**Independence of justice and current threats to democracy in Russia, considering LGBT+ rignts**

*This document is based on data from the legal and research activities of the Russian human rights initiative “Delo LGBT+”, as well as the individual human rights work of our activists in other areas*

Now, the judiciary in Russia has lost a significant part of its independence, especially in political matters, which poses a serious threat to democracy. Vulnerable groups can no longer count on going to court as a way to restore justice violated by executive or legislative authorities, or to achieve the realization of their rights through the courts - on the contrary, they are increasingly becoming victims of politically motivated processes.

One area where these violations have become particularly noticeable is the rights of queer people and LGBT+ activists. The most significant example of violations in this area is the conclusion of the Supreme Court of the Russian Federation dated November 30, 2023, recognizing the “international LGBT movement” as extremist. The text of the conclusion became available to the public only at the end of January 2024 and raised questions due to its obvious politicization and weak evidence base.

The decision of the Supreme Court of the Russian Federation dated November 30, 2023 actually prohibits LGBT+ people as a social group from defending their rights already enshrined in Russian laws, and even more so from seeking legislative recognition of new rights (for example, the rights to same-sex marriage or civil unions). The decision of the Supreme Court also contradicts the position of the Constitutional Court of the Russian Federation, set out in Resolution No. 24-P dated September 23, 2014, according to which, in a democratic society, issues related to sexual self-determination are not excluded from public discussion, citizens, including those whose sexual orientation differs from the generally accepted one cannot be deprived of the opportunity, in order to protect their rights and legitimate interests or the rights and legitimate interests of other persons (social groups), to use all methods not prohibited by law to attract public attention to existing facts of their violations. These methods include the right to create public associations of one’s choice without prior permission from state authorities and local governments, as well as the right to join such public associations on the terms of compliance with the norms of their charters. Thus, recognizing a non-existent movement as extremist violates the domestic legislation of the Russian Federation (including the Constitution), actually criminalizes human rights, activist or other public activities in the interests of LGBT+ people, creating a risk of state persecution for human rights defenders, activists, journalists, and possibly for anyone who openly expresses their views as LGBT people.

This decision of the Supreme Court of the Russian Federation should be regarded as a pseudo-legal document, which is not the result of a fair trial that complies with the norms of local and international law, but a policy statement that the court made under obvious pressure from the Russian authorities. It is obvious that this decision can and will be used in the future as a repressive tool against activists and politicians not only directly involved in the fight for LGBT+ rights, but also publicly supporting it, which will deal a blow to the already problematic situation with democracy in Russia.

Also, based on our judicial practice, it can be assumed that numerous errors and contradictions in the Supreme Court’s conclusion are due to the fact that all the examinations necessary to issue it were carried out in the centers of the Ministry of Internal Affairs and the Ministry of Justice without the involvement of authoritative and independent scientists and institutions. Any facts and data were not assessed objectively, but were used to achieve the set goal - the actual ban of LGBT people on the territory of Russia.

In the decision of the Supreme Court of the Russian Federation, one can notice a hierarchy of dangerous actions of LGBT people. “The most striking manifestation of extremist activity” the document designates “an agitation campaign aimed at changing existing laws <...> limiting, in their [LGBT people’s] opinion, the rights of participants in the Movement.” However, peaceful disagreement with current laws and proposals to change them are legal activities on the territory of the Russian Federation. Thus, the Supreme Court directly states that the main motivation for making this decision is the desire to exclude LGBT people and their allies from democratic processes for governing society, to ensure the hegemony of the pro-government point of view.

This decision came into force on January 10, 2024. At the same time, no one was allowed to participate in the process, no one was given the opportunity to appeal the court decision, although several attempts were made to enter the process by the defendant - both individual activists and groups of people with sufficient knowledge of the issues under discussion and observing all the necessary formalities requirements and deadlines. The arguments of the complaints touched upon both the tasks of administrative proceedings and the principles of operation of Russian courts, including transparency and equality before the law.

Lower-level courts also display similar bias and negligence. Thus, when considering cases of “LGBT propaganda,” the court extremely rarely turns to special expertise (only in 7% of cases). At the same time, the media regularly includes court decisions where such an examination was carried out by clearly incompetent specialists with gross formal violations, or where the court unsuccessfully carried out the examination on its own, citing the fact that this “does not require special knowledge” - although the role of an expert or professional opinion in Russian judicial practice is extremely high. It is also not possible to challenge the court’s decision in these situations - for example, the “LGBT+ Case” attracted two specialist philologists who found serious methodological errors in the linguistic examination, based on which the court intended to remove a child under guardianship from LGBT activist Jan Dvorkin. The court accepted the conclusions of specialists, but did not use them in making a decision and remained unconvinced: the fact that the guardian is an openly LGBT person poses a danger to the child, despite all other evidence confirming Dvorkin’s competence as a guardian and the benefits for the child from communication with him.

We believe that this situation is temporary, since all the necessary by-laws that make it possible to turn an examination into a method of falsification are already in force, and it is easier for the judiciary to make a guilty decision by referring to the findings of the examination. It should be expected that the practice of falsifying examinations and the evidence used in them in political cases would become widespread - especially if the subject of the examination belongs to the field of humanities, where some subjectivity of interpretations is possible. The practice of blocking websites and deleting materials containing information about LGBT+ people is becoming widespread. Such blocking is carried out both by decision of Roskomnadzor and Rosmolodezh, and by decision of the courts, without conducting psychological and linguistic examinations.

There is also a tendency for the Federal Security Service of the Russian Federation to participate informally in these cases. For example, in the city of Nizhny Novgorod, as part of a case where our lawyers provided defense, an employee of the FSB of Russia was present during the interview of witnesses when compiling material about an administrative offense, and accompanied each of them before court hearings. The essence of the case was accusing a transgender student of “LGBT propaganda” for her trans status (hidden by her) and private conversations about LGBT+ normality with other students. The evidence was clearly falsified under pressure, the witnesses assessed past events and formed an opinion about the girl “retroactively,” and the “offense” itself had expired. The court ignored all these circumstances because external pressure forced them to make politically motivated charges.

A similar situation was in the cases of “LGBT+ demonstration” in relation to our other clients – Gela Gogishvili and Haoyang Xu, where the decision to deport to China was made under pressure from FSB officers, which was openly discussed by the bailiffs. In most cases of “LGBT propaganda”, where we carried out the defense, the basis of the accusation is made up of reports from employees of the Center for Combating Extremism of the Ministry of Internal Affairs of the Russian Federation, and in 5 cases in different regions, the proceedings are carried out by the Criminal Investigation Department of the Ministry of Internal Affairs for the constituent entity of the Russian Federation, which is formally impossible - article for “LGBT propaganda” is administrative.

12 out of 18 cases on charges of promoting or demonstrating “non-traditional sexual relationships and gender reassignment”, where our team defended LGBT people, were initiated at the request of persons called by law enforcement officers “social activists” - voluntary homophobic “activists”, clearly “folk” organizations enjoying the patronage of the Russian government.

Thus, the court of any level in modern Russia becomes an instrument of the fight against democracy, which occurs with gross procedural and semantic violations. The former are sometimes possible to challenge, but not always successfully; the latter are impossible, as well as obvious contradictions with the current legislation of the Russian Federation and decisions of the Russian courts adopted earlier, or international legislation.

As the Constitutional Court of the Russian Federation indicated in Resolution No. 24-P dated September 23, 2014, the state is called upon to take measures aimed at eliminating possible infringements of the rights and legitimate interests of persons based on their sexual orientation, and to provide effective opportunities for the protection and restoration of their violated rights on the basis the principle of equality of all before the law and the court enshrined in Article 19 (Part 1) of the Constitution of the Russian Federation. Recognizing a non-existent movement as extremist will inevitably lead to the criminalization of human rights, activist or other public activities in the interests of protecting the rights of the relevant groups. This creates a risk of state persecution for human rights defenders, activists, journalists, and possibly for all LGBT people who openly express their views.

From the practice of the “LGBT+ Case,” there are systematic cases where the police, having realized that the victim was a queer person, simply blatantly changed his status to the accused, falsifying evidence. For example, the case of self-defense of a trans woman in Khimki. Numerous facts of outing are known. Representatives of law enforcement agencies, especially the police, are biased and intolerant towards queer people and can insult, misgender, verbally humiliate, and beat them. Cases of deliberate concealment of offenses and criminal acts against queer people have been recorded, and there are examples of police complicity in such criminal acts. According to our sociological research, in 2023 in Russia, 91% of queer people believe that they have a real risk of being subjected to life- and freedom-threatening persecution from queerphobic communities.

We have to conclude that the Russian court has lost the status of an instrument for at least partial restoration of justice and democracy, which it had at the turn of the 2010s and 2020s. At the moment, in most politically motivated cases, the court is a dependent instrument of the executive, and less often of the legislative, deliberately censoring vulnerable groups and systematically failing to comply with the rules of its own work.