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Another Year of Silence: Greenlighting Hate Crimes Against Armenia's LGBTQI+ Community

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Armenia, a post-Soviet Union country, has consistently grappled with LGBTQI+ issues. A 2011 survey¹ revealed that 55% of Armenians surveyed would sever ties with a friend or relative who came out as gay. A decade later, Armenia has not witnessed a decline in discrimination against the LGBTQI+ community, perpetuating a series of hate crimes. It is evident that, in terms of law enforcement, even after decriminalisation in 2003,² Armenia's political establishment is fostering both direct and indirect encouragement of intolerance and violence towards the LGBTQI+ community.

In principle, LGBTQI+ individuals possess the same legal rights and protections as all Armenian citizens under the Constitution.³ However, in practice, the utilisation of such protection by LGBTQI+ individuals is limited, as there exists no assurance that their rights will be upheld either in the courts or at police stations. This challenging reality is exemplified by several cases, notably the Joshua Haglund murder case, wherein the state police displayed unethical and immoral behaviour, indulging in an excess of power. On May 17th, 2004, Joshua Haglund, a US citizen and an openly gay visiting professor at the Yerevan State Linguistic University of V. Bryusov, was brutally murdered outside his apartment in central Yerevan. Although an inquiry was initiated into the murder and many gay men were rounded up and interrogated by the police, no one was ever charged with the crime. It was reported that Armenian gay men, or those perceived to be gay, faced intimidation from police during the investigation of the murder. At least one man was held in confinement for several days. Another individual reported being summoned to the police station, and when inquiring about the charges, an investigator remarked that being gay is a crime. He further alleges that the police expressed indifference to whether the law protected homosexuality, asserting that within their precinct, they considered themselves the law.⁴

The persistence of such instances of impunity perpetuates a cycle that hinders effective investigations to this day. Victims often refrain from reporting such incidents due to a lack of trust in law enforcement, the inefficacy of legal remedies, and a pervasive fear of exposure by law enforcement exceeding their powers.⁵

Armenia, as a state party to the European Convention on Human Rights (ECHR), is bound by the anti-discrimination provisions outlined in Article 14 of the Convention.⁶

¹ Pink Armenia, Public opinion toward LGBT people in Yerevan, Gyumri and Vanadzor cities, 2011. Available at ><https://issuu.com/pinkarmenia/docs/lgbtsurveyen/9>< (Last visited Dec. 18, 2023).

² In December 2002, the National Assembly approved the new penal code in which the anti-gay article was removed.

³ Articles 1 and 3. Constitution of the Republic of Armenia. Adopted in 2015.

⁴ Analysis: In the Criminal Case of US Citizen Joshua Haglund Murdered in Yerevan on May 17, 2004. The document was prepared by attorneys representing Joshua Haglund /Armenia Now, Two Months, No Answers: Haglund family says "someone has gotten away with murder". Available at ><http://www.archives.armenianow.com/2004/july16/news/>< (Last visited Dec. 18, 2023).

⁵ For instance, during a specific 2022 case, where, despite a criminal court of appeals ruling that investigators neglected to consider the psychological suffering of victims in a 2018 attack, the state prosecutor's response not only sought to justify the actions of the villagers but also seemed to encourage homophobic behaviour, advocating against the reopening of the case during a court session. US Department of State, 2022 Country Reports on Human Rights Practices: Armenia, P. 52. Available at ><https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/armenia/><; Pink Armenia Annual Report 2022, P. 6. Available at ><https://www.pinkarmenia.org/en/news/annualreport2023/>< (Last visited Dec. 18, 2023).

⁶ "The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin,

Furthermore, Armenia has ratified Protocol No. 12 to the ECHR, enforcing a general prohibition of discrimination since 2005. The Armenian Constitution incorporates principles of general equality and anti-discrimination in Articles 28⁷ and 29⁸. However, these constitutional provisions do not explicitly delineate protections based on sexual orientation or gender identity (SOGI).

Although the constitutional language does not explicitly articulate discrimination based on SOGI, the jurisprudential stance of the European Court of Human Rights (ECtHR) provides valuable insights. The ECtHR has consistently construed the words “other status” in Article 14 broadly, encompassing characteristics beyond those that are innate or inherent. Notably, the ECtHR's interpretation indicates that the prohibition of discrimination under Article 14 extends to issues related to SOGI.⁹ Despite the lack of explicit mention, the ECtHR has underscored the seriousness of discrimination based on sexual orientation, equating it with discrimination based on “race, origin, or colour.”¹⁰

It is imperative to note that Armenian courts are expected to align with precedents set by the ECtHR, particularly in cases sharing similar factual circumstances. In line with constitutional guidance, the interpretation of provisions concerning basic rights and freedoms in the Armenian Constitution should consider the practices of bodies operating under international human rights treaties ratified by the Republic of Armenia. Additionally, any restrictions on basic rights and freedoms should not surpass those delineated by international treaties to which the Republic of Armenia is a party.¹¹ Nonetheless, as of now, there has been only one case within Armenian court practice explicitly addressing discrimination based on sexual orientation.¹²

In 2022, the ECtHR rendered a landmark judgement against Armenia, marking its inaugural decision on LGBTIQ+ rights in Armenia. The case constituted the first instance of a hate crime and established the failure to protect individuals from discriminatory violence, coupled with the obligation to investigate such acts of violence. The focal point of this legal precedent was a well-known member of LGBTIQ+ community. The applicant, who co-owned and managed a bar in Yerevan, experienced a targeted arson attack in May 2012. The significance of this case resonates in multiple dimensions: it contributed to the Court's systematic categorization of “Sexual Orientation Issues,” introducing a specific classification for “*aggressive homophobic campaigns*” within the Court's factsheet, as exemplified by the case at hand. Moreover, this legal milestone set a precedent by establishing a breach of Articles

association with a national minority, property, birth, or other status.” Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe Treaty Series 005, Council of Europe, 1950, Article 14.

⁷ “Everyone shall be equal before the law.” Article 28, Constitution of the Republic of Armenia. Adopted in 2015.

⁸ “Discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.” Article 29. Constitution of the Republic of Armenia. Adopted in 2015.

⁹ *Identoba and Others v. Georgia*, 2015, § 96; *Salgueiro da Silva Mouta v. Portugal*, 1999, § 28; *Fretté v. France*, 2002, § 32.

¹⁰ *Vejdeland and Others v. Sweden*, 2012, § 55.

¹¹ Article 81. Constitution of the Republic of Armenia. Adopted in 2015.

¹² US Department of State, 2022 Country Reports on Human Rights Practices: Armenia, P. 53. Available at ><https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/armenia/>< (Last visited Dec. 18, 2023).

3 and 14 due to the failure to protect an individual from private-party homophobic attacks and hate speech, even in the absence of physical violence against individuals.

ECtHR unanimously adopted the applicant's argument, recognizing the sustained and aggressive nature of the homophobic campaign. It is noteworthy that the arsonists and other perpetrators in this case were identified as neo-Nazis, underscoring the extremist nature of the attacks. Importantly, the national courts did not have an opportunity to examine the case of discrimination on the grounds of sexual orientation as an aggravating circumstance of the crime. Despite numerous international recommendations, Armenia failed to amend its laws to address this deficiency¹³.

The Criminal Code of Armenia did not recognize discrimination based on SOGI as a motive for the crime. The justice system treated these crimes as ordinary, overlooking the hate-driven motivation as having no legal significance. Since the mid-2000s, Armenia has been the recipient of numerous recommendations, notably from the European Commission against Racism and Intolerance (ECRI), advocating for the explicit inclusion of SOGI as prohibited grounds in the Criminal Code.¹⁴ Additionally, there has been a persistent call for the incorporation of a provision explicitly stating that a homo/transphobic motivation should be deemed an aggravating circumstance for any ordinary offence.¹⁵ In 2022, with the introduction of the New Penal Code, there emerged a glimmer of hope that Armenian authorities would finally implement these substantial recommendations. However, disappointingly, the new Criminal Code failed to address these crucial issues.¹⁶

This setback is further mirrored in the Project Law of the Republic of Armenia on "Ensuring equality before the law," which, regrettably, lacks any provisions pertaining to the rights and protection of the LGBTIQ+ community. Consequently, the absence of legal safeguards perpetuates an environment of prevalent intolerance towards LGBTIQ+ individuals in Armenia, as indicated by the most recent data.¹⁷

¹³ *Oganezova v. Armenia*, 2022, §104.

¹⁴ See ECRI Report on Armenia, 2016, available at >chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://rm.coe.int/fourth-report-on-armenia/16808b5539>< (Last visited Dec. 19, 2023); ECRI Conclusions on the Implementation of the Recommendations in Respect of Armenia Subject to Interim Follow Up, 2019, P. 5, available at >chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://rm.coe.int/conclusions-5th-cycle-on-armenia/1680972faa>< (Last visited Dec. 19, 2023).

¹⁵ Round Table "Combating Racial discrimination and intolerance in Armenia" organised by the ECRI, 2018, P. 2, available at >chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://rm.coe.int/conclusions-jeremy-mcbride/16808e4a78>< (Last visited Dec. 19, 2023).

¹⁶ ECRI Report on Armenia, 2023, §10, available at >chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://rm.coe.int/sixth-report-on-armenia/1680ab9e33>< (Last visited Dec. 19, 2023).

¹⁷ An illustrative example involves an individual identifying as Vahe Yeghiazaryan, who brazenly live-streamed acts of abuse against a transgender person. This distressing incident included the use of derogatory language, profanity, and explicit calls for violence. Alarmingly, not only did this individual evade legal consequences for their actions, but they also found encouragement and support from segments of society/Pink Armenia, Annual Report 2022, P. 42. Available at ><https://www.pinkarmenia.org/en/news/annualreport2023/>< (Last visited Dec. 18, 2023); ECOM, Report on Violations of LGBT People's Rights in Armenia in 2022, 2022. Available at ><https://ecom.ngo/news-ecom/report-on-violations-of-lgbt-armenia-22>< (Last visited Dec. 20, 2023).

In conclusion, the absence of comprehensive anti-discrimination laws in Armenia leaves the LGBTQI+ community vulnerable, and the lack of specific hate crime legislation and other judicial mechanisms perpetuates a chain of impunity.