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

Communication from NGOs (Pink Armenia, European Human Rights Advocacy Centre, ILGA Europe) (14/11/2024) concerning the case of Oganezova v. Armenia (Application No. 71367/12).

Information made available under Rule 9.2 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, European Human Rights Advocacy Centre, ILGA Europe) (14/11/2024) relative à l'affaire Oganezova c. Arménie (requête n° 71367/12) **[anglais uniquement]**

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



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14 November 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

In response to our submission of 21 October 2024 in the case of *Oganezova v Armenia*,
the Representative of the Republic of Armenia on International Legal Matters submitted
their comments on behalf of the Armenian authorities on 29 October 2024. While we
appreciate the authorities' engagement and their response to the submission, we would
like to make further submissions with the aim of clarifying and supplementing a number
of the issues raised by the authorities in their comments with additional information.

Individual measures

I. Regarding the re-opening of the investigation

1. In response to our call to conduct an effective investigation into the applicant's case, the Government's representative has stated that the Applicant has not applied for the re-opening of the investigation of the case following an adoption of the ECtHR judgment in this case as a 'newly discovered circumstance', and that the recommendation to conduct an effective investigation on the basis of new circumstances is 'quite confusing' for the Government. With reference to our earlier submissions, we would like to clarify and reiterate what the applicant's request for effective investigation by the Investigative Committee of the Republic of Armenia entails.
2. New factors or newly revealed factors are grounds to reopen the investigation according to the Criminal Procedure Code of the RA. In this case, as confirmed by the Government and the Applicant, the investigation has been reopened in February 2022 (before the ECtHR judgment was adopted on 17 May 2022), on the basis of a newly discovered circumstance, i.e., a post by an individual unrelated to the case that the events of the case took place based on a state security motive and not a homophobic motive. Following the re-opening of the case, the investigating authorities have an obligation to conduct the investigation comprehensively and effectively according to the interest of justice.
3. We further note that it is not possible to reopen an investigation which has already been opened by the investigating authorities in Armenia. As a result, after the ECtHR adopted a judgment in the applicant's case, the applicant's legal representatives sent the judgement to the investigator of the case requesting to include it into the case materials and to consider it when qualifying the criminal act in the domestic case, instead of a request to open the already opened investigation. We reiterate that it has been over 2,5 years since the investigation was re-opened, however, no significant progress has been made in identifying the perpetrators and bringing them to justice. Taken together, the authorities' repeated reference to the applicant's alleged failure to request for the re-opening of the case on the basis of the ECtHR judgment, when the investigation has already been re-opened and underway, is indicative of the authorities' lack of intention to conduct a proper and comprehensive investigation. We remind the authorities that conducting a proper and comprehensive investigation is a

fundamental obligation of the investigating authorities deriving from both the domestic legislation and the European Convention on Human Rights.

General measures

II. Regarding domestic investigation of other LGBTQ+ related cases documented by PINK Armenia

4. In our submission, we referred to a number of cases concerning hate motivated crimes against LGBTQ+ persons in Armenia, documented by PINK Armenia in 2023. Among them were the cases of murder of a transgender woman and suicide of a 17-year-old homosexual boy (paragraph 3.1). The Government's representative referred to these cases as examples of cases where a proper investigation has been conducted.

5. We find it noteworthy that in both of these cases the hateful motives of the perpetrators were not considered by the investigation while deciding on the legal qualification of the act, which we consider a significant failure in the investigation. During the investigation of the murder case, the representative of the victim, who is the attorney of Pink Armenia, submitted a motion requesting to evaluate the hateful motives of the perpetrator when qualifying the act, emphasizing the existing bias indicators, however, those were not considered properly. The investigating authorities responded that no facts on the bias motive have been revealed during the investigation and therefore dismissed the motion. The lawyers' appeal against this decision to the prosecutor's office was left unexamined. The decision of the prosecutor has been appealed before the first instance court, which has stated that decisions on leaving the appeal unexamined cannot be subjected to appeal. Examining this decision of the first instance court, the court of appeal has decided that the appeal must be examined by the first instance court. However, the first instance court has again rejected the appeal, justifying that the indictment has already been sent to trial and that this issue should be evaluated by the court examining the main case. The trial process is currently ongoing and there is still no change related to qualification of the act. Furthermore, the prosecution concluded that the murder has been committed in the drug selling related context leaving the consideration of hateful motives unexamined.

6. We remind that these cases, as was mentioned in the earlier submission, were followed by widespread anti-LGBTQ+ hate speech in the media, including social media.
7. After the murder of the transgender person, a significant surge of hatred swept through the Armenian society. On social media and in the comments sections of news articles, individuals started justifying the perpetrator, labeling the victim, and calling for additional violence against the LGBTQ+ community. The comments also contained hate speech directed towards the mother of the deceased person. The following are just a few examples that sum up the overall tone of the entire content. In the comments on the press coverage of the transgender woman's murder, amid numerous justifications, endorsements, and calls for further violence, the following users' posts were found:¹
 - Arsen Khachatryan wrote: "Finally, there is some good news for this country."
 - Vahe Avetisyan wrote: "Bravo."
 - Siranush Serobyanyan wrote: "It's unfortunate that some friends are still alive. The abnormalities of nature are increasing more and more."
 - Karine Sargsyan wrote: "Very well done, get rid of these in this country."
 - Ruzan Khachatryan wrote: "You should all be beaten/killed."
 - Diana Cash wrote: "One infection is gone."
 - Milena Pogosyan wrote: "Who the hell are these? He did well to kill them. They should be punished like this..."
 - Ashot Grigoryan wrote: "You should be burnt alive, you scumbags."
 - Mi Sha wrote: "The one who judges the killer is a faggot. They should be burned; they are the devil's chicks."
 - Narine Sahakyan wrote: "They have done very well; they should be destroyed in masse and killed like flies."
 - Lilit Melkonyan wrote: "You should be exiled and erased from the world."

In the comments of another article:

- Hovhannes Aghababyan wrote: "They did the right thing; they should do the same to others."

¹ Mamul.am, "A transgender woman was killed in Yerevan. The LGBT community is speaking out about the climate of hate", 21.08.2023. <https://mamul.am/am/video/28236007>
Mediaroom News Site's Facebook page, "A 28-year-old man was brutally killed in Yerevan, who, according to witnesses, was transgender. After killing him, they burned him: details, 20.08.2023. <https://www.facebook.com/Mediaroom.am/posts/pfbid02V5xuWzmZKBy95qxnktAr8cJV3hWXRxDpv4QRPC3Sdd9GdTvhXRTBrgKVBA9w7gqWI>
News.am, "A particularly brutal murder in Yerevan. A 28-year-old transgender man was burned in the house", 20.08.2023. <https://news.am/arm/news/776322.html>

- Roza Karlenovna wrote: “They did a good job, cleaning our city of them.”

The same situation is evident in the comments of another news article, where they wrote, “The burner did well,” and so on.

In the comments' section of the news article about the attack during the candlelight vigil organized in memory of the murdered person, hate speech persisted. Some comments included:²

- Nona Martirosyan wrote: “They did very well; everyone should have done it; these kids have honor.”
- The user Armen-Khoro special effects wrote: “They should all be killed and burned.” Anahit Martirosyan wrote: “Burn those viruses.”

A similar wave of hatred was observed in the comments section of another article on the same topic:³

- Garik Tumanyan wrote: “Burn them too.”
- Anahit Simonyan wrote: “All of them had to be burned so that they would not pollute the environment.”

In the comments of the news article about the arrest of the murderer, hate speech continued with similar content:⁴

- Arut Pogosyan wrote: “He cleaned the garbage from nature so that it does not spread.”
- Seda Grigoryan wrote: “The boy did a good job cleaning up Armenia.”
- Artak Ka wrote: “Give him a reward.”

Even some public officials with a certain level of respect and status in the society and a broader audience have not been spared from engaging in speeches that incite hatred and enmity. In particular, Tehmina Vardanyan, a member of the Yerevan City Council, wrote the following on her Facebook page, on 22 August, 2023: “What caused so much noise and cries? They killed a transgender person... And what?... It’s too bad that they killed a person, but what are these cries aimed at?” I’m watching an interview: we knew that this would happen one day, we are not protected, they treat us badly, we, we, we...

² Link to Telegram channel. <https://t.me/armluram/>

³ Medianews, “Recently, the participants of the candlelight vigil organized in memory of the murdered transgender woman were attacked. Details”, 23.08.2023. <http://medianews.site/449557/>

⁴ News.am, “The 26-year-old man admitted that he killed the transgender man and then set the apartment on fire”, 21.08.2023. <https://news.am/arm/news/776396.html>

And when heteros are killed - why is there no such hype about it? That's enough! Let's leave things alone; let's see, from which NGO (with heterogeneous and mutilated feelings), who and what interview are they giving, and what authoritative opinion do they say? Dear journalists, with the same interest and questions, why don't you go after each murder and question different NGOs? We, the "naturals" (heteros), are becoming the most defenseless... P.S. For the first time in my life, I criticize the work of a journalist. P.S.S. I think I will open an NGO soon to protect people with normal sexual orientation. Sorry, and thank you."⁵

8. In the comments of publications about the abovementioned suicide case of the 17 year old homosexual boy, numerous hateful expressions, including calls for suicide directed at LGBT people, were found.⁶ Examples of comments on Radio Liberty's "Instagram" social network post include⁷:
 - A user under the pseudonym "Aso spb" wrote: "I call on all homosexuals (edited). Unite and gather, come together on the same bridge, and throw yourselves off as one, holding hands. You will clean our holy land at least a little."
 - Carol _set, a registered user, wrote: "He did the right thing." "LGBT – you should be expelled from Armenia; you are not fit for the country and the state. You have gone against God." "Let them die, what do they live for [anyway]." "Burn all LGBTs."

9. In the comments on the Facebook post of "Mamul. am" website regarding the same incident, many users expressed hatred and hostility, including:⁸ "Well done.", "He did the right thing.", "He'd do the right thing if he took a few people with him.", "Let one become a thousand.", "Let someone like him completely fall off the bridge; they pollute the air.", "May God let such an incident happen every day.", "Hold each other's hands and clean [the earth] from yourselves.", "To hell, he threw himself down; those like him who ruined the earth must disappear.", "He did it right; they are not fit [good] for nature or humanity.", "Good, good, the more news like this, the better. Let them gather like this, attach themselves, and jump from the bridge," among others.

The publication shared by the "Journalists for Human Rights" NGO also received comments such as: "Let all homosexuals (edited) take an example of this."

⁵ <https://www.iravunk.am/?p=262929&l=am>

⁶ <https://www.aysor.am/am/news/2023/11/15/%D5%B6%D5%B8%D6%82%D5%B5%D5%B6%D5%A1%D5%BD%D5%A5%D5%BC%D5%A1%D5%AF%D5%A1%D5%B6/2183792>

⁷ <https://www.instagram.com/reel/C0E68yPpAvo/?igsh=Mmt6MzUzMHhoYnFo>

⁸ Mamul.am, "A gay guy threw him off the bridge", 16.11.2023. <https://mamul.am/am/news/279554>

“Children are raised so they give another generation, and not engage in perversion instead.”

10. 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 the society: firstly, that such an approach is deemed acceptable by the state, indicating a lack of policies to combat hate speech, and secondly, that perpetrators can potentially evade punishment in such cases.

III. Regarding the limited trainings on hate crimes for law-enforcement agencies

11. In response to our submission on the lack of capacity-building activities for law-enforcement agencies, the Government representative has stated 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.

12. In this regard, we find it important to clarify that these trainings that should have been conducted for the prosecutors, investigators and police according to the memoranda of understanding signed⁹ in 2021 on TAHCLE¹⁰ (concluded between Police of the Republic of Armenia and ODIHR) and PAHCT¹¹ (concluded between the Academy of Justice, Office of the Prosecutor General, and the Investigative Committee of the Republic of Armenia) projects, were supposed to have a cascaded format, by the trainers trained by the OSCE/ODIHR experts. After the training for trainers conducted by the experts the Academy of Justice and the Police Educational Complex had the obligation to organize sustainable continuation of the trainings based on the modules provided by ODIHR, which did not happen. That was the essence and aim of the cascaded format of the supposed by the Memorandum trainings. Having all the necessary resources, such as the already trained trainers and the modules on the

⁹ <https://en.aravot.am/2021/05/26/283492/>

¹⁰ <https://www.osce.org/odihr/tahcle>

¹¹ <https://www.osce.org/odihr/pahct>

subject, there was no need to have the presence of the international partners to realize the effective continuation of the programs.

13. We are hopeful that all the other trainings and capacity building activities that have been organized by the law-enforcement agencies will finally have an impact on the practice and the hate crime and hate speech cases on the grounds of sexual orientation and gender identity will also be investigated as such, providing effective legal protection for LGBT+ people and raising trust of the victims towards law-enforcement bodies.

On behalf of the signing organisations

Hasmik Petrosyan

Legal representative of the Applicant

A handwritten signature in black ink, appearing to be 'H. Petrosyan', written in a cursive style.