Russia failed to respond adequately to politician's homophobic verbal assault, European Court finds

News, Legal Protection, Safety, European Court of Human Rights, Human Rights Defenders, Russia, Strategic Litigation

The European Court of Human Rights has found that Russia's failure to respond adequately to homophobic verbal assault and physical threats by a politician against LGBTI activists is in breach of their human rights.

Last week, in case *Yevstifeyev and others v. Russia*, lodged by victims of homophobic hate speech in Russia, the European Court of Human Rights found a violation of Article 8 of the European Convention on Human Rights (right to private and family life), together with Article 14 (prohibition of discrimination).

The applicants are LGBTI rights activists who participated as part of the LGBTI column in a rally against hatred in St Petersburg where they had to face homophobic insults and physical threats from a well-known politician and member of the St Petersburg Legislative Assembly, who attended the rally. He also spread false information concerning the applicants.

The applicants lodged criminal complaints but the authorities refused to register them, claiming the politician had allegedly merely expressed his personal opinion about the LGBTI community. The applicants also lodged an administrative offence complaint and a civil complaint, which were dismissed on the grounds that the statements did not amount to insult, as they were not directed against specifically named individuals.

The Court first confirmed that the applicants had been directly targeted by the verbal assault and that the statements at issue affected their psychological well-being and dignity, and therefore fell within the sphere of their private life.

As to the authorities' refusal to register the criminal complaints, the Court found that the domestic authorities had failed to strike a fair balance between the applicants' rights to respect for their private life and to be protected from discrimination on the ground of sexual orientation on one hand, and the public interest in protecting freedom of expression on the other hand.

Turning to the administrative complaint, the Court found that the domestic authorities did not provide relevant and sufficient reasons for dismissing the administrative complaints. Lastly, as regards the civil proceedings, the Court ruled that, by finding that the applicants were not affected by the contested statement, the civil courts had failed to acknowledge the applicants' rights to respect for their private life and to protection from discrimination on the ground of sexual orientation. The Court made clear that, contrary to the civil courts' rulings, the politician's statements could not be construed in a neutral way and were openly homophobic, had been particularly aggressive and hostile in tone, and included physical threats against the participants in the rally.

As a result, the Court concluded 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. It recalled its previous ruling that "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.” The judgment can be accessed here.