European Court of Human Rights: *Yevstifeyev and Others v. Russia*

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The European Court of Human Rights (ECtHR) delivered a judgment on 3 December 2024 concerning allegations of the Russian state's inadequate response to incidents of homophobic speech. Four applicants alleged that the Russian authorities failed to comply with their duty under the European Convention on Human Rights (ECHR) to protect them from discrimination based on their sexual orientation. The ECtHR found a violation of Article 14 (prohibition of discrimination) in combination with Article 8 ECHR (right to privacy) with regard to the unsuccessful legal actions against the homophobic insults and threats against three of the applicants during a demonstration. With regard to the complaint by the fourth applicant about a video on Instagram showing a comic actor hunting gay men in a forest, the ECtHR was of the opinion that the contested video did not have as its purpose the propagation of homophobic views and ideas, as it was apparently a provocative political satire and a parody on a matter of public interest. Therefore, it dismissed the fourth applicant's complaint regarding the alleged failure by the Russian authorities to protect his rights under Article 14 and Article 8 ECHR.

The applicants are four Russian nationals. All four applicants are LGBTI (lesbian, gay, bisexual, transgender and intersex) rights activists. In 2015 the first three applicants lodged a series of unsuccessful complaints – criminal, administrative and civil – against a well-known politician, Mr Milonov. The applicants alleged that Mr Milonov had shouted insults and threats at them at a rally they had taken part in in St Petersburg. The applicants complained in particular that the politician had grossly insulted and offended the participants in the anti-hatred rally. He had also apparently said that the applicants should be "liquidated" and "crushed with tanks and tractors", and he imitated the gesture of cutting a throat and shouted, "I am going to find you, be scared!" and "I am going to rip off your head".

In 2020 Mr Petrov, the fourth applicant, also lodged unsuccessful complaints concerning a video of a father and his son hunting gay men in a forest published on Instagram by a well-known comic actor and television presenter. The "gay hunt", set in 2035, was a parody of another video published shortly before a national referendum on amendments to the Russian Constitution, which had called in particular on the public to vote for an amendment defining marriage as a relationship between a man and a woman. Although not personally targeted by

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the impugned video, Mr Petrov submitted that, as an openly gay man and the head of an LGBTI rights association, he had been affected by the video at issue, which had provoked in him feelings of humiliation, anxiety and fear.

In the case of Mr Petrov, the ECtHR reiterated that negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group, who, therefore, although not directly targeted by the contested statements, can be considered victims within the meaning of Article 34 ECHR. It also noted that it has previously found that gender and sexual minorities require special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected, while the Russian LGBTI community can be regarded as a particularly vulnerable group needing heightened protection from stigmatising statements. It further observed that the video at issue was created and published on social networks by a well-known actor and television presenter and therefore attracted considerable public attention and had reached a wide public audience. But the ECtHR was not convinced that the video at issue contained negative stereotyping of LGBTI people reaching the level of seriousness required to affect the "private life" of individual members of that group. Taking into account its content, its humorous tone and the context in which it was published, it was difficult to construe it literally as approving of the hunting of gay people. The video was a political satire on a subject of general interest, published shortly before a national vote on amendments to the Russian Constitution regarding a gender issue. It was clearly a parody of another video calling on the public to vote for the amendments. The ECtHR reiterated in that connection that, in the context of an election campaign, a certain vivacity of comment may be tolerated more than in other circumstances. Referring to the right to freedom of expression and information under Article 10 ECHR the ECtHR observed that this right also covers satire, which is a form of artistic expression and social commentary and which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care. The ECtHR observed that satirical forms of expression relating to topical issues can play a very important role in the open discussion of matters of public concern, an indispensable feature of a democratic society. It concluded that the video must be considered as a political satire on a matter of public interest that did not reach the "threshold of severity" required to affect the "private life" of individual members of the LGBTI community. Therefore, Mr Petrov could not be considered a victim of the alleged violations of Articles 8 and 14 ECHR.

In contrast, the ECtHR found that the insulting and homophobic statements of Mr Milonov of which the first three applicants complained indeed affected their

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psychological well-being and dignity and therefore fell within the sphere of their private life. They attained the level of seriousness required for Article 8 ECHR to come into play, in combination with the right to be protected against discrimination (Article 14 ECHR). The ECtHR reiterated that there is a positive obligation on the authorities under Articles 8 and 14 ECHR to respond to harassment motivated by racism or homophobia which involved no physical violence, but rather verbal assault or physical threats or homophobic verbal attacks. This positive obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation. The ECtHR next observed that in cases like the present one, where the complaint is that rights protected under Article 8 ECHR have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 ECHR. The ECtHR found that the Russian authorities did not conduct a balancing exercise between these competing rights, instead focusing exclusively on protecting Mr Milonov's freedom of expression and disregarding the applicants' rights. Nor did they address the homophobic motives behind the incident. Taken as a whole and in context, Mr Milonov's statements were openly homophobic and particularly aggressive and hostile in tone. He called the participants in the rally, including the applicants, "perverts", "scumbags", "Aids-ridden", "paedophiles" and other offensive terms and he also made physical threats against them. The ECtHR came to the conclusion that the domestic authorities failed to comply with their positive obligation to respond adequately to the verbal assault and physical threats motivated by homophobia directed against the applicants. Failure to address such incidents can normalise hostility towards LGBTI individuals, perpetuate a culture of intolerance and discrimination and encourage further acts of a similar nature. There had accordingly been a violation of Article 14 in conjunction with Article 8 ECHR.

Case of Yevstifeyev and Others v. Russia

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