



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

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FIRST SECTION

Application no. 28680/24
Jakub Arkadiusz KWIECIŃSKI and Dawid MYCEK
against Poland
lodged on 24 September 2024
communicated on 29 September 2026

SUBJECT MATTER OF THE CASE

The application concerns allegedly inadequate protection against the homophobic hate speech.

The applicants, a same-sex couple residing in Poland, were married in Portugal in 2017. On 24 May 2017 the applicants shared on Facebook a photograph depicting them kissing. The post received several thousand comments many of them hateful, homophobic, inciting to violence and containing death threats.

On 10 July 2017 the applicants notified the Warsaw District Prosecutor that offences had been committed in respect of 34 posts which contained particularly hateful language. Within the next few months, the public prosecutor questioned the suspects and on 21 May 2018 charged them with different criminal offences. On 28 December 2018 Facebook was invited to disclose data relevant for the ongoing investigation.

On 24 October 2023 the prosecutor indicted eleven persons on charges of making threats (Article 190 of the Criminal Code, “the Code”), incitement to murder (Article 255 § 2 of the Code read in conjunction with Article 148) and insult (Article 216 of the Code). The description of the alleged offences did not make any reference to any homophobic motivation of the perpetrators.

On 25 October 2023 the Warsaw District Court (case no. V K 1093/23) convicted L.K. of insult proscribed by Article 216 of the Code and sentenced him to 1,000 Polish Zlotys (PLN) fine. On 8 March 2024 the Warsaw District

KWIECIŃSKI AND MYCEK v. POLAND – SUBJECT MATTER OF THE CASE AND
QUESTIONS

Court discontinued proceedings against L.K. owing to the expiry of the statute of limitations. The applicants' appeal was dismissed on 7 May 2024.

On 31 October 2023 the prosecutor discontinued the investigation against six other persons who had written hateful comments. On 9 September 2024 the Warsaw District Court upheld the decision (file no. II Kp 30/24).

On 4 April 2024 the Warsaw District Court convicted P.S. of incitement to murder and sentenced him to a fine of PLN 1,500 (II K 16/24).

The investigation concerning 26 other hateful comments is apparently still pending.

The applicants lodged two complaints about the unreasonable length of the proceedings. On 3 February 2023 the Warsaw Regional Court granted the complaint and awarded each applicant PLN 2,000 (file no. IX S 5/23). On 17 May 2024 the Warsaw Regional Court dismissed the second complaint lodged by the applicants.

The applicants complain under Article 8 of the Convention about the State's failure to fulfil its positive obligation to provide them with effective protection against homophobic hate speech and the absence in the Polish legal system of provisions penalising it. They allege that the number and particularly hateful nature of comments posted under their photograph caused them feelings of anguish and fear for their lives. They further complain under Article 8 in conjunction with Articles 13 and 14 of the Convention, alleging discrimination and inadequate reaction of the State to the violation of their right to respect for their private life on the grounds of their sexual orientation. In particular, the authorities failed to take into account that the offences committed against the applicants had been motivated by their sexual orientation.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicants' right to respect for their private and family life, contrary to Article 8 of the Convention?

2. Did the applicants have at their disposal an effective domestic remedy for their complaints under Articles 8 and 14 of the Convention, as required by Article 13 of the Convention?

3. Have the applicants suffered discrimination on the grounds of their sexual orientation, in breach of Article 14 of the Convention, taken in conjunction with Articles 8 and 13?

Reference is made in particular to the following allegations made by the applicants (see *Beizaras and Levickas v. Lithuania*, no. 41288/15, §§ 129 and 156, 14 January 2020 and *Bednarek and Others v. Poland*, no. 58207/14, § 94, 10 July 2025:

- of the authorities' failure to protect them from hate speech in that the investigation launched by them was lengthy and ineffective ending with discontinuations of the proceedings;
- of the deficiencies of the relevant legal framework which had not ensured to the applicants an adequate level of protection for serious expressions of hatred and calls to violence motivated by their sexual orientation;
- of the failure by the domestic authorities to investigate in an efficient manner their allegations of hate speech and incitement to violence and specifically address the allegedly discriminatory – homophobic – motivation of the offences.