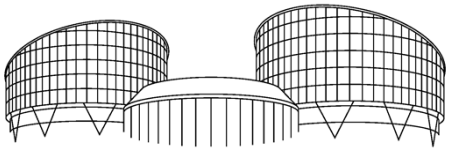

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SUPRUN AND OTHERS v. RUSSIA

(Applications nos. 58029/12 and 4 others)

JUDGMENT

Art 10 • Freedom to receive information • Refusal to provide applicants access to archival information regarding Soviet political repression, make copies or take photographs thereof; conviction of one applicant for collecting information • Gathering of information a relevant preparatory step for research and publications and contributed to public debate on Soviet political repression • Art 10 applicable • Interference with applicants' right to receive information • Taking photographs or making copies of archival documents facilitated a more precise and faithful dissemination of historical records • Authorities' failure to show how the disclosure of the information at issue affected the privacy of presumably deceased individuals • Impact on applicants' research on descendants' feelings, if any, minimal and remote • Domestic courts made no genuine attempt to assess applicability of Art 8 • Access sought to official data compiled in historical period relating to public or professional (and not personal) life of those involved • Restrictions on access to information did not pursue any "pressing social need" and was not based on relevant and sufficient reasons • Restriction on acquiring copies of archival documents did not pursue legitimate aim and was not "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 June 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 Suprun and Others v. Russia,

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

Georgios A. Serghides*, President*,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the five applications (see numbers in the appendix) 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 six individuals and one non-governmental organisation ("the applicants");

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the applicants' access to information held in the State archives, and to declare inadmissible the remainder of each application except the case of Mr Suprun (no. 58029/12);

the observations submitted by the Government in the case of Mr Suprun;

the observations submitted by the applicants;

the comments submitted by the International Federation for Human Rights (FIDH) and ARTICLE 19 which were granted leave to intervene by the President of the Section;

the decision by the Swiss Government not to exercise their right to intervene in the case of a Swiss national, Ms Dupuy (no. 29440/19);

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

Having deliberated in private on 21 May 2024,

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

INTRODUCTION

1. The case concerns the restrictions on the applicants' access to archival information regarding Soviet political repression.

THE FACTS

2. The facts of each application may be summarised as follows.

I. SUPRUN v. RUSSIA, no. 58029/12

3. The applicant, Mr Mikhail Suprun, was serving at the material time as the head of the Russian History Department at the Lomonosov Pomor State University in Arkhangelsk. He had authored more than 160 academic publications, including four books on the history of the Second World War.

4. In 2007, a cooperation contract was signed between, on one side, the Pomor State University, represented by its dean and Mr Suprun, and the Information Centre of the Arkhangelsk Regional Police, represented by its director, D., and, on the other side, the German Red Cross and the Historic Research Society of Germans from Russia (*Historischer Forschungsverein der Deutschen aus Russland E.V.*).

5. The contract's scope included the "processing of up to 40,000 records from Russian archives relating to victims of internment, repression and deportation who were civilian German subjects, former USSR citizens of German ethnic origin, German Wehrmacht officers, German civil servants, and ethnic Germans with nationality of other Eastern European states". Their personal files were to be scanned and the data entered into a database, which was to include fields such as name, date and place of birth, last known home address, profession, family composition, date of death, date and place of deportation, period and place of "forced settlement", grounds for release, ethnic origin, the arresting and convicting authorities, the nature of the charge, and the record number.

6. The contract imposed limitations on the use of personal data, specifying it could only be used "for humanitarian and academic purposes". Any publication on the Internet or commercial use was prohibited, and the transfer of the database or parts thereof to third parties necessitated the consent of the contract's signatories.

7. Following the processing of the records, the University and the Historic Research Society were to publish a memorial book, available in both German and Russian languages.

8. Between October 2007 and December 2008 Mr Suprun worked on the memorial book titled "Ethnic Russian Germans, Victims of Repression in the 1940s", focusing on the fate of forced settlers. He successfully processed over 8,000 records from the archives of the Information Centre of the Arkhangelsk Regional Police.

9. On 13 September 2009 an investigator for particularly important cases with the Investigations Committee of the Arkhangelsk Region initiated criminal proceedings against Mr Suprun, based in particular on findings from an inquiry by the Federal Security Service (FSB). Mr Suprun was accused of acquiring, with the alleged connivance of Mr D., and selling the personal data of USSR citizens of German origin without their consent. On the same day, investigators searched his flat and seized his electronic devices along with the original contract.

10. The trial was held in the Oktyabrskiy District Court of Arkhangelsk. The prosecution argued that Mr Suprun had "collected, through the copying of personal records and decisions concerning special settlers, personal data and information on the private lives of [twenty individuals], which was contained in the personal files of special settlers". The heirs of these special settlers were designated as injured parties. Some testified that they had not authorised anyone to copy information from the personal files of their ancestors, stating that this aspect of their lives had always been considered a "shameful secret". However, five witnesses stated that they did not regard the information from the personal files as a personal or family secret.

11. On 8 December 2011 the District Court found Mr Suprun guilty under Article 137 of the Criminal Code for unlawfully collecting personal and family secrets of the injured parties and transferring them abroad without their consent. The court determined that the documents Mr Suprun had copied from the files of special settlers contained personal and family secrets as they related to identifiable individuals and their families, actions that could potentially harm their and their families' reputations. The court exempted Mr Suprun from criminal responsibility due to the expired statute of limitations.

12. In his appeal, Mr Suprun's counsel contended, among other points, that information regarding the settlers' removal, imprisonment, repatriation, and judicial sanctions against them fell outside the realm of their private lives as it involved their interactions with public authorities.

13. On 28 February 2012 the Arkhangelsk Regional Court dismissed the appeal. Despite recognising the absence of a legal definition for "private life" and "personal and family secret", the Regional Court upheld the original judgment on the grounds that Mr Suprun's actions were unlawful due to the lack of consent from the injured parties and the absence of any legal provision that would have permitted him to collect such information.

II. DUPUY v. RUSSIA, no. 29440/19

14. The applicant, Ms Marie Dupuy, née von Dardel, is the great-niece of Mr Raoul Wallenberg, a Swedish diplomat who saved the lives of tens of thousands of Hungarian Jews at the end of the Second World War.

15. In January 1945 Soviet military counterintelligence arrested Mr Wallenberg and his driver, Mr Langfelder, transferring them to Moscow for interrogation. Despite repeated inquiries from the Swedish Government, the Soviet authorities initially maintained they had never detained Mr Wallenberg. They acknowledged he had been in their custody after returning prisoners-of-war reported seeing him in a Moscow prison. According to a statement issued by the Soviet Government on 6 February 1957, Mr Wallenberg succumbed to a heart attack in the Lubyanka Prison on 17 July 1947.

16. Between 1991 and 2000 a joint Russian-Swedish Working Group investigated Mr Wallenberg's fate, confirming his presence in two Moscow prisons, Lubyanka and Lefortovo, from 1945 to 1947. During a final press-conference held on 16 January 2001, a member of the Working Group from the FSB acknowledged the existence of significant evidence suggesting that Mr Wallenberg had died "a violent death" in a prison operated by the Ministry of State Security.

17. In 2009 Ms Dupuy authorised two independent researchers to collect information on the fate of Mr Wallenberg. They submitted a list of questions to the Central Archive of the FSB. The questions concerned the records of the Lubyanka Prison, including the prisoners' interrogations register for 1947. A reply from the FSB Central Archive dated 2 November 2009 stated that a prisoner, identified only as "Prisoner no. 7", was "with great likelihood the Swedish diplomat Raoul Wallenberg" who was interrogated on 23 July 1947. If this information were to be confirmed, it would have meant that the previous claim that Mr Wallenberg died on 17 July 1947, was incorrect.

18. The FSB Central Archive released a censored copy of two records of interrogations of Mr Langfelder and his cell-mate Mr Katona to the researchers. The records were apparently located on the same page of the journal as the interrogation record for "Prisoner no. 7". According to the FSB information, the three men were interrogated together on 22 and 23 July 1947. The FSB however did not give a reason for their refusal to release a copy of the interrogation record of "Prisoner no. 7".

19. On 16 March 2017 Ms Dupuy filed three requests for information to the FSB Central Archive in preparation of a publication on the fate of Mr Wallenberg after his arrest by Soviet troops. She asked to be given unredacted copies of archival documents, including specific pages of various registers from the Lubyanka and Lefortovo prisons, the prisoners' interrogation registers, the prisoners' transfer registers, the registers of prisoners' belongings, and the general alphabetical register of prisoners.

20. On 3 April 2017 the FSB Central Archive replied that access to the documents she requested could not be granted. Ms Dupuy was informed as follows: "The journals of calling prisoners for interrogation for the years 1945-1947 have already been made available to independent researchers. These journals contain not only the names of individuals associated with Wallenberg but also those of third parties unrelated to the case of the Swedish diplomat. Consequently, it is impossible to provide full copies of these pages, and this has been communicated to researchers on several occasions".

21. On 26 July 2017 Ms Dupuy initiated an administrative claim in the Meshchanskiy District Court of Moscow, challenging the refusal as unlawful and seeking access to the requested documents. She argued that there existed a public interest in accessing this information, as it could elucidate the fate of the well-known historical figure, Mr Wallenberg. As a close relative of Mr Wallenberg, she asserted that under Russian law she possessed the

necessary rights and authority to access such information. Furthermore, Ms Dupuy highlighted her active participation in various research projects concerning Mr Wallenberg. She emphasised that the information requested was within the FSB's possession, readily available, and did not require any additional data collection by the FSB.

22. On 18 September 2017 the District Court dismissed Ms Dupuy's claim. The court stated that the archival documents she requested contained private information about third parties unconnected with the Wallenberg case and, for that reason, could not be given to her. Furthermore, insofar as a portion of the information requested had already been given to her representatives and to the Russian-Swedish Working Group, the FSB's denial did not infringe upon any of her rights.

23. In her appeal, Ms Dupuy asserted that the requested documents did not contain personal secrets and should be available for public and State scrutiny. She also disputed the claim that she, or her representatives, had ever received these documents. Additionally, she argued that if any researcher had been granted access to this information, she should be entitled to the same.

24. On 20 February 2018 the Moscow City Court dismissed the appeal. It declined to assess the lawfulness of the refusal to grant access to the information, stating, "there were no grounds to believe that the [FSB Central Archive] had provided unreliable information in responding to the request".

25. On 6 July and 19 November 2018 the Moscow City Court and the Supreme Court of Russia, respectively, refused to consider further appeals on points of law.

III. KULAKOVA AND OTHERS v. RUSSIA, no. 12396/21

26. The applicants, Ms Yevgeniya Kulakova, Ms Olga Startseva and Ms Yelena Kondrakhina, collaborate with the Iofe Foundation, an informal community and online research centre. The centre, founded by the former political prisoner Veniamin Iofe, is dedicated to documenting the history of Soviet terror, the Gulag, and resistance to the regime. Its online archive, which focuses on the history of Soviet repression, encompasses a variety of materials, including personal documents, copies of investigative files – otherwise only accessible through in-person visits to the FSB archives – as well as memoirs, recorded oral narratives, and photographs.

27. On 29 March and 24 April 2019 the applicants reviewed the historic investigative case files at the FSB's archives in St Petersburg. Each time they were granted two hours for their review but were not permitted to photograph the materials. Despite their best efforts to transcribe the materials using their laptops, they were unable to complete the task within the allotted time. They requested permission either to photograph the untranscribed materials or to receive copies. By letters dated 10 April and 14 May 2019, the FSB denied the request for copies, claiming that the law restricted the right to obtain

copies from terminated criminal cases to rehabilitated persons and their heirs. The letters did not address the possibility of photographing the materials.

28. The applicants submitted a claim to the Dzerzhinskiy District Court of St Petersburg, contesting the FSB's responses as unlawful. They sought either the provision of copies of the documents or, in the alternative, permission to use technical means, such as photography, to create their own copies.

29. On 18 September 2019 the District Court denied the claim on the grounds that section 11 § 3 of the Rehabilitation Act governing the procedure for obtaining copies from archival criminal cases did not extend this right to individuals other than the rehabilitated and their relatives.

30. The applicants appealed, contending that the judge did not adequately consider the proportionality of the restriction on their right to obtain information, resulting in a disproportionate and discriminatory limitation.

31. On 14 January 2020 the St Petersburg City Court dismissed their appeal. On 3 June and 23 October 2020 the Third Cassation Court and the Supreme Court of Russia, respectively, summarily dismissed their appeals on points of law.

IV. PRUDOVSKIY v. RUSSIA, no. 61350/21

32. The applicant, Mr Sergey Prudovskiy, is a historian specialising in the study of Soviet political repression. He has published several books, including one that details the detention of his grandfather in the Gulag.

33. Mr Prudovskiy's research has particularly focused on the "ethnic operations" of the People's Commissariat for Internal Affairs (NKVD), a series of mass repressive campaigns targeting foreign nationals and specific ethnicities within the USSR, but also ethnic Russians living abroad. The "Harbin Operation" was one such campaign, targeting former employees of the Chinese Eastern Railway who were relocated to the USSR following the sale of the railway to the Japanese puppet state of Manchukuo in 1935. The extrajudicial three-members committees of the NKVD, known as "troika", considered a total of 30,938 cases of former Harbin residents, resulting in 19,312 death sentences and 10,669 other penalties.

A. Accessing the identities of NKVD officers

34. Among these victims was Ms Tatyana Kulik. Arrested in November 1937, she was sentenced to death as a Japanese spy by an NKVD troika and executed the following day. Mr Prudovskiy considered her case for inclusion in his upcoming book about the Harbin Operation. In 2018 he submitted a request to the FSB in Moscow to be granted access to her case file. Access was eventually granted but only to photocopies of the originals in which the positions, names and signatures of the NKVD officers and prosecutors

involved in her case were redacted. The FSB justified this by referring to an unpublished 2014 conclusion by the Interdepartmental Commission on the Protection of State Secrets, which extended the confidentiality period of certain information from 1917-1991 by thirty years, until 2044.

35. Mr Prudovskiy challenged the FSB's refusal to provide unredacted information, contending that such information did not constitute a State secret as materials concerning human rights violations by State authorities and officials can never be classified.

36. On 4 June 2020 the Moscow City Court dismissed the challenge, finding that the information concerning NKVD and USSR Prosecutor's Office staff revealed identities of counterintelligence personnel and their methods and operations, which were protected under specific clauses of the List of Information Classified as State Secrets. In his grounds of appeal, Mr Prudovskiy submitted that classifying the case of Kulik, a rehabilitated victim of political repression, contradicted the State Secrets Act. He maintained that Russian law did not allow for the blanket classification of all information related to security apparatus staff, particularly those involved in the 1930s State terror. On 10 October 2020 the First Appellate Court upheld the original decision, affirming that the surnames, positions, titles, and signatures involved in Kulik's case remain State secrets. It did not address the claim that information about unconstitutional and unlawful acts can never be classified. On 23 April and 29 July 2021 the Second Cassation Court and the Supreme Court of Russia, respectively, declined to consider further appeals on points of law.

B. Acquiring copies of archival documents

37. In November 2019 Mr Prudovskiy submitted a request to the FSB Central Archive, seeking either colour copies of approximately fifteen pages of archival documents or permission to photograph these documents by his own means. The documents, including prisoner transfer records and execution reports, were intended for use as illustrations in his forthcoming book about the Harbin Operation. The Central Archive denied this request, permitting only the viewing of the documents in the reading room.

38. Mr Prudovskiy challenged this refusal in the Khoroshevskiy District Court of Moscow, arguing that it violated his right to access information in so far as obtaining copies for scientific, research, or other lawful purposes constituted a legitimate right for users of archives. On 7 June 2020 the District Court dismissed his complaint. The court held that only rehabilitated persons and their relatives were entitled to free copies. Furthermore, it stated that Mr Prudovskiy did not possess the right to independently copy archival documents, as no law or regulation provided for such a right.

39. On 8 September 2020 the Moscow City Court upheld that decision on appeal. On 23 December 2020 and 8 June 2021 further appeals on points of

law were dismissed by the Second Cassation Court and the Supreme Court of Russia, respectively. These courts maintained that the refusal to permit independent copying did not contravene existing laws nor infringe upon Mr Prudovskiy's right to search for and receive information.

C. Access to information about a non-rehabilitated NKVD officer

40. In December 2019 Mr Prudovskiy requested access to archived criminal cases of former NKVD officers, including that of an officer who was convicted for negligence during the NKVD's "ethnic operations" and had not been rehabilitated. The FSB Central Archive provided Mr Prudovskiy with a report on the review of his case stating that he had not been rehabilitated but denied access to the case file. It relied on the 2006 order (see paragraph 58 below).

41. Mr Prudovskiy contested this refusal in the Khoroshevsky District Court. He argued that the 2006 order was not applicable to the cases of individuals who had not been rehabilitated and that the documents, being over seventy-five years old and unclassified, should be accessible. On 20 July 2020 the District Court upheld the FSB's decision.

42. On 14 December 2020 the Moscow City Court dismissed the appeal, noting that the denial of access did not impinge upon Mr Prudovskiy's rights as he was not a relative of the convicted officer. The Second Cassation Court, on 16 June 2021, and the Supreme Court of Russia, on 27 September 2021, rejected further appeals on points of law.

V. INTERNATIONAL MEMORIAL v. RUSSIA, no. 25390/22

43. The applicant, International Memorial, is a non-governmental organisation under Russian law established during the *perestroika* era to research and document Soviet political repression. In October 2022 Memorial was awarded that year's Nobel Peace Prize, along with the Ukrainian human rights organisation Centre for Civil Liberties and Belarusian activist Ales Bialiatski, for their efforts in "document[ing] war crimes, human rights abuses, and the abuse of power".

A. Acquiring copies of the NKVD troika protocols

44. International Memorial, as part of its various initiatives, carried out a documentation project about political repression in the Republic of Karelia during the years 1937-38. A significant aspect of this project was the creation of a website dedicated to the Great Terror in Karelia. The website was designed to display, in particular, copies of protocols from the Karelian NKVD troikas intended to provide historical validation of the events.

45. In December 2019 International Memorial submitted a request to the Karelian FSB for access to NKVD troika protocols, with the intention of either taking photographs of these documents independently or obtaining copies for a fee. The FSB denied the request, stating that the law only allows the provision of document copies in two situations: free copies for individuals who have been rehabilitated and their relatives, and for purposes associated with the social protection. Accordingly, International Memorial was only permitted to review the original documents.

46. International Memorial lodged a complaint with the Petrozavodsk City Court of Karelia, contending that the restriction on copying unduly burdened their research and constituted discrimination against users of the FSB archives in comparison to other public archives. On 17 June 2020 the City Court upheld the FSB's refusal as lawful, stating that "the existing legal framework governing the usage of archival documents does not provide for independent copying or photography".

47. On 7 September 2020 the Supreme Court of the Republic of Karelia upheld the judgment of the City Court. The Supreme Court recognised International Memorial's right to access documents relating to political repression but held that this right did not include the making of copies, which was a right reserved for rehabilitated individuals and their relatives.

48. Subsequent appeals on points of law were dismissed by the Third Cassation Court on 7 April 2021, and by the Supreme Court of Russia on 9 November 2021.

B. Information on prosecutors who participated in NKVD troikas

49. In 1989 the Presidium of the Supreme Soviet of the USSR formally repudiated the extrajudicial mass repressions that occurred during the Great Terror in 1937-38 and declared unconstitutional all decisions made by the NKVD troikas and other extrajudicial entities. International Memorial embarked on a project to compile a directory of all troika members, including NKVD officers, members of the Bolshevik Communist Party, and prosecutors responsible for fabricating charges against citizens. The majority of the material for the directory was gathered independently by members of International Memorial. However, they required additional information concerning prosecutors who were part of the troikas to complete their work.

50. In July 2019 researchers from the Memorial Research and Educational Centre, in collaboration with International Memorial, requested information from the General Prosecutor's Office. They sought information related to eleven former prosecutors who were part of the NKVD troikas. Details requested included their names, dates of birth and death, places of birth, social and educational background, party membership, and service records. The General Prosecutor's Office denied the request, relying on the Personal Data

Act which prohibited the disclosure of personal data without consent from the individual concerned or their heirs.

51. International Memorial contested the refusal before the Tverskoy District Court of Moscow. They argued that the information requested was related not to personal and family life but to the prosecutors' official duties and that it was more than seventy-five years old. The Personal Data Act did not apply to access to archival documents and permitted the processing of personal data for significant public and academic purposes. International Memorial also asserted that restricting access to information about these prosecutors violated the right to freely receive and disseminate information regarding individuals involved in political repression in the USSR.

52. On 24 July 2020 the District Court dismissed the challenge on the grounds that the archival materials regarding the prosecutors included details of their private lives and personal and family secrets, which could lead to their identification. The District Court also declared that there was no significant public interest in disclosing information about the prosecutors because their membership in an illegal extrajudicial body, which issued verdicts including death sentences, was not conclusive evidence of crimes against justice. On 4 March 2021 the Moscow City Court upheld that decision on appeal.

53. On 4 August 2021 the Second Cassation Court and, on 18 February 2022, the Supreme Court of Russia dismissed appeals on points of law.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

54. The Federal Law on Rehabilitation of Victims of Political Repression ("the Rehabilitation Act"), no. 1761-1 of 18 October 1991, condemned "the years of terror and mass persecution of people as incompatible with the idea of law and justice" and declared its aim as "providing rehabilitation for every victim of political repression on Russian soil since the [1917 Bolshevik Revolution]". Individuals who were convicted of offences against the State by decisions of [Soviet secret police known as VChK, GPU, NKVD, MGB], prosecutors, "special formations", troikas and other quasi-judicial bodies were eligible for rehabilitation (section 3). Individuals who have been rehabilitated or, in the event of their death, their heirs, have the right to access the case files of completed criminal and administrative proceedings and to obtain copies of documents. The access by other persons to these materials is regulated by the provisions on access to State archives (section 11 § 3).

55. The Federal Law on State Secrets ("the State Secrets Act"), no. 5485-1 of 21 July 1993, establishes that facts concerning violations of human rights and freedoms and illegal acts by State authorities and their officials may not be classified as State secrets (section 7).

56. The Federal Law on Archives ("the Archives Act"), no. 125-FZ of 22 October 2004, provides that access to archival documents may in particular include the provision of the original documents or copies thereof as requested (section 24 § 1.1(2)). Access to archival documents containing the personal and family secrets of an individual, information about their private life, or information that may harm their safety can be restricted for a duration of seventy-five years from the date these documents were created (section 25 § 3). Users of archival documents have the right to use, transfer, and distribute information contained within the archival documents provided to them, as well as copies of these archival documents, for any lawful purposes and in any lawful manner (section 26 § 1).

57. The Federal Law on Personal Data ("the Personal Data Act"), no. 152-FZ of 27 July 2006, establishes that issues concerning the storage, acquisition, recording, and use of documents of the Archival Fund of the Russian Federation and other archival documents containing personal data are excluded from its scope (section 1 § 2).

58. A joint order by the Ministry of Culture, the Ministry of Internal Affairs and the FSB, no. 375/584/352 of 25 July 2006, adopted the regulations on access to materials on closed criminal cases of individuals subjected to political repression stored at the archives of State bodies. Access to criminal and administrative cases concerning those who have been denied rehabilitation is excluded from the scope of the order. In response to requests for access to case files of non-rehabilitated individuals, the archives issue an official note containing the results of the review (point 5). Access to completed criminal and administrative cases is granted to rehabilitated individuals, their next-of-kin, legal heirs, and members of public authorities. Other persons may be granted access to the case materials before the expiration of seventy-five years from the date of creation of the documents with the written consent of the rehabilitated individuals or their heirs (point 6). The right of access to the materials includes the right to review the documents in the case file and to receive copies of them (point 7).

II. INTERNATIONAL MATERIAL

A. United Nations Economic and Social Council (ECOSOC)

59. At its sixty-first session in February 2005, the Commission on Human Rights of the ECOSOC deliberated on a report by the independent expert, Diane Orentlicher. The report included the "Updated Set of Principles for the Promotion and Protection of Human Rights Through Action to Combat Impunity" as an annex (E/CN.4/2005/102/Add.1, 2005). The Updated Set of Principles introduces the "right to know" which encompasses the "inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through

massive or systematic violations, to the perpetration of those crimes" (Principle 2). To give effect to the right to know, it outlines the State's duty to "ensure the preservation of, and access to, archives concerning violations of human rights and humanitarian law" (Principle 5). It specifies that "access to archives should also be facilitated in the interest of historical research, subject to reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals. Formal requirements governing access may not be used for purposes of censorship" (Principle 15).

B. Council of Europe

60. In Recommendation No. R (2000) 13 of 13 July 2000 on a European policy on access to archives, the Committee of Ministers of the Council of Europe, acknowledging that "a country does not become fully democratic until each one of its inhabitants has the possibility of knowing in an objective manner the elements of their history," called upon Member States to implement legislation on access to archives inspired by the principles set forth in the recommendation. Principles 5 and 6 mandate a non-discriminatory approach to access to archives, stating that "the criteria for access to public archives, defined in law, should apply to all archives across the entire national territory, irrespective of the Archives responsible for their preservation" and affirming access to public archives as a right within a political system founded on democratic values.

61. The Council of Europe Convention on Access to Official Documents (CETS No. 205), also known as the Tromsø Convention, entered into force on 1 December 2020. The Russian Federation was not a party to it. The Tromsø Convention was the first binding international legal instrument to recognise the right of everyone to access official documents held by public authorities without discrimination and regardless of the requester's status or motives in seeking access. All official documents are, in principle, public and can be withheld only subject to the protection of other rights and legitimate interests specifically listed in the Convention, unless there is an overriding public interest in disclosure. The Tromsø Convention establishes minimum standards for the prompt and fair processing of requests for access to official documents by public authorities holding the documents, as well as for internal administrative reviews and appeals to independent bodies or courts in the case of request denials. According to its Article 6 § 1, when access to an official document is granted, the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his or her choice unless the preference expressed is unreasonable.

III. RESEARCH SUBMITTED BY THE APPLICANTS

62. In 2021 the International Federation for Human Rights (FIDH) published a report entitled "Russia: Crimes Against History". The report offered an overview of the legal framework in Russia governing the issues related to historical memory and catalogued instances identified as "crimes against history" committed by the Russian authorities. These "crimes" included legislation that suppressed freedom of expression on historical matters, practices of censorship, denial of access to archives, and the State's failure to address crimes from the Soviet era.

63. After a brief period of relatively open access to archives regarding Soviet State terror, the authorities continued to keep secret most of the historical records of the Soviet security services. As recently as 2014, the Inter-Agency Commission for the Protection of State Secrets extended the classification period for the majority of the 1917-1991 documents from the Soviet security services for an additional thirty years, the maximum duration permitted under the law. Consequently, most of the Soviet security services' archives would remain confidential until 2044. Beyond secrecy, the authorities have invoked personal data arguments to obstruct historians' access to archival documents, thus effectively rendering "the creation of any encyclopaedias and biographical reference books impossible".

64. Access to archival files in completed criminal cases against the victims of Soviet repression has been governed by a special legal framework. The 1991 Rehabilitation Act stipulated that "rehabilitated individuals" – victims recognised as such by the State – were entitled to access their case files. However, from 2006 onwards, the FSB placed restrictions on this right by mandating archives to limit access to the documents containing personal data of "individuals other than the victims", namely, State officials involved in the persecution. For archive users other than the victims, such as historians and researchers, the 2004 Archives Act provided for free access to archives, with the proviso that documents containing information on "personal and family secrets or private life" would be restricted for a period of seventy-five years from the date of creation. Following the lapse of the seventy-five-year period, FSB officials devised new pretexts to deny access, asserting that the documents contained "confidential information", specifically the names of troika members, claiming that their disclosure "could harm both the living relatives of those officials and the objective assessment of the 1937-1938 historical period".

THE LAW

I. MATTERS OF PROCEDURE

A. Joinder of the applications

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

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

66. The Court further notes that the respondent Government, by failing to submit the written observations in the cases which were communicated to them after cessation of Russia's membership of the Council of Europe, manifested an intention to abstain from participating in their examination. However, the cessation of a Contracting Party's membership in the Council of Europe does not release it from its duty to cooperate with the Convention bodies. Consequently, the Government's failure to engage in the proceedings cannot constitute an obstacle to the examination of the case (see *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023, and *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, §§ 25-27, 28 April 2023).

C. Procedural succession in respect of International Memorial

67. Following the liquidation of International Memorial, the chairman of its board, Mr Yan Zbignevich Rachinskiy, and the executive director, Ms Yelena Borisovna Zhemkova, requested the Court to allow them to continue the proceedings in its stead.

68. Applying the approach to procedural succession concerning liquidated organisations which it relied upon in *Ecodefence and Others v. Russia* (nos. 9988/13 and 60 others, §§ 66-69 and 421, 14 June 2022), the Court accepts that Mr Rachinskiy and Ms Zhemkova have standing to pursue the application lodged by International Memorial.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

69. The applicants complained that restrictions on their access to archival information on Soviet political repression breached their right to receive information under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to ... receive ... information ... without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ..."

A. Admissibility

1. *The Court's jurisdiction*

70. The Court first 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 this complaint (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 46, 6 June 2023).

2. Compatibility ratione materiae

71. The Court will next address the applicability of Article 10 of the Convention. It reiterates that Article 10 does not grant an individual the right to access information held by a public authority, nor does it compel the domestic authorities to impart such information. Nonetheless, a right or obligation may emerge in instances where access to information is instrumental for an individual's exercise of their right to freedom of expression, particularly "the freedom to receive and impart information" and where denial of access constitutes interference with that right (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 155-56, 8 November 2016).

72. In determining the applicability of Article 10, the Court will be guided by the principles laid down in *Magyar Helsinki Bizottság* (cited above, §§ 157-70). The assessment will consider the specific circumstances of the case in the light of the following criteria: (a) the purpose of the information request; (b) the nature of the information being sought; (c) the role of the applicant; and (d) the readiness and availability of the information in question.

73. Regarding the first criterion, the Court has held that the purpose of the individual in requesting access to the information held by a public authority should be to enable their exercise of the freedom to "receive and impart information and ideas" to others (ibid., § 158). The applicants in the present case sought access to information in State archives to support their historical research on Soviet political repression, tracing the fate of victims of such repression, preparing publications about extrajudicial repressive organs and forced resettlement based on ethnic origins, uploading these findings to documentation websites, and displaying copies of original documents to

substantiate the reliability of the information. By seeking to uncover and publicise true facts about political repression and past injustices, the applicants were engaging in an essential component of public debate, thereby meeting the criterion related to the purpose of their request for information.

74. As to the nature of the information, the Court has considered that the data or documents to which access was being sought must generally meet a public-interest test in order to prompt a need for disclosure under the Convention (ibid., § 161). The definition of what might constitute a subject of public interest will depend on the circumstances of each case and may relate to issues concerning the life of the community, important social issues or problems the public would have an interest in being informed about (ibid., § 162). The revelation of details concerning Soviet political repression, including the identities of officers engaged in extrajudicial sentencing and information about the operations, enhances transparency concerning past human rights abuses and political persecution during a controversial period in history. In particular, the circumstances surrounding the death of Mr Wallenberg, a universally recognised public figure and a prominent subject of historical and academic enquiry, have attracted intense public interest. Consequently, the nature of information requested by the applicants satisfied the public-interest criterion.

75. Regarding the role of the applicants, the Court notes that International Memorial was among the most distinguished actors within Russian civil society, having been awarded the Nobel Peace Prize for its efforts to document State abuses of power. It assumed the crucial role of a "social watchdog" through documenting Soviet political repression. Mr Suprun and Mr Prudovskiy were professional historians specialising in the study of Soviet terror whose work contributed to the public understanding and historical record of these events, whilst Ms Kulakova, Ms Startseva, and Ms Kondrakhina were research associates collaborating with a foundation that documents the history of political repression and forced labour camps. Ms Dupuy was the next-of-kin of a notable historical figure who may have been a victim of an extrajudicial execution. The Court has granted a high level of protection to NGOs exercising a public watchdog role of similar importance to that of the press (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 103-104, ECHR 2013 (extracts)) and also to academic researchers and authors of literature on matters of public concern (see *Šeks v. Croatia*, no. 39325/20, § 41, 3 February 2022, and the case-law cited therein). Therefore, the role of the applicant criterion is met, as the applicants were seeking information motivated by legitimate, scholarly and public interest reasons.

76. Finally, the information the applicants were seeking was apparently "ready and available" and did not require the archives to collect any additional data. Indeed, in the cases of Ms Dupuy and Mr Prudovskiy, the archives had to deploy additional efforts to withhold the requested

information by redacting parts of the documents prior to their release (see paragraphs 18 and 34 above). Similarly, in response to Mr Prudovskiy's and Ms Kulakova and others' requests for copying archive documents, the archives did not allow them to photograph the documents with their own equipment, choosing instead to prevent the copying, thus aiming to limit access to information that was otherwise "ready and available" (see paragraphs 27 and 37 above).

77. Accordingly, the Court finds that Article 10 of the Convention was applicable in the circumstances of the present case where the applicants sought access to archival documents or copies thereof, as the gathering of information was a relevant preparatory step for research and publications and contributed to the public debate on political repressions in the Soviet Union.

3. Conclusion

78. The Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties and third-party interveners

(a) The applicants

79. Mr Suprun submitted that, due to the absence of a definition for "private and family secrets" in Russian law, his conviction lacked a sufficiently foreseeable legal basis. Furthermore, he argued that the elements he had collected, such as the dates of banishment or detention of special settlers or their rehabilitation, did not pertain to their private life as they were characteristic of their interaction with public authorities. Such information, he contended, was subject to the control of general public because it concerned political repression. The objective of his research was to prepare a memorial book, and none of the allegedly injured parties was able to explain how this book would have impacted their present-day life. He emphasised that criminal prosecution for academic work did not satisfy any pressing social need and exerted a chilling effect on other researchers.

80. Ms Dupuy contended that the official date and cause of Mr Wallenberg's death, as given by the Soviet Government in 1957, may not accurately reflect the true circumstances, suggesting instead that his death could have been a direct result of actions by the Soviet authorities. To substantiate this claim, she sought access to documents in Russian archives. Given Mr Wallenberg's significant historical role and the ongoing mystery surrounding his fate, both his family and broader international community had a justified interest in the full disclosure of events leading to his death in Soviet custody. The refusal to release the requested archival records, which

detailed prisoner transfers and were not deemed personal or confidential, further underscored the necessity for transparency regarding Mr Wallenberg's death, highlighting the broader right to historical truth.

81. Ms Kulakova and others argued that the restriction on their right to copy archival records was unnecessary, given that their research was driven by the public interest in preserving historical memory. The FSB's policy requiring in-person visits severely hindered their efforts to establish a public archive website focused on the history of Soviet terror. Moreover, the ban on acquiring digital copies substantially obstructed their work; materials copied manually were less reliable, and the transcription process was slow and inefficient due to the time constraints imposed on visits. The absence of any justification from the FSB or courts for this prohibition suggested an intent to diminish trust in the public archive and restrict public discussion on significant social issues, thereby undermining freedom of expression.

82. Mr Prudovskiy and International Memorial submitted that the refusal of their requests for information lacked a basis in domestic law. Thus, the Personal Data Act was inapplicable as, by its own terms, archival records fell outside its scope. In any event, the information requested, such as the employment records of Soviet-era prosecutors, did not fall within the protected category of personal secrets. Furthermore, the identity of perpetrators responsible for the Soviet terror could not be classified as a State secret, given that the State Secrets Act prohibits the classification of information pertaining to past violations of rights and freedoms as such. Highlighting the impact of these refusals, the applicants emphasised that obstructing access to information hindered their legitimate historical research, especially in a context where State authorities were seeking to discredit and suppress dissenting historical narratives about the Soviet past. The lack of access and unwarranted restrictions on copying undermined the applicants' ability to demonstrate the credibility and reliability of their research to the public.

(b) The Government

83. The Government submitted, in the case of Mr Suprun, that "private life" is an extremely broad term, incapable of an exhaustive definition, and that it is up to the individuals concerned to determine what elements of their private life should remain confidential. The finding of Mr Suprun's responsibility for violating the private life of the special settlers had a legal basis in Article 137 of the Criminal Code and pursued the legitimate aim of protecting the rights of others. The domestic authorities intervened to prevent him from unlawfully publicising information about private life of special settlers without the consent of their heirs.

(c) Third-party interveners

84. The International Federation for Human Rights submitted that, in recent years, the Russian authorities had been actively promoting an official historical narrative centred around the glorification of Soviet achievements, while downplaying or justifying the grave crimes committed by the Soviet regime, including those during the Great Terror. In this context, the FSB, under various pretexts, had begun to restrict access to the archives of the NKVD, of which it was the successor, for researchers and relatives of Stalinist terror victims. Archives hold a crucial role in upholding the "right to the truth", which is anchored in international law, particularly when it comes to the right of families to learn the fate of their loved ones.

85. ARTICLE 19 submitted that the so-called "right to the truth", namely the right of victims, their families, and society at large to know the truth about past human rights violations, was originally recognised by the UN bodies in relation to forced disappearances, torture, and extrajudicial killings. The recognition of the "right to the truth" rests on the premise that States must make information about human rights abuses accessible as a means of justice, accountability, and non-repetition. At the heart of the "right to the truth" lies the right to receive information, which falls within the ambit of the exercise of freedom of expression. Securing access to information about past human rights violations requires the opening of historical archives to the victims, their relatives, and the public at large. Archives enable researchers to disseminate information to the public, analyse past events, preserve memory, and prevent the recurrence of atrocities. The right to access historical archives has been recognised and enforced in national laws across all regions of the world, particularly in Europe, Latin America, and Africa. In a majority of the Council of Europe Member States, historic memory laws afford the victims of past human rights violations, as well as the general public, broad access to archival records related to atrocities perpetrated by totalitarian regimes, including the Nazi, Communist, and Francoist dictatorships.

2. The Court's assessment

(a) Existence of interference

86. In the light of its finding above that the applicants' requests for access to information fell within the scope of Article 10 of the Convention (see paragraphs 73-77 above), the Court considers that the refusal of the domestic authorities to provide the information requested amounted to an interference with their right to receive information under Article 10 § 1 of the Convention (see *Yuriy Chumak v. Ukraine*, no. 23897/10, § 39, 18 March 2021, and *Šeks*, cited above, § 60).

87. Interference with the exercise of the freedom to receive and impart information, however, is not limited to instances of an outright ban on accessing information but can also consist in various other measures taken by

the authorities (see *Karastelev and Others v. Russia*, no. 16435/10, § 70, 6 October 2020).

88. Although Mr Suprun was exempted from punishment in criminal proceedings, he was found liable for collecting information about forced settlers and transferring it abroad. The judgment against Mr Suprun, prompted by the intervention by the FSB and investigative authorities, curtailed his efforts to collect information about forced settlers and prevented him from compiling the memorial book which he was to prepare in accordance with the cooperation agreement entered into (see paragraphs 4 and 8 above). These actions constituted instances of interference with his right to receive information (compare *Dammann v. Switzerland*, no. 77551/01, §§ 28, 52 and 57, 25 April 2006, in which the applicant acquired an official document but did not publish its contents or use it for any other purpose).

89. As regards the cases where documents could be accessed on-site but requests for copies were denied, the Court notes that it has accepted that there was interference in a case where a historian was granted permission to access documents but the domestic authorities arbitrarily refused to grant unrestricted access, including by prohibiting him from publishing any information classified as State secrets (see *Kenedi v. Hungary*, no. 31475/05, §§ 16 and 42-43, 26 May 2009).

90. The Court considers that the exercise of the right to freedom of expression is impossible without the ability to impart information accurately and comprehensively. Taking photographs or making copies of archival documents enables historians and researchers such as Mr Prudovskiy and Ms Kulakova to capture accurate and unaltered images of original documents. This facilitates a more precise and faithful dissemination of historical records, which is essential for scholarly work and informed public debate. It also corresponds to the right of the public to receive information, extending the reach of historical documents beyond the physical confines of archives (see, in the same vein, *Kenedi*, cited above, § 43, and Article 6 § 1 of the Tromsø Convention, cited in paragraph 61 above). In the context of research into Soviet political repressions, photographs of archival documents can serve as a tool for transparency, offering reliable evidence of past actions and decisions by public authorities, thus enhancing public historical awareness. Accordingly, the Court finds that denying the applicants the ability to make copies or take photographs of archival records also disclosed an interference with their right to receive information.

(b) Justification for the interference

91. As a preliminary observation, the Court notes that various issues related to the operation of the Communist regime continue to be subjects of ongoing debate among researchers and the general public. As such, these issues should be considered matters of public interest in contemporary

Russian society. The Court reiterates that seeking historical truth is an integral part of freedom of expression and it is not within its remit to arbitrate on the underlying historical issues. These issues are part of a continuing debate among historians that shapes opinion regarding the past events and their interpretation (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 223, ECHR 2015 (extracts), and *Chauvy and Others v. France*, no. 64915/01, § 69, ECHR 2004-VI). However, it is important to note that such matters deserve the high level of protection guaranteed to political speech, and that the domestic courts are expected to take these elements into consideration (see *Ungváry and Irodalom Kft v. Hungary*, no. 64520/10, § 63, 3 December 2013).

92. For the reasons outlined below, it is not necessary for the Court to embark on a detailed analysis of the domestic legal basis for the interference in question. It will also proceed on the assumption that the interference pursued the legitimate aims of protecting national security and the reputation or rights of others.

(i) Restrictions on access to information

93. On the facts, the Court notes that at the heart of the applicants' complaint is the characterisation of the information they requested from the authorities as official secrets or personal data which could not be disclosed without the consent of the person identified or their heirs. The legal grounds and reasons provided for withholding information varied, including the protection of third parties (in the case of Ms Dupuy, see paragraphs 20 and 22 above), the safeguarding of personal data or private and family secrets (see paragraphs 50-52 above), and the protection of State secrets (see paragraphs 34-36 above). In the case of Mr Suprun, the privacy justification was applied to information not about the prosecutors, but about the victims of the NKVD's "ethnic operations" (see paragraphs 10 and 13 above). In a case involving Mr Prudovskiy, access was denied on the basis that the relevant regulations did not allow for the release of information about a convicted NKVD officer to anyone other than family members (see paragraph 42 above).

94. The Court has previously dealt with cases in which the denial of a request for information was deemed to pursue the legitimate aim of protecting the rights of others (see *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, 14 April 2009; *Magyar Helsinki Bizottság*, cited above; *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, 26 March 2020; and *Saure v. Germany (no. 2)*, no. 6091/16, 28 March 2023). Such cases might require a balancing of the right to respect for private life against the right to freedom of expression, but it is crucial to ascertain, firstly, that the rights under Article 8 have been indeed engaged (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 92 et seq., 25 September 2018).

95. The fundamental distinction between the present case and those previously considered by the Court lies in the fact that the latter concerned the private life of living individuals: authors of a constitutional complaint in *Társaság a Szabadságjogokért*, appointed public defenders in *Magyar Helsinki Bizottság*, candidates for an election in *Centre for Democracy and the Rule of Law*, and sitting judges and public prosecutors in *Saure*. By contrast, in the present case, the individuals concerned by the applicants' requests for information were professionally active in the 1930s and 1940s. Given the passage of time, it was reasonable to assume that by the time the requests were made they had already passed away.

96. On the premise that the individuals concerned were no longer alive, the Court reiterates that the private life of a deceased person does not continue after death (see *Jäggi v. Switzerland*, no. 58757/00, § 42, 13 July 2006) and that rights under Article 8 are eminently personal and non-transferrable (see *Dzhugashvili v. Russia* (dec.), no. 41123/10, §§ 22-24, 9 December 2014, and the case-law cited therein). Consequently, accessing information about deceased NKVD officers or Stalin-era prosecutors could not have infringed upon their privacy. The authorities failed to show how the disclosure of such information would have affected the privacy of the presumably deceased individuals, having regard in particular to the amount of time that had already lapsed. The Court observes that the domestic courts gave no weight to this factor (see *John Anthony Mizzi v. Malta*, no. 17320/10, § 39, 22 November 2011, and contrast with *Sõro v. Estonia*, no. 22588/08, § 56, 3 September 2015, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, §§ 42-50, ECHR 2004-VIII, which concerned the publication of information about the living applicants' collaboration with the KGB).

97. Alternatively, Article 8 may be invoked to protect the feelings of descendants by ensuring their deceased ancestors are treated with respect (see *Éditions Plon v. France*, no. 58148/00, § 47, ECHR 2004-IV, and *M.L. v. Slovakia*, no. 34159/17, §§ 23-24, 14 October 2021). Admittedly, disclosing an individual's role in political repression might cause discomfort to their descendants. However, again, the present case is distinct from the cases in which the disclosure had a direct and immediate impact on the privacy and life of the immediate family of the deceased (see, for example, *Éditions Plon*, concerning the disclosure of confidential medical records of a recently deceased head of State; *Hachette Filipacchi Associés v. France*, no. 71111/01, 14 June 2007, concerning the publication of a photograph of the mutilated body of a political figure shortly after his murder, and *M.L. v. Slovakia*, concerning the disclosure of details about a Catholic priest's intimate life after his conviction for sexual abuse and suicide). The applicants in the instant case did not seek to make any independent claims or revelations about intimate aspects of the private lives of the perpetrators or victims of political repression. In the absence of special circumstances, the impact of their research on the descendants' feelings, if any, must have been minimal

and remote (compare with *Putistin v. Ukraine*, no. 16882/03, § 38, 21 November 2013).

98. The domestic courts made no genuine attempt to assess the applicability of Article 8 of the Convention or the existence of an interference with the right to respect for private life in the circumstances of the present cases. The Court further notes that, in Mr Suprun's criminal proceedings, the descendants disagreed on whether the reputation of their ancestors as forced settlers was affected by his research. The domestic courts neither addressed that disagreement nor probed into the issue of whether describing the subject of his research as a "shameful secret" was sufficient to affect the enjoyment by the forced settlers' descendants of their right to respect for private life to the minimum level of severity required for Article 8 of the Convention to come into play (see *Denisov*, cited above, § 114).

99. In any event, the applicants sought access to official data compiled in the relevant historical period which related to the public or professional, rather than the personal life of those involved. The information collected by Mr Suprun (see paragraph 5 above) and requested by Mr Prudovskiy and International Memorial (see paragraphs 34, 40 and 49 above) included the basic biographical elements, employment records, and details of extrajudicial proceedings. For the Court, the request for these elements, even if they constituted personal data, related predominantly to the conduct of professional activities in the context of public proceedings. In this sense, the former officials' professional activities cannot be considered to be a private matter (see *Magyar Helsinki Bizottság*, cited above, § 194).

100. Against this background, the Court finds that the interests invoked by the domestic authorities with reference to Article 8 of the Convention were not of such a nature and degree as could warrant engaging the application of this provision and bringing it into play in a balancing exercise against the applicants' rights under Article 10 (see *Magyar Helsinki Bizottság*, cited above, § 196).

101. As to the argument that the information about the methods and operations used by the troika members constituted a State secret capable of jeopardising the national security (see paragraph 36 above), the Court first notes that the roles of the troika members were prosecutorial and quasi-judicial in nature; they were not engaged in counterintelligence or operational-search activities. Furthermore, it seems implausible that disclosing the names, ranks, and job titles of individuals involved in the fabrication of criminal cases under the former regime, more than eighty years ago, could undermine present-day national security. The domestic authorities have not presented any evidence to suggest otherwise. In the late 1980s, the authorities declared the operations of the NKVD and its extrajudicial bodies unconstitutional and acknowledged their responsibility for mass human rights violations during the Great Terror (see paragraph 49 above). Therefore, there was no "pressing social need" to maintain the secrecy of the proceedings from

almost ninety years ago. Access to old criminal case files could not have reasonably caused any harm to the secrecy or integrity of the investigation or to the authority of the judiciary.

102. The Court notes that the applicants' research focused on State-sanctioned human rights violations, including ethnic deportations and executions carried out on the orders of extrajudicial bodies, that took place on a massive scale during the 1930s and 1940s. As noted in paragraph 91 above, the pursuit of historical truth constitutes a fundamental aspect of freedom of expression, warranting a high level of protection. Interference with historical research into this subject inevitably conveys the impression that the aim was to provide immunity to those responsible for serious human-rights violations (see paragraphs 62-64 above). In these circumstances, it was incumbent on the domestic courts, as guardians of individual rights, to undertake a balancing exercise in conformity with the criteria laid down in the Court's case-law. However, their analysis was limited to a verification of compliance with applicable provisions of Russian law. This approach excluded any meaningful assessment of the applicants' rights to freedom of expression under Article 10 of the Convention, in a situation where any restrictions on the applicants' access to information requests – intended to contribute to a debate on a matter of general interest – would have required the utmost scrutiny (compare *Magyar Helsinki Bizottság*, cited above, § 199, and contrast with *Saure*, cited above, §§ 59-63, in which the domestic decisions considered multiple factors, including the role of the press, the public interest in the information, the potential impact on the professional and personal lives of the individuals targeted in the information requests, and the historical context of their past collaboration with Soviet-era secret services).

103. In these circumstances, the Court finds that the interference did not pursue any "pressing social need" and that the domestic authorities did not provide any "relevant and sufficient" reasons for it.

(ii) Restriction on acquiring copies of archival documents

104. Lastly, there remains the issue regarding the refusal to permit Mr Pudovskiy, Ms Kulakova and her associates to acquire copies of the documents essential for their research. In upholding this refusal, the domestic authorities did not assert that the restriction on providing copies or taking photographs was crucial to safeguard any protected interest. The archives and domestic courts limited their rationale to the observation that the legislation did not explicitly authorise the provision of copies to anyone other the rehabilitated individuals and their heirs or encompass the right to make copies independently (see paragraphs 29 and 38-39 above).

105. The Court has already held, in the context of access to information, that, in view of the interest protected by Article 10, the law cannot permit arbitrary restrictions which may become a form of indirect censorship should

the authorities create barriers to the gathering of information (see *Társaság a Szabadságjogokért*, cited above, § 27). While the acquisition of copies of archival documents may be denied in certain circumstances (see, for example, Article 6 § 1 of the Tromsø Convention, cited in paragraph 61 above), a mere reference to a legislative gap is insufficient to justify interference with the right to freedom of expression.

106. For the Court, the restriction on acquiring copies of the archival documents does not seem to have pursued any identifiable legitimate aim or "pressing social need" (see paragraph 104 above). The Court further notes that the documents were "ready and available" and accessible for viewing, and the limitation was not necessary for the efficient operation of the archives. The applicants were indeed able to review the documents, albeit within a limited timeframe, as well as manually copy the information they required. However, besides being a time-consuming exercise, the transcription did not assist the applicants in enhancing the reliability of their work in the public eye to the same extent as copies of the original documents would have. The restrictions also prevented them from making the documents accessible on a website or in print for the public archive on the history of Soviet terror. This restricted the broader public's access to that information and undermined the possibility of a public discussion on a socially significant issue.

107. The authorities did not provide the applicants with any alternatives, much less adequate ones, to the restriction on acquiring copies of archival information. As a suitable measure, the authorities could have, for instance, imposed a fee on the applicants for making copies to compensate for the time and effort of the archival staff, or allowed them to use their own photographic equipment under conditions that ensure the preservation of the archival documents.

108. The Court accordingly finds that this restriction did not pursue any legitimate aim and was not "necessary in a democratic society".

(iii) Conclusion

109. There has been accordingly a violation of Article 10 of the Convention in respect of all applicants.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. In the light of its findings concerning the applicants' complaints under Article 10 of the Convention, the Court takes the view that it has examined the main legal question raised and does not need to give a separate ruling on the admissibility or merits of the remaining complaints brought in particular under Articles 7, 8 and 14 of the Convention (see, for a similar approach, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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."

112. Mr Suprun claimed 10,000 euros (EUR) in respect of non-pecuniary damage. Mr Prudovskiy and International Memorial asked the Court to determine appropriate compensation for non-pecuniary damage. The other applicants considered that the finding of a violation would be sufficient just satisfaction. None of the applicants submitted claims for costs or expenses.

113. The Court awards Mr Suprun, Mr Prudovskiy, and International Memorial the amount of EUR 7,500 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Holds*, unanimously, that it has jurisdiction to examine the case and the Government's failure to participate in the proceedings presents no obstacles for the examination of the case;

3. *Decides*, unanimously, that Ms Zhemkova and Mr Rachinskiy have standing to pursue the proceedings initiated by International Memorial;

4. *Declares*, unanimously, the complaint under Article 10 of the Convention of the refusal to provide access to information and to make copies admissible;

5. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

6. *Holds*, by six votes to one, that there is no need to examine the remainder of the complaints;

7. *Holds*, unanimously,
   (a) that the respondent State is to pay Mr Suprun, Mr Prudovskiy, and International Memorial succeeded by Ms Zhemkova and Mr Rachinskiy, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros) each,

plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, by six votes to one, the remainder of Mr Suprun's claim for just satisfaction.

Done in English, and notified in writing on 18 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Georgios A. Serghides President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The case concerns the restrictions on the applicants' access to archival information regarding Soviet political repression. The applicants complained that there had been a breach of their right to receive information under Article 10 of the Convention and the judgment ultimately held that there had been such a violation (see paragraph 109 of the judgment and point 5 of its operative provisions).

2. I voted for all the operative provisions save for points 6 and 8.

3. This partly dissenting opinion concerns my disagreement with the holding of the judgment in its paragraph 110 and in point 6 of its operative provisions, namely, that in the light of the finding of a violation under Article 10, which the judgment considers to be the "main" complaint, there is no need to examine the remaining complaints, in particular, the complaints under Articles 7, 8 and 14.

4. I disagree with such an approach, and had I not been in the minority, I would have proceeded to examine the remaining complaints and to decide upon them. I would also have assessed Mr Suprun's just satisfaction claim in the light of that decision.

5. In disagreeing with the judgment's failure to examine the remaining complaints, I refer back to the reasons I provided in my partly dissenting opinion in *Zarema Musayeva and Others v. Russia*, no. 4573/22, 28 May 2024, without any need to reiterate them here.

APPENDIX

List of applications:

No.	Application no.	Case name	Lodged on	Name Year of birth or incorporation Place of residence Nationality	Represented by
1.	58029/12	Suprun v. Russia	16/08/2012	**Mikhail Nikolayevich SUPRUN** 1955 Arkhangelsk Russian	Ivan PAVLOV Mariya VOSKOBITOVA
2.	29440/19	Dupuy v. Russia	17/05/2019	**Elsa Marie DUPUY** 1952 Lausanne, Switzerland Swiss	Ivan PAVLOV Dariana GRYAZNOVA
3.	12396/21	Kulakova and Others v. Russia	28/01/2021	**Yevgeniya Yuryevna KULAKOVA** 1988 St Petersburg Russian **Yelena Igorevna KONDRAKHINA** 1987 Kolpino Russian **Olga Nikolayevna STARTSEVA** 1990 St Petersburg Russian	Olga STARTSEVA
4.	61350/21	Prudovskiy v. Russia	08/12/2021	**Sergey Borisovich PRUDOVSKIY** 1949 Moscow Russian	Nataliya SEKRETAREVA Tatyana CHERNIKOVA Natalya MOROZOVA Tamilla IMANOVA Tatyana GLUSHKOVA Anastasiya GARINA
5.	25390/22	International Memorial v. Russia	28/04/2022	**INTERNATIONAL MEMORIAL** 1991 Moscow Russian	Marina AGALTSOVA