



Criminal proceedings against applicants seeking to set up political party on religious basis were unnecessary

In today's **Chamber judgment**¹ in the case of [Yordanovi v. Bulgaria](#) (application no. 11157/11) the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the complaint by the two applicants about criminal proceedings brought against them for attempting to set up a political party on a religious basis. They complained of unjustified interference with their right to freedom of association and also of discrimination against them.

The Court emphasised that a criminal conviction represented one of the most serious forms of interference with the right to freedom of association, one of whose objectives was the protection of opinions and the freedom to express them, especially where political parties were concerned.

The applicants had not completed the requisite procedure in order to register a political party. The legal consequence of that failure was that the party could not exist or engage in any activity. The authorities' aim – to ensure the peaceful coexistence of ethnic and religious groups in Bulgaria – could thus be fulfilled through such a procedure, in this case by refusing to register the would-be political party. The Court further noted that the authorities could have dissolved the party if it was declared unconstitutional by the Constitutional Court. It did not see any reason why, in the circumstances of the case, criminal proceedings should have been brought against the applicants.

Principal facts

The applicants, Rosen Marinov Yordanov and his brother Atanas Marinov Yordanov, are Bulgarian nationals. They are businessmen and belong to the Turkish-Muslim minority in Bulgaria.

In 2008 the applicants set up and registered an association for the integration of the Turkish-speaking population in Bulgaria.

In June 2009 they decided to erect a monument on private land belonging to them in their home village of Slavyanovo, commemorating the Muslim and Christian soldiers killed during the Russo-Turkish war of 1877-78 (which resulted in Bulgaria gaining independence from the Ottoman Empire). In July 2009 the regional buildings inspectorate ordered the building work to be suspended.

The applicants decided to set up a political party, the Muslim Democratic Union. The constituent assembly was to meet on 26 September 2009, the end of Ramadan, in the centre of Slavyanovo. That morning the police informed the first applicant that it was illegal to hold a gathering without following the statutory procedure.

Several hundred people gathered on 26 September 2009 in the centre of Slavyanovo. An employee of Popovo municipality served an order on the first applicant for the dispersal of the meeting, on the grounds that it had not been notified in advance. The meeting nevertheless continued for a further

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

fifteen minutes approximately, during which time a vote was passed setting up the party, adopting its constitution and electing members to the party's decision-making bodies. A press conference was held immediately afterwards.

According to the Government, during the press conference the applicants had stated that the party's aim was to "defend the rights of Muslims in Bulgaria" and that "the State [had] done nothing for Muslims in Bulgaria", that Bulgaria had not officially recognised the Turkish minority, and that "it [was] a mistake to present Bulgaria in Europe as a one-nation State".

Over the following days the Popova district prosecutor's office brought criminal proceedings against the applicants for setting up a political organisation on a religious basis, an offence punishable under Article 166 of the Criminal Code, and for a breach of the peace in connection with building the monument. The first applicant was also charged with holding an unauthorised meeting, an offence under Article 174a § 2 of the Code, in connection with the continuation of the gathering at which the political party had been set up, despite the mayor's order prohibiting it.

On 1 September 2010 the District Court found the two applicants guilty of setting up a political party on a religious basis, in breach of Article 166 of the Criminal Code. The court sentenced the first applicant to a suspended one-year prison term. It held that the second applicant was not criminally liable and ordered him to pay an administrative fine of 4,000 Bulgarian leva (BGN) (2,045 euros (EUR)). The court also found the first applicant guilty of not putting an end to a public meeting that had been prohibited by the mayor, in breach of Article 174a § 2 of the Criminal Code, and sentenced him to a suspended term of six months' imprisonment. Combining the two sentences, the court imposed an overall suspended sentence of one year's imprisonment. It acquitted the applicants on the charge of breaching the peace.

The applicants appealed. On 22 October 2010 the Targovishte Regional Court upheld the District Court's conviction and sentences. It observed that the requirement for party members to adopt Islamic values meant that the party would have "a religious basis". However, the Regional Court found that the facts should be reclassified as an attempted offence, given that the setting-up of the party had not been completed.

Complaints, procedure and composition of the Court

Relying on Article 11 of the Convention (freedom of assembly and association), the applicants alleged that the criminal proceedings against them for attempting to set up a political party "on a religious basis" constituted an unjustified restriction of their right to freedom of association. Under Article 14 (prohibition of discrimination), read in conjunction with Article 11, they complained of discrimination against them.

The application was lodged with the European Court of Human Rights on 14 January 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O'Leary (Ireland), *President*,
 Gabriele Kucsko-Stadlmayer (Austria),
 André Potocki (France),
 Mārtiņš Mits (Latvia),
 Lətif Hüseynov (Azerbaijan),
 Anja Seibert-Fohr (Germany) and,
 Mira Mihaylova Raycheva (Bulgaria), *ad hoc Judge*,
 and also Victor Soloveytchik, *Deputy Section Registrar*.

Decision of the Court

Article 11

The Court had to ascertain whether the criminal proceedings brought against the applicants for attempting to set up a party in breach of Article 166 of the Criminal Code had been necessary in a democratic society.

Without considering the assessment by the Bulgarian courts as to whether the political party in question could be regarded as having a “religious basis”, the Court expressed serious doubts about the need for criminal sanctions in addition to the ban on such parties. A criminal conviction represented one of the most serious forms of interference with the right to freedom of expression. This was also true for the right to freedom of association, one of whose objectives was the protection of opinions and the freedom to express them, especially where political parties were concerned.

The Court observed that the applicants had not pursued until completion the requisite procedure for registering a political party. The legal consequence of that failure was that the party could neither exist nor engage in any activity. The result sought by the authorities – namely the peaceful coexistence of ethnic and religious groups in Bulgaria – could thus be fulfilled through such a procedure, in this case by refusing to register the would-be political party.

The Court further noted that the authorities had the possibility of dissolving a party if it was declared unconstitutional by the Constitutional Court. It did not see any reason why, in the circumstances of the case, criminal proceedings were necessary in addition to the other options.

In addition, Article 166 of the Criminal Code of 1968 had not been adopted, in the Communist era, with the aim of preventing a religious community from using democratic institutions to rise to power to the detriment of others, but rather to rule out any possible reappearance of so-called “capitalist” parties, and therefore not to defend religious and ethnic tolerance in Bulgaria.

Having regard to the above, the Court found that the criminal proceedings against the applicants for attempting to set up a political party on a religious basis was not necessary in a democratic society and had thus entailed a violation of Article 11.

Article 14

Having regard to its finding of a violation of Article 11, the Court decided that there was no need to examine the admissibility or merits of this complaint.

Just satisfaction (Article 41)

The Court held unanimously that the finding of a violation of Article 11 constituted in itself sufficient just satisfaction for any non-pecuniary damage and that Bulgaria was to pay the applicants 2,320 euros in respect of costs and expenses.

Separate opinions

Judge Raycheva expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.