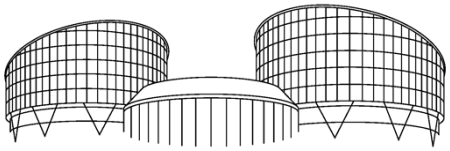

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VALAITIS v. LITHUANIA

(Application no. 39375/19)

JUDGMENT

Art 13 • Discontinuation of investigation into homophobic comments on the Internet not disclosing any prejudicial attitude by the authorities taking account of the Court's case-law • Wide-ranging and multifaceted domestic measures combatting hate speech in response to Court judgment in *Beizaras and Levickas*

STRASBOURG

17 January 2023

FINAL

17/04/2023

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

In the case of Valaitis v. Lithuania,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 39375/19) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Jonas Valaitis ("the applicant"), on 16 July 2019;

the decision to give notice to the Lithuanian Government ("the Government") of the complaint concerning the State's obligation to take positive measures to protect homosexual persons, including the applicant, from hate speech;

the parties' observations;

Having deliberated in private on 9 December 2022,

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

INTRODUCTION

1. The case concerns the applicant's complaint, under Article 13 of the Convention, that the Lithuanian authorities did not take positive measures to protect homosexual persons, including the applicant, from hate speech.

THE FACTS

2. The applicant was born in 1999 and lives in Klaipėda. He was represented by Ms D. Gumbrevičiūtė-Kuzminskienė, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

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

5. On 15 January 2018 the applicant published an essay on the Internet portal of a major daily newspaper, lrytas.lt. In it he referred to a finalist of a televised singing competition, G.S., who had publicly come out as homosexual.

The text of the essay, as reproduced by the Government in their observations, read as follows:

"This text may shock homophobes with weak nervous systems and silly men of Soviet thinking. I recommend you read this article only after consulting with your psychiatrists or not read it at all and run and squeal in the comments section and write that 'these gays are perverts', 'they are sick', 'exterminate them', and, certainly, do not forget to write 'oh my God, there were no such issues before'. It will make your life easier, but for a short period of time.

Such comment-makers seem to be representatives of a potato land somewhere in the middle of Europe who do not know what expression is. They hide under black cloaks and disappear in the crowd. It's normal here. And exceptional people – is that already abnormal? I recommend to these [people] to hide the shame of their thinking and remain silent. Lithuania is now free. So they can murmur and choke on their saliva in front of their computers before they are taken away by a social worker. People feel entitled to become degraded persons with the Soviet mentality, for whom the whole joy of life is to crush a person who wants to be happy as he is.

However, at last it has happened. Yes, they are coming. And there will be more of them. The finalist of 'The Voice of Lithuania' [G.S.] has confessed, 'Yes, I am homosexual' and then the comments appeared: 'I don't understand why he is advertising it', 'Maybe it's an honour for him?', 'Why write about such things at all?' 'How come he dares to demonstrate this in public?', 'What will I tell the children?', and 'Mental illness here!'. People have openly and bravely proclaimed on the Internet in such comments that they are bitches of this country, who are not aware of such concepts as 'love', 'respect for self-determination', and 'happiness' in the same way as sometimes their faces are not recognisable after a routine booze in some hole. These comments are published by people who supplement the criminal chronicles – they smash their partners' heads in with pots and this is the love of their asocial life. ...

They are those uneducated scumbags, who usually grew up in villages surrounded by low-intellect boozers, and living somewhere in their own huts and roaming with their village cohorts on weekends, because it is normal for them to express their opinions and feelings in such a way. They use their poor and degraded communication skills to communicate and resolve internal family conflicts. ..."

("*Šis tekstas gali šokiruoti silpnų nervų homofobus ir sovietinio mąstymo atsilupėlius. Rekomenduoju jį skaityti tik pasitarus su savo psichiatrais. Arba neskaityti visai, o bėgti pacypti į komentarų skiltį apie tai, kad „kokie tie gėjai iškrypėliai", „kokie jie nesveiki", „utilizuoti tokius", ir, žinoma, nepamirškite parašyti, kad „o Dieve, Dieve, anksčiau tokių dalykų nebuvo". Palengvės. Bet tik trumpam.*

Tokie komentatoriai atrodo tarytum kažkur Europos vidury egzistuojančio bulvių krašto atstovai, kurie nežino, kas yra saviraiška. Jie slepiasi po juodais apsiaustais ir išnyksta minioje. Čia normalu. O išskirtiniai žmonės – tai jau nenormalu? Rekomenduoju šiems slėpti tokią savo mąstymo gėdą ir tylėti. Bet dabar laisva Lietuva. Tad jie gali ūžti ir springti savo seilėmis kiurksodami prie kompiuterių, kol jų dar neatėmė socialinė darbuotoja. Žmonės mano turintys teisę tapti sovietinio mąstymo degradais, kuriems visas gyvenimo džiaugsmas yra sutrypti žmogų, kuris nori būti laimingas būdamas toks, koks yra.

Bet pagaliau tai vyksta. Taip, jie ateina. Ir jų ateis vis daugiau. Štai „Lietuvos balso" finalininkas [G.S.] prisipažino: „Taip, aš esu homoseksualus." Ir tada prasidėjo: „Nesuprantu, kam čia skelbtis", „Gal čia jam garbė?", „Kodėl apie tokius išvis rašo?", „Na bet kaip jis drįsta viešai demonstruotis?", „Ką pasakyti vaikams?", „Čia psichikos liga!". Žmonės internete tokiais komentarais atvirai ir drąsiai skelbė, kad yra totalios šios šalies bjaurybės, kurioms net tokios sąvokos kaip „meilė", „pagarba kito apsisprendimui", „laimė" yra tokios nepažįstamos, kaip kartais būna nepažįstami jų

veidai po eilinių gertynių kokioje nors landynėje. Šitie komentarai parašyti žmonių, kurie papildo kriminalų kronikas, – tai jie daužo savo sugyventinius puodais per galvą ir tai yra jų asocialaus gyvenimo meilė.

<...> Čia tie neišsilavinę dažniausiai kur nors prasigėrusiuose kaimuose su žemo intelekto pijokais augę svolačiai, patys kur nors apsistoję savo susikaltose kamurkėse ir savaitgaliais pasidaužantys su kaimo chebra, nes taip reikšti savo nuomonę ir jausmus jiems yra normalu. Savo menkus ir degradiškus bendravimo įgūdžius jie naudoja bendraudami ir spręsdami šeimos vidaus konfliktus. ...")

6. As pointed out by the Government, below the applicant's essay lrytas.lt published the following note: "This is a reader's essay. The opinion of the editorial board does not necessarily coincide with the statements made therein. This subjective opinion of the author does not necessarily coincide with that of the editorial board: lrytas.lt is not responsible for the reader's [essay's] content".

7. The applicant's essay received numerous comments by different persons. The following are twenty-one of those comments (one of them was posted twice), written by twenty different persons:

"Comment no. 1: the author, under the nickname LT BE PEDIKU, commented: "The author of this essay is a fag, fuck, pee on the devil's head fuck."

(*Gaidys nx autorius site straipsme, Apmizt galva velniui nx*)

Comment no. 2, by JIE ATEINA! PYDERASTINES ATMATOS ATEINA!: "They do not multiply, but their number is increasing! They will make your kids perverts too! It will become the norm! Kill a faggot before it's too late!"

(*jie nesidaugina, bet ju daugeja! jie padarys ir jusu vaikus iskrypeliais! tai taps norma! uzmusk pyderasta kol nevelu!*)

Comment no. 3, by AUTORIUI: "Is it honourable, in your view, to proclaim oneself a faggot??? Fashion or perversion? Stop promoting faggots; they have always been around and will always be around, but they shouldn't promote themselves as I don't publicise the fact that I'm a MAN and not a pervert!!? Just normal. Ah... that's what the Eurosoyuz [a portmanteau of European Union and *Sovetskij Soyuz* (Soviet Union in Russian)] has resulted in... awful."

(*Kokia pagal tave .Garbe viesintis pydaru??? Mada ar iskrypeliskumas? Baik reklamuoti pydarus, ju buvo ir bus, bet tegul nesireklamuoja, nes as nesireklamuoja ,kad esu VYRAS ir dar Neiskrypes!!? ' Tiesiog normalus .Blyn iki davede tas eurosajuzas .baisu* .)

Comment no. 4, by NORMA: "Before admitting to perversion, it was seen that something is wrong with this petty man, because a healthy man won't allow himself to be put in a skirt. Overall, both in this show and in the 'X Factor' show the judges tend to push through degenerates, while pushing aside more talented performers with thousand times better voices. Maybe they are forced to do so by the degenerate producers. But they, like the authors of this article, should be tried for the leading-to-death propaganda (defence of perverts). Or maybe soon there will appear a man's right to kill or not to kill [a person]. AIDS is also death."

(*Pries iskrypelio prisipazinima matesi, had su zmoguciu kazkas netvarkoj, nes sveiko vyro i sijona neiikisi. Is vise tiek siame, tiek X faktoriaus sou, matosi tendencingas teiseju noras prakisti issigimelius, nustumiant i sail talentingesnius ir tukstanti kartu*

geresnius balsus turincius atlikejus. Gal but jie yra spaudziami issiqimusiu projuseriu. O tokie, kaip sio straipsnio autoriai, turetu butu teisiami uz mirti nesancia (iskrypelius ginancia) propoqanda. O gal greitai bus laisva zmogaus teise zudyti, ar ne zudyti. Aids yra taip pat mirtis.)

Comment no. 5, by LINAS (this comment was posted twice): "Author, mind your words. You *verist mujik*. If faggots want to reveal that their asses itch, does it mean we should applaud. A faggot is a faggot. If it is acceptable for you that they suck each other's shitty knob, then you need treatment. You pervert, don't thrust your shitty knobby opinion on others. And don't insult normal people. I work in construction, but I don't walk around with posters saying that everyone should work on construction sites. So they should fuck each other quietly."

(*Autoriau skaitykis su zodziais.muzike paskutinis.jei piderai nori pasireiksti kad jiems subines niezti tai taip isena mes katutemis turime ploti. pideras ir yra pideras.jei tau normalu kai ciulpia vienas kitani sudma bybi tai tau cia reikia qyditis.iskrypeliau.nekisk savo sudinos bibynuotos nuomonesm kitiems.ir neuzgautiok normaliu zmoniu.as dirbu statybose bet neinu su plakatais kad visi i statybas.tai ir tegu tyliai pisasi tarp saves*)

Comment no. 6, by LR: "Wait wait, 'exceptional'??????? Have you, author, thought how many, for example, teenagers will read your piece of writing or having seen that kipper, will say, 'I also want to be exceptional and will pound his ass with force... It's cool'!!!???? Has it become normal to be gay? How many teens do they seduce then terrorise?????? Such perverts should be hounded out from broadcasting. Even if I'm backward-looking, I don't want to see such perverts, disgusting. What rights... they don't have any rights... Yuck... Those statements, when I saw them, made me sick."

(*Pala pala "isskirtiniai"??????? Ar jus mastot autoriau kiek tarkim paaugliu paskaitys jusu rasineli ar paziureje ta tipeli sakys o as ir noriu buti isskirtiniu as ir pasibaladosiu i sikyne cia jega!!!???? Jau gejai tspo normalu???? Kiek jie pauqliu suvilioja paskui terorizuoja?????? Vyt is eterio tokius iskrypelius.tegul as busiu atsilikus bet tokiu iskrypeliu matyt nenoriu slykstu .kokios dar mi teises jie isvis teisiu neturi slikstynesfiu kaip pamaciau net supykino nuo tokiu pasisakymu*)

Comment no. 7, by ZIAURUS ATVEJIS: 'Well, yes, let's thoughtfully look at those gays, who they are – for example, this scenario: two gays adopt a child; the child hears a bed rattling and the so-called parents moaning in the other room, the child tiptoes to the door and looks through the door gap, and sees that one man has climbed onto the other man, has pushed his willy into the other man's ass and is fucking him? Oh please, perhaps it is more awful than a nuclear, chemical bomb explosion??? And still some are able to defend these gays? A normal person if he is gay – having realised that he is bent – should shut his mouth so that he does not inadvertently reveal himself; this is as if some zoophile was walking along the street with some banner organising a parade and shouting loudly: Freedom to zoophiles! I want to fuck a goat, a pig, a dog, and also some other animal."

(*nu taip normaliai protingai paziurim kas yra tie gejai - pvz. toks variantas du gejai isivaikina vaika, vaikas uzgirsta kitame kambaryje brazkancia lova ir aimanojancius tipo tevus, prieina tyliai ir pro duru tarpa pamato - kaip vienas vyras uzlipes ant kito vyro ikises savo pimpala i kito vyro sikna ji pisa ? nu ir prasau tai turbut ziauriau nei atomines, chemines bombos sprogimas ??? ir dar kazkas sugeba gynti tuos gejus ? normalus zmogus jeigu jisaiyra gejus - jisai suprates kad yra issigimes, turetu uzsimurinti burna, had ne tycia kazkam neissiduotu, cia panasiai kaip koks zoofilas, eitu per gatve su kazkokia veliava padares parada ir garsiai sauktu - laisve zooftlams, as noriu papisti asila, kiaule, suni, ir dar kazkoki gyvuna*.)

Comment no. 8, by SVEIKAS: “Mankind has to start doing something, and quickly, rescuing the perverted faggots, because the cruel catastrophe of humanity is approaching. Those severely mentally ill no longer understand (owing to their disease) what they are doing and what they are talking about. Maybe it’s better to announce how many of them die each year from lung or other organ failure, without hiding the fact that the death was from AIDS. After all, weak-minded people can naïvely believe, say, the degenerate author of this article that this is normal. If it were normal, those degenerates would not have been exterminated, which also should be done now. It’s necessary to defend young healthy people, because dozens of naïve people can be infected by one degenerate. Why is the Ministry of Health keeping silent and not revealing the truth of homosexuality as a disease? After all, it is not necessary to look at the instructions of the degenerates in the EU leadership. Let us save humanity before it is too late.”

(*Zmonija kazka turi pradeti daryti, ir greitai, gelbejant issigimelius pederastus, nes arteja ziauri zmonijos katastrofa.. Tie sunkus psichiniai ligoniai jau nebesupranta (del ligos) ka jie daro ir ka sneka. Gal geriau paskelbti, kiek ju kasmet mirsta nuo plauciu, ar kitu organu nebeveiksnumo, neslepiant, kad mirtis buvo nuo AIDS. 0 juk silpnesnio proto zmoguciai gali naiviai tiketi, kad ir sio straipsnio issigimieliu autoriumi, kad tai normalu. Jei butu buve normalu, tai simtmecius tie isgamos nebutu buve naikinami, ka reiketu daryti ir dabar. Reikia gelbeti jaunus. sveikus zmones nuo mirties, nes nuo vieno issigimelio gali uzsikresti desymtys naivuoliu. Kodel tyli sveikatos apsauges ministerija, neskeldama sios pedrestu ligos esmes. Juk nebutina ziureti i ES vadovybeje esanciu issigimeliu nurodymus. Gelbekime zmonija koi nevelu.*)

Comment no. 9, by 22: “Yeah, they should all be caught and disposed of.”

(*jo reike visas sugaudyti ir utelizuoti*)

Comment no. 10, by NA NA: “An unlucky little faggot. I’m a faggot, give me first place, but faggots are not in power everywhere... Good luck... Bare your breast and lift your skirt...”

(*na nepasiseke pideriuku . as piderastas . duokit man pirma vieta ,na ne visas piderastai valdo,,,,,sekmes ..apnuogink krutine ir pasikelk sijona....*)

Comment no. 11, by GENE: “One cannot shake hands with faggots as they are always shitty.”

(*Su pederastais negalima sveikintis, nes jie visa laikq buna sudini*)

Comment no. 12, by KA TU CIA: “Head of ram, despite your barking, I still can’t stand faggots and that’s it.”

(*avino galva, belotum, nu nevirskinu as tq pederasty ir taskas*.)

Comment no. 13, by TAIP: “You, the writer, are a faggot too, you are abnormal, maybe men who love women are abnormal? Maybe you, a defender and praiser of faggots, want to say that a normal man who loves a woman is abnormal? You shitty asshole.”

(*tu rasytojau irgi pydaras, jus nenormalus, ci gal cia vyrai mylintys moteris nenormalus? Tu, piderastu gynejau ir liaupsintojau, nori pasakyti, kad normalus vyras, mylintis moteri yra nenormalus gal? Tu, sudina siknaskyle*)

Comment no. 15, by ARTURAS: “I’m HOMOPHOBIC and I’m proud of it, and those others are faggots.”

(*As HOMOFOBAS ir tuo didziuojuos, o tie anie- ped eras tai*)

Comment no. 16, by VILMA: “Because they are perverts – the answer to the last question in the article.”

(*todel.kad jie iskrypeliaim atsakymas ipaskutini straipsnio klausima*)

Comment no. 17, by DANA: “Condolences to the parents of Valaitis and Grazvydas that their children are perverts.”

(*Uzuojauta Valaicio ir Grazvydo tevams.kad vaikai iskrypeliai*.)

Comment no. 18, by LIETUVIS: “‘It’s normal. And exceptional people – is it abnormal?’ Since when are flits exceptional people... Mr author should think about whether he is normal or also not of clear direction if he is writing such humbug.”

(“Cia normalu. O isskirtiniai zmones - tai jau nenormalu?” Nuo kada gaidziai isskirtiniai zmones..tamsta autorius turetu susimastyti ar normalus dar ar irgi neaiskiu pakraipu jei raso tokias pievas)

Comment no. 19, by AUTORIUI: “Fucking asses and sucking shitty cocks means, to your mind, being exceptional???? If I had my way, I’d send them all through the chimney in Auschwitz...”

(*Pistis i sikna ir ciuloti sudinus pimpalus cia pagal tave isskirtinumas??? Mano valia butu visits per kamina Ausvice paleisciau...*)

Comment no. 20, by PANKAS: “The more gays and other faggots appear, the more people who cannot stand them will fall [on them]. You should disappear like parasites, silly men, or start serious treatment. Should we name those who have treated themselves for homosexualism? Don’t try to appropriate the image of rock or metal style or sub-cultures, otherwise I’ll boot you out at those parades. What kind of love is through the asshole? I’m not of the Soviet or any out-of-date views, on the contrary, I’m against sovietism and any offscourings like when a man is with a man... I’m not a homophobe, I’m more horrible than that.”

(*Kai tik daugiau gejų ir kitokiu homiku rasis tai dar daugiau jų nekenčiančiu užgrius. Išnyksit kaip parazitai tikri atsilupeliai, arba pradedami rimtq gydymq. Gal išvardint asmenis kurie išsigyde nuo homoseksualizmo? Nedryskit savintis neformaliu, roko ar metalo stiliaus ir subkulturų asmenų jvaizdzio kitaip po viena išspardysiu tuose eitynese. Kokia čia dar meilė perššiknalande? Neesu sovietinių paziurų ar visai senu paziurų as kaip tik pries sovietizma ir visokias atmatas kai vyras su vyru..., as ne homofobas as baisiau uz ji paty.*)

Comment no. 21, by ARTE: “Angry guys fucked Grazvydas’s ass.”

(*ir atpiso Grazvyda i sikna pikti dedes*)

Comment no. 22, by UK: “If I’ve never thought about faggots before – they sort of weren’t there, they didn’t exist for me – now I shall be more attentive and I’ll hit them on the head if I see any. They are becoming aggressive.”

(*Jeigu anksciau niekad kazkaip nesusimasciau apie piderastus-ju kaip ir nebuvo, neegzistavo jie man. dabar busiu atidesnis ir kalsiu i galva pamates. Jie jau agresyvus tampa.*)”

8. As is apparent from the above, several of those comments were directly targeted against the applicant, as the author of the article. He was called “a degenerate”, “a faggot” and “a shitty asshole”; it was suggested that he should be “peed on”; and he was urged “not to advertise faggots”; it was also suggested that he “should be prosecuted for propaganda that defended

perverts", and that he should "keep his shitty opinion to himself" and "not offend normal people". The comments regarding homosexuals were even harsher, including a suggestion that they should be put "through the chimney in Auschwitz".

9. On 17 January 2018 the applicant asked the authorities to start a criminal investigation into incitement to hatred and discrimination under Article 170 § 2 of the Criminal Code (see paragraph 37 below). The applicant referred to the above-mentioned comments as being targeted against persons of homosexual orientation. He also stated that some of the comments (see paragraphs 7-8 above) had also been targeted against the applicant personally and had been demeaning, offensive, and had expressed hatred against the applicant "for the sole reason that he had expressed certain thoughts" (*vien dėl to kad viešai išreiškė tam tikras mintis*).

10. In a decision of 25 January 2018, the prosecutor initially refused the request, holding that most of the comments had been one-off comments by a single author, which meant that the "systematic character" – an obligatory element for a comment to constitute a crime under Article 170 § 2 of the Criminal Code – had been lacking. In addition, under Article 25 of the Constitution (see paragraph 36 below), a person had the right to express his or her beliefs.

On 5 February 2018 the prosecutor's decision was upheld on a subsequent appeal by the Klaipėda District Court, which pointed out that criminal liability was an *ultima ratio* measure and that the statements in the comments constituted the opinion of their authors. Such statements, while improper, had not reached the level of severity required to justify prosecution.

On 2 March 2018 the Klaipėda Regional Court, on a subsequent appeal, referred to Article 28 of the Constitution and held that the right to freedom of expression could not breach the rights of others. For the Regional Court, the comments in question had been degrading; they had incited to physical violence against persons of homosexual orientation, and thus could not be seen as mere beliefs or opinions. Accordingly, those comments contained the elements of a crime and the prosecutor's decision to discontinue the pre-trial investigation under that provision had to be quashed.

11. Subsequently, on 8 March 2018 a criminal investigation was opened regarding a possible crime under Article 170 § 2 of the Criminal Code, and the applicant was granted victim status.

12. On 19 March 2018 the law-enforcement authorities asked the Office of the Inspector of Journalistic Ethics (*Žurnalistų etikos inspektoriaus tarnyba*) for an expert opinion on whether the twenty-one comments in issue incited physical violence and/or expressed hatred towards a group of persons on the basis of their sexual or other orientation or views, and, if so, which concrete phrases.

13. On 24 April 2018 the Office of the Inspector of Journalistic Ethics delivered an eighteen-page conclusion no. EAN-3, in which it examined each

of the comments and found that they had been demeaning and offensive towards persons of homosexual orientation. The inspector also stated whether or not each of those comments incited to violence and/or discriminated against that group of persons (see also paragraph 26 below).

14. On 1 August 2018 the prosecutor discontinued the pre-trial investigation, noting that one of the authors – S.K. (comment no. 6) – had confessed to having written that comment, but that it had been a one-off and written spontaneously, and, while demeaning, it did not pose a danger to homosexuals' right to equality or to their dignity. Neither did that comment urge readers to be violent against that group of persons. The prosecutor also referred to the Supreme Court's practice (case no. 3K-3-144/2011) to the effect that "part of Lithuanian society had rather conservative (negative) view towards sexual minorities" and therefore the topic of sexual minorities was subject to a certain amount of social tension (the prosecutor also referred to the Supreme Administrative Court's ruling of 23 July 2013 in case no. A-858-2475-13). Even so, under the practice of the Supreme Court, this general social context and the concrete context of the comment in issue (by S.K.) was not so tense that it would justify in itself stricter limitations on freedom of expression or application of the *ultima ratio* measure of criminal liability (the prosecutor referred to the Supreme Court's ruling in case no. 2K-86-648/2016). In addition, the Supreme Court had already held that in a democratic society criminal liability should be understood as the *ultima ratio* measure, employed to protect legal assets and values (*teisinių gėrių ir vertybių apsauga*), when those goals could not be achieved by more lenient measures (the prosecutor referred to the Supreme Court's rulings in cases nos. 2K-P-267/2011, 2K-262/2011 and 2K-677/2012).

The prosecutor also noted that another person – A.M. – who was suspected of being the author of comment no. 1, had testified when questioned that she had not written the comment, but that it could have been a member of her household who had been its author.

Lastly, regarding the entirety of the other comments, the prosecutor considered that they had been merely their authors' amoral reaction to the applicant's essay; however, they had not reached the threshold to be considered a crime.

15. The applicant's appeals against the prosecutor's decision to discontinue the pre-trial investigation were subsequently dismissed by a higher prosecutor on 28 August 2018 and by the Klaipėda District Court on 20 September 2018. The applicant lodged an appeal with the Klaipėda Regional Court, in which he complained about the prosecutor's decision not to prosecute in respect of the multiple comments at issue (see paragraph 7 above).

16. It is not entirely clear but would appear from the decision of 12 October 2020 of the Prosecutor General's Office (see paragraphs 20-24 below) that by an unappealable ruling of 23 October 2018 the Klaipėda

Regional Court ordered a fresh pre-trial investigation in order to establish the identity of the author of comment no. 1. The Klaipėda Regional Court also referred to the Inspector of Journalistic Ethics' findings that, apart from comments nos. 1 and 6, the other comments neither called for violence against persons of homosexual orientation nor called for discrimination against them; alternatively, the comments had been made from abroad and therefore it had been impossible to establish their authors.

17. On 5 December 2018 a prosecutor suspended the pre-trial investigation regarding comment no. 1, holding that after reopening the pre-trial investigation, a certain S.I. had been questioned as a special witness: he had testified that the router at home had had no password, thus anyone could have connected to that router and, as a result, it had been impossible to establish who had posted comment no. 1. It followed that all possible procedural actions had been carried out in order to identify the person who could have committed the crime, but that person could not be located. The applicant was informed of that decision. The suspension decision was upheld by a higher prosecutor on 28 December 2018, who dismissed the applicant's appeal and also observed that the pre-trial investigation had been reopened only in order to identify the author of comment no. 1.

18. By a ruling of 17 January 2019, which was not amenable to appeal, the Klaipėda District Court dismissed the applicant's appeal, wherein he had reiterated his grievance about the comments' authors' impunity.

19. On 15 September 2020 the Prosecutor General's Office received a letter from the Government Agent at the Court regarding the present application (no. 39375/19).

20. Having reviewed the material in the pre-trial investigation file regarding the applicant's case, by a decision of 12 October 2020 the Prosecutor General's Office noted that it appeared from the prosecutors' and courts' decisions in the applicant's case that the pre-trial investigation had been discontinued owing to several principal aspects: (a) the comments had been one-offs (*pavieniai*) and had therefore not met the systematic-character criterion (*neatitinka sistematiškumo reikalavimo*); (b) the conclusion that the comments had lacked concrete direct or indirect incitement to hatred and discrimination, or incitement to violence or to be physically violent (*kurstymo panaudoti smurtą ar fiziškai susidoroti*) towards a concrete group of persons, which could pose a real danger to the object protected by this criminal-law provision; (c) the opinion that, even though the topic of sexual minorities was pertinent in Lithuania and was subject to a certain amount of social tension linked to, among other things, a certain conservative (negative) point of view of part of society towards sexual minorities, this common social context was not so tense as to justify in itself stricter limitations on freedom of expression and application of the *ultima ratio* measure of criminal liability (the Supreme Court's ruling no. 2K-86-648/2016); and (d) the conclusion that the persons who had written the comments had reacted unethically and immorally

towards the applicant's publication (*publikacija*), but that such immoral behaviour did not comprise the elements of the crime provided for under Article 170 § 2 of the Criminal Code. The Prosecutor General's Office underscored that all the above "principle aspects" (*principiniai aspektai*) had been mentioned in the Supreme Court's practice (rulings in cases nos. 2K-677/2012 and 2K-86-648/2016), and that those two Supreme Court rulings had been referred to by the Court in the judgment of *Beizaras and Levickas* (no. 41288/15, 14 January 2020), in which the Court had expressed its disquiet with such a practice on the part of the Supreme Court. That practice had also led to a finding that the applicants' right to an effective domestic remedy under Article 13 of the Convention had been breached.

21. The Prosecutor General's Office pointed out Lithuania's unconditional obligation to execute the *Beizaras and Levickas* judgment. It then referred to Article 217 § 2 of the Code of Criminal Procedure (see paragraph 38 below): there was no doubt that the Court's judgment in *Beizaras and Levickas* had been an "important circumstance" (*svarbi aplinkybė*) for the pre-trial investigation in the applicant's case, because both cases had been similar, and the questions of fact and law in both cases – the applicant's and in *Beizaras and Levickas* – had been analogous. In addition, the violations established by the Court in *Beizaras and Levickas* had been closely linked to the applicant's case, which had been the second case under Article 13 of the Convention where an applicant had argued that the State had failed to discharge its positive obligation to protect persons of homosexual orientation from hate speech. Accordingly, even though reopening was an exceptional measure to review decisions which had become final, in the applicant's case the Court's judgment was a sufficient ground to hold that "essential circumstances" existed which were important to decide the case fairly and which had not been established when taking the decision to discontinue the pre-trial investigation.

22. On the facts, the Prosecutor's General Office pointed out that the Internet Protocol (IP) addresses of several commentators had been located abroad and that it had been necessary to establish them in order to bring those persons to justice. It referred to paragraphs 94 to 98 of the Methodological Recommendations which contained the criteria on the basis of which a European Investigation Order could be issued (see paragraph 42 below). In addition, it was necessary to establish whether the comments contained the elements of a crime under Article 170 § 2 of the Criminal Code and when assessing those comments, it was necessary to take into account not only the Court's judgment in *Beizaras and Levickas*, but also criteria set out in the Recommendation, in particular in paragraphs 74 to 80. Attention had to be drawn to the Court's finding that attacks against sexual minorities in Lithuania had reached the required level of gravity for criminal liability to apply in respect of them (*Beizaras and Levickas*, cited above, §§ 59-66). It was also relevant that, when assessing the question of co-conspiracy

(*vertinant klausimą dėl bendrininkavimo*), the argument used by the lower prosecutor – that conspiracy was not possible when some of the authors live abroad – had been clearly insufficient. In the applicant's case, the prosecutors had not scrutinised whether those who had written the comments in question had done so because of other comments previously posted by other persons, or whether they were their own statements after reading the applicant's essay. Attention had also not been paid to the question whether any concrete comment had received support ("likes"), which would show the comment's popularity. All those issues had to be examined when performing the pre-trial investigation, and it was indispensable to scrutinise each comment separately (its content, the author's intentions) and also the comments in their entirety in context, in order to ascertain whether they were one-offs or comments of persons acting together and approving each other's actions and attitudes and seeking identical goals.

23. Lastly, the Prosecutor General's Office referred to the Court's decision in *Lilliendahl v. Iceland* ((dec.), no. 29297/18, §§ 39 and 44-48, 12 May 2020) in which the Court had shared the Icelandic Supreme Court's view that the applicant's comments, which had been made publicly, had been "serious, severely hurtful and prejudicial", and that their prejudicial content had by no means been necessary for the applicant to engage in the ongoing public discussion. Likewise, the Court had noted that a fine, upon conviction, in the circumstances had not been excessive. The Court had underscored that the most serious form of "hate speech", by its very nature, fell outside the scope of protection of Article 10 of the Convention by virtue of Article 17.

24. In the light of the above considerations, and referring to Article 46 of the Convention, the Court's judgment in *Beizaras and Levickas*, Article 217 § 2 of the Code of Criminal Procedure, Article 4 § 2 of the Law on Prosecutor's Office (see paragraph 39 below), the Prosecutor General's Office decided to reopen the pre-trial investigation so that essential circumstances, having an impact on the fair resolution of the applicant's case, could be established. The applicant was informed about this decision.

25. On 16 November 2020 a Klaipėda district prosecutor discontinued the pre-trial investigation in respect of S.K., the author of comment no. 6, on the basis that she had confessed and cooperated with the authorities regarding the comment. By a final decision of 23 December 2020, the Klaipėda Regional Court rejected the applicant's subsequent appeal.

26. On 17 November 2020 the Klaipėda district prosecutor discontinued the pre-trial investigation in respect of fifteen other comments, holding that, as established by the Inspector of Journalistic Ethics (see paragraph 13 above), those comments had not incited violence against homosexual persons as a group or discriminate against them. For the prosecutor, the mere use of obscene words in any comment, without direct statements inciting hatred or discrimination, could not be considered a crime. Such statements, despite

being "improper" (*nekorektiški*), in their form or level of danger they posed did not attain the level required to make them a crime.

27. On 28 November 2020 the Klaipėda regional prosecutor granted the applicant's subsequent appeal and quashed the above decision. The higher prosecutor pointed out that the district prosecutor, when holding that the comments in issue had been improper but could not incite readers to violence against a certain group of persons, without explicitly referring to the Supreme Court's practice, had essentially relied on the Supreme Court's rulings in cases nos. 2K-677/2012 and 2K-86-648/2016. That practice of the Supreme Court had been formed prior to the Court's judgment in *Beizaras and Levickas*. On that basis, and also pointing to other aspects where the need for improvement on the part of the State authorities when responding to hate crimes had been pointed out by the Court, the regional prosecutor held that the pre-trial investigation had to be reopened in respect of fifteen authors of the comments in question. The prosecutor also referred to Articles 13 and 46 of the Convention: Lithuania was under the obligation to take individual and general measures to rectify the situation which had led to the finding of a violation of the Convention in *Beizaras and Levickas*.

28. The authorities then continued the pre-trial investigation regarding the comments in issue.

29. On 4 March 2021 a Klaipėda district prosecutor discontinued the pre-trial investigation in respect of S.I., who had been questioned as a suspect in connection with comment no. 1: S.I. denied having written it, and there was no irrefutable evidence to prove otherwise. A conviction could not be based on mere suppositions.

30. According to the Government, on 4 March 2021 the Kaunas district prosecutor's office suspended the pre-trial investigation regarding comments nos. 7, 10, 12 and 18. The persons whose IP addresses were linked to those comments had been located in Lithuania. They were questioned but testified that their Wi-Fi Internet networks had not been password protected, thus it was not possible to hold that those persons had made the four comments. In their most recent observations of 27 September 2021, the Government noted that the applicant had not complained about the decision of 4 March 2021 of the Kaunas district prosecutor's office to suspend the pre-trial investigation into those comments, and that decision by the district prosecutor had become final.

31. Similarly, on 17 March 2021 a Klaipėda regional prosecutor discontinued the criminal investigation in respect of and conditionally released from criminal liability (*pagal laidavimą*) D.V., who had written comment no. 16. She had fully confessed and regretted her actions, which were a one-off; she had also been of pension age and the applicant had not lodged a civil claim. That decision was approved by the Klaipėda District Court on 19 March 2021; the applicant was informed of that fact and of his right to appeal.

32. As summarised by the Government in their observations of 10 May 2021, on 5 March 2021 a Klaipėda district prosecutor suspended the pre-trial investigation with regard to a number of the comments in issue, holding that all possible measures to identify the persons who could have committed a criminal act had been carried out. The comments had been made from IP addresses in Germany, Canada, the United Kingdom, Sweden, Ireland, Norway, Denmark and the United States of America; the real IP addresses had also sometimes been changed to other IP addresses by using VPNs. The prosecutor also noted that in those countries information about IP addresses was stored for a limited time, such as for one year in Denmark, Ireland and the United Kingdom, for six months in Canada, and for twenty-one days in Norway. The prosecutor noted that the pre-trial investigation was suspended until such a time as there no longer existed grounds for suspension.

Regarding comment no. 15, the prosecutor noted that on 3 November 2020 the pre-trial investigation had been discontinued, because the comment lacked the elements of a crime.

Regarding comment no. 20, the prosecutor noted that it had been made from the IP address of a certain V.P., who had been questioned as a special witness, but it had been impossible to establish who had made it.

33. The applicant lodged a complaint against the district prosecutor's decision, but on 22 March 2021 the Klaipėda regional prosecutor's office, having familiarised itself with the material in the pre-trial investigation file and the applicant's arguments, upheld the decision to suspend part of the pre-trial investigation, holding that all the necessary acts had been conducted to identify the guilty persons. Some of the comments in issue had been made in foreign States which stored data about IP addresses for a short period of time and thus there was no longer the possibility to establish to whom they belonged, even using the legal assistance agreements in place with regard to those States. Some other comments had been made using special programs to disguise the actual IP addresses. The regional prosecutor, addressing the applicant's complaint regarding comment no. 5, established that that comment had been made from an IP address belonging to a company, which, although it had cooperated with the prosecutor, could not provide any useful information in order to ascertain to whom the IP address belonged. The regional prosecutor noted that under the domestic law of Lithuania, data about a subscriber or registered user of electronic communications services could be stored for a maximum period of six months from the date of the connection (whereas the comments in issue had been made on 15 January 2018): there was therefore no possibility to receive additional data from that company about the IP address in question.

The regional prosecutor noted that her decision could be appealed against to the Klaipėda District Court. The applicant was sent a copy of the decision on 22 March 2021.

The Government submitted that the applicant had not lodged a complaint against the regional prosecutor's decision, which had thus become final.

34. As regards comment no. 1, by a final decision of 26 May 2021 the Klaipėda Regional Court allowed the applicant's complaint about the hasty discontinuation of the pre-trial investigation with regard to S.I. and remitted the case to the Klaipėda district prosecutor's office for further investigation. It had been necessary to inspect S.I.'s electronic devices (for example, mobile phones, computers) in order to find out whether S.I. had posted that comment. Subsequently, during the search of 16 June 2021, S.I. voluntarily handed in to the authorities the relevant devices (mobile phones, tablets and computers), but after inspection, no information relevant for the pre-trial investigation was found. S.I. was questioned and testified that, while he tended not to communicate with homosexual persons, he also avoided any involvement in such discussions; nor did he write any comments on Internet portals. Accordingly, on 20 July 2021 the Klaipėda district prosecutor's office discontinued the pre-trial investigation in respect of S.I., holding that there were no objective data to prove S.I.'s guilt. The same day the pre-trial investigation regarding comment no. 1 was suspended for a lack of suspects, even after the necessary procedural actions had been undertaken.

In their most recent observations of 27 September 2021, the Government submitted that the applicant had been notified of the 20 July 2021 decision, but he had not complained about it within the required time-limit and it had therefore become final.

35. In their most recent observations of 27 September 2021, the Government stated that the situation regarding the suspended pre-trial investigation in which no authors of the comments had been identified remained unchanged.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION AND LEGISLATION

36. The relevant parts of the Constitution read as follows:

Article 25

"Everyone shall have the right to have his own convictions and freely express them.

...

The freedom to express convictions, as well as to receive and impart information, may not be limited other than by law when this is necessary to protect ... honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation ..."

Article 28

"While implementing his rights and exercising his freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people."

37. The relevant provision of the Criminal Code at the material time read and currently reads as follows:

Article 170. Incitement against any national, racial, ethnic, religious or other group of people

"2. A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of people or a person belonging thereto on the grounds of ... sexual orientation ... convictions or views

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.

3. A person who publicly incites violence or the physically violent treatment of a group of people or a person belonging thereto on the grounds of ... sexual orientation ..., convictions or views ...

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years ..."

38. The relevant provision of the Code of Criminal Procedure reads as follows:

Article 217. The rules for reopening a discontinued pre-trial investigation

"1. The prosecutor may reopen the pre-trial investigation on the basis of an appeal by the party to the criminal proceedings or on his or her own initiative, if there is a basis [for doing so] ...

2. A pre-trial investigation may be reopened when essential circumstances come to light which have an impact on the fair resolution of the case and which were not present when the decision to discontinue the pre-trial investigation was taken."

39. The relevant provision of the Law on Prosecutor's Office (*Prokuratūros įstatymas*) reads as follows:

Article 4. Public prosecutor's interaction with other State institutions

"2. Procedural actions of prosecutors shall be controlled by the superior prosecutor and the court. The superior prosecutor and the court shall establish violations of procedural laws by prosecutors and reverse unlawful decisions ..."

40. The domestic law and practice related to, among other things, the right to respect for private life and protection of human dignity are set out in *Beizaras and Levickas* (cited above, §§ 26-54). Specifically, the Supreme Court's case-law between 2010 and 2017 is set out in §§ 39-47 of that judgment.

II. DEVELOPMENTS IN LITHUANIAN LAW AND PRACTICE AFTER THE COURT'S JUDGMENT IN *BEIZARAS AND LEVICKAS*

41. In their submissions, the Government also referred to the following domestic legal instrument and administrative and other practice and initiatives put into place by the Lithuanian authorities after the Court's judgment in *Beizaras and Levickas*.

A. The Methodological Recommendations by the Prosecutor General

42. On 30 March 2020 the Prosecutor General approved the Methodological Recommendations to the heads of regional and district prosecutors' offices and the police on the specifics of the conduct, organisation and supervision of the pre-trial investigation with regard to hate crimes and hate speech ("the Recommendations"). The Recommendations came into force on 1 April 2020.

The Recommendations emphasise the States' positive obligation to combat hate speech and refer, among others, to the Court's judgments in *Beizaras and Levickas* (cited above), *Vejdeland and Others v. Sweden* (no. 1813/07, 9 February 2012), *R.B. v. Hungary* (no. 64602/12, 12 April 2016) and *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, ECHR 2005-VII). The Recommendations define what hate speech is, and discuss the main aspects of the launch and conduct of a pre-trial investigation with regard to hate speech and hate crimes, citing the Court's case-law regarding, among other things, the law-enforcement authorities' duty to acknowledge and establish the bias motivation of hate-speech crimes and to take an approach commensurate with the seriousness of the situation, should there be even the slightest indication that a perpetrator had a certain negative attitude and/or bias towards the victim of the criminal act (paragraphs 44-45).

The Recommendations speak of the clash between two fundamental values – freedom of expression and equality. They refer to the need to assess the level of danger the actions pose and refer to "a very clear rule", formulated by the Lithuanian courts on the basis of the Court's practice, that exceeding the limits of self-expression will always be more dangerous online, owing to the wide reach of such a message. Even a single comment could be dangerous and should be taken seriously. The Recommendations then refer to such aspects as the context of the comments (the more tense the context, the more freedom of expression may be restricted); the aims of those who make statements (whether they incite to hatred or violence); the manner in which the statements were disseminated (on the Internet, owing to the wide reach and anonymous nature, damaging statements could have serious consequences) (paragraphs 74-80).

The Recommendations also set out that, as the perpetrators of hate crimes sometimes use IP addresses abroad, prosecutors could ask for relevant data via the European Investigation Order procedure, or by writing directly to Google or Facebook central offices (paragraphs 94-98).

B. The prosecutors' decisions to reopen suspended pre-trial investigations

43. In their observations of 15 December 2020, the Government referred to the following procedural decisions when reopening and reviewing earlier adopted decisions after the Court's judgment in *Beizaras and Levickas* (cited above).

On 8 October 2020 the chief prosecutor of the Vilnius regional prosecutor's office quashed of its own motion the procedural decision by the Vilnius regional police department to refuse to initiate a pre-trial investigation into alleged hate speech, under Article 170 of the Criminal Code, and initiating one on the basis of the 19 June 2019 report of the Office of the Inspector of Journalistic Ethics regarding hate speech (negative comments) on social media (Facebook and YouTube) towards LGBT+ persons. The chief prosecutor found that the circumstances in that case were similar to those in the judgment in *Beizaras and Levickas*. Against the background of the Court's arguments in *Beizaras and Levickas* and in the more recent case of *Lilliendahl* (cited above), the chief prosecutor noted that the Convention and the Court's case-law had direct effect in Lithuania and that under Article 46 of the Convention, the High Contracting Parties had undertaken to abide by the Court's judgments. The chief prosecutor also noted the Court's criticism as regards the law-enforcement authorities' reliance on the earlier case-law of the Supreme Court preceding the judgment in *Beizaras and Levickas* which ignored the significant differences in the level of gravity of the homophobic speech at stake in that case compared to the expressions examined by the Supreme Court in those earlier judgments. On that basis the chief prosecutor concluded that primacy should be given to the principles formulated by the Court in *Beizaras and Levickas*.

44. Furthermore, by a decision of 22 October 2020, the chief prosecutor of the Vilnius regional prosecutor's office, having received a complaint by T.V.R. and E.D. against the Vilnius regional police office's decision to refuse to open a pre-trial investigation into the allegedly homophobic speech of a candidate for election to the *Seimas*, quashed the police decision and started a pre-trial investigation under Article 170 of the Criminal Code. The chief prosecutor reiterated the principles formulated by the Court in *Beizaras and Levickas* and in *Feret v. Belgium* (no. 15615/07, 16 July 2009), noted that the Convention and the Court's case-law had direct effect in Lithuania, which was under the obligation to abide by the final decisions of the Court, and that it was to be given primacy over the earlier case-law of the Supreme Court.

Likewise, the chief regional prosecutor also referred to the Recommendations (see paragraph 42 above).

C. Statistical information regarding pre-trial investigations post *Beizaras and Levickas*

45. According to the Government's submissions of 27 September 2021, after the judgment in *Beizaras and Levickas* had been published, there had been an increase in the number of pre-trial investigations started under Article 170 of the Criminal Code, including investigations regarding hate crimes committed on the ground of sexual orientation. Thus, in 2020, ninety pre-trial investigations (including pre-trial investigations into hate crimes committed on the ground of sexual orientation) had been started; in 2021 (until 31 May 2021), forty-one pre-trial investigations had been started. As a comparison, in 2017 and 2018 twenty-two pre-trial investigations had been started in each year, and in 2019 forty-two pre-trial investigations had been opened.

In 2020, the authorities had refused to start a pre-trial investigation in seventy-eight cases, and in 2021 in fifty-five cases. By comparison, in 2019 in hundred and eleven cases it had been refused to open a pre-trial investigation; in 2018 that number had been sixty-one; and in 2017 it had been seventy-two.

In 2020, eight cases had been transferred to court for examination, and the court had found three persons guilty. In 2021, up to 31 May 2021, fifteen cases had been transferred to court for examination, and by that date eleven cases had been examined and ten persons found guilty.

D. Inter-institutional cooperation

46. By decision no. 1V-162 of 24 February 2020 of the Minister of the Interior an inter-institutional working group was set up, comprising representatives of State institutions (the Ministry of the Interior, the Police Department, the Prosecutor General's Office, the Office of the Inspector of Journalistic Ethics) and representatives of non-governmental organisations and associations (for example, the National Lesbian, Gay, Bisexual and Transgender (LGBT) Rights Association). The aim of the group was to provide information and raise society's awareness about hate crimes and hate speech, encourage dialogue between vulnerable groups, raise effectiveness when dealing with hate crimes and hate speech, and prepare relevant recommendations. The working group's recommendations included, *inter alia*, monitoring the implementation of Lithuania's international obligations in the field of hate crimes and hate-speech prevention and preparing proposals regarding their proper implementation; improving the monitoring of hate crimes and hate speech in Lithuania; preparing and making public an annual

report on the situation of hate crimes and hate speech in Lithuania; exchanging best practices in the field of the prevention of hate crimes and hate speech; and strengthening the relevant competencies of law-enforcement and other State institutions and bodies and civil-society organisations. As noted by the Government, meetings, including with the participation of foreign experts and international organisations, were held regularly.

E. Training and discussions

47. Seeking to implement the Court's judgment in *Beizaras and Levickas*, the Prosecutor General's Office held a series of meetings: at the meeting of 18 June 2020, the Government Agent presented the main aspects of that judgment. The participants – fifty-six prosecutors and two public servants – discussed the judgment's impact on the domestic investigations of alleged hate crimes and hate speech, as well as ways to implement the Court's judgment. At the next meeting, organised by the Prosecutor General's Office on 6 October 2020, the Government Agent gave another presentation and led a discussion on *Beizaras and Levickas*; thirty-four prosecutors and more than a hundred police officers took part in the discussion.

48. Furthermore, between 2017 and 2020 the prosecutors and their assistants took part in training sessions on "Human rights protection", "The registration of hate crimes and collection of information", "Groups that are vulnerable to hate crimes and the law-enforcement authorities: expectations and possibilities".

49. At the time of the Government's observations of 15 December 2020, the Ministry of the Interior, the Prosecutor General's Office and the Office of the Inspector of Journalistic Ethics were completing implementation of the 2014-20 project "Strengthening the response to hate crimes and hate speech in Lithuania", aimed at taking effective measures to prevent racism, xenophobia and other forms of intolerance, with a special focus on the fight against hate crime and hate speech. The project sought to improve the system for recording and collecting information on hate crimes, and the reporting of hate speech on the Internet; to analyse the cases of criminal responsibility for hate crimes and hate speech and give recommendations to police officers; and to train prosecutors, judges and police officers about the specifics of investigations into hate crimes and criminal responsibility for such crimes, the identification of vulnerable communities and their needs, the promotion of reporting hate crimes, the strengthening of relations between the police and vulnerable communities, and the training of police officers and prosecutors.

50. In their submissions of 27 September 2021, the Government referred to the following subsequent training sessions:

(a) training on officials' actions in cases of hate crimes and on the prevention of hate crimes (in 2020, 218 police officers were trained; in 2021, up to 30 April, 126 police officers were trained);

(b) training on human rights and the activity of police officers, including the topic of hate crimes (in 2020, 144 police officers were trained; in 2021, up to 30 April, 192 officers were trained);

(c) training on the topic of the police officers' role in investigating hate crimes against LGBT persons (in 2021, up to 30 April, 38 police officers were trained; in July 2021, 2 training sessions were held to train 40 future trainers of officials; in autumn 2021, 90 high-level judges and prosecutors were to be trained).

51. In addition to the above-mentioned training sessions, the Prosecutor General's Office regularly organised meetings with the prosecutors who specialise in investigating hate crimes and hate speech; the Office also regularly informed society about relevant pre-trial investigations.

52. In March 2021, the Office of the Equal Opportunities Ombudsperson ran two focus groups, one with police officers and the other with prosecutors. The aim of those focus groups was to detect challenges in investigating and prosecuting hate crimes and the potential shortcomings of ongoing investigations; the need for information related to the assessment of hate motives; to assess the reasons for hate crimes not being resolved; and to assess the influence of the attitude of the police officers on the investigation of hate crimes. In March 2021, aiming to identify and define the challenges and problems faced by police officers and prosecutors in investigating hate crimes, the Office of the Equal Opportunities Ombudsperson organised a survey of officials.

53. On 2 May 2020 the Office of the Inspector of Journalistic Ethics and the Office of the Equal Opportunities Ombudsperson started implementing the project "#NOPLACE4HATE: Improving the institutional response to hate speech in Lithuania". The project's main objectives were to establish clear guidelines for police officers, prosecutors and judges on processing complaints about hate speech within the criminal justice system; to build up the capacity of the competent public authorities; to improve support to victims of hate speech; and to increase public awareness and the awareness of the law-enforcement authorities on how to recognise and react to hate speech.

54. On 7 May 2020 prosecutors were introduced to the practical guide "Cooperation with vulnerable communities experiencing hate crimes". On 4 February 2021 a prosecutor from the Prosecutor General's Office and one from the Vilnius district prosecutor's office provided the general public with information about the elements of hate crime, investigations into hate speech on the Internet, and the criminal penalties. On 8 April 2021 the Forensic Science Centre of Lithuania organised training on the linguistic aspects of hate speech. Projects, a media campaign and other measures were also taken with a view to training officials and preventing hate crimes.

55. In March-April 2021, the Office of the Equal Opportunities Ombudsperson organised a national awareness-raising campaign, "Hate

speech is a crime". A media campaign to break down stereotypes about certain vulnerable groups, including LGBT persons, was carried out. Social advertising (video clips) against discrimination, including on the grounds of sexual orientation, were created and broadcast on television and the radio, as well as on Facebook.

56. Discussions were initiated on the radio and on television. During that campaign, the Internet portal www.nepyka.lt (administered by the Office of the Equal Opportunities Ombudsperson) was created to increase public awareness. The purpose of the portal is, *inter alia*, to provide information about what hate speech and hate crimes are, and where to apply, and how, to defend one's rights in the event of hate speech and hate crime. Separate sections of the Internet site target the media, professionals and victims. During the same campaign, outdoor advertising posters were distributed in major Lithuanian cities, and articles and videos were shared on Facebook.

57. In 2021, State bodies (for example, the Office of the Equal Opportunities Ombudsperson) continued to inform the public about hate speech and the harm it causes. The Office of the Equal Opportunities Ombudsperson was planning to organise an information campaign on the detection of hate speech for police officers and prosecutors, as well as an online public awareness campaign about the assistance provided to the victims of hate crimes. According to the data available in May 2021, 141 police officers held the post of so-called police community officers, whose function included meetings with minority communities (including the sexual minority).

58. In April 2021, the Lithuanian Police Department, having assessed the best practices of foreign States, launched a virtual patrol unit. The functions of the virtual patrol include monitoring social networks; assessment of the information received and collection of additional information, if need be; and consultation and providing information. The virtual patrol carries out a preventive activity in cyberspace. It collects information about alleged violations of the law and transfers that information to the relevant police unit to carry out an investigation. In its first month, the virtual patrol received 576 reports from residents and institutions via various means (on Facebook, by email, and certain violations were identified by the virtual patrol unit itself). The reports included, but were not limited to, hate speech and discrimination. In its first month, 11 cases were transferred to police units for investigation into incitement to violence, and three pre-trial investigations into alleged incitement to violence were started on the basis of the information received from the virtual patrol. A plugin to prevent hate-crime incidents was to be installed in the online media by the end of April 2022.

III. THE SUPREME COURT'S MORE RECENT CASE-LAW

59. In a ruling of 13 March 2018 in case no. 2K-91-976/2018, the Supreme Court examined lower court decisions in which an individual, V.L., had been convicted under Article 170 § 2 of the Criminal Code for three criminal acts – for having expressed, on his Facebook page, hatred in respect of a group of persons based on their Jewish ethnicity and homosexual orientation. In his defence, V.L. relied on his right to freedom of speech. The Supreme Court noted that, under the Court's case-law, the right to freedom of speech could be restricted when it concerned hate speech or calls for violence (it relied on *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 204-12, ECHR 2015 (extracts)). The Supreme Court also noted that inciting to hatred did not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population could be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner (it cited *Vejdeland and Others*, cited above, § 54). The Supreme Court pointed out that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet played an important role in enhancing the public's access to news and facilitating the dissemination of information in general. The anonymity of Internet users, as such, was capable of promoting the free flow of ideas and information. At the same time, the ease, scope and speed of the dissemination of information on the Internet, and the persistence of the information once disclosed, could considerably aggravate the effects of unlawful speech on the Internet compared to traditional media (it cited *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 133 and 147, ECHR 2015).

60. The Supreme Court then examined the elements of the hate crime as provided in Article 170 § 2 of the Criminal Code, and, on the facts, considered that those elements had been present in V.L.'s actions: he had understood the danger of his systemic actions – publicly expressing hatred towards the Jews and homosexual persons; he had also sought to trigger a negative public reaction towards the above-mentioned groups of persons. The Supreme Court thus upheld V.L.'s conviction under Article 170 § 2 of the Criminal Code.

RELEVANT INTERNATIONAL MATERIALS

61. The relevant parts of the document of the Committee of Ministers prepared in connection with the execution of the Court's judgment in *Beizaras and Levickas* indicate as follows (CM/Notes/1419/H46-21, 2 December 2021):

"**Status of execution**

The Lithuanian authorities submitted two detailed action plans, on 13 November 2020 and 31 August 2021 (see DH-DD(2020)1044 and DH-DD(2021)852), summarised below:

Individual measures

The just satisfaction (covering non-pecuniary damages and costs and expenses) was paid in full and in time.

In response to the judgment, the authorities' initial decision to refuse to start a pre-trial investigation was quashed. On 14 July 2020, a pre-trial investigation was initiated under Article 170 § 2 of the Criminal Code of Lithuania ... into all 31 comments made by 29 persons. The authorities provided detailed information on the progress and status of this investigation. To date, criminal proceedings have ended in seven cases and are still pending in 22 cases. In five cases, requests for legal assistance have been sent to foreign authorities to question the suspects who live abroad. In four cases, the criminal proceedings are pending at different stages before the domestic courts. It has not yet been possible to identify thirteen persons due to the passage of time since the facts at issue. The authorities explain that should their identity be established, investigations could be opened against them as long as criminal prosecution has not been prescribed by that date.

General measures

The authorities underline that the Court did not call the domestic legislation into question but instead underlined as the source of the violations the discriminatory attitudes of the domestic authorities (the prosecutors and the courts) in its application. They have therefore taken measures to change the domestic practices and prevent similar violations of Article 14 in conjunction with both Article 8 and Article 13.

A. Improving effectiveness of investigations into hate crimes and hate speech

1. New Methodological recommendations for prosecutors and police officers on the conduct of pre-trial investigations into hate crimes and hate speech

Recommendations which adhere to the Court's case-law and follow the Court's findings in the judgment were drafted by an academic and approved by the Prosecutor General in March 2020. They have been disseminated to the heads of regional prosecutors' offices and the police and discussed in inter-institutional working groups.

2. Specialisation of prosecutors

Examination of complaints on hate crimes is allocated as much as possible to specialised prosecutors. For example, two recent orders of 2020 of the chief prosecutors of the Vilnius and Klaipėda Regional Prosecutor's Offices oblige the Heads of the respective structural divisions to ensure that the examination of complaints regarding alleged hate crimes and hate speech are allocated to prosecutors specialised in dealing with criminal acts against individuals' equality and freedom of conscience.

3. Review of previous decisions to refuse to start/to suspend/to discontinue pre-trial investigations

Explicitly invoking the Court's judgment, regional prosecutors are reviewing their previous decisions from 2016 onwards to refuse pre-trial investigations into allegations of hate crimes and hate speech, in order to examine whether a bias-motivation (including based on sexual orientation as in the present case) was an element of criminal acts committed against a person, society or property, or an aggravating circumstance.

To date, the Vilnius Regional Prosecutor's Office alone has reviewed 261 procedural decisions regarding criminal acts with potential bias-motivation (17 out of 261 procedural decisions were quashed after this review).

4. Targeted trainings and awareness raising projects

Between 2017 and 2021 multiple relevant trainings for law enforcement authorities took place and projects were implemented (see DH-DD(2021)852 for full details). In 2020, the Prosecutor's General's office organised with the Government Agent, presentations to prosecutors and discussions on the implications of the findings of the Court in the case. In 2021, the Office of the Equal Opportunities Ombudsperson held two focus groups for police officers and prosecutors with the main aim of identifying the challenges in investigating and prosecuting hate crimes and the potential shortcomings in the ongoing investigations. It also organised a national awareness-raising campaign 'Hate speech is a crime'. In December 2021, the National Human Rights Forum will be held on the issue of hate speech and hate crimes in Lithuania.

5. Registration and data collection on hate crimes and hate speech

At the request of the Prosecutor General's Office, changes are planned to the electronic database of criminal procedure and the Register of Criminal Offenses to improve registration and data collection on hate crimes.

6. Translation and dissemination of the judgment

The judgment was published in Lithuanian on the Government Agent's website with free access. The Agent also separately informed in writing the competent domestic authorities about the judgment, sending detailed explanatory notes. The Prosecutor General's Office held several meetings to discuss the impact of the present judgment on domestic investigations.

B. Evolution of the domestic case-law

The authorities note that the case-law of the domestic courts (including that of the district courts) shows a positive trend in eliminating impunity for discriminatory and homophobic hate comments on the internet. Recent case-law of the Supreme Court shows that hate speech based on sexual orientation is not tolerated and that it no longer refers to 'eccentric behaviour' as criticised by the Court.

For example, in a criminal case of 2018, where the perpetrator was convicted for inciting hatred against groups of people on different grounds, including sexual orientation, the Supreme Court referred extensively to the Court's case-law on hate crimes and underlined the seriousness of discrimination based on sexual orientation. Statistics show that in 2020, eight cases were transferred to courts for examination: three cases were decided, three persons were found guilty, and one person was acquitted. Up to 31 May 2021, 15 cases were transferred to courts for examination: 11 cases were decided, 10 persons were found guilty and compulsory treatment was imposed on one person.

C. Prevention of hate crimes and hate speech

In April 2021, the Lithuanian Police Office launched a virtual patrol unit to monitor social networks and carry out preventive activity in cyberspace, by collecting information about alleged violations and transferring that information to the relevant police unit to carry out investigations. Within a month from the start of its activity, the virtual patrol received 576 reports from individuals and institutions. The reports include, but they are not limited to, hate speech and discrimination. 11 cases were transferred to the police for investigation into incitement to violence and three pre-trial

investigations into alleged incitement to violence were initiated on the basis of the information received from the virtual patrol. The installation of a plugin in online media to prevent hate incidents is planned for by the end of April 2022.

D. Improving reporting on hate crimes and hate speech

Online platforms have been developed to encourage reporting on hate speech: on the 'ePolicija.lt' site, individuals can inform the police about criminal acts and follow the case; UNI-FORM, the online platform connecting LGBTI NGO's and police forces in EU countries, is implemented in Lithuania (this platform can be used by any other person who wants to report, including anonymously, a bias-motivated incident).

Meetings with the minority communities have been organised by police community officers to consult them on issues relevant to those communities (555 such meetings were held in 2020).

E. Statistics

There has been an increase of the number of pre-trial investigations (and a decrease in the number of refusals) started under Article 170 of the Criminal Code, including on grounds of sexual orientation, after the Court's judgment. 90 such pre-trial investigations were started in 2020 and 41 until 31 May 2021, compared to 22 in 2017, 22 in 2018 and 42 in 2019.

F. Establishment of an inter-institutional working group and adoption of an action plan 2021-2023 to promote non-discrimination

On 24 February 2020 an inter-institutional working group was formed, with the aim, *inter alia*, of raising awareness about hate crimes and hate speech; encouraging dialogue between vulnerable groups; exchanging good practices on prevention and investigation of such acts; increasing the effectiveness of the authorities' response to such allegations; and preparing relevant recommendations (including on the ongoing monitoring of hate crimes, exchanges of good practices, strengthening the identification of hate crimes and the capacity of law enforcement bodies). The group is composed of representatives of the Ministry of Interior, the Police Department, the Prosecutor General's Office, the Office of the Inspector of Journalist Ethics and representatives of Lithuanian non-governmental organisations and associations (including LGBTI organisations). In December 2020, the Minister of Social Security and Labour approved the Action Plan to Promote Non-Discrimination 2021-2023, one of its aims being the prevention of hate speech and hate crimes.

G. The authorities' assessment of the measures taken

The authorities underline the progress made in individual and general measures, note that civil society (ILGA-Europe) have underlined the positive trends in implementation of the present judgment and invite the Committee of Ministers to transfer the present case to the standard procedure.

Analysis by the Secretariat

Individual measures

The rapid opening by the authorities of a pre-trial investigation into the applicants' allegations of homophobic hate speech *ex officio*, soon after the judgment became final, and the multiple efforts taken so far to achieve concrete progress in this investigation are welcome developments. No further individual measures appear to be necessary as the measures taken respond to the Court's criticism as to the failure to launch an investigation due to the discriminatory attitudes of the authorities.

General measures

The authorities have taken a range of comprehensive and multi-faceted measures to increase the capacity of the Lithuanian criminal justice system to adequately respond to hate speech and hate crimes and thus address the issues raised by the Court.

The adoption of methodological recommendations for the investigation of hate crimes by police and prosecution services, the specialisation of prosecutors and the review of previous decisions to examine whether bias-motivation was an element of a crime are measures that can be noted with satisfaction. The authorities should now take all the necessary measures to ensure the effective implementation of the new recommendations in practice.

The evolution of the domestic case-law, the capacity-building measures for the investigative authorities and the statistics indicating an increase of hate crime investigations in recent years can be noted with interest. The authorities should continue their efforts to identify and eliminate the challenges in investigating and prosecuting hate crimes. These next steps could include further specialisation of prosecutors and extension of specialisation to police officers, and systematic comprehensive initial and in-service training specifically focused on detecting and handling hate crimes, for police officers, prosecutors, as well as judges, possibly drawing on the Council of Europe's expertise in order to ensure a Convention compliant application of the hate crime legislation, with particular emphasis on investigating the relevant causal links with discrimination.

The authorities should continue with their plans to improve registration and data collection on hate crimes, enabling them to acquire an integrated and consistent view of the prevalence of hate crime and the investigative and judicial authorities' response to such crimes and thus to assess the need for additional or corrective action.

The preventive measures taken by the authorities so far and their determination to continue to monitor and improve their response to hate crimes and hate speech are welcome. In particular, it is positive that a specific inter-institutional group has been created with the participation of civil society. It is important now that the working group pursues its activity, in particular by finalising their comprehensive strategic plan to address both prevention of and response to hate crimes and hate speech.

Proposal to examine this case under the standard procedure

In view of the comprehensive measures adopted to date, the progress achieved and the authorities' determination to continue their work to further enhance both prevention of and investigation into hate speech, the examination of these cases could continue under the standard procedure where the impact in practice and long-term stability of the measures can be assessed."

62. At its 1419th meeting held on 30 November-2 December 2021, the Committee of Ministers adopted decision CM/Del/Dec(2021)1419/H46-21 regarding the supervision of the execution of the Court's judgment in *Beizaras and Levickas*, in which it stated as follows:

"The Deputies

1. recalled that this case concerns the refusal, due to discriminatory attitudes, to launch a pre-trial investigation into the applicants' allegations of having been subjected to extreme homophobic online hate speech in 2014, and the lack of an effective domestic remedy;

As regards individual measures

2. considered that no further individual measures are necessary given that the just satisfaction has been paid and that the authorities reviewed and quashed their initial refusal to launch a pre-trial investigation into the applicants' complaints of homophobic hate speech found to be contrary to the Convention, launched an investigation *ex officio* and have progressed rapidly with it;

As regards general measures

3. noted with satisfaction the wide-ranging and multi-faceted measures taken by the authorities to improve investigations into hate crimes and hate speech, including the adoption of new methodological recommendations, the specialisation of prosecutors and the review of previous decisions to examine whether bias-motivation was an element of a crime or there were any causal links with discrimination; invited the authorities to take all the necessary measures to ensure the effective implementation of the new recommendations in practice;

4. noted with interest the evolution of the domestic case-law, the capacity-building measures for investigative authorities taken and the statistics indicating an increase of hate crime investigations in recent years;

5. encouraged the authorities to continue their efforts to identify and eliminate the challenges in investigating and prosecuting hate crimes and to continue with the training and awareness raising of law enforcement officers, prosecutors and judges, possibly drawing on the Council of Europe's expertise in order to ensure a Convention compliant application of the hate crime legislation, in order to ensure the sustainability of the progress achieved so far;

6. welcomed the preventive measures taken by the Lithuanian authorities so far and their determination to continue to monitor and improve their response to hate crimes and hate speech; encouraged them to pursue their efforts, in particular, to finalise their comprehensive strategic plan to address both prevention of and response to hate crimes and hate speech and to work on measures to improve registration and data collection on hate crimes;

7. invited the authorities to submit a consolidated action plan/report including all relevant developments and an assessment of the impact in practice of the measures taken so far, as well as information on any additional measures envisaged to monitor the effectiveness of investigations into hate crimes and hate speech in the future, by the end of June 2023 at the latest;

8. in light of the progress of the individual and general measures taken so far, decided to continue the examination of this case under the standard procedure."

THE LAW

ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. The applicant complained that the authorities had not responded effectively to his complaint regarding hateful comments made about him. He relied on Article 13 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

(a) The Government

64. Having regard to the Court's conclusions in *Beizaras and Levickas* (no. 41288/15, 14 January 2020), the Government did not question the applicability of Article 13 of the Convention to the circumstances of the present case, leaving the matter to the Court for a final decision.

65. The Government pointed out that the applicant's case covered two periods of time – the first, which had been subject to the domestic practice prior to the Court's judgment in *Beizaras and Levickas*, and the second, which had been subject to the domestic practice subsequent to it. Even if one were to admit that at the time of the lodging of the application there had been no effective remedy available, the current practice of the Lithuanian authorities, including the possibility of reopening the pre-trial investigation regarding the comments in issue, demonstrated that there was an effective remedy and the case could be considered as having been resolved, in accordance with Article 37 § 1 (b) of the Convention (they referred to *Dardanskis and Others v. Lithuania* (dec.), nos. 74452/13 and 15 others, §§ 21-32, 18 June 2019).

66. In their observations of 15 December 2020, the Government also submitted that the application should be rejected for non-exhaustion of domestic remedies, regard being had to the following: the principle of subsidiarity of the Convention mechanism; the direct effect of the Convention in the Lithuanian legal system; the fact that the Convention prevailed over domestic legal acts; the Court's judgments against Lithuania were binding on the State authorities; more than six months had passed since the judgment in *Beizaras and Levickas* had become final; the domestic authorities' immediate response to deal with the Court's criticism in that judgment; the domestic authorities' modified practice; and the applicant's individual situation (the pre-trial investigation was still being carried out in his case, and the Prosecutor General's Office when reopening the investigation had *expressis verbis* had regard to the judgment in *Beizaras and Levickas*).

In their most recent submissions of 27 September 2021, the Government argued that an effective domestic remedy in respect of individuals' complaints concerning hate-speech crimes directed against sexual minorities had been created.

(b) The applicant

67. In his submissions of 29 January 2021, the applicant stated that he had appealed against the decisions to discontinue the pre-trial investigation and exhausted all the legal remedies available before the Court's judgment in *Beizaras and Levickas*. After the Klaipėda District Court's final ruling of

17 January 2019 (see paragraph 18 above), he had no longer had the opportunity to appeal to higher courts.

After the initial reopening of the investigation after the Court's judgment, the investigation had been discontinued on the same discriminatory grounds that the comments had been inoffensive. In addition, too little effort had been made to establish the authors of the comments. Even those perpetrators who had been identified had been conditionally released from criminal liability (*pagal laidavimą*). This reflected the cynical and offensive position of the State, which corresponded to that of the majority of the population towards public and systematic insults of homosexuals. The State authorities had not put in place effective measures to protect the applicant against hate speech linked to his writing regarding homosexuals.

2. The Court's assessment

68. The Court first observes that the applicant did appeal against the prosecutors' and the courts' decisions either not to open a pre-trial investigation regarding the comments in issue, or to suspend the pre-trial investigation on the ground that all the measures to identify the authors of the comments had been exhausted (see paragraphs 15-18 above). It finds that during this first period of investigation, the applicant exhausted the available domestic remedies.

69. The Court also considers that the question of whether the applicant had effective domestic remedies during the second period of the pre-trial investigation, after it had been reopened by the Prosecutor General's Office (see paragraphs 20-24 above), is intrinsically linked to the applicant's grievance about the lack of domestic remedies for hate speech both in general and in the applicant's concrete case. Therefore the Court finds it premature to respond to the Government's arguments (see paragraphs 65-66 above) at this stage and will revert to this matter when examining the merits of the applicant's complaint.

70. The Court notes, lastly, 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 applicant

71. The applicant submitted that in his essay of 15 January 2018 (see paragraph 5 above), he had sought to express criticism and his subjective opinion. The descriptions used in that essay had only referred to narrow-minded individuals, given that less well-educated "people ... were more likely to be negative towards homosexuals and more likely to express

their thoughts by offending others". Even though the essay had been shocking or unfavourable to others, the applicant had merely expressed his opinion regarding people who have a negative attitude towards homosexuals.

72. Despite the offensive and violent comments the essay had received, and despite the applicant's request for a pre-trial investigation to be opened under Article 170 § 2 of the Criminal Code, throughout the investigation he had not been provided with effective legal protection: the investigation had been terminated on multiple occasions, without all the relevant circumstances having been assessed.

73. The pre-trial investigation in the applicant's case had been reopened only nine months after the judgment in *Beizaras and Levickas* had been delivered. The applicant believed that the only reason it had been reopened was that the Government Agent had informed the Prosecutor General's Office about the present application having been communicated to the Government for observations. Had the applicant not taken any steps to protect his rights at the international level, the domestic proceedings would have remained closed.

74. The State's obligation to investigate hate crimes in a timely manner, and to hold the perpetrators accountable, fell within its positive obligations. Therefore, formal resumption of the proceedings could not be considered an effective domestic remedy. The reopening of the investigation in his case had led to no tangible result, and some of the perpetrators had even been conditionally released from criminal liability or released because of the insignificance of the acts or on other grounds. The investigation had not been conducted diligently, and the time spent on the pre-trial investigation in his case – over three years – had allowed the perpetrators to avoid liability. It was the responsibility of the State to gather sufficient evidence before terminating pre-trial investigations. Three years after the crime had been committed, it was unlikely that it would be possible to find such evidence and to punish the perpetrators. The victim, however, was burdened by an unbearable financial and emotional toll to complain about the repeated interruptions of the pre-trial investigation and systemic loopholes.

75. The reopening of the domestic proceedings after the Court's judgment in *Beizaras and Levickas* had not been an effective remedy and was more likely to have been done for the sake of being seen to do something rather than to actually pursue and punish the perpetrators and restore justice. The prosecutors' arguments had been similar to those in the first investigation – the perpetrators' acts had still been considered inoffensive, thus none of the principles set out by the Court in *Beizaras and Levickas* had been implemented in practice. The State's positive obligation had not been fulfilled; the domestic authorities' practice remained the same. The applicant also believed that the *Drėlingas v. Lithuania* (no. 28859/16, 12 March 2019) or *Hutchinson v. the United Kingdom* ([GC], no. 57592/08, 17 January 2017) case-law was not applicable in his case.

76. In his most recent submissions of 2 November 2021, the applicant stated that all the measures indicated by the Government had been implemented too late and to this day were not effective either in terms of handling his specific case, or combating hate-speech crimes in Lithuania in general.

(b) The Government

(i) The State authorities' position in general

77. The Government firstly referred to the shift in the competent domestic authorities' practice, which had come about immediately after the Court's judgment in *Beizaras and Levickas*. Since then, the domestic authorities had been taking all the necessary measures to ensure an effective investigation into allegations of hate speech on the grounds of sexual orientation. The reasoning given by the Court in that judgment had been integrated into and developed in the law-enforcement authorities' practice. By setting out the general principles in *Beizaras and Levickas*, the Court had aided the competent domestic authorities, such as the prosecutors' offices and the domestic courts, to discharge their positive obligation to investigate in an effective manner whether comments regarding individuals' sexual orientation constituted incitement to hatred and violence.

78. The Government also referred to paragraph 152 of *Beizaras and Levickas*, in which the Court had acknowledged that the domestic courts at the first level of jurisdiction had been reaching guilty verdicts regarding discriminatory and homophobic comments on the Internet as well as other types of homophobic behaviour. The Government thus considered that the case-law of the first-instance courts had not been criticised by the Court. That being so, and given the Court's concern as to the Lithuanian Supreme Court's position on the "eccentric behaviour" or the supposed duty of persons belonging to sexual minorities "to respect the views and traditions of others" in exercising their own personality rights (ibid.), subsequent to the judgment in *Beizaras and Levickas* the prosecutors' offices had immediately addressed that concern by not invoking that particular case-law of the Supreme Court of Lithuania anymore. This was the case both when investigating the allegations of hate speech in the applicant's case and in other similar cases. The Court's judgment had thus had a direct effect and prevailed over the principles formulated in the case-law of the Supreme Court, except for the Constitution. The Supreme Court's case-law criticised by the Court thus did not preclude law-enforcement authorities, including prosecutors and all other entities, from applying domestic law and fulfilling their positive obligations. In these circumstances there was no need to wait for the shift in the Supreme Court's case-law in order to conclude the existence of an effective domestic remedy.

79. The Government wished to draw the Court's attention to the shift in the Supreme Court's case-law, which demonstrated that hate speech on the ground of sexual orientation was no longer tolerated (see paragraphs 59-60 above). Thus, there was currently no ground to hold that the Supreme Court's position was rather lenient towards those accused of hate speech against homosexuals. The fact that the Supreme Court had not had an opportunity to develop its case-law on the standards to be applied in hate-speech cases of comparable gravity committed on different grounds could be explained by the peculiarities of the criminal procedure – the Supreme Court's jurisdiction was dependent on parties lodging appeals on points of law. That notwithstanding, the practice of the prosecutors' offices and the case-law of district courts ensured that hate speech and hate crimes were being properly investigated.

80. Immediately after the delivery of the Court's judgment in *Beizaras and Levickas*, the domestic authorities had addressed the Court's concern about the lack of a comprehensive strategic approach by the Lithuanian authorities to tackling the issue of racist and homophobic hate speech, in order to provide an effective remedy under Article 13 of the Convention (see paragraph 46 above). The prosecutors' practice had been modified at the highest level: by the Prosecutor General's Office adopting new Methodological Recommendations (see paragraph 42 above), by quashing the decisions of lower prosecutors or police departments, by ordering reviews of the lower prosecutors' decisions, and by investigating allegations of hate-speech crimes received after the Court's judgment in *Beizaras and Levickas*, directly applying that judgment of the Court (see paragraphs 43-44 above).

81. Measures taken by the domestic authorities seeking to make the remedy effective had received a positive assessment among the organisations concerned. Specifically, during a web conference that had taken place at the Court on 8 October 2020, the representative of ILGA-Europe – the organisation that had submitted observations as one of the third-party interveners in *Beizaras and Levickas* (cited above, §§ 102-05) – had pointed out the positive trends since the timely implementation of that judgment in Lithuania, such as the adoption of the Methodological Recommendations (see paragraph 42 above), which had been published just three months after the adoption of the Court's judgment. The National Lesbian, Gay, Bisexual and Transgender (LGBT) Rights Association – a non-governmental organisation which had participated in the *Beizaras and Levickas* case at both the domestic and international levels (ibid., §§ 16-17) – considered that the Methodological Recommendations "promoted a conscious and sensitive attitude of law-enforcement officials towards victims of hate crimes or hate speech and emphasised the need for special-protection-needs assessments and special-protection measures".

82. The Government also referred to the available statistical information as proof of the increase in the number of pre-trial investigations started under

Article 170 of the Criminal Code, including pre-trial investigations into hate crimes committed on the ground of sexual orientation (see paragraph 45 above).

83. The Government pointed to the positive assessment by the Committee of Ministers of the measures taken by the Lithuanian authorities since the judgment in *Beizaras and Levickas*. In the light of the progress of the individual and general measures taken so far, the Committee of Ministers had decided to continue the examination of the *Beizaras and Levickas* case under the standard procedure instead of the enhanced one.

84. Lastly, in their most recent submissions of 8 December 2021, the Government admitted that general measures aiming to prevent violations were still being taken and their long-term effectiveness was still to be assessed, but already at that time one could not overlook the existing tangible progress resulting from the comprehensive measures adopted so far.

(ii) The applicant's case

85. Following the Court's judgment in *Beizaras and Levickas*, the same, effective stance as to the investigation into the allegation of hate speech on the grounds of sexual orientation had been followed by the domestic authorities in the applicant's case. The domestic authorities, invoking the guidance provided by the Court in that judgment, sought to address the Court's criticism and to carry out an effective investigation into the allegations of hate speech.

86. The Government disputed the applicant's statement that, had he not lodged an application with the Court, his case would have remained closed. To the contrary, as soon as the Court's judgment in *Beizaras and Levickas* had become final on 14 May 2020, the Lithuanian authorities had rapidly taken both individual and general measures to remedy the violation found by the Court. The pre-trial investigation in the applicant's case had been reopened on 12 October 2020, that is, five months later (see paragraph 24 above). Such a period of time was reasonable, having regard to the time needed to translate the Court's judgment into Lithuanian, for the State authorities to familiarise themselves with it, and for the Prosecutor General's Office to adopt new Methodological Recommendations. The State authorities had also had to change their practice: a lot of discussions had been held regarding, *inter alia*, the judgment's impact on other similar pre-trial investigations which had been carried out or which had been discontinued prior to the judgment in *Beizaras and Levickas*. As soon as the Prosecutor General's Office had reopened the pre-trial investigation on 12 October 2020, the applicant had been notified (see ibid.). The review of the prosecutors' decisions, directly applying the case-law of the Court, had been completed within a reasonable time.

87. The pre-trial investigation had been reopened with regard to all the comments in issue, and the domestic authorities had taken all possible and

necessary measures and actions to identify the persons guilty of the hate-speech crime. Where it had been possible to gather enough data, they had applied criminal liability to the guilty persons. Therefore, in the instant case, it had not been the discriminatory, prejudicial attitudes of the State authorities which had led to the failure to acknowledge the bias-motivation of the crime and to take an approach adequate to the seriousness of the situation, but mostly technical problems, which was a common issue as regards crimes committed on the Internet, and the time that had elapsed since the comments in question had been made, that had resulted in the discontinuation or suspension of the pre-trial investigation in respect of some of the comments in issue.

88. The applicant had actively participated in the pre-trial investigation: he had been informed about the procedural decisions taken by the prosecutors and had availed himself of his right to complain about them. That being so, one could not but note that the applicant had not appealed against several of the prosecutors' decisions to suspend the pre-trial investigation, which then became final.

89. As regards the persons conditionally released from criminal responsibility, criminal responsibility was an *ultima ratio* measure which had particular negative consequences for the person on whom it was imposed. Thus, by finding persons guilty but conditionally releasing them from criminal liability, the domestic authorities had sought to properly balance the situation of the victims and the guilty persons, also taking into account the fact that those decisions did not preclude seeking civil damages within the context of civil court proceedings.

90. The Government could not agree with the applicant's argument that the reopening of the pre-trial investigation in his case had been purely formal in nature, in order to be seen to be doing something in the eyes of the Court, but not to dispense justice. Rather, the pre-trial investigation in the applicant's case had been reopened as a result of the review of previous decisions that had been carried out of the authorities' own motion and within a reasonable time in all similar cases, including the applicant's, after the Court's judgment in *Beizaras and Levickas* had become final. Given that the source of the violations in *Beizaras and Levickas* had been the discriminatory attitude of the domestic authorities (prosecutors and the courts) in their application of the domestic law, once that judgment had become final, the Lithuanian authorities had taken measures to change the domestic practice in order to prevent violations in similar cases, including the applicant's. Thus, explicitly invoking that judgment of the Court, the regional prosecutors had been reviewing their previous decisions to refuse or to suspend or terminate pre-trial investigations into allegations of hate crimes and hate speech, and the Committee of Ministers had welcomed the measures taken.

91. In the light of the above, the Government were confident that the improved practice of the domestic authorities in the applicant's case

represented a genuine example of dialogue between the Court and the domestic authorities in Lithuania, which was deserving of a certain amount of deference, as had been demonstrated by the Court in respect of the national courts of Lithuania and other States Parties to the Convention which had duly taken into account requirements formulated by the Court in its previous judgments. The Government were of the view that, similar to the conclusions made by the Court in the judgments in *Drėlingas* (cited above) and *Hutchinson* (cited above), in the instant case the domestic authorities' current practice, since the delivery of the Court's judgment in *Beizaras and Levickas*, no longer displayed the discrepancy that the Court had identified in that judgment.

92. As a result, in the circumstances of the present case, there had been no violation of Article 13 of the Convention given that an effective domestic remedy had been created in Lithuania in respect of individuals' complaints concerning hate-speech crime directed towards sexual minorities and the State authorities had taken measures to protect the applicant against hate speech linked to his writing about persons of homosexual orientation.

2. The Court's assessment

(a) General principles

93. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the relevant national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see *Alekseyev v. Russia*, nos. 4916/07 and 2 others, § 97, 21 October 2010). The Court has also held that the provisions of the Convention must be interpreted and applied in a manner which renders their safeguards practical and effective, not theoretical and illusory (see *Mihalache v. Romania* [GC], no. 54012/10, § 91, 8 July 2019). In order to be effective, the remedy required by Article 13 must be available in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 80, ECHR 2012).

94. In the present case the Government did not dispute that the applicant had an arguable claim in respect of the comments in issue within the meaning of the Court's case-law and was thus entitled to a remedy satisfying the requirements of Article 13 (see paragraph 64 above). For its part, the Court finds it clear that the comments in issue, directed as they were against persons of homosexual orientation, and against the applicant personally, were serious enough in their severity to raise an issue under Article 14 of the Convention taken in conjunction with Article 8. This grievance in essence has also been raised by the applicant during the domestic proceedings, see paragraph 9

above. The same finding appears to have been reached by the Prosecutor General's Office, which acknowledged that both cases – the situation examined by the Court in *Beizaras and Levickas*, and the applicant's case – raised similar questions of fact and law, and on that basis it was decided to reopen the pre-trial investigation in the applicant's case (see paragraphs 21 and 24 above). That being so, the Court holds that the applicant had an arguable claim within the meaning of the Court's case-law and was thus entitled to a remedy satisfying the requirements of Article 13 of the Convention (see *Beizaras and Levickas*, cited above, § 150; on the existence of an arguable complaint by analogy with another case for the purposes of the applicability of Article 13, see, *mutatis mutandis*, *Chizzotti v. Italy*, no. 15535/02, §§ 38-40, 2 February 2006; on the recognition by the domestic authorities of the arguability of the complaint under Article 13 and the ensuing applicability of that Article, see *Barbotin v. France*, no. 25338/16, § 32, 19 November 2020, and the case-law cited therein).

(b) Summary of the Court's findings in *Beizaras and Levickas*

95. In *Beizaras and Levickas* the Court found it established, first, that the hateful comments, including the undisguised calls for violence by private individuals directed against the applicants and the homosexual community in general, had been prompted by a bigoted attitude towards that community and, secondly, that the very same discriminatory attitude had been at the core of the failure on the part of the relevant public authorities to discharge their positive obligation to investigate in an effective manner whether the comments regarding the applicants' sexual orientation constituted incitement to hatred and violence. By downplaying the seriousness of the comments, the authorities had at the very least tolerated them. In the light of those findings, the Court also considered it established 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 distinction in issue was compatible with the standards of the Convention. The Court thus held that in that case there had been a violation of Article 14 of the Convention taken in conjunction with Article 8 (ibid., §§ 129-30).

96. In that judgment the Court also found a violation of Article 13 of the Convention owing to the lack of an effective domestic remedy in respect of the applicants' complaint concerning a breach of their right to private life, on account of having been discriminated against because of their sexual orientation (ibid., §§ 151-56).

97. The Court observes that in that judgment it did not call into question that Lithuanian criminal law, in particular Article 170 of the Criminal Code, and the criminal justice system, including the courts, provided for a remedy which was generally effective for the purposes of Article 13 of the Convention (ibid., § 151). However, in that case the violation of Article 13 of the Convention stemmed from the finding that generally effective remedy had

not been operating effectively owing to, among other things, the State authorities' "prejudicial attitudes", and those authorities "giving unjustified preference to freedom of expression, or perhaps owing to other motives which, although not related to law, had an influence on law". The Court likewise referred to the Lithuanian law-enforcement institutions' failure to acknowledge the bias motivation of such crimes and to take an approach which would be appropriate to the seriousness of the situation. Overall, Lithuania had lacked a comprehensive strategic approach on the part of the authorities to tackle the issue of racist and homophobic hate speech (ibid., § 155).

(c) The Lithuanian authorities' response to the Court's judgment in *Beizaras and Levickas*

98. The Court first observes that the first reaction to its judgment in the aforementioned case of *Beizaras and Levickas* materialised only a few weeks after its adoption and thus before the judgment became final, when in February 2020 the Minister of Justice set up an inter-institutional working group, comprising representatives from State institutions and non-governmental organisations and associations. The working group aims to shape and strengthen the State authorities' approach on how to respond to hate speech and to hate crimes (see paragraph 46 above).

99. Next, the Court refers to the Prosecutor General's Methodological Recommendations on how to detect and prosecute hate speech, which came into force on 1 April 2020, only a few months after the Court's judgment had been delivered on 14 January 2020, and before it had become final on 14 May 2020. It is clear that these Recommendations comprise not only the most important principles the prosecutors must keep in mind when facing hate speech, but also provide guidance on how to tackle such crimes. They also refer, as guidance, to the Court's case-law on the subject (see paragraph 42 above).

100. The Court also has regard to the decision of 12 October 2020 of the Prosecutor General's Office reopening the pre-trial investigation in the applicant's case (see paragraphs 20-24 above). It will revert to this decision below when assessing its impact on the concrete situation of the applicant (see paragraphs 108-112 below), however at this stage the Court gives weight to the fact that that decision: first, acknowledged the numerous flaws in the prosecutors' decisions which were based on earlier practice of the Supreme Court (see paragraph 20 above); secondly, underlined Lithuania's unconditional obligation to execute the Court's judgment in *Beizaras and Levickas* (see paragraph 21 above); thirdly, underlined the Court's finding that attacks against sexual minorities in Lithuania had reached the required level of gravity for criminal liability to apply in respect of them (see paragraph 22 above); and, fourthly, on the basis of the Court's case-law, noted that hurtful and prejudicial comments were not necessary for an

individual to engage in a public discussion, and also that hate speech fell outside the protection of Article 10 of the Convention (see paragraph 23 above). For the Court, the Prosecutor General's decision demonstrates a clear and positive shift in the State authorities' attitude towards the prosecution of hate crimes.

101. Examining further, the Court refers to the fact that a number of decisions to terminate pre-trial investigations in hate-speech cases were reviewed and some of those cases were reopened (see paragraphs 43-44 above). In those decisions the chief prosecutor of the Vilnius regional prosecutor's office noted that the Court's case-law prevailed over the prior case-law of the Supreme Court, and that it had direct effect in Lithuania, which was under the obligation to abide by the Court's final judgments. The material available to the Court also demonstrates that those were not rare or one-off cases of a review having taken place after the delivery of the judgment in *Beizaras and Levickas*; as pointed out by the Committee of Ministers, 261 procedural decisions regarding criminal acts with potential bias motivation have been reviewed (see part A.3. in paragraph 61 above).

102. In *Beizaras and Levickas* the Court could not turn a blind eye to the Supreme Court's case-law, which, rather than providing for an effective domestic remedy for complaints of homophobic discrimination, referred to "eccentric behaviour" or the supposed duty of persons belonging to sexual minorities "to respect the views and traditions of others" in exercising their own personality rights (ibid., § 152). At the time of the adoption of that judgment, the Court found that the Government had not provided a single verdict by the Supreme Court showing that the trend of interpretation had been reversed. Neither did it appear that the Supreme Court had had an opportunity to provide greater clarity on the standards to be applied in hate-speech cases.

103. In the instant case, however, the Court is content to note a shift in the Supreme Court's position, which had occurred to a certain extent even prior to the adoption of the Court's judgment in *Beizaras and Levickas*, for example in its ruling of 13 March 2018 in which it upheld a conviction under Article 170 § 2 of the Criminal Code for incitement to hatred against a group of persons, including on the ground of sexual orientation. The Supreme Court, referring to the Court's case-law on the matter, observed that freedom of speech could be restricted when it concerned hate speech and that incitement to hatred did not necessarily entail a call for violence. Likewise, it noted the imperative not to underestimate the characteristics of the Internet that make it capable of aggravating the effects of hate speech. The Court finds that the Supreme Court clearly and unconditionally acknowledged the gravity of hate crimes and discrimination based on sexual orientation and eliminated the appearance of impunity in cases of hate-speech against homosexuals as established by the Court in *Beizaras and Levickas* (see paragraphs 59-60 above, and *Beizaras and Levickas*, cited above, § 152; for an overview of the

Lithuanian courts' case-law in similar cases see *Beizaras and Levickas*, §§ 39-54). The Supreme Court's ruling has also brought clarity as to the State's positive obligations, resolving the discrepancy identified in *Beizaras and Levickas* (see, *mutatis mutandis*, *Hutchinson*, cited above, § 40). Although in *Beizaras and Levickas* the Court had already acknowledged a positive trend in how the district courts had been interpreting the States' positive obligation to protect individuals from hate speech, in the present case, and noting the Lithuanian domestic courts' statutory obligation to take into account the Supreme Court's case-law, the Court is ready to hold that this latest ruling by the Supreme Court demonstrates that an effective domestic remedy for complaints of homophobic discrimination now exists at all levels of jurisdiction (ibid., § 152).

104. Next, the Court refers to, this fact being pointed out by the Government and not objected by the applicant, the civil-society position – the non-governmental organisations which represented the applicants and intervened as third parties in *Beizaras and Levickas*, and which have recently expressed their support for the reforms in the Lithuanian law-enforcement sector (see paragraph 81 above). It finds that such approval demonstrates amply that the view of the organisations supporting the non-discrimination cause has shifted and they no longer see the State authorities as being ambivalent towards protecting the interests of persons of homosexual orientation (see part G in paragraph 61 above). It is also noteworthy that representatives of civil society were directly involved in the State authorities' discussions that took place in Lithuania to consider the impact of the Court's judgment (see paragraph 46 above, and part F in paragraph 61 above).

105. It does not escape the Court's attention that since its judgment numerous training sessions for judges, prosecutors and police officers, with the participation of different experts, such as the Government Agent Office, the Office of Equal Opportunities Ombudsperson, the Inspector of Journalistic Ethics, have been organised to address various aspects relating to the prevention, detection and prosecution of hate crimes (see paragraphs 47-58 above, and part A.4. in paragraph 61 above). The statistical information, as provided by the Government, shows a clear increase in the number of investigated crimes, and, unlike the statistics referred to by the Court in *Beizaras and Levickas*, demonstrates that intolerance towards sexual minorities no longer goes unchecked, and that Article 170 of the Criminal Code can no longer be considered a "dead letter" (see paragraph 45 above; see also *Beizaras and Levickas*, cited above, § 155).

106. Lastly, the Court observes that both the Committee of Ministers and the Deputies welcomed the numerous above-mentioned measures by the Lithuanian authorities taken with the aim of effectively detecting and prosecuting hate crimes, and, given the progress of the measures taken so far, the Committee of Ministers decided to continue the examination of the

Beizaras and Levickas judgment under the standard procedure (see paragraphs 61-62 above).

107. In the light of the foregoing, and without prejudice to the Committee of Minister's competence under Article 46 of the Convention regarding the execution of the Court's judgments, the Court finds that following its judgment in *Beizaras and Levickas* the Lithuanian authorities have taken wide-ranging and multifaceted measures to increase the capacity of the Lithuanian criminal justice system to adequately respond to hate speech and hate crimes and thus to address the issues raised by the Court. Therefore, the Court will now pursue its analysis of its application in the applicant's case.

(d) As to the applicant's case

108. The Court first observes that when in January 2018 the applicant asked the Lithuanian authorities to open a pre-trial investigation into the comments in question, their initial reaction was negative: a prosecutor and a district court considered that the comments lacked a systematic character, the authors of the comments had the right to freedom of expression, criminal liability was to be considered an *ultima ratio* measure, and the comments had not been severe enough to justify prosecution (see paragraphs 9 and 10 above). Such a line of reasoning was then refuted by the Klaipėda Regional Court (see paragraph 10 *in fine* above). Subsequently, although a pre-trial investigation under Article 170 § 2 of the Criminal Code was opened and the applicant was granted victim status (see paragraph 11 above), as summarised by the Prosecutor General's Office, it was later discontinued by reference to the aforementioned ill-founded grounds and to the Supreme Court's case-law, which had been adopted prior to the Court's *Beizaras and Levickas* judgment (see paragraphs 14 and 20 above). One author of the comments was identified, however, she was released from criminal liability (see paragraph 14 above). Similarly, the pre-trial investigation regarding another comment had been suspended, hastily considering that all possible procedural actions had been carried out (see paragraph 17 and 34 above).

109. Examining further, the Court notes that impetus to the applicant's case was provided by the Prosecutor General's Office, acting on the basis of the letter of the Government Agent (see paragraphs 19 and 20-24 above). The Court finds it paramount that the Prosecutor General's Office first ruled out as unjustified a number of grounds for the suspension of the pre-trial investigation which had been based on the earlier case-law of the Supreme Court, and which had been criticised by the Court (see paragraph 20 above). Secondly, it found the questions of fact and law in the applicant's case to have been analogous to those examined by the Court in *Beizaras and Levickas*, the adoption of which the Office saw as an important circumstance to reopen the pre-trial investigation in the applicant's case (see paragraph 21 above). Thirdly, the Office pointed to a number of aspects which had not been examined in that pre-trial investigation, also against the background of the

newly adopted Methodological Recommendations (see paragraph 22 above). Fourthly, the Office referred to the Court's case-law according to which the gravest forms of hate speech fall outside the scope of protection of Article 10 of the Convention, and to the States' obligation to execute the Court's judgments (see paragraphs 23-24 above). As a result, the pre-trial investigation regarding the comments in response to the applicant's essay was reopened, and he was notified of that decision (see paragraph 24 above).

110. The Court next turns to the reopened pre-trial investigation that followed (see paragraphs 25-35 above): some of the authors of the comments were identified and released from criminal liability, given that they had cooperated with the authorities (see paragraph 25 above), some were conditionally released from criminal liability (see paragraph 31 above), and some suspects were identified but there was not enough data to prove their guilt (see paragraph 34 above). A number of comments had been made from IP addresses abroad, which precluded the identification of their authors (see paragraph 32 above). Against this background, the Court cannot hold that the pre-trial investigation was discontinued or suspended owing to the Lithuanian authorities' prejudicial attitude (contrast *Beizaras and Levickas*, cited above, § 154). In addition, and although this is not decisive for the Court's finding as to the existence of effective domestic remedies in the applicant's case, he did not appeal against several of the suspension decisions (see paragraphs 33 *in fine* and 34 *in fine* above). Regarding the suspension owing to the IP addresses being in foreign countries, the Court also refers to the Committee of Ministers' view that such a ground for suspension has not been seen as invalid or unjustified. Likewise, even though the applicant asserted that it had not been possible to identify some of the culprits owing to the passage of time, this aspect, although noted by the Committee of Ministers, was not seen as preventing the individual measures taken by Lithuania to execute the judgment in *Beizaras and Levickas* from being effective (see paragraph 61 above). Accordingly, even though in the applicant's case only one of the authors of the comments has been identified and located (see paragraph 31 above), this, in and of itself, is not a ground to hold that the pre-trial investigation was ineffective. The Court reiterates that the violation of Article 13 of the Convention in *Beizaras and Levickas* was primarily based on the domestic authorities' discriminatory attitude which had led to impunity. In the present case, and once the pre-trial investigation had been reopened by the Prosecutor General's Office (see paragraphs 20-24 above), the Court cannot discern any discriminatory attitude on the part of any of the Lithuanian authorities or officials involved in the applicant's case. In fact, any reliance by the district prosecutor on the "dated" case-law of the Supreme Court was swiftly corrected by the regional prosecutor (see paragraphs 26-27 above).

111. The Committee of Ministers, when assessing the measures taken by Lithuania to execute the *Beizaras and Levickas* judgment, also noted that

although the pre-trial investigation regarding all the comments in question had been reopened, not all of the authors of the comments had been identified and convicted. For the Committee of Ministers, regarding individual measures, it was sufficient that investigations could be reopened against the as yet unidentified authors should they be identified and provided that criminal prosecution had not become time-barred by that time (see paragraphs 61-62 above). This appears to coincide with the situation in the instant case (see paragraph 32 above). The Court sees no grounds to depart from the aforementioned assessment by the Committee of Ministers (for general principles relating to the execution of the Court's judgments under Article 46 of the Convention, see *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) ([GC], no. 15172/13, §§ 147-155, 29 May 2019).

112. Lastly, the Court reiterates that matters of appropriate sentencing largely fall outside the scope of the Convention (see *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI). The obligation of the States Parties to conduct an effective investigation under the Convention is an obligation as to means, not as to results. There is no absolute obligation for all prosecutions to result in conviction, or in a particular sentence. The Convention does not confer any independent right, as such, to have third parties prosecuted or sentenced for a criminal offence (see, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 96 and 147, ECHR 2004-XII, and *Rantsev v. Cyprus and Russia*, no. 25965/04, § 331, ECHR 2010 (extracts)). Accordingly, the fact that one author of a comment was identified but not convicted is not sufficient, in and of itself, to raise an issue under Article 13 of the Convention (see paragraph 31 above).

(e) Conclusion

113. The Court refers to its judgments in *Drėlingas* and *Hutchinson* (both cited above), in which it analysed the domestic law after the domestic authorities had responded to critique expressed in previous judgments of the Court. The Court examined, first, whether the lack of clarity in the domestic law had been dispelled after such a development in the domestic case-law of the respondent State, and, if so, whether the relevant requirements had been met in the applicant's case. In those cases, the Court agreed that the domestic courts had brought clarity as to the content of the relevant domestic law, having regard to the principles as formulated in the previous cases examined by the Court, and resolved the discrepancy identified in the previous judgments of the Court. The Court was satisfied that the exercise of the domestic law would, as was clear from the practice of the domestic authorities, be guided by all of the relevant case-law of the Court (see *Drėlingas*, §§ 108-09, and *Hutchinson*, §§ 70 and 71, both cited above).

114. The Court is of the view that, similar to the conclusions made by it in those two judgments and in view of the Committee of Ministers' decision (see paragraphs 61-62 above), in the present case the current practice of the

Lithuanian authorities, since delivery of the judgment in *Beizaras and Levickas*, no longer displays the discrepancy that the Court identified in that judgment. Having regard to the principle that the primary responsibility for protecting the rights set out in the Convention lies with the domestic authorities, as well as to the joint responsibility of the State Parties and the Court in securing those rights, the Court finds that the domestic authorities in the present case "drew the necessary conclusions" from the judgment in *Beizaras and Levickas* and, by applying the domestic law in the light of the principles as formulated by the Court in that judgment, "addressed the cause of the Convention violation" (see, *mutatis mutandis*, *Hutchinson*, cited above, § 71).

115. In sum – recalling the Committee of Ministers' competence under Article 46 of the Convention pertaining to the execution of the Court's judgments – the Court cannot but note that the recently adopted guidelines and recommendations by the domestic authorities, as well as the comprehensive approach when tackling hate crimes, including a number of decisions by prosecutors and courts, demonstrate that the authorities' discriminatory attitude – identified by the Court in *Beizaras and Levickas*, notwithstanding the already present and clear domestic legislation on the subject – is no longer apparent (on that, the Court refers to the Committee of Ministers' findings, see paragraphs 61, 62 and 106 above; see also *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 102, 11 July 20176161), and that effective remedies regarding the prevention, detection and prosecution of hate crimes may also come about through domestic practice. The Court, furthermore, reiterates its previous finding (see paragraph 110 above) that, in contrast to *Beizaras and Levickas*, it could not be concluded that the re-opened pre-trial investigation in the applicant's case was discontinued or suspended owing to a prejudicial attitude by the Lithuanian authorities. Moreover, and again in contrast to *Beizaras and Levickas*, an investigation, albeit delayed, was actually carried out in the applicant's case. Although that investigation ultimately did not lead to persons who had written the hateful comments in question being convicted or even charged, it did not, when considered as a whole, fall short of the requirements under Article 13 of the Convention.

116. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 13 of the Convention.

117. In view of this conclusion, the Court considers it unnecessary to rule on the Government's preliminary objection relating to the question of exhaustion of domestic remedies (see paragraph 69 above; for a similar approach see, *mutatis mutandis*, *Kurt v. Austria* [GC], no. 62903/15, § 213, 15 June 2021).

FOR THESE REASONS, THE COURT,

1. *Joins to the merits*, unanimously, the Government's preliminary objection as to the non-exhaustion of domestic remedies and *decides* that it is unnecessary to rule on it;

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

3. *Holds*, by 6 votes to 1, that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Arnfinn Bårdsen
Registrar	President

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

H.B.
A.R.B.

DISSENTING OPINION OF JUDGE KRENC

(Translation)

1. I am, very much to my regret, unable to agree with the judgment's reasoning and conclusion to the effect that there has been no violation of Article 13 of the Convention in the present case.

2. In my opinion, the judgment embarks on a review of the execution of the judgment given in *Beizaras and Levickas v. Lithuania* (no. 41288/15, 14 January 2020) rather than dealing with the specific case of the applicant whose complaint was before the Court.

That approach (as expounded at paragraphs 98 to 116 of the judgment) seems problematic to me in two respects.

3. First, I am not sure that it accords with the division of competences, laid down by the Convention, between the Court and the Committee of Ministers. Under Article 46 § 2 of the Convention, it is, in principle, for the Committee of Ministers to supervise the execution of judgments. It may fall to the Court to review the execution of its judgments in specific circumstances: where an infringement procedure is initiated before it, pursuant to Article 46 §§ 4 and 5 of the Convention, or where an applicant complains to it that a previous judgment finding a violation of his or her Convention rights has not been executed, to the extent that the failure of execution raises a new issue undecided by the initial judgment (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, ECHR 2009; *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, ECHR 2015; and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, 11 July 2017). No such circumstances arise in the present case.

4. Furthermore, my difficulty relates to the compatibility of the present judgment's approach with the Court's task as regards Articles 19 and 34 of the Convention.

In examining an individual application the Court may have to consider the steps taken by a State in response to a previous judgment finding it liable for a violation (see, in another field, *Vermeire v. Belgium*, 29 November 1991, Series A no. 214-C, and *Fabris v. France* [GC], no. 16574/08, ECHR 2013 (extracts)). That is not open to question.

However – and this is where I take issue – the Court cannot focus solely on the steps taken in execution of a previous judgment while disregarding the issues raised by the specific case before it. Pursuant to Articles 19 and 34 of the Convention, the Court's task is to decide whether there has been a violation of the Convention in the concrete case put before it by the applicant, not to determine whether and how the national authorities have given effect to one of its previous judgments.

5. In its case-law on Article 13 of the Convention, which lies at the crux of this case, the Court has repeatedly held that "in cases arising from individual petitions the Court's task is not to review the relevant legislation

or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it" (see *Amann v. Switzerland* [GC], no. 27798/95, § 56, ECHR 2000-II).

Contrary to this general rule, the present judgment focuses on the measures taken by the Lithuanian authorities after the *Beizaras and Levickas* judgment. I observe that the latter was delivered two years (14 January 2020) after the applicant in the present case had complained to the national authorities (17 January 2018). I therefore have serious doubts at the outset about the impact of those measures on the applicant's case.

6. Moreover, the case file discloses that the decision to reopen the pre-trial investigation was taken in October 2020, shortly after the Prosecutor General's Office was notified of the application lodged with the Court (see paragraph 19 of the judgment). The timeline of the domestic proceedings makes it difficult to believe that the lodging of the application played no part in the national-level decision to reopen the investigation. That it would have been reopened in the absence of such application to the Court may be seriously doubted, as it was by the applicant (see paragraph 73 of the judgment).

At any rate, no conjecture is necessary; it is enough to observe that the Prosecutor General's Office itself pointed out the failings of the nearly three-year-long investigation (see paragraphs 20 to 24 of the judgment). The present judgment takes note of this (see paragraphs 108 and 109; see also paragraph 94) but does not draw the necessary conclusions as to the effectiveness of the investigation. And yet it is clear beyond dispute from the record of the case that the decision to reopen the investigation was taken on the ground that States had a positive obligation to protect persons of homosexual orientation from homophobic speech and that the investigation thus far conducted had not discharged that obligation (see paragraphs 21, 22 and 23 of the judgment).

7. In my view, the taking of investigative action after the investigation was reopened did not have the effect of remedying the failings that had already been observed before it was reopened.

The effectiveness required by Article 13 must be established in relation to the relevant period (see *Khider v. France*, no. 39364/05, §§ 142-145, 9 July 2009).

Here, it cannot escape notice that the investigation was reopened more than thirty months after the applicant had complained to the authorities. That period is in itself quite long to be regarded as compatible with the State's obligation to investigate hate crimes in a timely manner.

I also note that one of the effects of the lengthy passage of time was to make it impossible to identify the authors of several comments, since information about IP addresses was stored for a limited time (see

paragraphs 32 and 33 of the judgment). The protracted nature of the investigation therefore concretely impaired its effectiveness.

8. The judgment lays particular emphasis on the fact that "once the pre-trial investigation had been reopened by the Prosecutor General's Office" there was no discernible "discriminatory attitude on the part of any of the Lithuanian authorities or officials involved in the applicant's case" (paragraph 110 of the judgment). I agree, but I do not think that that was a sufficient basis on which to hold that the investigation had been effective for the purposes of Article 13 of the Convention.

First, that finding of the majority concerns only the period after the investigation was reopened in October 2020 and not the (lengthy) period which preceded its reopening.

Second, and above all, the absence of such prejudice does not at all mean that the investigation was "effective" for the purposes of Article 13 of the Convention. What "effectiveness" requires first and foremost is a thorough and prompt investigation. Those are the cardinal requirements of "effectiveness", and in my view they were not met in this case.

In addition, the applicant's complaint does not concern the discriminatory conduct of the authorities during the investigation but relates to the lack of effectiveness of the investigation regarding homophobic and discriminatory statements of which he was a victim (see paragraphs 71-76 of the judgment).

9. Lastly, I am unable to join my esteemed colleagues in seeing "no grounds to depart from the (...) assessment by the Committee of Ministers" regarding the individual measures taken to execute the judgment in *Beizaras and Levickas* (see paragraph 111 of the judgment). I find such an approach problematic, since the Committee of Ministers did not determine the applicant's case; nor for that matter would it have had any jurisdiction to do so. With all due respect, I regret to observe that, here again, the judgment sows confusion as to the respective roles of the Court and the Committee of Ministers.

The Court's role is to rule on the applicant's case and to say what the Convention requires, whereas the Committee of Ministers' task under the Convention is to supervise the execution of the Court's judgments.

10. Let me be clear: the considerations set out above are in no way meant as criticism of the measures taken by the Lithuanian authorities following the judgment in *Beizaras and Levickas*. On the contrary, the authorities sought to execute that judgment in good faith. This is a good example of a virtuous dialogue between the Court and the national authorities – a point I wish expressly to emphasise.