8 (see *L.B. v. Hungary* [GC], no. 36345/16, § 103, 9 March 2023).

102. The Court has previously found that internet subscriber information associated with specific dynamic IP addresses, assigned at certain times and permitting the identification of a particular person who had shared certain content on the internet, was personal data which fell within the scope of the notion of "private life" protected by Article 8 of the Convention (see *Benedik v. Slovenia*, no. 62357/14, §§ 108-09, 24 April 2018, see also *Le Marrec v. France* (dec.), no. 52319/22, §§ 53 and 54, 5 November 2024).

103. In the present case the security services collected data related to the applicant's personal VK account, including IP addresses used to access it and user details associated with it, such as telephone numbers, email addresses, family names, first names and passwords. They also collected information about which online communities had been created and administered by the applicant; what communities she belonged to, including private ones; and any content published on her account wall. They further collected data related to the VK community administered by her, including user details of those who created and administered that VK community, its membership list with the user details of each member, and all the content published, specifying the time, IP address, and user ID associated with each publication. The data were collected between July 2011 and June 2019 (see paragraphs 52 and 53 above).

104. The extensive data collected by the security services from the VK company permitted the identification of the applicant as the owner of the VK account in question and the administrator of the VK community in question. They thereby linked the applicant to the publications on the VK account and the VK community, which in turn revealed a good deal about her online activity, including sensitive details of her personal interests, political and other beliefs, her professional, social and artistic activities and her civic and political activism.

105. The Court concludes that the applicant's personal data collected by the security services from the VK company fell within the scope of the notion of "private life" protected by Article 8 of the Convention. The processing of that data by the security services amounted to an interference with the applicant's right to respect for her private life within the meaning of Article 8 § 1 of the Convention.

(b) Justification for the interference

(i) General principles

106. The Court reiterates that any interference can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one or more of the legitimate aims to which paragraph 2 of Article 8 refers, and is necessary in a democratic society in order to achieve any such aim (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 227, ECHR 2015).

107. The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life, as guaranteed by Article 8 of the Convention. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of this Article. The need for such safeguards is all the greater where the protection of personal data undergoing automatic processing is concerned, not least when such data are used for police purposes (see *S. and Marper*, cited above, § 103), and especially where the technology available is continually becoming more sophisticated (see, in the context of storage of personal data, *Uzun v. Germany*, no. 35623/05, § 61, ECHR 2010 (extracts); *Catt v. the United Kingdom*, no. 43514/15, § 114, 24 January 2019; and *Gaughran v. the United Kingdom*, no. 45245/15, § 86, 13 February 2020). The protection afforded by Article 8 of the Convention would be unacceptably weakened if the use of modern technologies in the criminal-justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such technologies against important private-life interests (see, *mutatis mutandis*, *S. and Marper*, cited above, § 112).

108. Personal data revealing political opinions fall within the special categories of sensitive data attracting a heightened level of protection (see *Catt*, cited above, §§ 112 and 123).

109. Moreover, the Court has previously acknowledged the importance of online anonymity, noting that it has long been a means of avoiding reprisals or unwanted attention. As such, it is capable of promoting the free flow of ideas and information in an important manner, including, notably, on the internet. At the same time, the Court does not lose sight of the ease, scope and speed of the dissemination of information on the internet, and the persistence of the information once disclosed, which may considerably aggravate the effects of unlawful speech on the internet compared to traditional media (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 147, ECHR 2015

110. In the context of the collection and processing of personal data, it is essential to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards concerning, *inter alia*, duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data and procedures for their destruction, thus

providing sufficient guarantees against the risk of abuse and arbitrariness (see *S. and Marper*, cited above, § 99, and *P.N. v. Germany*, no. 74440/17, § 62, 11 June 2020).

(ii) Application to the present case

111. According to the domestic authorities, the measures taken against the applicant had a legal basis in section 10.1 of the Information Act and the Operational-Search Activities Act (see paragraph 52 above).

112. The Court has previously noted that operational-search activities could be performed only in connection with an offence classified as "criminal" under the domestic law (see *Glukhin v. Russia*, no. 11519/20, §§ 24 and 80, 4 July 2023). The Operational Search Activities Act therefore could not have been the legal basis for the measures taken in the present case, which concerned an administrative offence. Furthermore, the domestic authorities did not specify which provision of that Act provided a legal basis for asking the VK company to provide data.

113. Section 10.1 of the Information Act requires an "internet communications organiser" to store the content of all internet communications and related communications data and give law-enforcement authorities and the security services access to those data at their request (see paragraph 89 above). The Court therefore accepts that the collection of the applicant's personal data from the VK company by the security services had a legal basis in the domestic law.

114. The Court has previously found, in the context of internet messaging applications, that section 10.1 of the Information Act, read in conjunction with the legal provisions governing the law-enforcement authorities' access to the data stored and their further use, did not provide adequate safeguards against abuse and so did not meet the requirements of "quality of law" and "necessity in a democratic society" (see *Podchasov v. Russia*, no. 33696/19, §§ 69-75, 13 February 2024).

115. The Court does not see any reason to reach a different conclusion in the present case concerning the authorities' access to personal data on users collected by social networking platforms. The safeguards applicable in the present case are even lower because, in contrast to data stored by internet messaging applications access to which has to be authorised by a court (see *Podchasov*, cited above, § 72, and *Roman Zakharov*, cited above, § 34), no judicial authorisation is apparently required for the authorities to access personal data stored by social networking platforms. Indeed, in the present case the VK company shared the applicant's personal data following a simple request from the security services, without prior judicial authorisation.

116. Furthermore, it appears that the applicant had no effective remedies to contest the transmission of her personal data to the security services. The Government did not refer to any such remedies. It seems that the only remedy available to the applicant would be to lodge a judicial review complaint under

Article 226 of the Code of Administrative Procedure (Law no. 21-FZ of 8 March 2015, hereafter "the CAP", cited in *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 295-97, 7 February 2017). However, the sole relevant issue before the domestic courts in judicial review proceedings is whether the actions of the State officials were lawful. It is clear from the text of Article 226 of the CAP that "lawfulness" is understood as compliance with the rules of competence, procedure and contents. It follows that the courts are not required by law to examine the issues of "necessity in a democratic society", in particular whether the contested actions answered a pressing social need and were proportionate to any legitimate aims pursued, principles which lie at the heart of the Court's analysis of complaints under Article 8 of the Convention (see, *mutatis mutandis*, *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, § 96, 7 November 2017).

117. The Court has already found on a number of occasions, in the context of Article 8, that a judicial review remedy incapable of examining whether the contested interference answered a pressing social need and was proportionate to the aims pursued could not be considered an effective remedy (see *Zubkov*, § 98*,* cited above, with further references).

118. As regards whether the contested measures pursued a legitimate aim, the Court has previously found that the legal provisions prohibiting the promotion of homosexuality among minors do not serve to advance the legitimate aim of the protection of morals, and that such measures are likely to be counterproductive in achieving the legitimate aims of the protection of health and the protection of rights of others (see *Bayev and Others*, cited above, § 83). The Court therefore doubts that the collection of the applicant's personal data for proceedings for the administrative offence of promoting homosexuality among minors pursued a legitimate aim.

119. In determining whether the processing of the applicant's personal data was "necessary in a democratic society", the Court will further assess the level of the actual interference with the right to respect for private life (see *P.N. v. Germany*, cited above, § 73 and 84, and *Glukhin*, cited above, § 86). It has already noted the large volume of data collected, along with the extended period of the applicant's online activity it covered. Those data permitted the identification of the applicant as the owner of the VK account in question and the administrator of the VK community in question and revealed her personal interests, political and other beliefs, her professional, social and artistic activities and her civic and political activism (see paragraphs 103 and 104 above). In view of the quantity and nature of the data collected and the period over which its collection took place, the Court considers that the interference with the applicant's privacy rights was intrusive (compare and contrast *Le Marrec,* cited above, §§ 78 and 79). Insofar as those data revealed the applicant's political opinions, they fell within the special categories of sensitive data attracting a heightened level of protection (see paragraph 108 above).

120. Furthermore, it is important to note that the applicant's personal data was collected in the context of her exercising her Convention right to freedom of expression. Indeed, the security services had asked the VK company for users' personal data in order to identify and prosecute social networks users who had posted content identified as promoting homosexuality among minors (compare *Bayev and Others*, cited above, § 62, where convictions for promoting homosexuality among minors were found to amount to an interference with the applicants' right to freedom of expression). The Court will therefore bear in mind, when analysing whether the interference with the applicant's right to respect for her private life was "necessary in a democratic society", that the collection of large volumes of personal data, including sensitive data, in the framework of administrative offence proceedings concerning promotion of homosexuality among minors could also have a chilling effect in relation to the right to freedom of expression.

121. In the assessment of whether the processing of personal data in the context of investigations is "necessary in a democratic society", the nature and gravity of the offences in question is one of the elements to be taken into account (see, *mutatis mutandis*, *P.N. v. Germany*, cited above, § 72, and *Glukhin*, cited above, § 87). The offence of promoting homosexuality among minors was a minor one, classified as administrative rather than criminal under the domestic law. For that offence to be committed it did not need to result in adverse consequences (see paragraph 57 above). The applicant was accused of promoting homosexuality among minors because she had published information on LGBTI rights, such as, among other things, information about a project to monitor LGBTI discrimination, a guide for teachers on how to deal with such discrimination and a video by a psychologist explaining how to help LGBTI teenagers in trouble (see paragraph 50 above). It is important to note that she was not accused of advocating any sexual practices, reckless behaviour or unhealthy personal choices (compare *Bayev and Others*, cited above, § 72). In such circumstances the collection of the applicant's personal data from the VK company to identify her as the author of the above publications cannot be regarded as "necessary in a democratic society".

122. In view of the foregoing, the Court concludes that the collection by the security services of user data related to the applicant's personal VK account and to the VK community administered by her in the framework of administrative-offence proceedings for promoting homosexuality among minors, was based on legal provisions that did not provide sufficient guarantees against abuse and was moreover not "necessary in a democratic society".

123. There has accordingly been a violation of Article 8 of the Convention in application no. 39855/20 (Ms Tsvetkova).

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

124. The applicants complained that their convictions for an administrative offence and/or the blocking of their websites or webpages on social networking sites for "promoting homosexuality among minors" violated their right to freedom of expression as provided in Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Application no. 39855/20 (Ms Tsvetkova)

125. Having regard to the facts of the case, the submissions of the parties and its findings under Article 8 (see, in particular, paragraph 120 above), the Court considers that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 10 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

B. The other applications

1. Admissibility

126. In application no. 32416/20 (*V.C. v. Russia*) the calendar six-month time-limit for lodging a complaint to the Court after the final domestic decision expired on 30 April 2020, that is, during the COVID-related extension period (16 March to 15 June 2020). The applicant therefore had an additional three months to lodge his application with the Court (see *Saakashvili,* cited above, § 59). He lodged his application on 28 July 2020; he therefore complied with the six-month time-limit.

127. The Court notes that neither this complaint nor any of the others are manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. Merits

(a) Submissions by the parties

(i) The applicants

128. Ms Klimova (application no. 33421/16) and Ms Tsvetkova (application no. 10497/21) submitted that the domestic legislation banning promotion of homosexuality among minors did not meet the quality of law requirement in Article 10 § 2 of the Convention. Given the vagueness of the terminology used, the legislation was unforeseeable in its application and would in fact permit any information on LGBT issues to be banned. They further argued that the interference had not been justified by any legitimate aims and had not been "necessary in a democratic society". According to the domestic courts, promotion of homosexuality included the mere mention of homosexuality or statements presenting LGBT people as equally worthy as heterosexual people. The legislation in question therefore had a discriminatory effect.

129. Ms Klimova stressed in addition that neither the VK webpage nor the website contained any explicitly sexual content or any discussions of sex. The domestic courts had not taken it into account that the project aimed to support LGBT teenagers in difficulty. They had not specified what information they considered problematic, creating the impression – confirmed by the prosecutor (see paragraph 26 above) – that the entire contents of the VK community and of the website were illegal under Russian law.

130. Ms Tsvetkova submitted that the material published by her was educational material in the sphere of defending human rights and aiming at reducing the level of violence and intolerance in society and giving support to those who had suffered from homophobia.

131. Mr Sergeyev (application no. 46226/21) submitted that the ban on promoting homosexuality was discriminatory and did not pursue any legitimate aim. Furthermore, the domestic authorities had not justified blocking the webpage by explaining why that had been necessary in a democratic society and how it had been proportionate to a legitimate aim. They had not considered whether the same result could be achieved by less intrusive means. Nor had the blocking measure been strictly targeted at the allegedly illegal content. The blocking of access to the entire VK group had been arbitrary and excessive. The domestic authorities had not provided relevant and sufficient reasons for the total ban on one of the Russia's oldest LGBTI online resources which had existed since 2012, had been used by more than 30,000 people, contained many publications on LGBTI and human rights issues and which had never been subject to any complaints or liability in connection with its publications.

132. The other applicants maintained their complaints.

(ii) The Government in applications nos. 33421/16 (Ms Klimova) and 10497/21 (Ms Tsvetkova)

133. The Government submitted that the interference with the applicants' right to freedom of expression had been lawful and pursued the legitimate aims of protecting health and morals and the rights of others, namely children's rights. Reiterating the Constitutional Court's ruling (see a summary in *Bayev and Others,* cited above, § 25), the Government furthermore argued that the interference had been "necessary in a democratic society". Children, irrespective of their sexual orientation, were easily influenced by fashions and information disseminated on internet. Russian legislation protected children from information harmful for their development, such as aggressive promotion of models of sexual behaviour and of false ideas about socially acceptable models of family relationships which were incompatible with moral values commonly accepted in Russian society. Active public promotion of homosexuality or information about homosexuality could negatively influence children's sexual self-identification and could arouse interest in homosexual sexual relations. Moreover, the Government also noted that Ms Tsvetkova (application no. 10497/21) knew that the material published by her on internet would be accessible to children. Given that she did not have a higher education degree, she was not allowed to provide sex education to children.

(iii) The third party in applications nos. 8156/20 (Mr Yedemskiy), 32416/20 (V.C.), 33277/21 (Ms Gorshkova) and 46226/21 (Mr Sergeyev)

134. The Sphere Foundation submitted that Russian law banning promotion of homosexuality among minors was discriminatory and contrary to the Convention. It had been one of the first steps in the series of repressive legislation against the Russian LGBTI community laying the basis for discrimination and censorship which, initially random, had become systematic after 2022. The blocking of dating groups on social networks pursuant to that legislation deprived homosexual people of an opportunity to safely seek romantic and sexual relationships. The prohibition on dissemination of information about homosexuality limited the LGBTI teenagers' access to objective scientific information about sexual orientation and gender identity, as well as sexual and reproductive rights and health. It automatically excluded the possibility of discussing LGBTI issues in schools, thereby restricting teenagers' right to sexual education and increasing the risks of bullying for LGBTI teenagers, which consequently led to an increase in sexually transmitted infections, including HIV. Furthermore, the mere existence of the law prohibiting the promotion of homosexuality had a chilling effect and led to self-censure.

(b) The Court's assessment

(i) The existence of an interference

135. The applicants are the owner of a website and administrators of websites or social networking groups and communities. They published both content authored by them and also, in some cases, content authored by others. As regards the content authored by others, as editors of print media, the applicants decided what was published and provided a platform for authors, thus taking part in the exercise of freedom of expression, even if they did not necessarily share the opinions expressed in the content they published (see, *mutatis mutandis, Orban and Others v. France*, no. 20985/05, § 47, 15 January 2009; *Ólafsson v. Iceland*, no. 58493/13, §§ 5, 17 and 32, 16 March 2017; and *Kilin v. Russia*, no. 10271/12, §§ 53, 57 and 58, 11 May 2021).

136. Some applicants were held liable for an administrative offence in connection with the content published by them in VK communities or groups administered by them. Such convictions amounted to an interference with the applicants' right to freedom of expression under Article 10 § 1 of the Convention.

137. In other cases access to the websites and VK communities or groups owned or administered by them was blocked. The applicants were thereby prevented from accessing their own websites and VK communities or groups. They were unable to publish new content, while visitors were prevented from accessing the entire website or webpage content. The blocking measures therefore amounted to "interference by public authority" with the applicants' right to freedom of expression, of which the freedom to receive and impart information and ideas is an integral part (see *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 55, ECHR 2012, and *Vladimir Kharitonov v. Russia*, no. 10795/14, § 36, 23 June 2020).

138. Lastly, in two cases (nos. 33421/16 (Ms Klimova) and 32416/20 (V.C.)) the applicants were also held liable of an administrative offence for user comments posted, without prior content moderation, in VK groups or communities they administered. Their convictions constituted an interference with their right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention (see *Sanchez v. France* [GC], no. 45581/15, § 122, 15 May 2023). In so far as one of the applicant's, Mr V.C., claimed that he no longer administered one of the VK groups in question, his conviction for user-generated content published on that groups' webpage must still be regarded as constituting an interference with the exercise of his right to freedom of expression (compare *Stojanović v. Croatia*, no. 23160/09, § 39, 19 September 2013; *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015; *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, § 45, 16 July 2019; and *Kilin*, cited above, §§ 53 and 55).

139. The Court therefore concludes, and it has not been disputed between the parties, that there has been an interference with all applicants' right to freedom of expression.

140. Such interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in Article 10 § 2 and is "necessary in a democratic society" to achieve those aims.

(ii) Justification for the interference

(α) Content published by the applicants, whether authored by them or by others (applications nos. 33421/16 (Ms Klimova), 8156/20 (Mr Yedemskiy), 10497/21 (Ms Tsvetkova), 33277/21 (Ms Gorshkova) and 46226/21 (Mr Sergeyev))

141. The Court observes at the outset that the present case concerns publications on internet. It refers in this connection to the general principles on freedom of expression on internet and social media as summarised in *Sanchez* (cited above, §§ 158-62).

142. The Court reiterates that it is not justifiable to impose restrictions on children's access to information about same-sex relationships, where such restrictions are based solely on considerations of sexual orientation – that is to say, where there is no basis in any other respect to consider such information to be inappropriate or harmful to children's growth and development. Measures which restrict children's access to information about same-sex relationships solely on the basis of sexual orientation, whether they are directly enshrined in the law or adopted in case-by-case decisions, demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society (see *Macatė v. Lithuania* [GC], no. 61435/19, §§ 210-16, 23 January 2023).

143. The Court notes that interferences in the present case were based on the same legal provisions prohibiting promotion of homosexuality among minors which were examined by the Court in the case of *Bayev and Others*, cited above), in particular section 5(2) of the Protection of Children Act (see *Bayev and Others*, cited above, § 32) and Article 6.21 of the CAO (see paragraphs 87 and 88 above).

144. In *Bayev and Others* the applicants complained about the very existence of a legislative ban on promotion of homosexuality among minors and the Court focused on the necessity of the disputed laws as general measures (see *Bayev and Others*, cited above, §§ 61-64). By contrast, in the present case the applicants did not complain about the very existence of the ban but about its application in the specific circumstances of their cases. The

Court will however apply its findings in *Bayev and Others* to the present case in so far as relevant.

145. The Court found that the legal provisions in question did not serve to advance the legitimate aim of the protection of morals, and that such measures were likely to be counterproductive in achieving the legitimate aims of the protection of health and the protection of rights of others. Given the vagueness of the terminology used and the potentially unlimited scope of their application, those provisions were open to abuse in individual cases. Above all, by adopting such laws the authorities reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society (see *Bayev and Others*, cited above, § 83).

146. The Court notes that the websites and VK communities and groups owned or administered by the applicants sought to encourage tolerance and acceptance of LGBTI people, to give support to troubled LGBTI teenagers, to provide information on, and a forum for discussion of, LGBTI-related topics or to provide a space where LGBTI people could meet to find friends or romantic partners.

147. The applicants were either held liable of an administrative offence or the websites and VK communities and groups owned or administered by them were blocked because the domestic authorities found that the content published by them promoted homosexuality among minors. The publications imputed to the applicants concerned letters describing the experience of being an LGBTI teenager (see paragraph 7 above), information on how to seek psychological help (see paragraphs 20 and 29 above), posts expressing support to young LGBTI people (see paragraph 58 above), profiles of children between 14 and 16 years old seeking communication, friendship or relationships (see paragraph 73 above) or invitations to participate in meetings in support of non-traditional sexual relationships (see paragraph 84 above).

148. In some cases the domestic courts did not specify which publications they considered problematic (see paragraphs 19, 27, 35 and 79 above), giving the impression that the entire website or webpage was illegal because it delt with LGBTI-related topics. Although in those cases the domestic courts referred to some screenshots, they did not give any details about their content or specify which elements had led them to conclude that they were harmful for children.

149. It is evident from the domestic decisions that the restrictions were based solely on considerations of sexual orientation and that there was no basis in any other respect to consider the publications to be inappropriate or harmful to children's growth and development. It is important to note that in none of the cases did the domestic courts demonstrate that the applicants' publications advocated any sexual practices, reckless behaviour or any unhealthy personal choices (compare *Bayev and Others*, cited above, § 72).

The information published by the applicants was found to be unlawful and therefore prohibited from dissemination on the ground that it was deemed to aim at creating in minors a non-traditional sexual orientation, promoting the attractiveness of non-traditional sexual relationships or creating a distorted image of traditional and non-traditional sexual relationships as socially equivalent (see the definition of the promotion of homosexuality in paragraph 87 above, see also paragraphs 12, 27, 46, 63 and 73).

150. The Court notes in this connection that it has already dismissed the allegations that one's sexual orientation or identity is susceptible to change as a result of being exposed to a positive image of homosexuality as lacking any evidentiary basis (see *Bayev and Others*, cited above, §§ 74, 77 and 78). Furthermore, prohibition on disseminating information susceptible of "creating a distorted image of traditional and non-traditional sexual relationships as socially equivalent" embodies a predisposed bias on the part of a heterosexual majority against a homosexual minority, which cannot be considered by the Court to amount to sufficient justification for the interferences with the applicants' right to freedom of expression (see *Bayev and Others*, cited above, §§ 68 and 69). It finds on the contrary that to depict, as the applicants did in their publications, same sex relationships as being essentially equivalent to those between persons of different sex rather advocates respect for and acceptance of all members of a given society in this fundamental aspect of their lives (see *Macatė,* cited above, § 214).

151. In so far as in some cases the domestic courts found that the disputed publications were "capable of evoking in children the idea that ... non-traditional sexual relationships were superior to traditional ones" (see paragraph 12 above) and "demonstrated contempt for traditional sexual relations" (see paragraph 37 above), they did not provide any reasons to justify that finding. The Court reiterates in this connection that equal and mutual respect for persons of different sexual orientations is inherent in the whole fabric of the Convention. It follows that insulting, degrading or belittling persons on account of their sexual orientation, or promoting one type of family at the expense of another is never acceptable under the Convention (see *Macatė*, ibid.). However, the Court is unable to discern any such aim or effect in the disputed publications.

152. Lastly, the Court notes that in some cases the applicants' websites, VK communities or groups were marked with a "18+" age restriction sign (see paragraphs 33, 58 and 67 above). The domestic courts however found that this sign was insufficient to prevent minors' access without providing any further reasons or directions as to what was required (see paragraphs 36 and 63 above). The Court has already found that a warning addressed to persons under eighteen years old could be an acceptable measure to restrict the distribution of pornographic material to children, and may be more suitable than implementing an outright ban that impacts all audiences (see *Kaos GL v. Turkey*, no. 4982/07, § 61, 22 November 2016, and *Pryanishnikov*

v. Russia, no. 25047/05, § 61, 10 September 2019). That being said, in contrast to pornographic material, access to which may be justifiably restricted for children, it is not justified to impose similar restrictions on children's access to information about same-sex relationships, where such restrictions are based solely on considerations of sexual orientation (see paragraph 142 above).

153. The Court finds that the measures taken against the applicants and against the websites and VK communities and groups owned or administered by them sought to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships, labelling such information as harmful, and concludes that those measures were incompatible with Article 10 of the Convention.

(β) User-generated content (applications nos. 33421/16 (Ms Klimova) and 32416/20 (V.C.))

154. In two cases (nos. 33421/16 (Ms Klimova) and 32416/20 (V.C.)) the applicants were held liable for an administrative offence because of content posted by users, without prior content moderation, in social networking groups or communities that they had created and administered.

155. The Court will first examine whether the interference was lawful. It refers in this connection to the general principles as summarised in the case of *Sanchez* (cited above, §§ 124-28).

156. It reiterates, in particular, that a rule cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable a person to regulate his or her conduct. That person must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Sanchez*, cited above, § 125, with further references).

157. As regards internet publications more specifically, the responsibilities and liability rules imposed on internet intermediaries should be "transparent, clear and predictable". It is important that the High Contracting Parties bear this in mind when adapting existing regulations or adopting new norms, as and when technologies such as the Internet progress (see *Sanchez*, cited above, § 136).

158. The Court notes that the domestic courts did not refer to any domestic provisions providing at the material time for an obligation for the administrators of social networking groups or communities to delete content posted by third parties without prior content moderation and setting out in what circumstances such an obligation arose. Nor did they refer to any domestic provisions imposing liability for the failure to comply with such an obligation or, more generally, imposing liability for third-party internet content on administrators (compare and contrast *Sanchez,* cited above, §§ 130-42).

159. The domestic courts relied only on Article 6.21 of the CAO (see paragraphs 87 and 88 above) which made it an administrative offence to promote homosexuality among minors. They did not refer to any authoritative interpretation of that provision by the Supreme Court or the Constitutional Court confirming that liability under that Article could arise in respect of content posted by third parties. It follows that this legal provision did not allow the applicants to foresee, to a degree that was reasonable in the circumstances, the consequences of a failure to delete third-party content published in the social networking groups or communities administered by them.

160. It follows that the applicants' convictions for content posted by users, without prior content moderation, in social networking groups or communities they had created and administered was based on an expansive and unforeseeable interpretation and application of Article 6.21 of the CAO. The interference with their right to freedom expression was not therefore "in accordance with law".

(γ) Conclusion

161. In view of the foregoing, the Court finds there has been a violation of Article 10 of the Convention in all six of the present applications.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

162. The applicants complained under Article 14 of the Convention, taken in conjunction with Article 10, that they were discriminated against on grounds of sexual orientation. Ms Tsvetkova (applications nos. 39855/20 and 10497/21) and Ms Gorshkova (application no. 33277/21) also complained under Article 6 of the Convention that the administrative offence proceedings against them had been unfair because there had been no prosecuting party. Ms Tsvetkova also complained in application no. 39855/20 that she had been unable to examine the witnesses against her. Mr Sergeyev (application no. 46226/21) also complained that he did not have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention. Having regard to the facts of the case, the submissions of the parties and its findings under Articles 8 and 10, the Court considers that there is no need to give a separate ruling on the admissibility and the merits of the above complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu,* cited above, § 156).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. 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. Applications nos. 8156/20 (Mr Yedemskiy) and 33277/21 (Ms Gorshkova)

164. Mr Yedemskiy and Ms Gorshkova did not submit a claim for just satisfaction within the specified time-limit. Accordingly, the Court considers that there is no call to award them any sum on that account.

B. Other applications

1. Damage

165. Ms Klimova claimed 25,000 euros (EUR) in respect of non-pecuniary damage and 51,000 Russian roubles (RUB) in respect of pecuniary damage for the administrative penalty she had paid and the related banking fee.

166. Mr V.C. asked for compensation in respect of non-pecuniary damage and left it to the Court to determine the amount. He also claimed RUB 50,000 in respect of pecuniary damage for the administrative penalty he had paid.

167. Ms Tsvetkova claimed EUR 45,000 in respect of non-pecuniary damage in two applications. She further claimed EUR 700 and EUR 582 in respect of pecuniary damage for the administrative penalties she had paid.

168. Mr Sergeyev claimed EUR 15,000 in respect of non-pecuniary damage.

169. The Government submitted that the claims for non-pecuniary damage lodged by Ms Klimova and Ms Tsvetkova (in application no. 39855/20) had been excessive. As regards their claims for pecuniary damage, the penalties had been lawfully imposed on them.

170. The Court observes that the penalties imposed on Ms Klimova, Mr V.C. and Ms Tsvetkova (in application no. 10497/21) in the administrative proceedings were incurred in connection with their exercise of their freedom of expression and are directly related to the violations found in this case. The Court therefore awards EUR 757 to Ms Klimova, EUR 714 to Mr V.C. and EUR 582 to Ms Tsvetkova, in pecuniary damages, plus any tax that may be chargeable. Ms Tsvetkova's award in respect of pecuniary damage is only to be paid if the penalty in question has been paid by her; otherwise she should not be required to pay the said penalty and consequently will have no entitlement to an award in respect of pecuniary damage (compare *Bayev and Others*, cited above, § 97).

171. The Court does not discern any causal link between the violation of Ms Tsvetkova's rights under Article 8 found in application no. 39855/20 and the pecuniary damage claimed by her (compare *Konstantin Moskalev*

v. Russia, no. 59589/10, § 74, 7 November 2017); it therefore rejects this claim.

172. The Court awards Ms Klimova, Mr V.C. and Mr Sergeyev EUR 7,500 each in respect of non-pecuniary damage, plus any tax that may be chargeable. It awards Ms Tsvetkova EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

173. Relying on a legal fee agreement and an invoice, Ms Klimova also claimed EUR 11,250 for legal fees incurred before the Court.

174. Relying on a legal fee agreement and timesheets, Ms Tsvetkova claimed EUR 5,300 for legal fees incurred before the Court in application no. 39855/20. Relying on a postal invoice, a translation fee agreement and a related invoice, she further claimed EUR 5,800 for legal fees and EUR 120 for postal and translation expenses in application no. 10497/21. She asked for the amounts to be paid directly into her representative's bank account.

175. The Government submitted that Ms Klimova and Ms Tsvetkova had not submitted any proof that the requested sums had been actually paid.

176. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 3,000 to Ms Klimova and EUR 3,120 to Ms Tsvetkova, of which EUR 3,000 is to be paid into the bank account of her representative Mr Zboroshenko and EUR 120 to the bank account of her representative Ms Plyusnina, covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Holds* that the Government's failure to participate in the proceedings in applications nos. 8156/20, 32416/20, 33277/21 and 46226/21 presents no obstacle to the examination of the case and that it has jurisdiction to deal with all applications;

3. *Declares* the complaints under Article 8 in application no. 39855/20 and under Article 10 in applications nos. 33421/16, 8156/20, 32416/20, 10497/21, 33277/21 and 46226/21 admissible;

4. *Holds* that there has been a violation of Article 8 of the Convention in application no. 39855/20;

5. *Holds* that there has been a violation of Article 10 of the Convention in applications nos. 33421/16, 8156/20, 32416/20, 10497/21, 33277/21 and 46226/21;

6. *Holds* that that there is no need to examine the admissibility and merits of the remaining complaints under the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 757 (seven hundred and fifty-seven euros) to Ms Klimova, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 714 (seven hundred fourteen euros) to Mr V.C., plus any tax that may be chargeable, in respect of pecuniary damage;
      (iii) EUR 582 (five hundred and eighty-two euros) to Ms Tsvetkova, plus any tax that may be chargeable, in respect of pecuniary damage, if she has already paid the penalty to which this claim relates;
      (iv) EUR 7,500 (seven thousand five hundred euros) to Ms Klimova, Mr V.C. and Mr Sergeyev each and EUR 9,800 (nine thousand eight hundred euros) to Ms Tsvetkova, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (v) EUR 3,000 (three thousand euros) to Ms Klimova, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
      (vi) EUR 3,120 (three thousand one hundred and twenty euros) to Ms Tsvetkova, plus any tax that may be chargeable to the applicant, in respect of costs and expenses, of which EUR 3,000 (three thousand euros) to be paid into the bank account of her representative Mr Zboroshenko and EUR 120 (one hundred twenty euros) to the bank account of her representative Ms Plyusnina;
   (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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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	Represented by
1.	33421/16	Klimova v. Russia	29/05/2016	**Yelena Aleksandrovna KLIMOVA** 1988 Nizhniy Tagil	Dmitriy Gennadyevich BARTENEV
2.	8156/20	Yedemskiy v. Russia	01/02/2020	**Mikhail Anatolyevich YEDEMSKIY** 1973 Moscow	Damir Ravilevich GAYNUTDINOV
3.	32416/20	V.C. v. Russia	28/07/2020	**V.C.** 1984 Naberezhnye Chelny	Aleksandr Yelenovich BELIK
4.	39855/20	Tsvetkova v. Russia	22/08/2020	**Yuliya Vladimirovna TSVETKOVA** 1993 Komsomolsk-on-Amur	Nikolay Sergeyevich ZBOROSHENKO

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
5.	10497/21	Tsvetkova v. Russia	02/02/2021	**Yuliya Vladimirovna TSVETKOVA** 1993 Komsomolsk-on-Amur	Anna Vitalyevna PLYUSNINA
6.	33277/21	Gorshkova v. Russia	14/06/2021	**Vera Alekseyevna GORSHKOVA** 2000 Yekaterinburg	Anna Vitalyevna PLYUSNINA
7.	46226/21	Sergeyev v. Russia	07/09/2021	**Aleksey Vladimirovich SERGEYEV** 1979 St Petersburg	Anton Igorevich RYZHOV