European Court of Human Rights: Minasyan and Others v. Armenia

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The European Court of Human Rights (ECtHR), in a judgment of 7 January 2025, found that the Armenian authorities have failed to protect the applicant's right to privacy and reputation (Article 8 ECHR) in a case about LGBT rights. It also found a breach of Article 14 ECHR (prohibition of discrimination) in protecting homophobic hate speech under the right to freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns media articles offensively targeting the applicants, activists for lesbian, gay, bisexual and transgender (LGBT) rights. The ECtHR found that the Armenian authorities have failed to protect the applicants against hate speech and discrimination.

The applicants argued that, in particular, an article published on 17 May 2014 on the website of the Iravunk newspaper had constituted an unlawful interference with their rights guaranteed under Article 8 ECHR, as it caused them psychological harm and had violated their moral integrity. Invoking Article 14 ECHR, the applicants also argued that they had fallen victim to hate speech and discrimination, alleging that the attacks on them had been motivated not only by their activism, but also by their perceived sexual orientation and association with the LGBT community. In essence, the applicants submitted that the domestic courts' failure to censure or sanction the newspaper or its editor-in-chief for publishing the article at issue and some subsequent articles and comments had constituted a breach of the State's positive obligation to protect them from insulting and discriminatory homophobic statements. The applicants' claim was supported in third-party interventions by Article19, the Human Rights Centre of Ghent University, ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and TGEU (Transgender Europe).

The ECtHR reiterated that it was necessary to balance the applicants' right to respect their private life (Article 8 ECHR) against the public interest in protecting freedom of expression (Article 10 ECHR), bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles. Expression on matters of public interest is, in principle, entitled to strong protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection. Furthermore, Article 14 ECHR reflects the principle of non-discrimination and the values of tolerance and

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social peace. Therefore, the Contracting States of the ECHR are under a duty to combat discrimination, including based on one's sexual orientation.

The ECtHR observed that the article of 17 May 2014 was motivated by hostility against LGBT persons and attacked the applicants for their activism in the sphere of promotion and protection of LGBT rights and the fact that they had spoken out against homophobia. The article, in particular, used stereotypical and stigmatising labels such as "homosexual rights lobbyists" and "gay-campaign-supporting zombies", branded the applicants as "internal [enemies] of the Nation and the State", and advocated that they be blacklisted and subjected to specific acts of discrimination. The ECtHR found that such expressions affected the applicants' psychological well-being, dignity and reputation and seriously attacked their rights guaranteed under Article 8 ECHR. In attacking the applicants because of their support for the LGBT community, the author of the article expressly incited the public at large to show intolerance and to commit specific harmful, discriminatory acts against the applicants, including in the spheres of their personal and professional lives.

The ECtHR observed that the domestic courts gave full weight to the author's right to freedom of expression under Article 10 ECHR and little to no importance to the effect of his statements on the applicants and their private lives from the perspective of Article 8 in combination with Article 14 ECHR. The domestic courts failed to recognise the author's hostile tone and intentions and the impact that his statements had on the applicants' Article 8 rights. His expressions, meant to incite intolerance and hostility against the applicants with the clear intention of intimidating them and causing them actual harm, were downplayed by the courts and regarded as legitimate expressions of "criticism" in the context of a debate on a matter of public interest. By doing so, the domestic courts failed to protect the applicants from speech advocating intolerance and harmful acts in breach of Article 8 ECHR. The ECtHR also explained that it could not accept as an example of responsible journalism an article propagating hatred, hostility and discrimination against a minority, in this case, the LGBT community, which, at the material time, appeared to be one of the main targets of widespread hostility, hate speech and hate-motivated violence in Armenia. Hence, by failing to address the discriminatory nature of the impugned statements, the domestic courts also failed to comply with their positive obligation to respond adequately to the applicants' alleged discrimination on account of their perceived sexual orientation and association with the LGBT community, as required under Article 14 ECHR

The ECtHR concluded that the Armenian courts failed to carry out the requisite balancing exercise in line with the criteria laid down in its case-law. Furthermore, the manner in which the only civil remedy available to the applicants was interpreted and applied in practice failed to protect them against hate speech and discrimination.

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Finally, the applicants also requested the ECtHR to order the Government to introduce legislation prohibiting hate speech and discrimination and defining civil, administrative and criminal responsibility for such acts motivated by actual or perceived sexual orientation and gender identity of a person. They also asked that the Government publicly condemn any acts of hatred and intolerance against LGBT people in Armenia, promote the ideas of tolerance and equality in society and develop and implement a common policy for combating discrimination. The ECtHR, however, left it to the Armenian Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 ECHR to implement an effective legal framework in theory and practice. The ECtHR explained that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment in practice. Therefore, discretion in the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the ECHR to secure the rights and freedoms guaranteed.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Minasyan and Others v. Armenia, Application no. 59180/15, 7 January 2025

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