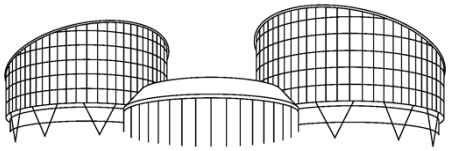

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF GENDERDOC-M AND M.D. v. THE REPUBLIC OF MOLDOVA

*(Application no. 23914/15)*

JUDGMENT

| Art 3 (+ Art 14) • Discrimination • Failure to conduct effective investigation into whether assault by private party was a hate crime motivated by homophobia |
|---|

STRASBOURG

14 December 2021

**FINAL**

14/03/2022

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Genderdoc-M and M.D. v. the Republic of Moldova,**

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 23914/15) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Asociaţia Obştească Centrul de Informaţii Genderdoc-M (hereinafter "Genderdoc-M", "the first applicant") and M.D., a Moldovan national ("the second applicant"), on 5 May 2015;

the decision to give notice to the Moldovan Government ("the Government") of the complaints under Articles 3, 8 and 14 and to declare inadmissible the remainder of the application;

the decision to grant the second applicant anonymity under Rule 47 § 4 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 the Equal Rights Trust, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 23 November 2021,

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

# INTRODUCTION

1. The case concerns positive obligations under Articles 3 and 14 to carry out an effective investigation into serious allegations of ill-treatment motivated by homophobic reasons.

# THE FACTS

2. The first applicant is an association registered in Chișinău; it represents the interests of LGBT persons in the Republic of Moldova. The second applicant was born in 1998 and lives in Bălți. The applicants were represented by Ms D. Străisteanu, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr O. Rotari.

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

## I. THE ALLEGED CRIMINAL OFFENCE COMMITTED BY M.

5. On 9 June 2014 the Bălți District Court found that, in a public statement, M. had engaged in hate speech and incitement to discrimination against homosexuals by calling on the public to prevent them from being employed in educational, medical and public food institutions and by falsely claiming that 92% of homosexuals were infected with HIV. The court ordered M. to retract the above-mentioned statements and to pay Genderdoc-M 10,000 Moldovan lei (MDL) in damages and MDL 12,564 in costs.

6. On 24 June 2014 M. gave a press conference in which he said that he would apologise not to homosexuals, but to Christians, whom he had misinformed when he had claimed that 92% of homosexuals were infected with HIV. In fact, he declared, 95% of them were thus infected, adding that many of them were a danger to society.

7. On 5 July 2014 Genderdoc-M lodged a criminal complaint against M. for breaching the equality of persons in the media, contrary to Article 176(2) of the Criminal Code (see paragraph 22 below).

8. On 23 August 2014 the Bălți Prosecutor's Office refused to start a criminal investigation, finding that M.'s actions did not constitute a criminal offence. On 3 September 2014 Genderdoc-M appealed against that decision to the hierarchically superior prosecutor, who on 9 September 2014 rejected the appeal.

9. On 16 September 2014 Genderdoc-M appealed against that decision to the investigating judge of the Bălți District Court. That appeal was rejected on 9 October 2014.

10. On 5 November 2014 the Bălți Court of Appeal upheld the lower court's decision.

## II. THE ILL-TREATMENT SUFFERED BY THE SECOND APPLICANT

11. On 5 October 2014 the second applicant was physically and verbally abused in the street by a group of 12-14 minors, who called the second applicant gay. On 12 October 2014 a video showing the abuse was posted on the internet. A criminal investigation was initiated into those events under Article 176 of the Criminal Code (see paragraph 22 below).

12. According to the second applicant, on 17 October 2014 A.P. had approached him in the street and insulted him for being gay, saying that he knew him from the video mentioned in the preceding paragraph.

13. On 20 October 2014 A.P. again approached him in the street and, after a short exchange of words, beat him up. On the same day the second applicant lodged a criminal complaint with the Bălți Police Inspectorate. According to

this complaint, earlier that day A.P. had pushed him. After the second applicant had protested, A.P. had asked his name and then "without any reason, hit him in the head seven times and kicked his body three times", after which he had left. A.P. had not insulted him that day. He added that on 17 October 2014 he had met A.P. by chance in the street and A.P. had insulted him, by swearing at him.

14. In a further statement to the police on 29 October 2014 the second applicant added that A.P. had told him on 17 October 2014 that he had recognised him since he had seen him on the internet. He had called him a "faggot" and a "paedophile". On that date the second applicant had not made a complaint since he had not thought he was serious and he had forgiven A.P. for the insults.

15. Also on 20 October 2014 an investigator asked that the second applicant be examined by a specialist at the Bălți Section of the Centre of Legal Medicine. The forensic report of 21 October 2014 found an ecchymosis under his right eye of 7 by 6 cm, an excoriation on his forehead of 2 by 1.5 cm and multiple excoriations on his chin of 0.6 by 0.4 cm, as well as concussion. The expert qualified the injuries as minor. A further forensic examination of 8 November 2014 confirmed the results of the first examination.

16. On 17 November 2014 the Bălți Prosecutor's Office refused to start a criminal investigation, since A.P.'s actions did not amount to a criminal offence. According to this decision, A.P. had stated that he had identified the second applicant as a homosexual from a video which he had seen on the internet. On 17 October 2014 he had approached the second applicant and told him he recognised him but had not insulted him or hit him. On 20 November 2014 he had been under the influence of alcohol when he had accidentally pushed a young man, whom he had recognised as the same young man whom he had seen on 17 October 2014. The young man had been angry at having been pushed; in response to the unwarranted accusations from this young man, who he later realised was in fact the second applicant, A.P. had hit him several times and left. He had not hit the second applicant because of his sexual orientation – had he wanted to, he could easily have done so on 17 October 2014, when they first met.

The prosecutor found that A.P. had beaten up the second applicant not because he was a homosexual, but because he had complained too much about an accidental push. Moreover, on 20 October 2014 A.P. had not said aloud anything about the second applicant being a homosexual. The prosecutor started administrative offence proceedings against A.P. for deliberately causing mild bodily harm.

17. On 1 December 2014 Genderdoc-M's lawyer, who also represented the second applicant, complained about the decision of 17 November 2014 to the Bălți Prosecutor's Office. In the complaint the lawyer mentioned the absence of any investigative measures taken, other than interviewing the second applicant and A.P. The prosecutor had even failed to include officially

in the file the photos showing the extent of the second applicant's injuries. The complaint was dismissed on 8 December 2014 as ill-founded.

18. On 17 January 2015 Genderdoc-M's lawyer appealed against the decision of 8 December 2014 to the Bălți District Court. In further submissions of 4 February 2015 the lawyer referred to the investigator's failure to carry out such investigative actions as identification of witnesses, crime scene investigation, obtaining recordings from any video cameras around the crime scene, or officially adding to the case materials of photographs showing the injuries caused to the second applicant. The lawyer finally drew the investigating judge's attention to the fact that he had earlier dismissed a complaint made by Genderdoc-M against M. (see paragraph 9 above) for the reason that no individual had been identified who had suffered from hate speech directed at homosexuals. In the lawyer's view, the second applicant's case proved that specific acts of violence were happening and that M.'s public statements had contributed to the violence suffered by the second applicant.

19. On 13 February 2015 the investigating judge of the Bălți District Court rejected the appeal as unfounded. The judge found that the injuries caused to the second applicant had been minor and thus no criminal provision applied. As for the complaint under Article 176, the judge found that during the proceedings the second applicant had never asked for A.P. to be prosecuted for discriminatory acts based on sexual orientation. During the interview with the investigator, he had noted that A.P. had used swear words, but had not mentioned any discrimination.

20. In her appeal of 26 February 2015 the second applicant's lawyer argued that it was not for the victim to give a legal qualification to the allegedly unlawful acts committed against him. The second applicant had clearly stated that A.P. had identified him as a homosexual after seeing a video on the internet and had assaulted him because of that fact. Moreover, in his decision of 17 November 2014 (see paragraph 16 above) the prosecutor had clearly dealt with the second applicant's assertion that he had been beaten up because of being a homosexual. While the prosecutor had rejected that assertion, he had clearly been aware of it so that it could not be said that the second applicant had not expressly complained about that. The authorities' decisions not to initiate a criminal investigation encouraged hate crimes and promoted the feeling of impunity for such crimes.

21. On 18 March 2015 the Bălți Court of Appeal upheld the lower court's judgment. The court relied on essentially the same reasons as those in the decision of the investigating judge. In particular, it found that in the initial complaint to the authorities the second applicant had referred to violent actions against him and not to discrimination. Also, the second applicant had failed to indicate which specific actions had not been properly carried out by the investigating authority and which of his rights had been breached as a

result of the choice of administrative rather than criminal proceedings against A.P.

# RELEVANT LEGAL FRAMEWORK

22. The relevant provisions of the Criminal Code read as follows

**"Article 77. Aggravating Circumstances**

(1) When determining punishment, the following shall be considered as aggravating circumstances:

(...)

c) the commission of a crime due to social, national, racial or religious hatred;

(...)

(h) the commission of a crime by acts of extraordinary cruelty or by mocking the victim;

(...)."

**"Article 176. Violation of the Citizens' Equality of Rights**

(1) Any distinction, exclusion, restriction or preference in the rights and freedoms of a person or group of persons, any support for discriminatory behaviour in the political, economic, social, cultural and other spheres of life, based on race, nationality, ethnic origin, language, religion or beliefs, sex, age, disability, opinion, political affiliation or any other criterion:

a) committed by an official;

b) which caused large-scale damage;

c) committed through the placement of discriminatory messages and symbols in public places;

d) committed on the basis of two or more criteria;

e) committed by two or more persons,

shall be punished by a fine in the amount of 400 to 600 conventional units or by community service for 150 to 240 hours or by imprisonment for up to 2 years, in all cases with (or without) the deprivation of the right to hold certain positions or to practise certain activities for 2 to 5 years.

(2) Promoting or supporting the actions specified in paragraph 1, carried out by means of the mass media, shall be punished by a fine in the amount of 600 to 800 conventional units or by community service for 160 to 240 hours, by a fine, applied to a legal person, in the amount of 1000 to 3000 conventional units with the deprivation of the right to practise certain activities for 1 to 3 years.

..."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION (THE STATEMENTS MADE BY M.)

23. Relying on Articles 10 and 14 of the Convention, Genderdoc-M complained of the lack of protection from the State authorities against the hate speech uttered by M. against members of the LGBT community, the interests of which they represented. Being the master of characterisation to be given in law to the facts of the case, the Court is not bound by the characterisation given by the applicant or a government (see *Radomilja and others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). The Court considers that the applicants' complaint raised under Articles 10 and 14 should be examined from the standpoint of Articles 8 and 14 (see, for instance, *Beizaras and Levickas v. Lithuania*, no. 41288/15, §§ 106-130, 14 January 2020).

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

25. In this case, the first applicant is an association (compare and contrast *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, §§ 53 and 58, 15 March 2012, and *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, § 51 and 68, 16 February 2021). The Court points out that an association cannot be allowed to claim, under Article 34 of the Convention, to be a victim of the acts or omissions which affected the rights and freedoms of its individual members who can lodge complaints with the Court in their own name (see, among others, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts); *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, §§ 115-116, ECHR 2013 (extracts); *Fédération chrétienne des témoins de Jéhovah de France v. France* (dec.), no. 53430/99, ECHR 2001-XI; and *Association des Amis de Saint-Raphaël et de Fréjus and Others v. France* (dec.), no. 45053/98, 29 February 2000, and *Identoba*, cited above, § 45). Therefore, Genderdoc-M cannot complain in its own name of the breach of the rights of its members and beneficiaries.

26. It follows that the first applicant cannot validly claim, on the facts of the present case, to be either a direct or indirect victim within the meaning of Article 34 of the Convention, of a breach of Article 8 of the Convention, taken either separately or in conjunction with Article 14. This part of the application is thus incompatible *ratione personae* with the provisions of the Convention

within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

## II. ALLEGED VIOLATIONS OF ARTICLES 3, 8 AND 14 OF THE CONVENTION (VIOLENCE AGAINST THE SECOND APPLICANT)

27. The second applicant complained under Articles 3, 8 and 14 of the authorities' failure to investigate effectively and punish the violence against him which had been motivated by the aggressor's homophobia.

28. Articles 3, 8 and 14 read as follows:

**Article 3**

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

**Article 8**

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

**Article 14**

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

### A. Admissibility

29. The Court notes that the complaint raised by the second applicant under Articles 3 and 8 (both alone and together with Article 14) concerning the acts of violence against him because of his sexual orientation are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. This part of the application must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

30. The second applicant submitted that, although he had informed it of the discriminatory motive for the assault on 20 October 2014, the investigating authority had failed to gather potential evidence by way of

establishing whether any CCTV camera covered the place of the incident, or by finding any eyewitness, notably amongst salespersons from the nearby shops. In the absence of any police report concerning identification of potential eyewitnesses, it should be presumed that no attempt was made to identify such witnesses.

31. The Government argued that the national authorities had carried out an effective investigation into the second applicant's ill-treatment. They had to rely on the statements by the second applicant and A.P., as well as the forensic reports. No other evidence could be collected since there was no such evidence. In particular, this incident had not been filmed. No eyewitnesses were identified and the only CCTV camera covering the relevant area had been installed in 2016, after the events in question. Moreover, the law did not impose on the authorities the obligation to file reports every time they had looked for eyewitnesses but failed to identify any. The Government argued that there was no evidence of any homophobic reasons for A.P.'s attack on the second applicant; the simple fact that a conflict arose between two private individuals should not raise an issue under Article 14 only because one of them happens to be a homosexual.

32. The Equal Rights Trust submitted that, even where the Court found a violation of Article 3, separate consideration should be given to the potential application of Article 14 whenever there was a *prima facie* case that violence had been gender-based. That was because discriminatory violence was qualitatively distinct from other forms of violence and acknowledging this was essential to a proper understanding of its causes, consequences and potential solutions. It was in this light that a member State's positive obligations under Article 14 needed to be assessed, in particular as regards the duties of prevention, protection, investigation and prosecution, as well as the nature of any reparation the authorities might be required to provide.

### *2. The Court's assessment*

#### (a) Preliminary remarks

33. The Court considers that the authorities' duty to prevent hate-motivated violence on the part of private individuals, as well as to investigate the existence of a possible link between a discriminatory motive and an act of violence, can fall under the procedural aspect of Article 3 of the Convention, but may also be seen to form part of the authorities' positive responsibilities under Article 14 of the Convention to secure the fundamental values enshrined in Article 3 without discrimination. Owing to the interplay of the two provisions, issues such as those in the present case may indeed fall to be examined under one of the two provisions only, with no separate issue arising under the other, or may require simultaneous examination under both Articles. This is a question to be decided in each case in the light of its facts and the nature of the allegations made (see *Bekos and Koutropoulos*

*v. Greece*, no. 15250/02, § 70, ECHR 2005-XIII (extracts); *B.S. v. Spain*, no. 47159/08, §§ 59-63, 24 July 2012; and compare with *Begheluri and Others v. Georgia*, no. 28490/02, §§ 171-79, 7 October 2014).

34. In the particular circumstances of the present case, in view of the second applicant's allegations that the violence perpetrated against him had homophobic overtones which rendered his ill-treatment sufficiently severe to attain the relevant threshold, and that the authorities failed to investigate sufficiently that bias-motivated violence, the Court deems that the most appropriate way to proceed would be to subject the applicant's complaints to a simultaneous dual examination under Article 3 taken in conjunction with Article 14 of the Convention (compare with *Abdu v. Bulgaria*, no. 26827/08, § 31, 11 March 2014).

**(b) General principles**

35. 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 (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C). 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 (see *Gäfgen v. Germany* [GC], no. 22978/05, § 103, 1 June 2010, and *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013). 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 (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 121, ECHR 1999-VI). Discriminatory remarks and insults must in any event be considered as an aggravating factor when examining a given instance of ill-treatment in the light of Article 3 (see *East African Asians v. the United Kingdom*, nos. 4403/70 et al., Commission's report of 14 December 1973, Decisions and Reports 78, p. 5, § 208, and *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 111, ECHR 2005-VII (extracts)). In assessing evidence in a claim of a violation of Article 3 of the Convention, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004).

36. Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States a positive obligation to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI). This obligation should include effective protection of, *inter alia*, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known (see, for instance, *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 38, 28 January 2014). Furthermore, Article 3 requires that the authorities conduct an effective official investigation into the alleged ill-treatment, even if such treatment has been inflicted by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII). For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and – if appropriate – punishment of those responsible (*Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 243, 30 March 2016). This is not an obligation of result, but one of means. In this connection, the Court has often assessed whether the authorities reacted promptly to the incidents reported at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length of time taken for the initial investigation (see, for instance, *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008).

37. 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 violence motivated by gender-based discrimination (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, §§ 138-42 ; *Mudric v. the Republic of Moldova*, no. 74839/10, §§ 60-64, 16 July 2013 ; and, under Article 2, in the context of police action, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII). 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 reassert continuously society's condemnation of such acts and to maintain the confidence of minority groups in the ability of the authorities to protect them from the discriminatory motivated violence. 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 (*Sabalić v. Croatia*, no. 50231/13, § 95, 14 January 2021). Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be to turn 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, for instance, *Begheluri and Others*, cited above, § 173).

**(c) Application of these principles to the facts of the present case**

38. The Court notes that, according to the applicant, he was hit seven times around the head and kicked three times by A.P. While the injuries found on his body were considered minor (see paragraph 15 above), the Government did not contest that Article 3 was applicable in the present case. The Court reiterates that subjecting a person to ill-treatment that attains a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of those characteristics, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. It may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others (see, for instance, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 118, 25 June 2019).

39. The Court considers that, given the unprovoked assault including ten blows to various parts of his body, the applicant suffered treatment which was degrading, even in the absence of any homophobic overtones, the existence of which the authorities were required to investigate. Therefore, it finds that Article 3 was applicable to the facts of the present case.

40. The second applicant did not claim that the authorities should have been aware in any manner of a real risk of an imminent attack on him and had failed to prevent it. Rather, he argued that the investigation into the event had been inefficient and that the law specifically adopted in order to fight hate crimes (Article 176 of the Criminal Code) had not been applied in A.P.'s case.

41. In this context the Court notes, as did the Government, that the initial complaint made to the authorities on 20 October 2014 did not specifically mention discrimination or allege that the ill-treatment was the result of A.P.'s homophobic attitude. In fact, in his complaint the second applicant noted that A.P. had attacked him without any reason and had hardly said anything beyond asking the victim's name (see paragraph 13 above). This was one of the main reasons for which the courts confirmed the prosecutors' decisions

not to initiate a criminal investigation against A.P. (see paragraphs 19 and 21 above).

42. However, when making his complaint on the same day when he had been ill-treated, the second applicant was clearly still recovering from the assault, notably from concussion (see paragraph 15 above). The Court finds that it would be excessively formalistic for the authorities to base their entire investigation into a serious complaint about ill-treatment only on the first complaint made by a victim recovering from the attack and not to take into consideration any subsequent explanations given. In this connection it is noted that even in the initial complaint the second applicant mentioned that A.P. had approached him three days earlier and had insulted him, using swear words. In a further statement made nine days after the event he had specified what kind of words those had been, namely "faggot" and "paedophile", and added that A.P. had identified him from a video on the internet (see paragraph 14 above). The internet video concerning the applicant clearly identified him as a homosexual and showed others insulting and humiliating the second applicant for being a homosexual (see paragraph 11 above). All of the above should have made it obvious to the authorities that the second applicant was in fact complaining not only of the violence itself, but also of its underlying homophobic reasons.

43. In such circumstances, it is difficult to understand the domestic courts' reasoning to the effect that the second applicant never complained of discrimination or alleged that the violence perpetrated against him had been motivated by hatred towards him as a homosexual. Moreover, that reasoning suggests that the authorities never seriously examined the possibility that the second applicant's ill-treatment had been a hate crime, as the prosecutor relied only on the statements by the two parties to the conflict and the forensic report. The several additional procedural shortcomings mentioned in the complaints to the courts (see paragraph 18 above), such as the failure to identify and hear potential witnesses, carry out a crime scene investigation or officially include in the case file the photographs showing the second applicant's injuries after the attack only confirm this attitude.

44. Moreover, given the minor injuries suffered by the applicant and the resulting inapplicability of the Criminal Code for ill-treatment *per se*, the absence or presence of a discriminatory motive implied the difference between applying very mild administrative sanctions or criminal ones. The authorities' failure even to initiate a formal criminal investigation into the second applicant's allegations undermined from the start their ability to establish this crucial point.

45. The Court thus finds that the authorities fell short of their procedural obligation to investigate the attack of 20 October 2014 on the second applicant, with particular emphasis on unmasking any discriminatory motive for the violence. The absence of such a meaningful investigation undermines public confidence in the State's anti-discrimination policy.

46. The Court thus concludes that in the present case there has been a breach of the respondent State's positive obligation under Article 3 taken in conjunction with Article 14 of the Convention.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. The second applicant also complained of a breach of Article 8 of the Convention alone and in conjunction with Article 14 as a result of the same events as those examined under Article 3.

48. In view of its findings concerning the complaints under Articles 3 and 14 above, the Court does not consider it necessary to examine the complaints under Articles 8 and 14 separately.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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. Non-pecuniary damage

50. The second applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. He submitted that he had had to hide in order to protect himself and that the authorities had refused him victim protection.

51. The Government argued that the sum claimed was excessive and unsubstantiated.

52. The Court awards the second applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

53. The second applicant also claimed 48,183 Moldovan lei (MDL, the equivalent of approximately EUR 2,480 at the time of making the claim) for the costs and expenses incurred before the domestic courts and for those incurred before the Court. He submitted copies of invoices confirming the payment of that sum to his lawyer.

54. The Government submitted that the sum claimed was excessive and that the need for such an amount of compensation of legal costs remained unproved.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to the second applicant.

### C. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints made by the second applicant under Articles 3, 8 and 14 admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need to examine the complaints made by the second applicant under Article 8 of the Convention taken in conjunction with Article 14;

4. *Holds*
   (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Stanley Naismith<br>Registrar | Jon Fridrik Kjølbro<br>President |