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

FIFTH SECTION

DECISION

Application no. 41214/13
MUSLIM BOARD STARTSEVO
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 18 October 2016 as a Committee composed of:

Ganna Yudkivska, *President,*
André Potocki,
Síofra O'Leary, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 June 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant association,

Having deliberated, decides as follows:

THE FACTS

1. The applicant association *(Мюсюлманско настоятелство Старцево)* is a local branch of the body representing the Muslim religion in Bulgaria. It was represented before the Court by Mr M. Ekimdzhiev and Ms G. Chernicherska, lawyers practising in Plovdiv.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms I. Stancheva-Chinova, of the Ministry of Justice.

A. The circumstances of the case

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

4. The applicant association represents the Muslim community in the village of Startsevo, on the territory of the Zlatograd municipality.

5. The applicant association claims that it has owned the plot of land on which the village cemetery is located since at least 1924. The plot at issue measures approximately 9,000 square metres.

6. On 6 March 2007, the mayor of Zlatograd issued a declaration whereby the plot was registered as public municipal property, on the basis of section 3 (2) of the Municipal Property Act (see paragraph 12 below). The document stated that the land was to be used as a cemetery and that it had previously been State property.

7. On 12 March 2012 the applicant association brought civil proceedings against the Zlatograd municipality, seeking a declaratory judgment to the effect that it was the owner of the plot of land.

8. In a judgment dated 23 July 2014 the Zlatograd District Court dismissed that claim. Its judgment was upheld upon appeal by the Smolyan Regional Court and the Supreme Court of Cassation, in judgments of 12 December 2014 and 11 January 2016 respectively. The courts pointed out that even though the applicable law permitted that cemeteries be owned by private persons, including religious associations, the applicant association had not proved its claim to be the property's owner.

9. In connection with the same proceedings the applicant association brought an additional claim asking the courts to order the municipal authorities in Zlatograd to cease actions that were allegedly interfering with its right to freedom of religion. The applicant association justified its interest in pursuing such a claim by reference to the following alleged actions on the part of the mayor of Zlatograd: he had denied that the applicant association had property rights to the plot of land; he had stated that the Muslim community was not entitled to maintain the plot according to Muslim tradition because the cemetery belonged to the entire village; he had insisted that religious rituals be performed only in places of worship; he had imposed fines on members of the Muslim community. The courts found the applicant association's claim inadmissible on the grounds that it could not be examined in the context of the ongoing property dispute, given that the appropriate avenues of redress for any breach of the right to freedom of religion were provided for in other legislation, notably the Religious Denominations Act (see paragraph 11 below).

B. Relevant domestic law

10. Article 13 § 1 of the 1991 Constitution provides that religions shall be free. Article 37 guarantees freedom of conscience, thought and choice of religion or of religious or atheistic views. Freedom of conscience and religion cannot be exercised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.

11. The 2002 Religious Denominations Act lays down the rules regarding the activities of religious denominations. Sections 35 (5), 37 and

38 authorise the Directorate of Religious Denominations attached to the Council of Ministers to conduct checks on complaints about violations of the freedom of religion and to impose administrative sanctions on the individuals and legal entities responsible.

12. Section 24 of the Religious Denominations Act provided for the first time that religious denominations could own and maintain cemeteries. On the question of ownership of cemeteries, the 1996 Municipal Property Act provides, in section 3 (2), that properties "earmarked to meet in a durable manner needs of the society of local importance" are to be considered public municipal property. The 2001 Urban Development Act provides in addition that where parks or cemeteries are owned by the State or the municipalities, they are to be deemed public property.

13. Under Articles 164 and 165 of the Criminal Code, it is an offence to hinder others' exercise of the freedom of religion, including through the desecration of graves or the obstruction of religious services and rituals using force or threats.

14. Regulation no. 19 issued by the municipal council of Zlatograd in 2010 sets out the rules concerning the organisation and management of cemeteries on the territory of the Zlatograd municipality. Under these provisions, the relatives of the dead may perform rites – including rites of a religious character – in the funeral chapel at the cemetery or at the graveside.

15. Section 18 of Regulation no. 2 of 21 April 2011 of the Minister of Health on the hygienic requirements regarding cemeteries provides that persons belonging to religions other than Orthodox Christianity which is traditional for Bulgaria can be buried in accordance with their community's rites and traditions. An exception is contained in section 22 of the Regulation, which requires that the dead must always be buried in a sealed coffin where death has occurred as a result of a dangerous infectious disease.

COMPLAINTS

16. The applicant association complained under Article 9 of the Convention of a breach of its freedom to manifest its religion. It referred first and foremost to the registration of the plot of land on which the cemetery was located as municipal property and the ensuing judicial proceedings. It also claimed that the authorities had: "obstructed and restricted" its use of the plot; required that the rites associated with a burial be performed only in a place of worship and not at the graveside; orchestrated "active propaganda" against Muslim rites; imposed restrictions as to the orientation of the graves and the shape of the gravestones; and

required that the Muslim dead be buried clothed and in coffins and "other similar things".

17. The applicant association also complained under Article 13 of the Convention that it had not had an effective domestic remedy in respect of the alleged breach of Article 9 of the Convention.

THE LAW

18. The applicant association complained under Article 9 and Article 13 of the Convention, which read:

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 13

"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. Arguments of the parties

19. The Government argued that the applicant association had failed to exhaust the available domestic remedies, because it had not sought protection under the relevant provisions of the Religious Denominations Act and the Criminal Code (see paragraphs 11 and 13 above). In addition, they pointed out that it was unclear whether the six-month time-limit under Article 35 § 1 of the Convention had been complied with, since the applicant association had not specified the dates of the alleged breaches of its rights.

20. In the event that the application were not deemed inadmissible for non-exhaustion of domestic remedies or as time-barred, the Government pointed out that the applicant association has presented no evidence or relevant factual circumstances relating to the alleged profanation or desecration of graves or the obstructing of religious rites. Nor had such evidence or information been presented during the domestic judicial proceedings in which the applicant association had relied on its right to freedom of religion. In addition, the rules applicable to the maintenance of

cemeteries and the burial of the dead, namely the 2010 Regulation adopted by the municipal council in Zlatograd and the 2011 Regulation adopted by the Minister of Health (see paragraphs 14-15 above), did not contain any requirements that went counter the traditions and practices of the Muslim religion, except, possibly, the rule of section 22 of the Minister of Health's Regulations (see paragraph 15 above), which was not however at issue in the case and was in any event aimed at the protection of public health.

21. Lastly, the Government pointed out that the property dispute concerning the plot of land where the Startsevo cemetery was located was of a purely civil-law character and was thus unrelated to the exercise of the applicant association's freedom of religion, since the performance of religious rites on the cemetery and the carrying out of burials in accordance with the Muslim religion was not dependent on who owned the land.

22. The applicant association contested the Government's argument based on non-exhaustion of domestic remedies and argued that the remedies indicated were ineffective in practice.

23. The applicant association reiterated its complaints and claimed that the State had interfered with its right to freedom of religion "through the actions of the local authorities and court decisions". It mentioned the "removal of religious representatives from places of worship or other properties", failure on the part of the State "to provide protection against the desecration of a functioning cemetery", and "systemic obstacles" hindering the exercise of its rights. It did not provide specific details as to what it meant by that, but simply referred to documents submitted by it during earlier stages of the proceedings before the Court.

24. The Government pointed out that these documents were related to the execution of construction works on a plot which does not correspond to the existing cemetery.

B. The Court's assessment

25. The Court notes, at the outset, the Government's objection based on non-exhaustion of domestic remedies – contested by the applicant association – and the Government's doubts concerning the observance of the six-month time-limit under Article 35 § 1 of the Convention (see paragraphs 19 and 22 above). However, it is of the view that it does not need to examine these matters because it considers the application in any event inadmissible for the reasons set out below.

26. The Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares

(see, among other authorities, *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 104-5, ECHR 2005-XI). The manner of burying the dead and cemetery layout can represent an essential aspect of religious practice (see *Johannische Kirche and Horst Peters v. Germany* (dec.), no. 41754/98, 10 July 2001).

27. Justifying its complaint of a breach of Article 9 of the Convention, the applicant association referred, initially, to the legal dispute between it and the local municipality as to who owned the plot of land the cemetery was located on, a dispute which ended up before the courts (see paragraphs 7-8 and 16 above). However, it has not been shown that the courts' recognition of the municipality as the land's owner resulted in the applicant association's inability to bury the Muslim community's dead on that plot in accordance with Muslim customs and to perform the necessary rites, or in any hindrance as regards Muslim access to the cemetery. Neither has it been shown that the municipality intended to allocate the land for other uses, or that it would maintain the cemetery in a manner incompatible with Muslim traditions and values.

28. The applicant association next made a number of additional claims, which the Court, like the Government (see paragraph 20 above), finds unsubstantiated. Before the Court the applicant association claimed that the authorities had "obstructed and restricted" its use of the plot of land on which the cemetery was located, had required that the rites associated with a burial be performed only in a place of worship and not at the graveside, had orchestrated "active propaganda" against Muslim rites, had imposed restrictions as to the orientation of the graves and the shape of the gravestones, and had required that the Muslim dead be buried clothed and in coffins (see paragraph 16 above). In the context of the domestic judicial proceedings concerning ownership of the relevant plot of land the applicant association also claimed that the mayor of Zlatograd had imposed fines on members of the Muslim community for unspecified offences (see paragraph 9 above). However, these claims, in addition to being too general, were not corroborated by a single piece of evidence, such as, for instance, administrative or court decisions, media publications or witness testimony. In its submissions following communication of the present application, the applicant association made further general claims about "the removal of religious representatives from places of worship or other properties", failure on the part of the State "to provide protection from the desecration of a functioning cemetery", and "systemic obstacles" to the exercise of its rights (see paragraph 23 above). Once again, none of the claims have been corroborated by any evidence or accompanied by detailed and reliable descriptions of the relevant circumstances. The Government pointed out that the documents referred to by the applicant association related to a dispute concerning a different plot of land (see paragraph 24 above).

29. Lastly, it has not been shown that the regulatory framework concerning the maintenance and use of cemeteries, namely the 2010 Regulation adopted by the municipal council in Zlatograd and the 2011 Regulation adopted by the Minister of Health (see paragraphs 14-15 above), contained rules that might conflict with Muslim traditions and practices. The Government pointed out as potentially problematic for the applicant association the rule contained in section 22 of the 2011 Regulation adopted by the Minister of Health (see paragraph 15 above), according to which – in certain circumstances related to the protection of public health – the dead must be buried in sealed coffins (see paragraph 20 above). However, even though the applicant association has raised the issue of burial, it has not demonstrated that the application of this provision, which clearly protects a legitimate interest, has concretely interfered with its right to religious freedom.

30. The Court thus finds that the applicant association has not established interference on the part of the public authorities with its right to manifest its religion.

31. Accordingly, the Court concludes that its complaint under Article 9 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

32. Having reached this conclusion, the Court finds also that there is no arguable claim of a breach of a substantive right under the Convention. It follows that the applicant association's complaint under Article 13 is manifestly ill-founded as well and that it must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 November 2016.

Milan Blaško
Deputy Registrar

Ganna Yudkivska
President