

La CEDU sulla persecuzione dei crimini d'odio (CEDU, sez. V, sent. 18 luglio 2024, ric. n. 40861/22)

La questione sottoposta alla valutazione della Corte, concernente la violazione degli artt. 3, 8 e 14 della Convenzione, trae origine dall'aggressione subita da una coppia omosessuale la quale lamenta l'inefficacia dell'indagine condotta in proposito e la mancata persecuzione dell'attacco come reato compiuto per motivi d'odio.

In merito ai fatti, la Corte rileva che un trattamento discriminatorio può, in linea di principio, equivalere a un trattamento degradante ai sensi dell'articolo 3 quando raggiunga un livello di gravità tale da costituire un affronto alla dignità umana. Osservazioni discriminatorie e insulti razzisti devono in ogni caso essere considerati un fattore aggravante quando si esamina un caso di maltrattamento alla luce del predetto parametro.

In proposito, la Corte ritiene che gli attacchi contro le persone LGBTI, innescati da espressioni di affetto, costituiscano un affronto alla dignità umana poiché prendono di mira le espressioni universali di amore e compagnia. Il concetto di dignità va oltre il mero orgoglio personale o l'autostima, comprendendo il diritto di esprimere la propria identità e il proprio affetto senza timore di ritorsioni o violenza. Gli attacchi come quello del presente caso non solo compromettono la sicurezza fisica delle vittime, ma anche il loro benessere emotivo e psicologico, trasformando un momento di intimità in uno di paura e trauma. Inoltre, umiliano e degradano le vittime, trasmettendo un messaggio di inferiorità delle loro identità ed espressioni e, pertanto, rientrano nell'ambito dell'articolo 3 della Convenzione.

Oltre a costituire un affronto alla dignità umana, gli attacchi contro le persone LGBTI motivati da manifestazioni di affetto influenzano profondamente la loro vita privata. La paura e l'insicurezza che tali atti instillano inibiscono la capacità delle vittime di esprimere apertamente emozioni umane fondamentali e le costringono all'invisibilità e all'emarginazione. La minaccia della violenza compromette la loro capacità di vivere autenticamente e le costringe a nascondere aspetti essenziali della loro vita privata per evitare danni. Di conseguenza, tali attacchi possono limitare la loro libertà di godere del diritto al rispetto della vita privata ai sensi dell'articolo 8 della Convenzione, con la stessa libertà delle coppie eterosessuali, imponendo così uno standard differenziale alla loro espressione di identità e relazioni.

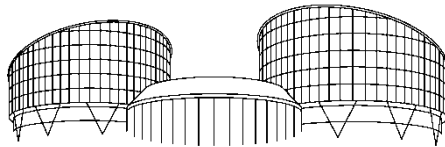
In tali circostanze, la Corte ribadisce che sugli Stati grava l'obbligo di fornire protezione contro gli attacchi all'integrità di un individuo e il dovere di condurre un'indagine idonea ad accertare i fatti, identificare e, se del caso, punire i responsabili. Laddove vi sia il sospetto che atteggiamenti discriminatori abbiano indotto un atto violento, è particolarmente importante che l'indagine ufficiale venga condotta con vigore e imparzialità, tenendo conto della necessità di riaffermare costantemente la condanna della società per tali atti e di mantenere la fiducia dei gruppi minoritari nella capacità

delle autorità di proteggerli dalla violenza motivata dalla discriminazione. Il rispetto degli obblighi positivi dello Stato richiede che l'ordinamento giuridico nazionale dimostri la propria capacità di far rispettare il diritto penale nei confronti degli autori di tali atti violenti. Senza un approccio rigoroso da parte delle autorità preposte all'applicazione della legge, i crimini motivati dall'odio verrebbero inevitabilmente trattati su un piano di parità con i casi ordinari privi di tali connotazioni, e l'indifferenza che ne risulterebbe equivarrebbe all'acquiescenza ufficiale, o addirittura alla connivenza, con i crimini d'odio.

Obblighi cui lo Stato convenuto è venuto meno nel caso di specie, omettendo di garantire che l'attacco omofobo subito dal ricorrente fosse adeguatamente perseguito; al contrario, le autorità nazionali hanno banalizzato l'incidente, trattando un attacco motivato dall'odio come equivalente a piccoli disturbi dell'ordine pubblico.

La Corte sottolinea l'importanza cruciale per gli Stati contraenti di affrontare l'impunità nei casi di crimini d'odio, in quanto rappresentano una minaccia significativa per i diritti fondamentali protetti dalla Convenzione. Il mancato intervento su tali incidenti può normalizzare l'ostilità verso le persone LGBTI, perpetuare una cultura di intolleranza e discriminazione e incoraggiare ulteriori atti di natura simile.

Per questi motivi, la Corte ha accertato violazione degli articoli 3 e 8 della Convenzione, in combinato disposto con l'articolo 14.



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

FIFTH SECTION

CASE OF XXX v. LATVIA

(Application no. 40861/22)

JUDGMENT
STRASBOURG
18 July 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Latvia,

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

Mattias Guyomar, *President*,

Lado Chanturia,

Carlo Ranzoni,

Mārtiņš Mits,

Stéphanie Mourou-Vikström,
Kateřina Šimáčková,
Stéphane Pisani, *judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 40861/22) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Latvian national, Mr “omissis” (“the applicant”), on 17 August 2022;
the decision to give notice of the application to the Latvian Government (“the Government”);
the parties’ observations;

Having deliberated in private on 25 June 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns an allegedly ineffective investigation into a hate-motivated attack on the applicant, raising issues in particular under Articles 3, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in “omissis” and lives in “omissis”. He was represented by Ms J. Tumule, a lawyer with the Latvian Centre for Human Rights in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

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

I. ATTACK ON THE APPLICANT

5. On 8 November 2020 the applicant and his partner, both men, were walking their dog to the local market in Riga. As they approached the flower shop, they crossed paths with two men who were visibly intoxicated. One man was later identified by the police as JP; the identity of the second man was not established (see paragraph 9 below).

6. Upon nearing the applicant and his partner, JP shouted at them, in Russian, “долбаная задница” – an extremely vulgar expression, roughly translated into English as “an ass that has been pounded” – and the other individual kicked the applicant in the buttocks. According to the applicant, the kick was not strong but was perceptible. After the applicant warned that he would call the police, JP turned around and mockingly stated, in Russian, “я хочу заняться с тобой сексом” (“I want to have sex with you”). Following that, the men became aggressive, and JP attempted to strike the applicant with his fist. The applicant avoided violence by fleeing into the flower shop and securing the door. JP tried to follow, demanding the applicant come out and using sexually explicit language. Meanwhile, the applicant’s partner called the police. As the applicant held the door, JP was unable to enter the shop, eventually ceased his attempts and left with the second man.

7. The applicant, exiting the shop, shouted to JP that he would call the police, which further enraged JP, prompting him to rush towards the applicant. The applicant once more sought refuge inside the flower shop to evade JP. The second man also approached, attempting to open the door and verbally

abusing the applicant. He then exposed himself, shouting at the applicant. Eventually, both men walked away.

8. The florist's salesperson witnessed these events and later confirmed to the police that the applicant was forced to hide inside the shop and hold the door closed with his hands, and that one of the men exposed himself.

9. The police arrived after being called by the applicant's partner. They obtained descriptions of the two men and later located them but did not detain or properly identify them, merely recording the names they provided. The police were eventually unable to identify the second man, as the name given did not match any records in the Population Register.

II. INVESTIGATION INTO THE ATTACK

10. The State Police initiated criminal proceedings on the charge of "hooliganism" under Section 231(1) of the Criminal Law. Both the applicant and his partner identified JP from a set of photographs.

11. On 21 December 2020 JP was interviewed as a suspect. He admitted to observing the two men – the applicant and his partner – walking closely and holding each other by the waist, which led him to assume their sexual orientation and feel offended by its overt display. He deemed it unacceptable and therefore voiced his disapproval by saying, "нидары, вы что совсем ох...ли?!" ("faggots, have you lost your f...ing minds [to act like this]?"). According to JP, after they had begun to walk away, the applicant retorted by calling JP a derogatory term, prompting JP to return and attempt to chase the applicant and kick his behind. JP recalled that he failed in this attempt because the applicant had held the doors of the flower shop closed and prevented him from entering. Unable to enter, JP again used slurs and stated that if such an incident were to occur again, he would punish the applicant. The Russian term he used can mean both to commit a physical assault and to engage in sexual intercourse; JP clarified that he used it in the former sense. JP denied witnessing any actions by the other man, including the alleged exposure.

12. On 18 May 2021 the police terminated the criminal proceedings. The investigator found that the elements of the criminal offence were not made out, particularly because JP's actions did not disturb the peace of others or any business operations. The police considered the matter an administrative offence and forwarded the case for administrative-offence proceedings (*administratīvā pārkaņpuma process*).

13. On 19 June 2021 the State Police found JP guilty of "petty hooliganism" under Section 11(1) of the Law on Administrative Penalties (see paragraph 23 below) and fined him 70 euros (EUR). JP did not appeal against the decision.

14. In the meantime, the applicant appealed the police decision to terminate the criminal proceedings to the supervising prosecutor, contending that JP's actions should be characterised as a hate crime under Section 150 of the Criminal Law, particularly since JP had admitted that his actions were motivated by his dislike for homosexuals. On 21 June 2021 the supervising prosecutor upheld the police decision regarding the offence of hooliganism. Regarding the hate crime, the prosecutor stated that the offence under Section 150 would involve verbal or written calls for hatred committed with direct intent to incite hatred. Since JP's actions were directed only against the applicant rather than against sexual minorities in general and did not incite others to hatred, the requisite elements of a hate crime were absent.

15. The applicant appealed the supervising prosecutor's decision to a higher-ranking prosecutor, referring in particular to the Court's findings in the *Beizaras and Levickas v. Lithuania* judgment (no. 41288/15, 14 January 2020) to the effect that the State had an obligation to establish an effective criminal-law system that would hold accountable those responsible for hate crimes. He also cited domestic case law, including a 2007 case involving a racially motivated assault (see paragraph 27 below). On 28 July 2021 the higher-ranking prosecutor endorsed the reasons set out by the supervising prosecutor.

16. The applicant then appealed the decision to the next-higher-ranking prosecutor at the Prosecutor General's Office. On 1 September 2021 the next-higher-ranking prosecutor set aside the decision to terminate the criminal proceedings and referred the matter back to the State Police for an investigation into an offence under Section 150(3) of the Criminal Law.

17. On 22 September 2021 the police restarted the investigation and conducted a new interview with JP. He reiterated the facts as previously stated. When asked by the investigator whether he harboured any hatred towards homosexual men, JP explained that his attitude towards homosexual men was neutral, but that he had been angered by the public display of affection between two men.

18. On 26 January 2022 the police investigator decided to terminate criminal proceedings, finding that JP's actions did not constitute an offence under Section 150 of the Criminal Law. The investigator found that it could not be established that JP had a direct intent to incite hatred or enmity, and his actions had not reached a sufficient level of publicity to influence public attitudes towards a social group, such as homosexuals.

19. The applicant unsuccessfully appealed the investigator's decision, first to the supervising prosecutor and then to the higher-ranking prosecutor. He highlighted that JP had admitted to using slurs motivated by the sexual orientation of the applicant and his partner. Additionally, he referred to the Court's judgment in the case of *Sabalić v. Croatia* (no. 50231/13, 14 January 2021) which underscored the police's obligation to investigate homophobic motives behind an assault.

20. On 29 March 2022 the higher-ranking prosecutor upheld the decision to terminate the investigation. The prosecutor recognised that JP's actions were motivated by prejudice against homosexual persons but determined that they were not intended to incite hatred. This determination was grounded on several factors: (1) JP's encounter with the applicant was fortuitous, (2) JP targeted only the applicant, motivated by the applicant's allegedly provocative behaviour, without urging others to change their views towards sexual minorities, (3) JP did not act against the applicant's partner, who is also homosexual, despite having the opportunity. Supporting this conclusion, the flower shop salesperson did not view the altercation between JP and the applicant as an attack based on sexual orientation nor did she report hearing any remarks that could be construed as inciting her or anyone else to hatred against homosexual persons.

21. The applicant also appealed the decision to the Prosecutor General's Office. On 5 May 2022 the prosecutor from that office upheld the discontinuation of the criminal proceedings, noting that the scope of procedural actions during the pre-trial investigation was adequate to make a well-founded decision. The facts collected did not establish that JP's actions amounted to a criminal offence. The decision was final and not subject to further appeal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

22. The Latvian Constitution (*Satversme*) establishes that the State shall protect human honour and dignity, and prohibits inhuman and degrading treatment and punishment (Article 95).

23. As worded at the material time, Section 11(1) of the Law on Administrative Penalties for Offences Relating to Public Administration, Public Order, and the Usage of State Language (*Administratīvo sodu likums par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā*) stipulates that “petty hooliganism”, defined as the disturbance of public order through conduct that disrupts the peace of individuals or the operations of businesses or institutions or that endangers the safety of others, is subject to a fine ranging from EUR 70 to 500.

24. Section 78 of the Criminal Law (*Krimināllikums*) defines the offence of inciting national, ethnic, racial, or religious hatred or enmity. The basic offence under subsection 1 involves any action aimed at triggering hatred or enmity based on nationality, ethnicity, race, or religion. Subsection 3 specifies more severe penalties for aggravated forms of the offence, involving actions that include violence or threats of violence, or offences committed in an organised group.

25. Section 150 of the Criminal Law penalises any activity aimed at inciting hate or enmity due to a person’s gender, age, disability, or any other characteristic, which results in substantial damage. Structurally similar to Section 78, subsection 1 of Section 150 addresses the basic offence, while subsection 3 pertains to the aggravated forms involving violence or threats of violence and offences committed in an organised group.

26. Section 231(1) of the Criminal Law sanctions “hooliganism” which is defined as a gross disturbance of the public order manifested in obvious disrespect for the public or in insolence, ignoring generally accepted standards of behaviour and disturbing the peace of persons or the operation of institutions, businesses, or organisations.

27. On 30 January 2007 the Riga Regional Court found two individuals guilty of a racially motivated attack under Section 78 of the Criminal Law (case no. K04-0113-07/18). They insulted and physically assaulted a Rwandan national in Riga due to his race and skin colour, urging him to leave Latvia. The defendants partially admitted guilt, citing their intoxication as an excuse and the victim’s laughter as a provocation. The court concluded that their actions were intentionally harmful and racially motivated, rejecting any defence related to hooliganism or lack of intent. The court emphasised their intent to humiliate the victim and incite racial hatred, as evidenced by their skinhead affiliation and the use of a swastika ring by one of the accused during the attack.

28. On 10 January 2018 the Talsi District Court convicted an individual of inciting hatred under Section 150 of the Criminal Law due to his homophobic comments on Facebook (case no. 11380026317). The perpetrator expressed vehemently discriminatory views against homosexuals, suggesting violence and disparaging their rights. His post included threats of shooting, and derogatory language, and the court highlighted that such expressions clearly overstep the boundaries of tolerable public discourse, thereby constituting hate speech under the law. The decision stressed that the perpetrator’s intent was not only to share his views but to actively promote hatred and encourage harmful actions against a targeted group.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLES 13 AND 14

29. The applicant complained that the authorities had failed to conduct an effective investigation into, and to prosecute, the homophobic attack committed against him. He relied on Articles 3, 13 and 14 of the Convention, and the Court put an additional question to the parties under Article 8 of the Convention. The relevant parts of these provisions read as follows:

Article 3

“No one shall be subjected to ... inhuman or degrading treatment ...”

Article 8

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on [account of] ... other status.”

A. Admissibility

30. The Government put forward a two-pronged objection as to the non-exhaustion of domestic remedies. Firstly, they argued that the applicant ought to have lodged a civil claim for compensation against JP for moral distress. Such a claim would have provided an adequate and effective remedy in the circumstances of the present case, where the applicant suffered verbal abuse rather than actual physical injuries and did not require medical treatment (they distinguished it from the cases of *M.C. and A.C. v. Romania*, no. 12060/12, 12 April 2016, and *Sabalić v. Croatia*, no. 50231/13, 14 January 2021, in which applicants had sustained injuries). Secondly, the applicant failed to claim at the domestic level that the investigation was rendered ineffective on account of the police’s failure to identify the second perpetrator, and that he received less favourable treatment due to his sexual orientation, as compared to the victim of the racially motivated hate crime in 2007 (see the judicial decision in paragraph 27 above).

31. The applicant responded that, in the present case, neither civil-law remedies nor administrative-offence proceedings constituted an appropriate procedural response to the homophobic attack he had suffered. These avenues failed to satisfy the State’s obligation to investigate under Articles 3 and 8 of the Convention. Furthermore, the Government’s assertion that the attack was not severe enough to warrant criminal prosecution trivialised the gravity of offences of a homophobic nature. This suggested a fundamental misunderstanding of the specific nature of homophobic hate crimes by the domestic authorities.

32. The Court reiterates that where an applicant has an arguable claim of being a victim of verbal assaults and physical threats motivated by discriminatory attitudes, only effective criminal-law mechanisms can ensure adequate protection and serve as a deterrent (see *Association ACCEPT and Others v. Romania*, no. 19237/16, § 102, 1 June 2021, and *Beizaras and Levickas v. Lithuania*, no. 41288/15, §§ 111 and 128, 14 January 2020). A civil claim that leads to compensation, but not to the prosecution of those responsible, would not suffice for the State to fulfil its procedural obligation to investigate

such acts (see *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 120, 14 December 2021, and *Sabalić*, cited above, § 74).

33. The Court further reiterates that the effectiveness of an investigation must be assessed as a whole rather than with reference to any individual elements (see, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). Once it has been established that the domestic authorities' obligation to conduct an effective investigation has been triggered, the applicant is not required to lodge a complaint regarding each specific failure within the investigative process. The authorities' obligation to investigate effectively does not depend on the complainant taking an active role in directing the investigation (see *X v. Greece*, no. 38588/21, § 40, 13 February 2024, with further references).

34. Finally, the Court is satisfied that the applicant has raised the discrimination complaint in the domestic proceedings, including by referring to the Court's case-law in similar cases in his submissions to the prosecutors (see paragraphs 15 and 19 above).

35. Accordingly, the Court rejects the Government's objection concerning the non-exhaustion of domestic remedies. It further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

36. The applicant submitted that he was the victim of a homophobic attack. The account provided by the Government, corroborated by testimonies from the applicant, witnesses, and the identified perpetrator, JP, conclusively established the offence as a homophobic hate crime. JP admitted that his intent was to insult the applicant and deter him from publicly expressing his homosexual orientation. Although the applicant avoided physical harm by seeking refuge in a shop, the incident was both intimidating and humiliating, causing significant psychological distress as it targeted his sexual orientation – a core aspect of his identity – thereby degrading and diminishing his human dignity. Such acts inherently violate fundamental rights and reach a level of severity that implicates Article 3 of the Convention. Additionally, the homophobic verbal attacks and threats of violence are deemed severe enough to breach the right to a private life under Article 8 of the Convention. The administrative-offence proceedings in this case failed to provide just satisfaction for the applicant or adequate punishment for the perpetrator. The applicant was not informed about the progress of these proceedings, nor was he granted the status of a victim. He was also not notified about the decision to fine JP, rendering him unable to raise any objections, for example, regarding the amount of the fine. Furthermore, the decision to impose an administrative fine on JP did not address the perpetrator's motivation.

37. The Government submitted that the alleged violation of the applicant's rights neither reached the minimum level of severity required by Article 3 of the Convention nor the seriousness needed to require a criminal-law remedy under Article 8 of the Convention. The applicant had not detailed any significant suffering resulting from the incident, as he sustained no bodily injuries or psychological trauma, nor did he seek any therapeutic support. Unlike previous cases where public humiliation exacerbated the impact of homophobic abuse, the incident involving JP occurred without witnesses, minimising its impact on the applicant's private life, a point particularly

emphasised by the police during the investigation. Furthermore, the domestic legal framework made possible effective investigations into offences motivated by discrimination, including homophobia. The inability to identify a second perpetrator did not detract from the investigation's effectiveness, as this individual was not accused of verbal or physical abuse towards the applicant. Throughout the investigation, the authorities acknowledged the homophobic nature of JP's actions; however, they terminated the criminal proceedings due to the absence of public exposure and the minor nature of the physical assault which lacked the necessary severity. The Government also noted that this case significantly differed from a 2007 case involving neo-Nazi perpetrators, where the domestic court identified a clear racist intent and the victim sustained injuries to the head which were more serious than the kick the applicant received in this case.

2. *The Court's assessment*

(a) The applicable provision

38. The Court reiterates that the obligation of domestic authorities in investigating hate-motivated attacks may arise under all the Convention provisions relied upon by the applicant (compare *Sabalić*, cited above, § 90). This duty of the authorities to prevent hate-motivated violence by private individuals and to investigate any potential connection between a discriminatory motive and the violent act may fall under the procedural aspect of Article 3 of the Convention (see *Identoba and Others v. Georgia*, no. 73235/12, §§ 63-81, 12 May 2015) or manifest as a positive obligation to ensure the enjoyment of rights enshrined in Article 8 (see *Association ACCEPT and Others*, cited above, § 68). Additionally, it may be part of the authorities' obligations under Article 14 to uphold fundamental rights without discrimination (see *Identoba and Others*, cited above, §§ 64 and 70-71, and *Association ACCEPT and Others*, loc.cit.) or create an obligation under Article 13 to provide an effective domestic remedy for victims of discrimination (see *Beizaras and Levickas*, cited above, §§ 151-156). Owing to the interplay of the various provisions, the applicable provision is to be determined in each case in light of its facts and the nature of the allegations made (see *Identoba and Others*, cited above, § 63).

39. On the facts, the Court notes that the attacker, JP, confessed that his assault was triggered by his negative reaction to observing two men, the applicant and his partner, displaying their affection publicly. JP stated that he was offended by this display, which prompted him to initially confront them verbally and subsequently physically, with the aim of putting an end to the behaviour he considered unacceptable. He employed highly offensive, aggressive language and anti-gay slurs, and threatened the applicant with further violence should the public display of affection continue (see paragraph 11 above).

40. The present case bears considerable similarities to previous cases where applicants were verbally and physically assaulted with the intent to intimidate them from publicly expressing their belonging to, and support of, the LGBTI community (see *M.C. and A.C. v. Romania*, cited above, § 117; *Identoba and Others*, cited above, § 70, and *Romanov and Others v. Russia*, nos. 58358/14 and 5 others, § 68, 12 September 2023).

41. In the present case, the applicant may have escaped the worst of the attack and did not suffer any actual injuries. However, even in the absence of injury or intense suffering, a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision (see *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, § 60, 16 December 2021). Further factors include the purpose for which the ill-treatment was inflicted,

together with the intention or motivation behind it. Thus, discriminatory treatment can in principle amount to degrading treatment within the meaning of Article 3 where it attains a level of severity such as to constitute an affront to human dignity. Discriminatory remarks and racist insults must in any event be considered as an aggravating factor when considering a given instance of ill-treatment in the light of Article 3 (see *Sabalić*, cited above, §§ 65-66, with further references).

42. The Court further observes that the aim of the verbal and physical attack was evidently to frighten the applicant and his partner so that they would desist from public expression of their affection (compare *Women's Initiatives Supporting Group and Others*, cited above, § 60). The Court considers that attacks on LGBTI individuals, triggered by expressions of affection, constitute an affront to human dignity by targeting universal expressions of love and companionship. The concept of dignity goes beyond mere personal pride or self-esteem, encompassing the right to express one's identity and affection without fear of retribution or violence. The attacks such as the one in the present case not only undermine the victims' physical safety but also their emotional and psychological well-being, turning a moment of intimacy into one of fear and trauma. Furthermore, they humiliate and debase the victims, conveying a message of inferiority of their identities and expressions, and therefore fall within the scope of Article 3 of the Convention.

43. Beyond constituting an affront to human dignity, attacks on LGBTI individuals motivated by displays of affection profoundly affect their private lives. The fear and insecurity that such acts instil inhibit the victims' ability to express fundamental human emotions openly and force them towards invisibility and marginalisation. The threat of violence compromises their ability to live authentically and compels them to conceal essential aspects of their private lives to avoid harm. Consequently, such attacks may restrict their freedom to enjoy the right to respect for private life under Article 8 of the Convention, as freely as different-sex couples, thereby imposing a differential standard on their expression of identity and relationships.

44. In these circumstances, the Court considers that the most appropriate way to proceed would be to subject the applicant's complaints to a simultaneous examination under Articles 3 and 8 of the Convention, taken in conjunction with Article 14 (compare *Oganezova v. Armenia*, nos. 71367/12 and 72961/12, § 78, 17 May 2022, and *E.G. v. the Republic of Moldova*, no. 37882/13, § 39, 13 April 2021). This approach makes it unnecessary for the Court to consider the complaint also from the standpoint of Article 13.

(b) Compliance with the State's obligations

45. The Court reiterates that, in the context of attacks by private individuals, the distinction between the requirements of Articles 3 and 8 of the Convention is not clearcut. Both provisions impose an obligation on the State to safeguard the physical and psychological integrity of a person (see *R.B. v. Estonia*, no. 22597/16, § 78, 22 June 2021, with further references) and form, along with Article 2, a continuum, triggering the State's obligation to provide protection once it has been established that attacks on an individual's integrity were sufficiently serious to necessitate a response (see, for example, *A. v. Croatia*, no. 55164/08, § 57, 14 October 2010; *Tërshana v. Albania*, no. 48756/14, § 126, 4 August 2020, and *Vučković v. Croatia*, no. 15798/20, § 54, 12 December 2023). In all cases, a fundamental element of the State's obligations is the duty to conduct an investigation capable of establishing the facts, identifying and, if appropriate, punishing those responsible.

46. Where there is a suspicion that discriminatory attitudes induced a violent act, it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to continuously reaffirm society's condemnation of such acts and to maintain the confidence of minority groups in the ability of the authorities to protect them from violence motivated by discrimination. Compliance with the State's positive obligations requires that the domestic legal system must demonstrate its capacity to enforce the criminal law against the perpetrators of such violent acts. Without a strict approach on the part of the law-enforcement authorities, hate-motivated crimes would unavoidably be treated on an equal footing with ordinary cases lacking such overtones, and the resulting indifference would be tantamount to official acquiescence to, or even connivance with, hate crimes (see *Identoba and Others*, cited above, § 77, and *Sabalić*, cited above, §§ 94-95, with further references).

47. The Court has found above that the attack on the applicant was sufficiently serious to require a response from the domestic authorities. It further notes that the discriminatory motive for the attack was not in doubt. The attacker openly acknowledged during the initial police interview that he used anti-gay slurs in reaction to what he perceived as unacceptable behaviour, specifically, the public display of affection between the applicant and his partner (see paragraphs 11 and 17 above).

48. In these circumstances, the Court finds that from the early stages of the proceedings the domestic authorities were presented with clear *prima facie* evidence of violence motivated by the applicant's sexual orientation. According to the Court's case-law, this required a rigorous application of domestic criminal law mechanisms capable of taking into account the homophobic overtones behind the attack and of prosecuting and if appropriate, adequately punishing those responsible (see *Sabalić*, cited above, § 105, with further references).

49. At the relevant time, the domestic legal system had in place criminal law mechanisms designed to protect individuals from hate-motivated offences. Two provisions of the Criminal Law, Sections 78 and 150, sanctioned offences motivated by hatred based on certain protected characteristics (see paragraphs 23 and 25 above). Although sexual orientation was not explicitly mentioned, it appears that Section 150 received an interpretation in judicial practice that included sexual orientation among the protected characteristics (see paragraph 28 above).

50. Nevertheless, in the present case, the police and prosecutors declined to prosecute the attack on the applicant as a hate-motivated offence. They justified this decision on the grounds that an offence under Section 150 of the Criminal Law should involve verbal or written calls for hatred, committed with the direct intent to incite hatred. Since JP's actions targeted only the applicant rather than sexual minorities as a whole, and occurred without an audience that might be incited to hatred, the essential elements of a hate crime were lacking (see paragraphs 14, 18 and 20 above). The prosecuting authorities disregarded the applicant's arguments that drew on the Court's case-law in similar cases involving hate-motivated attacks on individuals in connection with their sexual orientation or gender identity (see paragraphs 15 and 19 above).

51. It is not within the Court's remit to determine whether that narrow interpretation of the criminal-law provisions accurately reflected the requirements of domestic law and judicial practice or, in other words, whether the failure to bring criminal charges against JP resulted from deficiencies in the legislation or from its incomplete application by the prosecuting authorities. Nonetheless, the

fact remains that, even after the applicant exhausted all domestic appeals to hierarchically superior prosecutors, the perpetrator was neither charged nor prosecuted for the hate-motivated attack.

52. The Government placed emphasis on the fact that JP was found guilty of misconduct in the administrative-offence proceedings and was fined EUR 70. The Court considers, however, that recourse to this type of proceedings is not compatible with the domestic authorities' commitment under the Convention to ensure that homophobic attacks are adequately addressed and effectively deterred. This conclusion is primarily based on two reasons. First, the administrative-offence proceedings did not address the hate element of the attack against the applicant (compare *Sabalić*, cited above, § 108). Second, the leniency of the sanction was in manifest disproportion to the severity of the act, in terms of both its theoretical maximum and the fine that was actually imposed, which was at the lowest limit of the applicable scale (*ibid.*, §§ 98(iii) and 110, and paragraph 23 above). By resorting to administrative-offence proceedings in the present case, the domestic authorities trivialised the incident, treating a hate-motivated attack as equivalent to minor disturbances of public order, such as a drunken brawl. This approach suggests a failure to provide a robust response to an attack motivated by the applicant's sexual orientation, fostering a sense of impunity for hate-motivated offences rather than affirming a clear and uncompromising stance against such acts (*ibid.*, § 111).

53. The Court concludes that the respondent State failed in its obligation under Articles 3 and 8 of the Convention, read in conjunction with Article 14, to provide adequate protection for the applicant's dignity and private life by ensuring the effective prosecution of the attack against him, while taking into account the hate motive behind the attack. The Court emphasises the crucial importance for Contracting States to address impunity in cases of hate crimes, as they pose a significant threat to the fundamental rights protected by the Convention (see *Sabalić*, cited above, §§ 95 and 115, and *Association ACCEPT and Others*, cited above, § 127). Failure to address such incidents can normalise hostility towards LGBTI individuals, perpetuate a culture of intolerance and discrimination and encourage further acts of a similar nature.

54. There has accordingly been a violation of Articles 3 and 8 of the Convention, read in conjunction with Article 14.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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."

56. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He did not claim any costs or expenses.

57. The Government submitted that the amount claimed was excessive and unsubstantiated.

58. The Court awards the applicant the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar

Mattias Guyomar President