



Refusal to investigate hate-speech comments about same-sex kiss on Facebook was discriminatory

In today's **Chamber judgment**¹ in the case of **Beizaras and Levickas v. Lithuania** (application no. 41288/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, taken in conjunction with Article 8 (right to respect for private and family life), and

a violation of Article 13 (right to an effective remedy).

The case raised questions about the State's responsibility to protect individuals from homophobic hate speech.

The applicants are two young men who are in a relationship. One of the applicants posted a photograph of them kissing on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in general, while others personally threatened the applicants.

Both the prosecuting authorities and the courts refused to launch a pre-trial investigation for incitement to hatred and violence against homosexuals, finding that the couple's behaviour had been provocative and that the comments, although "unethical", did not merit prosecution.

The Court found in particular that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them so publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation. Such a discriminatory attitude had meant that the applicants had not been protected, as was their right under the criminal law, from undisguised calls for an attack on their physical and mental integrity.

Principal facts

The applicants, Pijus Beizaras and Mangirdas Levickas, are Lithuanian nationals who were born in 1996 and 1995, respectively. They live in Kaunas and Panevėžys.

The applicants are in a same-sex relationship. In December 2014 Mr Beizaras posted a photograph of them kissing on his Facebook page.

The photograph went "viral", receiving hundreds of comments in Lithuania. The comments mostly included calls for the applicants to be "castrated", "killed", "exterminated" and "burned" because of their homosexuality.

The applicants turned to a non-governmental organisation, the National Lesbian, Gay, Bisexual and Transgender Rights Association, of which they are both members, asking it to complain to the prosecuting authorities and to request that they initiate criminal proceedings for incitement to hatred and violence against homosexuals.

The prosecutor decided, however, not to initiate a pre-trial investigation regarding the complaint. He considered that the authors of the comments had merely been "expressing their opinion" and that,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

although they had reacted “unethically”, their behaviour did not warrant prosecution. The prosecutor further pointed out that his conclusion was in line with the Supreme Court’s practice in such cases.

The domestic courts then fully endorsed the prosecutor’s stance in a final ruling of February 2015, adding that the applicants’ behaviour had been “eccentric” and deliberately provocative. In particular, the applicants could have foreseen that posting a picture of two men kissing would not contribute to social cohesion and the promotion of tolerance in Lithuania, a country where “traditional family values were very much appreciated”. It would have been preferable for the applicants to share their picture with “like-minded people”, especially since Facebook gave the possibility to restrict access to just friends.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants alleged that they had been discriminated against on the grounds of sexual orientation because of the authorities’ refusal to launch a pre-trial investigation into the hate comments on Mr Beizaras’s Facebook page.

They also argued that the refusal had left them with no possibility of legal redress, in breach of Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 13 August 2015.

Third-party comments were received jointly from the AIRE Centre (Advice on Individual Rights in Europe), the European branch of the Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA-Europe”), the International Commission of Jurists (ICJ) and the Human Rights Monitoring Institute (“the HRMI”).

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Marko **Bošnjak** (Slovenia),
Egidijus **Kūris** (Lithuania),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 14 \(prohibition of discrimination\) and Article 8 \(right to respect for private and family life\)](#)

The Court found it clear that the comments on Mr Beizaras’s Facebook page had affected the applicants’ psychological well-being and dignity, bringing the case within the scope of Article 8 and therefore Article 14.

The Government had acknowledged in their submissions that the comments had been “offensive and vulgar”.

However, it denied that the applicants had been discriminated against, arguing that the domestic authorities’ decisions not to start a criminal investigation had had nothing to do with their sexual

orientation. It argued in particular that the decisions had been based: firstly on the applicants' behaviour, which had been provocative, among other things because of a cross woven into the second applicant's jumper, which could have sparked conflict with people of a different cultural and religious background; and secondly, on the fact that the comments in question had not reached a level so as to be considered criminal.

The Court, on the other hand, considered that the applicants' homosexual orientation had played a role in the way they had been treated by the authorities. Focussing on what they considered to be the applicants' "eccentric behaviour", the criminal courts had expressly referred to their sexual orientation in their decisions. They had even quite clearly expressed disapproval of the applicants so publicly demonstrating their sexual orientation when refusing to launch a pre-trial investigation, citing the incompatibility of "traditional family values" with social acceptance of homosexuality.

Because of the authorities' discriminatory attitude, the applicants had not been protected, as was their right under criminal law, from what could only be described as undisguised calls for an attack on their physical and mental integrity.

The Court thus found that the hate comments had been inspired by a bigoted attitude towards the homosexual community in general and that the same discriminatory state of mind had been at the core of the authorities' failure to comply with their duty to investigate in an effective manner whether those comments had constituted incitement to hatred and violence. By downgrading the danger of such comments, the authorities had at the very least tolerated them.

The Court therefore found that the applicants had suffered discrimination on the grounds of their sexual orientation. It further considered that the Government had not provided any justification showing that the difference in treatment had been compatible with the standards of the Convention.

Accordingly, the Court held that there had been a violation of Article 14, taken in conjunction with Article 8 of the Convention.

[Article 13 \(right to an effective remedy\)](#)

The Court found that the Lithuanian Supreme Court's case law as applied by the prosecutor, whose decision had then been upheld by the domestic courts, had not provided for an effective domestic remedy for homophobic discrimination complaints.

In particular, the Court noted with concern that the Supreme Court's case-law emphasised the "eccentric behaviour" of persons belonging to sexual minorities and their duty "to respect the views and traditions of others" when exercising their own rights. Furthermore, although that court had previously examined homophobic speech, it had never been as serious as in the applicants' case and the court had thus not had the opportunity to clarify the standards to be applied.

That finding was borne out by statistics which showed that of the 30 pre-trial investigations regarding homophobic hate speech opened in Lithuania between 2012 and 2015, all had been discontinued. Indeed, the domestic court which had handed down the final ruling in the applicants' case had even pointed out that opening criminal proceedings would have been a "waste of time and resources".

Moreover, reports by international bodies, including the Council of Europe's European Commission against Racism and Intolerance (ECRI), confirmed that there was growing intolerance towards sexual minorities in Lithuania and that the authorities lacked a comprehensive strategic approach to tackle racist and homophobic hate speech.

The Court therefore found that there had also been a violation of Article 13 of the Convention because the applicants had been denied an effective domestic remedy for their complaints about a breach of their private life owing to discrimination on account of their sexual orientation.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay each applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.