



“A CHIARE LETTERE” - TRANSIZIONI

**Libertà di religione e libertà d’opinione a confronto: bilanciamento e obbligazioni positive degli Stati membri dell’UE (g. c.)**

La sentenza della Corte EDU nel caso *Karaahmed v. Bulgaria*, divenuta definitiva da pochi giorni e di seguito riportata per esteso, affronta il problema del bilanciamento tra la libertà di coscienza e di religione, garantita dall’art. 9 della Convenzione EDU, e le libertà di manifestazione del pensiero e di espressione riunione e associazione, garantite dagli artt. 10 e 11. Si tratta, è noto, di una questione aperta e fortemente dibattuta in molti Paesi dell’Unione Europea; nel nostro, che ci riguarda più da vicino, le forze politiche ne hanno fatto l’oggetto di aspri contrasti di vedute, che assumono spesso gli aspetti (non solo teorici) dell’estremismo ideologico, dell’iperbole e dell’esasperazione linguistica, dell’indifferenza ai principi costituzionali del pluralismo confessionale e della libertà di religione indistintamente garantita a “tutti” dalla nostra Carta (art. 8, primo comma, e 19 Cost.).

Davanti ai giudici di Strasburgo erano a confronto il diritto delle autorità religiose di invitare i fedeli musulmani alla preghiera collettiva e pubblica, utilizzando degli altoparlanti – nel rispetto della disciplina delle emissioni sonore per la tutela della quiete pubblica – e il contrapposto diritto di altri cittadini di manifestare in pubblico – dopo regolare preavviso - il convincimento, fondato su convinzioni politiche, che quello specifico richiamo arrecasse comunque disturbo ai credenti di altra fede. Nel caso di specie, la preghiera del venerdì dei musulmani davanti e all’interno moschea di Sofia era stata disturbata da un centinaio di dimostranti, aderenti al partito politico Ataka, che rivolgevano insulti ai fedeli musulmani partecipanti al rito, lanciavano uova e pietre, penetravano in parte nell’edificio di culto armati di bastoni, mentre la polizia si limitava a tenere separati i due gruppi.

In sintesi, la Corte EDU afferma che lo Stato bulgaro ha violato il dovere di conformarsi agli obblighi positivi posti a suo carico dall’articolo 9 della Convenzione EDU, a causa del mancato rispetto da parte delle autorità nazionali dell’obbligo di assicurare concretamente un giusto equilibrio dei contrapposti diritti - mediante azioni volte a garantire l’efficace e pacifico esercizio in pubblico sia del diritto dei manifestanti di esprimere le loro opinioni sia del diritto del ricorrente e degli altri fedeli di compiere il rito della preghiera collettiva - a causa



della mancata previsione e adozione di misure idonee a fare fronte in modo adeguato a un evento non pacifico.

La pronuncia presenta un accentuato interesse per l'Italia. Politici e governanti italiani potrebbero leggervi tra le righe un avvertimento e uno stimolo a dare sostanza e concretezza alla concezione "positiva" delle libertà di religione e di convinzione, affermata venticinque anni or sono dal giudice delle leggi ma in buona sostanza ancora disattesa: una concezione propria di uno Stato che "si pone a servizio di concrete istanze della coscienza civile e religiosa dei cittadini" (Corte cost., sentenza n. 203 del 1989). Forse non si era lontani dal vero nello scrivere che «l'Europa ci indica, e talora ci impone - anche attraverso i suoi principi di diritto, le regole convenzionali, le decisioni della Corte - di riprendere il cammino, avviato nella prima metà degli anni ottanta e ben presto interrotto, verso un pluralismo confessionale di "sana e robusta costituzione"»<sup>1</sup>.

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

**FOURTH SECTION**

**CASE OF KARAAHMED v. BULGARIA**

*(Application no. 30587/13)*

**JUDGMENT**

*This version was rectified on 21 April 2015  
under Rule 81 of the Rules of the Court.*

**STRASBOURG**

**24 February 2015**

**FINAL**

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<sup>1</sup> **G. CASUSCELLI**, *Convenzione europea, giurisprudenza della Corte europea dei diritti dell'Uomo e sua incidenza sul diritto ecclesiastico italiano. Un'opportunità per la ripresa del pluralismo confessionale?*, in questa *Rivista*, settembre 2011, p. 56.



24/05/2015

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

**In the case of *Karaahmed v. Bulgaria*,**

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

Guido Raimondi, *President*,

Päivi Hirvelä,

George Nicolaou,

Nona Tsotsoria,

Zdravka Kalaydjieva,

Krzysztof Wojtyczek,

Faris Vehabović, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 3 February 2015,

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

**PROCEDURE**

1. The case originated in an application (no. 30587/13) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Veli Raif Karaahmed (“the applicant”), on 30 April 2013. He was born in 1976 and lives in Sofia.

2. The applicant was represented by Ms M. Ilieva, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms K. Radkova, of the Ministry of Justice.

3. On 3 December 2013 the Government were given notice of the application.

**THE FACTS**

**I. THE CIRCUMSTANCES OF THE CASE**

4. The case concerns an incident which took place on Friday, 20 May 2011, in front of the Banya Bashi Mosque in the centre of Sofia, in which leaders, members and supporters of the Bulgarian political party Ataka clashed with Muslim worshippers who had gathered around the mosque for the regular Friday prayer. The case also concerns the ensuing official investigations into that incident.



### **A. The Banya Bashi Mosque**

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 Turkey, the Middle East and Africa. 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, 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. to comply with the regulations concerning the level of urban noise.

6. The mosque itself is surrounded by railings approximately 1.5 metres high. Two sides of the mosque face onto a park, behind which is the Sofia Central Mineral Baths ("*Софийска централна минерална баня*"). One side faces onto a side street, Triaditsa Street. The final side faces onto the Princess Marie Louise Boulevard. There, the pavement of the boulevard is approximately 15 metres wide. Owing to a lack of space inside the mosque, worshippers often pray around the building during the Friday prayer, placing their prayer rugs on the boulevard pavement. On the boulevard side of the mosque, there is also a single storey extension, which is not protected by railings, the top of which is just over 1.5 metres high. It is therefore possible to gain access to the mosque compound from the boulevard by climbing onto the roof of the single storey extension.

### **B. Ataka and its campaign regarding the mosque**

7. Ataka is a Bulgarian political party. It was founded in April 2005 and, since then, in parliamentary elections has gained around 7-9% of the popular vote and 21-23 seats in Parliament. The party's leader, Volen Siderov, has been a Member of Parliament for Ataka since June 2005.

8. In 2006 Ataka and Mr Siderov began a campaign against the noise emanating from the loudspeakers installed on Banya Bashi Mosque. That year, they gathered about 35,000 signatures for a petition, presented to the Sofia Municipal Council on 18 July 2006, which called for the removal of the loudspeakers. On the evening of 18 July 2006 Ataka organised a rally against the "howling" emanating from the loudspeakers during the call to prayer.

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 believed that they disturbed persons who had other religious beliefs.



10. On Friday, 29 April 2011, supporters of Ataka mounted loudspeakers on a car and circled close to mosque, playing recordings of church bells and Christian chants during the regular Friday prayer that was taking place at the time. 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.

### **C. The events of 20 May 2011**

11. At about 12 noon on Friday, 20 May 2011, worshippers began to gather 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, either in the surrounding park or on the pavement on Princess Marie Louise Boulevard. Prayer rugs were spread out on the pavement boulevard, in keeping with the worshippers' normal practice.

12. At the same time, between one hundred and one hundred and fifty members and supporters of Ataka gathered in front of the mosque on the boulevard to protest against what they called the "howling" emanating from the loudspeakers installed on the mosque. The group included Mr Siderov, Mr D. Chukolov, the party's deputy leader, Ms D. Gadzheva, a Member of Parliament for the party, and Mr D. Stoyanov, a Member of the European Parliament for the party.

#### *1. Ataka's notification of the demonstration and the authorities' response*

13. According to information provided by the Government in the course of proceeding before the Court, on 19 May 2011 Ataka had notified the municipality that, pursuant to Article 8(1) of the Assemblies, Meetings and Demonstrations Act 1990 (see paragraph 46 below), it intended to hold an assembly in the park behind the mosque (i.e. between the mosque and the Central Mineral Baths). This was scheduled for 1-5 p.m. on 20 May with 300 participants. This notification was received by the municipality at 9.54 a.m. on 19 May 2011.

14. The Government also provided copies of three letters which they had received from various authorities in the course of the proceedings.

The first, from the municipality, stated that the Sofia Directorate of the Ministry of Internal Affairs was notified of the planned demonstration on 19 May 2011 at 10.50 a.m.

The second, from Ministry of Internal Affairs, stated that the Sofia Directorate only learned of the demonstration at 11.40 a.m. on 20 May 2011 when they received information that supporters of Ataka had started to gather in the park beside the mosque. Until that moment, the Sofia Directorate had received no information about the demonstration.



At this point, specialist police officers were dispatched to scene. A request for co-operation from the municipality was then received by the directorate by fax at 12.13 p.m.

The third, from Directorate of Religious Denominations ("*Дирекция по вероизповеданията*"), a governmental agency attached to the Council of Ministers, stated that, around 11 a.m. on 20 May 2011, they were informed by the Deputy Chief Mufti that the Ataka demonstration was going to be held in proximity to the mosque and that they immediately contacted the Ministry of Internal Affairs, after which the specialist police officers were dispatched to the mosque. They also contacted the municipality, which confirmed that permission had been given for the assembly to take place in the park between the mosque and the Sofia Central Mineral Baths.

*2. The development of the demonstration*

15. Video recordings of the event made by the media and broadcast on Bulgarian television have been provided to the Court by the parties. On the basis of those recordings, the following events can be established.

16. The demonstrators congregated, not on the Central Mineral Baths side of the mosque, but on Princess Marie Louise Boulevard in front of the mosque, where the worshippers had already begun to gather for Friday prayers. Most of the demonstrators were wearing black t-shirts featuring the inscriptions "Erdogan, you owe us 10 billion" and "Ataka says: No to Turkey in the EU". Many carried large Bulgarian flags and Ataka flags, which were green and featured the inscriptions "Ataka" and "Let's get Bulgaria back". In the course of the demonstration, the participants played Bulgarian patriotic songs from loudspeakers mounted on cars.

17. The recordings also show the demonstrators shouting invective at the worshippers, calling them "Turkish stooges", "filthy terrorists", "scum", "janissaries", "cut-offs" and "Islamists". They also depict the protestors shouting "Off to Ankara!", "Do not soil our land!", and "Your feet stink! That is why you wash them!" One of the participants in the rally can be seen slowly cutting 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!"

18. While this was happening, the mosque's imam, using the loudspeaker system, repeatedly appealed to the worshippers not to respond to the demonstrators' provocation.

19. When the Friday prayer started, one demonstrator climbed onto the roof of the single storey extension and played two loudspeakers on the roof in order to suppress the sound of the prayer. Five or six



worshippers then interrupted their prayers, climbed onto the roof and tried to move the loudspeakers.

20. In response, several more demonstrators entered the mosque compound by climbing onto the roof of the single storey extension. A scuffle ensued, in which members and supporters of Ataka, some of whom were carrying wooden flagpoles and metal pipes, moved against the worshippers and started hitting them. Some of the worshippers hit back in response. Some can be seen holding and waving plastic tubing which appears to have been torn from the side of the mosque. Approximately ten police officers also climbed onto the roof of the single storey extension to separate the fighting parties; three people were then arrested. While this was happening two or three other police officers can be seen attempting to keep the demonstrators in the park beside the mosque and back from the side of the single storey extension: at this point, there were over a hundred demonstrators in the park. Some of them can be seen throwing eggs at the worshippers.

21. Another few police officers can be seen attempting to maintain a human cordon between the remaining demonstrators (another fifty or so) who were standing on the boulevard 3-4 metres back from the area where the worshippers' prayer mats are spread out, though several members of Ataka, including its leaders, can be seen standing in that latter area, just in front of the mosque railings.

22. The demonstrators then continued to pelt the worshippers with eggs and stones and insult them. One of the demonstrators can be seen on the video recording wielding rolled up banner and shouting "We have been putting up with you for so many years. Where else would permit this [praying outside a mosque]? To whom are you praying?"

23. The parties accept that five police officers, five worshippers and Ms D. Gadzheva, who was hit on the chin by a flying stone, were injured in the course of the incident. It is not possible from the video recordings to determine who was responsible for her injury. One of the Muslim worshippers had to be hospitalised because he had concussion. Two police vehicles also sustained damage.

24. In apparent response to the police arresting two demonstrators on the roof of the single storey extension, Mr Siderov, surrounded by members of Ataka and journalists, then spoke into a microphone and addressed the police officers who were present at the scene. He asked them why they had not arrested any of "the real criminals who threw the stones" and accused them of bothering "Bulgarian patriots" rather than Islamists who "promoted violence against Christianity". He then turned to the senior police officer at the scene, asking him if he was a janissary and suggesting that he put on a fez. Finally, he stated that, in



Bulgaria, there was no Bulgarian police only a Turkish one and that those police officers present were a disgrace to their uniforms.

25. The incident ended at around 1.55 p.m. when, led by Mr Siderov and others, the demonstrators left the scene, Mr Siderov stating that he was going to Parliament to ask for the resignation of the Minister of Internal Affairs. As Mr Siderov was about to leave, at least four demonstrators wearing black t-shirts can be seen on the video recording piling some of the worshippers' prayer rugs and setting fire to them. No action was taken against those responsible, though it appears the police did call the fire brigade.

#### **D. Reaction to the events of 20 May 2011**

26. A number of politicians, including the then President of the Republic, Georgi Parvanov, condemned Ataka's involvement in the incident.

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

"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 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 at 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, 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."

#### **E. Investigations into the events**

28. There have been two separate series of investigations into the events at the mosque that day: one by the police, the other by the National Investigation Service.

##### *1. The police investigations*

29. In a letter dated 18 March 2014, the Ministry of Internal Affairs set out the progress made in the police investigations. Three investigations had been opened: one into the injury sustained by Ms Gadzheva; a second into injuries sustained by two police officers and a





cameraman, and criminal damage to the mosque and a police car; and a third into the violence directed towards the worshippers. The first two investigations have been suspended without anyone being charged.

30. The letter also stated that, in the course of the third investigation, thirty people had been interviewed as witnesses, and video recordings and other evidence had been obtained. In the course of that investigation, seven people had been charged (*"привлечени като обвиняеми"*) with aggravated hooliganism contrary to Article 325 § 2 of the Criminal Code (see paragraph 49 below). No information has been provided about whether those people were then prosecuted and, if so, whether any convictions were obtained.

#### 2. *The National Investigation Service investigation*

##### (a) **The applicant's attempts to participate in the investigation**

31. An investigation was also opened by the Sofia City Prosecutor's Office on 25 May 2011. The focus of that investigation was whether there had been any offences committed under Article 164 § 1 of the Criminal Code (the prohibition on hate speech motivated by religion: see paragraph 55 below).

32. On 6 December 2011 the applicant asked to be allowed to take part in that investigation as a victim within the meaning of Article 74 § 1 of the Code of Criminal Procedure 2005 (see paragraph 58 below). On 13 December 2011 the Sofia City Prosecutor's Office refused the applicant's request. It said that the offence under Article 164 § 1 of the Criminal Code 1968 was a "conduct" (*"формално"*) one (see paragraphs

55 and 57 below) and could therefore not have a victim.

33. On 16 March 2012 the applicant appealed against that decision to the Sofia Appellate Prosecutor's Office. 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.

34. On 17 April 2012 the applicant appealed against that decision. On 28 May 2012 the Sofia Appellate Prosecutor's Office found that the question whether an offence was a "conduct" (*"формално"*) or a "result" (*"результатно"*) one was irrelevant as to 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. It was therefore necessary to interview the applicant.



35. Accordingly, on 7 June 2012 the applicant was interviewed by the investigator in charge of the case. He stated that he had arrived at the mosque at 11.30 a.m. and had sat in the park between the mosque and the Central Mineral Baths until prayers began. He described the demonstrators' behaviour in the course of their demonstration, including the insults he had heard. He said that the police had done their job well in keeping the groups apart. 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.

36. On 16 August 2012 the applicant requested that the supervising prosecutor assign the case to another investigator on the basis that the original investigator was ethnically and religiously biased. He also requested access to the case file.

37. On 5 September 2012 the applicant once again asked to be allowed to take part in the investigation as a victim of the alleged offence.

38. On 19 November 2012 the Sofia City Prosecutor's Office refused the applicant's request, again finding that the offence under Article 164 § 1 of the Criminal Code 1968 was indeed a "conduct" offence ("*формално престъпление*") (see paragraphs 55 and 57 below) and could therefore not have a victim. It went on to reject the applicant's request to have the case re-assigned to another investigator, reasoning that, not being party to the proceedings, the applicant had no standing to make such a request. For the same reason, the applicant had no right to inspect the case file.

39. On 31 October 2013, after unsuccessful appeals by the applicant to Sofia Appellate Prosecutor's Office and the Supreme Cassation Prosecutor's Office, the deputy Chief Prosecutor decided that "conduct" offences ("*формални престъпления*") could in principle have a victim. 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, before deciding whether he could be allowed to take part in the proceedings in his capacity as a victim.

**(b) The progress of the investigation**

40. It appears that the National Investigation Service's investigation is still ongoing. Although a number of witnesses have been interviewed and expert reports obtained, no charges have been brought against any person in the framework of that investigation. However, the



Government have submitted part of the investigation file. This includes two statements given by a Mr M. In the second of those two statements he admitted to being the person responsible for cutting up the fez during the demonstration. He stated that he was instructed to do so by Mr Siderov and that Mr Siderov told him to do it before Mr Siderov arrived at the scene. He said he could not refuse because he was working for Ataka at the time. Mr M. also stated that it would have been possible to avoid any collisions between the demonstrators and worshippers if Mr Siderov had wanted. This could have been done by returning to the allocated place for the demonstration or by withdrawing after the scuffle on the single storey extension. Mr M. also stated that young, far-right supporters of Ataka had been drafted in from the town Gabrovo specifically for the demonstration and that they had been placed in the front line of the demonstration. In Mr M.'s view, Mr Siderov could have also avoided a confrontation with the worshippers had he not placed the Gabrovo group at the front of the demonstration.

41. From the investigation file as submitted to the Court, various efforts were made to summon the Ataka party leaders who were at the demonstration in order to interview them. With the exception of Mr Chukolov, the party's deputy leader, who has been interviewed, those efforts have failed.

## II. RELEVANT DOMESTIC LAW

### A. The Constitution of 1991

42. 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."

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

"1. The practicing of any religion shall be unrestricted."

44. 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."

### B. The law relating to assemblies and demonstrations in Sofia

45. The relevant legal provisions regulating the conduct of assemblies and demonstration in Sofia are contained in the Assemblies, Meetings and Demonstrations Act 1990 and the Ordinance no. 1 on



public order and protection of municipal property in the Sofia metropolitan area (1993).

46. Sections 8 and 11 of the 1990 Act provide:

**Article 8**

"1. Written notifications of open-air assemblies must be submitted to the mayor at least 48 hours prior to the commencement of each event and must contain details regarding the organisers, the nature of the event, as well as its time and location.

2. In urgent cases, notifications about open-air assemblies may be submitted on the day preceding the events."

**Article 11**

"1. Written notifications of demonstrations must be submitted to the mayor at least 72 hours prior to their commencement and must contain details regarding their nature, time and route; in urgent cases the notification must be submitted not later than two days prior to each event.

2. The mayor and the organisers of such event shall adopt all necessary measures to ensure that the events are carried out without disruption to public order and to traffic."

47. Article 21 of the 1993 Ordinance provides:

"1. Organisers of assemblies are obliged to ensure the respect of public order ... and the prevention of damage to public property.

2. Municipal authorities, in co-operation with the police, shall take all necessary measures to ensure that the events are carried out without disruption to public order and to traffic."

**C. Criminal law**

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

49. 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."

50. 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."

51. 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."



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

“3. Any person who forms or manages an organisation or 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.”

53. 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.”

54. 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.”

55. 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.”

56. 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.”

57. Legal commentary and case-law distinguish between “conduct” (“*формални*”) and “result” (“*результатни*”) 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 (S Стойнов, А., *Наказателно право, Обща част*, София, 2011, pp. 282-83, 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.)

#### **D. Criminal procedure**

58. 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 himself 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 the assistance of counsel (Article 75 § 1).

### **THE LAW**

#### **I. THE SCOPE OF THE CASE**

59. The applicant has complained that the events at the Banya Bashi mosque 20 May 2011 and the domestic authorities’ response to those events amounted to violations of Articles 3 and Article 9 of the Convention, in each case either taken alone or taken in conjunction of the Article 14. He has further complained that the same events amounted to a violation of Article 8 also either taken alone or taken in conjunction with Article 14. The Government contested these arguments. They also raised two preliminary objections as to the admissibility of the application, which applied to all of these complaints. Accordingly, it is appropriate for the Court first to consider whether these preliminary objections are well-founded and, if not, to



proceed to consider each of the applicant's substantive complaints in turn.

## II. PRELIMINARY OBJECTIONS

### A. The parties' submissions

60. The first preliminary objection the Government raised was that the applicant was not a victim of a violation of any of the Convention rights he relied upon because it had not been established how and to what extent he was involved in the events at the mosque on 20 May 2011. In his interview he referred only to being in the park behind the mosque. He did not claim to have been injured in the scuffle. He had said that the police had done a very good job. By the same token, the investigation into the events did not affect the applicant personally.

61. The second preliminary objection was that the applicant had failed to exhaust domestic remedies. He had not made any application to the Commission for the Protection against Discrimination, as confirmed by a letter from the Commission, which was annexed to the Government's observations. Otherwise, the applicant had a catalogue of remedies before the national authorities, rather than just the complaint he had made to the Sofia District Prosecutor's office, though the Government did not specify which other remedies were available.

62. The applicant submitted that the very reason that the Government could argue that the extent of his involvement had not been established was because domestic investigation, by its ineffectiveness, had been unable to establish the ways in which he had been a victim of the demonstrators' actions. Little weight could be placed on his interview. When the demonstration started, he with the other worshippers was a victim of the demonstrators' hate speech, their symbolic cutting of a fez and burning of prayer rugs, and by their stone and egg throwing.

63. As regards pursuing a complaint before the Commission for Protection Against Discrimination, this body was not competent to deal with crimes; if it found that a particular act of discrimination was criminal it was required by law to refer the case to the prosecuting authorities. This was what had happened in the present case, as the Commission's letter made clear.

### B. The Court's assessment

64. For the first of the Government's two preliminary objections, it is clear from the case file, including the video recordings, that the applicant was at the mosque before, during and after the demonstration. Indeed, he was accepted as being there by the domestic authorities in the course of the investigation. The extent to which he was affected by the demonstrators' actions is relevant only to whether



those actions met either the threshold for ill-treatment for the purposes of Article 3 of the Convention or to the extent of the interference with his other Convention rights (issues which the Court will consider in due course), rather than any lack of victim status. Accordingly, this preliminary objection must be rejected.

65. For the second of the two preliminary objections, the letter from the Commission which the Government has provided to the Court makes clear that the Commission would have been unable to consider any complaint while criminal proceedings were pending; for that reason, a complaint to the Commission in this case would have had no prospect of success. Therefore, this preliminary objection must also be rejected.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

66. The applicant complained that the behaviour of the demonstrators amounted to ill-treatment. Owing to the passivity of the authorities during the incident and to their failure properly to investigate the incident, there had been a violation of the State's positive obligations under Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

67. Moreover, relying on his belonging to a religious minority, the applicant complained that the domestic authorities' actions also amounted to a violation of Article 14 of the Convention taken in conjunction with Article 3. This Article reads:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

68. The Government contested those arguments.

#### **A. The parties' submissions**

69. The applicant emphasised the premeditation of the demonstration and its purpose, which, he submitted, was publicly to debase the worshippers because of their faith and their belonging to a religious minority. It was made worse by the presence and participation of high-ranking and high-profile members of Ataka (whose anti-immigration and anti-Islam stances were well-known), by the length of the demonstration, and by the time when it took place, during Friday prayers. This was exacerbated by the paramilitary and far-right overtones of many of the demonstrators, by their black dress, by the insignia of the flags they carried and by the anti-religious and anti-immigration insults they shouted, by their attempts to drown out the





call to prayer with loud nationalist music from loudspeakers, by their cutting of a fez (and threatening the worshippers with the same treatment), by their throwing eggs and stones and by their burning of the worshippers' prayer mats. This was not mere intimidation and bullying of the applicant and the other worshippers; it was deliberate targeting of their religion and ethnicity, and this meant the demonstrator's actions met the Article 3 threshold. The applicant is also visually impaired: the demonstration caused him significant anxiety and fear.

70. The Government submitted that the Article 3 threshold had not been reached in this case. There was no evidence that the applicant was a victim of physical ill-treatment. Nor were the psychological effects of the demonstration so serious as to meet the Article 3 threshold: however reprehensible, the conduct of the demonstrators was not prolonged or systemic; this was a one-off demonstration which lasted only an hour and a half. Even if the Article 3 threshold had been met, by properly policing the demonstration, the domestic authorities had complied with their positive obligations under that Article. Finally, the criminal investigation undertaken after the demonstration had complied with the State's procedural obligations under the Article.

#### **B. The Court's assessment**

71. The primary issue in respect of this complaint is whether the applicant's treatment at the hands of the demonstrators constituted ill-treatment within the meaning of Article 3; if it did not, the issue of the respondent Government's compliance with its positive obligations under Article 3 does not arise.

72. The principles the Court will apply in assessing whether any given treatment meets the Article 3 threshold are well-established in its case-law. They were recently re-stated by the Grand Chamber in *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § § 113-15, ECHR 2014 (extracts). Where relevant they provide (internal references omitted):

- Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour;

- Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Although the question whether the purpose of the treatment was to humiliate or



debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3;

– Treatment is considered to be “degrading” within the meaning of Article 3 when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance. The public nature of the treatment may be a relevant or aggravating factor in assessing whether it is “degrading” within the meaning of Article 3.

73. It should also be emphasised, particularly in the context of acts by third parties which are motivated by religious intolerance, that Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering (see *Begheluri v. Georgia*, no. 28490/02, § 100, 7 October 2014). Moreover, discriminatory treatment as such can in principle amount to degrading treatment within the meaning of Article 3, where it attains a level of severity such as to constitute an affront to human dignity (ibid, § 101, with further references therein).

74. Turning to the present case, the applicant accepts that he suffered no physical injury at the hands of the demonstrators on 20 May 2011; his complaint is instead based on the psychological effect the demonstrators’ actions had on him and his fellow worshippers. He relies both on the purpose of the demonstration and his particular vulnerability as someone with poor eyesight.

75. In the light of the evidence before it, the Court accepts that the intentions of the demonstrators went beyond simply protesting at the volume of the loudspeakers and that their intentions were to mock publicly and debase the worshippers and their religion. However, as premeditated and public as those actions were, and however much they succeeded in disrupting the prayers of the applicant and his fellow worshippers, they were not so severe as to cause the kind of fear, anguish or feelings of inferiority that are necessary for Article 3. As the Government have submitted, this was a one-off demonstration which lasted an hour and a half. This was not, therefore, a case where the prolonged actions of demonstrators could be said to have resulted in considerable mental suffering to the applicant. In this respect, the applicant’s situation stands in contrast to *P.F. and E.F. v. the United Kingdom* (dec). no. 28326/09, 23 November 2010, where considerable mental suffering was found to have occurred to young schoolgirls and their parents when they were exposed to two months of daily abuse – including threats and the throwing of missiles, including bodily waste –



at the hands of protestors and where, as a result of that suffering, the Article 3 threshold was found to have been met. The events at the mosque that day also fall to be distinguished from the findings of a violation of Article 3 found by the Court in *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, 3 May 2007, and *Begheluri*, cited above, where severe beatings, forced searches and a series of other humiliating acts, which were designed to force the applicants to act against their wills and conscience and which took place in a general and national climate of religious intolerance at the material time, were found to meet the Article 3 threshold.

76. Finally, the applicant's poor eye-sight has no bearing on the question of whether the Article 3 threshold has been met. Not only has he failed to substantiate this claim, this is not a condition which would have made him particularly vulnerable to the demonstrators' actions in this particular case.

77. The Court therefore finds that the Article 3 threshold has not been met in this case. As stated above, this finding makes it unnecessary to consider whether the Government complied with its positive obligations under this provision. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention. Given Article 14 has no independent existence from the substantive provisions of the Convention (see, among many other authorities, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 384, ECHR 2012 (extracts)), it follows that the applicant's complaint under Article 14 taken in conjunction with Article 3 is similarly manifestly ill-founded and must also be rejected in accordance with Article 35 §§ 3 (a) and 4.

#### IV. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

78. The applicant further complained that the failure of the domestic authorities adequately to protect him from the demonstrators and properly to investigate the incident amounted to a violation of his rights under Article 9 of the Convention. This was because, in his submission, the domestic authorities' failures prevented him from exercising his Article 9 right to peacefully practice his beliefs in the company of fellow worshippers. Article 9 provides:

"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."



79. The Government contested those arguments.

**A. Admissibility**

80. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

**B. Merits**

*1. The parties' submissions*

**a. The applicant**

81. The applicant submitted that the demonstration had to be seen in context. Ataka was well-known for its stance against both Islam and Bulgaria's Turkish minority. Regardless of how many police officers attended the mosque, or how well-equipped they were alleged to have been, the fact was that more than one hundred activists of such a party, led by prominent members of it, effectively mobbed the worshippers during a highly sensitive moment of prayer.

82. Whatever the efforts of the police, these fell short of the standard required by the Convention as they had not prevented the demonstrators from verbally abusing and threatening the worshippers, burning their prayer rugs, destroying a fez, mounting loudspeakers inside the mosque grounds and then attacking certain of the worshippers. The police were present but acted as impassive bystanders and intervened only after violence broke out.

83. Contrary to the Government's submissions (see paragraph 86 below), there had been no requirement for the worshippers to notify the authorities of their intention to pray on the boulevard. It was the demonstration which fell to be regulated by the authorities. Even before the police became involved, there had been a prior failing on the part of the municipality, which, knowing the nature of Ataka's policies, could have used its powers to divert the demonstration to another place or time. It would even have been possible to ban it entirely. The fact that the municipality had not even considered using these powers indicated a failure to understand, still less properly to assess, the public order problem posed by a demonstration of this kind. This failure, when taken with the failures of the police, meant that the authorities had failed to meet their positive obligations under Article 9 of the Convention.

84. The investigation into the incident was defective. It took prosecutors over a year to interview the applicant. Even when finally interviewed, the applicant was not asked about the actions of the demonstrators, but rather the legality of praying outside the mosque and the noise level of the call to prayer, as if this provided justification



for the demonstrators' actions. Despite several of the participants in the demonstration being well-known, and despite ample video footage of the incident, the investigation continued into "unknown" perpetrators. The person responsible for cutting up the fez, Mr M., was well-known to the police: see his statements at paragraph 40 above. The MP and MEPs involved in the demonstration had not even been questioned. The investigation had gone nowhere, depriving it of all deterrent effect for future crimes of this nature.

**b. The Government**

85. The Government accepted the existence of positive obligations deriving from both the substantive and procedural aspects of Article 9. However, they denied that there had been a breach of those positive obligations.

86. The Government submitted that the case concerned on the one hand, the right of a political group to freedom of expression and assembly (rights guaranteed by Articles 10 and 11 of the Convention) and, on the other, the rights of a religious group freely to practise their religion (guaranteed by Article 9). As much as the rhetoric of Ataka's supporters might go beyond good manners and the standards of good conduct, it was based entirely on their political views. The specific reason for the clash that day was not intolerance of the worshippers' religion but the refusal of the mosque to comply with directions from the municipality as to noise level of the loudspeakers. Advance notice of their demonstration had been given to the municipality; there was no legitimate reason to prevent it. Furthermore, the mosque had failed to notify the municipality of the intention of worshippers to pray on the boulevard outside the mosque. Given this lack of notification, there was no possibility for the Ministry of Internal Affairs to deploy additional police units around the mosque, particularly when that might have led the worshippers to complain of an unduly strong police presence around the mosque.

87. The Government further relied on the information provided by the municipality and the police (see paragraphs 13-14 above). Even before the demonstration started, ordinary and specialist police officers had deployed around the mosque and formed a cordon to separate demonstrators from worshippers. Sufficient numbers of police officers had been at the scene. They had handled the scuffle on the roof of the single storey extension in a matter of seconds and ensured the gradual dispersal of the demonstrators: once two demonstrators had been arrested, the demonstrators left the scene. No worshippers were arrested and the police remained until Friday prayers had been concluded; those prayers finished without any other incidents. The



applicant himself had praised the police for the job they had done and other worshippers had applauded the police for their actions in arresting certain demonstrators; it was Ataka who had criticised the police for only arresting its supporters. In all, the police response had been objective, balanced and reasonable.

88. Finally, the Government reiterated their submission, first made with respect to Article 3 above, that this demonstration had been a one-off event and that, subsequent to it, the domestic authorities took all necessary steps to prevent further such incidents, to sanction those responsible and not to allow any other provocative acts.

89. In the police investigation, seven demonstrators had been charged under Article 325 § 2 of the Criminal Code (see paragraph 49 above). Almost thirty people had been interviewed during the investigation and other investigative steps taken, including photographing and identifying participants in the incident. Complaints from those affected by the incident, including one made by the applicant, had been properly and expeditiously handled.

90. In the National Investigation Service investigation, the prosecutor's office had been justified in not treating the applicant as a 'direct' victim for the purposes of the relevant provisions of the Criminal Code. There had been no bias on the part of the investigation or anyone conducting it; all questions put to the applicant in his interview had been aimed at clarifying what had happened during the incident. The investigation had been carried out expeditiously: the main obstacle to its comprehensive completion was the parliamentary immunity of Mr Siderov, Mr Chukolov and Ms Gadzheva. This made it difficult to interview them, even as witnesses, because it was rare for requests to lift immunity to be made.

## 2. *The Court's assessment*

### a. **General principles**

91. At the heart of this case is the exercise of two sets of competing fundamental rights: the rights of Ataka and its supporters to freedom of expression and to peaceful assembly and the rights of the applicant and the other worshippers at the Banya Bashi mosque to pray peacefully in community together without undue interference.

92. All are rights protected by the Convention: the rights to freedom of expression and freedom of peaceful assembly by Articles 10 and 11, the right to freedom of religion by Article 9. None are absolute rights: all three Articles provide that the exercise of these rights may be subject to restrictions, *inter alia*, for the protection of the rights of others. The Convention does not establish any *a priori* hierarchy between these rights: as a matter of principle, they deserve equal respect. They must



therefore be balanced against each other in a manner which recognises the importance of these rights in a society based on pluralism, tolerance and broad-mindedness. Three further principles follow from this.

93. First, it is incumbent upon the State to ensure that – insofar as is reasonably possible – both sets of rights are protected. This duty applies equally when acts which may impinge upon one of the two rights are carried out by private individuals (in respect of Article 9, see *Begheluri*, cited above, § 160, 7 October 2014, and, in respect of the corresponding duty under Article 11, see *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 45, ECHR 2005-X (extracts)).

94. Second, to do so, the State must ensure that a legal framework is put in place to safeguard those rights from third parties and to take effective measures to ensure that they are respected in practice (see, for instance, *Begheluri*, cited above, § 164).

95. Third, as is always the case when a Contracting State seeks to protect two values guaranteed by the Convention which may come into conflict with each other, in the exercise of its European supervisory duties, the Court's task is to verify whether the authorities struck a fair balance between those two values (see, *mutatis mutandis*, *Hachette Filipacchi Associés v. France*, no. 71111/01, § 43, 14 June 2007 and *Öllinger v. Austria*, no. 76900/01, § 42, ECHR 2006-IX). In doing so, the Court should not act with the benefit of hindsight. Nor should it simply substitute its view for that of the national authorities who, in any given case, are much better placed to assess where the appropriate balance lay and how best to achieve that balance.

96. This is particularly true when it is the police who must in practice strike that balance. As the Court has frequently said, due regard must be had to the difficulties in policing modern societies (see, *mutatis mutandis*, *K.U. v. Finland*, no. 2872/02, § 48, ECHR 2008; *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 55, ECHR 2012; and *Frăsilă and Ciocîrlan v. Romania*, no. 25329/03, § 55, 10 May 2012). Thus, in assessing the response of the police to events of 20 May 2011, the positive obligation on them to guarantee the rights of both the demonstrators and the applicant and his fellow worshippers must be interpreted in a way which does not impose an impossible or disproportionate burden on them.

**b. Application to the present case**

97. In applying those principles to the present case, two preliminary remarks are necessary.

98. First, although Government have relied on the existence of a dispute between the municipality and the mosque over the volume of the Friday call to prayer, this has little bearing on whether, on the day



in question, a fair balance was struck between the demonstrators' rights and the rights of applicant and his fellow worshippers. The Government's reliance on the supposed absence of authorisation for the worshippers to use the boulevard for prayer is also of little weight: the Court's case-law is clear that, where the authorities have not been properly notified of a public event but there is no danger or disturbance to public order from that event, those participating in it do not automatically lose the protection of the Convention (for the application of this principle to religious ceremonies, see *Krupko and Others v. Russia*, no. 26587/07, § 56, 26 June 2014).

99. Second, it is not the Court's role to prescribe when domestic authorities should and should not give authorisation to a particular demonstration, even when that demonstration carries a risk of tension between the demonstrations and others (see, for instance, *Öllinger*, cited above, § 36). Consequently, it is not for the Court, acting with the benefit of hindsight, to find that the Ataka-led demonstration on 20 May 2011 should have been prohibited as posing an unacceptable risk to public order.

100. It is not contested that Ataka's views on Islam are a matter of public record. So too are its views on those whom it perceives as being the main adherents of Islam in Bulgaria. Consequently, once told by Ataka that there was to be a demonstration outside the Banya Bashi mosque, and one that would coincide with Friday prayers at that, it would have been clear to the domestic authorities what kind of demonstration it would be. Any demonstration by Ataka supporters at the Banya Bashi mosque, even one ostensibly directed at the volume of the Friday call to prayer, carried an inherent risk of tension between the demonstrators and the worshippers at the mosque. Indeed, the fact that the domestic authorities were aware of this risk is shown by decision of the Ministry of Internal Affairs, upon learning that demonstrators had started to gather outside the mosque, immediately to dispatch police officers to the scene. Having appreciated that there was a risk of disorder and violence, and having taken the view that there was nothing to prevent the demonstration going ahead or at least being moved to a different time, the domestic authorities should have been prepared – so far as was possible – to take steps first, to minimise the risk of that tension spilling over into violence and second, to secure both the rights of the demonstrators peacefully to assemble and the rights of the worshippers peacefully to pray. Any number of steps could have been taken, including, for instance, identifying areas where the demonstrators could demonstrate at a safe distance from the worshippers and ensuring a sufficient number of police officers were





made available in order to police properly a demonstration of this size and nature.

101. The domestic authorities were provided with time to take those steps. Ataka notified the municipality of its intentions on the morning of 19 May (see paragraph 13 above). There is some dispute between the municipality and the Sofia Directorate as to whether the latter was informed of the planned demonstration on 19 or 20 May (see paragraph 14 above). However, it is clear that – whether as a result of a lack of co-ordination between the relevant authorities or otherwise – no concrete steps to manage the situation were taken until the demonstration had begun; as the Ministry of Internal Affairs’ letter states, the first police officers were only dispatched to the mosque after they received information that Ataka supporters had started to gather in the park beside it (*ibid*). It is implicit from this failure to take any steps prior to the start of the demonstration that the domestic authorities failed to give any prior consideration as to how the competing rights of the demonstrators and worshippers could be fairly balanced to ensure that both were equally respected.

102. Even if not apparent before the demonstration began, the need to take such steps must surely have been clear once the demonstration started. It understates the nature of this demonstration to say that it was only about the volume of the Friday call to prayer. The demonstrators, mostly wearing black, sported slogans which made plain their view that the worshippers at the mosque were ethnic Turks as well as their views of both Turkey and ethnic Turks living in Bulgaria. They shouted anti-Turkish and anti-Islam slogans some of which were malicious and vulgar. The demonstrator who cut up the fez with a pocket knife and shouted “We shall now show you what will happen to each one of you” did so to the clear approval of those around him. The attempts of certain demonstrators to place loudspeakers on top of the single storey extension also met with the other demonstrators’ approval. These were acts which were not designed to express discontent at noise levels or even to express opposition to Islam but were clearly calculated to cause maximum disruption to the worshipper’s prayers and to provoke violence.

103. The worshippers, by contrast, had gathered for their weekly prayers. Their purpose that day was not to engage with the demonstrators but to pray according to their regular practice, as at previous Friday prayers. Even after the demonstrators began pelting them with eggs and stones, the worshippers continued to try to pray, thus respecting their imam’s appeal not to respond to provocation.



104. The police attending the mosque that day were therefore required in their actions to respect the exercise of the rights of each of the two groups and further to ensure each that each group respected the rights and freedoms of the other. In this regard it must have become clear to the police that doing nothing would have allowed the demonstrators to exercise their rights in a matter which was entirely oppressive of the rights of the worshippers.

105. Even allowing for the wide margin of appreciation which they enjoyed in such operational matters, it is readily apparent from the video recordings that the police failed to ensure that due respect for these rights was paid or even to give any serious consideration as to how such respect could be achieved. As the Court has stated, the authorities should have realised the inherent risk in permitting this demonstration to go ahead in the manner in which it did, all the more so when told that as many as three hundred demonstrators might be involved. It was inherently risky to allow that number of demonstrators so close to the mosque. They had initially announced their intention to demonstrate not on the boulevard, but on the other side of the mosque altogether, in the park behind it. Had the police kept them to that area it would have allowed the demonstrators to have their demonstration, it would have allowed the worshippers to continue their prayers with minimal disruption and, most importantly, it would have minimised any risk of violence between the two groups. Indeed, the police had the power to control the demonstration in that way: see Article 21 § 2 of the 1993 Ordinance on public order and protection of municipal property in the Sofia metropolitan area, set out at paragraph 47 above.

106. As it was, the proximity of the demonstrators to the mosque – with so few police officers between them and the worshippers – allowed the demonstrators to cause disruption they did and, in due course, for certain of them to climb into the mosque via the single storey extension. At this point, several hundred demonstrators and worshippers were separated by no more than a dozen police officers forming an improvised and visibly insufficient cordon. The fact that the demonstrators managed to gain access to the extension shows how inadequate this cordon was: had even more demonstrators chosen to climb on to the single storey extension the police would have been powerless to stop them or to stop the descent into full scale violence which would almost certainly have followed. It is true that the police managed to arrest certain of the demonstrators who had climbed on to the extension, but it appears that the situation was defused only by the demonstrators leaving the mosque area of their own account, and not before they had piled and set fire to some of the worshippers' prayer



rugs. This last act was one which the police did nothing to prevent: indeed, it is not clear how the demonstrators responsible were able to get past the police who had previously been separating the demonstrators and worshippers on the boulevard. Moreover, once the rugs were on fire, save for apparently calling the fire brigade, the police did nothing in response.

107. In sum, the outcome of the police's response that day was that a large number of demonstrators were able to stand within touching distance of Banya Bashi mosque, to shout insults at praying worshippers, to engage in threatening and provocative gestures and actions, and ultimately to gain access to the mosque. They enjoyed a virtually unfettered right to protest at the mosque that day, while the applicant and the other worshippers had their prayers entirely disrupted. It is plain, therefore, the police's actions were confined simply to limiting the violence which broke out that day and that no proper consideration was given to how to strike the appropriate balance in ensuring respect for the effective exercise of the rights of the demonstrators and the applicant and the other worshippers.

108. Therefore, given that the applicant, together with his fellow worshippers, was the victim of an infringement of his freedom to practise his religion and that this was a result of the demonstrators' actions, it became incumbent on the authorities' to respond effectively to those actions.

109. In this respect, the Court accepts that the condemnation of the demonstrators' actions by both the President and Parliament – set out at paragraphs 26 and 27 above – not only expressed disapproval and determination to ensure that this incident remained a one-off, but also insisted that all competent State authorities, including the prosecuting authorities and courts, take the necessary measures to ensure compliance with the Constitution and laws of the Republic (see the penultimate paragraph of the declaration, set out at paragraph 27 above). This stands in contrast to the absence of any meaningful response by the authorities in *Members of the Gldani Congregation of Jehovah's Witnesses and Others* and *Begheluri*, both cited above, which the Court found had contributed to an intensification and generalisation of religious violence against Jehovah's Witness in Georgia: paragraphs 133 and 165 of each judgment).

110. The Court also accepts that the relevant offences in the Criminal Code at the relevant time (set out at paragraphs 48-57 above), would have constituted an appropriate legal framework for the protection of the rights of the applicant and his fellow worshippers from violent infringement by certain of the demonstrators. It is also true that the



police investigation into the events at the mosque led to seven individuals being charged with acts of hooliganism under Article 325 of that Code. However, that investigation appears to have been directed only at the physical acts of violence in which certain of the demonstrators engaged on the roof of the single storey extension. The investigation of the National Investigation Service was meant to focus on the interference with religious rights of the applicant and his fellow worshippers which the demonstrators' actions had caused. It was opened on 25 May 2011. Despite numerous witnesses having been interviewed, this investigation has still not been completed nearly four years after the events. It is of particular significance that no action has been taken in respect of the most provocative gestures made by the demonstrators at the demonstration. No progress has been made in identifying and charging those responsible for piling and setting fire to the worshippers' prayers rugs, even though the individuals concerned can be clearly seen on the video recordings submitted by both parties to the Court. Nor has any action been taken as regards the cutting of a fez (and the threat that the same would happen to the worshippers), despite Mr M. giving a statement to investigators admitting his responsibility (see paragraph 40 above). Finally, with the exception of Mr Chukolov, none of the individuals who took a leading role in the demonstration that day have been interviewed: in this respect the Court notes that the Government, while stating that members of the Bulgarian and European Parliaments cannot be prosecuted without their immunity being lifted, have not submitted that immunity is a bar to their being interviewed. For these reasons, the National Investigation Service investigation cannot be considered an effective response to the events at the Banya Bashi Mosque on 20 May 2011.

111. In sum, the failure by the domestic authorities to strike a proper balance in the steps they took to ensure the effective and peaceful exercise rights of the demonstrators and the rights of the applicant and the other worshippers to pray together, as well as their subsequent failure properly to respond to those events, means there has been a failure of the State to comply with its positive obligations under Article 9. There has accordingly been a violation of that article.

#### V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. The applicant complained that the same events of 20 May 2011 and the authorities' reaction to them also amounted to a violation of Article 9 taken in conjunction with Article 14 of the Convention. Finally, he complained of a violation Article 8 of the Convention, either alone or taken in conjunction with Article 14 of the Convention.



Having regard to the fact that the Court has already examined the circumstances of this case under Article 9 of the Convention and has found a violation of that Article, it does not find necessary to examine the admissibility or merits of these complaints.

#### VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### **A. Damage**

114. The applicant made no claim in respect of pecuniary damage. In respect of non-pecuniary damage he claimed 10,000 euros (EUR), which in his submission reflected the suffering caused by both the demonstrators' actions on 20 May 2011 and the authorities' failure properly to investigate them.

115. The Government considered this amount to be unsubstantiated, exaggerated and manifestly ill-founded but did not submit what an appropriate figure would be, were the Court to find a violation of any article of the Convention.

116. The Court considers that the applicant must have suffered a degree of distress and frustration as a result of the incident at the mosque and the inadequacy of the domestic authorities' response to it. Therefore, taking into account all the circumstances of the case, and ruling on an equitable basis, as required under Article 41 of the Convention, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable on that amount, in respect of non-pecuniary damage.

##### **B. Costs and expenses**

117. The applicant also claimed EUR 7,308 for costs and expenses incurred before the domestic authorities and before this Court. This comprised postal expenses of EUR 28 and legal costs for ninety-one hours' work at a rate of EUR 80 an hour. The hours worked were twenty-five before the domestic authorities and sixty-six before this Court, the latter figure including, among other work, thirty hours' work in preparing the application, twenty-seven hours drafting the applicant's written observations and six hours in preparing his claim for just satisfaction.

118. The Government submitted that a rate of EUR 80 per hour was exaggerated and out of proportion to standard Bulgarian rates, although they did not suggest what an appropriate rate would be. They also considered that the number of hours work spent in lodging the



application and preparing the applicant's written submissions were excessive. They made no submission as regards the numbers of work performed before the domestic authorities.

119. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. On that basis, it finds as follows. For the expenses of EUR 28, this should be met in full. For the costs incurred before the domestic authorities, the Court accepts that these were actually and necessarily incurred and are reasonable as to quantum and should thus be met in full. For those costs, it thus awards EUR 2,000, plus any tax that may be chargeable. For the costs incurred before the Court, while the Court accepts that the hourly rate is reasonable, it agrees with the Government's submission that the number of hours worked is excessive and should be reduced by half. On that basis, it awards EUR 2,640 plus any tax that may be chargeable. The total award of costs and expenses is thus EUR 4,668.

### **C. Default interest**

120. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Rejects* the Government's preliminary objections regarding victim status and non-exhaustion of domestic remedies;
2. *Declares* the applicant's complaints concerning Article 3, either alone or taken in conjunction with Article 14, inadmissible;
3. *Declares* the applicant's complaint concerning Article 9 admissible;
4. *Holds* that there has been a violation of Article 9 of the Convention;
5. *Holds* that it is not necessary to examine the admissibility or merits of the remainder of the applicant's complaints under the Convention;
6. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Bulgarian levs at the rate applicable at the date of settlement:



- (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 4,668 (four thousand six hundred and sixty-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the Bulgarian Helsinki Committee;<sup>2</sup>
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos  
Registrar

Guido Raimondi  
President

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<sup>2</sup> Rectified on 21 April 2015. The following text was added: "to be paid into the bank account of the Bulgarian Helsinki Committee".