

IN THE NAME OF THE RUSSIAN FEDERATION
The Constitutional Court of the Russian Federation

Judgment

of 23rd September, 2014 No. 24-Π/2014

on the case concerning the review of constitutionality of Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation in connection with the complaint of N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov.

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar', G.A.Gadzhiyev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel'nikov, Yu.D.Rudkin, N.V.Seleznev, O.S.Khokhryakova, V.G.Yaroslavtsev,

guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Item 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 47¹, 74, 86, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in a session without holding hearing considered the case on the review of constitutionality of Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation.

The reason for the consideration of the case was the complaint of N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov. The ground for the consideration of the case was the discovered uncertainty of whether the legislative provision contested by the petitioners is in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur N.S.Bondar', having examined submitted documents and other materials, including written opinions of the Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I.Alexandrov and the Plenipotentiary

Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. Article 6.21 of the Administrative Offences Code of the Russian Federation establishes administrative responsibility for propaganda of unconventional sexual relations among minors, having expressed itself in dissemination of information aimed at formation of unconventional sexual orientations, attractiveness of unconventional sexual relations, distorted notion about social equivalence of conventional and unconventional sexual relations, or thrusting information on unconventional sexual relations causing interest to such relations, if these actions do not contain criminally punishable action (Section 1), as well as introduces special compositions of respective administrative offences, formulated on the signs of particular subjects and means of their commission (Sections 2 – 4).

Constitutionality of Article 6.21 of the Administrative Offences Code of the Russian Federation is contested by N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov, who were made administratively answerable for the commission of administrative offences envisaged by its Section 1 with meting out an administrative punishment in the form of administrative fine of 4,000 roubles.

1.1. By the resolution of the Justice of the Peace of judicial district No. 5 of Oktyabr'sky judicial area of the City of Arkhangel'sk of 3rd December, 2013 (left unchanged by the decision of Oktyabr'sky District Court of the City of Arkhangel'sk of 23rd January, 2014) it was established that N.A.Alexeev held in a public place – near the children's library building a single picket with the aim to propagandize unconventional sexual relations among minors, which expressed itself in demonstration of placards saying "Gay-propaganda does not exist" and "They do not become gays, they are born gays!". N.A.Alexeev did not contest circumstances expounded in the protocol on administrative offence, but claimed

that his actions were not propaganda and were aimed at dissemination of objective information that cannot cause damage to health, moral and spiritual development of minors. Yet his arguments were turned down by court as contradicting the materials of the case.

By the resolution of the same Justice of the Peace of 3rd December, 2013 (left unchanged by the decision of Oktyabr'sky District Court of the City of Arkhangel'sk of 23rd January, 2014) it was established that at the same public place Ya.N.Yakushenko conducted analogous action, assisting N.A.Alexeev to hold placards with the said inscriptions. Ya.N.Yevtushenko's arguments that this public event had the object not of propaganda of unconventional sexual relations, but exclusively informational influence on minors were turned down by court as not confirmed by the materials of the case.

By the resolution of the Justice of the Peace of judicial district No. 3 of Sovetsky judicial area of the City of Kazan' of 19th December, 2013 (left unchanged by the decision of Sovetsky District Court of the City of Kazan' of 11th February, 2014), passed in respect of D.A.Isakov, it was established that he held a public event in the form of single picket, during which a placard was used with the text "To be gay and to love gays is normal. To beat up gays and to kill gays is a crime". The court came to the conclusion that this information represented propaganda of unconventional sexual relations. D.A.Isakov's arguments that picketing was held with the only goal – to attract society's attention to inadmissibility of violence towards persons with unconventional sexual orientation were recognized as unsubstantiated, especially as minors had access to information disseminated by him that caused damage to health and development of children.

1.2. As follows from Articles 3, 36, 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", concretizing Article 125 (Section 4) of the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation admits citizens' complaints against violation of their constitutional rights and freedoms by legislative provisions applied in a specific case, whose consideration has been completed in

court, if it comes to the conclusion that these legislative provisions breach constitutional rights and freedoms of citizens and that there is uncertainty of whether they conform to the Constitution of the Russian Federation; the Constitutional Court of the Russian Federation adopts judgment solely on the subject stated in the complaint and only in relation to that part of the act, constitutionality of which is called in question, assessing both the literal meaning of legislative provisions under consideration and the meaning attributed to it by an official and other interpretations or the prevailing law-applying practices, as well as proceeding from their place in the system of legal norms; herewith the Constitutional Court of the Russian Federation rules exclusively on matters of law and refrains from establishment and investigation of actual facts whenever this falls within competence of other courts or other bodies.

N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov connect violation of their rights, guaranteed by Articles 15 (Section 4), 17 (Section 1), 19 (Sections 1 and 2), 21 (Section 1), 29 (Sections 1, 2 and 4) and 55 (Section 3) of the Constitution of the Russian Federation by Article 6.21 of the Administrative Offences Code of the Russian Federation with the fact that the ban introduced by it, excluding dissemination among minors of any information about homosexuality, including the one containing only the assertion on social equivalence of close relations between persons of different sexes and of those between persons of the same sex, has no reasonable grounds. In the petitioners' opinion, such ban is based on prejudices, by virtue of which non-heterosexual relations are condemned as immoral and, consequently, entails derogation of non-heterosexually oriented citizens' dignity, as well as discrimination on the sign of sexual orientation.

Since application of Sections 2 – 4 of Article 6.21 of the Administrative Offences Code of the Russian Federation by courts in specific cases with petitioners' participation is not confirmed by the submitted materials, the proceeding on their complaint in this respect is subject to discontinuance as not meeting the criterion of admissibility in accordance with the requirements of

Article 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

Thus, the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case is Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation as envisaging imposition of administrative responsibility for propaganda of unconventional sexual relations among minors, having expressed itself in dissemination of information aimed at formation of unconventional sexual orientations of minors, attractiveness of unconventional sexual relations, distorted notion about social equivalence of conventional and unconventional sexual relations, or thrusting information on unconventional sexual relations causing interest to such relations, if these actions do not contain criminally punishable action.

1.3. The Constitutional Court of the Russian Federation, having considered N.A.Alexeev’s suggestion, expressed on his behalf, on holding public hearing on the present case after passing judgments by the European Court of Human Rights on complaints of the Russian Federation’s citizens in its proceedings, in respect of whom legislative norms of a number of subjects of the Russian Federation had been applied, analogous to the one contained in Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, supposes that in this case coordination of the possibility to decide the case in the procedure of constitutional judicial proceedings with adoption of a respective judgment by the European Court of Human Rights is unfounded.

According to Article 46 (Section 3) of the Constitution of the Russian Federation, everyone has the right in accordance with international treaties of the Russian Federation to appeal to interstate bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted. The complaint of N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov has been admitted by the Constitutional Court of the Russian Federation for consideration, i.e. is in its proceedings, and therefore – within the meaning of the indicated prescription of the Constitution of the Russian Federation in the

interconnection with its Articles 46 (Sections 1 and 2), 118 (Sections 2 and 3), 125 (Section 4) and 126 – it is impossible to consider that prior to passing of final decision on the present case all available internal means of legal protection for the petitioners have been exhausted.

One should also take into account that normative control, i.e. review of intra-state legislation as regards its conformity to the Convention for the Protection of Human Rights and Fundamental Freedoms does not fall within the competence of the European Court of Human Rights as a subsidiary interstate judicial body for resolution of specific cases. With the account of this and proceeding from the principles of supremacy, supreme legal force and direct effect of the Constitution of the Russian Federation, fixed by it as the basis of the constitutional system of the Russian Federation (Article 4, Section 2; Article 15, Sections 1 and 2), it is impossible to recognize as well-founded the idea of instance and informative interdependence of the judgments of the Constitutional Court of the Russian Federation, which reviews constitutionality of norms of a law, applied in a specific case by a court, and of the European Court of Human Rights, which establishes violation in this case of rights and freedoms fixed in the Convention for the Protection of Human Rights and Fundamental Freedoms. As to the divergence in positions of the Constitutional Court of the Russian Federation and the European Court of Human Rights, their appearance, as follows from the Judgment of the Constitutional Court of the Russian Federation of 6th December, 2013 No. 27-II, contemplates use of respective procedural mechanisms to overcome such collisions.

Given such circumstances and since N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov had the opportunity to sufficiently fully expound their position, including presenting objections on the opinion of the representative of the party having adopted and signed the contested normative legal act, the Constitutional Court of the Russian Federation deems it possible to consider the present case in the procedure of Article 47¹ of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” without holding hearing.

2. According to the Constitution of the Russian Federation, in Russia as a democratic law-governed state man, his rights and freedoms are the supreme value, and their recognition, observance and protection on the basis of equality of all persons before the law and the court are an obligation of the state (Article 1, Section 1; Article 2; Article 19, Sections 1 and 2); human and civil rights and freedoms have direct force, they determine the meaning, content and implementation of laws, the functioning of legislative and executive authority and of local self-government and are guaranteed by law (Article 18).

As the Constitutional Court of the Russian Federation repeatedly pointed out, the Constitution of the Russian Federation, maintaining the priority of the person and his/her rights in all spheres, obliges the state to protect human dignity (Article 21, Section 1) as a necessary pre-requisite and basis for all other inalienable human rights and freedoms, condition of their recognition and observance; so far as nothing may be ground for derogation of human dignity, no one may be restricted in protection by legal means of his/her dignity as well as all rights and freedoms linked to it (judgments of 3rd May, 1995 No. 4-II, of 15th January, 1999 No. 1-II, of 25th April, 2001 No. 6-II and of 20th April, 2006 No. 4-II; rulings of 15th February, 2005 No. 17-O, of 1st March, 2010 No. 323-O-O and others).

2.1. Constitutional recognition of human dignity as a fundamental value of the Russian statehood contemplates the obligation of the Russian Federation to grant citizens guarantees against any unfounded interference with the sphere of their individual autonomy and at the same time, observing criteria and bounds of possible restrictions of human and civil rights and freedoms, following from the Constitution of the Russian Federation, its Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 2 and 3), to create for them real possibilities for free self-determination and self-expression.

By virtue of the principle of individual autonomy of a person, as it is reflected in Articles 22 (Section 1), 23 (Section 1), 28 and 29 (Sections 1 – 4) of the Constitution of the Russian Federation, guaranteeing to everyone the right to

freedom and personal inviolability, right to the inviolability of private life, right to choose, possess and disseminate his convictions and act in accordance with them, freedom of thought and speech, right not to be forced to express his/her thoughts and convictions or to deny them, right freely to seek, receive, transmit, produce and disseminate information by any legal means, every person has the right to carry on one or another way of life, answering his habits and ideas to the largest extent, he/she is free in determination of his convictions and preferences and may freely adhere to them, and the state must not admit arbitrary intrusion into the sphere of private life, respect distinctions connected with it.

Freedom of sexual self-determination related to this sphere implies existence of objective distinctions in sexual identity and possibility for persons, as a general rule having attained majority, to choose specific variants of sexual behavior, not conjugate with violence and causing damage to life or health or threat of such causing, including those that may be appraised disapprovingly by the majority, including from the point of view of ethical, religious or other ideas, having formed in concrete historical socio-cultural conditions of the society's development. Accordingly, sexual contacts in themselves, not falling under the criminal-law ban on actions of sexual nature with a person under 16, on mutual agreement between persons of the same sex are neither under ban of international law norms nor under ban of the Constitution of the Russian Federation, Article 19 (Section 2) of which guarantees protection equally to all persons, irrespective of their sexual orientation, and sexual orientation as such cannot serve as a lawful criterion for establishment of distinctions in the legal status of human and citizen.

In its turn, the state is called upon to take measures aimed at exclusion of possible encroachment upon rights and lawful interests of persons because of their sexual orientation and ensure effective possibilities for protection and restoration of their violated rights on the basis of the principle of equality of all before the law and the court, fixed in Article 19 (Section 1) of the Constitution of the Russian Federation. This constitutional principle, contemplating, among other things, inadmissibility of limitation in rights and freedoms or establishment of any

advantages depending on belonging to some or other social groups, which may be understood also as groups of persons with certain sexual orientation, is rendered concrete in the norms of branches of legislation (Article 3 of the Labour Code of the Russian Federation, Item 6 of Article 25 of the Law of the Russian Federation of 19th April, 1991 No. 1032-1 “On Employment of Population in the Russian Federation”, Item 4 of Section 1 of Article 18 of the Federal Law of 27th June 2004 No. 79-ФЗ “On State Civil Service of the Russian Federation”, Item 4 of Section 1 of Article 13 of the Federal Law of 30th November, 2011 No. 342-ФЗ “On Service in Bodies of Internal Affairs of the Russian Federation and Amendments to Individual Legislative Acts of the Russian Federation”, Item 2 of Section 1 of Article 3 of the Federal Law of 29th December, 2012 No. 273-ФЗ “On Education in the Russian Federation” and others). State legal protection against discrimination, including on the motive of belonging or non-belonging to some social groups, is ensured also by application of measures of administrative (Article 5.62 of the Administrative Offences Code of the Russian Federation) and criminal (Item “e” of Section 1 of Article 63 and Article 136 of the Criminal Code of the Russian Federation) responsibility.

2.2. So far as in the Russian Federation – by virtue of following from Articles 13 (Sections 1 – 3), 19 (Section 1) and 29 (Section 4) of the Constitution of the Russian Federation requirements of equality of all before the law, political and ideological diversity, freedom to seek, receive, transmit, produce and disseminate information by any legal means – in conditions of a democratic society questions connected with sexual self-determination are not excluded from public discussion, citizens, including those whose sexual orientation differs from the generally accepted one, may not be deprived of the opportunity, in order to protect their rights and lawful interests or rights and lawful interests of other people (social groups), to use in order to attract public attention to the facts of their violations all means not prohibited by law, including by way of organization and holding of public events or through mass media.

The Constitution of the Russian Federation, not establishing for freedom of speech and freedom of dissemination of information any ideological or world outlook criteria and restrictions and not contemplating majority's thrusting their convictions and preferences on minority, thus gives no grounds for establishment of a ban on holding of public discussions on sexual relations, including non-conventional, and on ensuring of rights, freedoms and lawful interests of sexual minorities, and the form of presenting information related to sexual relations, which offends public morals, is inadmissible to sexual orientations both of the majority of members of the society and those its members who adhere to non-conventional preferences. The fact that adherence to non-conventional sexual orientations in itself may look for many as offensive from the point of view of moral norms accepted in Russian society or in some other way infringing upon public morals and rights, freedoms and lawful interests of other persons linked to it can neither serve as obstacle for holding of such discussions, so far as in the Russian Federation the possibility of free reflection of different views and opinions in public discourse and in the information expanse is contemplated as an important element of its constitutional-law characteristics as a law-governed democratic state.

At the same time, proceeding from the requirements of Articles 17 (Section 3) and 55 (Section 3) of the Constitution of the Russian Federation, realization by citizens of the right to dissemination of information related to the issues of sexual self-determination of a person, must not violate rights and freedoms of other people, and in the legal regulation of this right, as well as other human and civil rights and freedoms, balance of constitutionally-significant values must be ensured. Consequently, bearing in mind delicacy of such issues as pertaining to the sphere of individual autonomy and not infringing upon its very essence, the state is entitled to introduce, on the basis of the indicated requirements of the Constitution of the Russian Federation, certain limitations of the activity, connected with dissemination of such information, if it acquires aggressive, persistent character

and can cause damage to rights and interests of other people, first of all minors, and is offensive in form.

The Constitution of the Russian Federation gives no grounds to recognize as unconditionally lawful public activity aimed at discrediting, inclining to denial of constitutionally significant moral values, predetermined by historical, cultural and other traditions of the multinational people of the Russian Federation. Such approach correlates with the provisions of the Universal Declaration of Human Rights, envisaging on the basis of recognition of everyone's duties to the community in which alone the free and full development of his personality is possible, admissibility of limitations in the exercise of human rights and freedoms by law, including with the object of meeting the just requirements of morality (Items 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 freedom of expression of one's opinion carries with it duties and responsibilities and may be subject to certain formalities, conditions, restrictions or sanctions envisaged by law and necessary in a democratic society, in particular, for the protection of public health and morals, protection of reputation and rights of other people.

The adduced provisions of international-law acts have general character, but in the international community, as well as in the practice of various national constitutional legal systems, there is no consensus as to the understanding of bounds of both sexual autonomy of a person in itself and dissemination of information with regard to sexual relations, normative definition of obscene behavior, conditions and criteria, on the basis of which it may be recognized as publicly dangerous and is subject to prohibitive state and legal influence. In the legislation of the Russian Federation mechanisms of realization of these provisions, which by virtue of Article 15 (Section 4) of the Constitution of the Russian Federation are an integral part of the legal system of Russia, are based on traditional ideas of humanism in the context of peculiarities of national and

confessional composition of Russian society, its socio-cultural and other historical characteristics, in particular on the formed as universally recognized in the Russian society (and shared by all traditional religious confessions) ideas on marriage, family, maternity, fatherhood, childhood, which received their formal legal fixation in the Constitution of the Russian Federation and on their particular value. Accordingly, dissemination by a person of his convictions and preferences concerning sexual orientation and concrete forms of sexual relations must not encroach upon dignity of other people and call in question public morality in its understanding having formed in Russian society, so far as other would contradict fundamentals of legal order.

When determining constitutionally admissible bounds of free dissemination of personal convictions and preferences in society, prohibition of propaganda or agitation, which arouses social, racial, national or religious hatred and hostility, established by Article 29 (Section 2) of the Constitution of the Russian Federation, which obliges the legislator to strive, acting within the limits of its constitutional powers and independently assessing the state and trends of Russian society on a concrete historical stage, to prevent manifestations of social aggression on the basis of demonstrative (public) denial of constitutionally significant moral values or disrespect for them. And law-enforcers must not be deprived of the possibility, while appraising concrete situation connected with dissemination of information concerning sexual relations (particularly if it broaches problems of unconventional sexual orientation, delicate and poly-semantically perceived in society), to take measures aimed at minimization or non-admittance of threat to legality, legal order, public security as well as to life and health of citizens, including those disseminating respective information.

2.3. Thus, the Constitution of the Russian Federation contemplates that the requirement of respect for and protection of personal dignity fixed by it is maintained and realized in the Russian Federation by means of protection of rights and lawful interests equal for all, including those who have unconventional preferences in private (including sexual) life. Establishment of the bounds of

exercise of the freedom of speech and free dissemination of information is determined, as pointed out in the Ruling of the Constitutional Court of the Russian Federation of 24th October, 2013 No. 1718-O, by the need to ensure balance of interests of all members of Russian society – both those sharing universally recognized system of values and those orientating towards other, deviating from traditional, models of behavior and belongs to discretionary powers of the legislator, which is called upon to co-ordinate normative-legal regulation of human and civil rights and freedoms exercised by it with ideas having formed in the society in concrete historical conditions of its development.

3. According to the Constitution of the Russian Federation, maternity, childhood and family are protected by the state; issues of protection of the family, maternity, fatherhood and childhood are within the joint jurisdiction of the Russian Federation and subjects of the Russian Federation (Article 38, Section 1; Article 72, Item “g” of Section 1).

Within the meaning of the said constitutional provisions, family, maternity and childhood in their traditional understanding, perceived from the ancestors, represent values that ensure constant change of generations, appear as a condition of preservation and development of the multinational people of the Russian Federation, and therefore need particular protection from the state. Accordingly, it is on the basis of traditional ideas about these values in the context of peculiarities of national and confessional composition of Russian society, its socio-cultural and other historical characteristics that the Russian Federation has the right to decide individual questions of legislative regulation in the fields, broaching sexual and inter-personal relations connected with them, not denying the necessity to take account of the requirements of the Constitution of the Russian Federation and international-law acts both with regard to individual autonomy of a person and with regard to the freedom of dissemination of information.

So far as one of the roles of the family is birth and upbringing of children, understanding of marriage as a union of a man and a woman lies in the basis of legislative approach to resolution of questions of demographic and social nature in

the field of family relations in the Russian Federation, which fully conforms to the provisions of Articles 7 and 38 of the Constitution of the Russian Federation and does not contradict the International Covenant on Civil and Political Rights (Article 23) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 12), envisaging the possibility of creation of a family in accordance with national legislation, regulating exercise of this right.

Proceeding from this and considering that the obligation of the state to create conditions for propaganda, support and recognition of unions of persons of the same sex follows neither from the Constitution of the Russian Federation nor from international-law obligations taken by the Russian Federation upon itself (rulings of the Constitutional Court of the Russian Federation of 16th November, 2006 No. 496-O and of 19th January, 2010 No. 151-O-O), regulation of the freedom of speech and freedom of dissemination of information, exercised by the federal legislator on the basis of Article 71 (Item “c”) of the Constitution of the Russian Federation contemplates no creation of conditions, making for formation and maintaining in society as equivalent of other, different from the universally recognized, interpretations of the institution of family and social and legal institutions conjugate with it.

3.1. Constitutional recognition of the values of family, maternity, fatherhood and childhood determines, in particular, the character and content of legal regulation in the field of state protection of rights of minors, which, as the Constitutional Court of the Russian Federation pointed out in the Judgment of 18th July, 2013 No. 19-II, must in order of priority guarantee them protection of personal dignity, the right to life, right to freedom and personal inviolability in order to ensure security of every child both directly from criminal infringements and from harmful effect on his morals and psyche, which can considerably influence his personal development, even if not expressed in concrete unlawful actions. These goals also determine the need to use optimal legal instruments in legal regulation, allowing, with observance of the requirements of Articles 17 (Section 3) and 55 (Section 3) of the Constitution of the Russian Federation, to

protect child against the influence of information able to cause damage to his health and development, in particular information conjugate with aggressive thrusting on concrete models of sexual behavior, formation of distorted ideas about socially recognized models of family relations, conforming to generally accepted in the Russian society moral values in their constitutional-law expression.

The expounded approaches, following from the Constitution of the Russian Federation and the practice of the Constitutional Court of the Russian Federation, correlate with the provisions of the UN Convention on the Rights of the Child of 20th November, 1989, which proceeds from the idea that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume the responsibilities within the community (Preamble); states in order to ensure healthy development of the child shall, in particular, protect the child from all forms of sexual exploitation and sexual abuse (Article 6, Item 2; Article 34).

To execute constitutional obligation of the state to protect the rights of minors and proceeding from the principles of children's preparation to full-value life in society, fostering of high moral qualities and civil spirit in them, the Federal Law of 24th July, 1998 124-Φ3 "On Basic Guarantees of the Rights of the Child in the Russian Federation" establishes, as follows from its Preamble, basic guarantees of rights and lawful interests of the child, provided for by the Constitution of the Russian Federation, with the aim to create legal, socio-economic conditions for their realization, and among other things obliges bodies of state power of the Russian Federation to take measures for the protection of the child from information, propaganda and agitation causing damage to his health, moral and spiritual development (Item 1 of Article 14).

Constitutional priorities in the field of family, maternity and childhood's protection are concretized also in the norms of the Federal Law of 29th December, 2010 No. 436-Φ3 "On Protection of Children from Information, Causing Damage to their Health and Development", which, according to Section 1 of its Article 1,

regulate relations connected with the protection of children from information causing damage to their health and (or) development, including such information contained in the information products. The said Federal Law, particularly specifying that its effect does not extend, in particular, to relations in the field of turnover of the information products containing scientific, scientific and technical, statistical information, and turnover of information products having significant historical, artistic or other cultural value (Section 2 of Article 1), gives definition of such notions as “information security of children” and “information causing damage to health and (or) development of children” (Article 2), as well as introduces classification of information products with regard to age categories of children (Chapter 2).

Article 5 of this Federal Law ascribes to information, causing damage to health and (or) development of children, information concerning sexual relations, whose dissemination among children is either prohibited, as it is established, in particular, with regard to propaganda of unconventional sexual relations (Section 2), or is limited for children of certain age categories (Section 3) proceeding from the traditional ideas about public morality and legal order, as well as bearing in mind the degree of their psychic development, and contemplates respective control from teachers and parents. The Convention on the Rights of the Child also proceeds from the need to adapt such information to age peculiarities of children; its Article 5 reflects the principle of consideration of the concrete level developing abilities of a child while exercise of control and direction in respect of the child by parents or, in respective cases, other persons responsible for the child. Equally, the Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25th October, 2007, ratified by the Russian Federation, obliges the states to take necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more

general context of information on sexuality and pay special attention to situations of risk, especially those involving the use of new information and communication technologies (Article 6).

3.2 In order to protect human and civil rights and freedoms, family, maternity and childhood, ensuring of legality, legal order and public security the Constitution of the Russian Federation, as follows from its Articles 1 (Section 1), 15 (Sections 1 and 2), 38 (Section 1), 45 (Section 1), 71 (Items “a”, “c”, “f”, “o”), 72 (Items “b”, “f”, “g”, “j” of Section 1) and 76 (Sections 1 and 2), allows the federal legislator to use all means available within the framework of its discretionary powers, being guided by the general principles of legal responsibility, which, as the Constitutional Court of the Russian Federation repeatedly pointed out, have universal significance and in their essence belong to the fundamentals of constitutional legal order. In the field of the protection of rights and lawful interests of the child administrative-law prohibition of propaganda of unconventional sexual relations among minors comes out as such means, the introduction of which is called upon to ensure prevention of the negative effect which can be put upon their formation by an external information influence.

In accordance with Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, administrative responsibility for propaganda of unconventional sexual relations among minors comes in the event of dissemination of information aimed at formation of unconventional sexual orientations of minors, attractiveness of unconventional sexual relations, distorted notion about social equivalence of conventional and unconventional sexual relations, or thrusting information on unconventional sexual relations causing interest to such relations, if these actions do not contain criminally punishable action.

The object pursued by the federal legislator when establishing this norm was to protect the child from influence of information able to urge him on to unconventional sexual relations, adherence to which hinders to build family relations as they are traditionally understood in Russia and are expressed in the Constitution of the Russian Federation. The Constitutional Court of the Russian

Federation recognizes that the possibility of influence of respective information, even presented in a persistent form, on future life of the child is not unconditionally proved. Nevertheless, proceeding from the specificity of public relations, connected with information influence on person having not attained majority and therefore being in vulnerable position, the federal legislator has the right, within the framework of legal regulation of dissemination of information about unconventional sexual relations among minors and bearing in mind the priority goal of ensuring the rights of the child, following from the Constitution of the Russian Federation in unity with international-law acts, and at attainment of the balance of constitutionally significant values to use for appraisal of the need to introduce some or other restrictions criteria based on the presumption of presence of a threat to the child's interests, especially as restrictions introduced by it concern only the address direction of respective information to person of a certain age category and therefore may not be regarded as excluding the possibility to realize constitutional right to freedom of information in this field.

The ban on exercise of public actions with regard to minors, indicated in Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, is called upon to prevent increased concentration of their attention on the issues of sexual relations, able at unfavourable coincidence substantially deform the child's ideas about such constitutional values as family, maternity, fatherhood and childhood and negatively reflect itself not only on his psychological state and development, but on social adaptation as well. The fact that such ban is not extended to cases connected with propaganda of immoral behavior within the framework of conventional sexual relations, which may also require state, including administrative-offences, reaction, gives no grounds to recognize this norm as not conforming to the Constitution of the Russian Federation from the point of view of breach of the principle of equality with regard to the protection of constitutional values which ensure continuous change of generations. Here the Constitutional Court of the Russian Federation proceeds from the idea that social links of every concrete person are indirectly also the object of its protection, since

imposition on minors of social orientations, which differ from the generally accepted in the Russian society, including those which are not shared, and sometimes perceived as unacceptable by parents, who bear the priority responsibility for the upbringing and development of their children, must care about their health, physical, psychic, spiritual and moral development (Article 38, Section 2, of the Constitution of the Russian Federation; Item 1 of Article 63 of the Family Code of the Russian Federation), can provoke social alienation of the child and hinder his successful development in family environment, moreover if one bears in mind that constitutional equality of rights, contemplating also equality of rights irrespective of sexual orientation, yet do not pre-determine the presence of actually equivalent appraisal of persons with different sexual orientation in the public opinion, which can be conjugate with objective difficulties when trying to avoid negative attitude of individual representatives of the society towards respective persons on everyday level. This also concerns cases when the information in itself, prohibited to be disseminated among minors, may be aimed, from the standpoint of its disseminator, at overcoming of negative attitude as such to these persons.

Establishing special (restrictive) legal regime of dissemination of information concerning unconventional sexual relations, its availability for minors, the federal legislator also took into consideration socio-psychological peculiarities of the child's personality, connected with perception of such information. And although age criterion chosen by it – in the context of the poly-semantic character of expert assessments of the age in which eventual formation of sexual preferences takes place – is also in a certain sense evaluative, it attributes to the restriction envisaged by Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation in essence spot character that withdraws the problem of its proportionality in the indicated aspect.

Ban on propaganda of unconventional sexual relations as activity of targeted and uncontrollable dissemination of information, able to cause damage to health, moral and spiritual development and, among other things, form distorted ideas

about social equivalence of conventional and unconventional sexual relations, among minors, who by virtue of age cannot independently critically appraise the received data, in itself does not exclude presenting of respective information in a neutral (enlightening, artistic, historical) context. Such informing, if it is deprived of the signs of propaganda, i.e. is not aimed at formation of preferences connected with the choice of unconventional forms of sexual identity and ensures individualized approach, taking into account peculiarities of psychic and physiological evolution of children in one or another age group, the character of a concrete highlighted question, may be carried out with the help of experts – teachers, physicians, psychologists.

3.3. Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, as follows from its content, proceeds from inadmissibility of propaganda of unconventional sexual relations among minors or thrusting information about such relations on them by any persons, irrespective of their sexual orientation. The term “unconventional sexual relations” used in this norm, as well as the construction “distorted idea about social equivalence of conventional and unconventional sexual relations” are determined solely by its purposeful destination, mean no negative appraisal of unconventional sexual relations as such by the state, are not aimed at derogation of honour and dignity of citizens practicing such relations.

Accordingly, Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation in itself and in the system of legal regulation operating in the Russian Federation cannot be regarded as containing official blaming of unconventional sexual relations, in particular homosexuality, and moreover, their prohibition. Its other interpretation, as admitting restriction of human and civil rights and freedoms exclusively on the sign of sexual orientation, would contradict constitutional principles of equality and non-admission of discrimination.

Bearing in mind delicate nature of the issues concerning sexual self-determination of a person, indissolubly connected with the right to private life and individual autonomy as constitutional values, interference with which on the part

of the state must be minimal, ban on propaganda of unconventional sexual relations among minors or thrusting information about such relations on them is not subject to broad interpretation and must be regarded in the context of circumstances, which the accent is made on in Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation and which with such, narrowly directed interpretation may justify deviation from general constitutionally protected of individual autonomy, non-interference with private life and freedom of speech under the condition of ensuring balance with other constitutional values, including the protection of family, maternity, fatherhood and childhood.

At this in this norm, taking into consideration the construction of Article 6.17 of the Administrative Offences Code of the Russian Federation, establishing responsibility for breach of the legislation of the Russian Federation on the protection of children against information causing damage to their health and (or) development, qualified composition is formulated, taking into account the probability of coming of long negative consequences in the fate of minors as persons, to whom damage can be caused by administrative offence envisaged by it, which determine increase of sanctions for its commission acceptable from the constitutional point of view.

So far as the goal of normative regulation, established by Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, is non-admission or restriction of respective information influence on minors and contemplates no automatic ban on dissemination of any information in the field of unconventional sexual relations, constitutional-law admissibility of the ban of their propaganda among minors must be appraised proceeding from the character of information, understood as propaganda, its potential audience (targeted information influence on minors) and place of dissemination.

3.4. Within the meaning of Article 54 (Section 2) of the Constitution of the Russian Federation, legal responsibility may come only for actions that are recognized as offences by the law in force by the moment of their commission. *Corpus delicti* of an offence is a necessary ground for all kinds of legal

responsibility, and signs of the composition of the offence, first of all in the public-law sphere, as well as the content of concrete compositions of offences, must accord with constitutional principles of the democratic law-governed state, including the requirement of justice, in its inter-relations with natural and juridical persons as subjects of legal responsibility. In its turn, presence of guilt as an element of subjective side of *corpus delicti* of an offence is a universally recognized principle of making legally answerable in all branches of law, and any exception from it must be expressed directly and unambiguously, i.e. be fixed directly in the law.

As follows from Articles 49, 50, 52, 54 and 64 of the Constitution of the Russian Federation, the principles of the presumption of innocence and guilty responsibility, i.e. presence of guilt as a necessary element of the composition of an offence, express general principles of law when applying state coercion in the field of public responsibility both in criminal and administrative law. Lesser in the degree of public danger in comparison with crimes significance of administrative offences as a particular kind of public-law delicts does not mean that they may be excluded from the sphere of operation of constitutional right to court protection and fair trial.

Accordingly, rendering concrete the provisions of Articles 17 (Sections 1 and 3), 46 (Sections 1 and 2), 49 (Section 1), 51 (Section 1), 54 (Section 2) and 55 (Section 3) of the Constitution of the Russian Federation, the Administrative Offences Code of the Russian Federation envisages in Article 1.5 that a person is subject to administrative responsibility only for those administrative offences, in respect of which his guilt is established (Section 1); a person in whose respect proceeding is conducted on a case of administrative offence is considered innocent until proved guilty in the procedure provided for by this Code and established by a resolution of a judge, body, official having considered the case (Section 2). Within the meaning of Section 1 of Article 1.5 of this Code in the inter-connection with Item 2 of Section 1 of its Article 24.5, the guilt of commission of an administrative offence is established in the course of the proceeding on a case of an administrative

offence; absence of guilt of commission of an administrative offence is one of the circumstances, requiring discontinuance of the proceedings on the case of an administrative offence.

The adduced legal positions, expounded in a number of decisions of the Constitutional Court of the Russian Federation (judgments of 25th January, 2001 No. 1-II, of 27th April, 2001 No. 7-II, of 17th July, 2002 No. 13-II, of 25th April, 2011 No. 6-II and of 25th February, 2014 No. 4-II; rulings of 9th April, 2003 No. 172-O, of 7th December, 2010 No. 1570-O-O and others), also extend to regulation established by Article 6.21 of the Administrative Offences Code of the Russian Federation.

Objective side of the action, envisaged by this Article, as a law-breaking action addressed directly to minors, does not include as an element the consequences of receipt of information about unconventional sexual relations by them and, being limited by the unlawful action as such does not contemplate confirmation of the fact that information disseminated by a person has in fact affected the formation of unconventional sexual orientation of its addressees, distorted idea of social equivalence of conventional and unconventional sexual relations or interest to such relations.

This means that the subjective side of formal composition of such offence as propaganda of unconventional sexual relations among minors can neither enclose its consequences and consists only in the realization of the objective of this unlawful action. Presence or absence of such an objective, as the Constitutional Court of the Russian Federation pointed out in the Ruling of 24th October, 2013 No. 1718-O, is subject to establishment together with other actual circumstances by courts of general jurisdiction and (or) other bodies and officials, who, while appraising some or other concrete actions, must take account of legal position, expounded in the Judgment of the Constitutional Court of the Russian Federation of 30th October, 2003 No. 15-II, on the need to delimitate informing and agitation as an aggregate of actions, prompting or aiming to prompt subjects of legal relations to certain behavior.

When establishing, within the framework of a concrete administrative offences proceeding, whether propaganda, falling under the ban envisaged by Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, possesses the indicated signs, law-enforcement bodies cannot but take into consideration the special character of this information's addressee – minors, and the person addressing them one or another information in such a delicate sphere as sexual relations must realize that usual, from his point of view, informing can, in a specific situation, have qualities of agitation (propaganda), if it is proved that its aim was dissemination (or moreover – thrusting) of information of a certain content. At the same time the fact that information about unconventional sexual relations turned or could have turned out to be available for minors in itself, in separation from all circumstances of the case, cannot serve as a ground for application of measures of state coercion in the form of administrative responsibility to this person: only intended commission by a person of respective public actions, directly aimed at propaganda of unconventional sexual relations among minors or intended commission of the same actions by a person, who consciously admitted that there may be minors among recipients of information or was indifferent to it, may be recognized as unlawful and administratively punishable.

3.5. As the Constitutional Court of the Russian Federation repeatedly pointed out (judgments of 23rd December, 1997 No. 21-II, of 23rd February, 1999 No. 4-II, of 28th March, 2000 No.5-II, of 23rd January, 2007 No. 1-II, of 8th November, 2012 No. 25-II, of 22nd April, 2013 No. 8-II and others), in judicial practice constitutional interpretation of normative provisions subject to application must be ensured; although the mechanism of a law's operation must be clear to subjects of respective legal relations first of all from the content of a concrete normative provision or a system of normative provisions being in interconnection, cases are not excluded when the necessary degree of certainty of legal regulation can be achieved by way of revelation of more complicated interconnection of legal provisions, including on the basis of generalization of court practice with regard to

a concrete sphere of public relations and with consideration of peculiarities of the realized rights and lawful interests of citizens; in cases when judicial practice admits attributing to some or other legislative provisions of legal meaning entailing violation of constitutional rights realized on their basis, the question arises of whether these legal provisions conform to the Constitution of the Russian Federation, which is to be resolved by the Constitutional Court of the Russian Federation in order to exclude their application and interpretation in the meaning, contradictory to constitutional norms.

The adduced legal positions of the Constitutional Court of the Russian Federation are significant for appraisal of legal regulation of administrative-delict relations, established by the federal legislator, within which use of evaluative or generally accepted notions (categories), in particular, with consideration of the peculiarities of specific objects of legal protection and the necessity of adequate and proportionate application of administrative-law bans in the conditions of diversity of models of behavior formed in in a concrete sphere, whereas the requirement of certainty, clarity, unambiguity of legal norms, following from the Constitution of the Russian Federation and contemplating availability of an administrative-law ban for perception and its clarity to the subjects of respective legal relations can be ensured also with the help of courts' explanations on the issues of their application (judgments of the Constitutional Court of the Russian Federation of 11th November, 2003 No. 16-II, of 14th April, 2008 No. 7-II, of 5th March, 2013 No. 5-II and others).

When considering cases concerning law-enforcement practice of lower-ranking courts as well as verification of laws of subjects of the Russian Federation, adopted prior to entry into force of Article 6.21 of the Administrative Offences Code of the Russian Federation, but containing normative provisions similar to it, on their conformity to federal legislation on administrative offences, the Supreme Court of the Russian Federation proceeded from the idea that the notion "propaganda" contemplates energetic public actions on formation in the conscience of orientations and (or) stereotypes of behavior or activity aimed at prompting or

prompting persons to whom it is addressed to commit some actions or refrain from their commission, in connection with which the ban on propaganda of unconventional sexual relations does not hinder the realization of the right to receive and disseminate information of general, neutral content on unconventional sexual relations, hold public events in the order envisaged by law, including open public debates on social status of sexual minorities, not imposing their life orientation on minors as persons, unable due to age independently critically appraise such information (rulings of 15th August, 2012 No. 1-AИГ12-11, of 7th November, 2012 No. 87-AИГ12-2 and of 27th February, 2013 No. 46-AИГ13-2).

So far as Article 126 of the Constitution of the Russian places on the Supreme Court of the Russian Federation functions of ensuring judicial supervision over court activity and giving explanations on issues of court practice with the aim to achieve its uniformity, courts when applying Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation must take account of its conclusions, including when resolving questions concerning holding of public actions, whose goals are connected with presentation of the position of persons with unconventional sexual orientation. Doing this, they in any event have no right to proceed from broad interpretation of the ban established by Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation.

4. Thus, Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation does not contradict the Constitution of the Russian Federation, so far as within its constitutional-law meaning in the system of the operating legal regulation it is aimed at the protection of such constitutionally significant values as family and childhood, as well as at prevention of causing damage to health of minors, their moral and spiritual development and contemplates no interference with the sphere of individual autonomy, including sexual self-determination of a person, is not aimed at prohibition or official blaming of unconventional sexual relations, does not hinder impartial public discussion of the questions of legal status of sexual minorities as well as use by their representatives of all not prohibited by law means of expression of their

position on these issues and protection of their rights and lawful interests, including organization and holding of public events and, bearing in mind that only public actions aimed at dissemination of information popularizing among minors or thrusting on them, proceeding from the circumstances of commission of this action, unconventional sexual relations may be recognized as unlawful, does not admit broad understanding of the ban established by it.

Accordingly, the appraisal of concrete actions of a person as falling under the ban established by Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation contemplates inadmissibility of formal approach when passing decisions by courts of general jurisdiction, which must take into account the whole complex of actual facts, confirming or, on the contrary, refuting presence of signs of unlawful propaganda or thrusting of information in these actions, direction at inadmissible popularization of unconventional relations among minors, as well as time, place and means of dissemination of respective information, motives which the person having disseminated it was guided by, including from the standpoint of their significance for ensuring rights and lawful interests of persons belonging to sexual minorities.

Proceeding from the expounded and guided by Articles 6, 47¹, 71, 72, 74, 75, 78, 79 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d:

1. To recognize Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation as not contradicting the Constitution of the Russian Federation so far as within its constitutional-law meaning in the system of the operating legal regulation it is aimed at the protection of such constitutionally significant values as family and childhood, as well as at prevention of causing damage to health of minors, their moral and spiritual development and contemplates no interference with the sphere of individual autonomy, including

sexual self-determination of a person, is not aimed at prohibition or official blaming of unconventional sexual relations, does not hinder impartial public discussion of the questions of legal status of sexual minorities as well as use by their representatives of all not prohibited by law means of expression of their position on these issues and protection of their rights and lawful interests, including organization and holding of public events and, bearing in mind that only public actions aimed at dissemination of information popularizing among minors or thrusting on them, proceeding from the circumstances of commission of this action, unconventional sexual relations may be recognized as unlawful, does not admit broad understanding of the ban established by it.

2. By virtue of Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the constitutional-law meaning of Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, revealed in the present Judgment, shall be obligatory throughout the territory of the Russian Federation for all representative, executive and judicial bodies of state authority, bodies of local self-government, enterprises, agencies, organizations, officials, citizens and their associations.

3. By virtue of Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, norms contained in other normative legal acts of the Russian Federation as well as in normative legal acts of subjects of the Russian Federation, analogous to Section 1 of Article 6.21 of the Administrative Offences Code of the Russian Federation, are subject to application in accordance with its constitutional-law meaning revealed in the present Judgment.

4. Citizens N.A.Alexeev, Ya.N.Yevtushenko and D.A.Isakov have the right to use the procedures of appeal of court decisions passed on their cases, envisaged by the legislation in force, with the aim to verify observance by judicial bodies, with account of actual circumstances of every specific case, constitutional-law criteria of application of the ban established by Section 1 of Article 6.21 of the

Administrative Offences Code of the Russian Federation as they are defined in the present Judgment.

5. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force from the day of its official publication, shall be directly applicable and shall not require confirmation by other authorities and officials.

6. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and the official Internet-portal of legal information (www.pravo.gov.ru). The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation

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