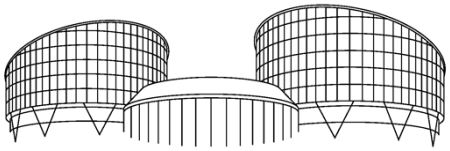

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ASSOCIATION ACCEPT AND OTHERS v. ROMANIA

(Application no. 19237/16)

JUDGMENT

Art 14 (+ Art 8 and Art 11) • Discrimination on the basis of sexual orientation • State's failure to ensure LGBT event proceeded peacefully, without verbal abuse, and carry out effective investigation into homophobic motives of counter-demonstrators

STRASBOURG

1 June 2021

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 Association ACCEPT and Others v. Romania,

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

Yonko Grozev, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Ana Maria Guerra Martins, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 19237/16) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a non-profit association under Romanian law ("the applicant association") and five Romanian nationals ("the individual applicants"), on 2 April 2016;

the decision to give notice of the application to the Romanian Government ("the Government");

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

the comments submitted by Ordo Iuris, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 20 April 2021,

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

INTRODUCTION

1. The application concerns the State's alleged failure to protect the applicants from homophobic verbal abuse and threats and to conduct a subsequent effective investigation into the applicants' complaint. It also concerns the consequences of these incidents on the applicants' right to freedom of peaceful assembly. The applicants relied on Articles 3, 8, 11, 13 and 14 of the Convention as well as on Article 1 of Protocol No. 12 to the Convention.

THE FACTS

2. The applicants' names, years of birth or establishment and place of residence are listed in the Appendix below. They were represented by Ms R.I. Ionescu, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms O.F. Ezer of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE INCIDENT OF 20 FEBRUARY 2013

5. In February 2013, the applicant association, ACCEPT – an organisation promoting the interests of lesbian, gay, bisexual and transgender people (LGBT) in Romania – organised a series of cultural events to celebrate LGBT History Month. The programme included the screening, on 20 February 2013, at 6 p.m., of a movie portraying a same-sex family, in a cinema situated in the National Museum for the Romanian Peasant ("the Museum") in Bucharest. The screening was meant to be followed by a discussion among the screening attendees, inspired by the movie, about the rights of same-sex families.

6. On 20 February 2013 the applicant association became aware that an "online mobilisation" was taking place on social media platforms calling for a counter-demonstration later in the evening, during the screening at the Museum. The applicant association's representative phoned the police and subsequently, upon advice from the police, sent a written request for protection.

7. Ten police officers from Bucharest police station no. 2, together with the head of that station, arrived on the premises to provide protection. They were later joined by a team of seven gendarmes who had been alerted by the director of the Museum via the national emergency number (112) and arrived as reinforcements in order to prevent any escalation. The police officers and gendarmes entered the building in which the cinema was situated, but remained in the corridor outside the screening room.

8. About twenty people attended the public screening, including the individual applicants (the second, third, fourth, fifth and sixth applicants). Entrance was free, but most of the participants had been invited by the applicant association to attend. Fifty more people entered the screen room, some of them carrying flagpoles.

9. According to the applicants, the newcomers disturbed the screening by shouting remarks such as *"*death to homosexuals*"*, *"*faggots*"* or *"*you filth*"*, and insulting and threatening attendees of the screening, including the individual applicants. Some of the intruders displayed fascist and xenophobic signs and brandished the flag of Everything for the Country (*Totul pentru ţară*), a Romanian far-right party. In 2015 that party was dissolved by court order. The intruders seemed to be associated with a far-right movement, the New Right (*Noua Dreaptă*), which is active in political life and is openly opposed, among other things, to same-sex marriage and same-sex adoptions (for further details on these movements, see paragraph 43 below).

10. The organisers alerted the police officers who had been stationed outside the screening room. The latter entered the room, confiscated some flags from the intruders and then left the room, despite the organisers' request to remain.

11. The intruders opposed the screening as they considered that the movie damaged national dignity because of its homosexual theme, a feeling that had been aggravated by the choice of venue – a place of history and tradition. They blocked the projector, so the screening could not continue. The organisers halted the screening and switched the lights on.

12. As people started leaving the room, the police officers stationed in the corridor checked the identity papers of twenty-nine individuals, the majority of them from the group opposing the screening. By 7.50 p.m. everyone had left the venue.

13. The report concerning the incident of 20 February 2013, written by the head of the gendarme team, reads as follows in so far as relevant:

> "At about 6.10 p.m. I was called by the [Bucharest Directorate General of Gendarmerie] to go to [the Museum] – where a movie was being screened by the association ACCEPT – because some members of the 'New Right' had entered the premises with a view to blocking the screening through any means.
>
> We arrived at 6.13 p.m. and I talked with [G.P.], the head of the police station, which had deployed [to the Museum] two uniformed police officers and six-seven [police officers] wearing civilian clothes. When we arrived, the screening had already started. In the room were present approximately sixty-seventy people (forty-fifty people ... from the 'New Right' and twenty people from the ACCEPT association). After a few minutes, those from the 'New Right' started booing, waving the national flag, and singing the national anthem, blocking the screening (6.18 p.m.). We monitored the situation from the corridor of the cinema, lending our support to the police officers, in order to avoid any possible altercations. At about 7.10 p.m. the people in the cinema room started leaving the premises. The police officers decided to verify the identity of the people present and asked us to help. [The identities of] twelve people were verified by the gendarmes and of eleven more by the police.
>
> At about 7.35 p.m., [G.P.] decided to allow to leave those people who refused to present their identity papers."

14. The gendarmes' report also listed the names and personal identification numbers of the twelve individuals identified by the gendarmes. In a separate report dated 24 February 2013 addressed to the General Inspectorate of the Romanian Gendarmerie, the head of the gendarme team present during the incident wrote a detailed depiction of several of the individuals identified and noted that they had belonged to the New Right and had been opposed – because of their religious and "moral" beliefs – to the event organised in the Museum.

15. On 21 February 2013 the police drafted a report on the incident, stating, in so far as relevant, as follows:

> "Entrance to the event was free, and present in the auditorium were both representatives of the ACCEPT association and sympathisers of the 'New Right'

movement, who were not exhibiting any insignia of that organisation. In the auditorium were thus present about sixty-seventy people, of whom forty-fifty belonged to the New Right movement.

After the movie started, some participants started causing a commotion ...

Eventually the screening was stopped, the light was switched on and the majority of those present expressed their indignation that the film was being screened in [the Museum]. They considered that the film was inappropriate because it had homosexual undertones and thus harmed the national honour. They expressed their indignation that the event had been organised in [the Museum] and not in a different place with less history and tradition.

The participants engaged in discussions about sexual orientation, and religious and nationalist issues, and the sympathisers of the 'New Right' sang the national anthem and patriotic and religious songs.

No acts of violence occurred during the combative discussions between the two groups.

In order to prevent negative incidents between the participants, the head of police station no. 2, and ten police officers came to the location, as well as a team of seven gendarmes, who [together] took preventive measures.

The event ended after approximately sixty minutes, and it was not necessary to intervene by force to evict the participants. At the museum exit, the identity papers of twenty-nine individuals were checked, most of them showing dissatisfaction at being checked in an operation that they considered to be illegal."

16. The screening was rescheduled and took place in the same location on 10 March 2013 without incident.

II. CRIMINAL COMPLAINT

17. On 5 March 2013 the applicant association lodged a criminal complaint about the incident with Bucharest police section no. 2, alleging incitement to discrimination, abuse of office by the restriction of rights, and the displaying of fascist, racist or xenophobic symbols in public. The complaint relied on Articles 247 and 317 of the Criminal Code ("the CC"), as in force at that time (see paragraph 36 below), was directed against the police officers and private individuals, and was lodged on behalf of ten individuals (including the individual applicants) who had participated in the screening of 20 February 2013. Those individuals complained that unidentified individuals had interrupted the screening, uttered threats, displayed fascist symbols, and filmed, photographed and videotaped the participants without their permission. They furthermore complained that the authorities had failed to take adequate measures to prevent and stop the behaviour of the violent group and to allow the victims' peaceful assembly to continue. The applicant association argued that those acts had been motivated by hatred towards homosexuals. The applicant association appended information about the alleged perpetrators – details which, it believed, would contribute to the identification of the perpetrators and the

roles that they had played in the incident. The applicant association also attached to the complaint a video of the incident, which had been posted on the Internet.

18. On 17 March 2013 the prosecutor's office attached to the Bucharest District Court determined that it had no jurisdiction to deal with the complaint and forwarded it to the prosecutor's office attached to the Bucharest County Court; on 27 February 2014 the prosecutor's office attached to the Bucharest County Court – noting that the case also concerned military personnel (that is to say the gendarmes) – forwarded the complaint to the military prosecutor's office attached to the Bucharest County Court.

19. On 31 March 2014 the military prosecutor's office opened a criminal investigation in respect of the case.

20. On 13 May 2014 D.P.P., a member of the applicant association, was interviewed by the military prosecutor. She stated that on 20 February 2013, about two hours before the start of the screening, she had received an email alerting her that a certain I.C. had posted on his social media page information to the effect that a group of individuals opposing the event would attend the screening in order to voice their opposition. She had called and then written to the police to request protection during the event. She furthermore declared that after the event, when the ACCEPT members had been leaving the premise, the intruders had continued to shout abuse at them.

21. G.P., the head of police station no. 2 (see paragraph 13 above), was heard on 18 June 2014. He reiterated that the intruders had made allegations that the screening was hurting the national honour and went against history and tradition. He declared that they may well have been supporters of extreme-right organisations but that they had not worn any distinct insignia of such organisations.

22. In a decision of 24 June 2014 the military prosecutor's office found that the gendarmes had been unable to create an action plan for dealing with the incident of 20 February 2013 because the applicant association had failed to seek the necessary pre-authorisation for that event. The prosecutor found that the gendarmes had complied with their obligations; the prosecutor then concluded the investigation in that respect. The prosecutor sent the case file to the prosecutor's office attached to the Bucharest District Court in order that the latter might continue the investigation concerning the police officers involved. No mention was made in that decision of the individuals who had interrupted the event.

23. On 4 September 2014 the prosecutor's office attached to the Bucharest District Court forwarded the case file to the prosecutor's office attached to the Bucharest Court of Appeal. It relied on a ruling of 18 June 2014 whereby the prosecutor-in-chief of the prosecutor's office attached to the Bucharest Court of Appeal had decided that all investigations

concerning heads of police stations from the jurisdiction of that Court of Appeal would be carried out by that prosecutor's office. Consequently, on 15 September 2014 the prosecutor's office attached to the Bucharest Court of Appeal took over the investigation in respect of the case.

24. In a decision of 14 October 2014 the prosecutor's office attached to the Bucharest Court of Appeal ended the investigation on the grounds that the acts complained of did not constitute criminal offences. The description of the incident, which was depicted as "an exchange of views" between the participants, was similar to that contained in the police report (see paragraph 15 above).

25. On 10 November 2014 the applicants lodged a hierarchical complaint against the prosecutor's decision; on 15 December 2014 that complaint was dismissed by the prosecutor-in-chief of the prosecutor's office attached to the Bucharest Court of Appeal. The applicants were notified of that decision on 29 December 2014.

26. Meanwhile, on 22 December 2014 the applicant association lodged a complaint with the preliminary chamber of the Bucharest District Court ("the Bucharest District Court") against the prosecutor's decision of 14 October 2014 (see paragraph 24 above), both on its own behalf and on behalf of the victims (including the individual applicants). Subsequently, the applicants extended the complaint to encompass the decision of 15 December 2014 (see paragraph 25 above). The applicants reiterated their version of the sequence of events, and reaffirmed that the police officers present on the premises had refused to intervene to de-escalate the situation. They argued that the investigators had disregarded evidence that would have allowed them to pick out the perpetrators from the intruders and the threat that they had posed to the applicants. Moreover, they argued that the prosecutor had completely omitted to investigate the part of the complaint concerning the intruders, and they gave the names of ten individuals whom they had been able to identify from the group of intruders. They furthermore contended that the intruders had worn fascist and xenophobic signs (not necessarily only symbols of the New Right organisation). Lastly, the applicants opposed the prosecutor's description of the incident as an "exchange of views".

27. At the same time, the applicant association lodged a complaint, on its own behalf and on behalf of the individuals concerned, with the prosecutor's office attached to the High Court of Cassation and Justice, against the decision of 15 December 2014. It argued that its criminal complaint (see paragraph 17 above) had been insufficiently investigated. In addition, it provided links to several videos published on the Internet about the incident.

28. On 5 February 2015 the prosecutor's office attached to the High Court of Cassation and Justice found that the investigation had not been sufficient in so far as it concerned the allegations that the intruders had worn

fascist symbols. He also deemed that the investigators should have interviewed the individuals who had participated in the incident. In its description of the incident, the prosecutor's office referred to the applicants as being "followers of same-sex relations" (*adepţii relaţiilor între persoane de acelaşi sex*).

29. Meanwhile, in the course of its examination of the complaint lodged by the applicants on 22 December 2014 (see paragraph 26 above), the Bucharest District Court became acquainted with the prosecutor's decision of 5 February 2015 and asked the applicant association if it intended to pursue its complaint concerning the incident of 20 February 2013. The applicant association requested that the examination continue and reiterated that two years had passed since the incident but that nothing had been done in order to uncover the truth – the only step taken having been to transfer the case from one prosecutor's office to another. On 2 March 2015 the Bucharest District Court dismissed the applicants' complaint.

30. On 12 June 2017 the prosecutor's office attached to the Bucharest Court of Appeal opened an investigation into the allegations of public utilisation of fascist, racist and xenophobic symbols. Four individuals were interviewed as witnesses, at least one of them from among the individuals identified in the gendarmerie report of 24 February 2013 (see paragraph 14 above). They all stated that they had witnessed exchanges between the two groups, but had not seen any fascist symbol or gesture. Some of them declared that they had heard about the screening from social media and had opposed it because entrance to the screening had been free to anyone who wished to view it – even though the film had – according to them – been rated as suitable only for adult viewing. One of the witnesses mentioned that he had noticed in the cinema auditorium a flag bearing the words "Everything for the country".

31. On 19 June 2017 the police viewed the footage of the incident and described its contents in a police report. In that report it was mentioned that a flag with the words "Everything for the country" written on it could be seen in the footage and that someone could be heard shouting "Death to the homosexuals".

32. On 11 August 2017 the prosecutor decided to discontinue the investigation on the grounds that the evidence in the file did not prove beyond any reasonable doubt that the alleged criminal acts had in fact been committed. The prosecutor considered that the evidence in the file did not corroborate the statements made by the members of the applicant association.

33. On 21 September 2017 the prosecutor-in-chief from the prosecutor's office attached to the Bucharest Court of Appeal dismissed the complaint lodged by the applicant against the decision of 11 August 2017.

34. The applicants lodged a complaint with the Bucharest Court of Appeal against the prosecutors' decisions. They argued that sufficient

evidence showed that fascist symbols had been displayed – including the slogan "Everything for the country", which belonged to a political party that had been banned because of its fascist agenda. On 22 November 2017 the Bucharest Court of Appeal upheld with final effect the prosecutor's decision of 11 August 2017 (see paragraph 32 above), on the grounds that there was no evidence to sustain beyond any reasonable doubt the assertion that fascist symbols had been displayed in public.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Law no. 60/1991

35. The relevant parts of Law no. 60/1991 on the organisation and conduct of public assemblies ("Law no. 60/1991") read as follows.

Article 2

"Public assemblies must be peaceful and civilised and [the organisers thereof] must ensure the protection of participants and of the environment ... [T]hey must not degenerate into turbulent actions capable of endangering the public peace, safety of people, their corporal integrity, life, or possessions, or public property ..."

Article 3

"The following [types of] public assemblies need not be declared in advance: cultural/artistic, sporting, religious or commemorative gatherings [and] events connected with official visits, as well as those organised in front of, or inside, the headquarters of or buildings belonging to [public or private] legal entities. If the organisers of public assemblies not subject to prior declaration have information that those assemblies may cause disorder or lead to violent acts, they have the obligation to request in good time specialised support from the mayor's office, the relevant gendarmerie and local police."

Article 5

"...

(2) It is forbidden to conduct simultaneously two or more separate public assemblies, in the same spot or on the same routes, irrespective of their characteristics."

Article 9

"Public hearings are forbidden if they pursue one of the following aims:

(a) the dissemination of fascist, communist, racist or chauvinist ideologies or ideologies of terrorist organisations using diversionary tactics, the defamation of the country or the nation, incitement to nationalist or religious hatred, [or] incitement to discrimination, public violence or obscene manifestations, contrary to public mores;

...

(c) the infringement of public peace, safety or morals [or] of the rights and freedoms of others, or the endangerment of the health of others."

Article 13

"Participants in public assemblies have the following obligations:

a) to observe the recommendations made by the organisers of [those] public assemblies, or their representatives or the law-enforcement authorities;

b) to refrain from actions likely to impede the normal conduct of public meetings and from incitement to such – either orally, by means of leaflets or by other audio-visual means;

c) not to introduce or to [allow], during [those] public meetings, objects such as those provided in article 12 § 1 (g) [alcoholic beverages] and (j) [weapons of any kind, explosive or incendiary material, irritants or paralysing substances, devices for delivering electric shocks, or other objects that could be used for violent actions or to disrupt the normal conduct of assemblies];

d) to leave immediately [those] public assemblies or the place in which they take place, when they are called upon to do so by the organisers, their representatives or the police;

e) not to participate in public assemblies in a state of inebriation, [and] not to consume or distribute alcoholic beverages or drugs."

B. The Criminal Code ("the CC")

36. The provisions of the CC, as in force until 1 February 2014, read as follows, in so far as relevant:

Article 247 Abuse of office by restriction of rights

"An act undertaken by a civil servant to restrict the use or exercise of a person's rights or to [place] a person in a situation of inferiority, on the grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion, political affiliation, beliefs, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, is punishable by imprisonment for between six months and five years."

Article 317 Incitement to discrimination

"Incitement to hatred on grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion, political opinion, convictions, wealth, social origin, age, disability, illness, or HIV infection/AIDS is punishable by imprisonment for between six months and three years or by a fine."

Article 323 Association for the purposes of committing crimes

"(1) Acting as part of [a criminal] association (or forming such an association) for the purpose of committing crimes ..., and joining and offering support of any kind to such an association, shall be punishable by three to fifteen years' imprisonment; the

punishment shall not be harsher than that provided by law for the crime for the purposes of which the association was formed.

(2) If an act of association is followed by the commission of a crime, the punishment shall consist of the sentence for that crime combined with the sentence provided in paragraph (1)."

37. In the new CC, in force since 1 February 2014, the relevant provisions read as follows:

Article 77 Aggravating circumstances

"The following situations constitute aggravating circumstances:

...

h) committing the crime [in question] for motives related to race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for any other similar reasons considered by the perpetrator to constitute causes of inferiority in respect of one person in relation to others."

Article 369 Incitement to hatred or discrimination

"Inciting the public, by any means, to hate or discriminate against a category of people is punishable by imprisonment of between six months and three years or by a fine."

C. Emergency Government Ordinance no. 31/2002

38. Emergency Government Ordinance no. 31/2002 bans fascist or xenophobic organisations, symbols and acts, as well as the honouring or venerating of people responsible for committing genocide, crimes against humanity or war crimes.

D. Discrimination under domestic law

39. Discrimination is prohibited by Article 16 of the Constitution, and is defined in Article 2 § 1 of the Anti-discrimination Ordinance (Government Ordinance no. 137/2000 on preventing and punishing all forms of discrimination). The relevant parts of the Anti-discrimination Ordinance are described in *Cînța v. Romania* (no. 3891/19, §§ 23-24, 18 February 2020) and *M.C. and A.C. v. Romania* (no. 12060/12, §§ 42-44, 12 April 2016, containing also one example of domestic practice). In addition, Article 15 reads as follows:

Article 15

"[It] constitutes a misdemeanour under this ordinance (in the event that the deed [in question] does not [already] fall under criminal law), to engage in any public behaviour which is in the nature of nationalist/chauvinist propaganda, [amounts to] incitement to racial or national hatred (or any behaviour that aims to hurt [a person's]

dignity), or incites intimidation, hostility, [or efforts to] degrade, humiliate or offend, [and] which is directed against a person or a group of people or a community, and which is related to [such people's] race, nationality, ethnicity, religion, social status, membership of a disadvantaged section [of society], beliefs, sex or sexual orientation."

E. Civil Code

40. Article 1349 of the Civil Code, in force since 1 October 2011, regulates liability in tort as follows:

Article 1349

"(1) Every person has a duty to respect the rules of conduct that the law or local custom imposes and not to infringe, through [his or her] actions or inactions, the rights or legitimate interests of other people.

(2) Those who knowingly breach this obligation shall be responsible for all damage caused, and must provide reparation in full.

(3) In the specific cases provided by law, a person must provide reparation for damage caused by the deed of another, by objects or animals under their control, or by a building owned by them falling into ruin.

(4) Liability for damage caused by defective products shall be regulated by a specific Act."

F. Domestic practice

41. The Romanian Academic Society (*Societatea Academică din România* – a Bucharest-based think tank and NGO) published a report in 2016 on the national legislation and domestic case-law regarding hate speech and discriminatory speech. The relevant parts concerning bias in the justice system against homosexuals) read as follows:

"V. 2. Hate speech in the case-law of the criminal court

The number of cases examined that concerned incitement to hatred or discrimination under Article 369 of the new Criminal Code or its previous versions – incitement to discrimination under Article 317 of the Criminal Code (as in force after 2006) and chauvinist nationalist propaganda under Article 317 of the Criminal Code (as in force before 2006) – and the number of criminal cases examined as offences prohibited under [Emergency Government Ordinance no. 31/2002] is very low, which gives us a limited perspective on how those legal provisions [have been] applied in practice. The very fact that few such cases are sent to court in comparison with the number of cases recorded under those offences shows that the crime of incitement to hatred or discrimination (and previous versions thereof) and the offences prohibited by [Emergency Government's Ordinance no. 31/2002] are difficult for the judicial organs to apply in practice.

The decision to send [an accused] to stand trial for such crimes rests with the prosecutor's office. The latter sifts through cases that could fall under the provisions regarding such crimes, making a first assessment and applying the [relevant] legal definition. In 2014, out of fifty-nine cases concerning the crime of incitement to

hatred or discrimination, Romanian prosecutor's offices resolved nineteen cases by means of a decision not to prosecute – ending the criminal investigation and closing [the proceedings]; in the first half of 2015, out of forty-seven cases, they resolved twenty by means of a decision not to prosecute – ending the criminal investigation and closing [the proceedings]. Consequently, over a year and a half, more than a half of the cases ... opened (thirty-nine of sixty-eight) [were] not [resolved in a manner that] satisfied, in the interpretation of the prosecutor's offices, the requirements for prosecution under Article 369 of the new Criminal Code. As for offences prohibited by [Emergency Government Ordinance no. 31/2002], in the same period, out of fifty-three cases opened, the prosecutor's offices resolved seventeen, of which only one case was forwarded to a court. This situation raises questions about the applicability in practice of the crime of incitement to hatred or discrimination – either in terms of (i) the clarity of the legal definition of that crime [and] how it is understood by those who lodge petitions/complaints or who open investigations and by prosecutors who [choose] not to prosecute cases and their good faith in interpreting and/or applying the law, or (ii) [the question of] the effectiveness of the law in terms of identifying perpetrators and the acts that constitute such crimes. In the following chapters we analyse the substance of these crimes and the way in which they have been interpreted and applied by the judiciary (with reference to the available case-law), with a view to establishing whether the law is clear or legislative amendments are still needed.

The crime of incitement to hatred or discrimination

We specify that since the entry into force of the new legal definition provided in Article 369 of the new Criminal Code (Incitement to hatred or discrimination), no court decision has been rendered that would enable the applicability of this provision to be examined. Therefore, the present analysis is based on cases in which the applicability of the older [version of the provision] was examined – that is to say Article 317 of the Criminal Code (Incitement to discrimination or nationalist/chauvinist propaganda) – and we distinguish between the two, where necessary, in accordance with the new text (Article 369 of the new Criminal Code)."

42. By its decision no. 9, dated 7 January 2015, the National Council for Combating Discrimination ("the NCCD") declared that statements made by a politician portraying homosexuals as mentally ill or as paedophiles had not exceeded the limits of the freedom of expression enshrined in Article 10 of the Convention, but advised politicians to refrain from making such statements in future. The case in question had been brought by the applicant association against a member of the parliament who had made the statements at issue (referred to in the 7 January 2015 decision) in a press interview. The applicant association had complained of discrimination against homosexuals and a violation of their personal dignity.

II. RELEVANT INTERNATIONAL MATERIALS

43. The European Commission against Racism and Intolerance (ECRI) released, in 2019, a country report on Romania, the relevant parts of which read as follows:

"27 ECRI notes that LGBT persons are targets of a high level of prejudice and offensive language, including by mainstream politicians. For instance, in 2017, a

member of the Senate made derogative remarks about homosexual persons. In 2018, a group of protesters interrupted the screening of an award-winning film [by] chanting anti-LGBT slogans, claiming it violated traditional Romanian values. The recent referendum on changing the gender-neutral definition of marriage (see § 91) also triggered an increase in hate speech and fuelled homophobia.

Hate speech by extremist groups

28. ECRI considers that the New Right (*Noua Dreaptă*) movement deserves mention because of its overt use of the Iron Guard legacy through holding public events with anti-Roma and antisemitic themes and engaging in the systematic use of hate discourse against ethnic Hungarians, LGBT persons and immigrants. For example, in October 2017, at the National Opera in Cluj-Napoca, members of this movement disrupted a concert in which an Islamic call to prayer was recited as part of the performance. ECRI is pleased to note that the New Right is not represented in the Romanian Parliament. On a related note, ECRI welcomes the banning of the political party, 'All for the Country (*Totul Pentru Țară*)' in 2015, due to its use of fascist symbols originating from the Legionary movement.

...

63. ECRI recommends that the authorities provide further training for police, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations. Furthermore, it also recommends that, in order to address the problem of underreporting, the authorities enhance cooperation between the police and vulnerable groups, in particular the Roma and the LGBT communities.

...

95. There are several studies showing that intolerance and discrimination towards LGBT persons are widespread in Romanian society. The opinion poll conducted by the NCCD revealed that LGBT persons are the fifth most unwanted group after persons living with HIV, drug addicts, persons with disabilities and Roma. Only 7% of respondents said that they would accept a homosexual as their relative, while 12% of them would want an LGBT person to be their colleague. These extremely low levels of societal acceptance contribute to significant discrimination and stigmatisation against LGBT persons in key areas of life. Between 2013 and 2016, the National Council for Combating Discrimination (NCCD), which deals with discrimination complaints based on sexual orientation, received a total of 33 complaints on this ground. In 2017, 17 out of the 682 petitions lodged before the NCCD were related to sexual orientation. The NCDD imposed a warning and a fine in two cases and issued a recommendation in another two. ECRI considers that these low numbers of cases before the NCCD may signify a problem of underreporting of discrimination among the LGBT community.

...

99. Although the problem of intolerance *vis-à-vis* LGBT persons is evident, there is no policy to combat this phenomenon in Romania. The draft National Strategy 'Equality, Inclusion, Diversity' (2018-2022) contains some measures – albeit not specifically targeted – to promote ... non-discrimination [against] LGBT people. In view of the above-mentioned lack of information about LGBT people and the significant discrimination which they experience, ECRI considers that the authorities should take urgent measures to promote tolerance towards LGBT persons in all areas of everyday life, as well as to combat homophobia and transphobia.

100. ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or as part of national plans currently in the drafting process, which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 8 AND 14 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 12 TO THE CONVENTION

44. Relying on Articles 3 and 8 of the Convention, the applicants complained of the lack of protection from the State authorities against the degrading and humiliating treatment to which they felt they had been subjected by private individuals on 20 February 2013. They furthermore complained, under the same Articles, that the authorities had failed to conduct an effective investigation into the incident of 20 February 2013. In their view, the authorities' lack of reaction in terms of both protection and investigation had been caused by their bias against the applicants because of their sexual orientation, contrary to Article 14 read in conjunction with Articles 3 and 8 of the Convention. They also considered that the same reasons that (in their view) had led to a violation of Article 14 of the Convention, had also triggered a violation of Article 1 of Protocol No. 12 to the Convention.

Those Articles read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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 sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

A. Admissibility

1. Victim status of the applicant association

45. The applicant association, ACCEPT, complained, together with the five individual applicants, that the attack by the counter-demonstrators during the screening of 20 February 2013 and the authorities' failure duly to investigate the incident had amounted to a violation of their rights under Articles 3 and 8 taken alone or in conjunction with Article 14 of the Convention, as well as under Article 1 of Protocol No. 12 to the Convention.

46. The Court reiterates that the word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation. Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see *Identoba and Others v. Georgia*, no. 73235/12, § 43, 12 May 2015, with further references).

47. However, the Court reiterates having found that that physical integrity, which is susceptible to be enjoyed by human beings, cannot be attributed to a legal person such as the applicant association (ibid., § 45). Moreover, associations cannot be allowed to claim, under Article 34 of the Convention, to be a victim of the acts or omissions that affected the rights and freedoms of its individual members who can lodge complaints with the Court in their own name (see, among others, *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, §§ 115-116, ECHR 2013 (extracts), and *Identoba and Others*, cited above § 45).

48. It follows that the applicant association cannot validly claim, on the basis of the facts of the present case, to be either a direct or indirect victim, within the meaning of Article 34 of the Convention, of a breach of Articles 3 and 8 of the Convention, taken either separately or in conjunction with Article 14 – or, for that matter, of a breach of Article 1 of Protocol No. 12 in relation to the same facts. In so far as it has been brought by the applicant association, the application is thus incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and must be rejected, in accordance with Article 35 § 4.

2. Article 3 taken alone or together with Article 14

(a) The parties' submissions

49. The Government argued that the treatment allegedly suffered by the individual applicants had not reached the threshold of Article 3 of the Convention. They pointed out that no physical harm had been caused to the individual applicants and that no forensic certificates attested to any consequences suffered by them in the aftermath of the incident in question. As for the alleged mental effects on the applicants, they argued that there were no special circumstances regarding the sex, age or state of health of the applicants that could have justified deeming that the treatment allegedly suffered fell within the scope of Article 3.

50. The individual applicants contended that the infliction of physical harm was not a pre-condition for treatment being ruled "degrading". Moreover, the aggression that they had suffered on 20 February 2013 had not turned into physical violence only because the first applicant had decided to suspend the event – a decision that had been taken in order to protect the participants. They submitted that, in their view, the degree of severity of that treatment should be assessed in the light of the fact that the acts of aggression had been directed against the LGBT community and had been part of a series of homophobic acts of violence coordinated by the extremist group the "New Right", which was notorious in Romania for its acts of violence – especially against the LGBT community. The intruders had outnumbered the participants in the event by a factor of two to one, and the applicants had felt trapped inside the closed dark space of the cinema, had been afraid for their own safety and lives, and had been verbally abused, while the police had refused to intervene and had seemed to even condone the intruders' actions. The ensuing feelings of fear, anguish and humiliation had continued even after the incident, as the aggressors had videotaped the applicants against their will and had posted those videos online, thus exposing them to additional stigma and hate speech.

51. The third-party intervener, the Ordo Iuris Institute for Legal Culture, a Polish non-governmental organisation, argued that not all acts of ill-treatment violating Article 3 of the Convention required a criminal response; a State could protect individuals by the mere introduction of a mechanism of administrative or civil liability. The closure of the investigation in respect of the instant case for lack of evidence did not necessarily indicate a failure, carelessness or ineffectiveness on the part of the authorities. The burden of proof lays with the applicants, as the case at hand did not disclose any of the exceptional circumstances in which the Court might agree to a reversal of the burden of proof and that burden being placed on the authorities (as often occurred in cases involving ill-treatment in State custody).

(b) The Court's assessment

52. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim. Furthermore, Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering. Hence, the treatment can be categorised as degrading when it arouses in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. The Court further reiterates that discriminatory treatment as such 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. More specifically, treatment that is grounded in a predisposed bias on the part of a heterosexual majority against a homosexual minority may, in principle, fall within the scope of Article 3. Discriminatory remarks and insults must in any event be considered to constitute an aggravating factor when considering a given instance of ill-treatment in the light of Article 3. In assessing evidence in respect of a claim of a violation of Article 3 of the Convention, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Identoba and Others*, cited above, § 65, with further references).

53. The present complaint was based on the psychological effect that the incident of 20 February 2013 allegedly had on the applicants, as members of the LGBT community. However, the applicants have not pointed to any facts that could enable the Court to find that the level of mental suffering that they experienced as a result of the incident – or as a result of the manner in which the investigation into that incident took place – came close to the level that the Court has found in other similar cases to engage the State's responsibility under Article 3 of the Convention with respect to situations of abuse on discriminatory grounds (see, for instance, *M.C. and A.C. v. Romania*, no. 12060/12, §§ 116-119, 12 April 2016, and *Identoba and Others*, cited above, §§ 68-71).

54. For instance, the case is to be distinguished from the cases of *Begheluri v. Georgia* (no. 28490/02, 7 October 2014) and *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia* (no. 71156/01, 3 May 2007), where threats directed against members of the religious community were accompanied by searches, severe beatings, robbery and a series of humiliating and intimidating acts. The continuous organised harassment was designed to force the applicants to act against their will and conscience, and took place within a general national climate of religious intolerance.

55. The applicant's situation also stands in contrast to *Identoba and Others* and to *M.C. and A.C. v. Romania* (both cited above), where verbal abuse and serious threats directed against the applicants – marchers promoting lesbian, gay, bisexual and transgender rights – were followed by actual physical assault on some of the applicants in circumstances in which they were surrounded and outnumbered by their assailants.

56. In the present case, although the counter-demonstrators outnumbered and surrounded the applicants, they were continuously monitored by the police, albeit from the corridor outside the screening room where the incident took place. No acts of physical aggression took place between the applicants and the counter-demonstrators. The verbal abuse, although openly discriminatory and performed within the context of actions that showed evidence of a pattern of violence and intolerance against a sexual minority, were not so severe as to cause the kind of fear, anguish or feelings of inferiority that are necessary for Article 3 to come into play.

57. In view of the foregoing, the Court finds that the minimum level of severity required in order for the issue to fall within the scope of Article 3 of the Convention has not been attained (see, for the same conclusion under relevantly similar circumstances, *Panayotova and Others v. Bulgaria* (dec.), no. 12509/13, § 48, 7 May 2019, and *R.B. v. Hungary*, no. 64602/12, §§ 47-52, 14 April 2016, with further references). Accordingly, the Court rejects the applicant's complaint regarding the authorities' alleged failure to fulfil their positive obligations under Article 3 (read alone or in conjunction with Article 14 of the Convention) as being manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

3. Article 8 taken alone or together with Article 14

(a) The Court's jurisdiction *ratione materiae*

(i) The parties' submissions

(1) The Government

58. At the outset, the Government contended that taking part in a movie screening in a public venue, access to which had been free to all for all, was a matter that did not fall under Article 8 of the Convention. Moreover, they argued that Article 8 could not come into play because no link existed between the State's alleged actions (or inaction) and the harm allegedly caused.

59. The Government refuted the applicants' statement that they had been victims by the mere fact of their having attended the screening and argued that, in fact, the applicants might not even be considered to be direct victims of the alleged violations as it could not be inferred from their own statements whether they were in fact members of the LGBT community or simply sympathisers of the applicant association.

(2) The applicants

60. The individual applicants argued that a person's sexual orientation and sexual life fell within the personal sphere protected by Article 8 of the Convention. The mere fact that the applicants had attended a LGBT film screening organised by the applicant association had been sufficient to expose them to homophobic slurs and threats aimed at creating in them a feeling of inferiority and at dehumanising them. They had felt fear, anguish and humiliation.

61. In addition, the individual applicants reiterated that the intruders had photographed and filmed them without their permission and had then published the material thus obtained on social media. That had exposed them to further stigma and discrimination.

(ii) The Court's assessment

(1) General principles

62. At the outset, the Court reiterates that given the fact that the question of applicability is an issue concerning its jurisdiction *ratione materiae*, the general rule for dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage, unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such particular reason exists in the present case; therefore, the issue of the applicability of Article 8 of the Convention falls to be examined at the admissibility stage.

63. The Court reiterates that the concept of "private life" is a broad term that is not susceptible to exhaustive definition and that also covers the physical and psychological integrity of a person. Such elements as a person's sexual orientation and sexual life fall within the personal sphere protected by Article 8. In certain areas of private life (such as environmental issues and the right to reputation), in order for Article 8 to come into play, the Court considers that 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 v. Lithuania*, no. 41288/15, § 109, 14 January 2020; also see, on the importance of analysis of the seriousness of the impugned interference for Article 8 to come into play in the context of different types of cases, *Denisov*, cited above, § 110-114).

64. The Court has repeatedly held that Article 14 complements the other substantive provisions of the Convention and the Protocols; it has no independent existence, since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no

room for its application unless the facts at issue fall within the ambit of one or more of the latter (*Beizaras and Levickas*, cited above, § 112). The Court also reiterates that the prohibition of discrimination under Article 14 of the Convention duly covers questions related to sexual orientation and gender identity (ibid., § 113 with further references).

65. Furthermore, the Court reiterates that according to the Convention organs' consistent approach, the word "victim" of a breach of rights or freedoms denotes the person directly affected by the act or omission which is in issue (ibid., § 76, with further references; see also the case-law quoted in paragraph 46 above).

(2) Application of those principles to the facts of the present case

66. In the present case, the Court notes that the individual applicants complained of the authorities' failure to protect them and to investigate attacks on their private life prompted by their sexual orientation. They explained in great detail the effects that the alleged inaction on the part of the authorities had had on them. In this respect, the Court reiterates that it has not ruled out the possibility that treatment that does not reach a level of severity sufficient to bring it within the ambit of Article 3 may nonetheless breach the "private life" aspect of Article 8, if the effects on the applicant's physical and moral integrity are sufficiently adverse (see *R.B. v. Hungary*, cited above, § 79 with further references).

67. The Court notes that a criminal complaint was lodged, on behalf of the individual applicants, against both the perpetrators and against the police officers who, in their view, had refused to assist the victims. That complaint was lodged in response to specific facts affecting the rights of the individual applicants under the Convention; moreover, these facts were supported by the evidence with which they furnished the authorities (see paragraph 17 above; see also, *mutatis mutandis*, *Beizaras and Levickas*, cited above, § 80). The individual applicants can therefore claim to be victims of the alleged violations.

68. Furthermore, the Court considers that the treatment complained of affected the individual applicants' psychological well-being and dignity, thus falling within the sphere of their private life (ibid., § 117). The fact that it occurred during a public event does not alter this conclusion. The Court considers that the violent verbal attacks on the applicants, which, moreover, had occurred in the context of evidence of patterns of violence and intolerance against a sexual minority, had attained the level of seriousness required for Article 8 to come into play. Consequently, the Court holds that the facts of the case fall within the scope of Article 8 of the Convention. Therefore, Article 14 of the Convention, taken in conjunction with Article 8, is also applicable to the present case.

(b) Non-exhaustion of domestic remedies

(i) The parties' submissions

(1) The Government

69. The Government argued that the applicants had at their disposal a civil remedy based on Article 1349 of the Civil Code (see paragraph 40 above). In addition, it was also open to them to lodge a complaint with the NCCD under the provisions of the Anti-discrimination Ordinance (see paragraph 39 above). They contended that (i) the Court should apply in the present case the same standards that it applied in in respect of cases involving medical negligence and (ii) all the applicants should be satisfied with a civil-law remedy, and thus not require a criminal response in the case.

70. They furthermore argued that the individual applicants should have been aware of the identity of the people (numbering at least twenty-nine) who had participated in the incident – namely those whose papers had been checked by the police at the end of the screening (see paragraph 15 above). The individual applicants could thus have lodged a civil claim against them.

71. As for the complaint lodged with the NCCD, the Government pointed out that the applicant association had used that remedy in 2015 when it had complained about the use of defamatory remarks made against the LGBT community. The Government noted that in that decision (which had not been submitted by the Government) the NCCD had recommended to the entire political class that it avoid making statements indicating that homosexuality was a disease or constituted behaviour that was similar to paedophilia.

(2) The applicants

72. At the outset, the applicants argued that the Government had failed to bring any evidence that the remedies that they had indicated would have been effective in the present case.

73. The applicants affirmed that the legislative provisions applicable to their situation were those of the CC (regarding hate crimes – see paragraphs 36-37 above) and those of Law no. 60/1991 (see paragraph 35 above). They rejected the categorisation of the facts of the present case as an offence (as opposed to as a crime) proposed by the Government under the Anti-discrimination Ordinance. Consequently, they argued that in lodging their criminal complaint, they had exhausted the effective domestic remedies available to them.

74. They reiterated that they had directed their criminal complaint not only against the police officers, but also against the private individuals who, in their view, appeared to have acted in an organised manner and had committed the offence of opposing with violence a public assembly. They

argued that if it had been properly conducted, the criminal investigation would have constituted an effective remedy.

75. The applicants submitted that they had raised all their complaints with the relevant authorities and had sought a remedy at all possible levels of jurisdiction (that is to say the Bucharest Court of Appeal). They furthermore reiterated that victims of hate crime such as themselves were powerless before the perpetrators of such crimes and before the criminal investigating authorities, as victims often did not have the means to identify the perpetrators of such crimes or to hold them accountable. They were thus dependant on the outcome of the relevant criminal investigation, which meant that they could not lodge compensation claims with the civil courts in the event that the perpetrators had not been identified by the police.

(ii) The Court's assessment

(1) General principles

76. In respect of the requirement to exhaust domestic remedies, the Court refers to the well-established principles of its case-law (as reiterated notably in *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

77. In particular, the Court reiterates that the obligation to exhaust domestic remedies requires applicants to make normal use of remedies that are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Gherghina*, cited above, § 85, with further references).

78. Nevertheless, there is no obligation to have recourse to remedies that are inadequate or ineffective. However, the existence of mere doubts as to the prospects of success of a particular remedy that is not obviously futile does not constitute a valid reason for failing to pursue it (ibid., § 86, with further references).

79. The Court has, however, also frequently stressed the need for the exhaustion rule to be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (ibid., § 87, with further references).

80. The Court also reiterates that as regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, and was available in theory and in practice at the relevant time. The availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or

complemented by practice or case-law (ibid., § 88; see also *Molla Sali v. Greece* [GC], no. 20452/14, § 89, 19 December 2018).

(2) Application of those principles to the facts of the present case

81. The Court notes that the applicants lodged a criminal complaint with the domestic courts in which they raised both the issue of the alleged infringement of their private life and the issue of discrimination (see paragraph 17 above). When properly conducted, a criminal investigation constitutes an effective domestic remedy for such complaints: abuse such as that allegedly suffered by the applicants is punishable by the domestic law (Article 317 of the former CC, cited in paragraph 36 above, and, subsequently, Article 369 of the new CC, cited in paragraph 37 above). All material in the relevant case file, including allegations of racist motives for such acts, should also be taken into account by investigators. In respect of the present case, the applicants had no reason to doubt the effectiveness of this remedy.

82. Even assuming that the civil proceedings could constitute an effective remedy in situations such as the present one (see, *mutatis mutandis*, *Remetin v. Croatia*, no. 29525/10, § 76 *in fine*, 11 December 2012), in respect of the respondent State, the Court has already found that failure to establish the identity of attackers renders futile any civil-law remedy and any remedy sought before the NCCD in so far as allegations of discrimination are concerned (see, *mutatis mutandis*, *M.C. and A.C. v. Romania*, cited above, §§ 62-63). Although a new Civil Code has entered into force in Romania since the time of the events in the case of *M.C. and A.C. v. Romania* (see paragraph 40 above), the Government did not prove that the procedural requirements for bringing an application with the civil courts under Article 1349 of the present Civil Code differed from those in force under the previous legislation. Consequently, the Court has no reason to depart from its findings in the case of *M.C. and A.C. v. Romania* concerning the lack of access to the remedy indicated by the Government for persons in the applicants' situation.

83. The fact that the applicants were able to present to the authorities the names of some of the counter-demonstrators (see paragraphs 17 and 70 above) does not change this conclusion. In fact, that information, which the applicants duly presented to the investigative authorities along with their criminal complaint (see paragraph 17 above), did not in itself allow them to be able to identify their actual assailants. It should have nevertheless allowed the authorities to correctly identify the participants and establish individual responsibility in respect of the incident.

84. For these reasons, the Court is satisfied that the individual applicants used the remedies that were available and sufficient for the purpose of the present application. It therefore dismisses the Government's preliminary objection of non-exhaustion of domestic remedies.

(c) Other grounds for inadmissibility

85. The Court notes that the complaint raised by the individual applicants under Article 8 (both alone and together with Article 14) is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The same conclusion is also valid for the complaint raised by the individual applicants in respect of the same facts under Article 1 of Protocol No. 12 to the Convention. This part of the application must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

86. The individual applicants argued that the authorities had been motivated by their own bias and prejudice against the LGBT community both when they had failed to intervene to stop the homophobic attacks of 20 February 2013 and when they had failed to investigate the incident. Even the language used by the authorities showed their bias. They qualified the attack as "discussion", "criticisms", and "an exchange of ideas" and the perpetrators as "sympathisers of the New Right" (*simpatizanţii Noii Drepte*), whereas they described the LGBT-related issues using phrases such as: "the film had homosexual connotations" (*conotaţii homosexuale*), "followers of same-sex relations (*adepţii relaţiilor între personae de acelaşi sex*), "an affront to national honour" (*afront adus demnităţii naţionale*), and "intolerance towards LGBT-community members" (*intoleranţă faţă de membrii comunităţii LGBT*).

87. In this regard, they refuted the Government's allegations (see paragraph 93 below) that the incident had constituted "mere discussions" or an "exchange of ideas" regarding the subject of the movie chosen to be screened by the applicant association.

88. The individual applicants contended that although the police officers had been present in sufficient numbers at the Museum during the incident and had been aware of the intruders' intentions, they had refused to protect the participants. Not even prompting by the organisers or the contents of the slurs and threats being screamed against the victims had induced the police to step in.

89. The individual applicants furthermore argued that the investigation had been protracted: for nineteen months three prosecutor offices had done little more than verify their own jurisdiction in respect of the case and forward the case from one prosecutor's office to another. Moreover, no investigative activity had taken place from 17 March 2013 until 27 February 2014, and an investigation had not been opened until 31 March 2014 – more than a year after the incident. The investigators interviewed the police

officers and gendarmes more than a year after the date of the occurrence of the incident under investigation and the intruders more than three years after the date of the incident.

90. Moreover, the applicants pointed out that although twenty-nine people had been identified by the police on the evening of 20 February 2013, only four had been interviewed in relation to the incident. No steps had been taken to clarify the contradictions between, on the one hand, the statements made by the victims (supported by recordings of the incident and screen shots of social-media posts) and, on the other hand, the statements made by the police officers and the intruders.

91. Lastly, the applicants contended that the authorities had closed the investigations into the allegations of homophobic hate crimes not because they had been unable to identify the perpetrators, but because they had considered that the incident had not been serious enough – in the absence of any physical violence – to reach the threshold required for behaviour to be categorised as a hate crime.

(b) The Government

92. The Government pointed out that the protection afforded against hate crimes had been enhanced since the date of the occurrences that had given rise to a violation in the case of *M.C. and A.C. v. Romania* (cited above). Moreover, the applicant association had been associated with the execution of that judgment and its input had contributed to the measures proposed or undertaken by the authorities in that process.

93. The Government furthermore pointed out that, despite the fact that the applicants had failed to comply with the requirements of Article 3 of Law no. 60/1991 (which required that they give warning in good time of any risk of violence – see paragraph 35 above), the police had been present on the premises to offer protection. The police had not intervened to stop the "discussions between the two parties" because there had been no need for such an intervention.

94. The Government argued that the fact that the case had been discontinued for lack of evidence did not render the investigation ineffective. They pointed out that several police officers and employees of the applicant association who had been present during the incident had been heard as witnesses during the proceedings and that the applicants had also been able to lodge their complaint and to pursue it at all levels of jurisdiction.

95. In so far as the allegations of discrimination were concerned, the Government argued that the present case differed from those where a demonstration had, for instance, been banned because of the authorities' bias against homosexuals. In the light of that difference, they argued that in the present case there had been no violation of Article 14 of the Convention.

2. The Court's assessment

(a) Preliminary remarks

96. The Court considers that the authorities' duty to prevent the infliction of hatred-motivated violence (whether physical attacks or verbal abuse) by private individuals and to investigate the existence of any possible discriminatory motive behind such violence can fall under the positive obligations enshrined in Article 8 of the Convention, but may also be seen as forming part of the authorities' positive responsibilities under Article 14 of the Convention to secure the fundamental values protected by Article 8 without discrimination. Owing to the interplay of the above provisions, issues such as those arising in respect of the present case may indeed fall to be examined under one of these two provisions only – with no separate issue arising under any of the others – or may require simultaneous examination under several of these Articles. This is a question to be decided in each case in the light of its facts and the nature of the allegations made (see *M.C. and A.C. v. Romania*, cited above, § 105, with further references).

97. Given the particular circumstances of the present case, and in view of the applicants' allegations that the incident of which they had been victims had had homophobic overtones that had been completely overlooked by the authorities, the Court finds that the most appropriate way to proceed would be to examine the applicants' complaint under Article 14, taken in conjunction with Article 8 of the Convention (see, *mutatis mutandis,* the above-cited cases of *Identoba and Others*, § 64, and *M.C. and A.C. v. Romania*, § 106).

(b) General principles

98. The relevant principles established under Article 14 of the Convention have been reiterated in *Molla Sali*, cited above, §§ 133-37):

> "133. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012; *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013; *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, 24 January 2017, and *Fábián*[*v. Hungary* [GC], no. 78117/13], § 113[,5 September 2017]). In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical.
>
> 134. However, not every difference in treatment will amount to a violation of Article 14. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Fábián*, cited above, § 113 and the references therein). In this context, the Court reiterates that the words "other status" have generally been given a wide meaning in its case-law (see *Carson and Others*[*v. the United Kingdom* [GC], no. 42184/05], § 70[, ECHR 2010]) and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Clift v. the United Kingdom*, no. 7205/07, §§ 56-59, 13 July 2010). For example, a discrimination issue

arose in cases where the applicants' status, which served as the alleged basis for discriminatory treatment, was determined in relation to their family situation, such as their children's place of residence (see *Efe v. Austria*, no. 9134/06, § 48, 8 January 2013). It thus follows, in the light of its objective and nature of the rights which it seeks to safeguard, that Article 14 of the Convention also covers instances in which an individual is treated less favourably on the basis of another person's status or protected characteristics (see *Guberina v. Croatia*, no. 23682/13, § 78, ECHR 2016 and *Škorjanec v. Croatia*, no. 25536/14, § 55, 28 March 2017 and also *Weller v. Hungary*, no. 44399/05, § 37, 31 March 2009).

135. The Court also reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. For the purposes of Article 14, a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a "legitimate aim" or if there is not a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realised (see *Fabris*[*v. France* [GC], no. 16574/08], § 56[, ECHR 2013 (extracts)]).

136. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011).

137. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the latter was justified (see *Khamtokhu and Aksenchik*, cited above, § 65; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177 [, ECHR 2007-IV])."

99. In addition, the Court reiterates that sexual orientation is a concept covered by Article 14. The Court has repeatedly held that – just like differences based on sex – differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification. Where a difference in treatment is based on sex or sexual orientation, the State's margin of appreciation is narrow. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background; in this respect, one of the relevant factors may be the existence or non-existence of common ground between the laws of the Contracting States. Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *Beizaras and Levickas*, cited above, § 114, and *Ratzenböck and Seydl v. Austria*, no. 28475/12, § 32, 26 October 2017, with further references).

100. The Court also makes reference to the general principles that it has established in its case-law regarding alleged violations of Article 8 of the Convention with respect to the positive obligations incumbent on the respondent States within in the context of that Article. These principles have been recently reiterated in *Beizaras and Levickas* (cited above, §§ 106-116).

101. In particular, the Court reiterates that positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even within the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 within the sphere of protection against acts committed by individuals in principle falls within the State's margin of appreciation, effective deterrence against grave acts where essential aspects of private life are at stake requires efficient criminal-law provisions (ibid., § 110 with further reference). Furthermore, the Court has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *M.C. v. Bulgaria*, no. 39272/98, § 152, ECHR 2003-XII, with further references).

102. The Court has acknowledged that criminal sanctions – including against individuals responsible for the most serious expressions of hatred, inciting others to violence – could be invoked only as an *ultima ratio* measure. That being so, it has also 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. The Court has likewise accepted that criminal-law measures are required with respect to direct verbal assaults and physical threats motivated by discriminatory attitudes (ibid., § 111, with further references).

103. The Court must also reiterate that it is not its task to rule on the constituent elements of the offence of incitement to hatred and discrimination (as described in paragraph 36 above). It is, moreover, primarily for the national authorities, in particular the courts, to interpret and apply domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. In so doing, the Court has to satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (ibid., § 116).

(c) Application of those principles to the facts of the case

104. At the outset, the Court observes that the applicants' complaint (see paragraph 44 above) is twofold: on the one hand, they argued that the authorities (the police and gendarmes) had failed to protect them during the incident of 20 February 2013, and, on the other hand, that the authorities (the prosecutor's office and the courts) had failed to conduct an effective investigation which would have taken into account the homophobic connotations of the incident. The Court will examine these aspects separately.

(i) Obligation to protect

105. The Court observes that on 20 February 2013 the individual applicants, who were part of a group of about twenty people (see paragraph 8 above), were subject to verbal abuse from a group of forty-fifty individuals (see paragraphs 9 and 31 above) who objected to and effectively broke up the event that the applicants were attending because of their opposition to same-sex relations (see paragraph 15 above). They were not stopped by the police officers, who, although they took certain measures when specifically prompted to do so by the applicants (such as confiscating some flags from the counter-demonstrators – see paragraph 10 above), seem to have minimised their assistance by remaining outside the room in which the incident occurred.

106. The Government argued that the police had been unable to intervene because the organisers had failed to properly secure prior authorisation for the event (see paragraph 93 above). The same argument also appeared in the decision rendered by the military prosecutor's office on 24 June 2014 (see paragraph 22 above). The Court cannot see the relevance of these allegations in the present case.

107. In this respect, it notes, firstly, that there is no evidence in the file that the applicant association was ever required to obtain prior authorisation for the type of cultural event it organised (see Article 3 of Law no. 60/1991, cited in paragraph 35 above), or to that end, was subjected to any sort of administrative proceedings in respect of that alleged omission.

108. More importantly, irrespective of whether the applicant association had complied with the requirements indicated by the Government or not, the Court cannot but notice that the authorities (that is to say police officers and gendarmes) were present in sufficient numbers on the premises from the beginning of the incident. Their presence had been prompted by information transmitted to the police by the applicant association as soon as the latter had become aware of possible opposition to the event that it had organised (see paragraphs 6 and 20 above).

109. The police officers or the gendarmes were at no point overpowered by the intruders, and they did not claim that they had been caught unprepared and had thus lacked the proper equipment to intervene (see the reports into the incident drafted by the gendarmes and police, quoted in paragraphs 13 and 15 above).

110. That said, the Court observes that although eighteen police officers and gendarmes were present on the premise, they remained outside the cinema auditorium, where the incident was developing, and, to a large extent, refrained from intervening to de-escalate the situation, despite being prompted to do so by the organisers (see paragraphs 7 and 10 above).

111. Furthermore, the police officers and gendarmes who were present on the premises did not intervene effectively, despite them being aware of the views and opinions being manifested by the intruders and having heard

the contents of the slurs uttered by them (see paragraphs 13 and 15 above). They thus did not prevent the individual applicants from being bullied and insulted by the intruders (see, *mutatis mutandis*, *Identoba and Others*, cited above, § 73).

112. More than a failure to intervene, the authorities' attitude and decision to remain aside despite being aware of the content of the slurs being uttered against the applicants seems to indicate a certain bias against homosexuals, which also permeated their subsequent reporting on the incident at the cinema. In this respect, the Court notes that the reports drafted by the police and gendarmes contained no reference to the homophobic insults suffered by the individual applicants and describe the incident in terms that completely disregard any such manifestations of homophobia (see paragraphs 13 and 15 above).

113. In view of the above, the Court concludes that the authorities failed to correctly assess the risk incurred by the individual applicants at the hands of the intruders and to respond adequately in order to protect the individual applicants' dignity against homophobic attacks by a third party.

(ii) Obligation to investigate

114. The Court observes that the police was present at the scene during the incident in question. Their initial findings showed that the counter-demonstrators had been motivated by the participants' sexual orientation (see paragraph 15 above). In these circumstances, the Court finds that already at the initial stages of the proceedings, immediately after the screening of 20 February 2013 to which the applicants participated, the domestic authorities were confronted with *prima facie* indications of verbal abuse motivated or at least influenced by the applicants' sexual orientation (compare *Šečić v. Croatia*, no. 40116/02, § 69, 31 May 2007; *Milanović v. Serbia*, no. 44614/07, § 99, 14 December 2010; *Abdu v. Bulgaria*, no. 26827/08, § 35, 11 March 2014; and *Begheluri*, cited above, § 176). According to the Court's case-law, this mandated for an effective application of domestic criminal-law mechanisms capable of elucidating the possible hate motive with homophobic overtones behind the violent incident and of identifying and, if appropriate, adequately punishing those responsible (see paragraphs 101-102 above; see also *S.M. v. Croatia* [GC], no. 60561/14, § 324, 25 June 2020).

115. In addition, the Court observes that the criminal complaint was lodged on 5 March 2013 – that is to say within two weeks of the date on which the incident had occurred. The applicants presented all the evidence at their disposal (see paragraph 17 above). However, for more than a year, no significant steps were taken in the investigation, as it was only on 31 March 2014 that the prosecutor's office effectively started investigating the incident (see paragraph 19 above).

116. The Court notes that the investigation lasted more than four years and eight months: from 5 March 2013 (when it was lodged) until 22 November 2017 (when the Bucharest Court of Appeal dismissed by a final decision the applicants' objections – see paragraph 34 above). Such a passage of time is liable not only to undermine an investigation, but also to compromise definitively its chances of being ever completed (see, *mutatis mutandis*, *M.C. and A.C. v. Romania*, cited above, § 120). The applicants complained about the length of the investigation, but to no avail (see paragraph 29 above).

117. The Court considers that at least the initial stages of the investigation should not have been too difficult for the authorities. The applicants provided a detailed description of facts in their initial complaint, which was complemented by the reports drafted by the gendarmerie and police. In addition, from the day on which the investigation started, the prosecutor's office had at its disposal the name of twenty-nine participants in the incident (at least some of them belonging to the group of intruders – see paragraphs 13, 14 and 15 above), as well footage of the incident provided by the applicants (see paragraphs 17 and 27 above).

118. The Court furthermore notes that although the initial complaint was made against both the officers and the intruders, the latter never became a subject of the investigation. Some of those individuals, identified by the police on the night of the incident, were interviewed as witnesses – but only after more than four years had elapsed after the date of the incident (see paragraph 30 above). However, despite the complaints (as well as an express objection) lodged by the applicants in respect of this point (see paragraph 26 above), none of the intruders were ever formally accused by the prosecutor. The Court has already held that failure to open criminal inquiries may compromise the validity of evidence collected during the preliminary stages of investigation (see, *mutatis mutandis, M.C. and A.C. v. Romania*, cited above, § 122, with further references).

119. It should be noted that in their decisions, the prosecutors concluded that there were insufficient elements to constitute proof that the alleged acts had actually been committed (see, in particular, paragraphs 32-34 above). The domestic authorities thus deemed that the threats of "death to the homosexuals" (see paragraph 31 above) or other remarks that the applicants alleged had been uttered against them (see paragraphs 9 and 17 above) had not reached the threshold required by the applicable law to constitute a criminal offence. However, while being careful not to hold that each and every utterance of hate speech must, as such, attract criminal prosecution and criminal sanctions, the Court reiterates its finding that comments that amount to hate speech and incitement to violence, and are thus clearly unlawful on the face of things, may in principle require the States to take certain positive measures. It has likewise held that inciting hatred does not necessarily amount to a call for an act of violence or other criminal acts.

Attacks on people committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the form of freedom of expression exercised in an irresponsible manner (see *Beizaras and Levickas*, cited above, § 125, with further references).

120. Moreover, the applicants argued from time of their lodging their very first complaint that the attacks had been of a homophobic nature (see paragraph 17 above) but this aspect had not been duly explored by the authorities. It was not before 5 February 2015 (that is to say almost two years after the incident) that the prosecutor started investigating the allegations that the intruders had exhibited fascist symbols (see paragraph 28 above). However, the alleged homophobic reasons for the commission of the acts were not mentioned in the prosecutors' decisions.

121. The Court cannot but note that the authorities consistently referred to the verbal abuse that was targeted against the individual applicants as constituting mere "discussions" or an "exchange of views" (see paragraphs 15 and 24 above). The perpetrators were described as "sympathisers" of far-right organisations and the victims as "followers" of same-sex relations (see paragraph 28 above). This language, far from being neutral or accidental, can suggest bias on the part of the authorities against the individual applicants, which may be seen as indicating that the authorities turned a blind eye to the homophobic overtones of the acts perpetrated, thus jeopardising the accuracy and effectiveness of the domestic proceedings as a whole.

122. Moreover, no weight was attached to the fact that that the organisation that seems to have been behind the attacks was notoriously opposed to homosexual relations (see paragraphs 9 and 43 above) or that the homophobic slurs in question had been uttered against the individual applicants (see paragraphs 21 and 31 above). These elements did not figure in the prosecutors' decisions wherein the acts of the gendarmes and police officers were examined (see paragraphs 22 and 24-25 above).

123. For these reasons, the Court concludes that the authorities did not take reasonable steps to investigate whether the verbal abuse had been motivated by homophobia. The necessity of conducting a meaningful inquiry into the possibility that discriminatory motives had lain behind the abuse was absolute, given the hostility against the LGBT community in the respondent State and in the light of the evidence that homophobic slurs had been uttered by the intruders during the incident (see, *mutatis mutandis*, *M.C. and A.C. v. Romania*, cited above, § 124 as well as paragraphs 41-43 above).

124. The Court considers that without such a rigorous approach on the part of the law-enforcement authorities, prejudice-motivated crimes will inevitably be treated on an equal footing with cases involving no such overtones, and the resultant indifference can be tantamount to official

acquiescence in, or even connivance with, hate crimes (see *Identoba and Others*, cited above, § 77, and, *mutatis mutandis*, *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, § 167, 27 January 2015).

125. Lastly, the Court acknowledges the evolution of the domestic law, which now prohibits incitement to hatred and discrimination (contrast *M.C. and A.C. v. Romania*, cited above, § 124, as well as paragraphs 37 and 92 above). Be that as it may, the Court reiterates that its role is not to examine in abstract the applicable national law, but rather to ascertain whether its interpretation by the domestic authorities is compatible with the Convention (see, *mutatis mutandis*, *Padovani v. Italy*, 26 February 1993, § 24, Series A no. 257-B, and *Beizaras and Levickas*, cited above, § 116). However, in the light of the above findings, the Court cannot but conclude that the authorities' response failed to take into account the homophobic overtones of the incident and to subject them to a proper evaluation under the domestic law, in line with the requirements of the Convention.

126. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to discharge their positive obligation to investigate in an effective manner whether the verbal abuse directed towards the individual applicants constituted a criminal offence motivated by homophobia (see, *mutatis mutandis*, *Beizaras and Levickas*, cited above, § 129). In doing so, the authorities showed their own bias towards members of the LGBT community.

(iii) Conclusion

127. In the light of the findings contained in paragraphs 113 and 126 above, the Court considers it established that the authorities have failed to offer adequate protection in respect of the individual applicants' dignity (and more broadly, their private life), and to effectively investigate the real nature of the homophobic abuse directed against them. It thus considers it established that the individual applicants suffered discrimination on the grounds of their sexual orientation. It furthermore considers that the Government did not provide any justification indicating that the authorities' attitude was compatible with the standards of the Convention.

128. There has thus been a violation of Article 14, taken in conjunction with Article 8 of the Convention.

129. This conclusion means that the Court does not need to examine the remainder of this complaint, that remainder having been raised under Article 8 of the Convention alone (see, *mutatis mutandis*, *M.C. and A.C. v. Romania*, § 126). For the same reasons, the Court considers that it is not necessary to examine separately whether there has also been a violation of Article 1 of Protocol No. 12 to the Convention (see, *mutatis mutandis* and among many other authorities, *M.C. and A.C. v. Romania*, cited above, § 129, and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 51, ECHR 2009).

II. ALLEGED VIOLATION OF ARTICLES 11 AND 14 OF THE CONVENTION AND OF ARTCLE 1 OF PROTOCOL NO. 12 TO THE CONVENTION

A. Article 11 read alone or together with Article 14

130. The applicants complained under Article 11 of the Convention, taken alone and in conjunction with Article 14, of the authorities' failure to protect their right to freedom of peaceful assembly and to investigate the actions that had led to the interruption of the event organised by the applicant association on 20 February 2013.

Article 11 of the Convention reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

1. Admissibility

131. The Court notes that this complaint 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) The parties' submissions

(i) The applicants

132. The applicants contended that the aim of the counter-demonstration had been to stop the event, and not to participate in a democratic debate. In their view, the counter-demonstration had breached the requirements of Law no. 60/1991 (see paragraph 35 above) in that it had not been peaceful, it had been carried out at the same time as another demonstration (which had been legally organised by the applicant association), it had been aimed at inciting discrimination and violence, it had been held to oppose the rights of others, and it had hindered the normal course of a peaceful assembly. Despite those infractions to the law, the authorities had failed to intervene, and it had been no longer possible for the event to take place.

133. They also contested the comments made by the third-party intervenor (see paragraph 136 below), which they considered to be vexatious.

(ii) The Government

134. The Government argued that those who chose to exercise the freedom to manifest their views or expose their membership of a minority group could not reasonably expect to be exempt from all criticism. In their view, the relevant domestic law, which consisted notably of Law no. 60/1991 and the CC (see paragraphs 35 and 36 above), was equipped to deal with the applicants' situation. Specifically, the Government pointed out that, in compliance with the law mentioned above, the police had arrived in great numbers within a short space of time at the place where the incident was developing, in order to ensure the participants' protection. Moreover, the authorities had conducted a thorough investigation into possible discriminatory reasons for the counter-demonstration.

135. Lastly, the Government pointed out that the decision to halt the screening had been taken by the applicant association and had not been imposed by the police or the administration of the Museum.

(iii) Third party intervener

136. The third-party intervener (see paragraph 51 above) argued mainly that the States were obliged to ensure the right to assembly for both demonstrations and counter-demonstrations as long as they were peaceful and did not propagate views manifestly contrary to the basic principles of democracy and human dignity.

(b) The Court's assessment

(i) Preliminary remarks

137. The Court considers, for the same reasons as those given in paragraph 97 above, that the most appropriate way to proceed with this complaint would be to examine it under Article 14, taken in conjunction with Article 11 of the Convention (see, *mutatis mutandis*, *Identoba and Others*, cited above, § 92).

(ii) General principles

138. At the outset the Court reiterates that the right to freedom of peaceful assembly covers both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015, with further references).

139. The Court also makes reference to the general principles that it has established in its case-law regarding alleged violations of Articles 14 and 11 of the Convention based on allegations that attacks by private individuals, coupled with the passivity of the police in the face of that violence, disrupted peaceful assemblies. These principles have been recently reiterated in *Berkman v. Russia* (no. 46712/15, §§ 45-49, 1 December 2020).

140. In particular, the Court has found that a peaceful demonstration may annoy or give offence to persons opposed to the ideas or claims that that demonstration seeks to promote. The participants must, however, be able, with the State's assistance, to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate (ibid., § 47, with further references). Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere (ibid., §§ 46 and 54).

141. The Court also reiterates that in the case of *Identoba and Others* (cited above, §§ 81 and 100) it considered that the State had violated its obligations under the principle of non-discrimination owing to the failure to protect demonstrators from homophobic violence and to launch an effective investigation (see also *Berkman*, cited above, § 49).

(iii) Application of those principles to the facts of the case

142. At the outset, the Court affirms that the disruption of the screening of 20 February 2013 undoubtedly amounted to an interference with the applicants' right to freedom of peaceful assembly guaranteed by Article 11 of the Convention (see, *mutatis mutandis*, *Identoba and Others*, cited above, § 97).

143. The Court furthermore observes that the applicants' complaints that the State failed to protect their freedom of assembly from bias-motivated violence stem from exactly the same factual circumstances as those that it has already examined under Article 14 of the Convention taken in conjunction with Article 8 (see paragraphs 105-128 above). The fact that the Court's findings in paragraph 128 above only concerned the individual applicants (see paragraph 48 above) does not change the relevance of those findings to the present complaint (which extends to all of the applicants). Consequently, the Court's findings under those provisions are equally pertinent to the examination of the complaint under Article 14, read in conjunction with Article 11 of the Convention.

144. This conclusion is not altered by the fact – pointed out by the Government – that the decision to stop the screening and to reschedule it for

a later date, was taken by the applicant association and was not imposed by the authorities (see paragraphs 11, 16 and 134 above). In fact, the Court reiterates that the right to freedom of assembly includes the right to choose the time, place and practical conditions of such an assembly, within the limits established in paragraph 2 of Article 11 (see *Sáska v. Hungary*, no. 58050/08, § 21, 27 November 2012).

145. The Court furthermore reiterates its findings that the applicant association contacted the authorities as soon as the latter became aware of possible opposition to the event that it had organised, and that the authorities were present in sufficient numbers on the premises from the beginning of the incident (see paragraphs 6, 20 and 108 above). In this regard, the authorities were under an obligation to use any means possible to ensure that the applicants' right to peaceful assembly was respected (see, *mutatis mutandis*, *Identoba and Others*, cited above, § 99). However, as the Court has already found, they failed to intervene effectively to de-escalate the situation, despite being aware of the content of the homophobic slurs being uttered against the participants (see paragraphs 110-112 above; see also *Berkman*, cited above, § 56).

146. All in all, the Court considers that the domestic authorities failed to ensure that the event of 20 February 2013 (which was organised by the applicant association and attended by the individual applicants) could take place peacefully by sufficiently containing the homophobic counter-demonstrators. Because of their failures in this regard, the authorities fell short of their positive obligations under Article 14 taken in conjunction with Article 11 of the Convention (see, *mutatis mutandis*, the above-cited cases of *Identoba and Others*, § 100, and *Berkman*, § 58).

147. This conclusion means that the Court does not need to examine the remainder of this complaint, that remainder having been raised under Article 11 of the Convention alone (see also paragraph 129 above).

B. Article 1 of Protocol No. 12 to the Convention

148. The applicants also considered that the same factors that, in their view, would trigger a violation of Article 14 (taken together with Article 11) of the Convention should also trigger a violation of Article 1 of Protocol No. 12 to the Convention.

149. However, in view of the conclusion reached by the Court concerning the complaint raised under Article 14 taken together with Article 11 of the Convention (see paragraph 146 above), the Court finds that it is not necessary to examine separately the admissibility and merits of this complaint (see, *mutatis mutandis*, *Sejdić and Finci*, cited above, § 51).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

150. Lastly, the applicants complained that they had had no effective remedy through which to raise their complaints before the domestic authorities concerning the alleged violation of their Convention rights, in breach of Article 13 of the Convention, read in conjunction with Articles 3, 8, 11 and 14 of the Convention, and in conjunction with Article 1 of Protocol No. 12 to the Convention.

Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

151. The Government contended that the applicants did not have an arguable claim under the Convention and that Article 13 was thus not applicable in their case. In any event, they argued that the relevant domestic law offered the applicants several effective remedies in respect of the alleged breaches of the Convention. Moreover, the Government noted that following the adoption of the judgment in the case of *M.C. and A.C. v. Romania* (cited above), the Ministry of Justice had facilitated the collection of data concerning hate crimes via its Electronic Court Record Information System database (ECRIS). Steps had also been taken to crystallise what actually constituted a "hate crime", including expressly adding prejudice against a person's sexual orientation to the list of possible aggravating factors in the commission of a crime (see Article 77 h of the new Criminal Code, cited in paragraph 37 above).

2. The applicants

152. The applicants considered that the domestic law concerning hate crimes was unclear and ineffective. They submitted that thus far, there had been no prosecution or conviction (under Article 369 of the Criminal Code – see paragraph 37 above) in the respondent State in respect of cases concerning the criminal offence of incitement to hatred or discrimination on the grounds of sexual orientation. Moreover, the domestic case-law regarding the prohibition of the use of fascist symbols (under Emergency Ordinance no. 31/2002 – see paragraph 38 above) was scanty and contradictory. In their view, the Government had failed to bring evidence indicating that the domestic law provided an effective remedy for these crimes.

153. Relying on the reports made by the Romanian Academic Society (see paragraph 41 above), the applicants argued that the legislature should list explicitly the grounds for discrimination necessary for behaviour to be categorised as a hate crime, instead of the general wording "against a category of people". In their view, the definition of a "hate crime" was too general; thus, it was unclear what kind of discourse would constitute a criminal offence under the relevant provision of the CC and what kind of discourse would constitute merely an administrative offence under Article 15 of Government Ordinance no. 137/2000 (see paragraph 39 above). They furthermore pointed out that the word "hatred" was not defined under Romanian legislation. Those uncertainties, together with the lack of awareness of the serious nature of hate crimes among prosecutors, explained (in their view, and according to the findings of the above report) why there had been almost no instances of anyone being indicted for incitement to hatred or to discrimination.

B. The Court's assessment

1. General principles

154. The Court reiterates that Article 13 requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 157, ECHR 2006-IX; and *A.K. v. Liechtenstein (no. 2)*, no. 10722/13, § 84, 18 February 2016).

155. The Court reiterates that Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision. The Court has also held that the provisions of the Convention must be interpreted and applied in a manner that renders their safeguards practical and effective, not theoretical and illusory. In order to be effective, the remedy required by Article 13 must be available in practice, as well as in law – in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Beizaras and Levickas*, cited above, § 149, with further references).

2. Application of those principles to the facts of the present case

156. At the outset, the Court considers that, for the same reasons as those explained in paragraphs 46 to 48 above, the applicant association cannot validly claim on the facts of the present case to be either a direct or indirect victim, within the meaning of Article 34 of the Convention, of a breach of Articles 3, 8 and 14 of the Convention, taken in conjunction with Article 13. In so far as it has been brought by the applicant association, the

complaint under Article 13 is thus incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4.

157. Furthermore, the Court reiterates that, in so far as the individual applicants were concerned, the complaint under Article 3, taken alone or in conjunction with Article 14 of the Convention, was declared manifestly ill-founded because the minimum level of severity required in order for the issue to fall within the scope of Article 3 of the Convention has not been attained (see paragraph 57 above). It follows that the individual applicants did not have an arguable claim in this regard (see, *mutatis mutandis*, *Posevini v. Bulgaria*, no. 63638/14, § 82, 19 January 2017). Accordingly, the complaint under Article 13 taken in conjunction with Articles 3 and 14 in this respect is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4.

158. In the present case the Court has found that the individual applicants' rights under Article 14, taken in conjunction with Article 8, and all the applicants' rights under Article 14, taken together with Article 11, were infringed (see respectively paragraphs 128 and 146 above). Therefore, they had an arguable claim, within the meaning of the Court's case-law, and were thus entitled to a remedy satisfying the requirements of Article 13.

159. In respect of Article 14 in conjunction with Article 8, the Court notes that the individual applicants mainly argue that the domestic law lacked clarity, which, in turn, renders unreliable the way that it was interpreted by the domestic authorities, prosecutors and courts. From this perspective, the complaint differs essentially from that examined by the Court under Article 13 in *Beizaras and Levickas* (cited above, § 151), in which the issue raised before the Court concerned generally effective remedies that were considered not to have operated effectively in a particular case owing to discriminatory attitudes negatively affecting the application of national law.

160. The Court furthermore reiterates that, in principle, when properly conducted, a criminal investigation constitutes an effective domestic remedy for complaints brought by the individual applicants under Article 8 and 14 of the Convention (see paragraph 81 above). The Court also reiterates that it is not its task to rule on the constituent elements of the criminal offence under examination (see paragraphs 103 and 125 above).

161. Lastly, the Court reiterates that the applicants' complaints that the State failed to protect their freedom of assembly from bias-motivated violence stem from exactly the same factual circumstances as those that it examined under Article 14 of the Convention taken in conjunction with Article 8 (see paragraph 143 above). Consequently, the above findings are equally valid in respect of the complaint raised by all the applicants under Article 13, taken in conjunction with Articles 11 and 14 of the Convention.

162. In the light of the above considerations – and bearing in mind the nature and substance of the violations found in the present case, on the basis of Article 14, taken in conjunction with Articles 8 and 11 (see paragraphs 127-128 and 146 above, respectively) –, the Court finds that it is not necessary to examine separately the admissibility and merits of the complaint under Article 13 of the Convention, read in conjunction with Articles 8, 11 and 14, as detailed above (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 123, ECHR 2005-VII with respect to the interplay between Articles 2 and 13 of the Convention; see also *Opuz v. Turkey*, no. 33401/02, § 205, ECHR 2009, with respect to the interplay of Articles 2, 3 and 14 and Article 13).

163. Lastly, for the same reasons, the Court finds that it is not necessary to examine separately the admissibility and merits of the complaint raised under Article 13 of the Convention, read in conjunction with Article 1 of Protocol No. 12 (see paragraph 149 above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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

165. The individual applicants claimed 15,000 euros (EUR) each in respect of non-pecuniary damage consisting of the mental suffering that they had experienced and continued to experience as a result of the violations alleged. The applicant association claimed EUR 25,000 in respect of non-pecuniary damage caused by the additional burden that it had to carry as a result of the violations alleged before the Court.

166. The Government contested the claims, referring to the amounts awarded by the Court in the cases of *M.C. and A.C. v. Romania* (cited above, § 133) and *Identoba and Others* (cited above, § 110).

167. The Court notes that it has found a violation of Article 14, taken together with Article 8, with regard to the individual applicants, and a violation of Article 14 taken together with Article 11 with regard to all applicants. As far as the individual applicants are concerned, the Court considers that they must have sustained non-pecuniary damage that cannot be compensated for solely by the finding of a violation. Furthermore, the Court has no doubt that the applicant association, as a legal entity, was also prejudiced in its legitimate interests as a result of a breach of its rights under Article 14, read in conjunction with Article 11 of the Convention (see

Identoba and Others, cited above, § 110). Having regard to the nature of the violation found, and making its assessment on an equitable basis, the Court awards the applicant association EUR 7,500 and each individual applicant EUR 9,750 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

168. The applicants also claimed EUR 1,764 for the costs and expenses incurred before the domestic courts in respect of the various domestic proceedings relating to the instant case, and EUR 1,500 for those incurred before the Court (namely, their lawyer's fee). Relevant invoices were attached to the claim.

169. The Government contested the claims and argued that the costs claimed in respect of legal representation before the Court were excessive.

170. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the applicants jointly the sum of EUR 1,764 for costs and expenses in the domestic proceedings and the sum of EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicants. The total sum awarded in respect of costs and expenses is thus EUR 3,264.

C. Default interest

171. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares,* by a majority, admissible the complaint raised by the individual applicants under Article 14 taken in conjunction with Article 8 of the Convention and under Article 1 of Protocol No. 12 to the Convention, concerning the alleged failure to protect their right for respect for their private life;

2. *Declares*, unanimously, admissible the complaints raised by the individual applicants under Article 8 of the Convention as well as the complaint raised by all applicants under Article 11, taken alone or in conjunction with Article 14 of the Convention;

3. *Holds*, unanimously, that it is not necessary to examine the admissibility and merits of the complaints raised by the individual applicants under Article 13 of the Convention, read in conjunction with Articles 8 and 14, and of the complaint raised by all applicants under Article 13 of the Convention, read in conjunction with Articles 11 and 14 of the Convention, and under Article 1 of Protocol No. 12 to the Convention, concerning the alleged failure to protect their right to freedom of peaceful assembly;

4. *Declares*, unanimously, the remainder of the application inadmissible;

5. *Holds*, by five votes to two, that there has been a violation of Article 14 of the Convention, taken in conjunction with Article 8, in respect of the individual applicants;

6. *Holds*, unanimously, that there is no need to examine whether there has been a violation of Article 8 of the Convention taken alone, in respect of individual applicants;

7. *Holds*, by five votes to two, that there is no need to examine whether there has been a violation of Article 1 of Protocol No. 12 to the Convention, in respect of the individual applicants;

8. *Holds*, unanimously, that there has been a violation of Article 14 of the Convention, taken in conjunction with Article 11, in respect of all applicants;

9. *Holds*, unanimously, that there is no need to examine whether there has been a violation of Article 11 of the Convention taken alone in respect of all applicants;

10. *Holds*, by five votes to two,

(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 7,500 (seven thousand five hundred euros) to the applicant association, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 9,750 (nine thousand seven hundred and fifty euros) to each individual applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 3,264 (three thousand two hundred and sixty-four euros) jointly to all applicants, plus any tax that may be chargeable to them, 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;

11. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Yonko Grozev
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Grozev and Harutyunyan is annexed to this judgment.

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PARTLY DISSENTING OPINION OF JUDGES GROZEV AND HARUTYUNYAN

1. While we agree with large parts of the substantive analysis under Article 14 in conjunction with Article 8, we could not follow the majority in finding a violation of those provisions, and on the identical complaint under Article 1 of Protocol No. 12 to the Convention, as we consider this complaint inadmissible for failure to exhaust the domestic remedies. This is in no way to be interpreted as belittling the importance of the human-rights issues at stake, either as far as the specific incident is concerned or with regard to the general issue of LGBT rights in Romania. With respect to the second, there are clear grounds for concern, as transpires from the findings of the ECRI report (see paragraph 43 of the judgment) – findings which should rightly inform the overall analysis of the Court.

2. However, the issue of domestic remedies in the present case is relevant both for the consistent interpretation of the Convention and for the development of adequate domestic remedies in the respondent State. We find this issue sufficiently important to justify a refusal to follow the majority's decision on admissibility, thus preventing us from declaring this part of the complaint admissible.

3. The objection raised by the respondent Government in respect of the complaint under Article 8 in conjunction with Article 14 is that the applicants should have lodged a civil-law suit or a separate complaint with the National Council for Combating Discrimination ("the NCCD"), a remedy the applicant association had used, albeit unsuccessfully, on previous occasions (see paragraph 71 of the judgment).

4. The majority's response to this objection by the Government is based on a previous judgment against Romania, namely *M.C. and A.C. v. Romania* (no. 12060/12, 12 April 2016). In that judgment the Court found, in the context of a homophobic attack, that the failure by the police to establish the identity of the attackers had rendered futile any civil-law remedy or any remedy sought before the NCCD in so far as allegations of discrimination were concerned. In the present case, however, the applicants themselves have identified some of the assailants. Nonetheless, the majority accepted that this was not sufficient to distinguish the case from *M.C. and A.C. v. Romania*, as the identifying information "which the applicants duly presented to the investigative authorities along with their criminal complaint, did not in itself allow them to be able to identify their actual assailants" (see paragraph 83 of the judgment).

5. We find this response unsatisfactory for a number of reasons. First, the impossibility of establishing the identity of the individuals allegedly responsible for the violation of the applicants' rights was a central argument for rejecting the Government's objection of non-exhaustion in *M.C. and A.C. v. Romania*. And for good reason. It is easy to see why a civil or

administrative remedy would not be effective if one cannot indicate a respondent. Without a respondent, it is not possible even to lodge a formal complaint in such proceedings. Once an individual can be indicated as a respondent in such proceedings, however, this objection is no longer valid. The reasoning followed by the majority, according to which the exact role and responsibility of an alleged assailant should be established before proceedings are initiated, is no longer convincing. It is precisely the purpose of such proceedings to establish the personal role and liability for the alleged violations of each and every one of the alleged assailants. To require that their role and responsibility is established in advance, before a complaint is filed, means to declare any civil or administrative remedy ineffective by definition.

6. This last point highlights a particular concern of ours with the approach taken by the majority. We find the suggestion that the Convention leaves no room for respondent States to calibrate their response as to what remedies to provide, and that it requires a criminal-law remedy in cases like the present one, difficult to accept. This is particularly important in the context of the principle of subsidiarity and the Court's supervisory role as a secondary guarantor of human rights to the national bodies, which should take the lead in upholding human-rights standards at the national level. We disagree with such a position, both as a matter of existing case-law and as a matter of judicial policy.

7. The Court has generally required criminal-law remedies in cases involving attacks against the physical integrity of individuals, that is, cases falling under Article 3 of the Convention. It is relevant in this context to highlight that the key precedent on which the present case relies with regard to the exhaustion of remedies, *M.C. and A.C. v. Romania,* is an Article 3 case.

8. When it comes to complaints under Article 8, and where – as in the present case – no physical attack on a person has occurred, the Court has taken the approach that respondent States have a margin in choosing the appropriate positive measures. The Court has held that Article 8 of the Convention requires the effective application of criminal-law remedies, in relations between private parties, only in cases of serious attacks on the physical integrity of a person. Examples include the sexual abuse of a mentally handicapped individual (see *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91); allegations of a physical attack against the applicant by three individuals, during which she was kicked and thrown down the stairs (see *Sandra Janković v. Croatia*, no. 38478/05, § 47, 5 March 2009); the beating of a thirteen-year old by a grown-up man, causing multiple physical injuries (see *Remetin v. Croatia,* no. 29525/10, § 91, 11 December 2012); and the beating of an individual causing a number of injuries to her head, requiring hospitalisation (see *Isaković Vidović v. Serbia*, no. 41694/07, § 61, 1 July 2014). In contrast, in respect of

less serious acts between individuals which may cause injury to a person's psychological well-being, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *Noveski v. the Former Yugoslav Republic of Macedonia* (dec.), nos. 25163/08 and 2 others, § 61, 13 September 2016, and *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013).

9. In the context of hate speech, the Court has acknowledged that criminal sanctions, including against the individuals responsible for the most serious expressions of hatred, inciting others to violence, could be invoked only as an *ultima ratio* measure (see *Beizaras and Levickas v. Lithuania,* no. 41288/15, § 111, 14 January 2020). The Court has accepted the need for a criminal-law remedy only in a limited number of Article 8 cases. In those cases the intensity of the interference with privacy rights has been particularly acute. In *R.B. v. Hungary*, (no. 64602/12, 12 April 2016) the racist verbal abuse against the applicant was accompanied by threats of violence with an axe, and in *Alković v. Montenegro*, (no. 66895/10, §§ 8, 11, 65 and 69, 5 December 2017) the racist verbal abuse was accompanied by ten gunshots in the direction of the applicant's home. In both cases the incidents occurred in the applicants' homes, something that clearly had the effect of enhancing the sense of vulnerability, and the first took place in the context of a "pogrom-like" event. The present case, in our view, is of a sufficiently different nature. Though all the relevant circumstances were not clearly established, it is clear that the incident took place in a public setting, specifically a museum, in the presence of a large number of people, and did not involve a confrontation comparable to the facts in *R.B. v. Hungary* or *Alković v. Montenegro*. In addition, while the applicants rightly criticise the inadequate police response, the latter's physical presence could not have but diminished the applicants' sense of vulnerability.

10. Our last point concerns the efficiency of the response to hate speech. For such a response to be efficient, it has to take place at the domestic level. It might well be that the NCCD has in the past not been as efficient in responding to incidents of hate speech as one might wish. But it remains the institutional response designed by the respondent State to deal with such issues. By requiring a criminal-law remedy and circumventing the response which the NCCD was designed to provide (and could have provided), and by not allowing it even to play a role in the proceedings, we are not strengthening the human-rights protection system under the Convention.

Appendix

No.	Applicant's Name	Year of birth / establishment	Place of residence
1	ASSOCIATION ACCEPT	2000	Bucharest
2	Alexandra CÂNDEA	1981	Bucharest
3	Alexandra Mihaela CARASTOIAN	1988	Bucharest
4	Ioana Ramona FILAT	1980	Bucharest
5	Diana Elena MATEESCU	1980	Bucharest
6	Claudia STĂNESCU	1981	Bucharest