European Court of Human Rights: V*olodina v. Russia (No. 2)*

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In a case about domestic violence in Russia, the European Court of Human Rights (ECtHR) emphasised the State's obligation to protect people from acts of cyberviolence — including the publication of intimate photographs without consent, stalking and impersonation — and to carry out an effective investigation into these acts. The case concerns Ms. Valeriya Volodina's allegation that the Russian authorities had failed to protect her against repeated cyberviolence by her partner who had created fake profiles in her name, published intimate photos of her, tracked her movements and sent her death threats via social media. The ECtHR found, in particular, that despite having the legal tools available to prosecute Ms. Volodina's partner, the authorities had not carried out an effective investigation and had not considered at any point in time what could and should have been done to protect her from recurrent online harassment. The authorities had therefore failed to comply with their obligations under Article 8 of the European Convention on Human Rights (ECHR) by insufficiently protecting Ms. Volodina from severe abuse (see also ECtHR 9 July 2019, *Volodina v. Russia*, App. no. 41261/17, finding violations of Article 3 and 14 ECHR).

In response to the Government's argument of non-exhaustion of domestic remedies, the ECtHR found that Ms. Volodina had made use of a remedy available to her under domestic law which was apparently effective and offered reasonable prospects of success, as complaining to the police about these matters could be an effective remedy. As to the Government's argument that Ms. Volodina should have also instituted civil proceedings, the ECtHR was of the opinion that, even assuming that a civil-law remedy could have been an effective one, an applicant who had pursued an apparently effective remedy could not be required to have also tried others that were available but probably no more likely to be successful.

On the merits of the case, the ECtHR clarified that the concept of private life included a person's physical and psychological integrity which States had a duty to protect, even if the danger came from private individuals. The particular vulnerability of victims of domestic violence and the need for active State involvement in their protection had been emphasised both in international instruments and in the Court's well-established case-law. The acts of cyberviolence, cyberharassment and malicious impersonation had been categorised as forms of violence against women and children capable of undermining their physical and psychological integrity in view of their

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vulnerability. The ECtHR refers to its earlier judgment in the case of *Buturugă v. Romania* (ECtHR 11 February 2020) in which it had pointed out that "cyberharassment is currently recognised as an aspect of violence against women and girls and can take a variety of forms, such as cyber-violations of private life ... and the taking, sharing and handling of information and images, including intimate ones". According to the ECtHR, online violence, or cyberviolence, was closely linked with offline, or "real-life", violence and fell to be considered as another facet of the complex phenomenon of domestic violence. The ECtHR also observed that intimate partners were frequently the likely perpetrators of acts of cyber-stalking or surveillance. States have a positive obligation to establish and apply effectively a system punishing all forms of domestic violence, whether occurring offline or online, and to provide sufficient safeguards for the victims.

It was not in dispute that the non-consensual publication of Ms. Volodina's intimate photographs, the creation of fake social-media profiles impersonating her, and her tracking with the use of a GPS device, interfered with her enjoyment of her private life, amounting to humiliation and disrespect, and causing her to feel anxiety, distress and insecurity, while also undermining her dignity.

First, the ECtHR found that the existing Russian legal framework was deficient in several important respects and failed to meet the requirements inherent in the State's positive obligation to establish and apply effectively a system punishing all forms of domestic violence.

Second, the ECtHR considered that the acts of cyberviolence in the instant case had been sufficiently serious to require a criminal-law response on the part of the domestic authorities and reiterated that both the public interest and the interests of the protection of vulnerable victims from offences infringing on their physical or psychological integrity required the availability of a remedy enabling the perpetrator to be identified and brought to justice. Civil proceedings which might have been an appropriate remedy in situations of lesser gravity would not have been able to achieve these objectives in the present case. As to the possibility of issuing orders prohibiting certain conduct or forms of cyberviolence, the ECtHR was unable to find that they offered sufficient protection to victims of domestic violence in Ms. Volodina's situation. It found that the response of the Russian authorities to the known risk of recurrent violence on the part of Ms. Volodina's former partner had been manifestly inadequate and that, through their inaction and failure to take measures of deterrence, they had allowed him to continue threatening, harassing and assaulting Ms. Volodina without hindrance and with impunity.

Third, the ECtHR reiterated that, to be effective, an investigation had to be prompt and thorough. The authorities had to take all reasonable steps to secure evidence concerning the incident, and special diligence was required in dealing

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with domestic violence cases. According to the ECtHR, the investigation which had been conducted from 2018 onwards could not be said to have been expeditious or sufficiently thorough. It had taken the authorities nearly a year to obtain information about the Internet addresses of the fake accounts from the Russian company operating the social media platform *VKontakte* and the authorities had not sent any requests to Instagram to identify the owner of the fake accounts. The questioning of Ms. Volodina and the inspection of the fake pages on Instagram had taken place in May 2020, two years since she had made her complaint in 2018. As a consequence of the slow-paced investigation into the fake social media profiles, the prosecution eventually became time-barred. The criminal case against Ms. Volodina's former partner was discontinued, even though his involvement in the creation of the fake profiles appeared to have been established. By failing to conduct the proceedings with the requisite diligence, the Russian authorities bore responsibility for their failure to ensure that the perpetrator of acts of cyberviolence be brought to justice. The impunity which ensued was enough to shed doubt on the ability of the State machinery to produce a sufficiently effective deterrent to protect women from cyberviolence.

The ECtHR came to the conclusion that even though the existing framework equipped the Russian authorities with legal tools to prosecute the acts of cyberviolence of which Ms. Volodina had been a victim, the manner in which they had actually handled the matter – notably a reluctance to open a criminal case and the slow pace of the investigation resulting in the perpetrator's impunity – disclosed a failure to discharge their positive obligations to protect Ms. Volodina's private life. Therefore, the ECtHR found, unanimously, a violation of Article 8 ECHR.

Judgment by the European Court of Human Rights, Third Section, in the case of Volodina v. Russa (No. 2), Application no 40419/19,14 September 2021

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