EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

# CASE OF MINASYAN AND OTHERS v. ARMENIA

*(Application no. 59180/15)*

JUDGMENT

Art 8 • Positive obligations • Private life • Art 14 (+ Art 8) • Discrimination • Online newspaper article targeting LGBT rights activists following their comments challenging Armenian Eurovision jury members' statement criticising the victory of a gay cross-dressing man in 2014 • Impugned article motivated by hostility against LGBT persons and attacked applicants because of their LGBT rights activism, expressly inciting the public to commit harmful discriminatory acts against them • Art 8 applicable • Arguable claim before domestic courts that applicants' perceived sexual orientation and close association with the LGBT community played a role in the online attacks • Art 14 (+ Art 8) applicable • Domestic courts' failure to recognise article's hostile tone, intentions and impact on applicants' Art 8 rights • Failure to address discriminatory nature of impugned statements and comply with positive obligation to adequately respond • Failure to carry out requisite balancing exercise in line with the Court's case-law • Civil remedy capable in theory of providing effective protection but manner in which interpreted and applied failed to protect applicants against hate speech and discrimination

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 January 2025

**FINAL**

07/04/2025

*This judgment has become final under Article 44 § 2 of the Convention.*
*It may be subject to editorial revision.*

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Minasyan and Others v. Armenia,**

The European Court of Human Rights (Former Fourth Section), sitting as a Chamber composed of:

Faris Vehabović, *Acting President*,
Gabriele Kucsko-Stadlmayer,
Branko Lubarda,
Armen Harutyunyan,
Tim Eicke,
Anja Seibert-Fohr,
Anne Louise Bormann, *judges*,
and Simeon Petrovski *Deputy Section Registrar,*

Having regard to:

the application (no. 59180/15) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by fourteen Armenian nationals, Ms Lili Minasyan, Ms Anna Nikoghosyan, Ms Anna Shahnazaryan, Ms Arevik Martirosyan, Mr Davit Tadevosyan, Mr Vahan Sedrakyan, Mr Vardan Hambardzumyan, Ms Gayane Arustamyan, Mr Mamikon Hovsepyan, Ms Nvard Margaryan, Ms Elvira Meliksetyan, Ms Pertchuhi Kazhoyan, Ms Lusine Saghumyan and Mr Vahancheraz Ishkhanyan ("the applicants"), on 24 November 2015;

the decision to give notice to the Armenian Government ("the Government") of the applicants' complaints under Articles 8, 14 and 17 of the Convention;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Human Rights Centre of Ghent University and three non-governmental organisations, ARTICLE 19, ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and TGEU (Transgender Europe), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 23 January and 10 December 2024,

Delivers the following judgment, which was adopted on the last-mentioned date:

# INTRODUCTION

1. The case concerns media articles targeting the applicants, activists for lesbian, gay, bisexual and transgender (LGBT) rights. It raises issues under Articles 8 and 14 of the Convention.

# THE FACTS

2. The applicants' details are set out in the appendix. They were represented by Ms N. Piliposyan, a practising lawyer, and Ms. L. Ghazaryan, a non-practising lawyer, both based in Yerevan, and Ms J. Gavron, Mr P. Leach, Ms K. Levine and Ms J. Sawyer of the European Human Rights Advocacy Centre (EHRAC) based in London.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

5. The applicants were, at the time of lodging their application, activists, members of NGOs, journalists and researchers active in the sphere of human rights, including LGBT and women's rights.

6. On 16 May 2014 Radio Liberty held an online press conference on Facebook during which the Armenian jury members of the 2014 Eurovision Song Contest (two well-known presenters, sisters Ms I.A. and Ms A.A.) said that they had awarded the lowest points to Conchita Wurst – a gay cross-dressing man who had won that year's competition – because of their "internal revulsion", adding that "just like mentally ill people cause[d] aversion, so [did] such phenomena". Many of the participants in the press conference, including the applicants, reacted to this statement and challenged the jury members by commenting on the Facebook press conference page.

7. The applicants' comments included the following:

(a) Ms Martirosyan: "Have you ever wondered where you get your hateful and discriminatory attitude towards others from, namely your fear, hatred and disgust towards others who were born equal and free just like you? Are you familiar with Article 14.1 of the Constitution? Do you realise that your public statements are anti-constitutional and anti-human? Please specify your values and [explain] what you understand by the word 'value'."

(b) Ms Shahnazaryan referred to the Mental Healthcare Act and the Constitution, stating that, under those laws, mental healthcare in society included showing the necessary attitude towards mentally ill people, such as tolerance and kindness, while ruling out any discrimination. She also included the link to a song by Charles Aznavour about a cross-dressing man, asking the jury members if they appreciated and had ever clapped to it. She further asked them whether they were ready to "commit *hara-kiri*" (ritual suicide) if they found out that they had clapped to a song about a male cross-dresser's love for another man, given that it made their very limited "Armenianness" feel "aversion to the point of *hara-kiri*".

(c) Mr Sedrakyan: "For many, the first names [I. and A.] are indivisible, as if they were one person. Is it true that you two are incestuous lesbians?"

(d) Ms Margaryan asked the jury members if they considered anyone different from themselves to be mentally ill and whether they had also received a pre-election handout to promote the ruling Republican party.

(e) Ms Arustamyan referred to a number of gay artists from past and present, including Leonardo Da Vinci, Pyotr Tchaikovsky, Oscar Wilde and Freddie Mercury, and asked the jury members if they also had an aversion towards them.

(f) Mr Ishkhanyan also referred to the above-mentioned Charles Aznavour song and asked the jury members how many points they would have awarded it given that they felt an aversion towards homosexuals.

(g) Mr Hambardzumyan asked the jury members if they were in good mental health and whether they had a document proving that they were not "mentally ill".

8. On 17 May 2014 an article was published on the website of the *Iravunk* (Law) newspaper ("the newspaper"), written by its editor-in-chief, H.G., entitled "They Serve the Interests of the International Homosexual (*հասմասեռասմոլ*) Lobby: the Blacklist of Enemies of the Nation and the State", which included the following content:

> "Homosexual rights lobbyists are trying to aggressively establish their rules of the game in our country. In connection with the disgusting phenomenon called Eurovision, they (*սրանք*) started harassing and destroying people who have voiced their own natural disgust for the human waste called Conchita. Their intention is clear: to intimidate all those who dare to oppose the efforts to make perversion the norm in Armenia. The aims of the gay lobby are quite obvious: to establish such rules of the game that would drastically limit the population's capacity to reproduce, while reducing the combat readiness of the generation eligible for military service to zero. First, they broke [the singer representing Armenia at the Eurovision Song Contest] and forced him to apologise, then they broke [I.A. and AA.] and forced them to apologise. It was in everyone's full view how, in the case of these modest and decent sisters, they organised a nasty *auto-da-fé* against [I.A. and A.A.] on Radio Liberty's Facebook press conference page. There is only one way to stop the onslaught of these lobbyists: ZERO TOLERANCE. Regardless of whether they were paid, forced or brainwashed to become gay-campaign-supporting zombies. All that is irrelevant; every lobbyist is an internal enemy of the Nation and the State, that's it. To that end, to the extent that I could devote time to it, I managed to compile a blacklist of those who harassed [I.A. and A.A.] on the Facebook press conference page. Now, for whom would such blacklists be useful?
>
> 1. **ORDINARY PEOPLE**: for them to stop any contact with these lobbyists both on the Internet and in real life; not to greet them; not to help them with any issues and not to do any business with them.
>
> 2. **PUBLIC OFFICIALS**: for them not to hire these lobbyists for public service jobs, and if they already work there, to fire them under any convenient pretext.
>
> 3. **EMPLOYERS**: for them not to hire these lobbyists.
>
> 4. **OWNERS OF MEDIA COMPANIES**: for them not to give these lobbyists an opportunity to influence public opinion.
>
> 5. **HEADS OF EDUCATIONAL INSTITUTIONS**: for these lobbyists not to have the opportunity to educate the younger generations.
>
> These are of course not the only ways to limit the activities of gay lobbyists. **Below we present a list of Facebook profiles of those who were active participants in the harassment campaign of [I.A. and A.A.].**"

9. The article was followed by a list of hyperlinks to a number of Facebook profiles, including those of the applicants.

10. On 31 May 2014 all the applicants, except Ms Minasyan and Ms Arustamyan, requested a retraction from the chairman of the editorial board of the newspaper, H.B., who was also an MP for the ruling Republican Party, and its editor-in-chief, H.G. They submitted that the entire essence of the article and the individual statements contained in it, as well as the fact that it had been addressed to them through their Facebook pages, insulted their honour and dignity. Furthermore, it contained information which did not correspond to reality, and which defamed and tarnished their honour, dignity and business reputation. The applicants relied on Article 1087.1 of the Civil Code.

11. On 3 June 2014 another article by H.G. was published on the newspaper's website, entitled "And They Still Dare to Request a Retraction?". It reproduced the text of the applicants' request for a retraction and added:

> "By throwing a quick glance at 'those who requested the retraction', the following immediately becomes evident. The list of those who signed the request is headed by a certain **Anna Shahnazaryan**, who, according to the *Civilnet* online channel, lives in Sweden. **This character is famous for writing 'gender' on her own forehead** and sharing that photo on Facebook for everyone to see, throwing down the gauntlet to public morality (see photo). In the same list, there is **Mamikon Hovsepyan** – the head of the NGO PINK Armenia, which has made the protection of homosexuals its main aim – the photos of whose participation in Latin American gay parades we already had the opportunity to publish years ago when we discovered the – to put it mildly – strange fact that the Ministry of Sport and Youth was sponsoring [PINK Armenia] ... Almost everyone can find such dishonourable episodes in the list of 'those who requested the retraction'. Although we put it quite mildly by saying 'dishonourable', the Armenian way of saying it would be that they have a stinking biography."

12. On 16 June 2014 the applicants instituted civil proceedings against the newspaper and its editor-in-chief under Article 1087.1 §§ 1 and 2 of the Civil Code (see paragraph 27 below), seeking compensation for damage to their honour and dignity. They argued that a number of statements in the article of 17 May 2014 – the colloquial and impolite form of "they" (*սրանք*), "gay-campaign-supporting zombies" and the text starting with "All that is irrelevant" – were insults and tarnished their honour and dignity. The article also contained statements inciting hatred and discrimination. In reply to their request for a retraction, the defendant had published a similar article on 3 June 2014 containing further insults, including statements such as "character", "stinking biography" and other similar expressions. The two articles had reached a large number of people – by 19 May 2014 the first had been viewed 3,495 times. Relying on Articles 3, 14.1 and 47 of the Constitution, they argued that by guaranteeing respect for private life and a person's right to dignity, it prohibited any kind of encroachments on a person's honour and dignity. Furthermore, the published material contained statements

constituting hate speech and incitement to discrimination. In this connection, the applicants referred to two Recommendations of the Committee of Ministers of the Council of Europe (see paragraphs 31 and 32 below), citing passages which recommended that member States adopt measures to combat discrimination on grounds of sexual orientation or gender identity. They further stated that, according to those documents, acts motivated by hatred threatened the rule of law and democratic foundations of society, while expressions which incited discrimination against, *inter alia*, minorities, were considered offensive and violated the Convention. Relying on the cases of *Erbakan v. Turkey* (no. 59405/00, 6 July 2006) and *Smith and Grady v. the United Kingdom* (nos. 33985/96 and 33986/96, ECHR 1999-VI), the applicants stressed the need to sanction or even prevent all forms of expression which spread, incited, promoted or justified hatred based on intolerance, and the fact that discrimination based on one's sexual orientation was as serious a problem as discrimination based on race, origin, skin colour and sex. While Article 10 of the Convention guaranteed freedom of expression, it also required that the rights of others not be violated by insults and expressions tarnishing their dignity. The applicants requested that the court order the defendant to issue a public apology on its website and pay 5,000,000 Armenian drams (AMD) in damages.

13. Between 11 and 30 July 2014 the newspaper published a series of articles concerning several of the applicants. These included (a) a photo of Ms Saghumyan with a funny grimace, with the caption "These Are the Phenomena That Sued *Iravunk*", (b) an article by H.G. about Ms Kazhoyan entitled "When the Daughter of a Public Official Engages in Homosexual Lobbying", published in a section of the newspaper called "Conchita's Witnesses" and attacking her for her activism in feminism and LGBT rights; (c) an article by H.G. about Mr Sedrakyan entitled "How the Son of a Bandit Became a 'Conchita's Witness'", calling him, among other things, a "Conchita's witness" and a "homosexual rights lobbyist" and attacking him for the comment he had made on the online press conference page, as well as other comments he had made on his own Facebook page in support of the LGBT community, (d) an article (author not indicated) about Mr Hovsepyan and the NGO PINK Armenia headed by him entitled "Camps: Young Gay Rights Lobbyists", describing their activities as homosexual lobbying and asking readers whether they felt nausea "because of the level of freedom enjoyed by the disgusting abbreviation that is LGBT"; and (e) an article by H.G. entitled "Gay Rights Lobbyists Are Losing Their Tempers", in which he continued to attack PINK Armenia, among others, for its activities combating hate and homophobia. In the latter article, the author at one point addressed the applicants as "boys and girls", adding that it was questionable whether they could be called that.

14. On 5 September 2014 H.G. created a Facebook event calling on "everyone who [was] not indifferent towards traditional values and who

value[d] the institution of the family and the nation's morality" to go to the court hearing scheduled for 20 October 2014 to support the newspaper, which had thrown down the gauntlet to gay rights lobbyists in order to defend "the right to live in an environment free from perverse influences". It appears that on the day of the hearing, about a dozen people gathered in front of the court building, holding posters with messages such as "Stop Anti-Armenian Propaganda", "Propaganda of Perversion Must be Banned by Law", "Gender Equals Perversion", "Yes to Traditional Family" and "Let's Protect the Right to Be Armenian".

15. On 25 October 2014, on the newspaper's twenty-fifth anniversary, H.B. and H.G. were awarded medals and other honours by the President of Armenia and the President of the National Assembly for, among other things, their significant contribution to the success of the newspaper.

16. On 30 October 2014 the Kentron and Nork-Marash District Court of Yerevan dismissed the applicants' claim. The court acknowledged at the outset that they were seeking a public apology and compensation for statements which had allegedly tarnished their honour, dignity and business reputation and incited hatred and discrimination. It was therefore necessary to carry out a balancing act between two competing interests – the right to honour and dignity, on the one hand, and freedom of expression and of the press, on the other – in order to determine whether the permissible limits of free speech had been overstepped and, as a result, their honour and dignity had been tarnished. Referring extensively to the Court's case-law under Article 10 of the Convention, as well as the Court of Cassation's case-law regarding Article 1087.1 of the Civil Code (see paragraph 30 below), the District Court recapitulated the circumstances of the case, finding that freedom of expression enjoyed wider protection in cases like the present where press articles on a matter of public interest were at stake and a distinction was to be made between value judgments and statements of fact. The article had not aimed to insult the applicants but simply contained an element of journalistic exaggeration and provocation. The impugned statements did not contain offensive words and ideas. Even if formulated with some exaggerations, the approach used had been balanced overall. The author had simply tried to give an equivalent response to those who, according to him, were trying "to aggressively establish new rules of the game in the country that could have destructive consequences". Thus, the article was within the permissible boundaries of freedom of journalistic speech and was of paramount public interest. The author had been guided by the principle of plurality of opinions and had not pursued the aim of tarnishing the applicants' honour and dignity, even if some of the formulations used might have shocked or disturbed them. The fact that I.A. and A.A.'s statements about Conchita Wurst had become the target of the applicants' criticism had provided the author of the article with press material and the applicants had ended up being subject to criticism themselves. Having joined a public

discussion, the applicants should have shown a certain tolerance towards the critical statements, since those statements as a whole were part of an open debate concerning the instilling of homosexual and similar ideas in society and not deviating from a Christian path, rather than personal insults. The District Court concluded that the interference with freedom of expression sought by the applicants was not necessary in a democratic society. It stated, lastly, that value judgments were not susceptible of proof and that such a requirement could in itself breach freedom of expression protected under Article 10 of the Convention.

17. On 28 November 2014 the applicants lodged an appeal. They argued, *inter alia*, that the District Court had failed to examine and assess all the evidence in the case, in particular, copies of all the subsequent articles published by the defendant which the applicants had presented to the court as evidence in support of their allegation that the defendant had had the intention to insult them and tarnish their dignity. The District Court had failed to correctly apply the Court's case-law under Article 10 of the Convention, to explain why it believed that the article was a matter of paramount public interest or to indicate the statements which it considered to amount to "value judgments" and why. Referring to the requirements of, *inter alia*, Articles 14 and 17 of the Convention and Protocol No. 12, the applicants argued that the court had failed to give any assessment to – or even mention – the fact that the article explicitly incited discrimination and hatred. The applicants again cited a number of passages from the above-mentioned Committee of Ministers Recommendations (see paragraphs 31 and 32 below), as well as the Court's findings in, *inter alia*, the case of *Vejdeland and Others v. Sweden* (no. 1813/07, § 55, 9 February 2012) concerning incitement to hatred and discrimination.

18. On 2 March 2015 another article was published in the newspaper, entitled "Adventures of the Armenian Gay Rights Lobbyists in Istanbul", covering the visit of Mr Hovsepyan to Istanbul. It was stated, *inter alia*, that he had travelled to Istanbul to exchange experiences with Turkish homosexual organisations, and that those establishing contact with Turkish homosexuals still dared to demand restoration of their honour from an Armenian newspaper even though it would have been more logical for their activities to be examined by Armenia's national security authorities. The author further referred to the proverb "obscenity is the second happiness", stating that the LGBT logic was interesting: they had travelled to kiss Turkish homosexuals and, at the same time, sued an Armenian journalist who had dared to tell the truth.

19. On 5 March 2015 the Civil Court of Appeal dismissed the applicants' appeal and upheld the judgment of the District Court. The court referred at the outset to the principles enshrined in the Court's case-law under Article 10 of the Convention, such as the wider protection enjoyed by the media and the press and the fact that value judgments were not susceptible of proof. It went

on to conclude that, contrary to the applicants' claim, the District Court had addressed and dismissed their arguments regarding the offensive nature of the impugned statements. The court had been right to conclude that the criticism expressed by the defendant was considered an opinion. Thus, the defendant, being a journalist, had expressed his negative view in respect of morals unacceptable for him, which, according to the author, were also of significance to national security, whereas value judgments and truthfulness of criticism were not susceptible of proof. The applicants had failed to prove that the defendant had had the intention to tarnish their honour, dignity or business reputation. As to the subsequent articles published by the defendant, they also simply expressed the author's negative attitude towards morals unacceptable to him and did not contain anything tarnishing the applicants' dignity. Moreover, the applicants had failed to specify which of the statements contained in those articles had tarnished their honour, dignity or business reputation. Those articles could not therefore serve as evidence of the defendant's intention to do so.

20. As regards the applicants' arguments of a violation of Articles 14 and 17 of the Convention, Protocol No. 12 to the Convention and Article 14.1 of the Constitution, those were also unfounded. In particular, the provisions in question guaranteed the equality of everyone before the law and prohibition of discrimination, whereas the subject of the applicants' claim before the courts concerned redress for damage caused to their honour and dignity. The applicants' arguments concerning discrimination therefore fell outside the scope of their claim because the provisions in question, in the light of the circumstances presented by the applicants, were not connected to questions of damage to honour and dignity. Moreover, the applicants had failed to show how they had been discriminated against or to submit any evidence that they had fallen victim to discrimination on the grounds of sexual orientation or because of advocating, spreading and lobbying in favour of such ideas. In particular, they had failed to provide proof that they had been refused a job, dismissed or had in some other way been subjected to discrimination precisely on those grounds. The applicants' allegations of a violation of those Articles were therefore unsubstantiated and had to be dismissed.

21. On 25 March 2015 H.B. gave a speech in Parliament, stating that George Soros, through his Open Society Foundation, was sponsoring NGOs such as PINK Armenia for them to initiate a judicial persecution against the newspaper and persecute freedom of speech and of the media in Armenia by targeting a specific media outlet. He added that the activities of the Open Society Foundation gave the impression of being aimed not only against the system of traditional values, but also against such a core democratic principle as freedom of speech and of the media. H.B. referred, in particular, to a grant provided to PINK Armenia by the Open Society Foundation, whose purpose, as stated on its website, was to assist in initiating strategic proceedings against

discrimination and, more specifically, raising the question as to whether there was hate speech in the article containing "the blacklist of enemies of the nation".

22. On 7 April 2015 the applicants lodged an appeal on points of law, raising similar arguments as previously.

23. On 29 April 2015 the Court of Cassation declared the appeal on points of law inadmissible for lack of merit. A copy of that decision was served on the applicants on 29 May 2015.

24. The applicants alleged that, following the decision of the Court of Cassation, the newspaper had continued to publish similar articles about them.

# RELEVANT LEGAL FRAMEWORK

## I. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitution (2005-2015)

25. Article 3 of the Constitution, as in force at the material time, provided that a person, his or her dignity and fundamental rights and freedoms had supreme value. The State ensured the protection of a person's and a citizen's fundamental rights and freedoms in accordance with the principles and norms of international law. The State was bound by fundamental human rights and freedoms and those of its citizens as a directly applicable law.

26. Article 14.1 provided that everyone was equal before the law. Discrimination on the grounds of sex, race, skin colour, national or social origin, genetic characteristics, language, religion, ideology, political or other opinion, association with a national minority, property, birth or disability status, age or personal or other social circumstances was prohibited.

### B. Civil Code (1999)

27. Article 1087.1 § 1 provides that a person whose honour, dignity or business reputation has been tarnished through insult or defamation can institute court proceedings against the person who made the insulting or defamatory statement. Article 1087.1 § 2 provides that, within the meaning of the Code, an insult is a public statement made through words, images, sounds, signs or other means with the aim of tarnishing someone's honour, dignity or business reputation. A public statement may be considered not to be an insult if it is based on true facts (except congenital defects) or pursues a paramount public interest. Article 1087.1 § 7 provides that, in the case of insult, a person may request the court to order one or more of the following measures: (i) a public apology, with the form of apology to be determined by the court; (ii) if the insult appears in information disseminated by a media

company, publication of all or part of the court's judgment through that media outlet, with the manner and volume of the publication to be determined by the court; and/or (iii) payment of compensation of up to 1,000 times the fixed minimum wage.

### C. Code of Civil Procedure (2018)

28. On 9 April 2018 a new Code of Civil Procedure entered into force in Armenia, replacing the former Code of Civil Procedure of 1999.

29. Article 4 of the new Code provides that if there is no substantive law or other legal act regulating a disputed relationship, the court will apply the legal provisions regulating similar relationships (legal analogy).

### D. Case-law of the Court of Cassation

30. In decision no. KD/2293/02/10 of 27 April 2012, the Court of Cassation, *inter alia*, interpreted Article 1087.1 of the Civil Code as follows. For a particular statement to be considered an "insult" within the meaning of that provision, it had to meet the following three criteria: (a) the expressed statement had to actually tarnish a person's honour or dignity; (b) the person making the statement had to pursue the aim of tarnishing a person's honour or dignity from the outset, meaning having the intention to belittle and humiliate a person; and (c) the statement had to be made publicly, which implied the presence of at least one third person. Furthermore, the definition of "insult" did not imply that any negative opinion or value judgment having a sufficient factual basis was not protected by law. When examining cases of alleged "insult", the courts had to pay special attention to the explanations of the person who had made the public statement in order to determine whether he or she had had the intention to humiliate someone or whether he or she had objectively expressed a value judgment, acting in good faith.

## II. RELEVANT COUNCIL OF EUROPE MATERIALS

### A. The Committee of Ministers of the Council of Europe

#### 1. *Recommendation No. R (97) 20 of the Committee of Ministers of the Council of Europe to Member States on "Hate Speech"*

31. The relevant extracts from the Recommendation adopted by the Committee of Ministers on 30 October 1997 read as follows:

> "The Committee of Ministers ...
>
> Recommends that the governments of member states:
>
> 1. take appropriate steps to combat hate speech on the basis of the principles laid down in this recommendation;

...

4. review their domestic legislation and practice in order to ensure that they comply with the principles set out in the appendix to this recommendation.

Appendix to Recommendation No. R (97) 20

**Scope**

The principles set out hereafter apply to hate speech, in particular hate speech disseminated through the media.

For the purposes of the application of these principles, the term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

...

**Principle 2**

The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member states should examine ways and means to:

- stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;

- review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;

- develop a co-ordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation;

...

- enhance the possibilities of combating hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction; ...

**Principle 3**

The governments of the member states should ensure that in the legal framework referred to in Principle 2, interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.

**Principle 4**

National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.

**Principle 5**

National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality."

### 2. *Recommendation Rec(2010)5 of the Committee of Ministers of the Council of Europe to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity*

32. The relevant extracts from the Recommendation adopted by the Committee of Ministers on 31 March 2010 are summarised in *Oganezova v. Armenia* (nos. 71367/12 and 72961/12, § 59, 17 May 2022).

## B. European Commission against Racism and Intolerance (ECRI)

### *ECRI Report on Armenia*

33. The relevant parts of the report on Armenia published by ECRI on 4 October 2016 read as follows (footnotes omitted):

"ECRI notes a rise in hate speech leading to acts of violence. The main targets of this are members of the LGBT community and non-traditional religious groups. This situation is all the more worrying given that there is high level of under-reporting of racist and homo/transphobic crime and that the effectiveness of the criminal, civil and administrative law provisions dealing with hate crime or discrimination is seriously hampered by the shortcomings in legislation. In addition, political discourse frequently contains statements stigmatising these vulnerable groups, which helps trivialise racist and intolerant attitudes within the population.

**Criminal law**

...

2. ECRI notes that Article 226 of the Criminal Code refers only to nationality, race, and religion as the characteristics of the victims of racist acts that are classified as criminal offences (hereafter 'prohibited grounds') ... This list of prohibited grounds ... does not refer to sexual orientation and gender identity ...

...

**Civil and administrative law**

...

12. The Armenian authorities have ... recognised the need for an anti-discrimination law ...

17. ECRI again recommends that the Armenian authorities adopt comprehensive civil and administrative legislation against discrimination – which should also cover the grounds of interest to ECRI – in all key fields of life ...

**Treatment of homo/transphobic speech in the Criminal Code**

...

26. ECRI recommends that sexual orientation and gender identity be expressly added to the prohibited grounds in Article 226 of the Criminal Code...

**Hate speech in political discourse**

29. ECRI notes a worrying level of intolerant statements against people belonging to the LGBT community, in particular by political leaders ...

30. ...Following a publication in an Armenian newspaper in May 2014 of an anti-gay black list of people, a ruling political party MP [H.B.] publicly supported the article; he also appeared as a witness for the newspaper in related court proceedings ...

37. As regards homo/transphobic hate speech, ... [a] particularly worrying case of anti-LGBT hate speech in the media has already been referred to [above]: in 2014, an Armenian newspaper called 'Iravunk' published an anti-gay black list of people, with direct incitement to discrimination and intolerance towards them ...

40. ECRI considers hate speech particularly worrying because it is a first step in the process towards actual violence, as demonstrated by several violent incidents against people belonging to ... the LGBT community ...

90. ... According to a survey conducted in 2012 by a local NGO, 72% of the Armenian population believe that the state should take measures to 'fight against homosexuals'. A survey released the same year ... revealed that 94% of the persons interviewed in Armenia would not want a gay neighbour. NGOs report that 'society either believes that homosexuality is a disease to be treated or people simply do not wish to accept something which is different from their traditional understanding of morality and family'. As a result, LGBT persons in Armenia 'exist, but not many are out in the open. They are hiding, though the general attitude is not negative; they are just seen to be ill people who are unfortunate to be born like that'.

**Legislation**

91. A general equality clause is included in Article 14.1 of the Armenian Constitution, prohibiting discrimination on the grounds of, among other things, gender and 'other personal or social circumstances' ... However, ECRI understands that, as was the case for hate speech ... general antidiscrimination standards have not been applied so far to LGBT persons in court proceedings, and the authorities have not provided ECRI with references to relevant case law in this respect. Moreover, since the burden of proof lies with the victim and there exists neither a legal definition of discrimination in Armenian law nor an adequate mechanism for investigating discrimination complaints, it remains difficult to prove discrimination cases on the grounds of sexual orientation or gender identity ...

99. ECRI's analysis shows the pressing need for the Armenian authorities to adopt comprehensive legislation to protect against discrimination, including on grounds of sexual orientation and gender identity and to establish effective mechanisms and procedures for dealing with complaints in this area ..."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 14

34. The applicants complained that the article of 17 May 2014 and subsequent articles had amounted to harassment and hate speech and had interfered with their private life, while the State had failed to provide protection in that regard, in breach of Articles 3 and 8 of the Convention. The State had also failed to acknowledge and provide protection from the discriminatory motives of the author, including the bias-motivated abuse and incitement to discrimination on the grounds of their LGBT-related activism and their perceived sexual orientation, in breach of Article 14 of the Convention in conjunction with Articles 3 and 8.

35. The Court notes at the outset that the applicants relied on both Articles 3 and 8 of the Convention in connection with the allegedly hateful and discriminatory newspaper articles. It reiterates that, being the master of the characterisation to be given in law to the facts of a case, it is not bound by the characterisation given by the parties. In the present case, having regard to the particular circumstances of this case and the approach taken by it in similar cases (see, for example, *R.B. v. Hungary*, no. 64602/12, §§ 39-52 and §§ 78-79, 12 April 2016, and *Association ACCEPT and Others v. Romania*, no. 19237/16, §§ 52-57, 1 June 2021, where the complaints regarding bias-motivated treatment were examined only under Article 8 of the Convention; and, by contrast, *Identoba and Others v. Georgia*, no. 73235/12, §§ 68-71, 12 May 2015; *M.C. and A.C. v. Romania*, no. 12060/12, §§ 116-19, 12 April 2016; and *Oganezova v. Armenia*, nos. 71367/12 and 72961/12, §§ 88-97, 17 May 2022, where both Articles 3 and 8 were addressed), it considers that the applicants' complaints fall to be examined solely under Article 8 of the Convention (see, *mutatis mutandis*, *Kaboğlu and Oran v. Turkey*, nos. 1759/08 and 2 others, §§ 50-51, 30 October 2018). It will therefore examine the applicants' case under Articles 8 and 14 of the Convention, the relevant parts of which read as follows:

**Article 8**

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

**Article 14**

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... [one's] status."

## A. The parties' submissions

### *1. The applicants*

36. The applicants submitted that the newspaper's publication of the article of 17 May 2014 (see paragraph 8 above) had constituted an unlawful interference with their rights guaranteed under Article 8 of the Convention. Furthermore, the domestic courts' failure to censure the newspaper or its editor-in-chief had constituted a breach of the State's positive obligation to protect them from treatment contrary to Article 8. They were human rights defenders and activists who supported and/or belonged to the LGBT community. The article had deprived them of their dignity, damaged their honour and social and professional reputation, and had had a detrimental impact on their ability to live their lives, causing them psychological harm and violating their moral integrity. The State's failure to protect them from discriminatory homophobic statements and to provide them with redress, including by failing to put in place effective legislation prohibiting discrimination and incitement to hatred on grounds of sexual orientation, amounted to a breach of Article 14 of the Convention. Readers had been expressly incited to discriminate against them on the basis of their association with the LGBT community and/or their perceived sexual orientation. The article had therefore gone beyond slander and insult and had constituted hate speech. It had intended to effectively deny them the ability to participate freely in society and the freedom to assert their personal identity, including their sexual orientation. Relying on the cases of *Identoba and Others* (cited above) and *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, ECHR 2005-VII), the applicants argued that the State had a positive obligation under Articles 8 and 14 of the Convention to protect individuals from hate speech and discrimination by private actors and to uncover and punish discriminatory motives for a violent attack, which it had failed to do in the present case.

37. First and foremost, the State had failed to set up an adequate legal framework designed to protect them from hate speech and discrimination. There had been no legal mechanisms for them to file specifically a hate speech and/or discrimination complaint in the national courts on the basis of sexual orientation and gender identity and to bring the newspaper to account for those acts. The constitutional prohibition of discrimination and the declarative nature of anti-discrimination clauses in other legislation made it

practically impossible for any applicant to file such a claim. There was no legally accepted definition of hate speech or incitement to discrimination. Moreover, the existing legal safeguards against incitement to hatred were not interpreted to include sexual orientation and/or the gender identity of a person. They had therefore had no other choice but to file a civil claim based on domestic provisions related to damage caused to honour and dignity.

38. The issues raised in their civil claim, including such essential issues as the hate speech and discrimination to which they had been subjected, had not been given due consideration by the domestic courts. Despite the discriminatory and manifestly homophobic language used by the author, including insults and incitement to discrimination against them, the domestic courts had ignored the applicants' claims of discrimination and incitement to hatred and failed to acknowledge the author's discriminatory and homophobic motives for targeting them and the offensive language used. The applicants argued that such hate speech was not protected under Article 10 of the Convention and was an abuse of rights within the meaning of Article 17 of the Convention. Thus, the domestic courts should have recognised the discriminatory stance of the newspaper and excluded the speech from the ambit of Article 10. Instead, they had completely downplayed the serious and prejudicial allegations contained in the newspaper articles, as well as their impact on the applicants, and acted in breach of Article 17 by interpreting the safeguards of Article 10 contrary to the core Convention values of tolerance and non-discrimination and extending Article 10 protection to hate speech.

39. In the alternative, the applicants argued that the domestic courts had failed to balance their rights under Article 8 against those of the author under Article 10 in a manner compatible with the Convention. The only reasoning provided had concerned the guarantees of Article 10 of the Convention and not all the essential circumstances necessary for a fair balancing act of the competing interests had been examined. In particular, the domestic courts had failed (a) to identify the purported general public interest and consider the evidence put forward by the applicants of an ongoing discrimination campaign; (b) to assess the consequences of the article's publication on the applicants' private lives, including the impact of the label "enemy of the Nation and the State"; (c) to consider the form of the article and the fact that it had been published on the Internet, enabling it to be shared across multiple platforms and continue to remain available online, also leaving their personal details permanently accessible; (d) to take into consideration that the main characteristic of the applicants as "blacklisted" people was their association with and/or support for the LGBT community, which was an obvious indicator of discrimination and hatred; and (e) to recognise that, far from carrying out the public watchdog role, the newspaper had been engaged in undermining the principles of equality and non-discrimination, on which democracy was based, and had been attempting to silence the applicants. The failure of the courts to properly deal with their complaint had led to the

legitimisation of the labels used by the author and justification of the newspaper's discriminatory behaviour.

40. Lastly, the applicants alleged that the newspaper articles had had a negative impact on their private lives. This allegedly included, among other things: (a) four applicants being subjected to hateful and threatening messages online, as well as mockery, isolation, bullying and insults in real life; (b) one applicant being labelled by his community as gay, resulting in him being shunned; (c) acquaintances, classmates and colleagues shutting off further contact with two applicants; (d) an employment offer being rescinded without reason in the case of one applicant; (e) an existing contract of employment being terminated in the case of one applicant; (f) one applicant being forced by his family members to attend conversion therapy; (g) one applicant being pressured by his family to leave his job as an activist; and (h) family members themselves being subjected to online abuse.

*2. The Government*

41. The Government submitted that Article 17 of the Convention was not applicable to the case, as there was a need to strike a fair balance between two Convention rights, namely the applicants' right to respect for their private life as LGBT activists under Article 8 and the freedom of expression of the author of the article under Article 10. The domestic courts had based their decisions on the Court's case-law, according to which ideas that offend, shock or disturb were also protected under Article 10. The article in question had contained the author's opinion about gay rights lobbyists. In the author's opinion, they had been trying to aggressively establish their rules of the game in the country, and their intention had been to intimidate all those who dared to oppose the efforts to make perversion the norm. The author had also been concerned about the population's capacity to reproduce, as well as the "combat readiness" of the generation eligible for military service. When assessing whether the speech constituted an "insult", the courts had concluded in duly reasoned judgments – and within their margin of appreciation – that there had not been a violation of the applicants' rights. In doing so, the courts had addressed the applicants' complaint regarding their honour and dignity in detail. There had therefore been no violation of Article 8.

42. The Government further disagreed with the applicants that Armenian law contained no provision for addressing the issue of discrimination and/or hate speech. They referred in this connection to Article 14.1 of the Constitution, which prohibited discrimination (see paragraph 26 above), and argued, referring to Article 3 of the Constitution (see paragraph 25 above), that Article 14.1 of the Constitution was directly applicable, making it unnecessary to incorporate it into laws. Furthermore, there was no need to put in place special legislative and procedural mechanisms for protection against hate speech and discrimination, as argued by the applicants, since in civil

proceedings, under Article 4 of the Code of Civil Procedure (see paragraph 29 above), it was possible to apply the principle of legal analogy. There was nothing in the domestic judgments about the alleged lack of anti-discrimination laws. On the other hand, the courts had repeatedly noted that the applicants had failed to prove that they had been subjected to discrimination. Thus, while alleging a violation of Article 14 of the Convention before the domestic courts, the applicants had failed to demonstrate how their rights protected under that provision had been breached and limited themselves to merely citing the relevant provisions. In their civil claim they had only raised the issue of insult, including damage to their honour and dignity, that is to say questions falling exclusively within the ambit of Article 8 of the Convention, but had failed to present the issue under Article 14 of the Convention. In this connection, the Government also referred to the fact that the Civil Court of Appeal had not considered the issue of discrimination, noting in its judgment that from the applicants' submissions it followed that they considered the impugned article an insult and that consequently the case would be examined by the court within the scope of "insult". The Court of Appeal had also noted that the applicants had failed to produce any evidence that they had been subjected to discrimination, such as being refused a job, dismissed from a job or any other discriminatory act, and dismissed their claim of discrimination as unsubstantiated (see paragraph 20 above). Had the applicants raised the issue of discrimination in a proper manner, the domestic courts could have examined that issue by virtue of the direct application of the Constitution, and, if necessary, by applying an analogy for procedural purposes. They had, however, failed to do so and had thereby failed to exhaust domestic remedies.

43. The Government further claimed, in the alternative, that, assuming that – as claimed by the applicants – there had been no effective legal framework for them to challenge the discrimination and to file specifically a hate speech/discrimination complaint with the authorities, they should have applied to the Court within six months, instead of making use of an ineffective remedy. They had chosen, however, to avail themselves of that remedy, having no prospects of success with regard to their claim under Article 14 of the Convention. The six-month time-limit therefore had to be calculated from the date on which the applicants had raised their claims before the domestic courts, namely 16 June 2014 (see paragraph 12 above).

*3. The applicants' reply*

44. The applicants submitted, in reply to the Government's non-exhaustion objection (see paragraph 42 above), that they had exhausted all the available domestic remedies and raised all their complaints before the domestic courts, including their discrimination complaint under Article 14 of the Convention. Firstly, while claiming that the constitutional provisions were directly applicable, providing effective protection from discrimination,

and that there was no need for specific legislation, the Government had failed to support this with any examples of domestic practice where discrimination and/or hate speech based on sexual orientation and gender identity had been successfully raised before the Armenian courts and provided redress. The Government's arguments were therefore theoretical and failed to demonstrate the existence of an accessible and effective remedy for discrimination or hate speech in practice. Moreover, they had expressly relied on the constitutional provisions on the prohibition of discrimination but the domestic courts had failed to apply them, which had been due to the declarative nature of those provisions and the absence of specific anti-discrimination laws. Secondly, there was no legally accepted definition of such concepts as hate speech, discrimination or incitement to discrimination, which had affected the domestic decisions. The courts had failed to define their understanding of those concepts and the circumstances that needed to be proved by the parties to establish those acts. Thus, the Civil Court of Appeal had required evidence of job loss to prove discrimination, even though theirs had not been an employment claim but one which had alleged discrimination and incitement to hatred that had adversely affected them. The domestic courts had clearly been unable or unwilling to address those claims in the proceedings. Lastly, as regards the Government's argument about applying the principle of legal analogy, according to the rules of civil procedure it could only be applied to substantive provisions of the law and not procedural ones, whereas their complaint about the absence of specific anti-discrimination legislation concerned not only substantive provisions but also the lack of procedural and institutional mechanisms. In any event, the Government had failed to indicate which laws should have been applied by analogy in the present case and how the applicants should have achieved this.

45. As regards the Government's objection regarding the alleged failure to comply with the six-month time-limit (see paragraph 43 above), the applicants submitted that they should not be blamed for having tried to exhaust a remedy, even if its effectiveness was in doubt. The domestic courts could and should have applied the above-mentioned constitutional provisions on the prohibition of discrimination when taking a decision on a particular case. Thus, the applicants had used the only available legal mechanism in Armenian law to challenge the content of the article on the basis that the hateful remarks and calls for discrimination constituted an attack on their dignity and an insult to their reputation. If it had been satisfied, their claim could have deterred the respondents from continuing to publish their hateful content.

*4. The third-party interveners*

**(a) ARTICLE 19**

46. ARTICLE 19 submitted that, while "hate speech" had no definition under international human rights law, the expression of hatred towards an individual or a group on the basis of a protected characteristic could, nevertheless, be divided into three categories, distinguished by the response international human rights law required from States: (a) severe forms of "hate speech" which States were *required* to prohibit, through criminal, civil and administrative measures, under both international criminal law and Article 20 § 2 of the International Covenant on Civil and Political Rights ("ICCPR"), such as advocacy of discriminatory hatred constituting incitement to hostility, discrimination or violence ("incitement"); (b) other forms of "hate speech" which States *might* prohibit, such as discriminatory or bias-motivated threats, harassment or assault which, however, did not involve incitement ("harassment"); and (c) "hate speech" that was lawful but nevertheless raised concerns in terms of intolerance and discrimination and merited a critical response by the State while being protected from restriction. As regards the most severe form of "hate speech", namely incitement, the United Nations Human Rights Committee had stressed that, while States were required to prohibit such expression, those limitations had to nevertheless meet the strict conditions set out in Article 19 of the ICCPR, which guaranteed the right to freedom of expression.

47. ARTICLE 19 noted that experts in this field had provided informative guidance on how to carry out the determination of the threshold of restricting freedom of expression on the basis that it amounted to incitement to hatred, adding that this examination was distinct from examinations of harassment cases. In particular, incitement focused on the specific intent of the speaker to cause acts of discrimination or violence against the individuals targeted, as well as the likelihood and imminence of that harm occurring. This examination required consideration of such factors as (a) the context of the expression; (b) the speaker's position and authority or influence over their audience; (c) the existence of intent to engage in advocacy of hatred and to target a protected group; (d) the content of the expression and the particular words used; (e) the extent and magnitude of the expression, including the means used and its frequency or volume; and (f) the likelihood of harm occurring, including its imminence.

48. Lastly, as regards sanctions in such cases, the State's response had to be proportionate, with responses restrictive of expression considered only a measure of last resort and less coercive means considered in the alternative which, in the case of the printed press, might include supporting effective forms of self-regulation. Since Article 20 § 2 of the ICCPR required States to prohibit but not criminalise incitement, they should apply a variety of legal means to respond to it, including civil, administrative and other measures.

The criminal-law penalties should be limited to the most severe forms of incitement and as a measure of last resort to be applied in strictly justifiable situations when no other means appeared capable of achieving the desired protection of individual rights in the public interest.

**(b) The Human Rights Centre of Ghent University**

49. The Human Rights Centre of Ghent University submitted that the present case raised important legal questions concerning the protection of LGBTIQ+ persons against hate speech under the Convention. They invited the Court to oblige States to provide effective protection in this area, including by requiring an adequate legal framework to be in place to protect against homophobic and transphobic hate speech. In this context, the third-party intervener invited the Court to reflect on the question whether such a legal framework should consist of criminal-law remedies or whether civil-law remedies were sufficient. Furthermore, the Court should require States to provide robust protection to human rights defenders, including those striving for the protection and promotion of rights of LGBTIQ+ persons. Specifically in the context of the present case, such protection was related to the broader positive obligation to promote a culture of tolerance *vis-à-vis* LGBTIQ+ persons.

**(c) ILGA-Europe and TGEU**

50. ILGA-Europe and TGEU jointly submitted that Contracting States had a positive obligation under the Convention to protect against hate speech on the basis of sexual orientation or gender identity. In the interveners' view, legislative measures that allowed victims of homophobic hate speech to bring civil discrimination claims to the courts were important steps to achieve such effective protection. Many Contracting States had already taken positive steps to criminalise and/or grant the right to bring civil proceedings against homophobic speech. As regards criminal liability, a large number of Contracting States expressly made it a criminal offence to incite hatred, violence or discrimination on the grounds of sexual orientation and, in some instances, also gender identity. These included Austria, Belgium, Estonia, France, Ireland, Greece, England and Wales, Spain, Croatia, Denmark, Finland, Malta, Iceland and the Netherlands. In some States like the Czech Republic, Germany, Italy and Poland, where hate speech against LGBT people was not explicitly defined as a criminal offence, generally worded offences had sometimes been used to protect from homophobic or transphobic expressions. A number of countries, such as the Czech Republic, Bulgaria, Hungary, England and Wales, Germany, Italy and Poland, had expressly established civil-law remedies for hate speech on the basis of sexual orientation.

51. Armenian legislation did not afford any protection against homophobic or transphobic expressions. In practice, LGBT people and affiliates in Armenia were prevented from seeking redress against hate/discriminatory speech, and continuously struggled to enjoy equality, not only because of the complete absence of an adequate legal framework but also because of the hostile attitudes against the LGBT community. This combination of social, cultural, political and other underlying factors and legislative gaps contributed to a further deterioration of the situation of LGBT people living in Armenia and prevented them from enjoying proper access to justice or living in a safe environment.

## B. The Court's assessment

### *1. Admissibility*

#### (a) Compatibility *ratione personae*

52. The Court notes at the outset that the applicants complained under Article 8 of the Convention that the publication of the article of 17 May 2014 and the State's failure to provide protection had unlawfully interfered with their right to respect for private life. The Court considers these to be two distinct issues, as the former implies a direct interference by the domestic authorities with the applicants' private life, whereas the latter concerns the State's positive obligation under Article 8. As regards the former, the Court finds no basis on which to hold that the newspaper article in question were attributable to the Armenian State. The newspaper was a private entity and, while the chairman of its editorial board, H.B., was also an MP for the ruling party (see paragraph 10 above), there are insufficient grounds to assert that he represented the State in his capacity as chairman of the newspaper's editorial board. Nor is there any other evidence suggesting that the State was liable for the content published by the newspaper and the views expressed. Therefore, in so far as the applicants may be understood to complain about the publication of the article, their complaint in that regard must be declared inadmissible as incompatible *ratione personae* with the provisions of the Convention (see, *mutatis mutandis*, *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, § 41, 16 February 2021). The Court will therefore address solely the applicants' complaints regarding the alleged failure of the State to fulfil its positive obligations under Article 8 of the Convention by protecting their private life from an alleged interference by a third party, in this case the newspaper, which, in any event, is the main question raised in the present application (compare *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 61, ECHR 2012).

**(a) Applicability of Articles 8 and 14 of the Convention**

53. The Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's physical and social identity (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018, and *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 109, 14 January 2020). Such elements as a person's sexual orientation and sexual life fall within the personal sphere protected by Article 8 (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 142, 17 January 2023; *Beizaras and Levickas*, cited above, § 109; and *Association ACCEPT and Others*, cited above, § 63), as do a person's reputation, honour and dignity (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017; *Kaboğlu and Oran*, cited above, § 65, 30 October 2018; and *Beizaras and Levickas*, cited above, § 117). In certain areas of private life (such as, for example, the right to reputation), in order for Article 8 to come into play, the alleged violation must attain a certain level of seriousness and be committed in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life (see *Beizaras and Levickas*, § 109, and *Association ACCEPT and Others*, § 63, both cited above).

54. The Court observes that the article of 17 May 2014 (see paragraph 8 above) was motivated by hostility against LGBT persons and attacked the applicants for their activism in the sphere of promotion and protection of LGBT rights and the fact that they had spoken out against homophobia, expressly inciting the public at large to encroach on various aspects of the applicants' private life by committing harmful discriminatory acts against them. The Court has no doubt that such expressions affected the applicants' psychological well-being, dignity and reputation and constituted serious attacks on their rights guaranteed under Article 8 of the Convention, clearly falling within the scope of that provision.

55. The applicants further argued that they had fallen victim to hate speech and discrimination, alleging that the attacks on them had been motivated not only by their activism but also by their perceived sexual orientation and association with the LGBT community, relying also on Article 14 of the Convention. The Court does not find the applicants' arguments to be without merit. Firstly, there is little doubt that the author of the article was motivated by hostility towards the LGBT community and that his intentions were to disrupt the show of support for, as well as the promotion and protection of, that community in Armenia. Secondly, a number of elements in the case suggest that the author may have regarded the applicants not only as LGBT activists but also as members of that community. The Court refers in this connection to a series of follow-up articles published by the same author in which he continued to attack the applicants. In one such article, the author appeared to mock the applicants' sexuality by questioning whether

they could be described as male or female (see paragraph 13 *in fine* above) and, in at least one applicant's case, openly implied that he was homosexual (see paragraph 18 above). This, combined with the author's strong homophobic views and his obvious intentions to harm the LGBT community, leads the Court to believe that the applicants had at least an arguable claim before the domestic courts that their perceived sexual orientation and close association with the LGBT community also played a role in the attacks on them (compare *Aghdgomelashvili and Japaridze v. Georgia*, no. 7224/11, § 47, 8 October 2020, and *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, § 77, 16 December 2021). They were therefore entitled to protection under Article 14 of the Convention and the guarantees of that Article, taken in conjunction with Article 8, are applicable to the present case. The Court considers that the most appropriate way to proceed is to subject the applicants' complaints to a simultaneous examination under both Articles (see, *mutatis mutandis*, *Identoba and Others*, cited above, § 92, and *Oganezova,* cited above, § 78).

**(b) Exhaustion of domestic remedies and compliance with the six-month time-limit**

56. The Court further notes that the Government have raised objections of non-exhaustion and failure to comply with the six-month time-limit (see paragraphs 42-43 above). It considers, however, that these objections are closely linked to the substance of the applicants' complaint that there was no effective legal framework in Armenia to protect them from hate speech and discrimination. They must be therefore joined to the merits.

**(c) Conclusion**

57. The Court notes that the complaint that the State failed to fulfil its positive obligations under Article 8 of the Convention, taken alone and in conjunction with Article 14 of the Convention, is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

*2. Merits*

**(a) General principles**

58. The Court reiterates that, while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in the effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. This presupposes that an effective legal system is in place and operating for the

protection of the rights falling within the notion of "private life", and is available to the applicant (see *Aksu*, cited above, §§ 59 and 68).

59. In cases like the present one, where the complaint is that rights protected under Article 8 have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying that provision, to the requirements of Article 10. Thus, in such cases the Court will need to balance the applicant's right to "respect for his private life" against the public interest in protecting freedom of expression, bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles (see *Aksu*, cited above, § 63; *Budinova and Chaprazov*, cited above, § 89; and *Behar and Gutman v. Bulgaria*, no. 29335/13, § 100, 16 February 2021). In similar cases, the Court has therefore attached significant weight to the fact that the domestic authorities identified the existence of conflicting rights and the need to ensure a fair balance between them. If the balance struck by the national judicial authorities is unsatisfactory, particularly because the importance or the scope of one of the fundamental rights at stake was not duly considered, the margin of appreciation accorded to the decisions of the national courts will be a narrow one. However, if the assessment was made in the light of the principles resulting from its well-established case-law, the Court would require strong reasons to substitute its own view for that of the domestic courts, which consequently will enjoy a wider margin of appreciation (see *Aksu*, §§ 66-67; *Budinova and Chaprazov*, § 89; and *Behar and Gutman*, § 100, all cited above).

60. According to that case-law, expression on matters of public interest is in principle entitled to strong protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection (see *Budinova and Chaprazov*, cited above, § 90, and *Behar and Gutman*, cited above, § 101). Thus, the gravest forms of "hate speech", which the Court has considered to fall under Article 17, are excluded entirely from the protection of Article 10 (see *Lilliendahl v. Iceland* (dec.), no. 29297/18, § 34, 12 May 2020, and *Nepomnyashchiy and Others v. Russia*, nos. 39954/09 and 3465/17, § 74, 30 May 2023). As regards less grave forms of "hate speech", although they do not fall entirely outside the protection of Article 10, it is permissible for the Contracting States to restrict them (see *Lilliendahl*, cited above, § 35, and *Nepomnyashchiy and Others*, cited above, § 74). The Court has also recognised the vital role played by the media in a democratic society (see *Stoll v. Switzerland* [GC], no. 69698/01, § 102, ECHR 2007-V, and *Pentikäinen v. Finland* [GC], no. 11882/10, § 91, ECHR 2015). It has, at the same time, accepted that it may be justified to impose even serious criminal-law sanctions on journalists in cases of hate speech or incitement to violence (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI; *Otegi Mondragon v. Spain*, no. 2034/07, § 59, ECHR 2011; *Atamanchuk v. Russia*, no. 4493/11, §§ 67

and 70, 11 February 2020; *Budinova and Chaprazov*, cited above, § 90; and *Behar and Gutman*, cited above, § 101).

61. The Court further reiterates that Article 14 of the Convention affords protection against discrimination in the enjoyment of the rights set forth in the Convention. According to the Court's case-law, the principle of non-discrimination is of a fundamental nature and underlies the Convention together with the rule of law, and the values of tolerance and social peace (see *S.A.S. v. France* [GC], no. 43835/11, § 149, ECHR 2014 (extracts)). In cases where the impugned statements are prima facie discriminatory in intent, the Court's analysis must also be coloured by the duties stemming from Article 14 of the Convention – in particular the duty to combat discrimination (see, *mutatis mutandis*, *Budinova and Chaprazov*, § 91; and *Behar and Gutman*, § 102, both cited above), including on the basis of one's sexual orientation, which the Court has repeatedly included among the "other grounds" protected under that provision (see *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, § 28, ECHR 1999-IX; *Fretté v. France*, no. 36515/97, § 32, ECHR 2002-I; and *Association ACCEPT and Others*, cited above, § 99).

**(b) Application of the above principles in the present case**

*(i) Effective legal system*

62. The Court will first examine whether an effective legal system was in place and operating for the protection of the rights falling within the notion of "private life", and whether it was available to the applicants. The applicants argued that there had been no effective legal framework in Armenia to protect them from the homophobic hate speech and discrimination to which they had been subjected, while the Government contended that the applicants had enjoyed such protection by virtue of Article 14.1 of the Constitution, which enshrined the principle of non-discrimination (see paragraph 26 above). The Court observes, however, that this constitutional provision was not incorporated into any branch of domestic law, such as criminal or civil law, or into any specific anti-discrimination law at the material time (see paragraph 33 above). While arguing that Article 14.1 of the Constitution was directly applicable by the domestic courts and did not require incorporation into other branches of law (see paragraph 42 above), the Government failed to explain, or demonstrate by providing examples of relevant domestic case-law, what this meant in practice. Their argument that the applicants could have relied on the principle of legal analogy to bring a claim under Article 14.1 of the Constitution before the domestic courts was based on a domestic legal provision, namely Article 4 of the Code of Civil Procedure (see paragraph 29 above), which was not even in force at the material time (see paragraph 28 above). In any event, as already stated, the Government failed to elaborate further or to provide evidence in support of their position.

63. The Court observes that the only remedy available to the applicants in the present case appears to have been a civil claim under Article 1087.1 of the Civil Code (see paragraph 27 above). The Court has previously 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, among other authorities, *Beizaras and Levickas*, cited above, § 111, and the cases cited therein). It has likewise accepted that criminal-law measures were required with respect to direct verbal assaults and physical threats motivated by discriminatory attitudes (ibid.). As far as acts encroaching on an individual's psychological integrity are concerned, the obligation to maintain and apply in practice an adequate legal framework does not always require that a criminal-law provision covering the specific act be put in place. The legal framework could also be made up of administrative or civil-law remedies capable of affording sufficient protection, possibly combined with procedural remedies such as the granting of an injunction (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, §§ 85 and 108, ECHR 2013; *Király and Dömötör v. Hungary*, no. 10851/13, § 61, 17 January 2017; and, most recently, *Nepomnyashchiy and Others*, cited above, § 76). The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is in issue (see *Söderman*, § 79, and *Nepomnyashchiy and Others*, § 76, both cited above).

64. The Court notes that Article 1087.1 of the Civil Code provided protection, *inter alia*, from "insult", defined as offensive speech tarnishing one's honour, dignity or business reputation (see paragraph 27 above) and it has not been alleged that this provision was incapable of providing effective protection in relation to those particular aspects of the applicants' private life. As regards specifically the alleged hate and discriminatory speech, the Court notes that, while not explicitly designed to address such instances, Article 1087.1 required the domestic courts to carry out a balancing exercise between the competing interests, and, in doing so, to examine and assess the author's intentions (see, in particular, the Court of Cassation's case-law in paragraph 30 above), which, in a case like the present one, could reasonably be expected to have involved an examination of the potentially discriminatory and hateful nature of the author's statements and motives. The redress which the applicants could seek from the newspaper under that Article included a public apology, publication by it of all or part of the ensuing court judgment and non-pecuniary damages. It therefore appears that nothing precluded the domestic courts from addressing the discriminatory and hateful nature of the impugned expressions when balancing the competing interests and, if

necessary, from providing adequate and sufficient redress. The Court can therefore accept that Article 1087.1 of the Civile Code was capable, at least in theory, of providing effective protection to the applicants from encroachment on various aspects of their private life within the meaning of Article 8, including from homophobic hate speech. It has doubts, however, about its effectiveness in practice with respect to such speech, in view of the Government's failure to provide any examples of domestic case-law and given the manner in which the applicants' specific case was examined by the domestic courts, as discussed below.

*(ii) Examination of the applicants' case by the domestic courts*

65. Turning to the domestic courts' findings in the proceedings instituted by the applicants under Article 1087.1 of the Civil Code, the Court considers that, for the reasons set out below, the courts failed to assess the statements contained in the article of 17 May 2014 in the light of the principles established in its case-law.

66. The Court observes at the outset that, in attacking the applicants because of their show of support for the LGBT community, the author of the article expressly incited the public at large to show intolerance and to commit specific harmful discriminatory acts against the applicants, including in the spheres of their personal and professional lives. The Court doubts whether such speech could enjoy protection under Article 10 of the Convention in the light of the requirements of Article 17. Nevertheless, the Court does not consider it necessary to rule on this question definitively because, even assuming that the guarantees of Article 10 applied to the statements contained in the impugned article, the domestic courts failed to balance the competing interests in accordance with the principles embodied in Articles 8 and 10 of the Convention, interpreted in the light of Article 17 of the Convention.

67. The Court notes, in particular, that the domestic courts gave full weight to the author's right to freedom of expression and little to no importance to the effect of his statements on the applicants and their private life. In doing so, the courts stressed the fact that the author was a representative of the press reporting on a matter of public interest. The Court reiterates in this connection that the protection afforded by Article 10 of the Convention to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016). Article 10 does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of that provision, the exercise of this freedom carries with it "duties and responsibilities", which particularly apply to the press. These "duties and responsibilities" are liable to assume significance when, as in the present case, there are attacks on the reputation of private individuals and the "rights

of others" are undermined (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III).

68. In the present case, the author of the article, believing homosexuality was a "perversion" which should be stopped from becoming the norm in Armenia, vented his anger at the applicants because of their activism and their show of support for the LGBT community. The author in essence incited intolerance, hostility and discrimination against LGBT persons and those, like the applicants, who promoted their rights, with the obvious intention of frightening the applicants into desisting from their public expression of support for the LGBT community (compare *Identoba and Others*, § 70; *Women's Initiatives Supporting Group and Others*, § 60; and *Oganezova*, § 95, all cited above). In doing so, he used stereotypical and stigmatising labels such as "homosexual rights lobbyists" and "gay-campaign-supporting zombies", branded the applicants as "internal [enemies] of the Nation and the State" and advocated that they be blacklisted and subjected to specific acts of discrimination.

69. The Court cannot accept as an example of responsible journalism an article propagating hatred, hostility and discrimination against a minority, in this case the LGBT community, which, at the material time, appeared to be one of the main targets of widespread hostility, hate speech and hate-motivated violence in the country (see *Oganezova*, cited above, §§ 87-122, as well as the ECRI report and the third-party submissions in paragraphs 33 and 51 above respectively), and against those, like the applicants, who were active in promoting and defending the rights of that minority. The domestic courts failed to recognise the author's hostile tone and intentions and the impact that his statements had on the applicants' Article 8 rights. His expressions, which were meant to incite intolerance and hostility against the applicants with the clear intention of intimidating them and causing them real harm, were downplayed by the courts and regarded as legitimate expressions of "criticism" in the context of a debate on a matter of public interest. By doing so, the domestic courts failed to protect the applicants from speech advocating intolerance and harmful acts in breach of Article 8 of the Convention.

70. The Court lastly observes that, in addition to alleging damage to their honour, dignity and reputation, the applicants argued before the domestic courts – not without merit – that the impugned article also incited hatred and discrimination on the grounds of their perceived sexual orientation (see paragraph 55 above). The District Court, while acknowledging the applicants' allegations of incitement to hatred and discrimination, failed to address that issue at all (see paragraph 16 above). It appears that the Court of Appeal did address the question as to whether the applicants had fallen victim to discrimination, however, its examination was limited solely to the question as to whether the applicants had suffered specific acts of discrimination such as refusal of employment, dismissal or the like (see paragraph 20 above). The

Court of Appeal, like the District Court, failed to address the question as to whether the impugned speech itself was bias-motivated and had discriminatory overtones, as well as the discriminatory motives of the author. By failing to address the discriminatory nature of the impugned statements, domestic courts failed to comply with their positive obligation to respond adequately to the applicants' alleged discrimination on account of their perceived sexual orientation and association with the LGBT community, as required under Article 14 (compare *Budinova and Chaprazov*, § 95; *Behar and Gutman*, § 106; and *Nepomnyashchiy and Others*, § 85, all cited above).

71. On the basis of the above, the Court concludes that the Armenian courts failed to carry out the requisite balancing exercise in line with the criteria laid down in its case-law. Furthermore, the manner in which the only civil remedy available to the applicants was interpreted and applied in practice failed to provide them with protection against hate speech and discrimination.

72. Having reached the above conclusions, the Court considers it necessary to address the Government's objections regarding the applicants' alleged failure to exhaust domestic remedies and to comply with the six-month time-limit (see paragraphs 42 *in fine* and 43 above).

73. The Court observes that the Government's objection concerning the applicants' alleged failure to comply with the six-month time-limit rested on the argument that, assuming that the applicants were correct in arguing that there was no effective legal framework in Armenia providing protection against hate speech and discrimination, the civil remedy which they pursued was ineffective in that respect and therefore did not need to be exhausted. Consequently, by pursuing that remedy before turning to the Court, they had missed the six-month time-limit.

74. The Court reiterates that the requirements in Article 35 § 1 of the Convention concerning exhaustion of domestic remedies and the six-month period are closely interrelated (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 130, 19 December 2017). Where it is clear from the outset that the applicant has no effective remedy, the six-month period (or, following the entry into force of Protocol No. 15, the four-month period) runs from the date on which the act complained of took place or the date on which the applicant was directly affected by or became aware of such act or had knowledge of its adverse effects (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009). However, mere doubts on the part of the applicant regarding the effectiveness of a particular remedy will not absolve him or her from the obligation to try it (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 74 and 84, 25 March 2014). On the contrary, it is in the applicant's interests to apply to the appropriate court to give it the opportunity to develop existing rights through its power of interpretation (see *Ciupercescu v. Romania*, no. 35555/03, § 169, 15 June 2010).

75. The Court has already found (see paragraph 64 above) that the civil remedy pursued by the applicants appeared in theory capable of providing protection to them against homophobic hate speech. Thus, the ineffectiveness of that remedy cannot be said to have been evident from the outset, especially in the absence of any relevant domestic case-law. It was therefore not unreasonable for the applicants to lodge a civil claim under Article 1087.1 of the Civil Code, and they cannot be blamed for having tried to put matters right at the domestic level by resorting to that remedy. Furthermore, in their civil claim they argued that they were victims of hate speech and discrimination owing to the nature of the impugned statements, referring in this connection to, *inter alia*, Article 14.1 of the Constitution, Article 14 of the Convention and the Court's case-law under that provision, as well as a number of relevant Committee of Ministers Recommendations (see paragraphs 12 and 17 above). Moreover, both the District Court and the Court of Appeal explicitly acknowledged that the applicants were seeking redress in respect of incitement to hatred and discrimination within the scope of their civil claim (see paragraphs 16 and 20 above). The Court is therefore satisfied that the applicants exhausted domestic remedies and lodged their relevant complaints within six months from the date of the final decision in those proceedings. It follows that the Government's objections regarding the applicants' alleged failure to exhaust domestic remedies and to comply with the six-month time-limit must be rejected.

76. There has accordingly been a violation of Article 8 of the Convention taken alone and in conjunction with Article 14 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. Lastly, the applicants complained that the failure of the courts to address their arguments regarding hate speech and discrimination had violated their right to a reasoned judgment, in breach of Article 6 § 1 of the Convention. They also relied on Article 13 with respect to their complaint regarding the lack of legal safeguards against hate speech and discrimination.

78. Bearing in mind the nature and substance of the violations found in the present case, on the basis of Article 8 taken alone and in conjunction with Article 14 of the Convention (see paragraphs 62-76 above), the Court finds that it is not necessary to examine separately the admissibility and merits of the complaints under Articles 6 § 1 and 13 of the Convention (see, *mutatis mutandis*, *Alković v. Montenegro*, no. 66895/10, § 77, 5 December 2017, and Association *ACCEPT and Others*, cited above, § 162, as regards, in particular, Article 13 of the Convention).

## III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

79. Without relying on any particular Article of the Convention, the applicants requested that general measures be applied to ensure structural changes. In particular, they requested that the Court order the Government to introduce legislation prohibiting hate speech and discrimination and defining civil, administrative and criminal responsibility for such acts motivated by actual or perceived sexual orientation and gender identity of a person. They also asked that the Government publicly condemn any acts of hatred and intolerance against LGBT people in Armenia, promote the ideas of tolerance and equality in society and develop and implement a common policy for combating discrimination.

80. The Government did not make any submissions on the matter.

81. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Akdivar and Others v. Turkey* (Article 50), 1 April 1998, § 47, *Reports of Judgments and Decisions* 1998-II; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I). This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1) (see *Oganezova*, cited above, § 131, and the cases cited therein).

82. Having regard to the established principles cited above and to the particular circumstances of the present case, the Court finds it appropriate to leave it to the Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention to implement an effective legal framework in theory and in practice (compare *Oganezova*, cited above, § 132).

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

## A. Damage

84. The applicants each claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

85. The Government submitted that a finding of a violation would constitute sufficient just satisfaction and that, in any event, the amounts claimed were too high.

86. The Court awards each applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

## B. Costs and expenses

87. The applicants also claimed a total of EUR 13,436.52 for the costs and expenses incurred before the Court, including EUR 3,000 for their two Yerevan-based lawyers, EUR 9,165.71 for their three EHRAC lawyers, EUR 1,067.11 for translation costs and EUR 204.42 for administrative expenses.

88. The Government submitted that the claim for the legal costs of the Yerevan-based lawyers had not been substantiated. As to the EHRAC lawyers, those lawyers had not represented the applicants before the Court. Furthermore, the only work performed by those lawyers had concerned the applicants' reply to the Government's observations. Hence, the amount claimed was grossly exaggerated. Besides, it had not been necessary to engage three lawyers to do that work. As to the administrative and translation costs, the services provided and the number of people involved indicated that those costs had not been necessarily incurred and should be significantly reduced.

89. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them. In the present case, the case file contains signed forms authorising the three EHRAC lawyers in question to represent the applicants before the Court, which the Government were informed of by a letter of 27 June 2019. The Court notes, however, that the applicants failed to submit any evidence showing that they had paid or were under a legal obligation to pay the fees charged by those lawyers (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 371-72, 28 November 2017). Nor did they submit any evidence in respect of their Yerevan-based lawyers or the alleged administrative expenses. The Court therefore rejects this part of the claim. On the other hand, the applicants submitted proof of payment of the translation costs claimed. The Court therefore awards the applicants EUR 1,067 in respect of costs and expenses incurred before it, plus any tax that may be chargeable to them.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objections of non-exhaustion of domestic remedies and failure to comply with the six-month time-limit and *dismisses* them;

2. *Declares* the complaints under Article 8 of the Convention taken alone and in conjunction with Article 14 of the Convention concerning the failure of the State to protect the applicants from an unjustified interference with their private life and from discrimination admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention taken alone and in conjunction with Article 14 of the Convention;

4. *Holds* that it is not necessary to rule separately on the admissibility and merits of the complaints under Articles 6 § 1 and 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,067 (one thousand and sixty-seven euros), plus any tax that may be chargeable to the applicants jointly, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Simeon Petrovski | Faris Vehabović |
| Deputy Registrar | Acting President |

# APPENDIX

List of applicants
Application no. 59180/15

| No. | Applicant's Name | Year of birth | Nationality | Place of residence |
|---|---|---|---|---|
| 1. | Lili MINASYAN | 1990 | Armenian | Yerevan |
| 2. | Gayane ARUSTAMYAN | 1968 | Armenian | Yerevan |
| 3. | Vardan HAMBARDZUMYAN | 1989 | Armenian | Yerevan |
| 4. | Mamikon HOVSEPYAN | 1982 | Armenian | Gyumri |
| 5. | Vahancheraz ISHKHANYAN | 1964 | Armenian | Yerevan |
| 6. | Pertchuhi KAZHOYAN | 1989 | Armenian | Yerevan |
| 7. | Nvard MARGARYAN | 1988 | Armenian | Abovyan |
| 8. | Arevik MARTIROSYAN | 1987 | Armenian | Yerevan |
| 9. | Elvira MELIKSETYAN | 1991 | Armenian | Vanadzor |
| 10. | Anna NIKOGHOSYAN | 1990 | Armenian | Yerevan |
| 11. | Lusine SAGHUMYAN | 1987 | Armenian | Vanadzor |
| 12. | Vahan SEDRAKYAN | 1994 | Armenian | Yerevan |
| 13. | Anna SHAHNAZARYAN | 1984 | Armenian | Sevan |
| 14. | Davit TADEVOSYAN | 1992 | Armenian | Yerevan |