European Court of Human Rights: Oganezova v. Armenia

IRIS 2022-7:1/24

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The European Court of Human Rights (ECtHR) has delivered a judgment finding breaches of the European Convention on Human Rights (ECHR) because of lack of protection against hate speech (see also IRIS 2020-3/21 Beizaras and Levickas v. Lithuania). The ECtHR found a breach of the prohibition of inhuman or degrading treatment and discrimination on the basis of sexual orientation because the Armenian authorities had failed to protect an LGBT-activist from homophobic arson and online hate speech. The authorities had also failed to carry out an effective investigation in order to identify the people responsible for the homophobic hate speech.

The applicant in this case was Ms Armine Oganezova, a well-known member of the lesbian, gay, bisexual and transgender (LGBT) community in Armenia. She was involved in promoting the rights of LGBT people in Armenia and internationally, and had criticised Armenia's human rights record on several occasions. Ms Oganezova also co-owned and managed a bar in the centre of Yerevan, a place where members of the LGBT community met to socialise.

In August 2011, an interview with Ms Oganezova in which she explained her participation in a gay pride march in Istanbul was broadcast on an Armenian television channel. After the interview was broadcast, she became the subject of an online hate campaign, intimidation and threats on the basis of her sexual orientation. On two occasions a group of people were loitering around Ms Oganezova's bar, harassing and intimidating the people gathered in the club. A few days later, an arson attack was carried out on the club. The fire was stopped by the fire brigade, but the interior of the club was badly damaged. An online group called "No to homosexuality" was created on Facebook and pictures of Ms Oganezova and several LGBT rights activists were posted online. A stream of insulting and threatening messages was posted against members of the LGBT community. In response, Ms Oganezova gave a television interview in which she discussed the arson attack and the homophobic attitude towards the LGBT community. Following the interview, a significant number of threats and homophobic comments addressed to her personally were posted mainly on Facebook and YouTube. In particular, the posts on Facebook included comments that the applicant "should die", "should be burnt", or should be "put in an electric chair". The comments posted on YouTube under a video concerning the arson

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attack, contained severely abusive language, stating that LGBT persons “should get out of this city, Armenia is for Armenians not sluts”. Ms Oganezova continued being harassed in the following days and she was subjected to homophobic abuse and threats online. Ms Oganezova submitted material printed out from various web pages which contained the relevant homophobic comments to the police, fand requested that the necessary steps were taken to identify the perpetrators of the arson and the authors of the online hate speech. However, apart from the criminal prosecution (without final punishment) of two people responsible for the arson attack, no criminal investigation was initiated in order to identify and prosecute the authors of the homophobic online hate speech. In contrast, the hate crimes against Ms Oganezova and the LGBT-community were openly condoned by some politicians and members of parliament, while also some police officers seemed to support the perpetrators’ motives for the hate crimes. In June 2012, Ms Oganezova left Armenia for Sweden. She applied for asylum on the basis of persecution due to her sexual orientation. Her decision to leave Armenia was motivated by the constant threats that she was receiving online, combined with the lack of protection by the authorities she had experienced.

Before the ECtHR, Ms Oganezova complained under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to privacy), 13 (right to an effective remedy) and 14 ECHR (prohibition of discrimination) about the State authorities’ failure to protect her from attacks and abuse by private individuals motivated by prejudice towards homosexuals and to investigate effectively the hate crimes, including the abuse and humiliation to which she had been subjected. She further complained, under the same provisions, about the lack of an adequate legislative framework to combat hate crimes directed against the LGBT minority.

The ECtHR first reiterated that treatment which humiliates or debases an individual, either in the eyes of others or in those of the victim, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, may be characterised as degrading and also fall within the prohibition set forth in Article 3 ECHR. The ECtHR further noted that the aim of the attacks, including the arson and the online hate speech, was evidently to frighten Ms Oganezova so that she would desist from her public expression of support for the LGBT community. Her emotional distress must have been further exacerbated by the fact that the police had failed to react properly and in a timely manner. Considering the background of the continuous harassment and the prevailing negative attitude towards the members of the LGBT community in Armenia, the ECtHR found that the situation in which Ms Oganezova found herself as a result of the arson attack and the subsequent (online) attacks on her person motivated by homophobic hatred must necessarily have aroused in her feelings of fear, anguish and insecurity which were not compatible with respect for her human dignity and, therefore, reached the threshold of severity within the meaning of Article 3 ECHR

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in conjunction with Article 14.

In particular, in relation to the highly abusive online hate speech, the ECtHR observed that Ms Oganezova had submitted the evidence in her possession, including screenshots from the relevant web pages which contained homophobic comments, to the police. However, there was nothing in the material before the ECtHR to suggest that there had been any meaningful follow-up on the matter. While being careful not to hold that each and every utterance of hate speech must, as such, attract criminal prosecution and criminal sanctions, the ECtHR emphasised that comments that amount to hate speech and incitement to violence, and were thus clearly unlawful on their face, may in principle require the States to take certain positive measures. It had likewise held that inciting hatred does not necessarily entail a call for an act of violence or other criminal acts. Attacks on people committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating hate speech in the face of freedom of expression exercised in an irresponsible manner. The ECtHR also referred to its earlier case law in which it held that where acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor (see IRIS 2020-3/21). Having regard to the acts of violence, including the arson attack, the authorities should have taken the hateful comments posted on social-media platforms all the more seriously. Instead, parliamentarians and high-ranking politicians themselves made intolerant statements by publicly endorsing the actions of the perpetrators. Lastly, the ECtHR took note of the evolution of domestic law, which since 2020 has prohibited hate speech in Article 226.2 of the Criminal Code. The ECtHR observed however that sexual orientation and gender identity are still not included in the characteristics of victims of the offence of hate speech despite the recommendations of the relevant international bodies in that respect. The ECtHR therefore found that the authorities had failed to respond adequately to the homophobic hate speech of which Ms Oganezova had been a direct target because of her sexual orientation. It concluded that the Armenian authorities had failed to offer adequate protection to Ms Oganezova from homophobic attacks and hate speech and to conduct a proper investigation into the hate-motivated ill-treatment against her including the arson attack on the club and the subsequent homophobic attacks. There had accordingly been a violation of Article 3 ECHR taken in conjunction with Article 14. The ECtHR found that this meant that it did need not need to examine the allegations made under Article 8 ECHR taken in conjunction with Article 14, or under Article 13 ECHR.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Oganezova v. Armenia, Application nos. 71367/12 and 72961/12, 17 May 2022

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