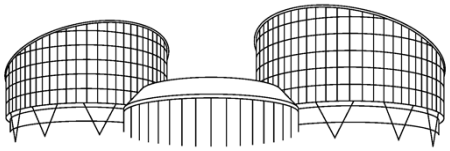

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BEDNAREK AND OTHERS v. POLAND

(Application no. 58207/14)

JUDGMENT

Art 3 (+ Art 14) • Positive obligations • Discrimination on the basis of sexual orientation • Insufficient State response to battery with homophobic overtones committed against the applicants • Treatment to which applicants were subjected reached the threshold of severity to fall under Art 3 • Domestic legal framework did not include sexual orientation among grounds for the commission of hate crime or discrimination offences • *Prima facie* indications that two of the applicants suffered violence motivated or influenced by prejudice • Despite the authorities investigating and convicting the perpetrators with some consideration to the homophobic context, no charges or prosecution brought for a hate-motivated attack • Attackers' demonstration of hostility towards applicants due to their perceived sexuality not taken into account in determining punishment • State's failure to discharge its duty to ensure violent attacks motivated by hostility towards victims' actual or presumed sexual orientation did not remain without an appropriate response

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 July 2025

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 Bednarek and Others v. Poland,

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

Ivana Jelić, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Georgios A. Serghides,
Erik Wennerström,
Raffaele Sabato,
Frédéric Krenc, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 58207/14) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Stanisław Bednarek and Dawid Durejko, Polish nationals, and by Vyacheslav Melnyk, a Ukrainian national ("the applicants"), on 17 August 2014;

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

the decision by the Government of Ukraine not to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

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

the comments submitted by Helsinki Foundation for Human Rights, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), and the Campaign Against Homophobia jointly with the Love Does Not Exclude Association, which were granted leave to intervene by the President of the Section;

Having deliberated in private on 3 December 2024 and 3 June 2025,

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

INTRODUCTION

1. The application concerns the criminal proceedings relating to battery with homophobic overtones committed against the applicants by third parties. It raises issues under Article 3 of the Convention in conjunction with Article 14 of the Convention.

THE FACTS

2. The first applicant, Mr Stanisław Bednarek, and the second applicant, Mr Dawid Durejko, are Polish nationals who were born in 1991 and live in Warsaw. The third applicant, Mr Vyacheslav Melnyk, is a Ukrainian national

who was born in 1992 and lives in Warsaw. They were represented before the Court by Mr P. Knut, a lawyer practising in Warsaw.

3. The Polish Government ("the Government") were represented by their Agent, Mr J. Sobczak, subsequently replaced by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

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

5. On 1 January 2013 at about 3 a.m., the applicants were assaulted and beaten by two brothers, Pa.M. and Pi.M., and a certain A.M. while walking in one of Warsaw's main streets with a female friend, K.K. The first and the third applicants, who were a couple at the material time, had been holding hands.

6. After the incident the first applicant complained to the police of pain on his face and a bloody nose. The second applicant complained that he had been punched during the assault but that he had not sustained any injuries. According to his submission to the police he did not consider himself a victim in the criminal case. He stated that he had feared for his life in the light of threats uttered by the assailants. It is not known whether any injuries were sustained by the third applicant.

7. On 1 January 2013 at 3.10 a.m., the M. brothers and A.M. were stopped by two police officers. Pa.M. and A.M. were tested and found to be inebriated. Pi.M. refused to take an alcohol test. Pi.M., Pa.M. and A.M. did not report any injuries.

8. Two incident reports (*notatka urzędowa*) were prepared by the police. It was noted in these documents that the first and the second applicants had submitted that the impugned attack had been motivated by homophobia and that swear words and homophobic threats had been uttered. The case file does not contain any other documents from the investigation phase of the proceedings.

9. Later that day Pa.M. was heard by the police as a suspect.

10. On 18 February 2013 the Warsaw-Centre District Prosecutor (*Prokurator Prokuratury Rejonowej*) filed a bill of indictment against Pi.M., Pa.M. and A.M., accusing them of the offences of battery and uttering threats. The case was registered with the Warsaw-Centre District Court (*Sąd Rejonowy*). The applicants were given the status of auxiliary prosecutors (*oskarżyciel posiłkowy*).

11. On 16 May 2013 the domestic court heard the accused persons. All three applicants were present at that hearing, accompanied by their lawyer. The applicants and K.K. testified at the hearing held on 14 August 2013 in the presence of the lawyer representing them.

12. On 14 August 2013 the Warsaw-Centre Regional Court convicted the accused persons of battery and Pa.M. was additionally convicted of uttering threats. All three were sentenced to imprisonment for a term of one year and each of them was ordered to pay 100 Polish zlotys ((PLN), approximately

25 euros (EUR)) to each applicant. All three prison sentences were suspended for three years.

13. The first-instance court based its judgment on the testimony of the applicants and of K.K. and on the submissions of A.M., Pa.M. and Pi.M. The domestic court considered that evidence only partly reliable in view of the fact that each party to the fight had clearly recounted the relevant events in a subjective manner and blamed their adversaries for the assault, the fact that the witnesses and the accused parties had altered their accounts during the proceedings, and the sequence of the events. The domestic court also heard the two policemen who had intervened, and it obtained all the incident reports (concerning the arrest, the search and the tests for alcohol levels in the blood).

14. The first-instance court attached the greatest weight to K.K.'s testimony, as she had been the only person not to actively participate in the brawl, having observed it from the periphery, and to the applicants' earlier version of the events, as it had been given shortly after the incident had taken place.

15. The first-instance court's reasoning was nineteen pages long and it contained detailed references to various pieces of contradictory or corroborating evidence. The analysis of the assailants' motives was a half-page long.

16. The domestic court established the sequence of events and assessed the accused persons' intent as follows.

17. Pi.M., who was intoxicated, maliciously accosted the first and the third applicants as they were walking, breaking their grasp and calling them "faggots", thus expressing his disapproval of their sexual orientation. He then kept walking. In the domestic court's opinion, even though Pi.M.'s behaviour had been reprehensible, it did not show that the accused had already at that point decided to attack the applicants because of their sexual orientation. The fact that he had refrained from immediately attacking the applicants showed instead that his intention at that point had only been to annoy them out of spite.

18. The first applicant then turned around and said something to Pi.M. That comment aroused aggression in Pi.M., who had been drinking that night. Pi.M. then attacked the first applicant. The first applicant fought back. At that point, neither of the remaining applicants nor Pa.M. or A.M. took part in the struggle.

19. The second and third applicants tried to separate the two men who were fighting. Pa.M. caught up with the group. The M. brothers were the aggressive party. They punched all three applicants in the head and the face.

20. At that point A.M. ran towards the third applicant and held him by the throat against a tree. The rest of the time, she stood to the side, insulting the applicants.

21. The brawl ended and the accused persons started to walk away, one of them carrying the first applicant's bag.

22. The second phase of the incident started when the first applicant, followed by the second and the third applicants, ran after Pa.M. and grabbed the bag from him. Pa.M. spontaneously reacted by turning around and hitting the first applicant. Pa.M. continued to hit him, and Pi.M. also subsequently joined in. At some point the first applicant fell or was knocked to the ground and the M. brothers continued to hit and kick him. The second applicant tried to pull the first applicant out of the brawl, whereupon he himself received several blows.

23. When the accused persons were stopped by the police, Pa.M. called the applicants "faggots" and threatened to knock their teeth out and beat them up. The domestic court noted that the slang word employed by Pa.M. (*zajebać*) could mean either "hitting someone" or "stealing". The court concluded that the expressions used by Pa.M. constituted threats of physical harm.

24. The first-instance court classified the incident as battery, with the accused persons having clearly been the aggressors. The threats made by Pa.M. were considered a separate offence. The domestic court analysed the elements of the latter offence, taking into account the offensive wording employed by Pa.M. (see paragraph 23 above).

25. As to the motivation of the accused persons, the domestic court found that Pi.M. had accosted the applicants to show his disapproval of their sexual orientation. It was with that motive that Pi.M. had walked in between the first and third applicants, breaking their grasp. The direct cause of the beating itself, however, had been Pi.M.'s irritation with the first applicant's remark, which he had made as Pi.M. had continued walking. The domestic court considered that the Pi.M.'s anger had clearly been unjustified, but it could nevertheless have been the cause of Pi.M.'s attack, bearing in mind his state of intoxication. In the domestic court's view, in the circumstances of the case and especially given his state of intoxication and resulting aggressive behaviour, Pi.M.'s assault might have taken place whatever the sexual orientation of the victim. The domestic court thus concluded that the direct motive behind the beating of the applicants had not been homophobia, but rather an urge to retaliate against the applicants for the comment which one of them had made.

26. The domestic court further observed that Pa.M.'s main motive in joining the fight had been to help and assist his brother, even though their behaviour had a clear homophobic dimension. A.M. had also been motivated by a desire to provide help to Pa.M. and Pi.M. Regarding the offence of uttering threats, the domestic court noted the use of the word "faggot" by Pa.M. (see paragraph 23 above). It did not, however, further elaborate on this element.

27. In deciding on the sentence, the domestic court observed that the level of the accused persons' culpability was high, since they were sane adults and had acted with intent to assault and threaten the applicants. The offences had

been committed with a direct intent and had caused serious social harm because the life and limb of the applicants had been at risk. Overall, the applicants had received blows to the head, face and body, they had been insulted and had felt further threatened. Less serious harm had been inflicted on the third applicant by A.M. The court also took into consideration the financial situation of the accused parties.

28. The applicants appealed, arguing, *inter alia*, that the first-instance court had erred in rejecting their argument that incident had been motivated, from the beginning until the end, by homophobia and in ordering a disproportionately lenient sentence. The applicants did not challenge the other factual findings made by the district court.

29. On 14 February 2014 the Warsaw Regional Court (*Sąd Okręgowy*) upheld the first-instance judgment. The appellate court held specifically that the available evidence, and in particular K.K.'s testimony, did not confirm the allegation that the acts committed by the accused had been motivated by hate, prejudice or discrimination against persons of different sexual orientation. The court observed that the fines imposed might appear low, but that they reflected the financial situation of the accused, who did not have any permanent jobs. The judgment was final, as no cassation appeal to the Supreme Court was available.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Existing regulations

30. Article 32 of the Polish Constitution, as in force at the relevant time and currently, sets out the principle of equality before the law and the general prohibition of discrimination on any grounds. It reads as follows:

> "1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
>
> 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever."

31. Hate crimes and discrimination are governed by Article 119 § 1 of the Polish Criminal Code (*Kodeks Karny*), which was in force at the relevant time and still is in force. That provision reads as follows:

> "Anyone who uses violence or makes unlawful threats towards a group of people or towards a particular person because of their national, ethnic, racial, political or religious affiliation or because of their lack of religious beliefs shall be subject to imprisonment for a term of three months to five years."

32. Article 158 of the same Code regulates the generic offence of battery. The version in force at the relevant time read as follows:

"1. Anyone who is involved in a brawl or a beating which exposes a person to the immediate danger of death or of [mild, medium or serious bodily injury] shall be punished by imprisonment for a term of up to three years.

2. If the consequence of a brawl or a beating causes serious damage to human health, the offender shall be punished by imprisonment for a term of six months to eight years.

3. If a brawl or a beating results in the death of a person, the offender shall be subject to imprisonment for a term of one to ten years."

33. In the current version of Article 158, in force since 1 October 2023, the above-mentioned terms of imprisonment have been changed as follows: in paragraph 1, the term is from three months up to five years; in paragraph 2, the term is from one year up to ten years; and in paragraph 3, the term is from two to fifteen years.

34. Article 190 of the Criminal Code regulates the generic offence of making threats. The version in force at the relevant time read as follows:

"1. Anyone who threatens another person with committing a criminal offence to the detriment of that person or of those close to him or her, where the threat raises a credible fear that it will materialise, shall be punished by a fine, restriction of liberty or imprisonment for a term of up to two years.

2. The prosecution [of that offence] shall be carried out on a request by the victim."

35. In the current version, in force since 1 October 2023, the above-mentioned provision sets out a single punishment of imprisonment for up to three years.

36. Article 53 of the Criminal Code pertains to the system of punishment and punitive measures. The version in force at the relevant time read as follows:

"1. A court shall impose a [discretionary] punishment within the limits set out by law, provided that the suffering [which results from the punishment] does not exceed the degree of the criminal responsibility, taking into account the degree of the social harm caused by the act and the objectives of prevention and education, which are to be achieved in respect of the sentenced person, and of the need to raise legal awareness in society.

2. The court imposing a punishment shall take into account, specifically[:] the motivation and the conduct of the offender, especially if the [victim] was a vulnerable person because of his or her age or health; [whether] the offence was committed jointly with a minor; the type and the degree of infringement of the obligations imposed on the offender; the nature and the scope of the negative consequences of the offence; the personal characteristics and circumstances of the offender; his or her lifestyle prior to the commission of the offence; [the offender's] behaviour after the commission of the offence, in particular [his or her] attempts to [restore] ... a sense of social justice; and the victim's behaviour.

..."

37. On 7 July 2022 amendments effective 1 October 2023 were made to Article 53 of the Criminal Code. Paragraph 1 of the provision currently reads as follows:

"1. A court shall impose punishment at its discretion, within the limits set out by law, taking into account the degree of social harmfulness of the act, aggravating and mitigating circumstances, the objectives of the punishment in terms of social impact, as well as the preventive objectives that it is supposed to achieve in relation to the convicted person. The severity of the punishment shall not exceed the degree of guilt."

38. In addition, paragraphs 2a and 2b were added, setting out aggravating and mitigating circumstances. Paragraph 2a, regarding the former, reads as follows:

"2a. Aggravating circumstances are, in particular:

1) a previous criminal record for an intentional crime or a for a similar crime lacking intent;

2) taking advantage of the victim's helplessness, disability, illness or old age;

3) a course of action leading to the humiliation of or [causing] anguish to the victim;

4) the commission of a premeditated offence;

5) the commission of the offence as a result of a motivation deserving particular condemnation;

6) the commission of an offence motivated by hatred because of the victim's national, ethnic, racial, political or religious affiliation, or because of the victim's lack of religious beliefs;

7) acting with particular cruelty;

8) the commission of an offence while under the influence of alcohol or a drug, if this condition was a factor leading to the commission of the offence or materially increasing its effects;

9) the commission of an offence in cooperation with or with the participation of a minor."

39. On 26 February 2014 the Polish Prosecutor General issued official Guidelines on Proceedings involving Hate Crimes (PG VIIG021/54/13). It is explicitly stated in that document that the guidelines concern crimes committed to the detriment of persons because of their national, ethnic, racial, political or religious affiliation or because of their lack of religious beliefs. The guidelines are silent on the subject of homophobic or transphobic hate crimes.

B. Attempts to reform the criminal law

40. The first proposal to amend the criminal law to prohibit hate crimes and hate speech motivated by homophobia and transphobia was submitted to the Polish Parliament in 2011. Three similar draft amendments were proposed in 2012. New draft amendments were presented in 2014, 2016, 2018 and 2019. All those draft amendments were either rejected, not submitted to a vote, or otherwise not advanced before the expiry of the Parliamentary term. The official position on the 2019 draft amendment taken by the Government, the Prosecutor General and the National Council of the Judiciary was

essentially that it was unnecessary to amend the Criminal Code to include sexual orientation and gender identity among the possible motives of hate crimes and hate speech, given that, in their view, the existing criminal and civil law offered sufficient protection against offences motivated by prejudice against LGBTI persons.

41. The latest draft amendment to prohibit hate crimes and hate speech motivated by homophobia and transphobia was submitted by the Government and was tabled in 2024 (document no. 876).

42. According to that proposal, Article 53 § 2a (6) and Article 119 § 1 (see paragraphs 31 and 36-38 above) (as well as Article 256 § 1 and Article 257 – on hate speech) of the Criminal Code should be amended to include, *inter alia*, hatred motivated by sexual orientation among the circumstances considered aggravating for acts of violence, uttering threats, incitement to hatred and hate speech. In addition, where relevant, the word "because" should be replaced by the term "in connection with". The formulation proposed aims at extending the applicability of the provisions in question to persons who do not have, but who are merely perceived as having the status designated in these provisions.

43. According to the written reasoning of the 2024 draft amendment, the existing criminal law is insufficient to ensure effective and viable protection for those affected by discrimination on the grounds, *inter alia*, of sexual orientation and does not meet the needs of the contemporary society. The aims of the reform included alignment with international standards, improvement of the effectiveness of the fight against offences committed on discriminatory grounds and the strengthening of the protection of victims by way of ensuring an effective system of criminal-law sanctions.

44. In December 2024, the first reading of the draft amendment was completed and the proposal was not rejected by the lower chamber of Parliament. In February 2025, the Extraordinary Committee for Changes in Codifications (*Komisja Nadzwyczajnej do spraw zmian w kodyfikacjach*) recommended that the draft amendment be adopted. That process is on-going.

II. STATEMENTS BY THE POLISH COMMISSIONER FOR HUMAN RIGHTS

45. In a submission of 22 October 2015 addressed to the Minister of Justice (VIII.816.2.2014.AM), the Polish Commissioner for Human Rights observed that the existing legal framework was not effective or comprehensive enough to ensure equal treatment of, *inter alia*, non-heterosexual or transsexual persons.

46. The Commissioner submitted that, according to the applicable international standards, the victims of hate crimes had to be identified as victims of discrimination, while the hate motive of a crime had to be revealed and the perpetrator had to be liable to a more severe punishment than that for

ordinary offences. In that context, the Commissioner stated that the Court, in its judgments in the case of *Kozak v. Poland* (no. 13102/02, § 92, 2 March 2010) and in the case of *P.V. v. Spain*, (no. 35159/09, § 30, 30 November 2010), had indicated that sexual orientation and sexual identity were among the grounds of discrimination prohibited under Article 14 of the Convention. Moreover, in the hate speech case of *Vejdeland and Others v. Sweden* (no. 1813/07, § 55, 9 February 2012), the Court had held that discrimination based on sexual orientation was as serious as discrimination based on "race, origin or colour". The Commissioner also referred to the Court's judgments in the case of *Abdu v. Bulgaria* (no. 26827/08, § 44, 11 March 2014) and in the case of *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII), making the following submissions. Hate motivated violence was a particular affront to human dignity and, in view of its perilous consequences, required from the authorities special vigilance and a vigorous reaction. It was for that reason that the authorities had to use all available means to combat such violence, thereby reinforcing the democratic vision of a society in which diversity was not perceived as a threat but as a source of enrichment. Treating hate motivated violence on an equal footing with cases lacking any such overtones would be tantamount to turning a blind eye to the specific nature of acts which were particularly destructive of fundamental human rights.

47. Lastly, the Commissioner observed that various international entities, including the European Union (EU) Agency for Fundamental Rights, the European Parliament, the United Nations (UN) Committee Against Torture, the UN Human Rights Committee and the European Commission against Racism and Intolerance ("the ECRI") (see paragraphs 52-56 below), had recommended that Polish criminal law should be amended so as to explicitly punish homophobic and transphobic crimes. Some of those entities had also recommended that such homophobic and transphobic motives should be treated as an aggravating circumstance for the purpose of punishment.

48. In a submission of 11 February 2016 addressed to the Minister of Justice (XI.816.10.2015.AM), the Polish Commissioner for Human Rights reiterated his observations from his previous submission in 2015 (see paragraphs 45-47 above). In addition, he stressed that violence against, *inter-alia*, non-heterosexual persons and transgender persons was of a special nature and required increased efforts to detect, prosecute and punish it. A strong response to that type of violence would be a guarantee of the implementation of international standards for the protection of the rights and freedoms of the victims of hate crimes.

49. In a submission of 14 May 2020 addressed to the Minister of Justice (XI.503.3.2020.MA), the Polish Commissioner for Human Rights reiterated that the existing national legal framework did not effectively protect the rights of LGBTI persons and was not aligned with the applicable international standards. The Commissioner further observed that hate crimes, including

hate speech, constituted the most dangerous form of unequal treatment and led to the exclusion of the targeted social groups. Hate crimes not only negatively affected the direct victims, but also democratic society and the principle of the rule of law, with which an attack on the fundamental principles of the dignity and equality of all human beings was incompatible. Given those considerations, it was necessary to amend the Criminal Code to include the penalisation of hate crimes, including hate speech, based on actual or perceived sexual orientation and sexual identity.

III. INTERNATIONAL MATERIAL

50. EU law prohibits any discrimination based on any ground, explicitly including sexual orientation (see Articles 10 and 19 of the Treaty on the Functioning of the EU, in force in Poland since 1 May 2004, and Article 21 § 1 of the EU Charter of Fundamental Rights, in force in Poland since 1 December 2009). The proposal for an EU Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426 final 2008/0140 (CNS)) is considered "blocked", with further progress "unlikely" (see the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission work programme 2025, published on 11 February 2025, Annex IV: Withdrawals, point 26, page 25).

51. On 31 March 2010 the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination on grounds of sexual orientation or gender identity. In so far as relevant, its Appendix reads as follows:

> **"I. Right to life, security and protection from violence**
>
> A. 'Hate crimes' and other hate-motivated incidents
>
> 1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
>
> 2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
>
> ..."

52. On 26 October 2010 the UN Human Rights Committee adopted the following concluding observations, having considered the sixth periodic report of Poland (Consideration of reports submitted by States parties under article 40 of the Covenant, CCPR/C/POL/CO/6):

> "...
>
> 8. The Committee notes with concern a significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people and, since 2005, in the number of cases based on sexual orientation filed with the Ombudsman. The Committee also regrets the absence of the provision in the [Criminal] Code of hate speech and hate crimes based on sexual orientation or gender identity as punishable offences (art. 2).
>
> The State party should ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated. It should also: legally prohibit discrimination on the grounds of sexual orientation or gender identity; amend the [Criminal] Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.
>
> ..."

53. In 2012, the EU Agency for Fundamental Rights issued a report: "Making hate crime visible in the European Union: acknowledging victims' rights". In so far as relevant, the agency formulated the following opinions based on the analysis contained in the report (see page 11 of the report):

> "...
>
> Acknowledging victims of hate crime
>
> ...
>
> Legislation should be adopted at the EU and national levels that would oblige EU Member States to collect and publish data pertaining to hate crime. This would serve to acknowledge victims of hate crime, in line with the duty of EU Member States flowing from the case law of the European Court of Human Rights to unmask bias motivations underlying criminal offences. These data would not allow for the identification of individuals but would be presented as statistics.
>
> ...
>
> As the right to non-discrimination under Article 14 of the ECHR ties in with the right to an effective remedy under Article 13 of the ECHR, victims of hate crime should have remedies available to them to enable them to assert their rights under Article 14 of the ECHR. This would apply in any case where victims believe that the public prosecutor or the criminal court did not sufficiently address the violation of this right.
>
> To encourage hate crime reporting, confidence should be instilled among victims and witnesses of hate crime in the criminal justice system and law enforcement.
>
> Ensuring effective investigation and prosecution
>
> EU Member States' law enforcement agencies and criminal justice systems should be attentive to any indication of bias motivation when investigating and prosecuting crimes.

Details on hate crime incidents should be recorded to allow for the identification of specific bias motivations, so that these can be followed up when investigating and prosecuting hate crimes.

Convicting hate crime offenders

Legislators should look into models where enhanced penalties for hate crimes are introduced to stress the added severity of these offences. This would serve to go beyond including any given bias motivation as an aggravating circumstance in the criminal code. The latter approach is limited in its impact because it risks leading to the bias motivation not being considered in its own right in court proceedings or in police reports.

Courts rendering judgments should address bias motivations publicly, making it clear that these lead to harsher sentences.

..."

54. On 19 November 2013 the UN Committee against Torture adopted the following concluding observations, having considered the combined fifth and sixth periodic reports of Poland (Concluding observations on the combined fifth and sixth periodic reports of Poland, CAT/C/POL/CO/5-6):

"...

Vulnerable groups

25. The Committee notes the adoption of the Equal Treatment Act in 2010 and the provisions of the [Criminal] Code prohibiting hate crimes (arts. 119, 256 and 257), but considers that neither the Act nor the [Criminal] Code provide adequate and specific protection against discrimination based on sexual orientation ... It is also concerned at the significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people ...

The Committee recommends that the State party incorporate offences in its [Criminal] Code to ensure that hate crimes and acts of discrimination and violence that target persons on the basis of their sexual orientation ... are punished accordingly. It also urges the State party to take all necessary measures to combat discrimination and violence against ... lesbian, gay, bisexual and transgender people ..."

55. The European Parliament, in a resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI)), stated that member States should register and investigate hate crimes against LGBTI people and adopt criminal legislation prohibiting incitement to hatred on grounds of sexual orientation and gender identity (see point 4.J(v) of the resolution).

56. In its report on Poland, published on 9 June 2015, the ECRI recommended that that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code (paragraph 47 of the report). In its latest report on Poland, published on 18 September 2023, the ECRI reiterated its previous recommendation and made the following observations, in so far as relevant (footnotes omitted):

"51. [The] ECRI recommends, as a matter of priority, that the Polish authorities initiate legislative amendments to add sexual orientation, gender identity and sex

characteristics as explicitly prohibited grounds to the relevant provisions of the Criminal Code.

...

63. Neither paragraph 1 of Article 118 of the Criminal code prohibiting homicide, nor paragraph 1 of Article 119 prohibiting violence, nor paragraph 2 of Article 255 prohibiting incitement to crime, have been amended to include sexual orientation or gender identity among the grounds for hate crime, despite [the] ECRI having recommended the addition of these grounds in its fifth report. As concerns criminal legislation, reference is made in this regard to the recommendation made in paragraph 51.

64. According to data submitted by the Polish authorities to [the] OSCE/ODIHR, there were 826 cases of hate crime recorded by police services in 2020, out of which 374 were prosecuted and 266 resulted in a sentence by court. The corresponding numbers were 972, 432 and 597 in 2019 and 1,117, 397 and 315 in 2018. According to the authorities, hate crimes constitute less than 1% of all crimes recorded in the country.

65. The authorities informed [the] ECRI that, in each regional public prosecutor's office, at least one district prosecutor is responsible for the conduct of proceedings in hate crime cases. As a result, there are in theory about one hundred prosecutors in Poland who are specialised in conducting proceedings in relation to hate crimes. The authorities indicated that such training for judges and prosecutors continue. A 2014 Prosecutor General's written order provides guidance as to how to investigate hate crimes. However, several civil society sources claim that the 2014 order was not properly implemented.

66. According to the independent prosecutor association LSO, the management of the Prosecution Service has systematically deprioritised the investigation and prosecution of hate crimes since March 2016 and there are no longer compulsory training courses about hate crimes for prosecutors who are assigned such cases. Neither are there any optional courses on hate crimes that prosecutors or judges could attend. Similar to the prosecution of hate speech, hate crime cases, which are indeed often based on the same articles of the Criminal Code, are frequently discontinued despite the apparent presence of clear evidence of criminal offences.

67. [The] ECRI recommends that the authorities ensure compulsory training about the effective investigation and prosecution of hate crime for police officers and prosecutors and make courses on the handling of hate crimes available to judges."

57. A similar recommendation was made by the UN Human Rights Committee in their Concluding observations on the seventh periodic report of Poland published on 23 November 2016 (CCPR/C/POL/CO/7). The relevant parts of that report read as follows:

"15. The Committee is concerned about the reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the authorities to such incidents. The Committee is also concerned that the [Criminal] Code does not refer to disability, age, sexual orientation or gender identity as grounds for hate crimes (arts. 2, 3, 18, 20, 26 and 27).

16. The State party should continue strengthening its efforts to prevent and eradicate all acts of ... homophobia by, *inter alia*:

(a) Amending the [Criminal] Code so that crimes motivated by discrimination on any grounds under the Covenant are investigated and prosecuted as aggravated forms of criminal conduct;

(b) Taking measures to prevent and swiftly and effectively respond to any incidents of hate speech, discrimination, violence or alleged hate crime, including through the Internet, by banning the operation of racist associations and facilitating civil lawsuits by victims pursuant to article 24 (1) of the Civil Code;

(c) Thoroughly investigating alleged hate crimes, prosecuting perpetrators and, if convicted, punishing them, and providing victims with adequate remedies;

..."

58. The UN Human Rights Council's Report of the Working Group on the Universal Periodic Review regarding Poland, published on 18 July 2017 (A/HRC/36/14) contains the following recommendations, in so far as relevant:

"120. The following recommendations will be examined by Poland which will provide responses in due time, but no later than the thirty-sixth session of the Human Rights Council:

...

120.46 Improve further its non-discrimination legislation by criminalizing hate crimes on the grounds of ... sexual orientation and gender identity, while taking the measures necessary to combat discrimination based on race, sex, nationality, ethnicity, religion or any other grounds (Brazil);

120.47 Amend the [Criminal] Code to provide that crimes motivated by discrimination on any grounds, including ... gender identity and expression and sexual orientation, are included in the Code and therefore can be investigated and prosecuted as hate crimes (Norway);

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

59. The applicants complained, relying on Articles 3, 6, 13 and 14 of the Convention, that when conducting the proceedings in respect of the assault and battery committed against them, the authorities had not taken into account the homophobic motivation of the perpetrators. The applicants also complained of a lack of adequate legislative and other measures to prosecute and combat hate crimes motivated by victims' sexual orientation.

60. The Court, being the master of the characterisation to be given in law to the facts of the case, considers that the applicants' complaints fall to be examined under Article 3 of the Convention taken in conjunction with Article 14 of the Convention (see *Radomilja and Others v. Croatia* [GC],

nos. 37685/10 and 22768/12, § 126, 20 March 2018). Moreover, in view of the applicants' allegations that the violence perpetrated against them had homophobic overtones which had not been adequately considered by the domestic court, the Court finds that the most appropriate way to proceed is to subject the applicants' complaints to a simultaneous examination under Article 3 taken in conjunction with Article 14 of the Convention (see, *mutatis mutandis*, *Identoba and Others v. Georgia*, no. 73235/12, § 64, 12 May 2015; *M.C. and A.C. v. Romania*, no. 12060/12, § 106, 12 April 2016; *Oganezova v. Armenia*, nos. 71367/12 and 72961/12, § 78, 17 May 2022; and *Karter v. Ukraine*, no. 18179/17, § 57, 11 April 2024).

61. The relevant provisions of the Convention read as follows:

Article 3

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

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."

A. Admissibility

62. 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.

B. Merits

1. The parties' submissions

(a) The applicants

63. The applicants argued that, when conducting the investigation and the court proceedings, the authorities had not taken into account the fact that the offences committed against them had been motivated by their sexual orientation. That motivation was, in their view, clearly shown by the insults shouted at them by the assailants during the incident. The authorities had therefore failed to meet the procedural obligations enshrined in Articles 3 and 14 of the Convention.

64. They also contended that, owing to the lack of adequate legislation, there was a pattern of disregarding the homophobic elements of cases where generic criminal offences were investigated, prosecuted and then tried in court.

65. Lastly, the applicants claimed that Poland did not monitor or effectively deter anti-LGBTI hate crimes. In their view, the lack of a specific criminal-law provision prohibiting hate crimes motivated by a victim's sexual orientation and the pattern of disregarding the homophobic context of other criminal offences resulted in the under-reporting and under-recording of homophobic and transphobic incidents in Poland.

(b) The Government

66. The Government essentially argued that there had been no violation of Article 3 of the Convention, whether taken alone or in conjunction with Article 14 of the Convention, owing to the effective investigation into the events complained of, the thorough court proceedings in which the applicants had had the status of auxiliary prosecutors, and the punishment of the perpetrators.

67. The Government acknowledged that the legal framework (in particular, Article 119 of the Criminal Code) did not explicitly prohibit hate crimes committed on the ground of the victim's sexual orientation. They claimed, however, that legal protection against such acts was not excluded and that, in fact, the domestic courts in the present case had taken into consideration the allegedly homophobic aspect of the case.

2. The third-parties' comments

68. The third-party interveners, namely, the Helsinki Foundation for Human Rights, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and the Campaign Against Homophobia jointly with the Love Does Not Exclude Association, made the following submissions regarding criminal offences against LGBTI persons in Poland in the recent years. In so far as relevant, the submissions of the third-party interveners focussed on two main themes, as described below.

(a) Discrimination and harassment of LGBTI persons in Poland

69. Each third-party intervener referred to various reports and surveys showing that the level of discrimination and harassment against LGBTQIA persons in Poland was over the European average. Those included: a report drawn up in 2020 by the EU Agency for Fundamental Rights "EU-LGBTI II Survey – A long way to go for LGBTI equality"; a report entitled "Situation of LGBTA Persons in Poland 2015-2016", financed by the Campaign Against Homophobia, the Lambda Warsaw Association and the Trans-Fuzja Foundation; the 2016 "Hate No More" survey report from the University of Warsaw; the 2019 Eurobarometer on discrimination in the EU; and the Council of Europe Commissioner for Human Rights' 2020 Memorandum on the stigmatisation of LGBTI People in Poland.

70. In particular, according to the above-mentioned survey by the EU Agency for Fundamental Rights, 15% of LGBTI persons in Poland had experienced physical violence in the five years before the survey. That was the highest rate among the EU member States, where the average rate was 11%. In the year before the survey, 42% of LGBTI persons in Poland had experienced harassment – as opposed to the 38% average rate for the EU. 12% of LGBTI victims of a physical or sexual attack motivated by their sexual orientation or gender identity had reported such attacks to the police – as opposed to the 14% average rate for the EU.

71. According to the same survey, 83% of respondents reported that they avoided holding hands with their same-sex partner in public – as opposed to the 61% average rate for the EU. The 2019 Eurobarometer on discrimination in the EU reported that public displays of affection, such as kissing or holding hands, by same-sex couples would make 58% of Poles feel uncomfortable – as opposed to the 14% of Poles whom public displays of affection by heterosexual couples would make feel uncomfortable.

72. The Campaign Against Homophobia and the Love Does Not Exclude Association submitted that hate crimes had a particularly severe impact compared to other crimes, in that they affected not only the victim, but also the broader LGBTI community and society as a whole.

73. The third-party interveners further submitted that, despite the scale of victimisation, hate crimes based on sexual orientation or gender identity were notoriously under-reported in Poland to the police. According to the "Hate No More" survey, that phenomenon could be explained by, among other reasons, the lack of faith of victims that their criminal complaints would lead to the arrest of offenders. Moreover, the Helsinki Foundation for Human Rights submitted that, according to a study conducted in 2016 by the Campaign Against Homophobia, the majority of persons in Poland who had tried to report various homophobic incidents had experienced attempts by the police to discourage them from pursuing their complaints (see also the 2016 "Hate No More" survey).

74. The Campaign Against Homophobia and the Love Does Not Exclude Association also submitted that Poland did not collect comprehensive statistics on anti-LGBTI hate crime. They pointed to significant discrepancies between the official statistics (according to which there had been twenty-three cases of such crimes committed in 2018 and 2019, combined) and information provided by non-governmental organisations (according to which there had been sixty cases of such crimes committed in 2018 and 2019, combined). In the third-party intervener's opinion, that discrepancy could be explained not only by under-reporting, but also by the under-recording of incidents of anti-LGBTI motivation for crimes by the police. In that context, the Campaign Against Homophobia and the Love Does Not Exclude Association, while praising the introduction of a "checkbox" for hate crimes in police IT systems, stressed that, in practice, hate crimes based on sexual

orientation or gender identity were largely not flagged. Likewise, Poland did not monitor the prosecution or the sentencing of anti-LGBTI hate crimes.

(b) Hate crimes in Polish law and practice

75. All of the third-party interveners expressed the view that LGBTI persons in Poland were not guaranteed any special protection against hate crimes or hate speech motivated by prejudice. Polish criminal law defined hate crimes as acts committed on the basis of a number of specific grounds which did not include sexual orientation or gender identity (Article 119 of the Criminal Code). Moreover, bias based on sexual orientation or gender identity was not listed among the aggravating circumstances in respect of other criminal offences (Article 53 of the Criminal Code).

76. Moreover, the Helsinki Foundation for Human Rights submitted that the criminal offences relating to acts of violence and harassment in general, such as various forms of battery (Articles 157 and 217 of the Criminal Code), defamation (Article 212 of the Criminal Code) and insult (Article 216 of the Criminal Code), were to be prosecuted by means of private prosecution (Article 488 of the Code of Criminal Procedure). In the third-party intervener's opinion, that constituted a barrier to the effective prosecution and punishment of such offences because it put an additional burden on the victim, who had to identify the offender, gather evidence, draft a private bill of indictment and pay a fee to launch the proceedings.

77. The third-party intervener claimed that the public prosecution of such offences, which was possible under the applicable law, was not effectively implemented, firstly, because of the wide statutory discretion enjoyed by the prosecutors and, secondly, because of the chilling effect resulting from the institutionalised supervision of the prosecutors by the Prosecutor General/Minister of Justice, who, at the material time, was a person who was well known for his public anti-LGBTI statements and policies.

78. The Campaign Against Homophobia and the Love Does Not Exclude Association submitted that, when offences based on prejudice against LGBTI persons were prosecuted and tried, the element of bias was often overlooked or minimised in the absence of relevant laws or guidelines. The third-party intervener stressed that the guidelines on prosecuting hate crimes, issued in 2014 by the Prosecutor General (see paragraph 39 above), referred to hate crimes which were set out in the Criminal Code, but not to hate crimes based on homophobic or transphobic motives. They further submitted that there was no requirement in the Polish legal framework to treat such motives as an aggravating circumstance in committing a crime. Although, theoretically, such motives could be taken into consideration at the sentencing stage in respect of ordinary crimes, that almost never occurred in practice, with judges often ignoring or minimising the anti-LGBTI motivation of a crime.

79. Lastly, the Helsinki Foundation for Human Rights submitted that, according to the 2021 Rainbow Europe Map and Index prepared by

ILGA-Europe, out of forty-nine European countries covered by the ranking, twenty-eight provided for a specific protection against hate crimes based on sexual orientation in their legislation, while thirty-two criminalised hate speech against gay persons. The third-party intervener further stressed that international institutions and the Polish Ombudsman had, for years, been calling on Poland to amend its criminal laws to provide special protection against acts motivated by prejudice against LGBTI persons, as had, among other organisations, the ECRI in its 2015 Report on Poland; the UN Human Rights Committee in its 2016 Concluding observations on the seventh periodic report of Poland; and the UN Human Rights Council in its 2017 Universal Periodic Review of Poland Third Cycle (see paragraphs 52-58 above). Nevertheless, the Polish Parliament had failed to adopt relevant draft amendments that had been put forward over the years (see paragraphs 40-44 above).

80. The Helsinki Foundation for Human Rights concluded that the absence of effective protection against hatred based on sexual orientation and gender identity in Poland should be treated as a systemic problem.

3. The Court's assessment

(a) The severity of the treatment inflicted on the applicants

81. 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 qualified 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 which is grounded upon 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 as an aggravating factor when considering a given instance of ill-treatment in the light of Article 3 (see *Identoba and Others*, cited above, § 65, with further references – concerning the State's failure to protect LGBTI demonstrators from homophobic violence and to investigate effectively the incident by establishing, in particular, the discriminatory motive of the attackers). This is particularly true for violent hate crime.

82. In this connection it should be remembered that not only acts based solely on a victim's characteristics can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced by situational factors equally or more than by their biased attitude towards the group the victim belongs to (see *Oganezova*, cited above, § 81, with further references). The Court also reiterates that attacks on LGBTI individuals, triggered by expressions of affection, constitute an affront to human dignity by targeting universal expressions of love and companionship. The concept of dignity goes beyond mere personal pride or self-esteem, encompassing the right to express one's identity and affection without fear of retribution or violence. Homophobic attacks not only undermine victims' physical safety but also their emotional and psychological well-being, turning a moment of intimacy into one of fear and trauma. Furthermore, they humiliate and debase the victims, conveying a message that their identities and expressions are inferior, and therefore fall within the scope of Article 3 of the Convention (see *Hanovs v. Latvia*, no. 40861/22, § 42, 18 July 2024).

83. The Court considers that the treatment to which all three applicants were subjected, on account of them being a target of homophobic insults and of them being drawn into a violent altercation that, additionally, involved battery on two of the them and risk of the third applicant experiencing the same (see paragraph 6 above), must necessarily have aroused in them feelings of fear, anguish and insecurity, and must have constituted an affront to their dignity.

84. The Court also considers that the physical injuries which the first two applicants sustained as a result of the attack, given their intensity (see paragraph 6 above), could in themselves raise an issue under Article 3 of the Convention (see, for example, *Beganović v. Croatia*, no. 46423/06, § 66, 25 June 2009; *Milanović v. Serbia*, no. 44614/07, § 87, 14 December 2010; and *Mityaginy v. Russia*, no. 20325/06, § 49, 4 December 2012).

85. It follows that, in respect of all three applicants, the treatment complained of reached the requisite threshold of severity to fall under Article 3 of the Convention (compare *Identoba and Others*, cited above, § 71; *M.C. and A.C. v. Romania*, cited above, § 119; and *Hanovs*, cited above, §§ 41-44; see also *Balázs v. Hungary*, no. 15529/12, § 57, 20 October 2015).

(b) Compliance with the State's positive obligations

(i) General principles

86. The Court has formulated the general principles to be applied in cases where an applicant complains of alleged ill-treatment motivated by hatred towards LGBTI groups in *Identoba and Others* (cited above, §§ 65-67) and *M.C. and A.C. v. Romania* (cited above, §§ 109-15).

87. In addition, the Court would stress that the general obligation of the High Contracting Parties under Article 1 of the Convention to secure for

everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *M.C. and A.C. v. Romania*, cited above, § 109). It includes an obligation, *inter alia*, to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Stasi v. France*, no. 25001/07, § 80, 20 October 2011).

88. Moreover, the Court reiterates that when investigating violent incidents, such as ill-treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives, which the Court concedes is a difficult task. The respondent State's obligation to investigate possible discriminatory motives for a violent act is an obligation to use best endeavours, and is not absolute. The authorities must do whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or discrimination based on gender or sexual orientation. To treat violence and brutality with discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see *Sabalić v. Croatia*, no. 50231/13, § 94, 14 January 2021, with further references).

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

90. Lastly, when the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention.

While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow grave attacks on physical and mental integrity to go unpunished, or for serious offences to be punished with excessive leniency. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, might be deemed to have submitted the case to careful scrutiny, so that the deterrent effect of the judicial system in place and the significance of the role it was required to play in preventing violations of the prohibition of ill-treatment are not undermined (ibid., § 97, with further references).

91. The Court has previously found violations of the States' procedural obligation, whether under Article 2 or under Article 3 of the Convention, where the domestic authorities failed to take all reasonable steps to effectively ascertain whether or not a discriminatory attitude might have played a role in various forms of attack against the applicants, and/or where there was a manifest disproportion between the gravity of the act and the results obtained at domestic level, fostering the sense that acts of ill-treatment went ignored by the relevant authorities and that there was a lack of effective protection against acts of ill-treatment (see, for example, cases listed in *Sabalić,* cited above, § 98). Many such cases concerned the authorities' response to attacks conducted by private individuals motivated by homophobic or transphobic hatred (see, for example, *Sabalić*, cited above, § 115; *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §§ 64-67, 16 December 2021; *Oganezova*, cited above, § 108; *Stoyanova v. Bulgaria*, no. 56070/18, § 74, 14 June 2022; and *Romanov and Others v. Russia*, nos. 58358/14 and 5 others, § 80, 12 September 2023).

92. In several such cases the Court's conclusion that the State had failed to comply with the above-mentioned procedural obligation was based on the fact that in domestic criminal legislation discrimination on the grounds of sexual orientation or gender identity was not referred to in the provision regulating incitement to hatred or was not set out as a bias motive or an aggravating circumstance in the commission of an offence (see, for example, *Oganezova,* cited above, §§ 103-04, and *Stoyanova*, cited above, §§ 70-73).

(ii) Application of these principles to the present case

93. In the present case, the applicants complained that the authorities had not taken into account the homophobic motive of their attackers, and, instead, had investigated, prosecuted and tried them for ordinary criminal offences. The applicants essentially argued that their case fitted the pattern of the Polish criminal justice system disregarding the homophobic elements of cases because of the lack of an adequate legal framework that would sanction hate crimes based on sexual orientation or gender identity (see paragraph 64 above).

94. The Court observes at the outset that, in the Polish legal framework, the offence of committing a hate crime or discrimination (see Article 119 § 1 of the Criminal Code, paragraph 31 above) does not include the grounds of sexual orientation or gender identity. Moreover, domestic criminal legislation does not provide that discrimination on such grounds should be treated as a bias motive and an aggravating circumstance in the commission of an offence (see Article 158 of the Criminal Code regulating the offence of battery, Article 190 of the Criminal Code regulating the offence of making threats, and Article 53 of the Criminal Code setting out punishment and punitive measures, set out in paragraphs 32-36 and 75 above; see *M.C. and A.C. v. Romania*, § 124; *Oganezova*, § 103; *Stoyanova*, §§ 70-73; and *Karter*, § 90, all cited above; and compare *Hanovs*, cited above § 49).

95. In this context, the Court notes that the UN Human Rights Committee, the UN Committee Against Torture, the EU Parliament, the ECRI and the UN Human Rights Council recommended that Poland should amend its criminal law so as to penalise crimes motivated by discrimination on the grounds of sexual identity and gender identity as such (see paragraphs 52 and 54-58 above). In addition, in 2010 the Committee of Ministers of the Council of Europe recommended that in the legal systems of the members States a bias motive related to sexual orientation or gender identity should constitute an aggravating circumstance when imposing punishment for hate crimes (see paragraph 51 above). In 2012, a similar recommendation was made in the general context of hate crimes by the EU Agency for Fundamental Rights (see paragraph 53 above). The Court notes that those recommendations for the law to be amended have not been followed (see *Oganezova*, § 104, and *Karter*, § 90, both cited above).

96. The Court further observes that where the domestic criminal law does not include sexual orientation or gender identity among the grounds on which the offence of hate crime or discrimination can be committed, criminal acts committed with a homophobic hate motive could indeed be treated by the investigative authorities and, subsequently, by the courts as ordinary crimes, effectively ignoring the hate-based nature of the offence in terms of legal consequences (see *Oganezova*, cited above, § 103).

97. The Court has previously identified as problematic the prosecution of attacks motivated by prejudice under the ordinary provisions of criminal law (see, for example, *Identoba and Others*, cited above, § 76; *Burlya and Others v. Ukraine*, no. 3289/10, § 139, 6 November 2018; and *Karter*, cited above, § 87) and has set out comprehensive Convention standards regarding the positive obligations of member States to combat violence motivated by hatred, including specifically against LGBTI persons (see paragraphs 86-92 above).

98. In the present case, although the material in the case file contains very few documents from the investigation (see paragraph 8 above), it is apparent that the domestic authorities were confronted with *prima facie* indications of

violence motivated or at least influenced by the attackers' prejudice against the first and the third applicant's sexual orientation (see paragraph 8 above; see also *Sabalić*, cited above, § 105, with further references).

99. According to the Court's case-law, this necessitated – even in absence of a specific homophobia-related hate crime in the Polish criminal law – 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 *Sabalić*, § 105; *M.C. and A.C. v. Romania*, § 124; *Oganezova*, § 103; and *Hanovs*, § 48, all cited above). It was also essential for the relevant domestic authorities to adequately address the issue of discrimination motivating the attack on the applicants (see, *mutatis mutandis*, *M.C. and A.C. v. Romania*, § 124, and *Oganezova*, § 104, both cited above). The Court would stress that the principles that it has set out in its case-law concerning violence motivated by hatred towards minority groups, including towards LGBTI persons (see paragraphs 86-92 above) ought to be applied by State authorities, including by the domestic courts that can directly rely on such standards even in absence of a relevant provision transposing them into domestic law.

100. The Court observes at the outset that, unlike in many other cases concerning a State's inadequate response to homophobic violence that it has examined (see *Identoba and Others*, cited above, § 80; *M.C. and A.C. v. Romania*, cited above, § 125; *Genderdoc-M and M.D. v. the Republic of Moldova*, no. 23914/15, § 45, 14 December 2021; *Karter*, cited above, §§ 91-92; or *Hanovs*, cited above, § 53), in the present case, the authorities investigated the attack against the applicants and the domestic courts tried and convicted the perpetrators, while giving some consideration to the homophobic context of the incident.

101. In particular, the domestic courts which examined the criminal case against the applicants' aggressors took note, firstly, of the victims' presumed sexual orientation, which had been manifested publicly by two of them holding hands, and, secondly, of the attackers' repeated use of the word "faggot" (see paragraphs 17 and 23 above). The courts then looked in detail at the sequence of the events in order to determine the motive of each of the aggressors at each particular phase of the commission of the offences with which they were charged (see paragraphs 16-24 above).

102. Regarding the battery, the domestic courts found on the facts that Pi.M. had bumped into two of the applicants to show his disapproval of their sexual orientation. At the same time, the domestic courts established that the cause of the beating itself, however, had been Pi.M.'s irritation with the first applicant's remark, which he had made as Pi.M. had continued walking. The domestic courts therefore concluded that the direct motive behind the applicants' beating in and of itself had been a desire on the part of the drunken man to retaliate against the applicants for the comment which one of them

had made. Irrespective of those findings, the domestic courts condemned Pi.M.'s initial, discriminatory attitude (see paragraph 25 above; contrast, *mutatis mutandis*, *Karter,* cited above, §§ 88-89). The domestic courts also found that Pa.M. and A.M.'s motive in joining the fight had primarily been to assist Pi.M., even though the brothers' behaviour had a clear homophobic dimension (see paragraph 26 above; ibid.). Regarding the offence of uttering threats, the domestic courts noted the use of the word "faggot", without, however, elaborating on or drawing any legal consequences from this element (see paragraph 26 above).

103. Each defendant received a prison sentence of one year for battery and one of them was additionally convicted of uttering threats. Those sentences were conditionally suspended for three years. In addition, the domestic courts, taking into account the difficult financial situation of the defendants, ordered them each to pay the equivalent of EUR 25 to each applicant (see paragraphs 12, 27 *in fine*, and 29 above).

104. The Court reiterates that it cannot act as a domestic criminal court, hear appeals against national courts' decisions, or make pronouncements on any points of criminal liability (see, among other authorities, *Stoyanova*, cited above, § 67). It is therefore not for the Court to say whether the Polish courts were correct in considering that the sequence of events falling under the classification of battery had not been started by Pi.M. aggressively walking in between the two applicants holding hands or in avoiding to attach importance to the clearly homophobic insults in the examination of the offence of uttering threats – thus excluding the possibility that the discriminatory attitude of the perpetrators had played any role in the commission of the offences with which they were charged (see, *mutatis mutandis*, *Stoyanova*, cited above, § 67, and paragraph 102 above). Nor is it within the Court's province to check whether the Polish courts properly assessed the interplay of mitigating and aggravating factors when determining the attackers' sentences (see *Stoyanova*, cited above, § 67, and paragraphs 27 and 103 above).

105. Without intending to express any approval or disapproval towards the Polish courts' ruling on these points, the Court would nonetheless stress that the perpetrators were neither charged nor prosecuted for a hate-motivated attack (see, *mutatis mutandis*, *Stoyanova*, cited above, § 71, and compare, *mutatis mutandis*, *Hanovs*, cited above, § 51). Moreover, the attackers' demonstration of hostility towards people whom they perceived to be homosexual (see paragraph 25 above) was not taken into account in the determination of the punishment, effectively rendering this fundamental aspect of the crime invisible and of no criminal significance (see, *mutatis mutandis*, *Stoyanova,* § 73; *Oganezova*, § 103; and *Hanovs*, § 51, all cited above). It does not appear, therefore, that the absence of legislative provisions identifying and punishing motives based on hostility towards the sexual orientation of an assault or battery victim was made good by the fact that the

domestic courts in the instant case took note of the homophobic dimension of the events or condemned – in passing – the discriminatory attitude of one of the perpetrators (see paragraph 102 above, and see, *mutatis mutandis*, *Stoyanova*, § 72, and compare *Oganezova*, § 103, both cited above).

106. It follows that the State's response to the attack against the applicants did not, in sufficient measure, discharge its duty to ensure that violent attacks motivated by hostility towards victims' actual or presumed sexual orientation do not remain without an appropriate response.

107. Accordingly, there has been a violation of Article 3 of the Convention taken in conjunction with Article 14 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicants claimed 10,000 euros (EUR), each, in respect of non-pecuniary damage.

110. The Government argued that the claim in respect of non-pecuniary damage should be dismissed as unsubstantiated and unreasonably high.

111. The Court finds that the applicants must have experienced mental suffering on account of the failure of the authorities to discharge their duty under Article 3 taken together with Article 14 of the Convention to respond appropriately to the homophobic motives for the violent attack on them. Ruling in equity, as required under Article 41 of the Convention, it awards each applicant EUR 7,000, plus any tax that may be chargeable on that sum.

B. Costs and expenses

112. The applicants did not make any claim in respect of costs and expenses.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by 5 votes to 2, that there has been a violation of Article 3 of the Convention taken in conjunction with Article 14 of the Convention;

3. *Holds*, by 5 votes to 2,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 7,000 (seven thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses, by 6 votes to 1, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Wojtyczek, Poláčková and Serghides are annexed to this judgment.

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Stanisław BEDNAREK	1991	Polish	Warszawa
2.	Dawid DUREJKO	1991	Polish	Warszawa
3.	Vyacheslav MELNYK	1992	Ukrainian	Warszawa

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicants, relying on Articles 3, 6, 13 and 14 of the Convention, complained that: (a) when conducting the proceedings in respect of the assault and battery committed against them, the authorities had not taken into account the homophobic motivation of the perpetrators; and (b) there was a lack of adequate legislative and other measures in order to prosecute and combat hate crimes motivated by victims' sexual orientation.

2. The Court decided that, being the master of the characterisation to be given to the facts of the case, it would examine the case only under Article 3 of the Convention taken in conjunction with Article 14, without examining separately the complaints under Article 6 and 13. There is no mention of these latter two complaints in the operative provisions of the judgment, while in point 4 of those provisions the judgment dismisses the remainder of the applicants' claim for just satisfaction. My partly dissenting opinion focuses on this lack of examination of the complaints under Article 6 and 13 and on operative point 4.

3. In line with my similar approach in many separate opinions, I am against what the judgment does in paragraph 60, namely, in absorbing or embedding the Article 6 and Article 13 complaints into the Article 3 and Article 14 complaints. In my humble view, such an approach is erroneous as it cannot be compatible with the autonomous and independent nature of these two Articles, the concept of individual application, the principle of the rule of law or the legitimacy of the Court. See, *inter alia*, my partly dissenting opinions in *L.F. and Others v. Italy,* no. 52854/18, 6 May 2025, *Kavečanský v. Slovakia,* no. 49617/22, 29 April 2025, and *Adamčo v. Slovakia (no. 2),* nos. 55792/20, 35253/21 and 41955/22*,* 12 December 2024, as well as my joint partly dissenting opinion with Judge Adamska-Gallant in *Cioffi v. Italy,* no. 17710/15, 5 June 2025.

JOINT DISSENTING OPINION OF JUDGES WOJTYCZEK AND POLÁČKOVÁ

1. We respectfully disagree with the finding that there has been a violation of Article 3 in conjunction with Article 14 of the Convention in the instant case.

2. We would also like to emphasise that, under its well-established case-law, the Court is prevented from substituting its own assessment of the facts for that of the national authorities (see, among many other authorities, *Škorjanec v. Croatia*, no. 25536/14, § 69, 28 March 2017, and *Balázs v. Hungary,* no. 15529/12, § 75, 20 October 2015). Likewise, its role is not to rule on the application of domestic law or to adjudicate on the individual guilt of persons charged with offences, but to review whether and to what extent the competent authorities, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by the procedural obligations under the Convention (see *Abdu v. Bulgaria*, no. 26827/08, § 48, 11 March 2014).

3. Turning to the circumstances of the present case, we observe that the domestic courts relied upon evidence from various sources, including from the applicants, who had the status of auxiliary prosecutors, and from the defendants, who had been heard in the presence of the applicants and the applicants' lawyer (see paragraph 11 of the judgment). The courts analysed the evidence at length and in detail. They also carefully analysed the sequence of events.

4. The majority stress that the perpetrators were neither charged nor prosecuted for a hate-motivated attack (see paragraph 105). We note in this context that the question of motives was an object of thorough and detailed examination by the domestic courts. The reasoning in the domestic judicial decisions appears coherent and persuasive. In our view, the domestic authorities took all reasonable steps to effectively ascertain whether or not a discriminatory attitude might have played a role in the events (see *Sabalić v. Croatia*, no. 50231/13, § 98, 14 January 2021). Given the factual findings made by the domestic courts concerning the perpetrators' motives, any charge for a hate-motivated act could have concerned only the first stage of the attack (when the applicants were bumped into).

5. In finding the three perpetrators guilty, the domestic courts considered as follows (see paragraph 27):

> "... [T]he level of the accused persons' culpability was high, since they were sane adults and had acted with intent to assault and threaten the applicants. The offences had been committed with a direct intent and had caused serious social harm because the life and limb of the applicants had been at risk. Overall, the applicants had received blows to the head, face and body, they had been insulted and had felt further threatened. Less serious harm had been inflicted on the third applicant by A.M."

For the purpose of sentencing, the domestic courts took into account all relevant circumstances established in the proceedings, including the perpetrators' motives. The factual circumstances which had been established were considered an aggravating factor weighing against them (ibid.). We therefore respectfully disagree with the following view (see paragraph 105):

> "... [T]he attackers' demonstration of hostility towards people whom they perceived to be homosexual (see paragraph 25 above) was not taken into account in the determination of the punishment, effectively rendering this fundamental aspect of the crime invisible and of no criminal significance."

If we understand the majority correctly, the main reason for finding a violation of the Convention is the flaws in the reasoning of the domestic judgments. Given the specific circumstances of the case, as established by the domestic courts, it is difficult to understand what precisely should have been done by those courts to comply with the Convention standards.

6. The majority note the recommendations to modify the domestic legal framework (see paragraph 95). We would like to make the following remarks in response to that part of the reasoning. Firstly, it is not clear whether the majority endorse those recommendations. Secondly, we observe that the principles set out in the Court's case-law concerning violence motivated by hatred towards minority groups can be applied directly in Poland by the domestic courts. It would be out of the scope of the Court's mandate to issue recommendations as to the manner in which domestic law should be changed (by legislation or by case-law). Thirdly and more importantly, in the specific circumstances of the instant case, as established by the domestic courts, the recommended changes to the law are of limited relevance. They would have applied only to the first stage of the events but not to the subsequent ones.

7. In conclusion, we note that the factual findings established by the domestic courts do not appear arbitrary or unreasonable. Even though the aggressors were charged, tried and convicted of offences not classified as hate crimes, the discriminatory context was given consideration by the domestic courts in compliance with the Convention standards. The sentences imposed on the applicants' aggressors took into account all the relevant circumstances that had been established and (unlike in *Sabalić*, cited above, § 110) do not appear to be manifestly disproportionate.

In our view, the approach adopted by the majority departs from the standards established in the Court's case-law.