European Court Rules Against Armenia Inaction in Anti-LGBTI Hate Crime Case

News, Legal Protection, Armenia, Bias-motivated Violence

> The European Court of Human Rights has ruled that authorities in Armenia failed to protect an LGBT bar owner and activist from homophobic physical and verbal attacks, and arson, and to carry out effective investigation.

The case Oganezova v. Armenia originated in May 2012, when a bar co-owned by the applicant, a member of the LGBT community in Armenia, was firebombed and caused significant damage. Following the incident, the applicant was subjected to physical attacks, death threats and hate speech. As a result, she left Armenia for Sweden, where she was granted asylum.

While two perpetrators were identified and admitted the attack, and were found guilty of intentional damage to property, the were handed a suspended two-year prison sentence, and were subsequently given amnesty.

The European Court's judgment is two-fold, addressing authorities' failure to conduct an effective investigation into the arson attack without considering the homophobic motive, and secondly, failure to protect the applicant from the threats and harassment against her in the aftermath.

The Court found that the continuous harassment of the applicant and the prevailing negative attitude towards the members of the LGBT community in general must have caused the applicant feelings of fear, anguish and insecurity which are not compatible with respect for her human dignity and reach the threshold of severity within the meaning of Article 3 (prohibition of torture, inhuman and degrading treatment) of the Convention, taken in conjunction with Article 14 (prohibition of discrimination).

In relation to the investigation, while the arson attack was formally investigated and the perpetrators convicted, the legal assessment of the crime took no account of the hate motive of the arson attack, "effectively rendering this fundamental aspect of the crime invisible and of no criminal significance".

Given that the domestic criminal legislation does not provide that discrimination on the grounds of sexual orientation and gender identity should be treated as a bias motive and an aggravating circumstance in the commission of an offence, law enforcement did not have necessary legal mechanisms to apply in this case. Therefore, the authorities failed to discharge their positive obligation to investigate in an effective manner whether the arson attack on the club which was motivated by the applicant's sexual orientation constituted a criminal offence committed with a homophobic motive. Thus, the Court found violation of Article 3 together with Article 14 on the authorities' failure to conduct effective investigation and subsequently protect the applicant from further attacks and harassment.

According to ILGA-Europe's Head of Litigation, Arpi Avetisyan: "This is a very timely and important judgment, symbolically delivered on the International Day Against Homophobia, Biphobia, Intersexphobia and Transphobia (IDAHOBIT. The judgment makes it clear that without legislation which explicitly covers bias-motivated crimes based on sexual orientation and gender identity, such crimes will remain invisible and foster impunity. We trust

Armenian authorities will put in place necessary legislative measures to prevent the occurrence of similar cases taking place in the future.”

Armenia currently ranks at 47 on our Rainbow Europe Map, ranks all 49 European countries on a scale between 0% (gross violations of human rights, discrimination) and 100% (respect of human rights, full equality). To find out more visit Rainbow
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