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La Corte Edu sul licenziamento di un'insegnante per motivi connessi all'orientamento sessuale (CEDU, sez. III, sent. 7 maggio 2024, ric. n. 49014/16)

La Corte di Strasburgo è stata chiamata a pronunciarsi sul ricorso presentato da una cittadina russa, insegnante scolastica, la quale ha lamentato di essere stata ingiustificatamente licenziata a causa del suo orientamento sessuale in relazione ad alcune foto pubblicate su un social media.
A tal riguardo, il licenziamento della ricorrente risulta evidentemente e grossolanamente sproporzionato rispetto allo scopo legittimo perseguito nel caso di specie, ossia la tutela della morale, dal momento che le foto contestate non erano né oscene né sessualmente esplicite.
Di conseguenza, la Corte ha ritenuto che il licenziamento della ricorrente abbia costituito un'ingerenza sproporzionata nei suoi diritti ai sensi dell'articolo 8 della Convenzione.
A ciò si aggiunge altresì la violazione dell'articolo 14 della Convenzione poiché la decisione delle autorità nazionali sarebbe stata determinata dalla mancata accettazione della sessualità della ricorrente (in base a quanto traspariva dalle foto), risultando perciò palesemente discriminatoria.

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

THIRD SECTION

CASE OF XXX v. RUSSIA
(Application no. 49014/16)

JUDGMENT
STRASBOURG
7 May 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Pere Pastor Vilanova, *President*,
Yonko Grozev,
Georgios A. Serghides,

Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Oddný Mjöll Arnardóttir, *judges*,
and Milan Blaško, *Section Registrar*,
Having regard to:
the application no. 49014/16 against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms "omissis" ("the applicant"), on 10 August 2016;
the decision to give notice to the Russian Government ("the Government") of the complaints concerning the alleged breach of Articles 8 and 14 of the Convention by the unlawful dismissal and discrimination on the grounds of sexual orientation;
the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);
the parties' observations;
the decision under Rule 47 § 4 of the Rules of Court to grant anonymity of the Court's own motion;
Having deliberated in private on 26 March 2024,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the decision to terminate the applicant's labour contract, which had been allegedly discriminatory and taken on the ground of her sexual orientation.

THE FACTS

2. The applicant was born in "omissis" and lives in "omissis". She was represented by Mr D. Bartenev, a lawyer practising in St Petersburg.
3. The Government were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov.
4. The facts of the case may be summarised as follows.
5. On 7 October 2011 the applicant joined one of the state educational facilities (schools) for students with special needs in St Petersburg as a music director (music teacher).
6. On 25 November 2014 the applicant was invited to a meeting with the school principal and a representative of the district municipal authorities. During that meeting she was informed that Mr I., a representative of the non-governmental organisation "Parents of Russia" (*Родители России*), had submitted a 'dossier' concerning the applicant's private life and sexual orientation to the principal. The applicant was informed that due to propaganda of non-traditional sexual orientation and bringing the high position of a teacher into disrepute, she could no longer continue educational activities and should resign her position. The applicant refused.

7. The above-mentioned 'dossier' presented by Mr I. contained about ten pages of review of the applicant's social media profile, her public group subscriptions, and lists of friends, as well as screenshots of her photos. The photos were predominantly those of her travel and partying photos, depicting her embracing and intimately kissing other women (without demonstrating nudity), as well as one photo of the applicant directing a middle finger gesture to a person behind the camera. The above-mentioned photos had been posted in a restricted-access album and had not been available for viewing by the general public. The materials in the file were accompanied with succinct commentaries highlighting the applicant's and her friends' sexual orientation, criticising the style of the photos and the applicant's behaviour, and concluding that her actions were incompatible with "a teacher's good name" and were capable of having harmful effect on the children and the school's reputation.

8. On 8 December 2014 the applicant submitted written comments on the events indicating that 1) there had been no previous complaints concerning her work and private life from the students or their parents, 2) at no point had she promoted any sexual orientation, and 3) the actions against her were discriminatory and inspired exclusively by her sexual orientation.

9. On the same day the school principal decided to terminate the applicant's contract. The full text of the decision read as follows:

"To dismiss [the applicant] from the position of musical director as of 8 December 2014 due to commission by an employee, who performs educational child-rearing functions (*воспитательные функции*), of immoral acts incompatible with continued performance of teaching activities [in accordance with paragraph 8, Article 81 of the Labour Code]."

10. On an unspecified date a group of twelve parents submitted a collective letter to the principal supporting the applicant's dismissal and voicing their concerns regarding "indecent photos" and "immoral acts". In their opinion, their children could have gained access to "harmful information promoting non-traditional sexual relations", which would have had a negative impact on them.

11. The applicant complained about her dismissal to the courts. Her lawsuit stated that there had been no proof of any immoral acts and the sole ground for dismissal had been her sexual orientation, which was discriminatory and contrary to the constitutional provisions and the applicable labour law. She further stressed that the materials presented to the school principal were obtained from a restricted-access album on her private social media profile, which had been accessible only to the applicant's friends, and that she had never brought up her sexual orientation in the school environment.

12. The school, in reply, stated that the applicant had committed an "immoral act" by publicly demonstrating "lesbian scenes and indecent gestures" on her social media. They further mentioned that the applicant was a member of a music band performing regularly in a "lesbian club" and that public recordings of that band showed the applicant performing songs of "lesbian content".

13. The Kirovskiy District Court of St Petersburg, during the trial, heard witnesses called by the parties, examined recordings of a conversation between the applicant and school officials and written evidence and heard the state prosecutor. The prosecutor, while acknowledging that the applicant performed her labour function well, supported her dismissal referring to the posting on

the Internet of "indecent photos", the applicant's public acknowledgement of her sexual orientation in court, and the above-mentioned parents' letter (see paragraph 10 above).

14. On 21 April 2015 the District Court adopted a judgment dismissing the applicant's lawsuit, which stated, in particular:

"The cause for dismissal of teacher [the applicant] was public display of immoral, unethical and unacceptable private conduct of a person performing educational child-rearing functions [as proven] by photos of indecent character containing public displays of indecent gesture, poses, public demonstration of unethically close (*неэтично близких*) same-sex relations posted on the Internet.

The court finds valid the respondents' arguments that for a person performing educational child-rearing functions [and dealing with minors], conduct is considered to be immoral and unethical – even if performed in restricted group of persons – when it entails public display of indecent gesture, poses, and unethically close same-sex relations, as well as photos of such conduct being posted on the Internet.

At the same time, the sexual orientation of [the applicant] as such has no significance for the [present dispute] since it is an expression of her free will and free choice of her relationships.

The legal significance is ... borne only by the immoral and unethical private conduct of [the applicant as] musical director of [the school].

...

It is of no legal consequence ... that the colleagues and parents of the students value professionalism of the musical director [the applicant] or [that she has received] multiple awards, diplomas and accolades [for her work]."

15. Having considered the applicant's appeal, on 3 September 2015 the St Petersburg City Court upheld the District Court's judgment. The appeal judgment stated, in particular:

"[The appeal court] concurs in the District Court's conclusion [regarding the applicant's dismissal], since it is based on the facts of the case and proper application of the substantive legal norms by the court deciding on the dispute ...

[The trial court was right to consider that the Labour Code has no definition of an immoral act and prescribes no assessment criteria, which implies] that qualification as "immoral" of any breach of moral foundations and accepted norms of social conduct is a prerogative of the employer depending on the specific circumstances ...

The duties of a musical director ... include developing aesthetic taste of students... and their emotional sphere. At the same time, according to the philosophy, psychology and pedagogy specialists' findings [presented in their reports], [the applicant's] actions and posting of the photos on the Internet have to be regarded as an immoral act incompatible with continued performance of educational child-rearing functions.

[According to the findings of the reports, the applicant's actions] diminish the authority of educators in the eyes of the public, promote and validate indecent conduct, form non-traditional sexual views ... Performance of educational child-rearing functions implies enhanced responsibility for personal conduct, given that the students model their behaviour on the example of [educators]

...

[The applicant's discrimination arguments had not been proven either in trial or on appeal]. The case material shows that the ground for dismissal has been [the applicant's] unethical and immoral private conduct and not her non-traditional sexual orientation ..."

16. The applicant's subsequent cassation appeals to the St Petersburg City Court and the Supreme Court of the Russian Federation were dismissed on 2 March and 11 April 2016 respectively.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION OF THE RUSSIAN FEDERATION

17. The Constitution of the Russian Federation of 1993 guarantees equality of rights and freedoms to everyone, irrespective of, in particular, sex, social status or employment position (Article 19). It also guarantees the right to freedom of thought and expression, as well as freedom to freely seek, receive, transfer, and spread information by any legal means (Article 29). It provides that rights and freedoms may be restricted by federal laws for the protection of constitutional principles, public morals, health and the rights and lawful interests of others, and to ensure the defence and security of the State (Article 55).

II. LABOUR CODE

18. The Labour Code of the Russian Federation of 2001 in the relevant parts prescribes as follows:

Article 3. Prohibition of employment discrimination

"Everyone has equal opportunities in the exercise of labour rights.

No one shall be restricted in labour rights and freedoms or benefit from any preference on the grounds of sex, race, skin colour, ethnicity, language, origin, property, family, social or official status, age, place of residence, attitude to religion, convictions, belonging or not belonging to public associations or any social group, as well as on other grounds not related to professional characteristics of an employee ..."

Article 81. Termination of a labour contract by an employer

"A labour contract may be terminated by an employer for:

...

8) commission by an employee, who performs educational rearing functions (*воспитательные функции*), of an immoral act incompatible with continued performance of those tasks ..."

III. CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

19. In its judgment no. 24-P of 23 September 2014 reviewing the constitutionality of administrative liability for "promotion of non-traditional sexual relations among minors" the Constitutional Court stated, in particular, the following:

"... Under the principle of individual autonomy ... every person has the right to live the mode of life most compatible with his inclinations and viewpoints, he is free to determine his convictions and preferences and may uphold them freely, and the State should not allow arbitrary interferences in private life and should respect the resulting differences.

... [T]he freedom of sexual self-determination implies the existence of objective differences in sexual identification and the possibility for individuals to choose ... specific variants of sexual conduct, including those possibly lacking the approval of the majority due to *inter alia* ethic, religious and other convictions, which had developed in specific historical, social and cultural conditions of development of a society. Accordingly, same-sex sexual contacts – consensual and not falling under the criminal prohibition of sexual contacts with persons under the age of 16 – are

prohibited neither by the international norms, nor by the Constitution of the Russian Federation, which in paragraph 2, Article 19 guarantees equal protection to all irrespective of sexual orientation; and the sexual orientation as such may not serve as a lawful criterion for establishing difference in the legal status of a [person].

In its turn the State is called to take measure aimed at excluding possible restriction of lawful right and freedoms of persons on grounds of their sexual orientation and [on the basis of the principle of equal protection in Article 19 of the Constitution] to take measures aimed at ensuring effective opportunities to protect and restore the infringed rights. This constitutional principle, implying prohibition of restricting rights and freedoms or providing preferences on the grounds of belonging to social groups, which may be interpreted as including groups of persons with a particular sexual orientation, has been developed in statutory norms [in various fields of law, *inter alia* in Article 3 of the Labour Code ...]"

IV. COUNCIL OF EUROPE MATERIAL

20. In Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, the Committee of Ministers of the Council of Europe recommended that:

"V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation."

THE LAW

I. JURISDICTION

21. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v Russia* [GC], nos. 40792/10 and 2 others, § 73, 17 January 2023, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14 and 28525/20, § 389, 25 January 2023).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8

22. The applicant complained that the employer's decision to terminate her labour contract had been a disproportionate interference with her private life driven by discrimination on the ground of her sexual orientation, in breach of Articles 8 and 14 of the Convention. The relevant parts of the above-mentioned Convention provisions read as follows:

Article 8

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

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

A. Admissibility

23. The Government acknowledged an interference with the applicant's right under Article 8 of the Convention, however they claimed that it had been prescribed by law and necessary in a democratic society. They argued that the applicant's complaint under Article 14 in conjunction with Article 8 of the Convention was manifestly ill-founded.

24. The applicant contested the Government's arguments.

25. The Court notes that in the light of the principles well established in the case-law both Article 8 and Article 14 are applicable in the present case (see paragraphs 31-33 below).

26. The Court observes that the Government's arguments pertain almost exclusively to the merits of the case. In the Court's opinion, the above-mentioned complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

27. The applicant argued that her dismissal from her teaching position had been in violation of Articles 8 and 14 of the Convention and had not been necessary in a democratic society. While accepting that a termination of a teacher's contract might be justified by immoral acts committed outside the school setting, she argued that the Russian authorities had failed to prove that her behaviour had been indeed 'immoral' or that such behaviour was incompatible with her duties of a music teacher. She stated the only proof of her allegedly immoral behaviour was her photos with other women, including her girlfriend, which were neither sexually explicit, nor obscene. As regards the middle figure gesture the applicant submitted that it was a widely used form of artistic expression and, with reference to *Szanyi v. Hungary* (no. 35493/13, 8 November 2016) that the gesture could not have justified the sanction imposed. In general the applicant contended that her dismissal from work had been exclusively based on her sexual orientation and had been discriminatory, since it considered the sexual orientation as such to be dangerous and harmful to school children and sufficient to justify termination of a labour contract.

28. The Government maintained that an interference with the applicant's rights under Article 8 was legitimate and proportionate given her allegedly unethical and immoral conduct. They argued under Article 14 of the Convention that there was no proof that the applicant had been dismissed on the ground of her sexual orientation and, essentially, that posting the photos in question would have led to a dismissal of any teacher regardless of their sexual orientation. Moreover, the applicant dealt not simply with minors, who are in general particularly susceptible to adult influence, but with children requiring a heightened degree of care and to whom a teacher is a

"quintessence" of morality and ethics. The Government alleged that the applicant – continuously employed as a teacher – was well aware of the ethical requirements and restrictions imposed on her and should have been cognizant of the potential consequences of posting the photos in question, even in a private closed album on social media. Lastly, in their opinion the domestic courts had carefully and impartially examined the applicant's claims and dismissed them on sufficient grounds.

2. *General principles*

29. It must be stressed from the outset that in a "democratic society" particular importance is attached to pluralism, tolerance and broadmindedness and that pluralism and democracy are built on genuine recognition of, and respect for, diversity. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, § 112, ECHR 1999-III; *S.A.S. v. France* [GC], no. 43835/11, §128, ECHR 2014 (extracts); and *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 90-92, ECHR 2004-I).

30. The concept of "private life" under Article 8 of the Convention is a broad term not susceptible to exhaustive definition, which covers, *inter alia,* the physical and psychological integrity of a person, including their sexual orientation and sexual life (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008). When the relevant restrictions concern "a most intimate part of an individual's private life", such as one's sexuality, there must exist "particularly serious reasons" before such interferences can satisfy the requirements of Article 8 § 2 (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 52, Series A no. 45).

31. Employment disputes also fall within the scope of Article 8 when they concern an individual's social and professional reputation, professional role and career prospects (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 126-30, 25 September 2018).

32. In respect of teachers the Court has previously accepted that their conceivable influence on the pupils and the children's young age might be relevant factors in the national authorities' assessment of whether a limitation should be imposed on the exercise of Article 9 rights (see *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V, concerning wearing religious headgear). Further it has been accepted under Article 10 that since teachers are figures of authority to their pupils, their special duties and responsibilities to a certain extent also apply to their activities outside school (see *Vogt v. Germany*, 26 September 1995, § 60, Series A no. 323, concerning holding views allegedly incompatible with the constitutional order). The Court considers that these principles also apply in cases, such as the present one, brought under Article 8.

33. In respect of Article 14, the Court has repeatedly held that it has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see *Schalk and Kopf v. Austria*, no. 30141/04, § 89, ECHR 2010).

34. The general principles under Article 14 relevant to the present case had been previously summarised in *Vallianatos and Others v. Greece* ([GC], nos. 29381/09 and 32684/09, §§ 76-77, ECHR 2013 (extracts)). Notably, it is settled in the Court's case-law that sexual orientation is a concept

covered by Article 14 and differences in treatment based on sexual orientation require "particularly convincing and weighty reasons" by way of justification, while differences based solely on considerations of sexual orientation are unacceptable under the Convention (ibid. § 77).

3. *Application of these principles in the present case*

35. The parties agree that the applicant's dismissal from work amounted to an interference with her private life within the meaning of Article 8 of the Convention. They further agree that it had been prescribed by law (see paragraph 18 above). The Court has no grounds to rule otherwise.

36. It might be inferred from the Government's submission, and it is not disputed by the applicant, that the legitimate aim pursued by the authorities in the present case had been the protection of morals. The Court notes that "morals" are explicitly listed in Article 8 § 2 among the interests justifying restrictions of the rights protected by that provision. The Court thus accepts this aim as legitimate.

37. The Court will now turn to examining whether the applicant's dismissal had been proportionate to the aim pursued and whether it had been discriminatory.

38. It is accepted by both parties that a termination of a teacher's contract might be justified by immoral acts committed outside a school setting and that Article 81 of the Labour Code provided for dismissals on these grounds (see paragraph 18 above). At the same time the parties disagree whether the applicant had committed any immoral acts and whether her sexuality had played the decisive role in her dismissal.

39. The Government in their submissions claimed that the applicant's sexuality had not been a relevant factor in her case since any teacher would have been dismissed for similar actions. This argument does not hold since the case material demonstrates that the applicant's sexual orientation and its alleged "immorality" had featured prominently in the reasoning of the national authorities. However, even if the Court were to entertain the Government's above argument, the termination of a labour contract on the basis of the remaining facts considered by the school administration and the courts – that is the posting of photos showing affection to intimate partners without being obscene or sexually explicit – is evidently and grossly disproportionate to the legitimate aim advanced in the present case.

40. The dismissal of a teacher with appropriate qualifications, of good repute with students and parents and without a prior history of complaints could not have been the necessary, sole, and immediate sanction for the images whether they had stayed private or became public. The host of disciplinary measures available to every employer, such as a warning, reprimand, suspension, and others, had been forsaken by the school administration and preference was immediately given to the most restrictive measure, i.e. dismissal. It is striking that the case material contains no indication that anything but the voluntary termination or dismissal had ever been considered by the school administration (see paragraphs 6 and 9 above).

41. As regards the photo with a middle finger gesture, the Court is neither prepared to accept the applicant's characterisation of it as an inconsequential form of artistic expression (see paragraph 27 above), nor the authorities' treatment of it as a public display of an indecent gesture or pose and evidence of unethical and immoral conduct (see paragraphs 14-15 above). The use of such a gesture by the applicant was at the very least in poor taste and hardly comparable to rhetorical devices employed in heated parliamentary debates (see *Szanyi*, cited above, §§ 6, and 35-42). The

domestic courts simply pointed to the existence of the photo without considering when and where it had been taken, who had witnessed the gesture, the availability and restrictions in access to the photo on the applicant's social media profile or the manner in which it had been procured by the third party. In the absence of any detailed analysis of the domestic authorities of the matter, including the assessment of compatibility of the applicant's conduct with the ethical standards currently held in the country (see *mutatis mutandis Peradze and Others v. Georgia*, no. 5631/16, § 44, 15 December 2022), the Court is unable to deduce how this gesture used in a private setting outside of school activities had warranted alone the gravity of the sanction imposed.

42. Accordingly, the Court concludes that the applicant's dismissal from her workplace due to the posting of photos showing affection to intimate partners and a middle finger gesture had amounted to a disproportionate interference with her rights under Article 8 of the Convention.

43. However, the Court is not in a position to disregard the fact that the applicant's sexuality was at the very core of the national authorities' decision to terminate her contract. The school administration's position (see paragraphs 9 and 12 above) and the judicial decisions (see paragraphs 14-15 above) refer explicitly to "lesbian scenes" and "lesbian content", "unethically close same-sex relations" and "non-traditional sexual orientation" as the controlling factors for the decision to qualify the acts in question as immoral and incompatible with the functions of a music teacher.

44. The national courts in their judgments claimed that the applicant's dismissal was justified not by her sexual orientation, but by the actions apparently predetermined by it. The Court is unable to entertain this logic. An individual's sexual orientation may not be isolated from the private and public expressions of it, which are evidently protected elements of an individual's private life under Article 8 of the Convention. The posting of travel and partying photos showing affection towards intimate partners is a commonplace practice on social media. The authorities' hostile reaction in the present case was unmistakably driven by the lack of acceptance of the applicant's sexuality and was, therefore, patently discriminatory. There is no evidence that anything beyond sexual orientation had supported the authorities' conclusions regarding immorality of conduct in photos demonstrating the applicant's affection towards other women.

45. Accordingly, it amounted to a difference in treatment based solely on considerations of sexual orientation without particularly convincing and weighty reasons, which is unacceptable under the Convention (see *Vallianatos*, cited above, § 77).

46. Having regard to the above-mentioned considerations (see paragraphs 42 and 45 above), the Court concludes that the applicant's dismissal from her workplace had amounted to a disproportionate interference with her Article 8 rights and that this interference was based solely on considerations of sexual orientation in violation of Article 14. Her expression of sexuality and affection towards other women could not have been qualified as an immoral act and her use of a questionable gesture could not demonstrate an irreparable incompatibility of action with her teaching functions. The case material unequivocally demonstrates that contrary to the authorities' claims the only real and discernible reason for the applicant's dismissal had been her sexual orientation.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

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

A. Damage

49. The applicant claimed 21,340 euros (EUR) in respect of pecuniary damage calculated essentially as a loss of salary for the period of forty months following her dismissal. She further claimed EUR 10,000 in respect of non-pecuniary damage.

50. The Government considered the amount claimed as pecuniary damage was unreasonable and having no connection to the subject matter of the application. Referring to the Court's case-law concerning estimated loss of profit in commercial activities (notably, *S.C. Prodcomexim SRL v. Romania (no. 2)*, no. 31760/06, § 53, 6 July 2010, and *Patrikova v. Bulgaria*, no. 71835/01, §§ 108, 119, 4 March 2010), they implied that the applicant's present claim had been equally speculative and should not be granted. In the Government's opinion the applicant's claim of non-pecuniary damage was equally unreasonable, excessive, and inconsistent with the Court's practice.

51. The Court cannot accept the Government's argument concerning pecuniary damage and to equate the applicant's claim of lost salary under a labour contract to an estimated loss of profit by a commercial enterprise. The applicant's loss of gainful income – her salary – had a direct causal link to her dismissal from her post on discriminatory grounds. If the Russian courts had discharged duly the positive obligation to protect the applicant from that discrimination and had examined her complaint effectively, she would have been able to claim the payment of lost earnings for the period of unlawful dismissal (see, *a contrario*, *Danilenkov and Others v. Russia*, no. 67336/01, §§ 142-43, ECHR 2009 (extracts)). At the same time, it must be noted that the applicant provided no explanation regarding why she claimed before this Court her lost income for the specific period of forty months after the dismissal. Having regard to the parties' submissions and acting on an equitable basis, the Court finds it reasonable to grant the applicant's claim of pecuniary damage in part equal to her estimated salary of twelve months following dismissal, i.e. EUR 6,500.

52. Turning to the applicant's claim of non-pecuniary damage and having regard to the parties' submissions and to the nature of the established violations of Convention rights, the Court finds it appropriate to grant the claim in full and award her EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

53. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the Court. In support of her claim she submitted a legal services contract of 1 August 2016 and an itemised invoice of 4 April 2018 with the calculation of working hours and the applicable fees.

54. The Government stressed that according to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred. In their opinion, in the absence of proof of actual payments the contract and an invoice may not demonstrate that the costs had been actually incurred. They further

highlighted that under the above-mentioned contract a payment was contingent on the Court's adoption of a judgment and should have been made within one month following delivery of such judgment.

55. The Court notes that nothing suggests that the legal services contract is void or voidable under Russian civil law. It is also clear that under the terms of that contract the applicant is under an obligation to pay her representative for the rendered services. Lastly, it is only the term of payment, which is defined as one month after adoption of a judgment by this Court, and the contract states explicitly that the payment is due irrespective of whether the Court adopts a violation or a non-violation judgment or an inadmissibility decision. Accordingly, the Government's objections must be dismissed.

56. Regard being had to the documents in its possession and the above-mentioned considerations, the Court considers it reasonable to grant the applicant's claim of costs and expense in full and award the sum of EUR 6,000 covering costs incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicant's complaints in so far as they relate to facts that took place before 16 September 2022;
2. *Declares* the complaints under Articles 8 and 14 of the Convention concerning the termination of the applicant's labour contract on the ground of her sexual orientation admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention and Article 14 of the Convention taken in conjunction with Article 8;
4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

   (i) EUR 6,500 (six thousand five hundred euros), in respect of pecuniary damage;

   (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (iii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   (iv) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar
Pere Pastor Vilanova President