Judicial harassment against LGBT+ under the 'propaganda' law in Russia

How Articles 6.21 and 6.21.2 of the Administrative Code of the Russian Federation Have Been Applied After the Complete Ban of LGBT+ "propaganda" on December 5, 2022



A Joint Study by Citizens' Watch and Sphere Foundation

St. Petersburg Human Rights non-governmental organization
«Citizens' Watch»

The Citizens' Watch is a human rights NGO operating since 1992 in St. Petersburg. We are convinced that as soon as an impartial and independent court appears in Russia, all other problems with human rights will be solved sooner or later, therefore our main priority is assistance in the formation of an independent judicial system and facilitating citizens' access to justice.

We pay special attention to the transparency and accessibility of justice, our experts take part in the development of recommendations to improve the transparency of the courts, to lower the threshold of access to justice for disadvantaged groups. Our organization also provides free legal aid to vulnerable groups and engages in human rights awareness and education.

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Sphere Foundation

Sphere Foundation is a human rights organization that was created in 2011. We provide help and support for LGBTQ+ people and work with other organizations that have similar goals.

Our mission is to contribute to the creation of an environment in which people will not experience violence or discrimination on account of their sexuality or gender identity.

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Introduction

The ban on neutral or positive mentions of LGBT+ has been forming gradually. The tightening began in Russian regions in 2006. At the federal level, "propaganda" was banned in 2013. The Constitutional Court of the Russian Federation defined "propaganda" as "activities aimed at the intentional and uncontrolled dissemination of information that can harm health, moral and spiritual development, including forming distorted perceptions of the social equivalence of traditional and non-traditional sexual relationships"[1]. Thus, the Constitutional Court distinguishes **propaganda with the intent of forming a positive image** of "non-traditional sexual relationships" and **dissemination of "neutral" information** about "non-traditional sexual relationships" to leave the possibility of working with children on this topic primarily to teachers, doctors, and psychologists"[2]. The reason for the ban on propaganda specifically among children was explained by the Constitutional Court as children "due to their age cannot critically evaluate the received information"[3]. Thus, the Constitutional Court distinguishes propaganda with the intent of forming a positive image of "non-traditional sexual relationships" and leaves the possibility of working with children on this topic primarily to teachers, doctors, and psychologists.

In 2022, the ban on "propaganda" was extended to adults, and the dissemination of information about LGBT+ among children was prohibited. This ban, together with the Supreme Court of the Russian Federation's decision on November 30, 2023, recognizing the "international public LGBT movement" as extremist, effectively constitutes a complete ban on mentioning LGBT+ in any context other than unequivocal condemnation in public and private spheres, as private correspondence or private thematic events can become grounds for prosecution under the Administrative Code of the Russian Federation.

The Administrative Code of the Russian Federation differentiates between "propaganda" among adults and children (Article 6.21 "Propaganda of non-traditional sexual relations and (or) preferences, gender change" of the Administrative Code of the Russian Federation) and the dissemination of

[1] "On the verification of the constitutionality of part 1 of Article 6.21 of the Code of Administrative Offenses of the Russian Federation in connection with the complaint of citizens N.A. Alekseev, Ya.N. Evtushenko, and D.A. Isakov", para. 3.2.

[2] *Ibid.*

[3] *Ibid.*

information among children (Article 6.21.2 "Dissemination among minors of information demonstrating non-traditional sexual relations and (or) preferences or capable of inducing minors to change gender" of the Administrative Code of the Russian Federation). These articles are the object of this study, and its subject is the normative content, interpretation, and application of such norms in the practice of Russian courts.

The aim of this report is to identify and analyze patterns in the application of Articles 6.21 and 6.21.2 of the Administrative Code of the Russian Federation by Russian courts from December 2022, when these articles were introduced in their current form[4], to March 2024, as the authors of the report were limited by the deadlines for submission to international bodies.

Our research sets the following tasks:

- To create profiles of individuals subjected to administrative liability and the bodies that draft administrative offense protocols, as well as to describe the acts for which individuals are held accountable under these articles;
- To identify, systematize, and describe the criteria and requirements for expert opinions of specialists and experts, as well as the experts themselves, used by judicial bodies to distinguish between "propaganda" and "dissemination of information", and thus, between the two offenses of the Administrative Code of the Russian Federation;
- To determine how judges use ideological concepts, particularly the notion of "traditional values," to justify their decisions, and how this concept serves as the basis of state policy in Russia for prosecuting the LGBT+ community;
- To analyze the penalties imposed under the studied articles of the Administrative Code of the Russian Federation: fines, administrative arrests, and deportation of foreign nationals.

Research Methodology

We have analyzed 64 final judicial decisions involving charges under Article 6.21 of the Administrative Code of the Russian Federation (both the old and new versions from December 5, 2022) and under Article 6.21.2 of the Administrative Code of the Russian Federation. The analysis included the

[4]Federal Law No. 479-FZ of 05.12.2022 "On Amendments to the Code of Administrative Offenses of the Russian Federation".

texts of decisions from both the first and second instances, where higher courts had considered appeals. The study included only those judicial decisions made between December 5, 2022, and March 31, 2024, and published by March 31, 2024. The essence of the charges in these judicial decisions was as follows:

- "Propaganda of non-traditional sexual relations and/or preferences, gender change among minors" (odd parts of Article 6.21 of the Administrative Code of the Russian Federation in the new version from December 5, 2022);
- "Propaganda of non-traditional sexual relations and/or preferences, gender change among minors" (even parts of Article 6.21 of the Administrative Code of the Russian Federation in the new version from December 5, 2022);
- "Dissemination among minors of information demonstrating non-traditional sexual relations and/or preferences or capable of inducing minors to change gender" (Article 6.21.2, introduced by Federal Law No. 479 from December 5, 2022).

The judicial decisions for analysis were obtained with the support of independent publications such as "OVD-Info" and "Mediazona," as well as through monitoring media and regional court websites.

The analysis was conducted based on the following criteria:

- Who drafts the administrative offense protocols;
- Who is the person being held accountable;
- What actions are leading to administrative liability under these articles;
- How courts justify their decisions:
    - Which legal norms are referenced,
    - What evidence is used,
    - How the offense is determined to be "propaganda" or "dissemination of information";
- What decisions do courts make and what punishments are imposed:
    - Grounds for overturning or reviewing decisions,
    - Amounts of imposed fines,
    - Reasons for judges imposing fines below the minimum amount,
    - Features of penalties for foreigners;
- Whether courts comply with legal requirements for timely publication of judicial decisions.

The report also provides a brief historical overview of the changes in Russian legislation leading to the adoption of Articles 6.21 and 6.21.2 of the Administrative Code of the Russian Federation in their current version.

The main conclusions in the report focus on the logic and evidence judges use in making decisions and imposing penalties. The report pays special attention to the expert opinions of experts and specialists that some judges base their decisions on, particularly whether the experts are independent.

List of Terms, Abbreviations, and Acronyms

"Center 'E'" — Directorate for Combating Extremism of the Ministry of Internal Affairs of the Russian Federation.
"Express Expert Opinion" — A term used in courts for an expert's report that does not meet the requirements for judicial expertise established by Article 26.4 "Expertise" of the Administrative Code of the Russian Federation and Federal Law of 31.05.2001 No. 73-FZ "On State Judicial Expert Activity in the Russian Federation," and accepted as evidence in the case.
Administrative Code — Administrative Code of the Russian Federation.
CIS — Commonwealth of Independent States.
Constitutional Court — Constitutional Court of the Russian Federation.
ECHR — European Convention on Human Rights.
Family Code — Family Code of the Russian Federation.
FSUE "GRCHTs" — Federal State Unitary Enterprise "Main Radio Frequency Center."
Gender — A continuously evolving social construct codifying expected behaviors, social, and cultural norms applied to define and characterize the roles and forms of self-expression of individuals in society, often reduced to concepts of femininity and masculinity.
Gender Marker — In our study, indicated in the "sex" field in documents.
Court-appointed Expert Opinion — A procedural action provided by the legislation of the Russian Federation on legal proceedings, including conducting research and providing an expert opinion on issues requiring special knowledge in science, technology, art, or craft.
Law on Access to Court Information — A law regulating relationships related to ensuring user access to information about court activities (Federal Law of 22.12.2008 No. 262-FZ "On Ensuring Access to Information on Court Activities in the Russian Federation").
Law on Information — A law regulating relationships arising in the sphere of information, information technologies, and information protection (Federal Law of 27.07.2006 No. 149-FZ "On Information, Information Technologies, and Information Protection").
Law on Judicial Expertise — A law defining the legal basis, principles of organization, and main directions of state judicial expert activity in the Russian Federation (Federal Law of 31.05.2001 No. 73-FZ "On State Judicial Expert Activity in the Russian Federation").
LGBT+ — Lesbians, gays, bisexuals, and trans* persons. We use this formulation as it is established in society and understood by most Russian-speaking individuals. However, it is not perfect and does not include all members of the queer community, so we use "+".

Ministry of Internal Affairs — Ministry of Internal Affairs of the Russian Federation.
ROC – Russian Orthodox Church.
Roskomnadzor — Federal Service for Supervision of Communications, Information Technology, and Mass Media.
Supreme Court — Supreme Court of the Russian Federation.
Trans* Person — A person whose gender (or gender identity) does not match the sex assigned at birth. We use "*" because "transgender" is an umbrella term that includes not only people who have undergone "gender transition."
UDHR — Universal Declaration of Human Rights.

From the Author

The official terms "propaganda of non-traditional sexual relations and/or preferences, gender change" and "dissemination among minors of information demonstrating non-traditional sexual relations and/or preferences or capable of inducing minors to change gender," used in this report, do not imply endorsement by the authors. For brevity, these official terms are replaced in the report with LGBT+ "propaganda" and "dissemination of information" about LGBT+. Since it is unclear what the legislator specifically means by "non-traditional sexual relations and/or preferences," the replacements adopted in the report do not adequately reflect the official concepts.

Ban on Information about LGBT+: Legislation and Ideological Justification

Ideology of "Traditional Values"

When the USSR ceased to exist, Soviet ideology lost its central role in the state, although its main actor, the Communist Party of the Soviet Union, has continued its activities.[5] The Russian Federation, at least in words and in the 1993 Constitution, declared a commitment to human rights and the rule of law. In 1998, Russia ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, human rights values took an important place in official discourse and public debate.

The Russian Orthodox Church (ROC), which did not cease to exist in the USSR and was forced to compromise and cooperate with Soviet officials[6], faced new challenges, one of which was the ideology of human rights competing, in the opinion of the ROC, with religious ideology[7]. At the 2000 Bishops' Council, the "Bases of the Social Concept of the Russian Orthodox Church" were adopted, criticizing human rights as not considering "the fallen nature of man" and calling for disobedience to laws that hinder "eternal salvation"[8]. In 2008, the "Fundamentals of the Teaching of the Russian Orthodox Church on Dignity, Freedom, and Human Rights"[9] was formulated, where the ROC makes a direct reference to human rights, providing an interpretation of the concept of human dignity. In the ROC's

[5] Resolution of the Constitutional Court of the Russian Federation of 30.11.1992 No. 9-P "On the Case Concerning the Verification of the Constitutionality of the Presidential Decrees of the Russian Federation of August 23, 1991, No. 79 'On the Suspension of Activities of the Communist Party of the RSFSR,' August 25, 1991, No. 90 'On the Property of the CPSU and the Communist Party of the RSFSR,' and November 6, 1991, No. 169 'On the Activities of the CPSU and the Communist Party of the RSFSR,' as well as the Verification of the Constitutionality of the CPSU and the Communist Party of the RSFSR".

[6] Sonntagszeitung and Le Matin Dimanche: Patriarch Kirill in the 1970s engaged in espionage for the KGB under the pseudonym "Mikhailov," Novaya Gazeta.Europe, 02/05/2023.https://novayagazeta.eu/articles/2023/02/05/sonntagszeitung-i-le-matin-dimanche-patriarkh-kirill-v-1970-kh-v-zheneve-zanimalsia-shpionazhem-dlia-kgb-pod-psevdonimom-mikhailov-news

[7] See, Kristina Shtekl, "The Approach of the Russian Orthodox Church to the Issue of Human Rights," State, Religion, Church No. 3, 2014.

[8] "The Bases of the Social Concept of the Russian Orthodox Church," 2000, IV. 7.http://www.patriarchia.ru/db/text/419128.html

[9]The Foundations of the Doctrine of the Russian Orthodox Church on Dignity, Freedom, and Human Rights," 2008, I, http://www.patriarchia.ru/db/text/428616.html

interpretation, human dignity is directly linked to morality; a person has freedom of choice but only within the framework of moral behavior, which the ROC does not approve of and calls for harmonizing human rights with "moral norms, with a moral principle"[10].

According to Kristina Stoeckl, a researcher of the ROC, such language indicates that the ROC misinterprets Article 29 of the Universal Declaration of Human Rights (UDHR):

> *1. Everyone has duties to the community in which alone the free and full development of his personality is possible.*
> *2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.*

Article 29 of the UDHR speaks of a person's responsibility to society and the possibility of limiting their rights and freedoms to respect public morality. The ROC does not consider the principle of proportional and necessary limitation of human rights, as well as the principles of equality and non-discrimination.

Kristina Stoeckl also notes that this rhetoric is not an invention of the ROC but borrowed from the rhetoric of American conservatives[11], who actively operate worldwide, interacting with conservative movements in other countries and promoting an agenda of banning abortion rights, LGBT+ rights under the slogans of protecting family and children, and traditional values[12].

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[10] *Ibid.,* II, III.2, III.3.

[11] Kristina Stoeckl, "Traditional Values, Family, Homeschooling: The Role of Russia and the Russian Orthodox Church in Transnational Moral Conservative Networks and Their Efforts at Reshaping Human Rights," International Journal of Constitutional Law, Volume 21, Issue 1 (January 2023): 232., https://doi.org/10.1093/icon/moad026

[12] For example, World Congress of Families (WCF) / International Organization for the Family (IOF), https://www.loc.gov/item/lcwaN0017307/

This rhetoric of traditional values was then transferred to Russian legislation. The Presidential Decree on traditional values emphasizes the role of the ROC in their formation.

Judicial practice reflects these trends. A Russian judge justified the need to ban a children's book about a pigeon as follows: "The dissemination of beliefs and preferences concerning sexual orientation and specific forms of sexual relations should not infringe on the dignity of others and undermine public morality as understood in Russian society, otherwise, it would contradict the foundations of the legal order adopted in the Russian Federation and enshrined in the relevant provisions of the Constitution of the Russian Federation, federal laws, particularly the Family Code of the Russian Federation" (Decision of the Moscow City Court in case No. 7-2274/2024 from 09.02.2024).

According to another court: "The Constitution of the Russian Federation does not provide grounds for recognizing the unconditional legality of public activities aimed at discrediting or inducing the denial of constitutionally significant moral values, predetermined by the historical, cultural, and other traditions of the multinational people of the Russian Federation. This approach correlates with the provisions of the UDHR, which stipulate, based on the recognition of a person's duties to society in which the free and full development of their personality is possible, the permissibility of restrictions on the exercise of human rights and freedoms by law, including to meet the just requirements of morality (paragraphs 1 and 2 of Article 29), as well as the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10) and the International Covenant on Civil and Political Rights (Article 19), according to which the right to free expression of opinion entails duties and responsibilities and may be subject to certain formalities, conditions, restrictions, or penalties prescribed by law and necessary in a democratic society, particularly for the protection of health and morals, the reputation and rights of others"[13].

[13] Decision of the Elizovsky District Court of Kamchatka Krai, Case No. 5-72/2023, dated April 6, 2023.

Legislative Measures to Restrict LGBT+ Information

The first law banning LGBT+ "propaganda" among minors in Russia was adopted in the Ryazan region back in 2006[14]. This example was followed by other regions, such as St. Petersburg[15].

In 2013, a similar law was adopted at the federal level[16]. Federal Law No. 135-FZ[17] supplemented the Administrative Offences Code of the Russian Federation (Administrative Code) with Article 6.21, establishing liability for the dissemination of information about "non-traditional sexual relationships" among minors.

In 2014, the Constitutional Court of the Russian Federation (Constitutional Court) issued a ruling on the constitutionality of Law No. 135-FZ[18], explaining that "propaganda of non-traditional sexual relationships" represents "activities aimed at the deliberate and uncontrolled **dissemination** of information capable of harming health, moral and spiritual development, including forming distorted perceptions of the social equivalence of traditional and non-traditional sexual relationships, among minors who, due to their age, cannot critically evaluate the received information." The ban on "propaganda" does not exclude the presentation of relevant information in a neutral (educational, artistic, historical) context. Such information, if devoid of propaganda features, i.e., not aimed at forming preferences associated with the choice of non-traditional forms of sexual identity and ensuring an individualized approach considering the psychological and physiological development of children in different age groups, the nature of

[14] Ryazan Region Law No. 41-OZ of April 3, 2006, "On the Protection of Morality and Health of Children in Ryazan Region," Article 4.

[15] St. Petersburg bans the propaganda of homosexuality.. Deutsche Welle. https://www.dw.com/ru/санкт-петербург-запрещает-пропаганду-гомосексуализма/a-15775630

[16] Putin signed a law banning gay propaganda among children. RIA Novosti. https://ria.ru/20130630/946660179.html

[17] Federal Law No. 135-FZ of June 29, 2013 "On Amendments to Article 5 of the Federal Law 'On the Protection of Children from Information Harmful to Their Health and Development' and Certain Legislative Acts of the Russian Federation to Protect Children from Information Promoting the Denial of Traditional Family Values".

[18] Ruling of the Constitutional Court of the Russian Federation No. 24-P of September 23, 2014 "On the Case of Verifying the Constitutionality of Part 1 of Article 6.21 of the Code of the Russian Federation on Administrative Offenses in Connection with the Complaints of Citizens N.A. Alekseev, Y.N. Yevtushenko, and D.A. Isakov."

the specific issue covered, can be carried out with the involvement of specialists — educators, medical professionals, psychologists[19].

In November 2022, the president approved the "Foundations of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values,"[20] which states that "propaganda of non-traditional sexual relationships" is alien to the Russian people and destructive to Russian society's system of ideas and values, and undermines the traditional family (section 14).

A significant tightening occurred in December 2022 when Federal Law No. 479-FZ[21] was adopted. This law amended Article 6.21 of the Administrative Code, banning "propaganda of non-traditional relationships" among adults. In the new version of Article 6.21 of the Administrative Code, even-numbered parts prohibit "propaganda" among children, while odd-numbered parts do so among adults.

Furthermore, Law No. 479 introduced a new Article 6.21.2 to the Administrative Code, prohibiting the "dissemination among minors of information demonstrating non-traditional sexual relationships and/or preferences or capable of inducing minors to change gender." Roskomnadzor clarified that audiovisual services must consider the "presence (absence) of scenes depicting LGBT when choosing age ratings, independently make necessary changes to media libraries, and identify and remove all materials with LGBT propaganda from their resources"[22].

In February 2023, Roskomnadzor approved the "Criteria for Evaluating Information Propagating Non-Traditional Sexual Relationships and/or Preferences, Pedophilia, Gender Change," which include, for example, "information aimed at convincing the attractiveness of non-traditional sexual relationships, preferences, and attitudes, including forming a positive image of persons involved in non-traditional sexual relationships due to their non-traditional sexual preferences, attitudes or expressing positive

[19] Decision of the Elizovsky District Court of Kamchatka Krai, Case No. 5-72/2023, dated April 6, 2023.

[20] Decree of the President of the Russian Federation No. 809 of November 9, 2022, "On Approving the Foundations of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values".

[21] Federal Law No. 479-FZ of December 5, 2022, "On Amendments to the Code of the Russian Federation on Administrative Offenses".

[22] Roskomnadzor Urges Platforms to Self-Label Content Featuring LGBT Demonstrations. TASS. https://tass.ru/obschestvo/18220395

evaluation or approval of non-traditional sexual relationships, preferences, and attitudes"[23].

On November 30, 2023, following a lawsuit by the Ministry of Justice, the Supreme Court of the Russian Federation recognized the "international LGBT public movement" as an extremist organization and banned its activities in Russia[24].

An overview of the legislative changes shows a gradual ban on neutral or positive mentions of LGBT+ publicly. It all began with the prohibition of "propaganda," a term officially defined by the Constitutional Court as "activities aimed at the deliberate and uncontrolled dissemination of information capable of harming health, moral and spiritual development, including forming distorted perceptions of the social equivalence of traditional and non-traditional sexual relationships."[25] In other words, the Constitutional Court considers "propaganda" as the intentional formation of a positive attitude towards LGBT+. Subsequently, the ban on "propaganda" was extended to adults, and the dissemination of information about LGBT+ among children was prohibited. This ban, coupled with the Supreme Court's decision to recognize the "international LGBT public movement" as an extremist organization, effectively constitutes a complete ban on mentioning LGBT+ in any context in the public sphere other than outright condemnation. Although the Administrative Code differentiates between "propaganda" among minors and the dissemination of information about LGBT+ among children, this distinction is practically nullified by the Supreme Court's decision recognizing the "international LGBT public movement" as an extremist organization.

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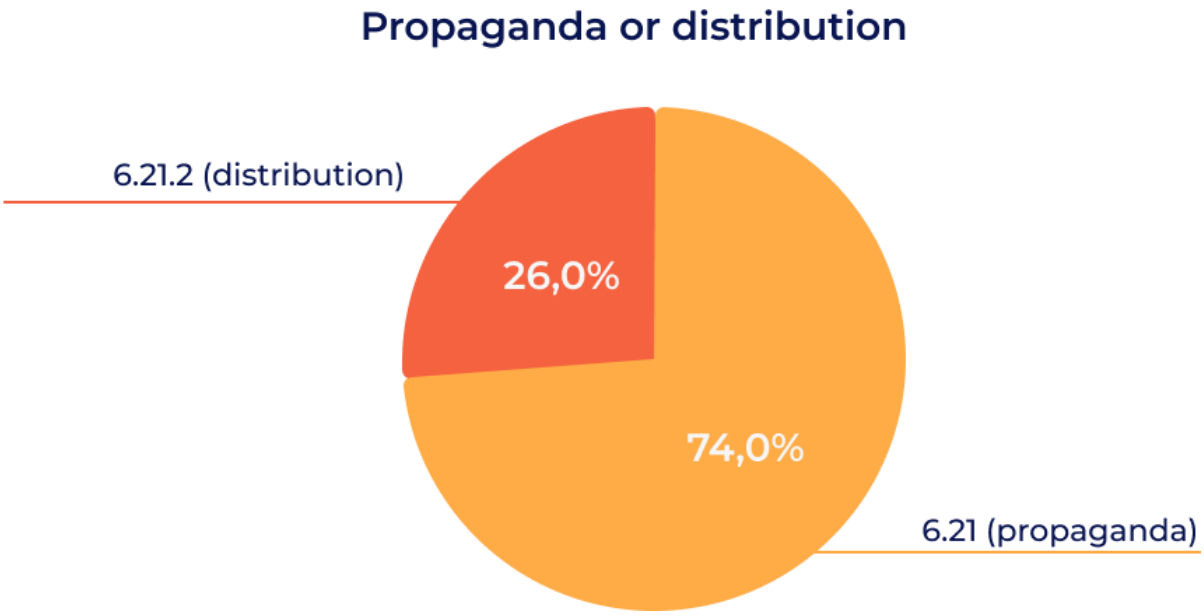
[23] Order of Roskomnadzor No. 25 (as amended on November 8, 2023) of February 27, 2023, "On Approving the Criteria for Evaluating Materials and/or Information Necessary for the Federal Service for Supervision of Communications, Information Technology, and Mass Communications to Make Decisions Regarding the Inclusion of Domain Names and/or Web Page URLs in the Unified Automated Information System 'Unified Register of Domain Names, Web Page URLs, and Network Addresses Containing Information Prohibited for Distribution in the Russian Federation'" (Registered with the Ministry of Justice of Russia on April 17, 2023, No. 73053).

[24] The Supreme Court Recognized the LGBT Movement as Extremist. What This Means. RBC. https://www.rbc.ru/politics/30/11/2023/6568458b9a79471364217d98

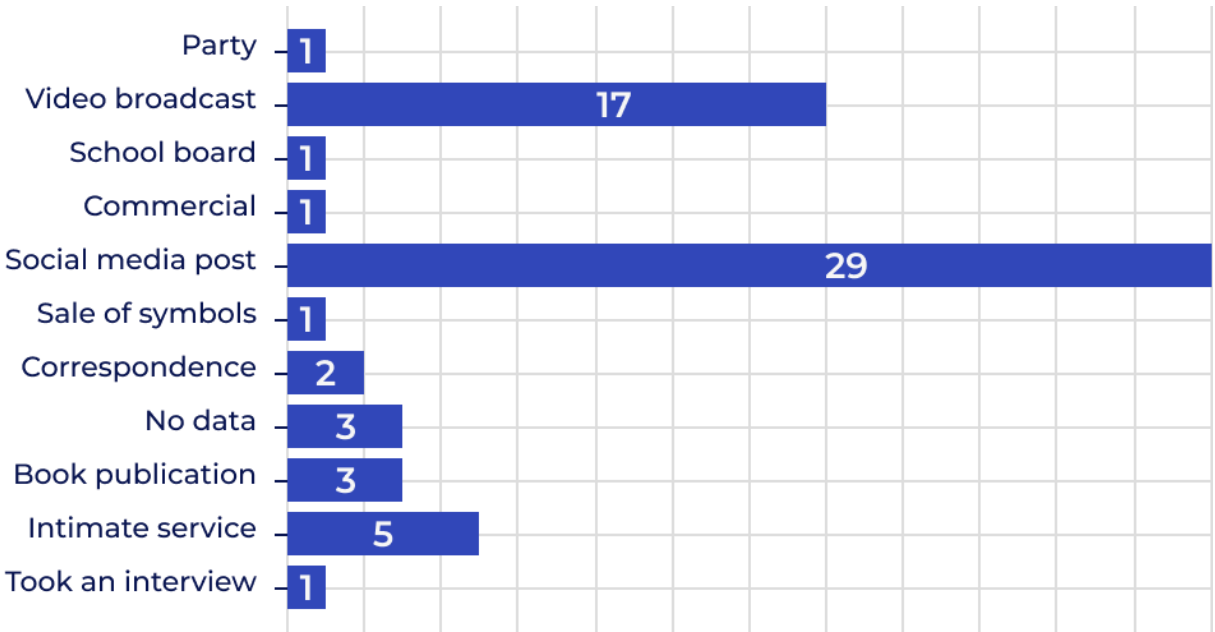
[25] Constitutional Court of the Russian Federation Decision of September 23, 2014 No. 24-P "On the case of reviewing the constitutionality of Part 1 of Article 6.21 of the Code of Administrative Offenses of the Russian Federation in connection with the complaints of citizens N.A. Alekseev, Ya.N. Yevtushenko, and D.A. Isakov" paragraph 3.2.

Subject of the "Offense" and Profile of the Prosecutor

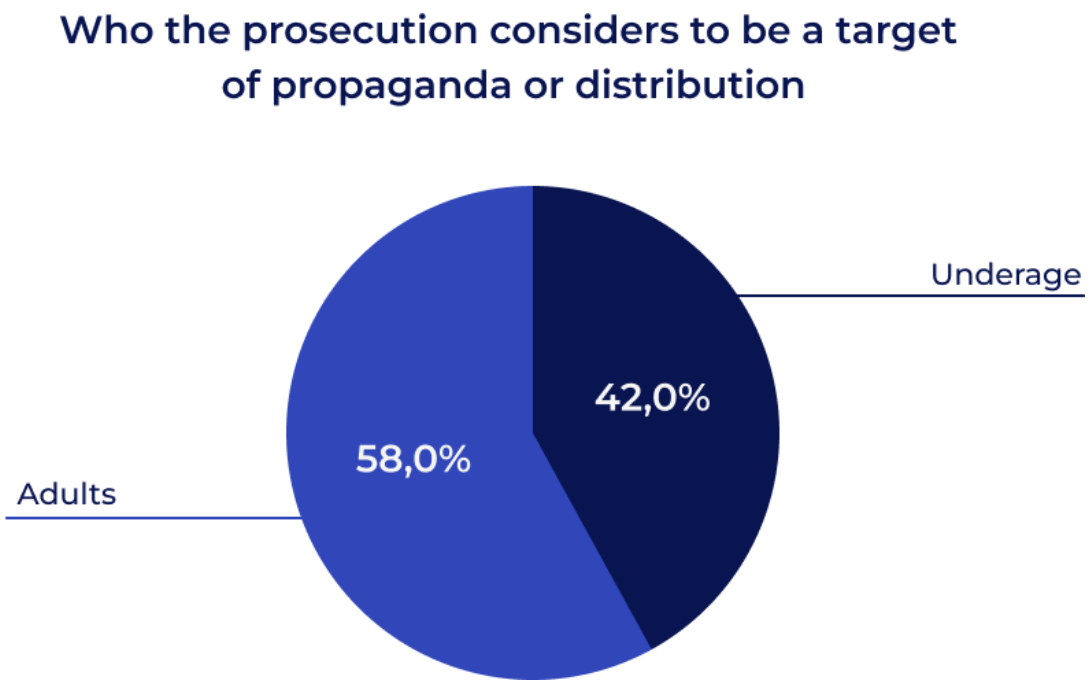
A total of 47 court decisions were made under parts 1-4 of Article 6.21 of the Administrative Code and 17 decisions under parts 1 and 2 of Article 6.21.2.



The majority of cases are related to online and social media activity: posting (17), advertising intimate services (5), or private correspondence (2). The second largest group of cases involves the prosecution of streaming services and TV channels for showing films or videos (17).



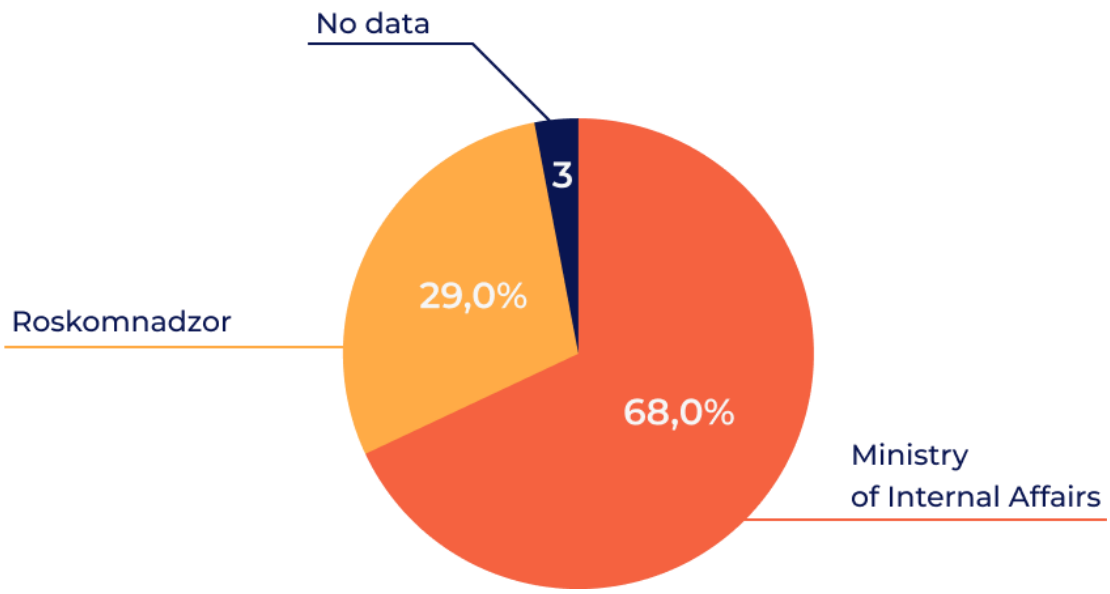
More than half of the cases are related to "propaganda" among adults.



Prosecutors in such cases are Roskomnadzor and divisions of the Ministry of Internal Affairs (Ministry of Internal Affairs), including the Centre for Combating Extremism ("Center 'E'") as well as territorial divisions of the Ministry of Internal Affairs, the criminal investigation department, the juvenile affairs department, the administrative legislation enforcement department, the economic security and anti-corruption department, the department for combating the illegal use of information and communication technologies, and district police officers.

Roskomnadzor prosecutes streaming services and TV channels, while the Ministry of Internal Affairs prosecutes all others. In 8 cases, the proceedings were initiated as a result of internet monitoring conducted by the Ministry of Internal Affairs, meaning Ministry of Internal Affairs officers specifically browse social media in search of LGBT+ photo or video content. Information posted on social media can be classified under the article on the dissemination of information among minors (Article 6.21.2), as the social networks from our research — VK and YouTube — do not allow content access to be age-restricted.

Who filed the administrative offence report?



The Ministry of Internal Affairs initiates cases based on denunciations and the results of its monitoring of social networks. Based on denunciations, the Ministry of Internal Affairs opened 7 cases:

- 2 reports from the "League of Safe Internet" (against individuals for posts on Telegram)[26].
- 1 report from the chairpersons of the State Duma Committee on Information Policy, Information Technology, and Communications (against the publishing house "EKSMO" regarding a book in a library)[27].
- 1 report from the chairman of the All-Russian public movement "Veterans of Russia" (against Yuri Dud for an interview he conducted)[28].

[26] Decision of the Tver District Court of Moscow in case 05-0920/2023 dated August 14, 2023; Decision of the Tver District Court of Moscow in case 05-1170/2023 dated October 16, 2023.

[27] Decision of the Moscow City Court in case 7-2274/2024 dated February 9, 2024.

[28] Decision of the Lefortovo District Court of Moscow in case 12-1327/2022 dated August 25, 2022.

The authors of the remaining 3 reports (against human rights activist Yan Dvorkin[29], LGBT+ activist Xu Haoyang[30], and an individual posting an ad for intimate services[31]) are not mentioned in the court decisions.

8 cases were initiated based on the Ministry of Internal Affairs's monitoring of social networks. Text posts or photographs can serve as the basis for accusations from social network materials. Each photograph can result in a new case. In one case related to photographs stored in the "Saved Photos" folder on VKontakte, the defense argued that if multiple violations under the same article of Administrative Code are identified during one control event, they should be treated as one case with one administrative penalty (part 5 of Article 4.4 of Administrative Code)[32]. However, the court disagreed:

> *"From the report on the operational-search measure dated 19.09.2023, it follows that signs of an administrative offense in the actions of D.D. Rashevskaya were identified not during state control (supervision), but during the operational-search measure 'examination of objects and documents,' which is why the justice of the peace rightly did not apply the provisions of part 5 of Article 4.4 of Administrative Code of the Russian Federation"* (Slavyansky District Court of Krasnodar Territory in case 12-4/2024 dated 29.01.2024).

Court decisions often do not specify which social network contained the prohibited information. However, from available information, VKontakte is the most popular network, with fewer cases involving Telegram, Instagram (owned by Meta, which is recognized as an extremist organization and banned in Russia), and YouTube.

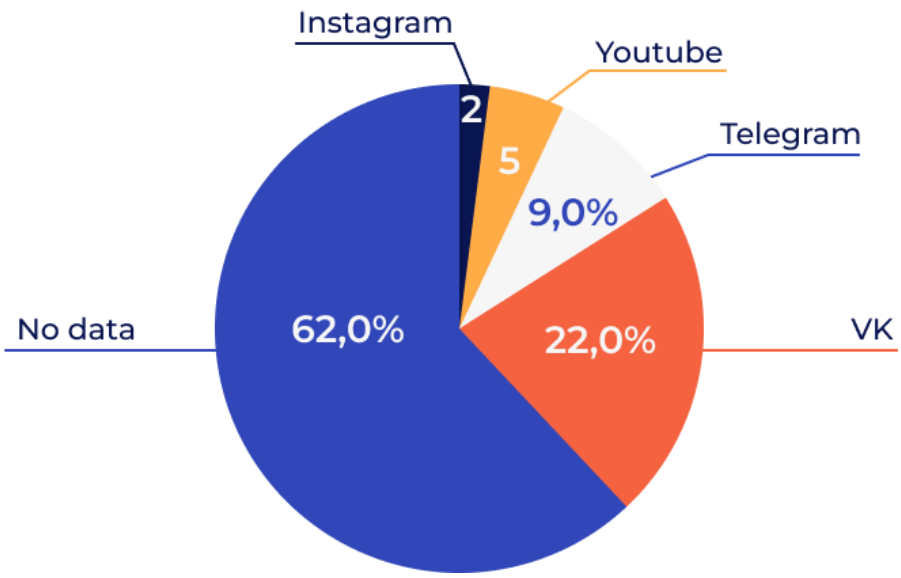
[29] Ruling of the Ostankino District Court of Moscow in case 05-0566/2023 dated May 4, 2023.

[30] Ruling of the Savelovsky District Court of Moscow in case 05-0210/2023 dated February 3, 2020.

[31] Ruling of the Savelovsky District Court of Moscow in case 05-0210/2023 dated February 3, 2023.

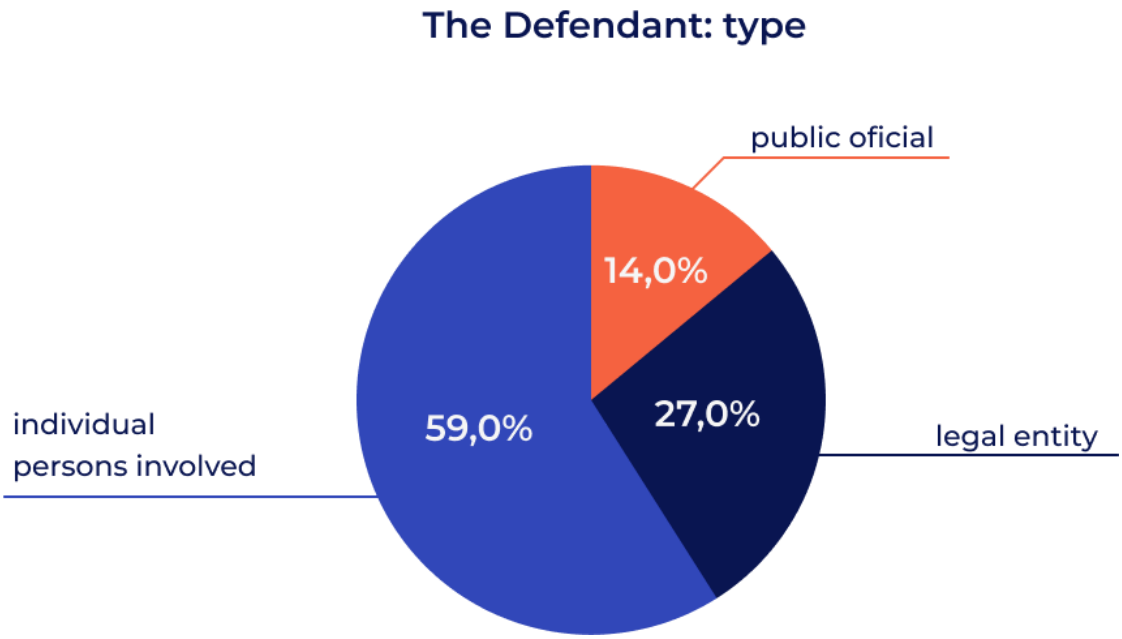
[32] Decision of the Slavyansk City Court of the Krasnodar Territory in case 12-4/2024 dated January 29, 2024.

Where it was posted?



Profile of the Defendant

According to our research, most of the defendants are individuals. Less frequently, organizations and their officials are held liable. Organizations are usually audiovisual services, home theater companies, etc.



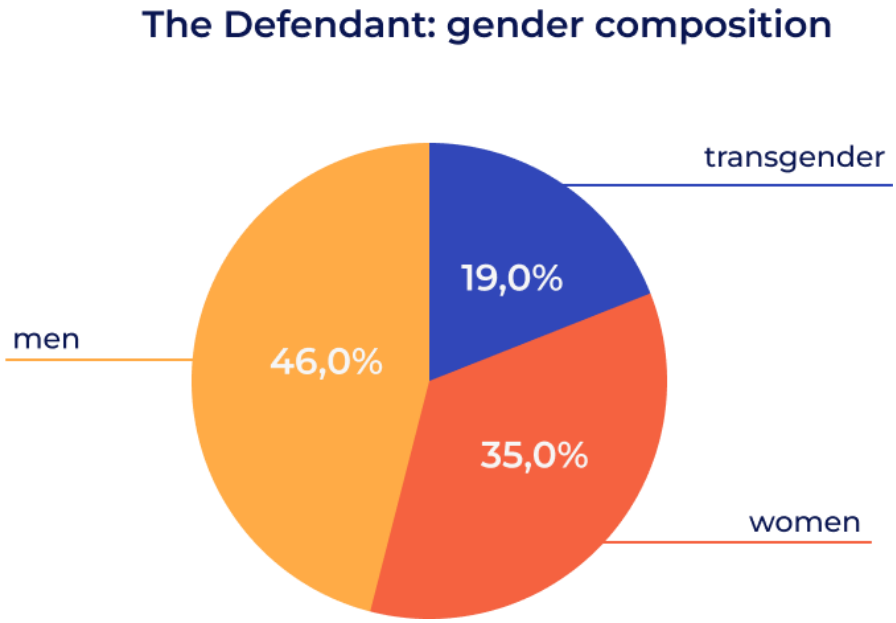
Most of the accused have a male gender marker, though there are also women and possibly trans* persons, who are less frequently accused of 'propaganda'. It is not always possible to determine the gender of the defendant from court decisions. For example, Yan Dvorkin is known to be a trans* person, therefore, in the case such information is underlined[33]. In some decisions, the text of intimate service ads mentions that the person is transgender[34]. In one decision, an ad is described: "...in the profile, they post photos in a dress and wig with long hair, writing about themselves in the feminine gender"[35]. In such cases, these individuals were classified as trans*

[33] Ruling of the Ostankino District Court of Moscow in case 05-0566/2023 dated May 4, 2023.

[34] Ruling of the Savelovsky District Court of Moscow in case 05-0103/2023 dated January 18, 2023; Ruling of the Savelovsky District Court of Moscow in case 05-0082/2023 dated January 18, 2023; Ruling of the Savelovsky District Court of Moscow in case 05-0210/2023 dated February 03, 2020; Decision on the complaint against the decision in the case of an administrative offense of the Sovetsky District Court of the Krasnodar Territory in case 12-98/2024 dated 03/12/2024; Decision on the complaint against the decision in the case of an administrative offense of the Leninsky District Court of the Krasnodar Territory in case 12-194/2024 dated 01.09.2024.

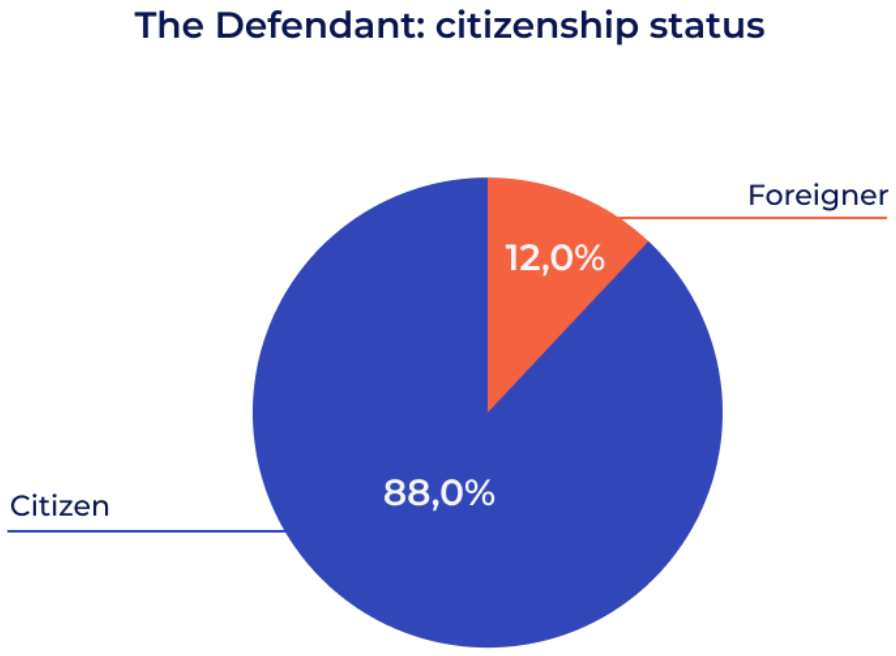
[35] Decision of the Timmiryazevsky District Court of Moscow in case 05-0141/2023 dated January 25, 2023.

persons. Totally there are 7 people, who were mostly prosecuted for posting intimate service ads online.



Most of the defendants are Russian citizens. There were only 7 cases involving foreigners according to our research:

- 4 foreigners were prosecuted for posting intimate service ads online.
- 1 was prosecuted for correspondence.
- 2 were prosecuted for social media posts.



Concept of "Propaganda" and "Dissemination of information"

During the "first wave" of the LGBT+ ban, when the ban concerned only "propaganda" and only among minors (2006-2022), courts defined "propaganda" in accordance with the position of the Constitutional Court of the Russian Federation: *"the intentional dissemination of information of a certain content aimed at forming non-traditional sexual attitudes, the attractiveness of non-traditional sexual relationships among minors"*[36]. Such a ban was justified by the vulnerability of children, who are unable to critically perceive information and are therefore susceptible to "propaganda" of foreign, Western values[37]. For example, in a decision in case No. 78-app2-16 dated October 3, 2012, the Supreme Court of the Russian Federation referred to Article 3 of the CIS Model Law "On Protecting Children from Information Harmful to Their Health and Development"[38], which defines "propaganda" as *"the activity of individuals and (or) legal entities in disseminating information aimed at forming in the minds of children attitudes and (or) behavior patterns, or intended to induce or inducing persons to whom it is addressed to perform certain actions or refrain from performing them"*[39].

The Supreme Court in 2012 explained that the St. Petersburg law does not prohibit any dissemination of information about LGBT+ in principle: "the prohibition of propaganda of sodomy, lesbianism, bisexuality, transgenderism does not impede the realization of the right to receive and disseminate information of a general, neutral content about non-traditional sexual relationships, to hold public events in the manner prescribed by law, including open public debates about the social status of sexual minorities, without imposing their life attitudes on minors as persons who, due to their age, cannot independently critically evaluate such information"[40].

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[36] Ruling of the Central District Court of Simferopol, Republic of Crimea, in case 5-444/2023, no date provided.

[37] Ruling of the Constitutional Court of the Russian Federation No. 24-P of September 23, 2014 "On the Case of the Constitutionality of Part 1 of Article 6.21 of the Code of the Russian Federation on Administrative Offenses in Connection with the Complaints of Citizens N.A. Alexeev, Y.N. Yevtushenko, and D.A. Isakov".

[38] The law was adopted at the 33rd plenary session of the Interparliamentary Assembly of the CIS member states by Resolution No. 33-15 dated December 3, 2009.

[39] Definition of the Supreme Court of the Russian Federation in Case No. 78-APP2-16 dated October 3, 2012.

[40] Determination of the Supreme Court of the Russian Federation in Case No. 78-APP2-16 dated October 3, 2012.

This approach was used in 2014 by the Constitutional Court[41], which was considering not the legality of a regional ban on "propaganda" as the Supreme Court did, but the federal law prohibiting "propaganda." The Constitutional Court defined "propaganda" as *"the activity of targeted and uncontrolled dissemination of information that can harm health, moral, and spiritual development, including forming distorted views on the social equivalence of traditional and non-traditional sexual relationships"*[42]. The Constitutional Court does not exclude the legality of presenting such information in a neutral (educational, artistic, historical) context.[43] The Constitutional Court does not exclude the legality of providing relevant information in a neutral (educational, artistic, historical) context[44]. The Constitutional Court emphasized that the prohibition does not apply to *"informing if it lacks propaganda elements, i.e., it is not aimed at forming preferences related to the choice of non-traditional forms of sexual identity, and ensures an individualized approach that takes into account the peculiarities of the mental and physiological development of children in a particular age group, the nature of the specific issue being addressed, and can be carried out with the involvement of specialists — educators, medical professionals, psychologists"*[45].

After the legislative changes in 2022 (expanding "propaganda" to adults and adding a ban on the dissemination of information among children), courts continue to refer to the 2014 Constitutional Court's ruling and its definition of "propaganda," although adults are less susceptible than children and do not have the same "vulnerability." This means that the definition of "propaganda" needs clarification. Moreover, the Constitutional Court's explanations have essentially lost relevance, as both targeted "propaganda" and neutral information about LGBT+ are now outlawed.

[41] Ruling of the Constitutional Court of the Russian Federation dated September 23, 2014, No. 24-P "On the case of reviewing the constitutionality of Part 1 of Article 6.21 of the Code of Administrative Offenses of the Russian Federation in connection with the complaint of citizens N.A. Alekseev, Ya.N. Yevtushenko, and D.A. Isakov."

[42] *Ibid.*

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

> *"Non-traditional sexual relationships in the feature film 'Game of Keys' are not shown episodically; the theme of same-sex relationships is presented as one of the possible and equally likely ways out of a family crisis, and non-traditional sexual relationships are romanticized"* (Ruling of the Moscow District Court in case 5-1242/2023 dated 18.08.2023).

Meanwhile, the lower courts continue to emphasize the distinction between prohibited "propaganda" and permissible information dissemination among adults. For instance, the Central District Court of the Republic of Crimea[46] in its decision in case 5-444/2023 stated that *"the ban on the propaganda of non-traditional sexual relationships does not impede the right to receive and disseminate general, neutral information about non-traditional sexual relationships, to hold public events as provided by law, including open public debates on the social status of sexual minorities, without imposing their life attitudes on an indefinite circle of people or attempts to form a distorted view of the social equivalence of traditional and non-traditional relationships"*[47].

In contrast to "propaganda," Russian legislation contains **a definition of "dissemination of information".** Clause 9, Article 2 of Federal Law No. 149-FZ "On Information, Information Technologies, and Information Protection" dated 27.07.2006 understands "dissemination" as "actions aimed at receiving information by an indefinite circle of people or transmitting information to an indefinite circle of people." **Thus, the difference is that "propaganda" (with the intent to create a positive image) is prohibited among both adults and children, while even neutral informing on LGBT+ is prohibited among children.** Any mention of LGBT+ in public and even private spaces, such as correspondence in social networks, can lead to liability either under Article 6.21 ("propaganda" among adults) or under Article 6.21.2 of the Administrative Code (dissemination among children).

[46] The UN General Assembly determined the status of Crimea as a temporary occupation and condemned it, not recognizing the annexation of the territory of Crimea and the city of Sevastopol (Resolution GA/11493, March 27, 2014). In practice, Crimea and Sevastopol are controlled by Russia, Russian legislation is applied in these territories, and thus the Russian Federation is responsible for upholding human rights. Therefore, we have included in our report cases decided by the courts of Crimea and Sevastopol.

[47] Decision of the Central District Court of the Republic of Crimea in case 5-444/2023 dated undetermined.

Neutral publications on the internet and social networks are completely banned, as it is impossible to control the age of the content consumer in these public spaces.

How Courts Determine Guilt

a) Formal Elements of the Offense: No Actual Harm, Victims, or Other Consequences Required

Firstly, it is important to note that both offenses under Articles 6.21 and 6.21.2 of the Administrative Code are formal and do not require the establishment of any real consequences.

> *"The subjective side of the formal composition of such an offense as propaganda of non-traditional sexual relationships among minors cannot cover its consequences and is only about the awareness of the purpose of this unlawful action"* (Ruling of the Central District Court of the Republic of Crimea in case 5-444/2023, undated).

> *"To the question of the defender on how many minors watched these films, [the court] explained that in this case, it does not matter, as the offense is formal..."* (Decision of the Zamoskvoretsky District Court of Moscow in case 12-1500/2023 dated 07.09.2023).

Courts justify the lack of need to consider consequences by stating that the act itself poses a serious threat to public relations. For example, in considering an accusation under Part 3 of Article 6.21 of the Administrative Code, the Moscow District Court of Saint Petersburg stated: "the significant threat to protected public relations is not in the occurrence of any negative consequences of the offense, but in the person's [audiovisual service's]

disregard for the requirements of administrative law and failure to fulfill its duties in the field of public morality"[48].

b) Lack of Justification in Court Decisions: The Act Speaks for Itself

In the case of five cases involving ads for intimate services, the courts did not explain what they saw as "propaganda." Judges only needed to establish the fact of posting an ad stating that intimate services are provided by a trans* person[49]. All five decisions on intimate ads were made against trans* persons.

Two decisions of the Savelovsky District Court of Moscow were made on the same day, involving similar circumstances: in both cases, the defendants were foreigners. These decisions are almost identical, containing nothing about the guilt of the defendant: whether they admitted it, whether the court established guilt, and no explanations from the defendant. These circumstances may indicate that these decisions were made by the court without a hearing[50]. Since the defendants were foreigners, a decision was made to deport them. Accordingly, the severity of the punishment is disproportionately higher than for a Russian citizen. At the same time, the law does not provide for the possibility of making a decision on administrative expulsion or arrest in an extrajudicial manner (but this may change, see below "Expulsion of Foreigners").

> *"The judge of the higher court agrees with the conclusions of the justice of the peace that the image in the examined photograph of two men kissing on the lips indicates the propaganda of non-traditional sexual relationships and preferences"* (Ruling of the Slavyansky City Court of Krasnodar Territory in case 12.11/2024 dated 13.02.2024).

[48] Ruling of the Moskovsky District Court of St. Petersburg in case 5-1242/2023 dated March 18, 2023.

[49] Ruling of the Savelovsky District Court of Moscow in case 5-103/23 dated January 18, 2023.

[50] On how deportation hearings are conducted in Russia, see: Review of Judicial Decisions Statistics, Civil Assistance, 2023, https://refugee.ru/dokladyi/stats-vydvorenie/

"The justice of the peace correctly established that the information posted on the website 'Intim 23' clearly promotes non-traditional sexual relationships, access to the site is free, the specified Internet resource is accessible to an indefinite circle of people, anyone, including minors, can familiarize themselves with the content. The textual information combined with images is clearly and unequivocally aimed at popularizing and promoting non-traditional sexual relationships, including among minors, and may arouse interest in children and adolescents in non-traditional forms of sexual behavior" (Ruling of the Leninsky District Court of Krasnodar Territory in case 12-194/2024 dated 09.01.2024).

c) "Propaganda" or "Dissemination"?

The definition "propaganda" is not defined in the law. As noted above, the Constitutional Court defined "propaganda" as "activity aimed at the purposeful and uncontrolled dissemination of information capable of harming health, moral, and spiritual development, including forming distorted perceptions of the social equivalence of traditional and non-traditional sexual relationships."[51] The Constitutional Court emphasized that "propaganda" should be distinguished from neutral informing.

One of the defense strategies in such cases was to claim **the uncertainty of the term "propaganda."** The Supreme Court rejected this argument, referring to other examples of the use of this term in Russian legislation, for example, Article 6.13 of the Administrative Code, which provides for liability for the propaganda of narcotic drugs, as well as Article 20.3 of the Administrative Code, which provides for liability for the propaganda of Nazi paraphernalia and symbols. It is unclear how, according to the Supreme Court, reference to these articles should clarify the term "propaganda," as they also do not contain a definition of this term.

[51] Ruling of the Constitutional Court of the Russian Federation dated September 23, 2014, No. 24-P.

In the practice of lower courts, there are assertions that the term "propaganda" has a generally recognized meaning and does not require any additional explanation. For example, in the decision of the Moscow District Court of Saint Petersburg in case 5-1242/2023 dated August 18, 2023, the position of a Roskomnadzor official is cited, who, when bringing an audiovisual service to responsibility, relied "on the general understanding of the term propaganda" and recognized "propaganda" in an LGBT+ film where "there is a direct indication of the possibility of entering into homosexual relationships as one of the options for resolving a family crisis"[52]. The court agreed with Roskomnadzor's position, stating that "contrary to the arguments of the defense, the absence in the legislation of the Russian Federation of the term 'propaganda of non-traditional sexual relationships and/or preferences' does not indicate the impossibility of establishing the presence of such information in the material, as the term propaganda has a settled and generally accepted meaning, which is applicable, including to the sphere of non-traditional sexual relationships and/or preferences"[53].

Most cases of prosecuting audiovisual services are initiated under Part 2 or Part 4 of Article 6.21.2 of the Administrative Code, that is, as dissemination of information about LGBT+ among minors. However, there are two examples where the same actions were qualified under Article 6.21 of the Administrative Code. For example, the showing of Sergey Lazarev's clip "So Beautiful" by an audiovisual service was qualified under Part 3 of Article 6.21 of the Administrative Code as "propaganda" on the Internet[54]. The second case of qualifying video content as "propaganda" under Part 3 of Article 6.21 of the Administrative Code is related to the showing of the film "Game of Keys"[55]. Both cases were initiated by Roskomnadzor and expert opinions (FGUP "GRChTS") were used as the basis for the court decisions[56].

There is also an example that even deviates from the logic established by the legislator. The Moscow City Court deemed the book "Golub Gennady" published by "EXMO" as "propaganda." A woman had taken this book for her daughter and found information about LGBT+ in it. The court made its decision under Part 1 of Article 6.21 of the Administrative Code, i.e., as "propaganda" among adults. We assume that the defense did not

[52] Decision of the Moscow District Court in case 5-1242/2023 dated August 18, 2023.

[53] *Ibid.*

[54] Decision of the St. Petersburg City Court in case 12-55/2024 dated February 6, 2024, and Decision of the Vyborg District Court of St. Petersburg in case 12-229/2024 dated February 8, 2024.

[55] Ruling of the Moskovsky District Court in case 5-1242/2023 dated August 18, 2023.

[56] On the GRCHC." GRCHC https://www.grfc.ru/grfc/

understand the essence of the accusation and requested the court, among other things, to conduct an expert examination in accordance with Article 17 of the law "On the Protection of Children from Information Harmful to Their Health and Development." The court responded that the interests of children were not being protected in this case, and therefore an expert examination was not needed. It was sufficient to rely on the investigation by a senior expert from the 5th Department of the Expert Forensic Center of the Main Directorate of the Ministry of Internal Affairs, which indicated that "the aforementioned book has a tendency to form a positive emotional and meaningful attitude towards non-traditional sexual relationships (individuals of the same sex), non-traditional relationships are presented as normal, usual, accepted, i.e., natural, which is expressed throughout the book in a disorganized manner..."[57].

> *"Since administrative liability for actions stipulated by part 1 of Article 6.21 of the Administrative, committed among minors, if these actions do not contain signs of a criminally punishable act, is established by the legislator in part 2 of Article 6.21 of the Administrative Code, violation of which is not imputed to the society within the framework of the case under consideration, there were no grounds for appointing and conducting an expert examination of information products to establish the age restriction of the circle of readers, as referred to by the complainant, at the district court judge"*[58].

Cases of dissemination are initiated by Roskomnadzor or the Ministry of Internal Affairs against audiovisual services and for YouTube videos, respectively. Our research shows that the same act can be qualified as "dissemination" and as "propaganda," which nullifies the difference between these two concepts and offenses.

YouTube videos are also qualified as dissemination among minors: all three cases concerning this social network in our research are qualified under Article 6.21.2 of the Administrative Code. The banned videos include titles like "How does a gay couple sleep? Kiss me all night", "We're back, love story

[57] Decision of the Moscow City Court in case No. 7-2274/2024 dated February 9, 2024.
[58] *Ibid.*

in the country of hate", "Watch us recreate kissing scenes", "I want to hug you during sleep", "Who knows me better, my boyfriend or best friend?" "Our first time, frank stories", "Our favorite positions during", "25 types of kisses with my boyfriend",[59] and "video interview with an openly gay Russian émigré performance artist"[60] Fedor Pavlov-Andreevich.

In principle, we saw no difference between actions qualified under Articles 6.21 or 6.21.2 of the Administrative Code.

d) "Express Expert Opinion" and Other Analogues

In 18 cases, judges referred to expert reports, but only in 2 cases were these likely judicial examinations conducted in accordance with Article 26.4 "Expertise" of the Administrative Code and the requirements of the Federal Law of 31.05.2001 No. 73-FZ "On State Judicial Expert Activity in the Russian Federation"(Law on Judicial Expertise). We cannot make a precise conclusion since these two court decisions mentioned the word "expertise" without clarifying whether it was conducted in accordance with Article 26.4 of the Administrative Code.

In other cases, often thanks to the objections of the defense, it becomes clear that the court decisions are based on an innovation not provided by law, such as an "express expert opinion" or another "simplified" analogue of "expertise." Courts indicate that they accept these pieces of evidence not under Article 26.4 of the Administrative Code as judicial expert's conclusions but as other evidence under Article 26.2 of the Administrative Code ("Evidence"). In practice, this means that the court relies on a document provided by the prosecutor but applies lower requirements to it compared to a regular expert opinion.

> *"The argument of the defender that the expert conclusion dated June 10, 2022, No. SPE7722-084 was obtained in violation of the law and cannot be recognized as admissible evidence in the case is to be rejected. The expert report dated June 10, 2022, No. SPE7722-084 was obtained not within the framework*

[59] Ruling of the Vakhitovsky District Court of the Republic of Tatarstan in case No. 12-2605/2023 dated July 27, 2023; Ruling of the Vakhitovsky District Court of the Republic of Tatarstan in case No. 5-480/2023 dated April 6, 2023.

[60] Ruling of the Lefortovo District Court of Moscow in case No. 12-1327/2022 dated August 25, 2022.

of the administrative offense case against Dud Y.A., but in connection with operational-search measures regarding the dissemination of materials on the Internet presumably containing propaganda of non-traditional sexual relations among minors" (Decision of the Lefortovo District Court on case 12-1327/2022 dated August 25, 2022).

"The abovementioned expert report meets the requirements of Article 26.2 of the Administrative Code for evidence of this kind, as well as the requirements of clause 5 of Article 26.4 of the Administrative Code. It specifies who conducted the research and on what basis, discloses its content, and provides a reasoned answer to the questions posed to the expert; the rights and obligations provided by Article 25.9 of the Administrative Code were explained to the expert, who was also warned of the responsibility for refusal or evasion of giving an opinion and for giving a knowingly false expert opinion, as indicated in the report" (Decision of the Ostankinsky District Court on case 05-0566/2023 dated May 4, 2023).

"Given the nature of the prepared expert opinions, as well as the information contained in them, the express expert reports dated September 7, 2023, and October 3, 2023, presented in the case materials, are not expert opinions prepared in accordance with Article 26.4 of the Administrative Code, but may be recognized as documents on the basis of which circumstances relevant to the correct resolution of the case are established" (Decision of the St. Petersburg City Court on case 12 - 55/2024 dated February 6, 2024).

Judges usually do not specify why exactly an "express opinion" is needed, but the context of the decisions suggests that judges rely on these expert opinions to establish the fact of disseminating information about LGBT+[61], as well as that this information speaks positively about LGBT+[62].

An "express expert opinion" should not replace a judicial examination, as it does not meet the requirements of Article 26.4 of the Administrative Code regarding the procedure for appointing and conducting an examination. The St. Petersburg City Court explained that an "express expert opinion" is not an expert opinion under the rules of Article 26.4 of the Administrative Code, but may be recognized as a document establishing circumstances relevant to the correct resolution of the case[63] and thus serves as the basis for the court's decision. According to the St. Petersburg City Court, judicial expertise of the controversial video clip is unnecessary because it is conducted when special knowledge is required. In this case, the question of establishing "propaganda" is a legal one and is exclusively decided by the court[64].

> *"In this case, as follows from the express expert opinion, non-traditional sexual relations in the feature film 'Game with Keys' are not shown episodically; the theme of same-sex relationships is presented as one of the equally probable ways out of a crisis in family relationships, non-traditional sexual relationships are romanticized, thereby creating a corresponding attitude for the audience (person), that people in non-traditional sexual relationships not only do not differ from representatives of heterosexual relationships, live an ordinary, normal life but are also quite successful and authoritative, worthy of being role models. Their sexual preferences, if not socially approved, are at least acceptable in society and equivalent to the union of a*

[61] Ruling of the Moscow District Court of St. Petersburg in case No. 5-1242/2023 dated March 18, 2023; Ruling of the Ostankino District Court in administrative offense case No. 5-0566/23 dated May 4, 2023.

[62] Ruling of the Moscow District Court of St. Petersburg in case No. 5-1242/2023 dated March 18, 2023; Ruling of the Ostankino District Court in administrative offense case No. 5-0566/23 dated May 4, 2023.

[63] Appellate Ruling of the St. Petersburg City Court on Case No. 12-55/2024 dated February 6, 2023.

[64] Decision of the St. Petersburg City Court on Case No. 12-55/2024 dated February 6, 2024.

man and a woman" (Resolution of the Moscow District Court of St. Petersburg on case 5-1242/2023 dated March 18, 2023).

"In the text on screenshot No. 4, there is a positive assessment of non-traditional sexual relationships (not between a man and a woman), which is accompanied by a justification that non-traditional sexual relationships are characterized as natural, established based on the expert opinion of the Ministry of Internal Affairs' expert at address No. 12/5-49 dated April 11, 2023" (Resolution of the Ostankinsky District Court on the case of an administrative offense No. 5-0566/23 dated May 4, 2023).

In some cases, the defense objected to the use of such expert opinions, pointing out that the affiliation, status, and education of the specialists were not established in violation of Article 26.4 of the Administrative Code[65]. The court did not take the defense's objections into account.

In one case, the prosecutor did not even offer the court an "express expert opinion," but only a certificate from a senior expert of the Expert Forensic Center of the Main Directorate of the Ministry of Internal Affairs, accompanied by an interview with the specialist[66]. The defense objected and requested the court to appoint a judicial examination, but the judge refused, citing the sufficiency of the evidence in the case.

In another case, the defense provided the court with a comprehensive psychological-linguistic expert study, refuting the conclusions of the provided expert opinion by specialists from the State Educational Institution of Higher Education "Crimean Engineering-Pedagogical University named

[65] Appellate Ruling of the St. Petersburg City Court on Case No. 12-55/2024 dated February 6, 2023.

[66] Appellate Ruling of the Moscow City Court on Case No. 7-2274/2024 dated February 9, 2024.

after Fevzi Yakubov"[67]. The court preferred the prosecution's expert opinion, as in the court's opinion, it was more complete.

> *"The court agrees with the expert opinion of the specialists from the State Educational Institution of Higher Education 'Crimean Engineering-Pedagogical University named after Fevzi Yakubov,' as the latter was conducted by specialists of a higher educational institution not interested in the outcome of the case, is the most motivated and complete in terms of analysis and evaluation of the entire content (text) of the graphic novel. In this expert opinion, unlike the comprehensive psychological-linguistic expert study, practically all phrases, verbal constructions with a sexual subtext of characters of the same gender (men), which reflect a detailed picture of psychological and physical (sexual) violence of an individual, were studied"* (Resolution of the Central District Court of the Republic of Crimea on case 5-444/2023 undated).

e) Ideological Justification: Traditional Values

In 12 decisions judges refer to "traditional values."

> *"When examining the music video by S. Lazarev 'So Beautiful,' one can unequivocally conclude that it shows non-traditional sexual relationships and preferences, expressed in the demonstration of several same-sex couples (girls). The associative series of the entire music video, as well as its textual content, allow the conclusion of predominantly romantic (spousal, partner) relationships between the characters. Moreover, in one of the episodes, the hands of two women with wedding rings, i.e., the symbol of a married*

[67] Ruling of the Central District Court of the Republic of Crimea on Case No. 5-444/2023, undated.

couple, are shown" (Decision of the St. Petersburg City Court on case No. 12-55/2024 dated February 6, 2024).

To justify the illegality of the content, judges refer to the provisions of the Constitution of the Russian Federation (Article 38(1), Article 72, clause 1 (j.1)), the Family Code of the Russian Federation (Articles 1(3), 12, 48, 51, 123(1(2))[68], 124(2)), the Presidential Decree "On the Approval of the Fundamentals of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values,"[69] and the Constitutional Court Resolution dated September 23, 2014, No. 24-P[70].

"The legislation of the Russian Federation, in particular the provisions of subclause 'zh.1' of part 1 of Article 72 of the Constitution of the Russian Federation, paragraph 3 of Article 1, Article 12, Article 48, paragraph 2 of Article 48, paragraph 1 of Article 51, the second paragraph of paragraph 1 of Article 123 (succession in upbringing), paragraph 2 of Article 124 of the Family Code of the Russian Federation, is based on the necessity of strengthening such traditional family relationships as the union between a man and a woman, founded on feelings of mutual love and respect between the man and the woman, and their raising of children. The dissemination of beliefs and preferences concerning sexual orientation and specific forms of sexual relations should not undermine the dignity of other individuals and cast doubt on public morality as understood in Russian society. Anything otherwise would contradict the foundations of the legal order adopted in the Russian Federation and enshrined in the corresponding provisions of the Constitution of the Russian Federation and federal laws, particularly the

[68] For example, Ruling of the Savelovsky District Court of Moscow on Case No. 5-103/23 dated January 18, 2023.

[69] Ruling of the Elizovo District Court of Kamchatka Krai on Case No. 5-72/2023 dated April 6, 2023.

[70] Ruling of the Moscow City Court on Case No. 7-2274/2024 dated February 9, 2024.

Family Code of the Russian Federation" (Resolution of the Savelovsky District Court of Moscow in case 5-103/23 from January 18, 2023).

In the "Foundations of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values" and in the ruling of the Constitutional Court from September 23, 2014, No. 24-P[71], it is explained that the principle of equality of people based on gender identity and sexual orientation contradicts "traditional Russian values."

Thus, the definition "traditional values" plays a significant role in justifying the persecution of LGBT+, making it important to understand where this definition originated in Russian official rhetoric and why it receives so much attention.

[71] Resolution of the Constitutional Court of the Russian Federation No. 24-P dated September 23, 2014, "On the Case Concerning the Constitutionality of Part 1 of Article 6.21 of the Code of the Russian Federation on Administrative Offenses in Connection with the Complaints of Citizens N.A. Alekseev, Y.N. Yevtushenko, and D.A. Isakov."

Issues of Procedural Fairness

Judge-Prosecutor

The impartiality of judges in administrative offense cases is not guaranteed by Russian law, as the participation of a prosecutor or another person representing the prosecution in such cases is not mandatory. Under these conditions, the responsibility of presenting the prosecution falls on the judge, preventing the judge from remaining an independent arbitrator. Consequently, the principle of judicial impartiality is violated. This conclusion was reached by the European Court of Human Rights in the case of *Karelin v. Russia* (judgment of September 20, 2016, complaint No. 926/08). The European Court instructed Russia to create a mechanism ensuring the impartiality of judges hearing such cases by including a prosecutorial authority (a representative of the prosecution or another state body) in those processes where oral hearings are held, or by adopting other appropriate measures (para. 96). The creation of such a mechanism is provided for in the draft of the new Code of Administrative Offenses. The draft of the Administrative Code was discussed in 2019 and 2020 but has not been adopted[72].

> *"The petition from the defense counsel Bredeliev Yu.V. to summon a representative of the prosecutor's office to the court session is not subject to satisfaction, as the powers of the prosecutor in the framework of proceedings on an administrative offense are established by part 1 of Article 25.11 of the Administrative Code, and supporting the state prosecution is not included in this list. Mandatory participation of the prosecutor in the consideration of cases of this category is not provided for by the norms of the Administrative Code".* (Resolution of the Supreme Court of the Republic of Tatarstan in case 7-494/2023 dated April 13, 2024).

[72] The draft of the new Code of Administrative Offenses has been posted for repeated public discussion, Ministry of Justice of the Russian Federation, April 29, 2020. URL:: https://minjust.gov.ru/ru/events/39865/

Experts from Roskomnadzor

All cases initiated by Roskomnadzor in our study involve minors. This is due to the scope of Roskomnadzor's authority. This service evaluates the compliance of informational content with Russian legislation on child protection. In 2010, Federal Law No. 436-FZ "On the Protection of Children from Information Harmful to Their Health and Development"[73], was adopted, establishing general requirements for the examination of information products. Article 17 states that the examination of information products is conducted by experts accredited by Roskomnadzor. Roskomnadzor sets the requirements for experts and publicly maintains their registry[74].

The law stipulates that experts must have higher professional education and possess special knowledge in areas such as pedagogy, developmental psychology, developmental physiology, child psychiatry, cultural studies, art studies, and art history[75]. Their services are paid for by the customer, which can be any person.

Experts conclude whether "the information in the informational product is harmful to the health and/or development of children, whether the informational product complies or does not comply with a certain category of informational products, whether the informational product complies or does not comply with the information product mark" (part 2(7) of Article 18). The procedure for conducting the examination is regulated by the order of the Ministry of Communications of Russia No. 217[76].

Thus, Roskomnadzor independently forms a list of experts to whom it can turn for content examination and pays for their services.

In a number of cases, the court's decision indicated that the experts worked at FGUP "GRChTs." This is the Federal State Unitary Enterprise "Main Radio

[73] Federal Law No. 436-FZ of December 29, 2010, "On the Protection of Children from Information Harmful to Their Health and Development".

[74] Register of Accredited Experts and Expert Organizations Involved in Monitoring Activities in the Field of Mass Communications, Roskomnadzor. https://rkn.gov.ru/opendata/7705846236-AccreditedExpertsMassCommunications/

[75] Federal Law No. 436-FZ of December 29, 2010 "On the Protection of Children from Information Harmful to Their Health and Development".

[76] Order of the Ministry of Communications and Mass Media of Russia No. 217 of August 29, 2012 "On Approving the Procedure for Conducting Expertise of Information Products for Ensuring Children's Information Security".

Frequency Center," created by Roskomnadzor, with its owners being Roskomnadzor and Rosimushchestvo[77]. The enterprise's charter is approved by Roskomnadzor[78]. The general director of "GRChTs" is appointed by Roskomnadzor[79]. The enterprise is responsible for assigning radio frequencies[80] and performs other Roskomnadzor functions, including the examination of informational products for child protection compliance[81]. The enterprise's property and profits are federally owned[82]. Thus, "GRChTs" is so closely linked with Roskomnadzor that it is not an independent institution but a part of Roskomnadzor.

Therefore, at least in cases where it is known that the examination by Roskomnadzor's request was conducted by "GRChTs," it can be confidently stated that these examinations were not conducted by independent experts.

In cases where the defense pointed out the experts' dependence on Roskomnadzor, the judges did not consider the defense's arguments[83]. At the same time, the court rejected the defense's opinion of specialist, stating that the expert was not accredited by Roskomnadzor and did not have the right to conduct an examination of informational products for harm to children[84].

Who Conducts "Express Expert Opinions" and Their Analogues

Information about the institutions that prepared the "express expert opinion" or its analogues is available in 9 cases. Information about specific specialists is available in one case. In two cases, at the request of the "Center 'E'," the linguistic research reports were prepared by the department of the Expert and Criminalistic Center of the Main Directorate of the Ministry of

[77] Charter of the Federal State Unitary Enterprise "Main Radio Frequency Center" (FSUE "GRFC"), approved by the Roskomnadzor Order No. 162 of August 10, 2017, Clause 1.4.

[78] Legal Foundation Documents. GRFC. https://www.grfc.ru/grfc/about/title-document/

[79] Charter of the GRFC, Clause 5.1.

[80] Federal Law No. 126-FZ of July 7, 2003, "On Communications," Part 3 of Article 24.

[81] Charter of the State Radio Frequency Centre, Section 2.2.28.

[82] Charter of the State Radio Frequency Centre, Section 3.1, 3.2.

[83] Two cases have been initiated against an audiovisual service and its official: Decision of the Novosibirsk Regional Court in case No. 7a-321/2023 dated September 29, 2023; Decision of the Central District Court of Novosibirsk on the appeal against the administrative offense ruling in case No. 12-390/2023 dated September 1, 2023.

[84] Decision of the Novosibirsk Regional Court in case No. 7a-321/2023 dated September 29, 2023.

Internal Affairs. In another two cases, the reports of the specialists were prepared at the request of the Ministry of Internal Affairs of the Republic of Crimea by the State Budgetary Educational Institution of the Republic of Crimea "Crimean Engineering and Pedagogical University named after Fevzi Yakubov". In the remaining 5 cases, the expert opinions were prepared by experts of the Federal State Unitary Enterprise "Main Radio Frequency Center" at the request of Roskomnadzor.

Outcomes of Court Proceedings

Return of Protocol

The administrative offense proceedings involve authorized persons drafting protocols on administrative offenses, which, in cases provided for by the Administrative Code, are sent to court. This order of consideration applies to Articles 6.21 and 6.21.2 of the Administrative Code.

In four cases, judges decided to return the protocol due to deficiencies: the date mentioned had not yet occurred[85]; there was no evidence of employment relationships or that the act was part of official duties, although the protocol was drawn up against an official[86].

In two other cases, the Ministry of Internal Affairs, when drawing up the protocol for a video on "VKontakte," did not present evidence of the place and time of the alleged administrative offense (posting the video) and did not notify the accused person of the time and place of drafting the protocol[87].

Imposition of Punishment

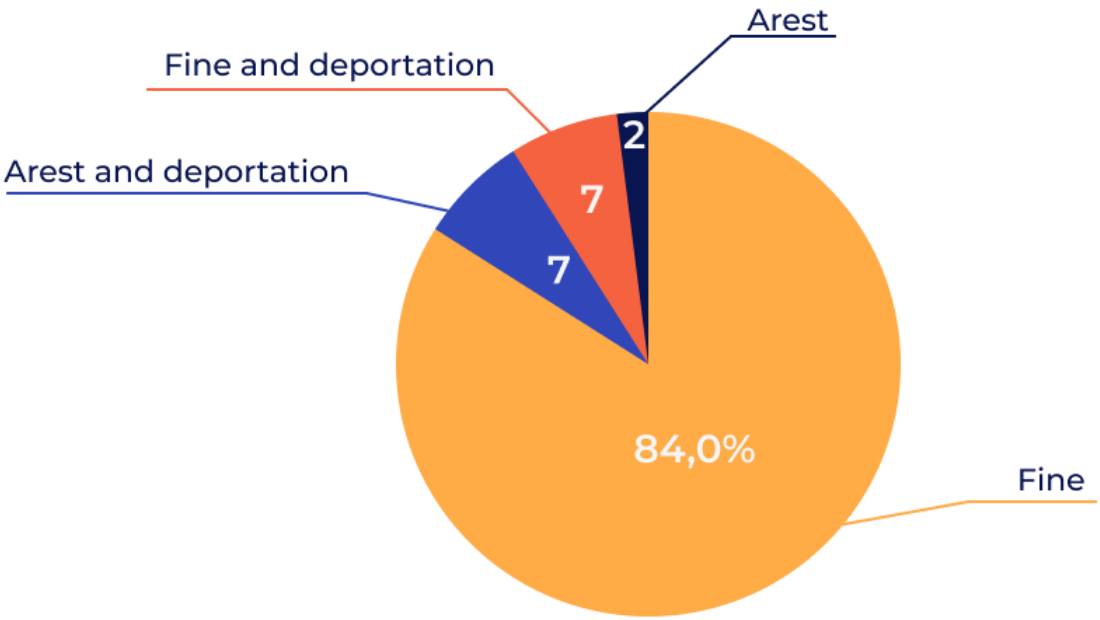
The most common punishment for Russian citizens is fines (45 cases). Foreigners are typically subjected to deportation with a fine (4 cases) or administrative arrest (4 cases). In one case, when a Ukrainian citizen living in occupied territories was held accountable, the court imposed one day of administrative arrest but stated that deportation would not be applied in this specific instance[88].

[85] Determination of the Liskinsky District Court of Voronezh Oblast in case No. 5-90/2023 dated June 5, 2023.

[86] Determination of the Liskinsky District Court of Voronezh Oblast in case No. 5-90/2023 dated June 5, 2023; Determination of the Liskinsky District Court of Voronezh Oblast in case No. 5-91/2023 dated June 2, 2023.

[87] Determination of the Lomonosov District Court of Arkhangelsk Oblast in case No. 5-597/2023 dated October 20, 2023; Determination of the Lomonosov District Court of Arkhangelsk Oblast in case No. 5-597/2023 dated October 20, 2023.

[88] Decision of the Leninsky District Court of Krasnodar Krai in case No. 5-497/2023 dated April 22, 2023.



Fines

The articles in question stipulate significant fines. The minimum fine for individuals under both articles ranges from 50,000 to 100,000 rubles, for officials from 100,000 to 200,000 rubles, and for legal entities from 800,000 to 1,000,000 rubles. If there are qualifying factors, such as "propaganda" among minors (part 2, article 6.21) or dissemination on the internet (part 1, article 6.21.2), the fine amount increases. The maximum possible fine (under part 4, article 6.21 — "propaganda" among minors in the media and/or the internet) is 5,000,000 rubles for legal entities and 400,000 rubles for individuals.

Below the Minimum Amount

Courts do not deem offenses under the "propaganda" articles to be minor[89] and do not exempt offenders from liability on this basis, as they believe the act itself poses a significant threat to society[90]. However, judges can impose

[89] «A minor administrative offense is an action or omission that, although formally containing the elements of an administrative offense, does not constitute a significant violation of protected public relations when considering the nature of the offense, the role of the offender, the extent of the damage, and the severity of the resulting consequences" (Resolution of the Plenary Session of the Supreme Court of the Russian Federation No. 5 of March 24, 2005, "On Some Issues Arising for Courts in Applying the Code of the Russian Federation on Administrative Offenses").

[90] Resolution of the Moscow District Court of St. Petersburg on Case No. 5-1242/2023 dated March 18, 2023.

fines below the minimum amount under exceptional circumstances (part 2.2, article 4.1 of the Administrative Code).

a) Legal Entities

Out of 16 cases involving legal entities, information on the fine amount is available in nine cases. These are cases under parts 1 and 3 of article 6.21 and part 2 of article 6.21.2 of the Administrative Code. In five cases, judges imposed the minimum fine, and in three cases, fines below the minimum amount (500,000 rubles instead of 800,000 or 1,000,000). In two instances where the fine was below the minimum, courts reduced the fine amount because the entities involved were small businesses[91] dealing with a massive amount of information that needs to be checked for compliance with the new law[92]. The reasons for the reduced fine in the third decision are unclear[93].

Only one case from our research resulted in a fine above the minimum — 1,500,000 rubles for showing the film "Perfect Strangers." The court explained that "the minimum administrative fine would not meet the goals and objectives of administrative offenses legislation."[94] Unfortunately, the court did not clarify the reasons for its decision.

b) Officials

Out of nine decisions involving officials, information on the fine amount is available in four cases. The decisions were made under part 3 of article 6.21 of the Administrative Code ("propaganda" on the internet) and part 2 of article 6.21.2 (dissemination on the internet). In three decisions, the minimum fine of 200,000 rubles was imposed, and in one case, the fine was 100,000 rubles, which is below the minimum. The court did not explain the

[91] Resolution of the Savelovsky District Court of Moscow on Case No. 05-1133/2023 dated June 22, 2022; Decision of the Novosibirsk Regional Court on Case No. 7a-321/2023 dated September 29, 2023. Small and medium-sized enterprises are provided with support measures in accordance with Federal Law No. 209-FZ of July 24, 2007 "On the Development of Small and Medium-Sized Entrepreneurship in the Russian Federation," including the reduction of administrative fines based on their status.

[92] Decision of the Novosibirsk Regional Court on Case No. 7a-321/2023 dated September 29, 2023.

[93] Decision of the St. Petersburg City Court on Case No. 12-55/2024 dated February 6, 2023.

[94] Decision of the Novosibirsk Regional Court on Case No. 7a-321/2023 dated September 29, 2023.

reasons for this decision[95]. However, according to media reports citing the court's press service,[96] a fine below the minimum was also imposed on Yuri Alexandrovich Dud — 120,000 rubles under part 2 of article 6.21 of the Administrative Code[97].

c) Individuals

Out of 27 cases where individuals were fined, information on the fine amount is available in 20 decisions (removed from the publication in the other cases).

For "less severe" offenses under part 1 of article 6.21 of the Administrative Code ("propaganda") and part 3 of article 6.21 ("propaganda" on the internet), as well as part 2 of article 6.21.2 of the Administrative Code (dissemination among children on the internet), courts usually impose the minimum fine of 50,000 and 100,000 rubles, respectively.

For more "severe" articles — part 4 of article 6.21 ("propaganda" among minors on the internet) and part 7 of article 6.21 of the Administrative Code ("propaganda" by a foreign citizen on the internet), judges impose fines not only at the minimum level. Out of six cases under these articles, one resulted in a fine below the minimum amount of 100,000 rubles, while the rest were above the minimum, ranging from 150,000 to 300,000 rubles. A fine below the minimum was imposed for posting a video on VKontakte, and the judge considered the voluntary removal of these videos from the social network and the severe financial situation of the person being held accountable as exceptional circumstances[98].

In two cases, courts imposed fines below the minimum for individuals. In the first, the lower court imposed a fine of 200,000 rubles under part 4 of article 6.21 of the Administrative Code for posting videos on the internet; the appeal reduced the fine to 100,000 rubles, citing remorse and "rectification of the violation": removal of the videos[99]. In another case, the lower court imposed a fine of 100,000 rubles for posting photos on VKontakte under

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[95] Decision of the Central District Court of Novosibirsk on Case No. 12-390/2023 dated September 1, 2023.

[96] Dud was fined ₽120,000 for Promoting Homosexuality. RBC. https://www.rbc.ru/society/12/07/2022/62cd2b289a7947094815ed39

[97] Decision of the Lefortovo District Court in Case No. 12-1327/2022 dated August 25, 2022.

[98] Decision of the Oktyabrsky District Court of Arkhangelsk in Case No. 12-259/2024 dated January 29, 2024.

[99] Decision of the Oktyabrsky District Court of Arkhangelsk in Case No. 12-259/2024 dated January 29, 2024.

part 3 of article 6.21 of the Administrative Code (the minimum fine for individuals is 100,000 rubles); the appellate instance reduced the fine to 50,000 rubles because the person being held accountable admitted guilt, was unemployed, and was declared bankrupt.[100]

> *"When imposing an administrative penalty, the court takes into account that LLC 'TA RUSSIAN REPORT' falls under the category of small and medium-sized enterprises, is a micro-enterprise included in the unified register of small and medium-sized enterprises at the time of the administrative offense, and considers the nature of the administrative offense. It deems it necessary to impose a fine in accordance with parts 2 and 3 of Article 4.1.2 of the Administrative Code"* (Resolution of the Savelovsky District Court of Moscow in case 05-1133/2023 dated 22.06.2022).

In other cases, courts did not consider personal circumstances. For example, when imposing a fine of 100,000 rubles on Yan Dvorkin, founder of Moscow's 'Center T,' which assists transgender people and their families, the court did not evaluate the presence of a young child with a disability[101]. Consequently, the court decision had an even greater impact on Dvorkin's life, as it led to the removal of the child from the family[102].

> *"The court did not find exceptional grounds to impose the minimum penalty stipulated by the sanction of the article, since the minimum administrative fine would not meet the goals and objectives of administrative offense legislation"* (Resolution of the Industrial District Court of Perm in case 5-235/2023 dated 11.07.2023).

[100] Decision of the Chita District Court of the Zabaykalsky Krai in case 2-126/2023 dated October 2, 2023.

[101] Ruling of the Ostankino District Court of Moscow on the administrative offense case 5-0566/23 dated May 4, 2023.

[102] "Sleeping and Crying": Founder of the Transgender Support Center Left Russia. OVD-Info.. https://ovd.info/2023/11/29/dvorkin

Expulsion of Foreigners

The Administrative Code provides for harsher penalties for foreign citizens: deportation, always accompanied either by administrative arrest or a fine. Deportation was ordered in eight decisions, half of which were accompanied by a fine and the other half by arrest. An exception is made for Ukrainians residing in the "annexed territories" who have not acquired Russian citizenship. Our research includes one such case where a Ukrainian citizen was not deported from Russia[103].

> *"The court notes that [name redacted] is a citizen of the Republic of Ukraine, born in [address] region, and registered at [address]. Considering the fact that on [date] the ratification of treaties on the accession of the Donetsk People's Republic, Lugansk People's Republic, Zaporizhzhia, and Kherson regions to Russia was approved, [name redacted] is entitled to obtain Russian citizenship and cannot be subjected to administrative deportation from the Russian Federation"* (Resolution of the Leninsky District Court of Krasnodar Territory in case 5-497/2023 dated 22.04.2023).

If the treatment of individuals in similar situations varies based on any characteristic (nationality, religion, gender, or citizenship), the state must have a reasonable and justified cause for such treatment[104]. We believe that in this case, there is no reasonable cause to impose different penalties for the same actions on Russian and foreign citizens.

The lack of such a reason is evidenced by the Russian policy aimed at consistently restricting the rights of migrants. One of the latest measures is a bill passed in the first reading in June 2024, which will grant police the authority to make decisions on the deportation of foreign citizens as a penalty for administrative offenses[105] (currently, only a judge can impose

[103] Ruling of the Lenin District Court of the Krasnodar Krai on case 5-497/2023 dated April 22, 2023.

[104] National legislation to combat racism and racial discrimination, ECRI revised General Policy Recommendation No.7 - adopted on 13 December 2002 and revised on 7 December 2017.

[105] Draft Law No. 615003-8 "On Amendments to the Code of the Russian Federation on Administrative Offenses (regarding the empowerment of internal affairs bodies (police)

such a penalty according to part 2 of Article 3.10 of the Administrative Code). The proposed amendments also include the creation of a new migration regime, "expulsion," which applies to migrants who have lost their grounds for legal residence in Russia and entails deprivation of rights: prohibition on marriage registration, opening a bank account, and more[106].

The explanatory note states that the creation of the new migration regime is justified by the criminogenic situation among migrants and the public's demand for the state to respond to the "mass influx of migrants." Such a one-sided approach to migration issues indicates that Russian state authorities ignore human rights protection concerning migrants[107].

Review of Decisions

We studied 34 appellate decisions. We are aware of 22 more appellate decisions that were made but not included in our report, as their texts were not published.

The sample shows the stability of judicial practice: only four decisions were overturned on appeal. Of these, two cases were remanded for reconsideration. In the first case, the court remanded the case for reconsideration because it did not find the lower court's decision convincing regarding the absence of "propaganda" in the photos[108] published on social media. In the second case, the district court overturned the magistrate's decision to hold someone administratively liable for posting an ad for intimate services on the internet, as the police found no evidence that the person charged was the ad's author[109].

In another case, the district court overturned the magistrate's decision on an administrative offense because the police failed to properly notify the accused, and the proceedings were terminated due to the expiration of the

with the authority to make decisions on the administrative expulsion of foreign citizens and stateless persons from the Russian Federation)"https://sozd.duma.gov.ru/bill/615003-8.

[106] Draft Law No. 614967-8 "On Amendments to Certain Legislative Acts of the Russian Federation (with the aim of improving the effectiveness of federal state control (supervision) in the field of migration)"https://sozd.duma.gov.ru/bill/614967-8.

[107] OHCHR, Principles and guidelines on the human rights protection of migrants in vulnerable situations, A/HRC/33/67, 2018.

[108] Decision of the Central District Court of the Volgograd Region on Case No. 12-403/2024 (date not provided).

[109] Decision of the Soviet District Court of the Krasnodar Territory on Case No. 12-98/2024 of March 12, 2024.

administrative prosecution period[110]. One decision, where the lower court found no offense, was overturned, and the proceedings were terminated due to the expiration of the time limit for administrative liability[111]. In another case, the proceedings on the appeal were terminated because the official from the TV channel withdrew the complaint[112].

> *"The justice of the peace did not properly evaluate the entire body of evidence presented in the case regarding its relevance, admissibility, reliability, and sufficiency. The motives for recognizing the factual circumstances established during the inspection of internet resources on [date] as not indicative of propaganda of non-traditional sexual relations and/or preferences or gender change were not provided in the justice of the peace's resolution"* (Decision of the Central District Court of Volgograd Region in case 12-403/2024, no date).

> "When reviewing the case of an administrative offense, it was established that the user of the internet page account named 'Exotic' was not identified, as the domain of this page belongs to a foreign state. Moreover, the case materials do not contain evidence that the photo on the internet page 'Intim23' (https://lady.intim23.online/girls/1095) is indeed a photo of [name redacted], and not another person; no portrait examination was conducted, and visual comparison does not allow for confirming the identity of the person in the photo and [name redacted]" (Decision of the Sovetsky District Court of Krasnodar Territory in case 12-98/2024 dated 12.03.2024).

[110] Decision of the Vakhitovsky District Court of the Republic of Tatarstan on Case No. 12-2605/2023 of July 27, 2023.

[111] Decision of the Central District Court of the Volgograd Region on Case No. 12-382/2024, date not specified.

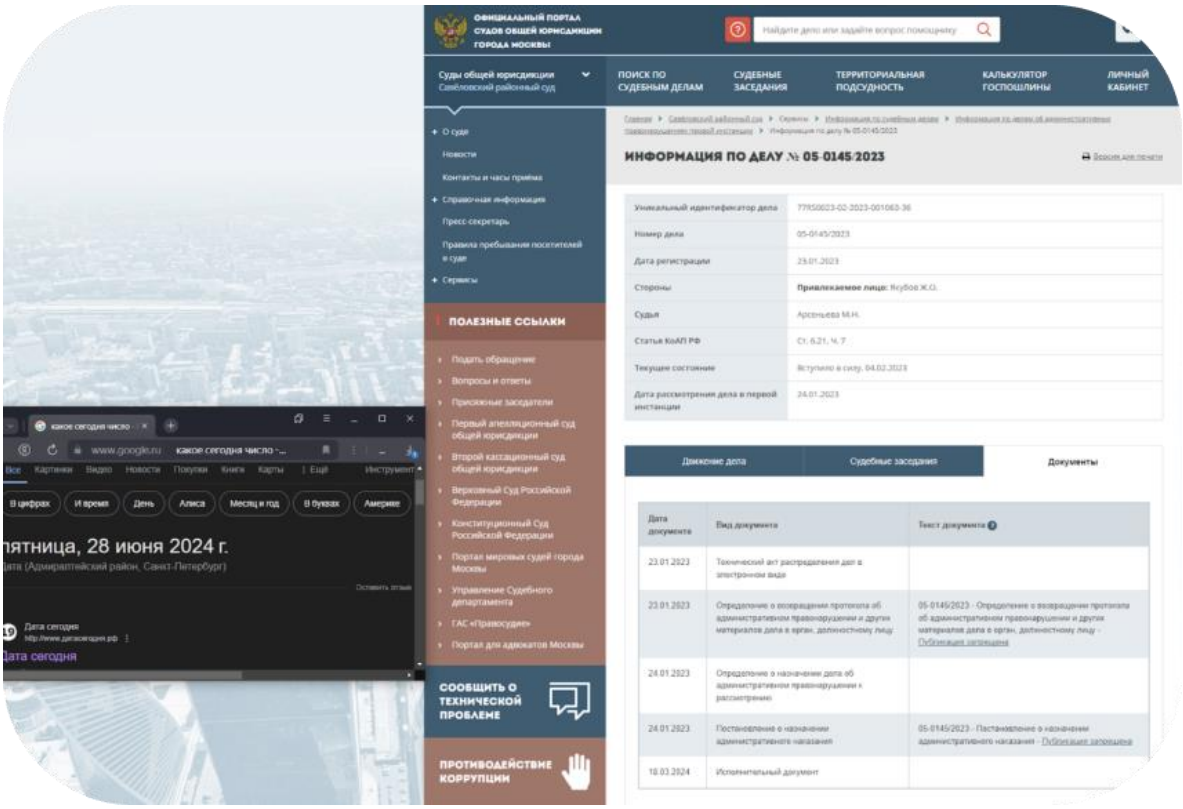
[112] Ruling of the Basmanny District Court in case 12-1467/2022 dated January 27, 2022.

Public Access to Court Decisions

Publication of Court Decisions

According to the law, specifically subparagraph "g" of paragraph 2, part 1, Article 14, and Article 15 of the Federal Law "On Ensuring Access to Information on the Activities of Courts in the Russian Federation"[113] (Law on Access to Court Information), the text of a judicial act must be posted online within a reasonable time but no later than one month after the day of its finalization.

During our research, we found 51 cases where decisions had not been published by March 31, 2024. We sent requests to the courts asking for publication. Only one court (Smolninsky District Court of Saint Petersburg) responded and published three decisions. As of June 28, 2024, 15 out of 51 decisions (including the aforementioned three) were published. Sometimes, the case cards justify the absence of the published judicial decision text by citing paragraph 5 of Article 15 of the Law on Access to Court Information[114], which lists cases whose decisions are not published.



[113] Federal Law No. 262-FZ "On Ensuring Access to Information on the Activities of Courts in the Russian Federation" dated December 22, 2008.

[114] Federal Law "On Ensuring Access to Information on the Activities of Courts in the Russian Federation" dated December 22, 2008, No. 262-FZ.

Among the categories of judicial cases mentioned in paragraph 5 of Article 15 of the Law on Access to Court Information are cases "affecting state security" or cases "on crimes against sexual integrity and sexual freedom of the individual," among others.

In our opinion, cases under Articles 6.21 and 6.21.2 of the Administrative Code do not fall under any category of cases whose judicial decisions are not published. Therefore, the absence of judicial decision texts under these articles is illegal.

Depersonalization of Court Decisions

As a general rule, the texts of judicial decisions in administrative offense cases are published no later than one month after the day of their finalization (Article 15 of the Law on Access to Court Information)[115]. Personal data of the participants in the process are removed from the decisions to protect their privacy, meaning the court decisions undergo depersonalization. Court staff conducting the depersonalization may remove data that is not personal, which destroys the possibility of analyzing the judicial decision. Additionally, published decisions often omit fine amounts. Out of 51 judicial decisions imposing fines, the fine amount was removed in 16. Details of laws and rulings of the Constitutional Court of the Russian Federation, film titles, and even the decision date are removed[116].

> *"'MegaFon TV' distributed audiovisual works to minors by [name redacted]: 'Beyond Reason'..."* (Decision of the Tverskoy District Court in case 05-0622/2023 dated 29.06.2023).

> *"The ruling of the Constitutional Court of the Russian Federation from [date] No. -P clarified...."* (Decision of the Yelizovsky District Court of the Kamchatka Territory in case 5-72/2023 dated 06.04.2023).

[115] Federal Law "On Providing Access to Information on the Activities of Courts in the Russian Federation" dated December 22, 2008, No. 262-FZ.

[116] For example, the Decision of the Central District Court of Simferopol in case 5-444/2023 dated [no date].

Conclusion

Analyzing the law enforcement practice regarding the ban on "propaganda" among all age groups and the dissemination of information about the LGBT+ among children, we conclude that any mention of LGBT+ in public and even private spaces, such as social media correspondence, can lead to liability under Article 6.21 ("propaganda" among adults) or Article 6.21.2 of the Administrative Code (distribution among children). This includes neutral publications on the internet and social networks, as it is impossible to control the age of the content consumer in these public spaces.

We analyzed 64 judicial decisions of the first and second instances from December 5, 2022, to March 31, 2024, published by March 31, 2024, under Article 6.21 CAO RF (in its old and new editions from December 5, 2022) and under Article 6.21.2 of the Administrative Code (effective from December 5, 2022). The majority of cases are related to online activities and the persecution by Roskomnadzor of audiovisual services for showing audiovisual materials without an 18+ rating.

The Law "On Information, Information Technologies, and Information Protection" defines "information dissemination" as actions aimed at receiving information by an indefinite circle of persons or transmitting information to an indefinite circle of persons. Unlike "propaganda," which is not defined by law, the dissemination of information does not require the disseminator's intent to create a positive image of LGBT+.

The Constitutional Court of the Russian Federation provided a definition of "propaganda" in 2014 when it was only banned among children. The Constitutional Court noted the special vulnerability of children to information that "harms" their development and the formation of "traditional values." After the legislature extended the application of Article 6.21 of the Administrative Code to adults, it is unclear how relevant the concept of "propaganda," as formulated by the Constitutional Court, remains, as adults do not have such vulnerability.

Judicial practice does not help answer this question; judges either use the 2014 Constitutional Court’s interpretation without detailed analysis or claim a generally accepted understanding of "propaganda" that does not require interpretation.

During our analysis of judicial decisions, we found that courts do not distinguish between "propaganda" and “dissemination of information”, although they are two different offenses. The same actions can be qualified as both "propaganda" and “dissemination of information”. It appears to depend entirely on the specific agency or official who drafted the protocol. Thus, from a law enforcement perspective, “dissemination” and "propaganda" are indistinguishable.

To justify decisions, judges sometimes use " Express Expert Opinions" or expert opinions that do not meet judicial expertise requirements. For instance, some of these opinions are conducted by experts affiliated with Roskomnadzor under Article 17 of the Federal Law "On Protecting Children from Information Harmful to Their Health and Development." Their affiliation with Roskomnadzor, which drafts administrative offense protocols, casts doubt on their independence and the reliability of their expertise.

Articles 6.21 and 6.21.2 of the Administrative Code provide for large fines. Courts often impose the minimum possible fine, except when there are qualifying signs of the offense, such as "propaganda" among minors on the internet and "propaganda" by a foreign citizen on the internet. Courts impose less than the minimum penalty on legal entities with small enterprise status and individuals who admit guilt and simultaneously remove the contentious content or declare bankruptcy.

Foreign citizens receive harsher penalties in the form of deportation accompanied by a fine or administrative arrest. Such selective treatment of foreigners lacks a reasonable and justified cause and is, therefore, discriminatory.

Overall, the judicial decisions we examined are not well-founded or convincing. Even when judges thoroughly review films, videos, or photographs, their conclusions about their illegality due to non-compliance with "traditional values" contradict human rights values, equality, and non-discrimination principles.

Recommendations

For the Russian Federation:

1. Exclude Articles 6.21 and 6.21.2 of the Administrative Code from the legislation and cease prosecuting for publishing information about the LGBT+ community in a neutral or positive light.
2. Align the legislation with international human rights standards on freedom of expression and access to information.
3. Repeal the Supreme Court's decision of 30.11.2023 recognizing “the international public movement LGBT” as an extremist organization.

For Russian Civil Society:

1. Conduct detailed monitoring of the persecution of LGBT+ individuals under Articles 6.21 and 6.21.2 of the Administrative Code, considering the findings of this study.
2. Create a shared database/platform for collecting and analyzing information on the application of Articles 6.21 and 6.21.2 of the Administrative Code among interested human rights organizations and independent media.

For the International Community:

1. Foreign countries should consider LGBT+ individuals in the Russian Federation as belonging to a persecuted social group. Therefore, LGBT+ individuals leaving Russia require international protection as refugees or another protective status.
2. Foreign countries should consider the possibility to improve the processes of reviewing and issuing humanitarian visas (including taking into account the reasonable time frame for such consideration, and the readiness of Russian human rights organizations for dialogue and cooperation) to LGBT+ individuals in the Russian Federation who are subjected to administrative penalties under Articles 6.21 and 6.21.2 of the Administrative Code.
3. International and interregional organizations and associations, including the UN and EU institutions, whose priority is the protection of human rights and democracy, should use their voice to advocate for expanded opportunities for Russian LGBT+ people to obtain visas or other travel documents.

Written by Olga Startseva and Daniil Schmidt

Judicial harassment against LGBT+ under the 'propaganda' law in Russia. How Articles 6.21 and 6.21.2 of the Administrative Code of the Russian Federation Have Been Applied After the Complete Ban of LGBT+ "propaganda" on December 5, 2022. — Citizens' Watch; Sphere Foundation, 2024. — 56 pp.



