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Meeting: 1514th meeting (December 2024) (DH)

Communication from NGOs (Pink Armenia, EHRAC, ILGA Europe) (21/10/2024) concerning the case of Oganezova v. Armenia (Application No. 71367/12) and reply from the authorities (29/10/2024).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1514^e réunion (décembre 2024) (DH)

Communication d'ONG (Pink Armenia, EHRAC, ILGA Europe) (21/10/2024) relative à l'affaire Oganezova c. Arménie (requête n° 71367/12) et réponse des autorités (29/10/2024). **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

21 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Sent by email.

21 October 2024

Dear Sir/Madam,

Re: Oganezova v. Armenia, Appl. no. [71367/12](#) and [72961/12](#) – submissions pursuant to Rule 9(2) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments

This submission is communicated by the Pink Armenia Human Rights Defender NGO, the European Human Rights Advocacy Centre (EHRAC) and ILGA-Europe (the “European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association”). Pink Armenia and EHRAC acted as legal representatives of the Applicant Armine Oganezova. We are lodging this submission under Rule 9(2) of the Rules of the Committee of Ministers ahead of the consideration of the case of Oganezova v. Armenia at 1514th CM DH meeting in December 2024.

This submission concerns both individual and general measures necessary for the full and effective implementation of the case. It provides an assessment of the actions taken by the Armenian authorities since the decision of the Committee of Ministers CM/Del/Dec(2023)1468/H46-1, taking note of the Government’s latest action plan of 29 March 2023. At the end of the document, we set out key recommendations on the measures that should be undertaken by the authorities to address the systemic issues raised by this case.

I. Summary of the facts

This case concerns an aggressive homophobic campaign against the applicant Armine Oganezova, a well-known member of the lesbian, gay, bisexual and transgender (LGBT) community in Armenia, including an arson attack on 8 May 2012 on a club belonging to the applicant. The Court found that the State has failed to protect the Applicant and to effectively investigate the homophobic arson, physical and verbal attacks. According to the Court, the homophobic attacks on the applicant were not compatible with respect for her human dignity, and, therefore, reached the threshold of severity within the meaning of Article 3 taken in conjunction with Article 14. The authorities had thus failed to discharge their positive obligation to investigate in an effective manner whether the arson attack, which had been motivated by the applicant's sexual orientation, constituted a criminal offence committed with a homophobic motive.

II. Individual measures

As described in the first submission of 2 May 2024 to the Committee of Ministers,¹ the representative of the Applicant had applied to the General Prosecutor's office on 4 February, 2022, asking to reopen the investigation of the case based on newly revealed factors, particularly following a post made by Hagop Berberian (a person not previously involved in the investigation of the case) on the "Facebook" platform about the motives and the perpetrators of the arson attack where he appeared to be one of the offenders. The General Prosecutor's office had sent the case to the Investigative Committee to reopen and conduct a new investigation. Case number 8 had been filed and the victim Armine Oganezova had been called to give testimony on 5 October²³

Notwithstanding several letters to the Investigative Committee and the General Prosecutor's office sent on behalf of Hasmik Petrosyan, authorized representative of the Applicant, requesting for updates on the investigation, the Applicant could not access any information about the process of the investigation since her testimony two years ago. The last request to the Investigative Committee to receive information about the status of the investigation has been sent on 3 October 2024 and according to the official response, the investigation is still ongoing and that several investigative activities have been conducted and that Mr. Berberian the author of the Facebook post has testified during this period, without indicating further details (Annex 1). We believe that an investigation lasting for more than two and half years is unreasonably prolonged, particularly given that it has not yet been submitted to a court.

¹ 1468th meeting (June 2023) (DH) - Rules 9.2 and 9.6 - Communication from NGOs (Pink Armenia and EHRAC) (02/05/2023) in the case of Oganezova v. Armenia (Application No. 71367/12).

³ The official letter of the investigator has been attached to the previous submission as Annex 1

We note that in its first decision in this case, adopted on 7 June 2023, the CM invited the authorities to inform the Committee about the relevant developments of the reopened criminal proceedings.

II General Measures

3.1. Inadequate drafting of the "Law on Equality"

According to the 2023-2025 Action Plan deriving from the Human Rights Protection National Strategy⁴, adopted on 28 September 2023, the "Law on Ensuring Equality" was to be adopted during the second semester of 2024. The draft has already been published at the e-draft online public discussion platform and several meetings have been organized by the Ministry of Justice with civil society organizations, including Pink Armenia, however, the recommendations have not been considered yet and the final draft has not been either published or sent to the Parliament yet.

The main loopholes in the draft law are: a) the **absence of sexual orientation and gender identity as explicitly protected grounds**, despite the non-exhaustive list of characteristics, b) the **lack of legal subjectivity for civil society organizations to bring claims of public interest**, and c) the **insufficient authority of the Equality body** to serve as an effective extra judicial mechanism to combat discrimination and lack of guarantees to ensure inclusion of different vulnerable groups in the Bodies structure.

If the recommendations of the international and regional mechanisms and civil society are not considered and the draft is not amended in a way to provide effective protection mechanisms for LGBT+ people, then the law will not constitute an implementation of the State's obligations.

3.2. Ineffective application of the new Criminal Code

The new Criminal Code of 2022 is not comprehensive in terms of providing effective measures to protect LGBT+ people. The practice of law-enforcement bodies does not fill this gap, as described below. Many bias-motivated crimes committed towards LGBT+ people have not been qualified as crimes committed in aggravating circumstances, in only one case – the stabbing of a gay man who is a citizen of United States – aggravating circumstances were recognized. Pink Armenia documents between 40-50 cases of violation of human rights of LGBT+ people in conjunction with discrimination related to their sexual orientation or gender identity each year since the entry

⁴ 2023-2024 Human Rights Protection National Strategy, <https://moj.am/storage/uploads/1674.1.pdf>

into force of the new Code. Data gathered during the year is summarized and analyzed through annual reports.⁵ Incidents happen in almost every sphere of life, such as educational institutions, workplace, healthcare institutions, service provision, public places, armed forces, as well as at home.

The increase in registered offenses stands out when compared to previous years, as documented in PINK Armenia annual reports.⁶

In particular, in 2023, 51 cases were documented, with 49 involving individual victims and 2 categorized as group cases involving severe, criminally accountable expressions of hate speech directed towards the LGBT community, as set out below.

- The two group cases included multiple offenders, in which the expressions of hate were connected within a single event.
- Out of the documented cases, 22 involved cases of domestic violence. In five of these cases, the victims initially wanted to file a complaint with law enforcement authorities. However, four of them later decided against filing a complaint or reporting the crime altogether out of fear of coming out and mistrust in law enforcement, and one case was suspended by the investigative body, citing the justification that the parent intended to address a perceived “sick” phenomenon.
- Four cases of physical violence have been recorded, with two victims expressing fear of applying to law enforcement authorities, which led to these cases being unreported. In the other two cases, criminal proceedings were initiated, but the current status of the process remains unknown.
- Six cases of threats to life or health were documented, with victims turning to law enforcement authorities in only two instances. One of them later withdrew the complaint, while the investigation for the second case is still ongoing.
- Two cases of dissemination of information regarding private life were recorded, but the victims chose not to contact law enforcement in both instances.

⁵ The Human Rights Situation of LGBT people in Armenia, Annual reports.

<https://pinkarmenia.org/en/publications/?sort=date-DESC&terms%5B%5D=reports>

⁶ Pink Armenia, Human Rights situation of LGBT people in Armenia. Annual report, 2023

<https://pinkarmenia.org/wp-content/uploads/2024/05/lgbtreport2023en.pdf>

- One case of murder and one case of suicide were recorded, leading to the initiation of criminal cases, however, investigations into both incidents are still ongoing.
- Five cases of ill-treatment by law enforcement bodies were documented. Complaints were filed, and three criminal cases were initiated, but one victim later withdrew their complaint.
- OA case of violence during military service, in a psychiatric institution, and in a juvenile care center each have been recorded. In all three cases, the victims opted not to file a complaint with law enforcement bodies.
- Five cases of violations have been recorded within the educational system, and in none of these instances did the victims choose to contact law enforcement bodies.

Out of the total 51 registered cases, only 12 victims sought assistance from law enforcement bodies. Two additional cases in which investigation is ongoing are the cases of murder and suicide, in which the investigative body is obligated to initiate criminal proceedings.

The main reason for such a low rate of reporting of such cases to law enforcement is lack of trust towards police and investigative authorities, based on several factors, including:

- Mistreatment by law-enforcement agencies, mockery, and justification of violence;
- Ineffective investigation of the cases leading to impunity;
- Dissemination of information related to the personal life of victims by the authorities investigating the case, including within families;
- Fear of facing more violence as a result of filing a complaint.

As just one example among others, a transgender woman was killed, and her apartment was burned on 21 August 2023.⁷ However, the bias indicators have not been revealed and the investigator failed to consider and characterize the motivation of the perpetrator. In this case, as in others, the motions of the attorneys to consider biased motivation when qualifying the crime are left unexamined or rejected.

Notwithstanding the recommendations of Council of Europe based on the report conducted in 2019⁸ and Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for

⁷ Azatutyun Radio, A transgender woman has been killed in Armenia. LGBT community raises the issue of hateful atmosphere. <https://www.azatutyun.am/a/32557553.html>

⁸ Council of Europe, Collection of data on discrimination, hate crimes, and hate speech in Armenia Situational analysis report, 2019 <https://rm.coe.int/situational-analysis-armenia-eng/16809e49f1>

Security and Co-operation Europe (OSCE) regarding elaboration of hate crime data codes, State bodies still have no official data on hate crimes and hate speech.

The 2024-2028 Strategy for the Implementation of Gender Policy in the Republic of Armenia⁹ and the Action Plan Derived from it, though constituting a step forward in terms of addressing gender-based discrimination and violence, again leaves aside the needs of protection of LGBT+ people, providing zero action directed to ensuring equality and combating violence towards LBT women.

3.3. Failure to investigate increasing instances of hate speech

After the murder of a transgender person, a significant surge of discriminatory hatred swept through society. On social media and in the comments sections of news articles, individuals provided justifications endorsing the perpetrator's act, labeling the victim, and calling for additional violence against the LGBT+ community.

It is essential to highlight that, despite the criminalization of public calls for violence and the justification of violence since the entry into force of the Criminal Code in 2022 (which nonetheless failed to include sexual orientation and gender identity as explicitly protected grounds in Article 226.2 on hate speech), law enforcement agencies have not initiated any proceedings to gather evidence or assess the criminal implications of such a substantial volume of calls to violence against LGBT+ people. Taking effective measures against calls for violence and their justification is a crucial initial step that the state must undertake to prevent hate crimes and safeguard vulnerable groups. The state's inaction in this regard sends two explicit messages to society: firstly, that such an approach is deemed acceptable by the State, secondly it indicates a lack of policies to combat hate speech.

Another wave of hate speech followed the suicide of a 17-year-old gay boy. In the comments sections of publications about this suicide, numerous hateful expressions, including calls for suicide directed at LGBT+ people, were evident. Pink Human Rights Defender NGO has also been the target of calls for violence and hatred. Some calls to violence were directed towards the organization's staff. For example, a user registered under the name "mikababayan7224" on the "Instagram" social network wrote: "That Pink staff should also be thrown off the bridge."

These manifestations of hate speech have not received any response from the State, either in terms of legal consequences or public criticism. As mentioned above, public calls to violence or advocacy for such violent acts must be considered as a case of "public accusation", as provided by the Criminal Code, establishing an obligation on the investigative body to start a preliminary

⁹ 2024-2028 Strategy for the Implementation of Gender Policy in the Republic of Armenia <https://www.e-draft.am/projects/6821>

investigation regardless of the existence of a complaint. Consequently, the State has failed to address hate speech not only through criminal law regulations existing since 2020, but also through other measures, such as administrative responsibility or even condemnation.

3.4. Limited Law Enforcement Bodies' Capacity Building

Armenia implemented ODIHR's programs on Prosecutors and Hate Crime Training (PAHCT) and Training Against Hate Crime for Law Enforcement (TAHCLE) in 2021 and 2022, respectively. After the need assessment research, the first cycle of training for trainers was conducted by the ODIHR experts. However, though the trainings for police, investigators and prosecutors were supposed to be cascaded and involve more people, they were stopped by the Academy of Justice and the Police Educational Complex after a short period of time.

This demonstrates a lack of will to educate law-enforcement bodies' officers on the specificities of identification and investigation of hate crimes, as well as on sensitive and needs-based treatment towards the victims. To date, Pink Armenia has not been able to observe any improvement in the behavior of law-enforcement bodies when faced with instances of hate crime or hate speech based on sexual orientation or gender identity."

3.5. Absence of Public Awareness Raising Activities

After seven years of examination, the Administrative Court of Appeal of Armenia failed to recognize Pink Armenia's posters aimed at raising awareness for LGBT+ people integration within society as social advertisements, thus preventing Pink Armenia from launching this public campaign. Here is the short summary of the facts:

In 2017, Pink Armenia submitted some posters aimed at raising awareness and spreading tolerance within society to the RA Ministry of Culture with a request to recognize them as public service announcements (PSAs). Recognition of posters as PSAs would allow using the opportunities explicitly created for PSAs, namely the cost-free installation of posters on urban billboards, as well as on specially designated advertisements, in addition to other privileges. The Ministry of Culture rejected Pink Armenia's proposal with the justification that the ads do not address any issue of social importance and do not contain any element of public awareness-raising, and that the public would already be aware of the existence of persons with a "non-traditional" sexual orientation from TV programs, therefore there would be no need to spread information about them.

Pink Armenia filed a complaint with the Administrative Court with a claim to recognize the Ministry of Culture's administrative act on rejecting the application as unlawful and to oblige the Ministry to identify the ads as PSAs. The lawsuit was rejected by the Administrative Court of First Instance on 24 October 2018. The decision was appealed to the Court of Appeal. The Court of Appeal partially upheld the appeal, sending the case to the Court of First Instance for a new examination on 18 March 2020. The Court of First Instance rejected the claim for the second time in 2022 and the Administrative Court of Appeal rejected the appeal for the second time in 13 June 2024, justifying that the advertisements do not concern any issue of public importance or any human right.

Further to this, the State bodies have not organized any awareness raising activity or any kind of measure to address the existing prejudices against LGBT+ persons in Armenia. Consequently, the State not only has failed to take determined action to raise awareness about discrimination and prejudice experienced by LGBT+ persons but has also refused to provide space for human rights defenders to organize such action with their own resources, indicating the authorities' bias and leading to a violation of their freedom of expression on discriminatory grounds.

Recommendations on the individual and general measures

The applicant and the co-signing organisations therefore respectfully invite the Committee to make the following recommendations to the Government of Armenia regarding the measures to be undertaken to insure implementation of this judgment:

Individual measures:

- Conduct an effective investigation based on new and newly revealed facts considering the biased motivation of the perpetrators and urgently make the information on the progress and content of the investigation accessible to the victim and her representatives.

General measures:

- Adopt a comprehensive Law on Equality explicitly providing sexual orientation and gender identity as protected grounds; providing legal capacity for non-governmental organizations in cases of protection of public interest and defining a procedure for the formation and operation of an independent equality body;
- Amend Article 71 of the Criminal Code providing aggravating circumstances for a crime and liability and Article 330, providing criminal liability for public calls to violence and

justification of a violent action, so that both provisions expressly include sexual orientation and gender identity as protected grounds.

- Develop and implement a system of recording hate crimes and identifying the nature of the bias motive as well as analyze the data and provide statistics to the general public.
- Include the modules of hate crime provided by the OSCE ODIHR according to the projects TAHLCE and PAHCT and the Council of Europe module on hate speech in the educational programs and training agendas for police, investigators and prosecutors.
- Conduct awareness raising activities and campaigns targeting both the general public and specific groups, such as private sector organizations, educational institutions and healthcare institutions, in cooperation with civil society organizations to increase general understanding of the nature and dangerous consequences of hate crimes, hate speech and discrimination, including about LGBT+ people as one of the main targets of such crimes.

On behalf of the signing organisations

Hasmik Petrosyan

Legal representative of the Applicant



Annex 1. Response of the Investigative Committee - 10.10.2024



REPRESENTATIVE OF THE REPUBLIC OF ARMENIA ON INTERNATIONAL LEGAL MATTERS

RA, Yerevan, 0010, Republic square, Government house 1

DGI

29 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Mr. Pavlo Pushkar

Head of Division in the Department for the Execution of
Judgements of the European Court of Human Rights,
Directorate of Human Rights

Yerevan, 29 October 2024

Subject: Case of Oganezova v. Armenia (application no. 71367/12 and 72961/12)- Judgment of 17 May 2022, final on 17 August 2022.

Dear Mr. Pushkar,

With reference to the 21/10/2024 communication (Communication) submitted by the Pink Armenia Human Rights Defender NGO, the European Human Rights Advocacy Centre (EHRAC) and ILGA-Europe (the “European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association”) with regard to the execution of *Oganezova v. Armenia* case, the Government of the Republic of Armenia brings the attention of the Committee of Ministers to the following comments.

Individual measures

In its communication the applicant made recommendation **to conduct effective investigation of the case at issue based on the new and newly discovered circumstances**. At the outset, it should be reiterated that considering the fact the applicant did not apply for the reopening of the case within the period prescribed by law to reopen the case based on new circumstances, currently there is *no investigation based on new circumstances*. It is quite confusing for the Government the recommendation to conduct effective investigation on new circumstances. As to the domestic proceedings relating to Ms. Oganezova, in February 2022, before the judgment was delivered, based on the report of Ms. Oganezova’s representative about **someone’s post on a social media platform presenting that the events took place based on a state security motive rather than on homophobe motive**, the case had been reopened based on newly discovered circumstances.

According to the information provided by the Investigative Committee, number of investigative measures had been undertaken, including questioning the person, who made a post on a social

media platform and others having alleged information about the incident. Complex investigative and procedural activities and measures have been undertaken and direct indications were given aimed at disclosure of new facts and evidence, and considering the confidentiality clause of the preliminary investigation, details of concrete measures and the investigative tactic cannot be disclosed in the public document.

The investigation is in progress and even from the Letter attached to the Rule 9 communication, it is visible that Ms. Oganezova was also aware of that fact.

General measures

Investigation of hate crimes: The actions undertaken by the General Prosecutor's Office to insure proper investigation of hate crimes are of comprehensive nature.

The Prosecutor General's Office is making all efforts to ensure that all **reported offences** on hate crime and hate speech are duly prosecuted. According to information provided by the Prosecutor General's Office, the latest official statistical data of the Prosecutor General's Office covers the period of January-July 2024 and during this period 10 defendants were charged in over 33 hate speech and hate crime cases. As a result, five defendants were convicted and two defendants were acquitted.

"Documented" cases: In the Joint Communication a reference is made to "documented" cases by Pink Armenia involving alleged victims of hate speech and hate crimes. As no details are provided about the exact cases it is impossible to provide further updates or follow up information. It is also underlined in the Joint Communication that there were several instances when not all documented cases were actually reported to the law enforcement authorities. Case reporting is a very important condition for combating hate crime and hate speech cases and hence the Prosecutor General's Office is undertaking internal deliberations on the measures for helping to improve accurate reporting of hate crimes and hate incidents.

At the same time, criminal proceedings can only be initiated and appropriate measures can be taken, only when credible information about alleged crimes is reported to law enforcement bodies. The numerical indicators mentioned cannot serve as reliable sources of information unless the individual involved provides details about the alleged crime to proper bodies. Consequently, based solely on uncertain data, it is impossible to make valid judgment about the number of cases, let alone, the quality of investigation of the said category of cases.

Other pending cases referred in the Joint Communication: In the Joint Communication only two concrete cases were mentioned that are currently under examination by the domestic authorities. It is submitted that the case of suicide of a 17-year-old gay boy as referred in paragraph 3.3. of the Joint Communication is **at the investigation stage**, while the case of killing of a transgender woman on 21 August 2023 mentioned in paragraph 3.1. of the Joint Communication **has been already submitted to the court.**

Instead of presenting those two cases as yet another example of proper investigation of reported crimes, in its communication the NGO presented them, in subparagraph 3.3 titled “failure to investigate instances of hate speech”, which is totally incomprehensible and unacceptable.

The Government asserts that in all those cases where the offence is duly reported, proper investigation and prosecution is undertaken.

“Limited” Law enforcement Bodies’ Capacity Building and Trainings

The Government has diametrically opposed opinion on the allegations made by the NGO in this respect based on the following.

During recent years, large scale activities are undertaken to increase the capacity building and intensify the training programs of law enforcement agencies. It is quite surprising and unexpected that the NGO failed to present them, *among the others*, considering the fact that the Pink Armenia NGO was and is systematically involved in many of those trainings as qualified trainers of the field. Instead in its communication they mentioned only about one episode of trainings organised by ODIHR in the Justice Academy in 2022. In the paragraph 3.4 of the communication, the NGO wrongfully stated that those trainings were stopped by the Justice Academy.

According to the information provided by the Justice Academy, on 30.08.2022, 31.08.2022, 09.09.2022 and 09.09.2022 ODIHR organised trainings in the Justice Academy - "*Fighting against hate crimes*", with participation of **33 prosecutors and 36 investigators**. It should be reiterated, that the trainings were proposed and organised by the ODIHR and they were suspended by the international partners and not by the Justice Academy, who expresses its full support and willingness to continue those trainings. Moreover, the NGO was dully informed, in written form, that the training cycle was suspended by the initiative of the international partners, rather by the Justice Academy. Thus, it is another misinterpretation of situation on the ground.

It should be highlighted that, during recent years, number of mandatory courses, training programs were organized for police officers, investigators, prosecutors, judges and other stakeholders.

During the 2020-2022 period, **106 police officers and 131 judges** were trained on the topics of prohibition of discrimination and ensuring equality of rights. Overall, the number of trained judges, investigators, prosecutors, police officers in the previously mentioned period increased by at least 40%.¹

Apart from the ongoing and the future training courses it is important to note that the educational program in the Educational Complex of Police includes a course of Constitutional law that consists of lessons regarding the constitutional and legal status of a person and a citizen, individual rights and freedoms, political rights and freedoms, social, economic and cultural rights and freedoms,

¹ The Government’s decision “On approving the national strategy for the protection of human rights and the resulting action plans for 2020-2022 and 2023-2025”, available at <https://www.arlis.am/DocumentView.aspx?DocID=138194>

constitutional guarantees of rights and freedoms. During the 4th year of their studies the police officers have a course entitled “human rights and the police”. The aim of these courses is to strengthen the central role of individual human rights within the framework of the police system, while providing guidance on how to ensure that these rights are upheld and respected without discrimination.

Mandatory trainings on prohibition of discrimination: Currently, mandatory courses of *“Current issues on ensuring equality and non-discrimination” for judges and prosecutors; “Features of investigating crimes of public speech aimed at inciting or promoting hatred, discrimination, intolerance or enmity, as well as public calls for violence, public justification or promotion of violence. Exploring the concept of international definitions and discrimination indicators of hate speech” for investigators* are included in the Justice Academy curriculum.

Continuing training of prosecutors on the theme of Ensuring Equality and Prohibition of Discrimination is organised. Based on the recommendation of the Prosecutor General’s Office the prosecutors must undergo 4 academic hours of mandatory training in the Justice Academy on this topic. The training on Ensuring Equality and Prohibition of Discrimination is included in the list of mandatory trainings for prosecutors in 2024.

Tailored trainings for prosecutors on hate crime and hate speech: Preventing and prosecuting hate crimes is a priority area for the Prosecutor General’s Office. Launching a hate crime and hate speech tailored training for prosecutors is an initiative of the Prosecutor General’s Office which is being jointly implemented with the Council of Europe Project on “Promoting Equality and non-discrimination in Armenia”. The Prosecutor General’s Office has conducted internal training needs assessment and submitted the list of questions/issues that arise during the prosecution of hate speech and hate crime cases. This tailored training will be organized for all prosecutors that deal with hate speech and hate crime cases before the end of 2024.

Methodological support to investigation of hate crime cases: Currently guidelines for the investigation of discrimination, hate speech and hate-motivated cases for the police, investigative bodies and prosecutors are being developed as defined by 2023-2025 National Strategy on Human Rights Protection of Armenia. Once developed and adopted, these guidelines will be a very important tool for daily work of law enforcement authorities.

Council of Europe HELP online platform: In 2023 an online course on combating hate speech for judges and prosecutors from Armenia was launched on the Council of Europe HELP online platform (and still ongoing). As of today **18 judges and prosecutors** in Armenia participated in the course. The course contains 8 hybrid modules covering the following topics: defining and identifying hate speech; raising public awareness and using counter-speech; support for those targeted by hate speech; self-regulation as a means of tackling the use of hate speech; media, the internet and hate speech; administrative and civil liability for the use of hate speech; administrative and other sanctions against organizations that use hate speech; criminal liability and sanctions for the use of hate speech.

Awareness-raising campaigns and trainings

Human rights defender (HRD): In 2022, the HRD signed a Memorandum for Collaboration with the “Institute of Liberal Politics” NGO agreeing to cooperate within the framework of a project aimed at combating hate speech. Accordingly, several informative video-materials on hate speech and its negative effects were filmed and disseminated. Under the same project, it is also intended to devise a Guide for the Television and Radio Commission on the application of relevant provisions on hate speech, as well as develop a Code of Conduct for the Members of the National Assembly sanctioning hate speech. Moreover, the Advisor to the HRD, along with other experts, developed and delivered a training program on hate speech for politicians and journalists.

In 2023, the office of the Human rights defender in cooperation with the Council of Europe developed a Manual on online hate speech for educators under the project “Strengthening access to justice for victims of discrimination, hate crime and hate speech”. The manual aims to provide educators with knowledge and skills in teaching children and young people about hate speech in the digital environment, its dangers and negative outcomes, as well as how to identify hate speech, and deal with it both as a victim and as a witness.

International Partners: In cooperation with international partners, number of training programs and join projects were organized starting from 2024, a part of which are in process or still ongoing. As part of the project “Promoting equality and non-discrimination in Armenia” co-funded by the European Union/Council of Europe and implemented by the Council of Europe under the programme “Partnership for Good Governance”, several initiatives were carried out to enhance the expertise of Armenian police officers regarding international standards on non-discrimination and equality and introducing them with viable mechanisms to address hate motivated crimes, including on the SOGI grounds.

Five Armenian police officers participated in a Peer-to-Peer exchange in Skopje, North Macedonia, from June 19-21, significantly improving their skills in identifying and addressing hate-motivated crimes. During the exchange, they had the opportunity to learn best practices from colleagues in North Macedonia, Serbia, and Georgia.

On 27-28 June 2024, 25 Armenian police officers completed a capacity-building training course aimed at strengthening their ability to respond to hate-motivated crimes. During the sessions, participants learnt about the best practices from the Republic of Moldova and Montenegro on combating hate motivated crimes and on engaging with the CSOs for the better protection of the vulnerable communities. In this second phase of the training, participants deepened their understanding of how to identify and investigate hate crimes, while also learning about key Council of Europe and other European standards and recommendations in the field of non-discrimination and equality.

On 26-27 September 2024, Armenian police officers were furtherly trained on European standards on equality and non-discrimination. Presentations and discussion covered relevant standards,

including the recent judgment of the European Court of Human Rights "Oganezova v. Armenia", giving participants a platform for active exchange on measures and procedures for handling and addressing hate-motivated crimes.

In addition, two CoE manuals on police education were translated into Armenian, with the final publication expected by the end of 2024: "Manual for police education on equality and non-discrimination" and "Policing Hate Crime against LGBTI persons".

Furthermore, the Project contributed expert opinions on key legislative initiatives. This included an expert opinion on the Draft Law on Ensuring Equality and Protection against Discrimination, in collaboration with the Venice Commission, an expert opinion on the Draft Law on National Minorities. The Project also supported a working discussion on the latter draft law, bringing together MPs, the Ministry of Justice, and representatives of national minorities to ensure a comprehensive dialogue on the issue.

Legislative developments

Innovations of new Criminal Code: New Criminal code (the article 264) criminalizes the act of destroying or damaging property, explicitly defines as an aggravating circumstance the motive of "hatred, intolerance or animosity caused by racial, national, ethnic or social origin, religion, political or other views or other circumstances of a personal or social nature". This development directly addresses the issues raised in the case of *Oganezova*, as the hateful component of the crime can no longer be neglected. It creates the possibility for the law-enforcement authorities to properly and comprehensively address the violent acts that amongst others target the LGBT community.

New Criminal Code provides criminal liability for discrimination. Article 203 of the Criminal Code reads as follows:

Discrimination – a differential treatment, which is degrading the person’s honor and dignity or the rights and freedoms or by which the person gets advantages, absent of any objective grounds or legitimate purpose, on the basis of sex, race, color, ethnic or social origin, genetic features, language, religion, outlook, political or other opinions, being a national minority, property situation, birth, health, disability, age or other personal or social circumstances

shall be punished with a fine for maximum ten times of minimal salary, or public works for maximum hundred hours, or limitation of freedom for a term of maximum one year or short-term imprisonment for a term of maximum one month.

Act established in Part 1 of this Article, that has been exercised by the use of authority or official powers or influence conditioned thereof shall be punished with a fine for maximum twenty times of minimal salary, or public works from eighty to one hundred and fifty hours, or deprivation of the right to occupy certain posts or exercise certain activity for a term of maximum three years, or limitation of freedom for a term of maximum two years, or short-term imprisonment for a term of maximum two months, or imprisonment for a term of maximum two years.

This article not only gives a new definition of discrimination but it also establishes it as a formal *corpus delicti*, thereby designing the act of discrimination as a crime in and of itself, without the need to prove the existence of socially dangerous consequences.

It is worth noting that the new Criminal code has also criminalized public speech aimed at inciting or promoting hatred, discrimination, intolerance or animosity, as well as distributing materials or objects for that purpose and publicly calling for violence, publicly justifying or advocating violence, and distributing materials or objects to that effect.

Moreover, unlike the former criminal code, the new criminal code has enlarged the list of the circumstances that can be basis for discrimination. In addition, if previously an act could be considered discriminatory only when it was violating the rights or freedoms of a person, then in the new criminal code the definition of discrimination includes giving advantages to a person without an objective basis or legal purpose.

The scope of aggravating circumstances has also been expanded by the new code, and now the article 71 point 6 clearly establishes that “*committing the crime with the motive of hatred, intolerance or animosity caused by racial, national, ethnic or social origin, religion, political or other views or other circumstances of a personal or social nature*” is an aggravating circumstance. It goes without saying that the law cannot establish an exhaustive list of all possible grounds of discrimination, thus it is important to add that the discrimination faced by the LGBT community falls under the criterion of “other circumstances of personal nature”.

Innovations of new Criminal Procedure Code: It introduced significant legal reforms aimed at enhancing the status and the rights of the victims. The requirement that the victim must have suffered damage directly caused by the alleged crime is no longer a mandatory condition to accord a person a victim status. This implies that in the context of criminal proceedings, the victim is not only the individual who was the direct target of the crime, but also the one whose legal interests were not directly violated. This changes allows the law-enforcement authorities to include in the criminal proceedings the victims of hateful violent acts that although were not directly targeted but suffered as a result of the said acts.

Similar to the accused and the defense lawyer, the victim also has the right to attach evidence to the proceedings and to examine them. Furthermore, the Code has eliminated the requirement for victims to submit a formal request and provide justification for presenting evidence during the proceedings, thus simplifying the process for victims to exercise their right to do so. Again these changes will simplify the processes for all victims to participate in the procedures. As the facts of the case demonstrate the applicant has had a significant role in criminal proceedings by submitting evidence. Even though no complaints have been brought before the court about the existing legal requirements, it is still relevant to indicate that the process has been simplified.

Draft Law on Ensuring Equality and Protection against Discrimination: For the purpose of overcoming the lack of comprehensive legislation on ensuring equality in the domestic legal system a law entitled Law on Ensuring Equality and Protection against Discrimination has been drafted. The aim of this law is to ensure equal opportunities for the implementation of the rights

and freedoms of every individual and citizen with no discrimination. This law will define the concept of discrimination and its types, subjects, and mechanisms for ensuring equality before the law, as well as the status, objectives, and activities of the Equality Council. It has to be mentioned that the Draft Law is being developed in accordance with the principles set in the EU Council Directive 2000/43 (respectively Articles 2, 7, and 8), the International Convention on the Elimination of all forms of Racial discrimination, as well as with the Article 1 of the protocol 12 of the European Convention on Human Rights, especially the Draft Law envisages all grounds of discrimination prescribed in the abovementioned Article. It should be highlighted that it passes the CoE and OSCE expertise and main recommendations have been dully incorporated in the Draft law.

Multiple meetings, round table discussion have been organized with international national experts, agencies, Standing Committee on Labor and Social Affairs of the National Assembly National Assembly experts.

As mentioned in the submitted Action plan, the Government's decision "On approving the national strategy for the protection of human rights and the resulting action plans for 2020-2022 and 2023-2025" specifies that the revised draft of the Draft Law on Ensuring Equality and Protection against Discrimination must be submitted to the National Assembly in 2024.²

Thus, the Ministry of Justice, after circulating the Draft Law on Ensuring Equality and Protection against Discrimination among all relevant stakeholders and collecting all comments on the Draft Law as a result of large scale public discussions, including with NGOs, finalised the text of the Draft Law and submitted for the final adoption.

The Government asserts, that the finalized version of the Draft Law on Ensuring Equality and Protection against Discrimination is in the National Assembly (in line with the deadline stipulated in the Human Rights Protection National Strategy).

Conclusion: Comprehensive anti-discrimination policy, effective fight against hate crimes and impunity is one of the key priorities of the State. Though reforms are ongoing, the large scale legislative and practical steps undertaken, with, *inter alia*, inclusion of capacity building activates, mandatory courses, training should not be downgraded.

Sincerely,



Yeghishe KIRAKOSYAN

² Reference document: [DH-DD\(2023\)411](#)