



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

THIRD SECTION

CASE OF YEVTIFEYEV AND OTHERS v. RUSSIA

(Applications nos. 226/18 and 3 others – see appended list)

JUDGMENT

Art 14 (+ Art 8) • Discrimination on the ground of sexual orientation • Private life • Domestic authorities' failure to comply with positive obligation to respond adequately to homophobic motivated physical threats and verbal assault by a politician against three of the applicants at a rally

Art 34 • Lack of victim status of the remaining applicant as regards his complaint about a video, published by a well-known comic actor and television presenter and allegedly containing negative stereotyping of the LGBTI community • Video published shortly before a national vote on Constitutional amendments and clearly a parody of another video calling on the public to vote for them • Provocative political satire on a matter of public interest and contributing to a political debate and not, taken as a whole and in the context, propagating homophobic views and ideas • Threshold of severity required to affect the “private life” of individual members of the LGBTI community not reached

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 December 2024

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 Yevstifeyev and Others v. Russia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseyinov,

Andreas Zünd,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 226/18, 236/18, 2027/18 and 22327/22) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the four Russian nationals listed in the appended table (“the applicants”), on the various dates indicated therein;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Articles 8, 13 and 14 of the Convention concerning alleged failures of the Russian authorities to afford redress to the applicants in respect of various homophobic statements, and to declare inadmissible the remainder of the applications;

the observations submitted by the applicants;

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

Having deliberated in private on 12 November 2024,

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

INTRODUCTION

1. The case concerns alleged failures by the domestic authorities to comply with their positive obligation to respond adequately to homophobic statements and thereby secure respect for the applicants’ “private life” and protect them from discrimination.

THE FACTS

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

I. YEVSTIFEYEV, MINIAKHMETOV AND GRACHEV V. RUSSIA
(APPLICATIONS Nos. 226/18, 236/18 AND 2027/18)

3. The applicants are members of the LGBTI (lesbian, gay, bisexual, transgender and intersex) community and are LGBTI-rights activists.

A. The impugned statements

4. On 1 May 2015 the applicants participated in a rally against hatred in society which took place in St Petersburg. They were part of the LGBTI column and carried rainbow flags and LGBTI thematic banners. Mr Yevstifeyev was one of the organisers of the rally.

5. Mr V. Milonov, a well-known politician and a member of the St Petersburg Legislative Assembly, also attended the rally. He stationed himself near the site of the rally and, several minutes after its start, began to shout insults and threats at the participants of the LGBTI column. In particular, he shouted vulgar prison-slang terms for gay men and women. He also called them “perverts”, “scumbags”, “Aids-ridden” and other offensive terms. He claimed that he knew half of the participants and that they were all paedophiles. He also shouted that the participants should all be “liquidated”, thrown into the river, crushed with tanks and tractors, be arrested and jailed for five years, “cast into the cauldron” and should “croak from Aids”. Pointing at some of the participants he imitated the gesture of cutting a throat or shouted “I am going to find you, be scared!” or “I am going to rip off your head”.

6. Mr Milonov addressed the following statements specifically to Mr Grachev: “Who is it? Catch this punk. You, outcast faggot. I will find you, I will find you, got it? He has got the flag. Why don’t you arrest him? Arrest this punk, arrest this faggot!”. He addressed the following statements specifically to Mr Miniakhmetov: “Faggot! Absolute faggot. Faggot, faggot, faggot, get out of here. I will give you a holed spoon¹”.

B. The criminal complaints

7. On 27 May 2015 the applicants lodged criminal complaints under Article 128.1 § 4, Article 136, Article 280 § 1 and Article 282 of the Criminal Code (see paragraphs 35-37 below and, for a summary of Article 282 of the Code, *Nepomnyashchiy and Others v. Russia*, nos. 39954/09 and 3465/17, § 39, 30 May 2023) against Mr Milonov. They argued that Mr Milonov’s statements amounted to public appeals to extremist activities, calls for violence, incitement to hatred and enmity, and humiliation of human dignity on the ground of membership of the social group of LGBTI people. They also

¹ An offensive prison-slang term used to describe an inmate who has been sexually assaulted or is perceived as homosexual.

complained that Mr Milonov had spread false information (namely that they were paedophiles and infected with HIV) about the participants of the rally, and therefore about the applicants as well, which had defamed their honour and dignity. Lastly, they claimed that Mr Milonov had used his official status to obstruct the rally. They submitted video recordings of Mr Milonov's behaviour during the rally.

8. By letters of 25 June 2015 the St Petersburg Investigative Committee refused to register the applicants' complaints, finding that they did not contain *prima facie* indications of any criminal offences as Mr Milonov had merely expressed his personal opinion about the LGBTI community. The applicants were advised to sue Mr Milonov in civil proceedings.

9. The applicants lodged applications in the Smolninskiy District Court of St Petersburg seeking judicial reviews of the Investigative Committee's refusal to register their criminal complaints, but by three separate decisions of 23 November 2015 the court rejected those applications, finding that the refusal had been lawful and justified. The St Petersburg Investigative Committee had correctly found that the applicants' complaints contained no *prima facie* indications that a criminal offence had been committed because Mr Milonov had only been expressing his personal opinion about the LGBTI community.

10. The applicants appealed against those decisions. On 19 and 21 January and 16 February 2016 the St Petersburg City Court upheld the District Court's decisions, finding that they had been lawful, well reasoned and justified.

C. The administrative-offence complaint

11. On 26 May 2015 the applicants lodged a complaint under Article 5.61 § 2, Article 5.62 and Article 20.1 of the Code of Administrative Offences ("the CAO", see paragraphs 38-40 below). They complained that Mr Milonov had behaved in a disorderly manner towards them and had publicly insulted them. His behaviour had amounted to discrimination on the ground of membership of the social group of LGBTI people. They submitted video recordings of Mr Milonov's behaviour during the rally.

12. By a letter of 19 June 2015 a deputy prosecutor of the Tsentralnyy District of St Petersburg replied that the applicants' complaint did not disclose any indications that administrative offences had been committed. In particular, it was impossible to establish the persons who had allegedly been insulted by Mr Milonov as he had not specifically named them. Statements directed at a group of unnamed people, identifiable only by certain common traits, could not be considered as an insult to any particular individual.

D. The civil complaint

13. On 20 May 2015 the applicants lodged a civil claim against Mr Milonov, relying on Articles 150, 151 and 152 of the Civil Code (see paragraph 42 below and *Nepomnyashchiy and Others*, cited above, §§ 43 and 44, for a summary of Articles 150 and 151 of the Civil Code). They argued that Mr Milonov had addressed his statements to all gay, lesbian, bisexual and transgender people who had been part of the LGBTI column at the rally, including the applicants. The statements had therefore been addressed to a small group of clearly identifiable individuals and thus targeted every member of that group. Some statements had been addressed specifically to the applicants (see paragraph 6 above). They complained that the right to honour, human dignity and respect for private life and the right to freedom from discrimination – protected by Article 19 of the Russian Constitution (see *Nepomnyashchiy and Others*, cited above, § 35), by Articles 8 and 14 of the Convention and by Article 150 of the Civil Code – had been breached by Mr Milonov’s offensive and obscene statements. Furthermore, relying on Article 152 of the Civil Code, the applicants claimed that Mr Milonov had spread false information damaging to their honour and dignity, namely that they were paedophiles and infected with HIV. By using vulgar prison-slang terms denoting prisoners who had been forced to have homosexual intercourse by their cellmates, Mr Milonov had implied that they had served prison terms. The applicants argued that Mr Milonov had insulted them because of their sexual orientation out of hatred towards LGBTI persons. His statements had therefore been discriminatory. They submitted video recordings of Mr Milonov’s behaviour during the rally and relied on witness statements.

14. On 21 December 2015 a court-appointed expert found that Mr Milonov’s statements had been insulting and had targeted a specific person or persons.

15. On 7 July 2016 the Kirovskiy District Court of St Petersburg dismissed the applicants’ civil claim. It found that the applicants could not hear Mr Milonov because of the music being played by the demonstrators and that they could only have learned about his statements from the video recording. Thus, the applicants had not been directly affected by the statements. The court rejected witness testimony that Mr Milonov’s statements could be heard by all participants in the rally as “subjective”. Furthermore, the applicants had not proved that Mr Milonov’s statements had been addressed to each of them specifically or that they had been insulting and defamatory. Mr Milonov did not know them personally. He had expressed his personal negative opinion about the LGBTI community rather than about any specific individuals. The court also found that the expert report was insufficient to support the applicants’ position. The expert had only taken into account the slang meanings of the impugned statements and had

disregarded the fact that each of Mr Milonov’s words had multiple meanings, some of which were not offensive, especially outside the prison context. The court did not have any reason to believe that Mr Milonov had meant to use the relevant words with the meanings they had taken on in slang. As regards the words that had been addressed to Mr Grachev (see paragraph 6 above), Mr Milonov’s intention had clearly been to prompt the nearby police officers to arrest Mr Grachev rather than to insult him. There was no evidence that Mr Grachev had heard those words as the video recording showed that he had not reacted in any way.

16. The applicants lodged an appeal, but on 20 September 2016 the St Petersburg City Court upheld the judgment, finding that it had been lawful, well reasoned and justified.

17. The applicants then lodged a cassation appeal, which was dismissed on 28 February 2017 by a judge of the St Petersburg City Court. That court found, in particular, that it was impossible to establish any specific individuals against whom Mr Milonov’s statements had been directed.

18. They applicants lodged a further cassation appeal, which was rejected on 5 June 2017 by the Supreme Court of the Russian Federation.

II. PETROV V. RUSSIA (APPLICATION NO. 22327/22)

19. The applicant is openly gay and the executive director of the Moscow LGBT Initiative Group Stimul, an unregistered public association for equality and human dignity irrespective of sexual orientation, gender identity, gender expression and sex characteristics.

A. Background information

20. A national vote on amendments to the Russian Constitution was scheduled for 1 July 2020. One of the proposed amendments defined marriage as a relationship between one man and one woman.

21. On 1 June 2020 the pro-government media website FAN published a video urging the public to vote for the amendments. Set in the year 2035, the video told the story of an orphan being adopted by two men. When the boy understood that he would not have a new mother, he became upset. To comfort him, one of his new fathers, who was wearing makeup, offered him a dress to wear. “Is this the Russia you choose?”, the narrator asked the viewers, adding: “Decide for the future of the country, vote for the amendments to the Constitution.”

B. The video at issue

22. As a parody of FAN’s video, D.K., a well-known comic actor and television presenter, published on his Instagram account a video of a mock

“gay hunt”. The video in question, set in the year 2035, showed a father and son hunting gay men in a forest. The men wore hunting outfits and were armed with hunting rifles. The dialogue between the father and son was as follows:

“Father: The gay hunting season opened today. My son and I came here to, how do you say, thin out the population. Right, son? (laughs)

Son: I killed my first gay at the age of sixteen.

Father: The winter this year was warm, plenty of food. The gays must be fat, lardy, you know. My son and I have been hunting gays for a long time.

Son: My father has been taking me along since gay hunting was authorised in 2020.

Father (luring): Faggot, faggot, faggot, faggot, faggot, faggot, faggot ... Your turn, son (unintelligible)

Son: Starbucks, Starbucks ...

Father: Here he is, the faggot.

Son: Ah!

The hunters fired their rifles in the direction of a running man in colourful clothes.

Son: Mum will make fruit tart (*Мамка голубцов наделает*)”

At the end of the video the two hunters posed smiling and with their thumbs up near the man, who was lying dead on the ground. The father was standing with his foot on the man’s back and the son was holding up his head by the hair. The following text then appeared:

“Is this the Russia you choose? Vote for the amendments to the Constitution.

Amendment no. 66. Russians are authorised to hunt big game, homosexuals and birds during the summer.”

23. According to the applicant, the video was viewed 120,000 times and received 5,000 likes and 714 comments, some of which supported the murder of gay people.

24. On 18 June 2020 “Your friend, a homonegative person”, a public community on the social networking website VKontakte (“VK”) (<https://vk.com/rushomophobic>) republished the above-mentioned video, preceded by the following message:

“Unfortunately, we do not know who made this video – which is clearly a response to FAN’s video about gay adoptive parents, with a reference to the ‘Saw’ website, which, according to most, is a creation of the LGBT community. Mocking the Constitution, inciting violence, violating the ban on propaganda [of homosexuality among minors] – is this funny?”

C. Criminal complaint

25. On 19 June 2020 the applicant lodged a criminal complaint under Article 282 of the Criminal Code (see *Nepomnyashchiy and Others*, cited

above, § 39). He argued that the video contained a call for violence against gay people. He submitted, in particular, that gay people were represented as prey. They were dehumanised and equalled to animals whom it was permissible to hunt. The video therefore risked inciting violence against gay people.

26. The police commissioned a linguistic expert examination of the video. On 7 October 2020 the expert found that the video contained negative statements about homosexual people, namely the word “faggot”, which was an offensive term. In the context of the video as a whole, the words “gays” and “homosexuals” had also been given negative connotations by the speakers. The video did not contain any approval of hostile acts against homosexual people or any statements advocating the idea of people’s superiority or inferiority depending on their sexual orientation or other characteristics.

27. On 11 January 2021 the anti-extremism unit of the police refused to open a criminal case for the absence of *corpus delicti*, finding that the complaint fell to be examined in administrative-offence proceedings.

28. The applicant lodged an application for the judicial review of that decision. On 1 December 2021 the Zelenogradskiy District Court of Moscow rejected that application. It found that the decision of 11 January 2021 had been issued by a competent official in accordance with the procedure prescribed by law. It had been lawful and well reasoned.

29. The applicant appealed against that judgment. However, on 9 February 2022 the Moscow City Court upheld the judgment of the District Court, repeating its reasoning.

D. Administrative-offence complaint

30. On 19 June 2020 the applicant lodged a complaint under Article 20.3.1 of the CAO (see paragraph 41 below) with the Prosecutor General, repeating the arguments he had advanced in the criminal complaint (see paragraph 25 above). He also asked the Prosecutor General to restrict access to the material, which he described as extremist, under section 15.3 of the Information Act (see paragraph 43 below).

31. A prosecutor at the Moscow prosecutor’s office questioned Mr D.K., one of the creators of the video. D.K. explained that it was a parody of FAN’s video about gay adoptive parents urging the public to vote for the constitutional amendments. He stated that the video created by him mocked homophobia by exaggerating it to a grotesque level of absurdity. He considered that the video’s satirical message was obvious and that it was impossible to understand it literally.

32. On 24 May 2021 the Moscow prosecutor refused to open an administrative-offence case under Article 20.3.1 of the CAO against D.K. Relying on the findings of the linguistic expert report (see paragraph 26

above), the prosecutor held that no “object of an offence” (“*объект правонарушения*”) had been identified in the video.

33. There is no information in the case file about any reply to the applicant’s request under section 15.3 of the Information Act.

RELEVANT LEGAL FRAMEWORK

34. For a summary of the relevant provisions of domestic law, see the case of *Nepomnyashchiy and Others* (cited above, §§ 35-44).

I. CRIMINAL CODE

35. Article 128.1 § 1, as in force at the material time, punished criminal libel, that is the intentional dissemination of false information that damaged another person’s honour, dignity, or reputation. Article 128.1 §§ 4 and 5 punished, respectively, criminal libel involving allegations that a person suffered from a disease dangerous to others and accusations that he or she had committed a sexual offense.

36. Article 136 punished discrimination, that is the violation of an individual’s rights, freedoms, and lawful interests based on gender, race, nationality, language, origin, property and official status, place of residence, religion, beliefs or membership of a public association or social group, committed by persons using their official position.

37. Article 280 § 1 punished public calls for extremist activities.

II. CODE OF ADMINISTRATIVE OFFENCES

38. Article 5.61 § 2, as in force at the material time, punished insult, that is the debasement of another person’s honour and dignity, expressed in an offensive manner and conveyed via a public speech, publicly displayed work, or mass media.

39. Article 5.62 punished discrimination, defined as the violation of an individual’s rights, freedoms, and lawful interests based on gender, race, skin colour, ethnicity, language, origin, property status, family status, social status, official position, age, place of residence, religion, beliefs or membership or non-membership of a public association or social group.

40. Article 20.1 punished minor disorderly acts, that is breaches of public order expressing an apparent lack of respect for society, accompanied by the utterance of obscenities in public places, offensive behaviour towards others or the destruction of, or damage to, the property of others.

41. Article 20.3.1 punished inciting hatred to or enmity against and debasing the dignity of an individual or a group of individuals on the grounds of sex, race, ethnic origin, language, background, religious beliefs or

membership of a social group, committed publicly or via mass media, including on the internet, if these acts did not amount to a criminal offence.

III. CIVIL CODE

42. Article 152 provides that an individual may apply to a court with a request for the rectification of “statements” (“сведения”) that are damaging to his or her honour, dignity or professional reputation if the person who disseminated such statements does not prove their truthfulness. The aggrieved person may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such statements.

IV. INFORMATION ACT

43. Section 15.3 of the Information Act (Law no. 149-FZ of 27 July 2006), as in force at the material time, established the procedure for blocking access to content disseminated in breach of the law. Subsection 1 defined such illegal content as including, among other things, calls for extremist activities. Upon detecting such illegal content or receiving reports from State authorities or individuals, the Prosecutor General or his deputies were to request the telecoms regulator, Roskomnadzor, to restrict access to web resources disseminating the illegal content.

THE LAW

I. PRELIMINARY ISSUES

A. Joinder of the applications

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

B. Representation

45. The Court notes that the applicants submitted their written observations after 16 September 2022. They were represented by lawyers admitted to practise in Russia. However, once Russia ceased to be a member State, the Russian lawyers no longer satisfied one of the criteria set out in Rule 36 § 4 (a) of the Rules of Court, namely that they be “authorised to practise in any of the Contracting Parties”. Despite these circumstances, the Court considers that in the interests of the administration of justice lawyers admitted to practise in Russia may continue to represent applicants in cases lodged against that former member State (see, *mutatis mutandis*, *Andrey*

Rylkov Foundation and Others v. Russia, nos. 37949/18 and 83 others, § 72, 18 June 2024).

C. Consequences of the Government's failure to participate in the proceedings

46. The Court further notes that the respondent Government, by failing to submit any written observations, manifested an intention to abstain from participating in the examination of the case. However, the cessation of a Contracting Party's membership in the Council of Europe does not release it from its duty to cooperate with the Court. Consequently, the Government's failure to engage in the proceedings cannot constitute an obstacle to the examination of the case (see *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023).

D. The Court's jurisdiction

47. 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 Contracting 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. PETROV V. RUSSIA (APPLICATION No. 22327/22)

48. The applicant complained that the domestic authorities had failed to comply with their obligation to respond adequately to a discriminatory video and to secure respect for his "private life" as required by Articles 8 and 14 of the Convention. He also complained under Article 13 of the Convention that he did not have at his disposal an effective domestic remedy for his Convention complaints. The relevant Articles provide as follows:

Article 8

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

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

Article 13

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

Article 14

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

49. The applicant submitted that, as an openly gay man and the head of an LGBTI rights association, he had been affected by the video at issue, which had provoked in him feelings of humiliation, anxiety and fear. His situation was therefore similar to that of the applicants in the cases of *Budinova and Chaprazov v. Bulgaria* (no. 12567/13, 16 February 2021), *Behar and Gutman v. Bulgaria* (no. 29335/13, 16 February 2021) and *Nepomnyashchiy and Others* (cited above).

50. The Court notes at the outset that the applicant complained about a video that allegedly contained negative stereotyping of the LGBTI community as a whole. He was not personally targeted by the impugned video.

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

52. As regards the level of seriousness to be attained by the contested statements for Article 8 to become applicable, the Court has held that in cases such as the present one, where the allegation is that a public statement about a social or ethnic group has affected the “private life” of its members within the meaning of Article 8 of the Convention, the relevant factors for deciding whether that is indeed so include, but are not necessarily limited to, (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position *vis-à-vis* society as a whole), (b) the precise content of the negative statements regarding the group (for example, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype), and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group’s

identity and dignity. It cannot be said that one of those factors invariably takes precedence; it is the interplay of all of them that leads to the ultimate conclusion on whether Article 8 is applicable. The overall context of each case – in particular the social and political climate prevalent at the time when the statements were made – may also be an important consideration (see *Budinova and Chaprazov*, cited above, § 63, and *Behar and Gutman*, cited above, § 67).

53. Turning to the circumstances of the present case, the Court notes that it has previously found that gender and sexual minorities require special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected. The Russian LGBTI community can be regarded as a particularly vulnerable group needing heightened protection from stigmatising statements (see *Nepomnyashchiy and Others*, cited above, § 59).

54. It also observes that the video at issue was created and published on social networks by a well-known actor and television presenter and therefore attracted considerable public attention (see paragraphs 22 and 23 above). It thus reached a wide public audience.

55. That being said, the Court is not convinced that the video at issue contained negative stereotyping of LGBTI people reaching the level of seriousness required to affect the “private life” of individual members of that group. Taking into account its content, its humorous tone and the context in which it was published, it is difficult to construe it literally as approving of the hunting of gay people. The video was a political satire on a subject of general interest. It is significant that it was published shortly before a national vote on amendments to the Russian Constitution. It was clearly a parody of another video calling on the public to vote for the amendments (see paragraph 21 above). Indeed, it echoed important compositional elements of that video. For example, both videos were set in 2035 and, after showing scenes from a future involving gay men, both videos asked the same question “Is this the Russia you choose?”, followed by a call to vote for the amendments to the Constitution.

56. Taken as a whole, the contested video could not reasonably have appeared to have as its purpose the propagation of homophobic views and ideas. It apparently sought – by means of provocative political satire – to mock the homophobic message of FAN’s video by exaggerating it to an absurd extent and to warn against indulging homophobia by showing how it could ultimately lead, by a slippery slope effect, to social acceptance of violence against gay people (see also the creator’s explanation in paragraph 31 above). Furthermore, in the context of the lead-up to a popular vote on constitutional amendments, the contested video could be seen as a contribution to a political debate about the proposed constitutional amendments, expressed in a satirical form.

57. The Court reiterates in that connection that, in the context of an election campaign, a certain vivacity of comment may be tolerated more than in other circumstances (see *Sanchez v. France* [GC], no. 45581/15, § 152, 15 May 2023, with further references). It further reiterates that the protection conferred by Article 10 also applies to satire, which is a form of artistic expression and social commentary and which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care (see *Eon v. France*, no. 26118/10, § 60, 14 March 2013, with further references; *M'Bala M'Bala v. France* (dec.), no. 25239/13, § 31, ECHR 2015 (extracts); and *National Youth Council of Moldova v. the Republic of Moldova*, no. 15379/13, § 74, 25 June 2024; and see, in the context of Article 8, *Sousa Goucha v. Portugal*, no. 70434/12, § 50, 22 March 2016, and *Grasser v. Austria* (dec.), no. 37898/17, §§ 12 and 15, 23 April 2019). Satirical forms of expression relating to topical issues can play a very important role in the open discussion of matters of public concern, an indispensable feature of a democratic society (see *Eon*, cited above, § 61).

58. The Court further notes that the applicant's having perceived the video as offensive does not mean that it reaches the "threshold of severity" required to affect his "private life". Whilst such sentiments are understandable, they alone cannot set the limits of freedom of expression (see, for a similar approach, *Vajnai v. Hungary*, no. 33629/06, § 57, ECHR 2008, and *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, § 115, 28 August 2018). The key issue in the present case is whether the video in question, when viewed as a whole and in context, reached the level of seriousness capable of impacting on the identity of the LGBTI community and on the feelings of self-worth and self-confidence of individual members of that community, taking into account the factors listed in paragraphs 51 and 52 above.

59. Having analysed the relevant factors, the Court concludes that the video must be considered as a political satire on a matter of public interest that did not reach the "threshold of severity" required to affect the "private life" of individual members of the LGBTI community. The applicant cannot therefore be considered a victim of the alleged violations of Articles 8 and 14 of the Convention.

60. It follows that these complaints should be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 §§ 3 (a) and 4.

61. The applicant also raised a complaint under Article 13 of the Convention. According to the Court's established case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see, among many others, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131, and *Velečka*

and Others v. Lithuania, nos. 56998/16 and 3 others, § 140, 26 March 2019). Having regard to the findings relating to Articles 8 and 14 (see paragraph 60 above), the Court concludes that the applicant did not have an “arguable claim”, and that therefore Article 13 is not applicable. It follows that this part of the application must also be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. YEVSTIFEYEV, MINIAKHMETOV AND GRACHEV V. RUSSIA (APPLICATIONS NOS. 226/18, 236/18 AND 2027/18)

62. The applicants complained that the domestic authorities had failed to comply with their obligation to respond adequately to statements that discriminated against them based on their sexual orientation and to secure respect for their “private life” as required by Articles 8 and 14 of the Convention. They also complained under Article 13 of the Convention that they did not have at their disposal an effective domestic remedy for their Convention complaints.

A. Articles 8 and 14 of the Convention

1. Admissibility

63. The Court observes that the applicants were among the participants in the rally and were therefore directly targeted by Mr Milonov’s statements. They could accordingly claim to be victims of the alleged violations of Articles 8 and 14 of the Convention (compare *Association ACCEPT and Others v. Romania*, no. 19237/16, §§ 8, 9 and 67, 1 June 2021).

64. The Court further finds that the statements at issue affected the applicants’ psychological well-being and dignity and therefore fell within the sphere of their private life. They attained the level of seriousness required for Article 8 to come into play (see, in respect of similar statements, *Association ACCEPT and Others*, cited above, §§ 9 and 68; see also *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 117, 14 January 2020). Consequently, the Court holds that the facts of the case fall within the scope of Article 8 of the Convention. Therefore, Article 14 of the Convention, taken in conjunction with Article 8, is also applicable to the present case.

65. The Court also 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.

2. Merits

66. The applicants maintained their complaints.

67. The Court has previously dealt with cases of harassment motivated by racism or homophobia which involved no physical violence, but rather verbal

assault or physical threats. It has found that there is a positive obligation on the authorities under Articles 8 and 14 of the Convention to respond to such incidents (see, as regards homophobic verbal attacks, *Beizaras and Levickas*, § 110, and *Association ACCEPT and Others*, §§ 96 and 101, both cited above; and, in respect of racist verbal attacks, *R.B. v. Hungary*, no. 64602/12, § 84, 12 April 2016, and *Király and Dömötör v. Hungary*, no. 10851/13, § 72, 17 January 2017). This positive obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation (see *Beizaras and Levickas*, cited above, § 108).

68. In cases like the present one, where the complaint is that rights protected under Article 8 have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 of the Convention (see *Király and Dömötör*, § 73, and *Behar and Gutman*, § 100, both cited above). Thus, in such cases the Court will need to balance the applicants' right to respect for their private life against the public interest in protecting freedom of expression, bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles. In doing so, the Court must attach significant weight to the question whether the domestic authorities have identified the existence of conflicting rights and the need to ensure a fair balance between them. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts. All of this presupposes that an effective legal system was in place and operating for the protection of the rights falling within the notion of "private life", and was available to the applicants (see *Nepomnyashchiy and Others*, cited above, § 73).

69. In the present case the domestic authorities were confronted with *prima facie* indications of verbal abuse motivated by the applicants' sexual orientation. The Court will therefore examine whether the Russian authorities, in dealing with the applicants' case, complied with their positive obligations under Article 14 of the Convention taken in conjunction with Article 8.

70. It notes that Russian law contains both civil-law mechanisms and criminal-law provisions, including through administrative-offence proceedings, for the protection of an individual's private life against homophobic statements. It has doubts, however, about their effectiveness in practice, in view of the Government's failure to show the existence of settled domestic practice (see, *mutatis mutandis*, *Nepomnyashchiy and Others*, cited above, § 79). The applicants in the present case tried them all to no avail.

71. As regards the applicants' criminal complaints of criminal libel, discrimination, public calls for extremist activities and incitement to hatred or enmity and the debasement of human dignity, it is not the Court's task to

rule on the constituent elements of these offences. It is primarily for the national authorities, in particular the courts, to interpret and apply domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Beizaras and Levickas*, cited above, § 116). In the present case the domestic authorities refused to register the complaints, finding that they did not contain *prima facie* indications of any criminal offences (see paragraph 8 above). They did not conduct any investigation or provide persuasive reasons for their finding, limiting their reasoning to the statement that Mr Milonov had merely expressed his personal opinion about the LGBTI community. They therefore failed to recognise that the case involved a conflict between the applicants' rights to respect for their private life and to protection from discrimination on the ground of sexual orientation and Mr Milonov's right to freedom of expression. They did not conduct a balancing exercise between these competing Convention rights, instead focusing exclusively on protecting Mr Milonov's freedom of expression and disregarding the applicants' rights. Nor did they address the homophobic motives behind the incident.

72. While being careful not to hold that each and every homophobic utterance must, as such, attract criminal prosecution and criminal sanctions (see *Beizaras and Levickas*, cited above, § 125), the Court finds that in the criminal proceedings the domestic authorities failed to strike a fair balance – in the light of the principles resulting from the Court's well-established case-law – between the applicants' rights to respect for their private life and to be protected from discrimination on the ground of sexual orientation on one hand and the public interest in protecting freedom of expression on the other hand.

73. Turning now to the complaint lodged by the applicants concerning the administrative offences of insult, discrimination and minor disorderly acts, the Court observes that it was also rejected with summary reasoning (see paragraph 12 above). In particular, the only ground for rejecting the complaint of insult was that Mr Milonov's statements did not amount to insult because they were directed against a group of people rather than against specifically named individuals. The Court has already found that the applicants were directly targeted by the contested statements as they were among the participants in the rally (see paragraph 63 above). Some of the statements were moreover specifically addressed to Mr Grachev and Mr Miniakhmetov (see paragraph 6 above). Because they effectively denied the applicants' standing to complain of insult in the administrative-offence proceedings, the domestic authorities never actually examined the core of their complaint that Mr Milonov's statements had affected their rights to respect for their private life and to be protected from discrimination on the ground of sexual orientation. Furthermore, the domestic authorities did not provide any reasons for rejecting the complaint in so far as it concerned discrimination and minor disorderly acts. They did not therefore provide

relevant and sufficient reasons for their finding that the applicants' complaint did not disclose any indications of administrative offences.

74. Lastly, as regards the civil proceedings instituted by the applicants, the Court observes that the Russian courts also failed to examine the case in those proceedings in the light of the principles embodied in Articles 8, 10 and 14 of the Convention (see paragraph 15 above). As in the administrative-offence proceedings, the domestic courts also found in the civil proceedings that the applicants had not been personally affected by the contested statements, this time because they could not hear them directly owing to loud music and because Mr Milonov did not know them personally. The Court is not convinced by those arguments. Even if the applicants could not hear the contested statements in the moment, they still learned of them later from the video recording and became affected at that instant. Mr Milonov's lack of prior acquaintance with the applicants is irrelevant when deciding if they were directly targeted and impacted by the verbal assault. If prior acquaintance were necessary, it would produce the manifestly unreasonable result that only homophobic statements made by acquaintances could be subject to complaint. Nor is the Court convinced by the finding that Mr Milonov's statements targeted the LGBTI community as a whole rather than any specific individuals, for the reasons explained in paragraphs 63 and 73 above (see also the expert opinion in paragraph 14 above). By finding that the applicants were not affected by the contested statements, the civil courts failed to acknowledge the applicants' rights to respect for their private life and to protection from discrimination on the ground of sexual orientation, and never reached the stage of conducting a balancing exercise between the competing Convention rights.

75. The Court is also not persuaded by the civil courts' finding that the contested statements could be construed in a neutral way and that there was no reason to believe that Mr Milonov had meant to use the words he did with the offensive meanings they had in slang rather than with some other of their possible meanings (see paragraph 15 above). Taken as a whole and in context, Mr Milonov's statements were openly homophobic and particularly aggressive and hostile in tone. He called the participants in the rally, including the applicants, "perverts", "scumbags", "Aids-ridden", "paedophiles" and other offensive terms. He also made physical threats against them (see paragraphs 5 and 6 above).

76. In sum, the domestic authorities failed to comply with their positive obligation to respond adequately to the verbal assault and physical threats motivated by homophobia directed against the applicants. Failure to address such incidents can normalise hostility towards LGBTI individuals, perpetuate a culture of intolerance and discrimination and encourage further acts of a similar nature (see *Hanovs v. Latvia*, no. 40861/22, § 53, 18 July 2024).

77. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 8.

B. Article 13 of the Convention

78. Having regard to the facts of the case, the submissions of the parties and its findings under Article 14 taken in conjunction with Article 8, the Court declares the complaint under Article 13 admissible and considers that there is no need to give a separate ruling on its merits (see *Hanovs*, cited above, § 44).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION IN APPLICATIONS NOS. 226/18, 236/18 AND 2027/18

79. Article 41 of the Convention provides:

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

A. Damage

80. Mr Yevstifeyev, Mr Miniakhmetov and Mr Grachev claimed 11,000 euros (EUR) each in respect of non-pecuniary damage.

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

B. Costs and expenses

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that the Government’s failure to participate in the proceedings presents no obstacles for the examination of the case and that it has jurisdiction to deal with the applications;
3. *Declares* applications nos. 226/18, 236/18 and 2027/18 admissible and application no. 22327/22 inadmissible;
4. *Holds* that there has been a violation of Article 14 of the Convention in conjunction with Article 8 in applications nos. 226/18, 236/18 and 2027/18;

5. *Holds* that there is no need to examine the merits of the complaint under Article 13 of the Convention in applications nos. 226/18, 236/18 and 2027/18;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros) to each of the applicants in applications nos. 226/18, 236/18 and 2027/18, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President

YEVSTIFEYEV v. RUSSIA JUDGMENT

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence	Represented by
1.	226/18	Yevstifeyev v. Russia	04/12/2017	Aleksey Borisovich YEVSTIFEYEV 1991 St Petersburg	Kseniya Andreyevna MIKHAYLOVA
2.	236/18	Miniakhmetov v. Russia	04/12/2017	Ruslan Alfatovich MINIAKHMETOV 1986 St Petersburg	Kseniya Andreyevna MIKHAYLOVA
3.	2027/18	Grachev v. Russia	04/12/2017	Daniil Sergeevich GRACHEV 1993 St Petersburg	Kseniya Andreyevna MIKHAYLOVA
4.	22327/22	Petrov v. Russia	12/04/2022	Andrey Aleksandrovich PETROV 1984 Moscow	Anton Igorevich RYZHOV