



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

Communicated on 3 December 2013

FOURTH SECTION

Application no. 30587/13
Veli Raif KARAAHMED
against Bulgaria
lodged on 30 April 2013

STATEMENT OF FACTS

1. The applicant, Mr Veli Raif Karaahmed, is a Bulgarian national who was born in 1976 and lives in Sofia. He is represented before the Court by Ms M. Ilieva, a lawyer practising in Sofia.

A. The circumstances of the case

2. The case concerns a well-publicised incident which took place on Friday, 20 May 2011, in front of the Banya Bashi Mosque in the centre of Sofia, and in which leaders, members and supporters of the political party “Ataka” (“Attack”) clashed with Muslim worshippers who had gathered around the mosque for the regular Friday prayer (“Jumu’ah”). The case also concerns the ensuing investigations into that incident.

3. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background

4. The applicant and his family have lived in Sofia for the last few years. Throughout that time, he was a regular visitor to the Banya Bashi Mosque in the centre of Sofia.

5. The Banya Bashi Mosque was built in 1576 and is currently the only operating mosque in Sofia. It can hold up to 700 worshippers. According to information provided by the Chief Mufti’s Office, there are about 30,000 Muslims in Sofia; some of them are Bulgarian nationals, and others immigrants from the Middle East and Africa. Due to the lack of enough space inside the mosque, worshippers often pray around the building during

the Friday prayer (“Jumu’ah”). The mosque is fitted with loudspeakers which were installed soon after the fall of the communist regime in 1989. Those loudspeakers are turned on during the call for prayer (the “ezan” or “azan”), which lasts about five minutes five times a day, and during the whole of the Friday prayer. They are turned off between 10 p.m. and 6 a.m. with a view to complying with the regulations concerning the level of urban noise.

6. During the last few years, the Chief Mufti’s Office has tried to build another mosque in Sofia, but has for the time being been unsuccessful in obtaining the necessary permits.

7. The political party “Ataka” (“Attack”), which the applicant describes as xenophobic and extremely nationalist, was founded in April 2005. At the parliamentary elections in June 2005, a coalition of which it was part obtained 8.14% of the votes, and accordingly twenty-one parliamentary seats. At the parliamentary elections in 2009, the party obtained 9.36% of the votes, and accordingly twenty-one parliamentary seats. At the parliamentary elections in May 2013, it obtained 7.30% of the votes, and accordingly twenty-three parliamentary seats. The party’s leader, Mr V. Siderov, is a former journalist, and has since June 2005 been a Member of Parliament for “Ataka”. In October 2011 he ran for President of the Republic, and obtained 3.64% of the votes in the first round of voting. According to the applicant, Mr Siderov is notorious for his extreme and violent anti-minority, racist and xenophobic views, which he expresses publicly on various occasions: on television, during rallies of “Ataka”, and in the course of parliamentary debates.

8. In 2006 “Ataka” and Mr Siderov began a campaign against the noise emanating from the loudspeakers installed on Banya Bashi Mosque. In that year, they gathered about 35,000 signatures for a petition, presented to the Sofia Municipal Council on 18 July 2006, that called for the de-installation of those loudspeakers. In the evening of 18 July 2006 “Ataka” organised a rally against the “howling” emanating from the loudspeakers during the call to prayer. As a result, the then mayor of Sofia sent a letter to the Chief Mufti, insisting on compliance with the municipal regulations on public order. The letter said that “Sofia Municipality support[ed] the constitutional right of the various religious communities in Bulgaria ... freely to carry out their rituals”, but asked the Chief Mufti to take measures to “reduce the volume of the loudspeakers with a view to not inconveniencing non-Muslim citizens who live[d] and work[ed] in the vicinity” of the mosque.

9. In 2007 “Ataka”’s mayoral candidate for Sofia, Mr S. Binev, declared that, if elected, he would ban the calls for prayer broadcast from those loudspeakers because he was of the view that they disturbed persons who had other religious beliefs.

10. On Friday, 29 April 2011, supporters of “Ataka” used loudspeakers mounted on a car belonging to the party and circling close to Banya Bashi

Mosque to play recordings of the ringing of church bells and of Christian chants during the regular Friday prayer that was taking place in the mosque. It appears that this was repeated during the week that preceded the incident of 20 May 2011. In the words of one of “Ataka”’s Members of Parliament, this was done to counter the “noise terror” emanating from the mosque.

11. In 2012 “Ataka” and Mr Siderov insisted that the State impose a moratorium on the building of new mosques in Bulgaria.

2. The events of 20 May 2011

12. At about 12 noon on Friday, 20 May 2011, between a hundred and fifty and two hundred members and supporters of “Ataka”, including the party’s leader, Mr Siderov, its deputy leader, Mr D. Chukolov, a Member of Parliament for the party, Ms D. Gadzheva, and a Member of the European Parliament for the party, Mr D. Stoyanov, rallied in front of Banya Bashi Mosque to protest against the “howling” emanating from the loudspeakers installed on the mosque. The party had apparently notified the municipality that it intended to hold a rally in front of the central municipal bath, which is next to the mosque. The participants in the rally carried a big Bulgarian flag, flags of “Ataka” – which were green and featured the inscriptions “Ataka” and “Let’s get Bulgaria back” around the party’s symbol, which is a stylised version of the first letter of the Glagolitic alphabet (the oldest known Slavic alphabet, created in the ninth century). Some of them were wearing black t-shirts featuring the inscriptions “Erdogan, you owe us 10 billion” and “Ataka says: No to Turkey in the EU”. In the course of the rally, the participants played Bulgarian patriotic songs from loudspeakers mounted on cars.

13. At the same time, a number of Muslim worshippers were gathering in and around the Mosque for the regular Friday prayer. The applicant was one of them. He, along with thirty or forty other worshippers, remained outside the mosque because there was not enough space in it.

14. Video recordings of the event that were broadcast by the mass media showed how supporters of “Ataka” were shouting invective against the Muslim worshippers, calling them “Turkish stooges”, “filthy terrorists”, “scum”, “janissaries”, “cut-offs”, “fezzes” and “Islamists”. They were also shouting “Out of Bulgaria!”, “Bulgaria is ours!”, “Off to Ankara!”, “Do not soil our land!”, “Your feet stink!”, “Stop that shameful howling in the centre of Sofia!” and “Let’s cleanse the land of our forefathers!”. One of the participants in the rally cut a Turkish fez with a pocket knife, saying “Can you hear me? We shall now show you what will happen to each one of you!”, while others around him were chanting “Ataka!” and “Victory!”.

15. Shortly after that, when the Friday prayer had already started, the participants in the rally tried to install loudspeakers immediately next to the entrance to the mosque with a view to suppressing the sound of the prayer. Several Muslim worshippers interrupted their prayer and asked the front-

person of the rally to move those loudspeakers away. However, he replied “Turkish stooges! Swine! Down with DPS!¹”, “Death to DPS!”. The worshippers then tried to move the loudspeakers away. A scuffle ensued, in which members and supporters of “Ataka”, some of whom were carrying wooden flagpoles and metal pipes, moved against the Muslims and started hitting them. Some Muslims hit them in response. A police officer tried to break the fighting parties apart. The imam repeatedly called on the Muslim worshippers not to respond to provocations.

16. The participants in the rally then started pelting the Muslim worshippers with eggs and stones, insulting them, spitting on their prayer rugs, and setting some of those rugs on fire. One of the participants in the rally was wielding a piece of pipe and shouting “We shall crucify you! ... Where can you have that, huh? In! In! Where do you have this thing out, huh? What’s that prayer, huh?” Apparently in response to the police arresting two members or supporters of “Ataka”, Mr Siderov, surrounded by members of “Ataka” and journalists, addressed the officers who were present at the scene, asking them why they had not arrested any Muslim. Mr Siderov then tried to attack a person, kept on asking the police the same question, and declared before the journalists that the police did not chase the real criminals, preferring to arrest “Bulgarian patriots” and leave an attack on a “Bulgarian Member of Parliament” without any consequences. He also asked the police whether they were “Bulgarian police officers” or “janissaries”.

17. Five police officers, five Muslim worshippers and Ms D. Gadzheva, who was hit on the chin by a flying stone, were injured in the course of the incident; one of the Muslim worshippers had to be hospitalised because he had a brain concussion. Two police vehicles also sustained damage. The incident was filmed by a number of television cameras, and the video recordings were broadcast many times on various television stations.

18. According to information provided by the Minister of Internal Affairs during parliamentary question time on 3 June 2011, at about 11.50 a.m. on 20 May 2011 the Sofia police were alerted that a number of members and supporters of “Ataka” had started to gather in front of Banya Bashi Mosque. Police patrols were immediately dispatched to the scene. After finding out from Sofia Municipality that the rally had been allowed to proceed, the police formed a command and control unit, headed by the deputy director of the Sofia Directorate of Internal Affairs, to coordinate the actions of the police in relation to the rally. At 12.13 p.m. additional units of the national and of the municipal police were sent to the scene. The police formed a cordon in front of the members and supporters of “Ataka”. At 12.57 p.m. the number of members and supporters of “Ataka” present at

1. “Movement for Rights and Freedoms”: a political party founded in 1990 to defend the rights of the Turkish ethnic minority in Bulgaria. It enjoys wide support among ethnic Turks and Muslims in Bulgaria.

the scene was about one hundred at fifty, and there were about the same number of Muslim worshippers outside the mosque. According to the Minister, the police managed to contain the incident, and at about 1.55 p.m. the participants in “Ataka”’s rally withdrew from the scene.

19. The applicant, who says that he felt shocked, hurt, scared and humiliated by the incident, declared before the journalists present at the scene that he intended to start a hunger strike in front of the Council of Ministers in protest.

3. Reactions to the events of 20 May 2011

20. The same day, 20 May 2011, several thousand persons, who organised themselves on “Facebook”, decided to rally in front of Banya Bashi Mosque to show their solidarity with the Muslims affected by the incident by placing flowers on the fence of the mosque. The applicant was one of the main organisers of that event, which took place the next day, 21 May 2011.

21. On 26 May 2011 several Muslims organised by the applicant gathered in front of the Council of Ministers to express, by means of a silent protest, their indignation. They insisted that the authorities ban the holding of rallies in the immediate vicinity of places of worship.

22. In the meantime a number of politicians, including the President of the Republic, condemned incident of 20 May 2011.

23. On 27 May 2011 the Parliament adopted a declaration likewise condemning the incident. It read as follows:

“The Members of Parliament categorically condemn the aggression of the political party ‘Ataka’ of 20 May 2011 against worshippers in the centre of the capital. It is particularly scandalous that this was done on a Friday, a holy day for Muslims, at the time of their obligatory prayer. With those actions, that party isolated itself from the democratic society in Bulgaria.

The conduct of that party is deeply alien to the Bulgarian people, to its religious and ethnic tolerance. We express our profound disquiet from the attempts to undermine the ethnic peace and to stir up religious tensions between Bulgarian citizens.

Following its attempted aggression against ethnic peace, which gives rise to a threat to the national security of the Republic of Bulgaria, the political party ‘Ataka’ has become dangerous for the government of the country.

The Bulgarian Constitution says that it is impermissible to use religious communities and institutions, or religious beliefs, for political ends.

We, the Members of Parliament, insist that all competent State authorities, including the prosecuting authorities and the courts, take the necessary measures to ensure compliance with the Constitution and the laws of the Republic of Bulgaria.

We call on the mass media to behave responsibly, which in this tense time full of provocations means not to provide a platform to the voice of hatred.”

24. On 3 June 2011, during parliamentary question time, Mr Siderov asked the Minister of Internal Affairs a number of questions in relation to

the incident and the incident was debated by him, the Minister, and a Member of Parliament for the Movement for Rights and Freedoms.

4. Investigations into the events of 20 May 2011

25. According to information provided by the Minister of Internal Affairs during the parliamentary question time on 3 June 2011 and information provided by the Supreme Cassation Prosecutor's Office on 4 May 2012, on the day of the incident, 20 May 2011, the prosecuting authorities opened three pre-trial investigations in connection with it: two in connection with alleged acts of hooliganism contrary to Article 325 § 1 of the Criminal Code 1968 (see paragraph 53 below), and one in connection with an alleged serious or intermediate bodily harm caused to Ms D. Gadzheva. The first investigation was opened against the two persons arrested by the police in the course of the incident on 20 May 2011; they were later formally charged and released on bail. The second investigation was opened against an unknown perpetrator who had hit a police officer in the face with a shovel, had torn the uniform of another officer and caused him abrasions, had hit a camera operator, and had caused damage to the mosque and to a police car; that investigation was stayed on 20 October 2011 because the perpetrator's identity could not be established. The third investigation was likewise opened against an unknown perpetrator.

26. On 25 May 2011 the applicant complained to the Sofia District Prosecutor's Office in relation to the incident. He requested the prosecuting authorities to investigate the incident and prosecute those responsible for the alleged attack.

27. On 16 August 2011 the Sofia District Prosecutor's Office opened an investigation against an unknown perpetrator in connection with an alleged offence under Article 164 § 1 of the Criminal Code 1968 (see paragraph 49 below). However, on 17 October 2011 that investigation was discontinued in view of an identical investigation opened by the Sofia City Prosecutor's Office on 25 May 2011.

28. On 6 December 2011 the applicant requested the Sofia City Prosecutor's Office to allow him to take part in that investigation in his capacity as victim within the meaning of Article 74 § 1 of the Code of Criminal Procedure 2005 (see paragraph 55 below). He argued that the alleged attack had caused him fear and had infringed his rights as a Bulgarian national and a Muslim.

29. In a letter of 13 December 2011 the Sofia City Prosecutor's Office turned down the applicant's request. It said that the offence under Article 164 § 1 of the Criminal Code 1968 was a "conduct" one (see paragraphs 49 and 54 below) and could therefore not have a victim. It followed that the applicant could not take part in the proceedings in his capacity as a victim and avail himself of the rights under Article 75 of the Code of Criminal Procedure 2005 (see paragraph 55 below).

30. On 16 March 2012 the applicant appealed to the Sofia Appellate Prosecutor's Office. He argued that the lower prosecutor's office had misconstrued Article 74 § 1 of the Code of Criminal Procedure 2005, and that, having been directly affected by the alleged offence, he was entitled to take part in the proceedings in his capacity as a victim. On 2 April 2012 the Sofia Appellate Prosecutor's Office referred the case back to the Sofia City Prosecutor's Office, instructing it to rule on the applicant's request by means of a formal decision. On 5 April 2012 the Sofia City Prosecutor's Office did so, repeating the reasons that it had given on 13 December 2011.

31. On 17 April 2012 the applicant appealed against that decision, reiterating his arguments. In a decision of 28 May 2012 the Sofia Appellate Prosecutor's Office found that the question whether an offence was a "conduct" or a "result" one was irrelevant for the point whether a person could be a victim of that offence. However, there was no evidence that the applicant had been present when the alleged offence had been committed or that the offence had directly affected him. His request to join the proceedings in his capacity as a victim could not be entertained without first gathering evidence on those points. It was therefore necessary to interview the applicant, and possibly other witnesses, in relation to that.

32. Accordingly, on 11 June 2012 the applicant was interviewed by the investigator in charge of the case. According to the applicant, in the course of the interview the investigator was hostile to him and his religion, asking him whether he knew whether he was entitled to pray in front of the mosque and whether he had obtained permission to do so by an appropriate authority.

33. On 16 August 2012 the applicant requested the supervising prosecutor to assign the case to another investigator. He argued that the investigator had displayed hostility towards him and his religion, and disrespect for his moral suffering resulting from the alleged attack. It could therefore be concluded that the investigator was ethnically and religiously biased, and would not be able to deal with the case objectively and impartially. The applicant went on to request access to the case file.

34. On 5 September 2012 the applicant once again requested to be allowed to take part in the investigation in his capacity as a victim of the alleged offence. He reiterated his arguments and submitted that, as instructed by the Sofia Appellate Prosecutor's Office, evidence had been gathered that he had been present in front of Banya Bashi Mosque during the attack on 20 May 2011.

35. On 19 November 2012 the Sofia City Prosecutor's Office turned down the applicant's request. It relied on a decision of the Supreme Cassation Prosecutor's Office of 12 November 2012 in which that Office, following a referral by the Sofia City Prosecutor's Office, had overturned the decision of the Sofia Appellate Prosecutor's Office of 28 May 2012 (see paragraph 31 above) on the basis that the offence under Article 164 § 1 of

the Criminal Code 1968 was indeed a “conduct” offence (see paragraphs 49 and 54 below) and could therefore not have a victim. The Sofia City Prosecutor’s Office went on to reject the applicant’s request to have the case re-assigned to another investigator. It reasoned that, not being party to the proceedings, the applicant had no standing to make such a request. For the same reason, the applicant did not have the right to inspect the case file.

36. On 5 March 2013 the applicant appealed to the Sofia Appellate Prosecutor’s Office. He relied on Articles 3 and 14 of the Convention and this Court’s case-law under those Articles, as well as on several decisions of the Supreme Court of Cassation that said that the damage flowing from an offence did not necessarily have to be part of the *actus reus*.

37. On 10 April 2013 the Sofia Appellate Prosecutor’s Office upheld the decision of the Sofia City Prosecutor’s Office, fully agreeing with its reasoning.

38. On 17 May 2013 the applicant appealed to the Supreme Cassation Prosecutor’s Office, reiterating his arguments.

39. On 31 October 2013 the deputy Chief Prosecutor decided partly to set aside the decision of the Supreme Cassation Prosecutor’s Office of 12 November 2011. She reasoned that the question raised by the applicant – whether a “conduct” offence could have a victim – hinged on whether the damage allegedly suffered by the victim of an offence had to be part of the *actus reus*. According to the doctrine, that was not required. The analysis of the Supreme Court of Cassation’s case-law showed that the answer was case-specific, depending not so much on the “conduct” or “result” character of the alleged offence, but on whether the offence could give rise to damage for a particular person. In some cases, the Supreme Court of Cassation had been satisfied that “conduct” offences had given rise to damage for specific individuals; in others, it had found the opposite. Therefore, the Sofia City Prosecutor’s Office and the Supreme Cassation Prosecutor’s Office had erred by finding that “conduct” offences could in principle not have a victim. Persons who had suffered direct and proximate damage as a result of a “conduct” offence could be regarded as victims of that offence and thus be allowed to take part in the proceedings. The Sofia Appellate Prosecutor’s Office had correctly given instructions for the carrying out of additional investigative steps to determine whether the applicant had indeed suffered such direct and proximate damage. The prosecutors who had dealt with the case had in addition erred by examining the applicant’s request to take part in the proceedings solely by reference to Article 164 § 1 of the Criminal Code 1968 (see paragraph 49 below). A number of persons had written to the prosecuting authorities with allegations that the events in connection with which the applicant complained could amount to offences under other Articles of the Code. Indeed, there was cause to inquire whether the applicant had become victim of an offence under Article 165 § 1 (see paragraph 51 below), which could give rise to direct and proximate damage

for a particular person, or hooliganism under Article 325 § 1 (see paragraph 53 below). It was therefore necessary to check whether the applicant had himself been prevented from carrying out his religious observances, and if so, in what way. That point had not been fully elucidated in his first interview, which made it necessary to interview him again, and also possibly to interview others, before deciding whether he could be allowed to take part in the proceedings in his capacity as a victim. However, in so far as the previous decisions on that point had referred to Article 164 § 1 of the Code, they were correct, not because that offence was a “conduct” one, but because it did not presuppose any direct and proximate damage, but only indirect damage, for a particular person.

40. It appears that the investigation is still ongoing. According to information provided by the Supreme Cassation Prosecutor’s Office on 4 May 2012, the authorities interviewed a number of witnesses and obtained an expert report. According to information provided by the Sofia City Prosecutor’s Office on 29 January 2013 following a request for information made by the Bulgarian Helsinki Committee, no charges have been brought against any person in the framework of that investigation.

B. Relevant domestic law

1. The Constitution of 1991

41. Article 6 § 2 of the Constitution of 1991 provides as follows:

“All citizens shall be equal before the law. There shall be no restrictions of rights or privileges on grounds of race, nationality, ethnic identity, sex, origin, religion, education, opinions, political affiliations, or personal, social or property status.”

42. Article 13 of the Constitution provides, in so far as relevant:

“1. Religions shall be free.

...

4. Religious institutions and communities and religious beliefs shall not be used for political ends.”

43. Article 37 of the Constitution provides as follows:

“1. Freedom of conscience, freedom of thought and the choice of religion or of religious or atheistic views shall be inviolable. The State shall assist in the maintenance of tolerance and respect between the adherents of different denominations, and between believers and non-believers.

2. Freedom of conscience and religion shall not be exercised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.”

2. *Criminal law*

44. The Criminal Code 1968, as in force at the relevant time, 20 May 2011, contained the following relevant provisions.

45. Article 162 § 1 criminalised racially, nationally or ethnically motivated hate speech in the following terms:

“Any person who, by means of oral or written addresses or other means of mass communication, electronic information systems or otherwise foments or incites racial, national or ethnic enmity or hatred or racial discrimination shall be punished by up to four years’ imprisonment and a fine ranging from five thousand to ten thousand levs, as well as by public reprimand.”

46. Article 162 § 2 criminalised racially, nationally or ethnically motivated violence in the following terms:

“Any person who uses violence against another or damages his property on account of his nationality, race, religion or political convictions shall be punished by up to four years’ imprisonment and a fine ranging from five thousand to ten thousand levs, as well as by public reprimand.”

47. Article 162 §§ 3 and 4 criminalised related offences in the following terms:

“3. Any person who forms or manages an organisation of group that aims to commit offences under paragraphs 1 or 2, or systematically allows the commission of such offences shall be punished by a term of imprisonment ranging from one to six years, a fine ranging from ten thousand to thirty thousand levs, as well as by public reprimand.

4. Any person who is member of such an organisation or group shall be punished by up to three years’ imprisonment and public reprimand.”

48. Article 163 criminalised racially, nationally or ethnically motivated mob violence in the following terms:

“1. Persons who take part in a mob gathered with a view to attacking groups of the population, individual citizens or their property on account of their nationality, ethnicity or race shall be punished as follows:

- (1) the instigators and leaders – by up to five years’ imprisonment;
- (2) all others – by up to one year’s imprisonment or probation.

2. If the mob or some its members are armed, the punishment shall be:

- (1) for the instigators and leaders – a term of imprisonment ranging from one to six years;
- (2) for all others – up to three years’ imprisonment.

3. If an attack has been carried out and serious bodily harm or death has ensued, the instigators and leaders shall be punished by a term of imprisonment ranging from three to fifteen years, and all others – by up to five years’ imprisonment, if not subject to harsher punishment.”

49. Article 164 § 1 criminalised hate speech motivated by religion in the following terms:

“Any person who, by means of oral or written addresses or other means of mass communication, electronic information systems or otherwise, preaches hate on the basis of religion shall be punished by up to four years’ imprisonment or probation, as well as by a fine ranging from five thousand to ten thousand levs.”

50. Article 164 § 2 criminalised the desecration or destruction of religious installations in the following terms:

“Any person who desecrates, destroys or damages a religious temple, a house of prayer, a shrine, or a building adjacent to any of those, their symbols or tombstones shall be punished by up to three years’ imprisonment or probation, as well as by a fine ranging from three thousand to ten thousand levs.”

51. Article 165 § 1 criminalised the intimidation of religious observances in the following terms:

“Any person who by force or threats prevents others from freely professing their religion or from carrying out their religious observances and rituals that do not breach the law, public order and good morals, shall be punished by up to one year’s imprisonment.”

52. Article 165 § 3 criminalised mob violence motivated by religion in the following terms:

“The actions described in Article 163 carried out against groups of the population, individual citizens or their property on account of their religious affiliation shall be punished with the penalties provided for in that Article.”

53. Article 325 criminalised hooliganism in the following terms:

“1. Any person who carries out indecent actions which grossly violate public order and show overt disrespect for society shall be punished for hooliganism by up to two years’ imprisonment or by probation, as well as by public reprimand.

2. If the actions are accompanied by resistance against [a law enforcement officer], or are characterised by exceptional cynicism or arrogance, the penalty shall be up to five years’ imprisonment.”

54. The doctrine and the courts’ case-law distinguish between “conduct” and “result” offences, based on the definition of the *actus reus*. “Conduct” or “formal” offences do not require a particular result to ensue from the offender’s conduct. By contrast, “result” or “real” offences require such a result (see Стойнов, А., *Наказателно право, Обща част*, София, 2011, as well as реш. № 182 от 13 ноември 1996 г. по н. д. № 193/96 г., ВС, ВК; реш. № 726 от 7 февруари 2003 г. по н. д. № 606/2002 г., ВКС, I н. о.; реш. № 731 от 7 януари 2005 г. по н. д. № 417/2004 г., ВКС, III н. о.; реш. № 101 от 18 февруари 2005 г. по н. д. № 691/2004 г., ВКС, III н. о.; реш. № 91 от 17 февруари 2009 г. по н. д. № 37/2009 г., ВКС, III н. о.; реш. № 129 от 17 март 2009 г. по н. д. № 68/2009 г., ВКС, III н. о.; реш. № 122 от 10 юни 2009 г. по н. д. № 62/2009 г., ВКС, II н. о.; реш. № 196 от 16 април 2010 г. по н. д. № 86/2010 г., ВКС, I н. о.; реш. № 24 от 25 януари 2011 г. по н. д. № 672/2010 г., ВКС, II н. о.; реш. № 471 от 9 февруари 2012 г. по н. д. № 2103/2011 г., ВКС,

III н. о.; реш. № 85 от 2 май 2012 г. по н. д. № 17/2012 г., ВКС, III н. о.; реш. № 152 от 5 юни 2012 г. по н. д. № 238/2012 г., ВКС, I н. о.; and реш. № 329 от 19 юни 2013 г. по н. д. № 1057/2013 г., ВКС, I н. о.).

3. Criminal procedure

55. Article 74 § 1 of the Code of Criminal Procedure 2005 defines the victim of an offence as “the person who has suffered pecuniary or non-pecuniary damage as a result of the offence”. The victim, if he or she has a known address in the country, must be immediately notified of the opening of criminal proceedings (Article 75 § 2), and may exercise his or her procedural rights if he or she expresses the wish to take part in the pre-trial proceedings (Article 75 § 3). In the course of the pre-trial proceedings those procedural rights are: to be informed of his or her rights in the proceedings; to obtain protection for him- or herself and his or her relatives; to be informed of the unfolding of the proceedings; to take part in the proceedings in line with the rules of criminal procedure; to make requests and objections; to challenge the decisions to discontinue or stay the proceedings; and to have counsel (Article 75 § 1).

4. Position expressed by the Ombudsman of the Republic

56. Following a wave of racial and xenophobic attacks, on 6 November 2013 the Ombudsman of the Republic expressed the following opinion:

“As Ombudsman of the Republic of Bulgaria, I would like to express my profound concern about the numerous recent outbursts of violence inspired by racial, ethnic or religious hatred. I categorically oppose all ideologies, policies and forms of expression inciting to racial hatred, violence or discrimination, as well as any acts which may increase fear or tension between the various racial, ethnic, national, religious or social groups and render any civilised dialogue and understanding between them impossible.

In the past few days, several events relating to violence were brought into the focus of public attention. They gave occasion for the resurgence of racism, xenophobia and prejudice against those who are different, as well as for the creation of an atmosphere of prejudice, intolerance and new divisions and discords in society. That is why I would like to draw attention to the definition of ‘hate speech’ given in Recommendation No. R (97) 20 of the Committee of Ministers of the Council of Europe to Member States. According to that instrument, hate speech is to be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

Once more, I draw the attention of the competent authorities tasked with investigating xenophobic and racist acts that it is necessary that they display particular diligence. They must not automatically relegate those offences to offences committed for ‘hooligan motives’, as has more than once happened in similar situations in the past, but detect and investigate the possible perpetration of ‘hate crimes’.

In my capacity as national Ombudsman, I support the timely actions of the law enforcement authorities directed towards the institution of pre-trial investigations against those who incite to religious or ethnic hatred and preach and instigate xenophobic or racist attitudes, as well as against those who carry out attacks against Bulgarian nationals, refugees or aliens. Let us not forget that the Republic of Bulgaria is a State governed by the rule of law. Any person who is on its territory is under the duty to comply with the law, and if such person commits an offence, he or she must bear the appropriate punishment. The way in which criminal liability is put into action is laid down in the law, and that law should be applied to all, regardless of their origin or religion, or the colour of their skin.”

C. Relevant international law

57. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination was ratified by Bulgaria on 8 August 1966 and came into force in respect of it on 4 January 1969. It was published in the State Gazette on 10 July 1992, with the result that, by virtue of Article 5 § 4 of the Constitution of 1991, from that date on it has been part of domestic law (see also *реш. № 7 от 2 юли 1992 г. по конст. д. № 6/1992 г., КС, обн., ДВ, бр. 56 от 10 юли 1992 г.*).

58. Article 4 of that Convention provides as follows:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

59. Article 5 of that Convention provides, in so far as relevant:

“In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; ...”

60. Article 6 of that Convention provides:

“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

COMPLAINTS

61. The applicant complains that on 20 May 2011, while praying in front of the Banya Bashi Mosque in Sofia, he was subjected to verbal aggression, coupled with physical violence against members of the group of worshippers to which he belonged and the threat of physical violence against him personally. He submits that that caused him to feel humiliated, vulnerable and fearful for his physical integrity. In his view, the passivity of the authorities *vis-à-vis* the actions of the attackers made them complicit in those actions and directly engaged the responsibility of the respondent State in relation to the attack. He further submits that even assuming that the State’s responsibility was not directly engaged, the State failed in its positive obligations to prevent that attack, which was not an isolated incident but the culmination of an anti-Turkish and islamophobic campaign on the part of the political party “Ataka”. The applicant relies on Article 3 of the Convention, alone and in conjunction with Article 14, or alternatively on Article 8 of the Convention, alone and in conjunction with Article 14.

62. The applicant further complains that the authorities did not carry out an effective investigation into the incident on 20 May 2011. In particular, the prosecuting authorities treated the offence under investigation as a victimless “conduct” offence rather than a “result” offence, which led them to deny the applicant the status of a “victim” within the meaning of the Code of Criminal Procedure 2005, with the result that he could not inspect the case file or take part in the proceedings. Secondly, the authorities allowed – allegedly by design – the investigation to drag on for more than two years without bringing criminal charges against anyone, even though the perpetrators, some of whom were public figures, could easily be identified on the basis of the available video recordings and the statements of numerous eyewitnesses. Thirdly, the prosecuting authorities did not give the facts under investigation a proper legal characterisation, treating them as religion-based hate speech under Article 164 § 1 of the Criminal Code rather than ethnicity-based hate speech under Article 162 § 1 of that Code,

which shifted the focus of the investigation, and as a “conduct” offence rather than a “result” offence, which prevented the physical aggression carried out by the perpetrators to be taken into account. Fourthly, the investigator in charge of the case failed to deal with it properly on account of his islamophobic bias against the applicant. Lastly, by characterising the offence as a “conduct” rather than a “result” one, the prosecuting authorities indirectly discriminated the applicant because he was treated less favourably than the victim of a “result” offence; such a distinction did not have an objective and reasonable justification. The applicant relies on Article 3 of the Convention, alone and in conjunction with Article 14, or alternatively on Article 13 of the Convention, taken together with Articles 8 and 14.

QUESTIONS TO THE PARTIES

1. Was the treatment to which the applicant was allegedly subjected on 20 May 2011 inhuman or degrading, within the meaning of Article 3 of the Convention (see, *mutatis mutandis*, *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, §§ 98-109, 3 May 2007, and *P.F. and E.F. v. the United Kingdom* (dec.), no. 28326/09, § 38, 23 November 2010)? If so, were the authorities under a positive obligation to protect him from that treatment, and did they duly discharge that obligation? Were the authorities under a similar positive obligation under Article 8 of the Convention (see, *mutatis mutandis*, *P.F. and E.F. v. the United Kingdom*, cited above, §§ 50-52), and did they duly discharge it? In particular, what, if any, were the measures that the police had planned and took in connection with “Ataka”'s rally? How many officers were dispatched to the scene, were they appropriately equipped, and what steps did they take? What was the exact sequence of events around Banya Bashi Mosque around 1 p.m. on 20 May 2011?

2. Were the authorities under a positive obligation under Article 9 of the Convention to protect the applicant from the alleged attack on 20 May 2011 against the manifestation of his religion and, if so, did they duly discharge that obligation (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above, §§ 129-35)?

3. Were the authorities under a positive obligation under Article 14 of the Convention, read in conjunction with Article 3 and Article 9, to protect the applicant against the alleged attack on 20 May 2011, and, if so, did they duly discharge that obligation (see, *mutatis mutandis*, *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, §§ 139-42, and *P.F. and E.F. v. the United Kingdom*, §§ 55-58, both cited above)?

4. Were the authorities under a procedural obligation under Article 3 and Article 9 of the Convention to carry out an effective investigation into the alleged attack of 20 May 2011? Were they in addition under an obligation under Article 14 of the Convention to inquire into whether that attack had been motivated by religious and/or ethnic hatred (see, *mutatis mutandis*, *Beganović v. Croatia*, no. 46423/06, §§ 93-94, 25 June 2009, and *Milanović v. Serbia*, no. 44614/07, §§ 96-97, 14 December 2010)? If so, did they discharge those obligations properly and without discrimination, as required by Article 14 of the Convention? The Government are required to submit the entire case file of the investigation carried out by the prosecuting and investigating authorities.