The Dark Side of Humor

The ECtHR and the Normalization of Hate Speech

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On March 3, 2025, the European Court of Human Rights (ECtHR) released its final judgment in *Yevstifeyev and others v. Russia*. The decision concerned two applications against the Russian government, claiming that the domestic authorities had failed to comply with their obligation to "respond adequately" to homophobic messages and thus violated the applicants' right to private life under Articles 8 and 14 of the Convention. One of the complaints involved a homophobic video of a satirical nature. It was submitted by an openly gay Russian activist who claimed that the video "provoked in him feelings of humiliation, anxiety, and fear." The application was rejected on inadmissibility grounds, with the Court explaining that the video "must be considered as a political satire on a matter of public interest," and the applicant "cannot therefore be considered a victim of the alleged violations."

This ruling offers an excellent illustration of the Court's flawed understanding of the role of humor and satire in the protection of free speech. The ECtHR's doctrine on this matter suggests that political satire warrants stronger protection against government censorship than other forms of political expression. This perspective is commendable, as satire serves as a particularly effective means of voicing criticism and perspectives in the face of power. Curtailing free speech to exclude offensive humor risks undermining the democratic rule of law. Yet, when protections for free expression concern offensive humor, it is crucial to recognize that humor possesses a legitimizing quality. The humorous form makes its message more appealing, interesting, and "digestible", regardless of the content. When racist, antisemitic, homophobic, or otherwise hateful content is presented in a satirical form, it is more likely to be accepted—even by those who would otherwise reject the same content if expressed as a serious statement. Moreover, when such satirical hate speech is amplified through online dissemination and state endorsement, it intensifies the threat to the group it targets and enhances its legitimacy in public opinion. The ECtHR systematically overlooks this "dark side" of humor, thereby increasing the vulnerability of marginalized minorities within the Council of Europe and setting a dangerous precedent for other international and domestic courts.

"The Threshold of Severity" Test

One of the applications in the *Yevstifeyev* case involved an Instagram video of a "mock 'gay hunt'" released in early June 2020 by Denis Kosyakov, a prominent Russian comic actor. Context is crucial to understanding the video's impact and message: it was a response to a homophobic video published a few days earlier by FAN, a pro-government media website, ahead of a national vote on a constitutional amendment that proposed to define marriage exclusively as a partnership between a man and a woman. The original video sought to ridicule same-sex adoptive families as a means of supporting the amendment. According to the Court's account, Kosyakov's video served as a parody of FAN's homophobic campaign. It depicted a father and son hunting gay men in a forest, firing their rifles at a fleeing man in colorful clothing, and ultimately posing "smiling and with their thumbs up near the man, who was lying dead on the ground," with the "father standing with his foot on the man's back and the son holding up his head by the hair."

The complaint filed with the ECtHR concerned the parody video created by Kosyakov, rather than the original FAN content. It was submitted by a member of the LGBTQ+ community in Russia, who contended that

the video constituted a call for violence against the community. The complaint further argued that the Russian government's failure to respond adequately to this incitement infringed upon his right to private life, amounting to a violation of Articles 8 and 14 of the Convention.

The Court rejected these claims, deeming the application inadmissible on the grounds that the video had a negligible effect on the applicant's private life. This conclusion was reached by applying the "threshold of severity" test, which involves an objective assessment of the seriousness of an attack on the applicant's private life that may trigger protection under Article 8 of the ECHR. This test has previously been employed by the Court in similar circumstances.

The *Yevstifeyev* ruling suggested that one indicator of seriousness could be the applicant's proximity to the offensive message. For instance, public insults and threats directed at an LGBTQ+ rally are considered direct attacks on the participants, thereby falling under the scope of Article 8. This was the situation in the second incident addressed in *Yevstifeyev*, where the Court found that Russia violated the Convention by failing to protect the applicants. However, this rationale did not extend to the "mock 'gay hunt'", as the applicant was not "personally targeted by the impugned video", despite being openly gay and an active advocate for the LGBTQ+ community. The Court acknowledged that low levels of proximity could be offset by high levels of grievance. Even if an applicant has not been directly targeted by an offensive statement, they may qualify for protection under Article 8 if the "negative stereotyping of a group [...] reaches a certain level [...] impacting the group's sense of identity and the self-worth and self-confidence of [all its] members". Nevertheless, the Court was "not convinced that the video at issue contained negative stereotyping of LGBTI people". Walking "the thin line between satire and hate", it concluded that the case did not meet the threshold of severity, particularly due to the video's satirical nature.

Humor Normalizes Hate Speech

This conclusion aligns with the Court's general approach to humorous hate speech. In a recent article, I demonstrated that the ECtHR provides greater protection to hateful speech expressed humorously, particularly in cases of political satire. When the content of the speech falls within the scope of the right to free expression, the Court is likely to grant it "humor immunity", a heightened level of protection due to its potential to persuade by undermining and ridiculing the subject of the satire. This characteristic is valued by the Court as a safeguard of democratic rule of law, playing an "important role in the open discussion of matters of public concern, an indispensable feature of a democratic society".

However, the power of humor has a darker side. Its effective transmission of messages, especially when disseminated online, is often exploited by the extreme right to amplify and normalize hateful narratives against marginalized communities. As one influential study suggests, the dissemination and legitimization of extreme right positions in the form of satire,
"can contribute to a climate of bigotry, hatred, and fear within Western societies, which would then lead to the acceptance of more radical measures taken against perceived threats [...], undermine a sense of security and trust in established institutions of the media, the state, and the democratic process. It may cultivate and nourish the grounds on which radical ideas bloom, furthering radicalization under the benign guise of laughter and humorous criticism".

This aspect of humorous hate speech is systematically overlooked by the ECtHR and other courts. It is never taken into account in their assessments of the right's scope and proportionality analysis. The amplifying and normalizing effects of satirical humor must be integrated into hate speech jurisprudence. As I have argued, the humorous formulation of an expression "should be valued not only as a potential immunity but also as an undermining factor that may lower the level of the expression's protection when it amplifies its harmful message. A satirical expression aimed at intimidating individuals from expressing their views or

targeting a marginalized minority group should receive less protection than the same expression made in a non-satirical form, due to its 'louder' nature and consequent harm".

The Court's reasoning in *Yevstifeyev* came close to acknowledging this aspect of humor. The primary factors for determining the scope of Article 8's protection mentioned in the decision were: (1) the targeted group's vulnerability; (2) the content of negative statements; and (3) the statements' "form and context". Given the oppression and criminalization of LGBTQ+ in Russia, the violent portrayal in the video, even if intended as a satirical piece, should have prompted the Court to assess its contribution to this climate. Instead, the Court downplayed its effect and limited the relevant facts to the subjective intentions of the video's authors. Having stated that "gender and sexual minorities require special protection" and acknowledging that the video "attracted considerable public attention" and "reached a wide public audience", the Court asserted that the video constituted a form of "political satire" that "could not reasonably have appeared to have as its purpose the propagation of homophobic views and ideas". The Court interpreted it as an attempt "to mock the homophobic message of FAN's video" and thought that "in the context of the lead-up to a popular vote on constitutional amendments, the contested video could be seen as a contribution to a political debate about the proposed constitutional amendments". This immunity status led the Court to conclude that the "video must be considered as a political satire on a matter of public interest that did not reach the 'threshold of severity'".

This line of reasoning is, at the very least, questionable. First, according to the ECtHR's own jurisprudence, the subjective intention of the author of the offensive expression is linked to the "imminence" factor. Offensive speech may be restricted if it poses an imminent risk of "the commission of acts of violence, intimidation, hostility or discrimination". Second, the assertion that the video "could be seen as a contribution to a political debate" does not rule out the possibility that it may also serve other, deplorable goals, such as the ostracization of already threatened minorities. And finally, while subjective intention may help determine whether the video qualifies as hate speech, in this case the Court improperly uses it to conclude that the video is objectively non-harmful, a conclusion that cannot be derived from intention alone.

Considering the Risks

In 2020, the year Kosyakov's video was released, one in five Russians supported the "elimination" of LGBTQ+ people from society. The Russian government's efforts to entrench these views began in 2013 with a law banning "gay propaganda" to minors. In the nearly five years between the video's release in 2020 and the final ruling in *Yevstifeyev*, these measures multiplied. The share of Russians opposed to LGBTQ+ people enjoying the same rights as others increased by 19% between 2019 and 2024. Although Kosyakov's video may not have imposed immediate harm on the applicant in *Yevstifeyev* and was not the most decisive factor in the propagation of homophobia in Russia, the ECtHR's failure to consider the potential harm of this video, as well as its broader disregard for the "dark side" of humor in this and previous cases, is more consequential. Indeed, the "elusive and subjective nature of humor makes it particularly difficult to [...] draw a clear line between hate speech and protected expression". But overlooking the normalizing effect of humor on hate speech and the harm it can inflict on marginalized groups poses a significant risk to liberal democracies, one that is no less dangerous than overzealous restrictions on free expression.

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