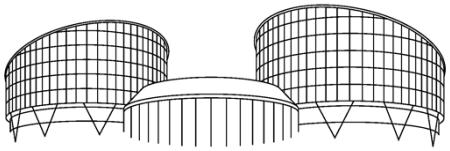

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BUDINOVA AND CHAPRAZOV v. BULGARIA

(Application no. 12567/13)

This version was rectified on 4 March 2021
under Rule 81 of the Rules of Court

JUDGMENT

Art 14 (+ Art 8) • Discrimination • Private life • Failure of domestic courts to discharge positive obligation to afford redress to Roma applicants for discriminatory statements made by leader of political party • Art 8 applicable as statements' negative effect reached a "certain level" or "threshold of severity", considering the characteristics of the group, the content of the statements and the form and context • No fair balance between competing interests at stake with due regard to Court's case-law

STRASBOURG

16 February 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Budinova and Chaprazov v. Bulgaria,

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

Tim Eicke, *President*,
Armen Harutyunyan,
Georges Ravarani,
Gabriele Kucsko-Stadlmayer,
Jolien Schukking,
Ana Maria Guerra Martins, *judges*,
Maiia Rousseva, *ad hoc judge*,
and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 12567/13) 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 two Bulgarian nationals, Ms Kremena Goshova Budinova and Mr Vasil Stoyanov Chaprazov ("the applicants"), on 7 February 2013;

the decision to conduct the proceedings in this case simultaneously with those in the case of *Behar and Gutman v. Bulgaria* (no. 29335/13);

the decision to give the Bulgarian Government ("the Government") notice of the complaints concerning the alleged failure of the Bulgarian authorities to afford the applicants redress with respect to various public statements by Mr Volen Siderov in relation to Roma in Bulgaria, and to declare the remainder of the application inadmissible;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the written comments submitted by two non-governmental organisations, the Greek Helsinki Monitor and the European Roma Rights Centre, which had been granted leave to intervene in the case as third parties,

Noting the withdrawal from the case of Mr Yonko Grozev, the judge elected in respect of Bulgaria, and the ensuing decision of the Vice-President of the Section to appoint Ms Maiia Rousseva to sit as an *ad hoc* judge,

Having deliberated in private on 15 December 2020,

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

INTRODUCTION

1. The case primarily concerns a complaint, under Articles 8 and 14 of the Convention, that by dismissing a claim brought by the applicants – Bulgarian nationals of Roma ethnic origin – under anti-discrimination legislation whereby they had sought a court order against a well-known journalist and politician compelling him to (a) apologise publicly for a number of public statements in which he had allegedly negatively

stereotyped Roma in Bulgaria in a crude manner, and (b) refrain from making such statements in the future, the Bulgarian courts had failed in their positive obligation to ensure respect for the applicants' "private life".

THE FACTS

2. The applicants were born in 1970 and 1945 respectively and live in Sofia. They were represented initially by Ms M. Ilieva, a lawyer practising in Sofia and at the material time working with the Bulgarian Helsinki Committee, and then by Ms A. Kachaunova, also a lawyer practising in Sofia and working with that Committee, and by Mr K. Kanev, the Committee's chairman.[1] On 15 January 2016 the then President of the Fifth Section gave Mr Kanev leave to represent the applicants in all pending and future cases in which he was appointed to personally act as their representative (Rule 36 § 4 (a) *in fine* of the Rules of Court).

3. The Government were represented by their Agent, Ms I. Stancheva-Chinova of the Ministry of Justice.

I. BACKGROUND TO THE CASE

4. Ataka is a Bulgarian political party founded in April 2005. In parliamentary elections held on 25 June that year it received 8.14% of the votes cast and won twenty-one seats in Bulgaria's two-hundred-and-forty-seat Parliament. In parliamentary elections held in 2009 it received 9.36% of the votes cast and again won twenty-one seats. In parliamentary elections held in 2013 it received 7.30% of the votes cast and won twenty-three seats. In parliamentary elections held in 2014 it received 4.52% of the votes cast and won eleven seats. It fought the March 2017 parliamentary elections as part of a three-party coalition, United Patriots, which gained 9.31% of the votes cast, and won eight of the coalition's twenty-seven seats. In May 2017 United Patriots entered into a coalition with GERB, the political party then holding the biggest number of parliamentary seats, and formed a joint government with it; United Patriots received three ministerial positions, one of which was allocated to Ataka. At the elections for European Parliament in May 2019 Ataka received 1.07% of the votes cast and did not win any seats. Ataka has its own television channel, which apparently regularly broadcasts a programme attacking ethnic minorities and foreigners (see paragraph 36 *in fine* below).

5. The party's leader, Mr Volen Siderov, has been an Ataka Member of Parliament since 2005. Before that, he worked as a journalist: in the early 1990s he was editor-in-chief of the daily newspaper *Demokratsia*; then, in

[1] Rectified on 4 March 2021. The sentence previously read: "They were represented by Ms A. Kachaunova, a lawyer practising in Sofia and working with the Bulgarian Helsinki Committee, and by Mr K. Kanev, the chairman of the Bulgarian Helsinki Committee."

the early 2000s, he was a columnist for the daily newspaper *Monitor*; and later he served as the presenter of a daily television programme *Ataka*, aired by the television station SKAT. In September 2006 he stood as a candidate in that month's presidential election. He came second in the first round of voting, receiving 21.5% of the votes cast, and in the run-off lost against the incumbent, Mr Georgi Parvanov, by 24.05% to 75.95%. In February 2011 Mr Siderov again announced his candidacy in the upcoming presidential election. In the first round of voting, which took place on 23 October 2011, he received 3.64% of the votes cast. Following the 2017 parliamentary elections (see paragraph 4 above), Mr Siderov became chairman of the United Patriots parliamentary grouping, but in July 2019 was removed from that position and was excluded from the parliamentary group along with two other Ataka members of parliament. Ataka nevertheless kept the ministerial position that it had in the coalition government (see paragraph 4 above).

6. The applicants described Ataka as a "xenophobic party" and said that in his career as a journalist and politician Mr Siderov had systematically engaged in extreme anti-minority propaganda, by way of his books, his articles in *Monitor*, and then his television programme, which in effect he had made his political platform.

7. Further information about Ataka's activities and political positions can be found in *Karaahmed v. Bulgaria* (no. 30587/13, §§ 7-27, 24 February 2015).

II. PROCEEDINGS UNDER THE 2003 PROTECTION FROM DISCRIMINATION ACT

8. In January 2006 the applicants and sixteen other people, as well as sixty-six non-governmental organisations, brought proceedings against Mr Siderov under section 5 of the 2003 Protection from Discrimination Act ("the 2003 Act" – see paragraph 22 below). They alleged that a number of public statements made by him had constituted harassment of, and an incitement to discrimination against, Roma, Turks, Jews, Catholics and sexual minorities. The applicants argued, *inter alia*, that each of them – as a member of a minority – had been personally affected by those statements; they also based their claim against Mr Siderov on Article 32 § 1 of the Constitution (see paragraph 19 below), noting that it afforded protection against infringements of one's dignity.

9. The Sofia District Court split the case into eight separate cases on the basis of the specific type of discrimination alleged by each group of claimants. The case of the two applicants, both of whom were Roma working as journalists who often reported on Roma-related issues, concerned statements made by Mr Siderov in relation to Roma.

A. Statements by Mr Siderov at issue in the applicants' case

10. In their claim, the applicants asserted that a number of statements made by Mr Siderov in his television programme, interviews, speeches and a book had amounted to harassment and incitement to discrimination against people of Roma ethnic origin. The applicants sought court orders against Mr Siderov to stop making such statements and to restore the *status quo ante* by publicly apologising for his statements.

11. The applicants referred in particular to the following statements by Mr Siderov (arranged in the order in which they appeared in the particulars of claim):

The 1 June 2005 edition of the *Ataka* television programme (with the theme of "Gypsy terror")

"... Professor [S.K.] died, expired, passed away. The man [was] beaten to a pulp after a terrorist attack by a Gypsy gang on peaceful Bulgarians [having fun] in their own place. ...

... This scientist – Bulgarian, famous, man of authority enjoying a very good name in scientific circles – was killed like a dog by a gang of ferocious Gypsies. With premeditation, wilfully, sadistically ...

... This whole genocide [was] carried out against the Bulgarian community in the Zaharna Fabrika neighbourhood. A genocide committed by an ethnic group of Gypsies. There is in Bulgaria a racial, ethnic discrimination against Bulgarians by the Gypsy ethnic group. ..."

The 4 June 2005 edition of the *Ataka* television programme (with the theme of "Gypsy terror")

"... A gang of Gypsies, eighty strong, carried out a terrorist attack against several Bulgarians who were attending the high school graduation dance of a man from the neighbourhood. People were thrashed in the course of this attack; one of them died. A fifty-three-year-old university professor of history, [S.K.], died after an awful, sadistic beating. It turns out that the problem is not confined to Zaharna Fabrika. This is a problem for the whole of Bulgaria. I have received information about similar happenings from all corners of the country. Some of the stories are harrowing, and people say that they live in such fear that they dare not even complain to the police because they would not do anything in response. I received information from the village of Mechka, near Pleven. I have spoken [before] about this village – there, in 2000, [P.T.] was killed in his own yard. Until this day this man's killers have not been caught, have not been convicted. They are from among the Gypsies, from the village's Gypsy neighbourhood. After this case, it turned out that it was not only this murder that had not been investigated – there had been seven more [such cases], villagers told me. Today they live in a fear that can only be compared with the fear of people living under foreign occupation – trembling each day for their life, for their property. ..."

The 7 June 2005 edition of the *Ataka* television programme (with the theme of "Gypsy terror")

"... And Gypsy terror over Bulgarians is growing literally by the week. ...

... This shows that the authorities refuse to deal with the Gypsy terror. This is a tremendous problem for Bulgaria. And I am telling you that if the authorities keep on refusing to address the issue, in two-three years, or five, Gypsy terror will become Bulgaria's foremost problem. But it will then be too late, for Bulgarians will have self-organised and responded to violence with violence. ...

... Think very hard; if Euroroma [a political party] enter Parliament, what greater [level of] protection will the terrorists from the Gypsy ghettoes ever gain? Because the thing they carry out – it is organised terror against Bulgarians. This terror must be brought to a halt. This terror must be resisted. And I promise you that work is being done in that respect. Hard work is being carried out by Bulgarians who can no longer bear the terrorising of their compatriots and will do all they can for this to cease. ...[2]"

The 8 June 2005 edition of the *Ataka* television programme (with the theme of "Gypsy terror")

"... There is no town, no settlement in Bulgaria that has not borne the brunt of Gypsy terror. ...

... I want to tell you also that the question of Gypsy terror can only be resolved by tackling ... tackling this population in general – putting it where it belongs. They should work, learn to respect the laws, learn to meet their obligations, [learn] to pay their taxes and dues. ..."

The 14 June 2005 edition of the *Ataka* television programme (with the theme "The Gypsy killers of Professor [K.] are free")

"... The Gypsy terror in Bulgaria continues. The Gypsy terror in Bulgaria has never stopped. What is more, this has now begun to be acknowledged by international studies that show that the bulk of the crime in the country – upwards of 30% – is being carried out by Gypsies. At the same time, this ethnic group accounts for a mere 5% of the general population. So we Bulgarians have been subjected to total Gypsy terror. Every day, every hour, in all corners of Bulgaria. ...

... An esteemed Bulgarian scientist was killed in a sadistic, barbaric manner by a gang of Gypsies. ...[3]"

The 4 May 2005 edition of the *Ataka* television programme (with the theme "The racial discrimination against Bulgarians in Bulgaria")

"... At the same time, whole Gypsy neighbourhoods are not only not paying for their electricity but also beat up fee collectors, attack the police vehicles that try to re-establish order, ... smash everything around them, loot shops, rob people ... and nothing is being done to them. When you ask the high command of the police or the State in general why they have not taken any measures, they say – in order not to provoke an ethnic conflict. So a group of people in Bulgaria – non-Bulgarians – is being placed in a privileged position. ... This is called democracy, this is called integration, this is called wonderful names, which however conceal a single thing – discrimination and genocide against the Bulgarians in Bulgaria. ..."

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[2] The passage marked in *italics* was later not formally put on the record of the proceedings (see paragraph 12 of the judgment).

[3] The passage marked in *italics* was later not formally put on the record of the proceedings (see paragraph 12 of the judgment).

The 6 May 2005 edition of the *Ataka* television programme

"... This huge wave of external and internal factors, which wish, which categorically wish and work to de-Bulgarianise Bulgaria. *Work to destroy the Bulgarian nation as a nation*.[4] Work for its Gypsification, for its Turkification. Work for everything but the possibility for the Bulgarian people to consist of Bulgarians. I would like to tell you that according to official statistical data more than half of the children born in Bulgaria are either little Turks or little Gypsies. This is because nowadays, with plenty of outside money, anti-Bulgarian factors, aided by national traitors from within, have long since been working to divide the Bulgarian people. Work is being done to make Gypsies feel like a separate nationality, to pretend that they are apart and to seek collective rights. Work is being done for all sorts of other ... to create all sorts of other invented nationalities in Bulgaria. The results are at hand – already more than half of all newborns in Bulgaria are not Bulgarian. This means that the de-Bulgarisation process is moving towards its high point – the end of the Bulgarian nation. ..."

The 25 May 2005 edition of the *Ataka* television programme (with the theme "Gypsy terror")

"... Today I would like to speak about a topic on which the so-called official media keep silent, and on which politicians keep silent too. This topic is Gypsy terror – the Gypsy terror carried out towards Bulgarians in Bulgaria. This is a very serious topic; this is a drastic topic. But most media, as I said, keep silent about this topic. ...

... Awful violence has taken place in the Zaharna Fabrika neighbourhood towards Bulgarians, and more than eighty Gypsies took part in it. They wrecked an establishment [selling food and drink], beat up a police officer, beat up the establishment's owner, beat up the people who were there, and yet I do not know of any of them having been arrested. Here – see this material from the front page of *Noshten Trud*, the only newspaper that does not shirk from writing about the Gypsy topic – the topic of Gypsy terror towards Bulgarians. ...

... In this case, notably, police officers were hurt as well. Though they tried to shoot plastic bullets into the air, they were attacked and some were struck and beaten up by the Gypsies. This is not the first such case. You will recall that a village police officer in a village near Burgas was beaten up – attacked by a gang of Gypsies. Forest rangers were attacked in Botevgrad and the vicinity. Forest workers were attacked near Samokov. Terror is constantly being generated across Bulgaria. By a population that calls itself 'a minority'. Except that in many towns and villages in Bulgaria it is no longer a minority but the majority. There are today hundreds of villages in Bulgaria in which the prevailing population is Gypsy. Not only does it not integrate – something that parrots getting food from foreign foundations talk about; it also terrorises the Bulgarian population there. This terror continues under the benevolent gaze of the ruling clique, which not only does nothing but also stops the law-enforcement authorities from intervening. Usually, when something like this happens, as in the case of this terror over Bulgarian citizens in Zaharna Fabrika, then orders come from somewhere high-up for the police not to intervene, for investigators to keep mum, for prosecutors not to sweat too much, and for the judicial system to, you know, close its eyes and not put the ruffians, the rapists, the killers – very often of Gypsy origin – in prison. ...

... The Bulgarian State nowadays tolerates Gypsy terror against Bulgarians. ..."

[4] The passage marked in *italics* was later not formally put on the record of the proceedings (see paragraph 12 of the judgment).

The 30 May 2005 edition of the *Ataka* television programme (with the theme "Gypsy terror")

"... Today I continue with the topic of Gypsy terror. ... These are between 1,500 and 2,000 Gypsies – no-one can say how many exactly – who have come from all over the country, have settled there, without registering their address. All of them are deemed to inhabit the same address ... and live there illegally. They do not pay taxes, do not pay fees, do not pay for electricity, do not pay for water supply. They pay for nothing. But what do they do – they beat up Bulgarians, rob them, ill-treat them, rape women, kill; there have been several murders already. I categorically promise you, dear Bulgarians, that I will investigate these cases, because this is not simply terror – 'Gypsy terror', as I have entitled my programme – this is genocide. This is to commit genocide against the Bulgarian ethnic group in Bulgaria. This genocide is being manipulated and stimulated from abroad. I have information that these Gypsy raids are being paid for – paid for so that they be organised and stir up unrest. Someone wishes this place to become like Kosovo. ..."

The 22 March 2005 edition of the *Ataka* television programme (with the theme "Gypsy terror")

"... And this is just one episode from the long series of instances of Gypsy violence, which is now an everyday occurrence in the capital. As you can see, we are talking about an inner-city school in the capital, in [the district of] Ovcha Kupel. And what about localities in the countryside – smaller settlements, villages – which are being constantly subjected to Gypsy violence? ...

... There are whole regions, dear Bulgarians, where settlements have in the last few years turned from Bulgarian – predominantly Bulgarian – to predominantly Gypsy. Someone would say that this is already a demographic issue. For my part, I say that this is a question of genocide against the Bulgarians, since Gypsy criminality is deliberately not being prosecuted. ...

... I must say that during the last few years – the last perhaps seven or eight years – about 102 towns and villages in Bulgaria have turned from predominantly Bulgarian to predominantly Gypsy. This means a conquest of Bulgaria – a 'Gypsification' that will lead to ... I personally dare not paint the picture that might result, because the impudence of those groups, ethnic groups, is growing like an avalanche. ..."

The 23 June 2004 edition of the *Ataka* television programme

"... We see how in the Borisova Gradina park the busts of a number of Bulgarian national writers and revolutionaries have gone missing, stolen by Gypsy gangs and melted for recycling. ..."

Interview with Mr Siderov aired by SKAT television in June 2005

"... I shall not detain people here with details of the dozens of instances of marauding, of crime left simply without any repercussions – just because it would cause ethnic unrest, as the people in power are now saying. ... They refuse to take a stance, and thus encourage whole groups of people, who simply know that they will not be sanctioned, and who do as they please. There are dozens of examples ... Villages, towns are simply squirming under a living terror. And this terror is becoming greater each day, and I believe that this should all be brought to a halt. There is a way to bring it to a halt. These ways ... so, at first they seem violent, administrative, but they are being applied in developed countries. And I shall again

point to America, so very beloved by all democrats and liberal-mongering politicians. Where anyone who commits an offence or attacks you in your home – on your property, which is inviolable and sacred by constitution – you can literally shoot him, [while] protecting your home, and not be held liable. I am categorically in favour of that. I want the Bulgarian to be protected in his own home. To be able to protect his family, his property, and not wonder whether, if he defends himself, he will tomorrow become a target for the judicial system, be branded as a violent offender, as has happened in some cases ...

... Gypsification is an enormous problem. It is not such an easy problem. Because I know of no country in Europe that has managed to integrate its Gypsy population, fully and completely. There is no such country. The problem is that in Bulgaria – unlike in Germany or France – this population is a serious percentage. There, even if there are Gypsies, they are a lot fewer in terms of percentage and do not create such a problem. If no measures are taken – at State level – as part of a programme, then this problem (I am categorically certain [and] I assure all viewers, all Bulgarians of this) ... will become paramount for Bulgaria in only five to six years. Because this population – let's say it honestly, directly – understands sanctions. As does, by the way, a serious part of the population of the Earth when they are subjected to sanctions. And we cannot be confident that self-education [and] moral scruples will prevail and that one fine day we will see ourselves surrounded by a Gypsy ethnic group that will be at such a level of morality as to by itself heed all laws and moral precepts. ..."

Speech by Mr Siderov at a pre-election rally of Ataka in Burgas on 22 June 2005

"... All Gypsy gangs, marauders, who torture, ill-treat, rape and loot in all towns of Bulgaria will be put in their place. ...

... Now is the time when we must begin to stop this process of the Gypsification of Bulgaria. ..."

Speech by Mr Siderov at the first session of the newly elected parliament on 11 July 2005

"... Because a gigantic genocide of the Bulgarian nation was carried out during this eight-year period. At the insistence of foreign factors (*фактори*) hostile to Bulgaria, it is envisaged to leave [just] three-and-a-half to four million of our people [remaining in Bulgaria. This is the plan of the Bulgarophobes, and this plan is being carried out before our very eyes. If someone asks how, I will explain: by stripping Bulgarians of the right to be masters in their own State; by leaving them to die of misery and lack of medicine and medical treatment; by subjecting them to terror by Gypsy gangs, who every day attack, loot, rape and ill-treat the Bulgarian nation. And then, deliberately, no one seeks to uncover the crimes committed by them, because the foreign directive is precisely that – not to investigate offences committed by these minority groups. The goal is for Bulgarians to live in fear, to lose faith, to be crushed, submissive. ..."

Interview with Mr Siderov aired by Darik Radio in July 2005

"**Host**: Now, the other topic – Roma. How to resolve the problem of illegal logging and the Roma?

Mr Siderov: ... I know that in this region this is an everyday occurrence, this happens all the time: Gypsies with carts, with saws, with equipment – quite decent, by

the way – are constantly cutting down [trees] ... there is illegal logging going on. ... This is well-known – everyone knows this. Just ask around the region – they will tell you. And in the fact that what happened here was a clash between Gypsy poachers who break the law (this should be said clearly, no one has done it until today) and law-enforcement authorities or forest rangers (I am not sure which – this will surely be elucidated in the future investigation). This is simply the consequence of something that is happening; measures against this illegal logging should have been taken long ago – put the perpetrators in prison and ensure that they do not think again of cutting down Bulgarian forests, because the damage is dreadful. This damage will not be made good for decades. This is simply an invasion of termites that is destroying Bulgaria.

Host: This is one side of the coin, Mr Siderov; but would you say that, should it be established that the gendarmerie or the forest rangers or the police have beaten up Gypsies – would you say that they should also be punished?

Mr Siderov: If it is established that Gypsies have beaten up – because I know of a case in which today or yesterday – not sure, let me avoid an error – but a very recent case in which Burgas Gypsies attacked some [water-charge] collectors and beat them up – collectors who were on their way to cut off the water mains of [someone] who had not paid water charges for three years.

Host: They should obviously be punished. And should those who beat up Gypsies likewise be punished?

Mr Siderov: Those who lay their hands on a law-enforcement officer should be punished with the full severity of the law. I am simply categorically in favour of that. In the case of [these gendarmes], I fully excuse the actions of the gendarmerie there, because in this case specifically we have a crime, we have illegal logging, we have an offence that has gone on for years. It was, you know, high time for the gendarmerie to intervene. I am for that.

Host: ... And yet, should Gypsies be beaten up in ... when they are being arrested?

Mr Siderov: This is not a correct question, because what is 'should they be' supposed to mean? Offences should be prevented ...

Host: Do you approve of violence against Gypsies?

Mr Siderov: If offenders put up resistance, they should be neutralised, including by force. This is the law. So there must have been some resistance, because there is more than one case in which Gypsies have attacked police officers, have attacked law-enforcement officers; there were police officers, patrols, and so on, who were beaten up. This is inadmissible; in every civilised country such people are simply neutralised on the spot, at that very second, by all possible means. And this is absolutely lawful, within the bounds of the law.

Host: And do you approve? Because there have been such cases against Bulgaria in Strasbourg [regarding] the thrashing of Gypsies in investigation facilities. When they have already been caught, do not put up resistance – they are being tied up and beaten.

Mr Siderov: And I would ask you: do you approve of an attack on a law-enforcement officer by a poacher, a law-breaker, a criminal?

Host: If we are to maintain a humorous vein – you are determined to preserve your image.

Mr Siderov: ... I am against Strasbourg's decision. If someone approves of a police officer being attacked, I, according to ... my personal opinion is that he should have permission and the right to shoot to kill in such cases, because this is how law-enforcement authorities operate. This is how it is in America, this how it is, you know, in developed countries – the police are inviolable; they cannot be attacked, especially by someone who is committing an offence. This is the same as ... he should become a target for the police officer, for the law-enforcement officer who is doing his duty, and be neutralised, including by using firearms. ..."

Passages from Mr Siderov's book *Bulgarophobia*, published in Sofia in 2003

"... They steal to get out of poverty, say the waged [*платените*] human-rights defenders; they have no jobs. They skip over the tiny fact that Gypsy families keep their children out of school *en masse* and they remain illiterate. What kind of work can they get later? If you offer them agricultural work, they balk. They prefer to steal the fruit. To steal wiring and scavenge all things made of metal. According to villagers, it is chiefly Gypsies who now burn the forests, so that they can smuggle wood after that. ..." (page 288)

"... According to the statistics, unemployment benefits in Bulgaria are distributed as follows: 65.2% of the money goes to Roma [and] 14.6% for Bulgarians. Again, the few active Bulgarians of working age who remain in Bulgaria support a gigantic percentage of Gypsies who for their part only take benefits, do not pay for anything, and are on top of all that the main thieves of electric wiring, which has caused the State losses of hundreds of millions and is everywhere [else] treated as terrorism (but we are broad-minded). If this is untrue, let the police and the investigators who deal with electric-wiring theft rebut me. ..." (page 315)

"... Throughout all those years, when Gypsy bandits stole, cut away tonnes of electric wiring (which in civilised countries is a terrorist act) and left whole regions without electricity, causing millions of levs in damages, non-Gypsies were hanging themselves from the ceiling out of despair ..." (page 332)

"... The brazenness of this demonstrable Gypsy banditry comes from statements such as that of [T.T.], the leader of the Roma Association, to the newspaper *Trud* on 14 August 2001: 'Bulgaria will become Kosovo'. The prophecy (or threat) of the Roma leader is evidently turning into reality. In the absence of State authority in Bulgaria, the next stage is terrorist acts and murders of non-Gypsies. 'What are we to do?' asks the police chief in Plovdiv hopelessly. Our advice is, first tender your resignation. And until then let someone who knows how to deal with terrorists and street vandals take over your post. ... " (page 333)

B. Course of the proceedings in the applicants' case

1. At first instance

12. When hearing the case on 21 November 2006, the Sofia District Court listened to audio recordings of Mr Siderov's statements presented by the applicants. The minutes of the hearing, drawn up by the court's clerk, did not include certain passages of dialogue (see footnotes 2, 3 and 4 above). On 8 December 2006 the applicants asked the court to rectify the minutes so that those passages were included in them. On 16 April 2007 the

court heard its clerk in the presence of counsel for the applicants. The clerk stated that she had noted down everything that she had been asked to, and that she had no clear recollection of hearing the passages of dialogue whose inclusion was being requested. In view of those explanations, and noting that the request for correction of the minutes had been made belatedly, the court refused to make the requested changes to the minutes.

13. On 15 October 2008 the Sofia District Court dismissed the applicants' claim. It began by noting that the case turned on whether Mr Siderov's statements had constituted a proper exercise of his right to express an opinion, as guaranteed by Article 39 § 1 of the Constitution (see paragraph 20 below), or whether they had amounted to an exercise of that right with a view to fomenting ethnic strife. The court went on to say that the assertion that the impugned statements had constituted harassment or incitement to discrimination were not supported by the facts. The statements, though revealing a negative attitude towards Roma as a group, had not been aimed at placing them at a disadvantage *vis-à-vis* other ethnic groups, but rather the opposite, as they had contained appeals that Roma be treated on an equal footing with other Bulgarian citizens. It was true that the statements, which had touched upon the integration of Roma, had been phrased in a manner that had not struck the correct tone and had not reflected the need for tolerance when discussing issues of public importance. But that was not in itself indicative of incitement to discrimination, since that turned on a statement's content rather than its form or wording. Mr Siderov had, whether justifiably or not, sought to focus the public's attention on "the fact that certain ethnic minority groups commit[ted] offences against the person, which went unpunished, and [did] not fulfil their obligations, as was expected of all Bulgarian citizens – namely not to disrupt public order and to pay their dues to the State and the various utility companies". Calls for the investigation and punishment of offences committed by members of one or other ethnic group, and for them to abide by the laws, did not amount to discrimination, but were rather directed towards the equal treatment of the members of the various ethnic groups. To accept that ethnicity might be grounds to treat an individual or a group differently and to exonerate them from criminal or civil liability would be tantamount to legitimising discrimination against people with a different ethnic self-consciousness, which was proscribed by the Constitution and the 2003 Act. Mr Siderov's public manifestation of his negative views about the conduct of the Roma community did not in itself amount to discrimination, since his statements had not been aimed at placing that community in a less favourable position; rather, he had called for – as was indeed required by law – equal treatment for all (see реш. от 15.10.2008 г. по гр. д. № 2858/2006 г., СРС).

2. The applicants' appeal

14. The applicants and the four other claimants in the case lodged an appeal with Sofia City Court, arguing that the first-instance court's findings had been formalistic and contrary to common sense. They argued that when a politician publicly spoke about an ethnic group in such crude terms, he in effect instilled fear and hatred towards it. It was not necessary for him directly to call for violence or discrimination against it. By holding otherwise, the court had erred in the application of the 2003 Act. Moreover, by referring to Mr Siderov's assertions as "fact", it had itself displayed racial bias.

15. On 21 June 2010 the Sofia City Court upheld the lower court's judgment. It held that the available evidence did not permit it to conclude that the impugned statements, as detailed in the statement of claim, had subjected the applicants to treatment different to that accorded to the rest of the population, or had constituted harassment or incitement to discrimination. In his newspaper articles, the public statements made by him over a considerable period of time (including his interview for Darik Radio), and his speech in Parliament in 2005, Mr Siderov had not directly or wilfully encouraged discrimination against those of Roma ethnicity. In particular, his remark in his book, *Bulgarophobia*, that the inhabitants of a Roma neighbourhood in the town of Plovdiv owed six million Bulgarian levs to the electricity company and that no steps were being taken to collect that debt could not be categorised as harassment (see реш. № 2935 от 21.06.2010 г. по в. гр. д. № 2703/2010 г., СГС).

3. The applicants' appeal to the Supreme Court of Cassation

16. The applicants and the four other claimants in the case appealed on points of law. They argued that the Sofia City Court had failed to give cogent reasons for its judgment or to properly analyse Mr Siderov's statements in the light of the definitions of harassment and incitement to discrimination given by the 2003 Act. They again emphasised that Mr Siderov was a well-known politician who had actively sought to vilify a whole ethnic group.

17. On 8 August 2012 the Supreme Court of Cassation declined to accept the appeal for examination. It held that there was no indication that there was inconsistent case-law regarding the points at issue in the case, or that it threw up special issues relating to the correct application of the law or its development (see опр. № 972 от 08.08.2012 г. по гр. д. № 1672/2011 г., ВКС, IV г. о.).

RELEVANT LEGAL FRAMEWORK

I. BULGARIAN LAW

A. Constitutional provisions

18. Article 6 § 2 of the 1991 Constitution provides for equality before the law in the following terms:

> "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."

19. Article 32 § 1 of the Constitution enshrines the right to protection of one's private life and dignity in the following terms:

> "Citizens' private life shall be inviolable. All shall be entitled to protection against unlawful interferences with their private ... life and against infringements of their honour, dignity or good name."

20. Article 39 § 1 of the Constitution provides that everyone is entitled to express an opinion and publicise it through words (whether written or oral), sounds or images, or in any other way. Under Article 39 § 2, that right must not be "exercised to the detriment of the rights and reputation of others, or for incitement to ... enmity or violence against anyone".

B. The 2003 Protection from Discrimination Act

1. Prohibition of discrimination and harassment

(a) Statutory provisions

21. The Protection from Discrimination Act was enacted in 2003 and came into force on 1 January 2004. Section 4(1) prohibits any direct or indirect discrimination on the basis of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status or property status, or on any other grounds laid down in statute or an international treaty to which Bulgaria is party.

22. Under section 5, harassment based on any of the grounds listed in section 4(1) – as well as sexual harassment, or incitement to discrimination, persecution and racial segregation – is deemed to constitute discrimination.

23. Paragraph 1(1) of the 2003 Act's additional provisions defines "harassment" as any unwanted conduct motivated by the grounds listed in section 4(1) – whether expressed through physical gestures, words or otherwise – that either is meant to infringe or results in the infringement of the dignity of the people concerned and the creation of an intimidating, hostile, degrading, humiliating or offensive environment. Paragraph 1(5) defines "incitement to discrimination" as direct and wilful encouragement,

instructions or pressure to practice (or coaxing into practising) discrimination.

24. The Supreme Administrative Court has stated that direct discrimination and harassment are related but nevertheless distinct concepts: as regards the concept of harassment, any difference in treatment is irrelevant – rather, harassment is characterised by its special aim or result, as set out in paragraph 1(1) (see реш. № 8105 от 08.06.2011 г. по адм. д. № 8708/2010 г., ВАС, VII о., upheld by реш. № 156 от 05.01.2012 г. по адм. д. № 13389/2011 г., ВАС, петчл. с-в).

(b) Case-law relating to public statements about Roma as a group

(i) Case-law of the Supreme Administrative Court

25. In a March 2009 judgment, upheld on appeal in December 2009, the Supreme Administrative Court found that statements by a mayor in a radio interview that "even cows in [his municipality] would cause less obstruction than a Gypsy neighbourhood" and that "such a Roma neighbourhood would be ten times more dangerous than a rubbish dump [located] in the proximity of living quarters" had amounted to harassment within the meaning of the 2003 Act, as they had infringed the dignity of a large number of people and had created an insulting environment based on ethnicity. The fact that the mayor had expressed his opinion in relation to a public-policy issue could not justify his comparing a minority ethnic group to "cows" and a "rubbish dump". Nor was it a defence that the mayor had not meant to offend the people concerned; it was enough that his words, which had been widely publicised in the Roma community, had led to that result (see реш. № 3019 от 06.03.2009 г. по адм. д. № 9485/2008 г., ВАС, VII о., upheld by реш. № 14472 от 01.12.2009 г. по адм. д. № 11158/2009 г., ВАС, петчл. с-в).

26. In a July 2009 judgment, upheld on appeal in February 2010, the same court held that a television programme portraying Roma as being prone to anti-social behaviour could lead to negative stereotypes and thus fell under the prohibition provided by section 5 of the 2003 Act (see paragraph 22 above), given that it could not be justified on freedom-of-expression grounds. That was so in view of, in particular, the special duties and responsibilities of journalists and the widely held prejudice against Roma (see реш. № 9983 от 23.07.2009 г. по адм. д. № 2059/2009 г., ВАС, VII о., upheld by реш. № 1476 от 04.02.2010 г. по адм. д. № 14286/ 2009 г., ВАС, петчл. с-в).

27. In a March 2016 judgment the same court held that by using a derogatory term for Roma in the name that he had given to a computer file, an IT expert employed by the presidential administration had committed "harassment" within the meaning of paragraph 1(1) of the 2003 Act's

additional provisions (see реш. № 2445 от 02.03.2016 г. по адм. д. № 1248/2015 г., ВАС, V о.).

28. By contrast, in a final judgment of January 2019 the same court held that a statement by a Deputy Prime Minister to Parliament – in which he had referred to offences committed by Roma in strongly negative terms and had stated that some Roma had turned into "impudent, arrogant and beast-like humanoids" – had amounted to a legitimate exercise of his right to freedom of expression, and that it had not amounted to "harassment" within the meaning of paragraph 1(1) of the 2003 Act's additional provisions (see paragraph 23 above) with respect to the individual Rom who had lodged a complaint about it, since he had not been named and since there was no evidence that he had been personally affected by it (see реш. № 636 от 15.01.2019 г. по адм. д. № 7229/2018 г., ВАС, V о.).

29. A similar approach was taken in a subsequent final judgment delivered by the same court with respect to statements relating to Roma made by a mayor (see реш. № 14026 от 21.10.2019 г. по адм. д. № 12163/2018 г., ВАС, V о.).

(ii) Case-law of the Supreme Court of Cassation

30. In a final June 2019 judgment (see реш. № 2 от 19.06.2019 г. по гр. д. № 3203/2018 г., ВКС, III г. о.) – the first judgment that it appears to have given in proceedings conducted under section 71 of the 2003 Act (see paragraph 33 below) – the Supreme Court of Cassation held (in relation to the above-mentioned statement by the Deputy Prime Minister – see paragraph 28 above) that, for there to be "harassment" within the meaning of paragraph 1(1) of the 2003 Act's additional provisions (see paragraph 23 above), there must be both "unwanted conduct" (for instance in the form of a public statement) and specific negative consequences of that conduct in the personal sphere of the people complaining of it (such as a refusal to employ them or lease accommodation to them, or the uttering of specific threats against them). On that basis, the court dismissed the claim, finding no evidence that the Deputy Prime Minister's statement had targeted the claimants or had somehow specifically affected them.

2. Proceedings before the Commission for Protection from Discrimination and follow-up claims for damages

31. The authority chiefly responsible for ensuring compliance with the 2003 Act is the Commission for Protection from Discrimination ("the CPD") (section 40). It can act of its own motion, or pursuant to complaints by the aggrieved parties or to reports by concerned persons or authorities (section 50). If the CPD finds that there has been a breach of the 2003 Act, it can order that that breach be averted or stopped, or that the *status quo ante* be restored (section 47(2)). It can also impose sanctions

(such as fines), order coercive measures, or give directions that must be complied with (section 47(3) and (4)). The CPD's decisions are amenable to judicial review (section 68(1) and section 84(2)).

32. People who have obtained a favourable decision delivered by the CPD and wish to obtain compensation for damage suffered as a result of the breach established by it can lodge a claim for compensation for damage against the persons or authorities that have caused that damage (section 74(1)).

3. Proceedings before the civil courts

33. Those complaining of discrimination can, alternatively, lodge a claim in a civil court seeking (a) a judicial declaration that there has been a breach of the 2003 Act, (b) an injunction against the party engaging in such discrimination requiring him or her to cease committing the breach, to restore the *status quo ante* and to refrain from committing any such breach in the future, and (c) damages (section 71(1)(1) to (1)(3)). Such a claim can be lodged on behalf of the aggrieved party by a non-governmental organisation (section 71(2)). If the alleged discrimination has affected many people, the non-governmental organisation may even lodge the claim in its own name, in which case those directly affected can join the proceedings as third parties (section 71(3)).

4. The possibility of choosing between bringing proceedings in the CPD and proceedings in the civil courts

34. In an interpretative decision given in January 2019 (тълк. пост. № 1 от 16.01.2019 г. по тълк. д. № 1/2016 г., ВКС, ОСГК, и ВАС, ОСС на I и II к.), a joint formation of the plenary of the Supreme Court of Cassation's civil chambers and of all the judges of the Supreme Administrative Court noted, *inter alia*, that the two possible avenues of redress under the 2003 Act – lodging a claim under section 71 with the civil courts and lodging a claim with the CPD – were alternatives between which the people concerned were entitled freely to choose.

II. COUNCIL OF EUROPE MATERIALS

35. In its Recommendation No. R (97) 20 to member States on "hate speech", which it adopted in 1997, the Committee of Ministers of the Council of Europe recommended that the member States "take appropriate steps to combat hate speech on the basis of the principles [herein] laid down". Those principles, set out in an appendix to the recommendation, read, in so far as relevant:

Scope

"The principles set out hereafter apply to hate speech, in particular hate speech disseminated through the media.

For the purposes of the application of these principles, the term 'hate speech' shall be understood as covering all forms of expression that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."

Principle 2

"The governments of the member [S]tates should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member [S]tates should examine ways and means to:

...

– enhance the possibilities of combating hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;

..."

Principle 3

"The governments of the member [S]tates should ensure that in the legal framework referred to in Principle 2, interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others."

Principle 4

"National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein."

36. In its fourth report on Bulgaria (CRI(2009)2), published in September 2009 and covering the period between 2004 and the middle of 2008, the European Commission against Racism and Intolerance ("ECRI") stated:

> "90. ECRI is concerned to note that an extreme right-wing party has been launching virulent verbal attacks on, among others, Turks as an ethnic and religious group, and that it has helped to create a climate of intolerance towards them. For instance, the party often presents Turks as a threat to the country. ECRI notes with approval that in March 2008 the party's leader was convicted by the Sofia Court on the grounds that he had created a hostile and threatening environment for Turks. The court ordered this party to refrain from making remarks of this kind. According to certain polls, the party's popularity is waning.
>
> ...
>
> 108. As stated elsewhere in this report, there have been instances of racist and xenophobic political speeches and comments, pronounced mainly by members of an extreme right-wing party and its leader. The latter has twice been sentenced for racist remarks in response to complaints by members of civil society. Six further complaints are currently before the courts. As stated above, a strong message from the authorities would be necessary to counter the harmful impact of this party and of any other political personality who indulges in the same kind of rhetoric, by ensuring that the prosecuting authorities make sure that the legislation on incitement to hatred is enforced. The political party's television channel regularly broadcasts a programme attacking ethnic minorities and foreigners. To date, however, no action has been taken against this channel, even though representatives of ethnic minorities have lodged complaints against it."

37. In its fifth report on Bulgaria (CRI(2014)36), published in September 2014 and covering the period between the middle of 2008 and March 2014, ECRI stated:

> "31. ... ECRI notes that racist and intolerant hate speech in political discourse continues to be a serious problem in Bulgaria and the situation is worsening. The main targets of racist hate speech are Roma, Muslims, Jews, Turks, and Macedonians. The last election campaign was marked by strong anti-Gypsyism. ... Much of the problem centres on one nationalist political party, Ataka, which is represented in Parliament. Its leader is well-known for his out-spoken racist views. He has rallied against the "gypsification" of Bulgaria, systematically linking Roma with criminals; he has called for a ban on the construction of mosques to halt the spread of Islam and he has published two antisemitic books."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

38. The applicants complained under Articles 8 and 14 of the Convention that the courts had dismissed their claim against Mr Siderov. Articles 8 and 14 provide, so far as relevant:

Article 8 (right to respect for private and family life)

"1. Everyone has the right to respect for his private ... life ..."

Article 14 (prohibition of discrimination)

"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."

A. Admissibility

1. Victim status

(a) The parties' submissions

39. The Government submitted that the applicants could not claim to be victims of a breach of their rights under Articles 8 or 14 of the Convention, and that their complaint in effect amounted to an *actio popularis*. They had not been directly affected by any of Mr Siderov's statements, and had, moreover, not sought any damages in relation to them.

40. The applicants referred to their submissions on the applicability of Article 8 of the Convention (see paragraph 46 below).

(b) The Court's assessment

41. The applicants' complaint does not concern Mr Siderov's statements as such. Indeed, there is no basis on which to hold that those statements are attributable to the Bulgarian State, and any complaints concerning the statements themselves would therefore be incompatible *ratione personae* with the provisions of the Convention (see, *mutatis mutandis*, *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, §§ 60-61, ECHR 2012). The complaint concerns solely the Bulgarian courts' refusal to accord the applicants redress with respect to those statements, which in the applicants' view was contrary to Bulgaria's positive obligations under Articles 8 and 14 of the Convention. It is not in doubt that the applicants were personally and directly affected by the judicial decisions dismissing their claim against Mr Siderov. Whether Mr Siderov's statements and the courts' reaction to them engaged the applicants' rights under Articles 8 and 14 is a question which has to do with the compatibility of the applicants' complaint with the provisions of the Convention *ratione materiae* rather than with their status as alleged victims in that respect.

42. In this regard, the position in the present case differs from that in *L.Z. v. Slovakia* ((dec.), no. 27753/06, § 69, 27 September 2011), which concerned a measure attributable to the respondent State – the renaming of a street – and where the question of whether that measure had affected the applicant's rights under Article 8 and the question of whether he could

claim to be a victim in that respect were inextricably linked. The position also differs from that in *Aksu* (cited above), where the complaint, as originally formulated, likewise concerned statements alleged to be partly attributable to the respondent State's authorities (ibid., §§ 60 and 81). The complaint at hand concerns solely the positive obligations allegedly incumbent on the Bulgarian authorities.

43. The Government's objection must therefore be rejected.

2. Applicability of Articles 8 and 14 of the Convention

(a) Submissions by the parties and the third parties

(i) The Government

44. The Government noted that the applicants' claim against Mr Siderov had been general rather than based on assertions that his statements had specifically affected their private sphere or had had any specific pernicious effects on them personally. It was telling in that regard that the applicants had not sought damages from Mr Siderov, as they had been able to do by law. According to the Court's case-law, the extent to which general statements about a group affected its individual members had to be assessed in the light of the particular circumstances. In this case, the applicants had waited for more than three years after the publication of Mr Siderov's book and for more than six months after his other statements before initiating proceedings against him. They had, moreover, not done so by themselves, but had joined a case piloted by a non-governmental organisation and encompassing claims relating to several minority groups. Such procedural conduct did not suggest any particular interest in vindicating one's personal rights or interests. The courts had, moreover, dismissed the applicants' claim owing to their finding that Mr Siderov's statements had not affected their dignity or amounted to harassment or incitement to discrimination towards them. The applicants could thus not validly assert that the statements in question had affected them to the point of engaging Article 8 of the Convention. Their being journalists, which had not been cited as an argument during the domestic proceedings, did not alter that conclusion.

45. The Government moreover submitted that the facts of the case did not engage Article 14 of the Convention either, since the applicants had not put forward prima facie evidence that Mr Siderov's statements had had a discriminatory intent or effect. The Government referred in this respect to the Bulgarian courts' finding that the statements had not constituted harassment or incitement to discrimination towards the applicants.

(ii) The applicants

46. The applicants pointed out that they were Roma who had lived their whole lives in Bulgaria, and that, being journalists reporting on issues relating to Roma, they were quite aware of all public statements bearing on

that topic. Mr Siderov's statements, which had received wide coverage, had amounted to virulent racist invective, and had been deeply shocking in view of the way in which they had been expressed. They had therefore affected the applicants' private life. The applicants had raised arguments to that effect from the outset of the domestic proceedings, even basing their claim on the provision of the Bulgarian Constitution (Article 32 § 1) that protected private life. Although some of the statements had concerned specific incidents, most of them had targeted, in the strongest of terms, the entire Roma community in Bulgaria.

47. The applicants went on to argue that Mr Siderov's statements had clearly had a discriminatory intent. For the most part, that had constituted racist hate speech deployed during an election campaign with a view to securing more votes. They had contained inflated language and had deliberately twisted the relevant facts, thus clearly seeking to stir up hatred and discrimination against Roma. Article 14 of the Convention had therefore likewise been engaged.

(iii) The third parties

(1) The Greek Helsinki Monitor

48. The Greek Helsinki Monitor, a non-governmental organisation based in Glyka Nera, Athens, referred at length to the practice of the United Nations Committee on the Elimination of Racial Discrimination regarding the question of whether individuals – even if not personally targeted – could be seen as sufficiently affected by offensive remarks directed against the ethnic or national group of which they were members. The intervenor also referred to judgments given by the Court of Justice of the European Union which, it argued, had a bearing on that question. It went on to note that various United Nations and Council of Europe bodies had emphasised the need to counter negative racial and ethnic stereotypes (in particular when spread by politicians), and cited reports that had expressed concern about the prevalence – particularly in Bulgaria – of such remarks. Lastly, it pointed out that while the Court's case-law under Article 10 of the Convention with respect to hate speech was quite well developed, the same could not be said of its case-law regarding the same point under Article 8 of the Convention. The case at hand was thus an excellent opportunity to bring the Court's case-law into line with emerging trends and provide the victims of hate speech proper protection.

(2) The European Roma Rights Centre

49. The European Roma Rights Centre ("ERRC") drew attention to the pervasiveness of discrimination against Roma in Europe, to their disadvantaged social position, and to the widespread use of racist rhetoric with respect to them – in particular by politicians. The ERRC referred

extensively to the 2012 Rabat Plan of Action "on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (A/HRC/22/17/Add.4). In its view, the prevalence of anti-Gypsyism in Europe meant that the Court had to accept that individual Roma people should be able to make legal challenges against hate speech directed against their community as a whole, and that when dealing with cases touching on that point, the national authorities had a duty under Article 14 of the Convention, read in conjunction with Article 8, to identify and name stereotypes common to anti-Gypsyism and to protect Roma from public figures spreading such stereotypes.

(b) The Court's assessment

(i) Applicability of Article 8 of the Convention

50. "Private life" within the meaning of Article 8 § 1 of the Convention is a broad term not susceptible to exhaustive definition. It is settled that it covers a person's moral integrity (see *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91; *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 95, ECHR 2012; and *Couderc and Hachette Filipacchi Associés* v. *France* [GC], no. 40454/07, § 83, ECHR 2015 (extracts)), and that it may encompass a person's zone of interaction with others, even in a public context (see *Von Hannover (no. 2)*, cited above, § 95; *Couderc and Hachette Filipacchi Associés*, cited above, § 83 *in fine*; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 131, 27 June 2017).

51. The question in this case is whether negative public statements about a social group can be seen as affecting the "private life" of individual members of that group to the point of triggering the application of Article 8 of the Convention in relation to them.

52. The point, which goes to the Court's jurisdiction *ratione materiae*, falls to be examined as an admissibility issue (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 92-93, 25 September 2018).

(1) Judgments and decisions bearing on the point

53. In the first two cases in which it was confronted with this issue, the Court declared the complaints under Article 8 of the Convention inadmissible without formulating general criteria.

54. In the first case, *Pirali v. Greece*, a naturalised Turkish refugee in Greece had been aggrieved by an anti-immigrant letter published in a newspaper. He had brought criminal proceedings coupled with a claim for damages against the newspaper's publisher, director and editor-in-chief, but the proceedings had been discontinued owing to the expiry of the relevant limitation period. The applicant complained under Articles 8 and 14 of the Convention that the State had failed to protect his honour. The Court held

that the applicant had not been personally affected by the publication at issue (since it had concerned all immigrants in Greece) and that the discontinuance of the proceedings could not engage the State's liability under Articles 8 or 14 (see *Pirali v. Greece* (dec.), no. 28542/05, 15 November 2007).

55. In the second case, *L.Z. v. Slovakia* (cited above), a Slovak national of Jewish ethnic origin living in the Czech Republic had been aggrieved by the renaming of a street in a Slovak village after a well-known Nazi collaborator. He had unsuccessfully brought proceedings in Slovakia in relation to that, and complained under Article 8 of the Convention that the renaming of the street had infringed his right to respect for his private life. The Court noted that (a) the substance of the applicant's arguments (before both the domestic courts and itself) against the renaming of the street was of a public-interest nature; (b) the applicant did not live in Slovakia and had no ties to the village where the street was located, not even having visited it; and (c) there was no evidence that the renaming of the street had negatively affected the applicant's private life. The complaint therefore amounted to an *actio popularis* (ibid., §§ 72-79).

56. The next case which threw up the point, *Aksu* (cited above), gave rise to a judgment by the Grand Chamber of the Court. In that judgment, the Grand Chamber laid down the general principle that, to be seen as capable of impacting on the sense of identity of an ethnic or social group and on the feelings of self-worth and self-confidence of the group's members to the point of triggering the application of Article 8 of the Convention in relation to them under its private-life limb, the negative stereotyping of the group "must reach a certain level" (ibid., § 58). The Grand Chamber did not, however, articulate expressly the factors which may bear on the point.

57. That case concerned a Roma living in Turkey who had been aggrieved by passages in an academic book about Roma in Turkey and by the definitions of the word "Gypsy" in two dictionaries (all three publications had been partly funded by the authorities). According to him, they contained language that negatively stereotyped Roma in Turkey as a group and thus offended his Roma identity. The Court found that although the applicant had not been personally targeted, he could have felt offended by the statements concerning the ethnic group to which he belonged, and that there had been no dispute in the domestic proceedings about his standing to sue in that regard. He could hence be considered as a victim in respect of the impugned remarks, and the publications allegedly affecting the identity of the group to which he belonged had therefore affected his "private life" (ibid., §§ 53 and 60).

58. The Grand Chamber of the Court was again presented with the issue in *Perinçek v. Switzerland*. In that case, a Turkish politician had been convicted in Switzerland in relation to public speeches that he had made there, in which he had denied that the mass killings of Armenians in the

Ottoman Empire in 1915 and over the following years had amounted to genocide. He complained under Article 10 of the Convention. The Grand Chamber found that the applicant's statements had affected the right of Armenians to respect for their and their ancestors' dignity – including their right to respect for their identity, which was constructed around the understanding that their community had suffered genocide. It held that these were rights protected under the "private life" heading of Article 8 of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 227, ECHR 2015 (extracts)). It noted in that regard that the Armenian community attached immense importance to the question of whether the tragic events of 1915 and the following years were to be regarded as genocide and was acutely sensitive to any statements regarding that point (ibid., § 252). It did not, however, set out more generally the types of factors which bore on its assessment.

59. In a subsequent case, *Lewit v. Austria*, an Austrian national of Jewish ethnic origin who was one of the last living survivors of the Mauthausen concentration camp had been aggrieved by an article in a right-wing periodical which had asserted that people freed from the camp in 1945 had engaged in robbing, plundering and killing, had called them a "plague for the people" ("*Landplage*"), and had commented favourably on the discontinuance of criminal proceedings opened with respect to a nearly identical earlier article. The applicant had, together with others, lodged a claim for damages against the owner of the periodical in relation to the second article, and it had been dismissed on the basis that he had not been personally affected by the article and thus had no standing to initiate proceedings respect of it. With reference to *Aksu* (cited above, § 58), the Chamber of the Court dealing with the case found that the last living survivors of the Mauthausen camp could be seen as a "(heterogeneous) social group", and that Article 8 of the Convention applied because the facts underlying the case fell within the scope of the applicant's "private life", even though the article had not personally named him (see *Lewit v. Austria,* no. 4782/18, §§ 46-47, 10 October 2019).

60. The issue arose also in a case, *Panayotova and Others v. Bulgaria*, which bore strong factual similarities with the present one. There, ethnic Roma living in Bulgaria had been aggrieved by an anti-Roma brochure published by Mr Siderov's political party, Ataka, in October 2011, and had unsuccessfully asked the prosecuting authorities to open a criminal investigation against Mr Siderov in relation to that brochure. They complained, *inter alia*, under Article 8 of the Convention of the authorities' refusal to do so. In assessing the applicability of Article 8, the Committee of the Court dealing with the case fully based itself on *Aksu* (cited above, § 58), and found that in view of its content and the manner in which it had been arranged and presented, the brochure had clearly sought to portray Roma in Bulgaria as exceptionally prone to crime and depravity, and thus to

stigmatise and vilify them. Those assertions had been far stronger than the statements at issue in *Aksu* (cited above), and it could hence be accepted that they had affected the applicants' "private life" (see *Panayotova and Others v. Bulgaria* (dec.) [Committee], no. 12509/13, § 56, 7 May 2019).

(2) Principles emerging from the relevant judgments and decisions of the Court

61. Thus, as matters stand, the general proposition flowing from the Court's case-law in this domain is that laid down in *Aksu* (cited above, § 58): that, to be seen as capable of impacting on the sense of identity of an ethnic or social group and on the feelings of self-worth and self-confidence of the group's members to the point of triggering the application of Article 8 of the Convention in relation to them, the negative stereotyping of the group "must reach a certain level". What emerges from the Court's reasoning in *Aksu* itself, and then in *Perinçek* and *Lewit* (both cited above), is that this point can only be decided on the basis of the entirety of the circumstances of the specific case.

62. It appears, however, necessary to spell out more explicitly the kinds of considerations which may bear on the assessment of that point. They can be distilled from the Court's findings in those cases, even though they were not expressly articulated in them. Some guidance can also be derived from the Court's general approach to the applicability of Article 8 of the Convention in cases in which the assertion is that someone's "private life" has been negatively affected by a statement or an act. In *Denisov* (cited above, §§ 112-14), the Grand Chamber of the Court held that in such cases the effects of the statement or act must rise above a "threshold of severity". Although the specific issue in *Denisov* (cited above) was whether a dismissal from one's professional position could engage Article 8, the broader point made there has subsequently been applied in cases raising very different issues. For instance, in *Hudorovič and Others v. Slovenia* (nos. 24816/14 and 25140/14, §§ 115 and 157, 10 March 2020), which concerned access to safe drinking water and sanitation by members of the Roma minority, the Court expressly referred to *Denisov* (cited above, § 114) and then relied on it to emphasise that the State's alleged failure to provide the applicants with access to safe drinking water would only raise an issue under Article 8 if there was convincing evidence that this failure had effectively eroded their core rights under that provision. In *Beizaras and Levickas v. Lithuania* (no. 41288/15, § 117, 14 January 2020), which concerned a matter much closer to the one under examination here, the Court found that violently homophobic statements made under a photograph published on the applicants' Facebook page had attained a sufficient level of seriousness to affect their "private life", and that Article 8 was thus engaged with respect to those statements. The Court emphasised in that connection that for Article 8 to come into play, an attack on a person must attain a

certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life (ibid., § 109). By contrast, in *Vučina v. Croatia* ((dec.), no. 58955/13, §§ 30-31 and 34-51, 24 September 2019), the application of the "threshold of severity" approach led to the conclusion that the publication of a photograph in a magazine with an erroneous caption identifying the applicant as someone else had not affected her to a degree attracting the application of Article 8.

63. Based on the case-law summarised in paragraphs 54 to 62 above, the Court finds that in cases such as the present one, where the allegation is that a public statement about a social or ethnic group has affected the "private life" of its members within the meaning of Article 8 of the Convention, the relevant factors for deciding whether that is indeed so include, but are not necessarily limited to, (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position *vis-à-vis* society as a whole), (b) the precise content of the negative statements regarding the group (in particular, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype), and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group's identity and dignity. It cannot be said that one of those factors invariably takes precedence; it is the interplay of all of them that leads to the ultimate conclusion on whether the "certain level" required under *Aksu* (cited above, § 58) and the "threshold of severity" required under *Denisov* (cited above, §§ 112-14) has been reached, and on whether Article 8 is thus applicable. The overall context of each case – in particular the social and political climate prevalent at the time when the statements were made – may also be an important consideration.

(3) Application of those principles

64. In this case, as borne out by the content of Mr Siderov's numerous statements (see paragraph 11 above), the group targeted by him were the Roma in Bulgaria. The Court has long acknowledged the disadvantaged and vulnerable position of Roma and the need for their special protection (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 96, ECHR 2001-I; *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 181-82, ECHR 2007-IV; *Oršuš and Others v. Croatia* [GC], no. 15766/03, §§ 147-48, ECHR 2010; *Aksu*, cited above, §§ 44 and 75; *Horváth and Kiss v. Hungary*, no. 11146/11, § 102, 29 January 2013; *Vona v. Hungary*, no. 35943/10, § 67, ECHR 2013; and *Hirtu and Others v. France*, no. 24720/13, § 70, 14 May 2020), and has specifically

emphasised the need to combat their negative stereotyping (see *Aksu*, cited above, § 75 *in fine*).

65. Mr Siderov's statements, all of which appear to have been deliberately couched in inflammatory terms, visibly sought to portray Roma in Bulgaria as exceptionally prone to crime and depravity (compare *Panayotova and Others*, cited above, §§ 8-11 and 56). The statements were systematic and characterised by their extreme virulence (see paragraph 11 above: "genocide committed by an ethnic group of Gypsies"; "Gypsy terror over Bulgarians"; "Gypsy terror in Bulgaria"; "genocide against the Bulgarian ethnic group in Bulgaria"; "towns ... simply squirming under a living terror"; "Gypsy gangs, marauders"; "brazenness of this demonstrable Gypsy banditry", "gigantic genocide of the Bulgarian nation", and so on). Although some of the statements referred to specific incidents, the overall thrust of Mr Siderov's message, conveyed bluntly and repeated many times over, was, in essence, that Roma were immoral social parasites who abused their rights, lived off the back of the Bulgarian majority, subjected that majority to systematic violence and crime without hindrance, and aimed to take over the country. It is beyond doubt that this amounted to extreme negative stereotyping meant to vilify Roma in Bulgaria and to stir up prejudice and hatred towards them.

66. In view of the many channels of communication used by Mr Siderov – television and radio programmes, public speeches and a book – and the frequent repetition of his core message (as outlined above) – especially in the run-up to the parliamentary elections in June 2005 – it can be accepted that his statements reached a wide audience.

67. When making most of the statements at issue in the present case Mr Siderov was a well-known figure in Bulgarian society, and the chairman of a then ascendant political party, who shortly after making those statements came second in a presidential election (see paragraph 5 above). Moreover, his vehement anti-Roma stance appears to have constituted a core component of his party's political message (see paragraphs 36 and 37 above; see also the factual findings in *Panayotova and Others*, cited above, §§ 8-11). Indeed, the applicants lodged their claim against Mr Siderov at precisely the time when his political career was on the rise (see paragraphs 4-5 and 8 above), and when his utterances were thus gaining more notoriety. The fact that the applicants did so jointly with many others is not, in the circumstances, a material consideration (compare *Lewit*, cited above, § 18).

68. In view of all these factors, which in this case point in the same direction and reinforce each other, the Court accepts that the statements made by Mr Siderov and impugned by the applicants were capable of having a sufficient impact on the sense of identity of Roma in Bulgaria and on the feelings of self-worth and self-confidence of individual Roma there to have reached the "certain level" (see *Aksu*, cited above, § 58) or

"threshold of severity" (see *Denisov*, cited above, §§ 112-14) required, and thus affected the applicants' "private life". Article 8 of the Convention is hence applicable.

(ii) Applicability of Article 14 of the Convention

69. Article 14 of the Convention has no independent existence, and only applies if the facts at issue fall within the ambit of one or more of the substantive provisions of the Convention or its Protocols (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts)). Since, as found above, the facts of the present case fall within the ambit of Article 8 of the Convention, Article 14 is applicable, and the complaint will hence also be examined in its light.

3. Exhaustion of domestic remedies

(a) The parties' submissions

70. The Government submitted that by opting for proceedings before the civil courts rather than proceedings before the CPD, the applicants had failed to exhaust the available domestic remedies. In view of the nature of the redress that they had sought with respect to Mr Siderov, proceedings before the CPD would have been more suitable. A direct claim before the civil courts was more apt if the alleged victims asserted that they had personally suffered damage as a result of harassment or incitement to discrimination, which was not so in the applicants' case. Proceedings before the CPD would also have been faster and more effective, and could have led to sanctions against Mr Siderov. The applicants had not explained their preference for civil-court proceedings. Moreover, they had waited for quite a while after the impugned statements before bringing those proceedings.

71. The applicants submitted that they had legitimately opted for one of the alternative avenues of redress under the 2003 Act. There was nothing to suggest that proceedings before the CPD would have been more effective.

(b) The Court's assessment

72. The general principles regarding the requirement to exhaust domestic remedies are summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). Regarding situations in which different avenues of redress are available, the Court reiterates that an applicant who has made use of a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). Where a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009).

73. The 2003 Act provides for two possible avenues of redress with respect to discrimination and harassment allegedly perpetrated by private persons: (a) proceedings before a special commission (possibly followed by judicial-review proceedings before the administrative courts in respect of the commission's decision, and by proceedings for damages in the civil courts), or (b) proceedings brought directly in the civil courts – the route chosen by the applicants. It cannot be said that the former would have presented any clear advantages in terms of the remedial options available. The applicants wished to obtain an official finding that Mr Siderov's statements had amounted to harassment and an incitement to discrimination, an order that he stop making such statements, and a restoration of the *status quo ante* by way of an apology (see paragraph 10 above). They could have achieved that through either procedure. The special commission can find a breach of the 2003 Act and order that the breach be stopped and that the *status quo ante* be restored, and so can the civil courts (see paragraphs 31 and 33 above). Indeed, recently the plenary of the Supreme Court of Cassation's civil chambers and of all the judges of the Supreme Administrative Court expressly noted that the two procedures were alternatives between which the people concerned were entitled freely to choose (see paragraph 34 above).

74. Nor can it be said that, as matters stood when the applicants lodged their claim against Mr Siderov, it was clear that the alternative remedy – proceedings before the special commission – would have offered better chances of success. It is true that, as borne out by the case-law cited in paragraphs 25 to 27, such proceedings appear to have so far yielded more success to people complaining of racial harassment by way of general statements stigmatising their ethnic group. But the final decisions in those cases date from 2009, 2010 and 2016, whereas the applicants launched the proceedings at issue earlier, in January 2006. At that time, the 2003 Act had been in operation for just over two years (see paragraph 21 above), and there was apparently nothing to suggest that either one of the two alternative remedial routes under it afforded better prospects of success than the other.

75. Nor is it apparent that proceedings before the special commission would have been capable of affording the applicants redress faster than proceedings in the civil courts. It should not be overlooked in this regard that the commission's decisions are not final but rather are amenable to judicial review (see paragraph 31 *in fine* above).

76. In sum, the applicants cannot be criticised for not having attempted a remedy that would have been directed essentially at the same end as the one already attempted by them and which, as matters stood when they were faced with a choice between the two, did not appear to offer a better prospect of redress (see, *mutatis mutandis*, *A. v. France*, 23 November 1993, § 32, Series A no. 277-B; *Iatridis v. Greece* [GC], no. 31107/96, § 47,

ECHR 1999-II; *Guberina v. Croatia*, no. 23682/13, § 50, 22 March 2016; and *Lewit*, cited above, §§ 72-73).

77. The Government's objection must therefore be rejected.

4. Whether the complaint is in part manifestly ill-founded

(a) The parties' submissions

78. The Government submitted that some of Mr Siderov's statements had not been admitted to the record of the domestic proceedings, and had as a result not been part of the material examined by the Bulgarian courts (see footnotes 2, 3 and 4 and paragraph 12 above). The applicants' request that the record of the proceedings be rectified had been refused because, *inter alia*, it had been belated. Mr Siderov's interview with Darik Radio had been included in the evidence submitted during the domestic proceedings solely by way of witness testimony (that is to say a listener submitted an account of the interview) rather than through an audio recording whose authenticity could be checked. The complaint, so far as it concerned all those statements, was thus manifestly ill-founded. In so far as it concerned passages from the book *Bulgarophobia* (see paragraph 11 *in fine* above), the complaint was likewise manifestly ill-founded, as the applicants had not submitted a copy of the whole book, but only selected passages from it, either in the domestic proceedings or in those before the Court. Those passages could not be duly assessed outside their proper context, which was within the book as a whole.

79. The applicants noted that the Government did not contest the reality of those of Mr Siderov's statements that had not formally been included in the record of the domestic proceedings against him. They also pointed out that the Sofia District Court's refusal to include those statements in the record had been based solely on the evidence of the clerk who had drawn up the minutes of the hearing. Mr Siderov's interview with Darik Radio had been duly included in the record of the domestic proceedings against him. As for the book *Bulgarophobia*, it was quite voluminous (running to a total of 454 pages), and consisted of a collection of articles by Mr Siderov, most of which were unrelated to the issues pertinent to the case at hand. The relevant passages of the book had been included in the record of the domestic proceedings against Mr Siderov and taken into account by the domestic courts, as evidenced by the direct reference to the book in the Sofia City Court's judgment. All those statements did not therefore fall to be excluded from consideration in the present case.

(b) The Court's assessment

80. As already noted, the applicants' complaint does not concern Mr Siderov's statements as such, but rather the Bulgarian courts' refusal to accord to the applicants redress with respect to them. Nothing in the reasons

that those courts gave for dismissing the applicants' claim suggested that they did so owing to the absence from the official record of those phrases that were not noted down by the clerk keeping the record of the hearing at which the court played the audio recording of Mr Siderov's statements (see paragraph 12 above). Indeed, those phrases do not appear to have substantially altered or added to the general thrust of his utterances (see paragraph 11 and footnotes 2, 3 and 4 above). Rather, the reasons that the courts gave for dismissing the applicants' claim had to do with their overall assessment of the language used by Mr Siderov in those of his statements that are at issue in the case and the impact of that language on the applicants (see paragraphs 13 and 15 above). Moreover, the Sofia City Court appears to have based its judgment on all of the statements made by Mr Siderov outlined in the applicants' statement of claim, rather than solely on those featuring in the record of the hearing on 21 November 2006 (see paragraph 15 above).

81. The reasoning of the Sofia City Court's judgment also shows that it had regard to Mr Siderov's interview with Darik Radio (see paragraph 15 above).

82. As for the book *Bulgarophobia* (see paragraph 11 *in fine* above), there is nothing to suggest that its not being submitted to the Bulgarian courts in its entirety somehow prevented them from properly assessing the passages of which the applicants complained.

83. The complaint cannot therefore be rejected as manifestly ill-founded in respect of the statements outlined by the Government.

5. Conclusion regarding the admissibility of the complaint

84. It has already been found that the complaint is not inadmissible because the applicants could not be regarded as victims, or because of its alleged incompatibility *ratione materiae* with the provisions of the Convention, or because of a failure by the applicants to exhaust domestic remedies, or owing to its being in part manifestly ill-founded. Nor can it be said that the complaint is manifestly ill-founded as a whole, or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

85. According to the applicants, the Bulgarian courts had not properly assessed Mr Siderov's statements. The statements had clearly amounted to racist hate speech: they had referred to Roma in denigrating terms; imputed exceptional cruelty to them; portrayed them as engaging in extreme and violent forms of discrimination *vis-à-vis* Bulgarians, as social parasites and

as a demographic threat to Bulgaria; alleged that they were especially prone to crime; and called for action on the part of Bulgarians to resist and combat their "terror". Such language could not be portrayed as part of a debate conducted in the general interest in a democratic society, and merited very limited protection; rather, it deserved to be sanctioned. In view of the pervasiveness of discrimination against Roma in Bulgaria, which was closely linked to the prevailing stereotypes about them, Mr Siderov's statements, which had sought to boost those stereotypes, had deeply affected the Roma community, and the applicants as members thereof. The fact that the applicants were journalists meant that they had had to face those statements for a long period of time. Other factors to be taken into account were Mr Siderov's prominence and his easy access to media and other speaking platforms, and the fact that, owing to the manner in which they had been made, his statements had reached a very wide audience. Lastly, it had to be borne in mind that the applicants had not pressed for criminal penalties to be imposed on him, but had merely sought civil declaratory and injunctive relief.

(b) The Government

86. The Government submitted that they were aware of the serious nature and consequences of discrimination based on ethnicity, especially when directed against vulnerable minorities. They pointed out that the integration of Roma in Bulgaria was a problem that had constantly fuelled public debate in the country over the past decades. They referred to various difficulties and initiatives taken in that regard, and argued that Mr Siderov's utterances had to be seen against that backdrop. Moreover, two of his statements had been made in response to specific incidents. According to the Government, Mr Siderov's statements had not amounted to hate speech: they had neither called for or justified violence, hatred or intolerance, nor had they had the capacity to do so. Rather, they had amounted to criticism of the authorities for not doing enough to tackle crime and for artificially separating minorities from society and sealing them off. That was especially the case in respect of Mr Siderov's speech to Parliament. It had to be recognised also that Mr Siderov had resorted to inflated language in order to attract attention, and that Article 10 of the Convention protected even ideas that could offend, shock or disturb. He had spoken on matters of public interest in his capacity as a journalist and a politician, which meant that there had been little scope for restricting his right to freedom of expression. As could be seen from their reasoning, the Bulgarian courts had duly balanced that right against the need to protect the applicants' private life. It also had to be borne in mind that Mr Siderov's statements had not been made against a tense social or political background, and, as noted by the Sofia City Court, had not been capable of leading to harmful consequences. It was telling in this connection that since emerging on the political scene in

the mid-2000s, his political party, Ataka, had been continually losing electoral support. That indicated that Mr Siderov's statements had not seriously affected Bulgarian society. Nor was there any evidence that they had affected the applicants, or Roma in Bulgaria in general.

2. The Court's assessment

87. It is settled that Article 8 of the Convention gives rise to positive obligations, and that these obligations may require the adoption of measures designed to secure "respect for ... private life" even in the sphere of the relations of individuals between themselves (see, among other authorities, *X and Y v. the Netherlands*, § 23; *Von Hannover (no. 2)*, § 98; and *Aksu*, § 59, all cited above).

88. In *Aksu* (cited above, §§ 61 and 81), the Court held, in relation to public statements alleged to have negatively stereotyped a minority ethnic group (Roma in Turkey), that since those statements could be seen as affecting the "private life" of the group's individual members, there was a positive obligation to afford them redress with respect to those statements.

89. In discharging this duty, the national authorities must, however, also have regard to the rights of the author of the statements under Article 10 of the Convention. Thus, in such cases the chief question becomes whether the authorities have struck a proper balance between the aggrieved party's right to respect for his or her "private life" and the right of the author of the statements to freedom of expression. The general principles governing the analysis of this point have been set out in *Aksu* (cited above, §§ 62-68; see also *Perinçek*, cited above, §§ 198-99 and 228). There is no need to repeat them in full here, except to emphasise that the key consideration is the relative weight that should be ascribed to these two rights – which are in principle entitled to equal respect – in the specific circumstances of each case, and that this turns on the comparative importance of the concrete aspects of the two rights that are at stake in the case in question, and the need to restrict (or, as the case may be, protect) each of them. The national authorities have a margin of appreciation in making this assessment, but their conclusion can be accepted by the Court only if they have carried out the balancing exercise in conformity with the criteria laid down in its case-law.

90. According to that case-law, expression on matters of public interest is in principle entitled to strong protection under Article 10 of the Convention, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection (see *Perinçek*, cited above, § 230, with further references). The Court has also recognised the vital role played by the media in a democratic society (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 52, ECHR 1999-I; *Stoll v. Switzerland* [GC], no. 69698/01, § 102, ECHR 2007-V; and *Pentikäinen v. Finland* [GC], no. 11882/10, § 91, ECHR 2015), and has

consistently emphasised the importance of freedom of expression for members of parliament (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 137, 17 May 2016, with further references). It has, at the same time, accepted that it may be justified to impose even serious criminal-law sanctions on journalists or politicians in cases of hate speech or incitement to violence (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI; *Otegi Mondragon v. Spain*, no. 2034/07, § 59, ECHR 2011; and in particular *Atamanchuk v. Russia*, no. 4493/11, §§ 67 and 70, 11 February 2020), and stated that even statements made by members of parliament deserve little, if any, protection if their content is at odds with the democratic values of the Convention system, since the exercise of freedom of expression, even in parliament, carries with it the "duties and responsibilities" referred to in Article 10 § 2 (see *Pastörs v. Germany*, no. 55225/14, § 47, 3 October 2019).

91. Since the statements in respect of which the applicants sought redress were (as is obvious from the very terms used in them) prima facie discriminatory in intent with respect to Roma, in the present case that analysis must also be coloured by the duties stemming from Article 14 of the Convention – in particular the duty to combat racial discrimination, which includes discrimination on account of someone's ethnic origin (contrast *Aksu*, cited above, §§ 43-45).

92. It is not for the Court to say whether the impugned statements amounted to "harassment" or "incitement to discrimination, persecution and racial segregation" within the meaning of section 5 of the 2003 Act and paragraph 1(1) of the 2003 Act's additional provisions (see paragraphs 22 and 23 above). It is for the national authorities – especially the courts – to interpret and apply domestic law. The Court's task is limited to reviewing their decisions in the light of the requirements of the Convention.

93. In this case, by contrast with *Aksu* (cited above, §§ 69-72 and 82-87), it cannot be said that the Bulgarian courts assessed the tenor of Mr Siderov's statements in an adequate manner. Although the courts acknowledged the vehemence of the statements, they downplayed their capacity to stigmatise Roma in Bulgaria as a group and arouse hatred and prejudice against them, and apparently saw them as no more than part of a legitimate debate on matters of public concern (see paragraphs 13 and 15 above). That, however, ignored the point that while an expression of opinion might touch upon a matter of public concern – such as the relations between ethnic groups in a country – it can at the same time promote or justify hatred and intolerance towards some of those groups, and thus be entitled to no or very limited protection under Article 10 of the Convention (see, for example, *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007, regarding statements concerning Jews in Russia, and *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, § 79, 4 November 2008, regarding statements concerning Jews and Poles in Lithuania). In view of

the language used by Mr Siderov and the overall thrust of his message (see paragraphs 11 and 65 above), his statements went beyond being a legitimate part of a public debate about ethnic relations and crime in Bulgaria, even if it can be recognised that they included an element of exaggeration calculated to attract attention. As already noted, they amounted to extreme negative stereotyping meant to vilify Roma in that country and stir up prejudice and hatred towards them (see paragraph 65 *in fine* above).

94. The manner in which the Bulgarian courts assessed the tenor of Mr Siderov's statements reflected on the way in which they balanced his right to freedom of expression against the applicants' right to respect for their private life. Although they recognised the tension between those two rights, the courts cannot be said to have properly weighed their relative importance in the circumstances. The Court has consistently held that sweeping statements attacking or casting in a negative light entire ethnic, religious or other groups deserve no or very limited protection under Article 10 of the Convention, read in the light of Article 17 (see *Seurot v. France* (dec.), no. 57383/00, 18 May 2004; *Soulas and Others v. France*, no. 15948/03, §§ 40 and 43-44, 10 July 2008; and *Le Pen v. France* (dec.), no. 18788/09, 20 April 2010, which concerned generalised negative statements about non-European and in particular Muslim immigrants in France; *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI, which concerned statements linking all Muslims in the United Kingdom with the terrorist acts in the United States of America on 11 September 2001; *W.P. and Others v. Poland* (dec.), no. 42264/98, ECHR 2004-VII, and *Pavel Ivanov*, cited above, which concerned vehement anti-Semitic statements; *Balsytė-Lideikienė*, cited above, § 79, which concerned accusations that Jews and Poles in Lithuania had committed war crimes and genocide against the Lithuanian majority; and *Féret v. Belgium*, no. 15615/07, § 71, 16 July 2009, which concerned statements portraying non-European immigrant communities in Belgium as criminally minded). This is fully in line with the requirement, stemming from Article 14 of the Convention, to combat racial discrimination. The fact that the author of the statements is a politician or speaks in his or her capacity as a member of parliament does not alter that (see *Féret*, cited above, § 77). By in effect ascribing considerable weight to Mr Siderov's right to freedom of expression in relation to the statements impugned by the applicants, and by playing down the effect of those statements on the applicants as ethnic Roma living in Bulgaria (the country in which Mr Siderov had made the statements), the Bulgarian courts failed to carry out the requisite balancing exercise in line with the criteria laid down in the Court's case-law.

95. By refusing to grant the applicants redress in respect of Mr Siderov's discriminatory statements, the domestic authorities failed to comply with their positive obligation to respond adequately to discrimination on account of the applicants' ethnic origin and to secure respect for the applicants' "private life". There has therefore been a breach of Article 8 of the Convention read in conjunction with Article 14.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 14 OF THE CONVENTION

96. The applicants complained under Articles 6 § 1 and 14 of the Convention that by dismissing their claim against Mr Siderov and referring to his assertions as a "fact" the Sofia District Court, whose judgment had been upheld on appeal, had in effect legitimised Mr Siderov's racist views, displayed racial bias, denied the applicants a fair trial, and discriminated against them.

97. The parties made no submissions in relation to this complaint.

98. The Court has – when dealing with the complaint under Articles 8 and 14 of the Convention – already analysed the reasons given by the Bulgarian courts for the dismissal of the applicants' claim against Mr Siderov. Hence, the present complaint, which also concerns those reasons, does not require separate examination (see, *mutatis mutandis*, *Tautkus v. Lithuania*, no. 29474/09, § 62, 27 November 2012).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicants claimed 6,000 euros (EUR) each in respect of the non-pecuniary damage that they had allegedly suffered as a result of the refusal of the Bulgarian courts to afford them redress with respect to Mr Siderov's repeated public vilification of their Roma ethnic identity.

101. The Government submitted that that claim was inadmissible for non-exhaustion of domestic remedies, as the applicants had not sought damages during the domestic proceedings. The claim was also ill-founded, there being no evidence that the applicants had suffered any discrimination as a result of those of the statements made by Mr Siderov that are at issue in the instant case.

102. According to the Court's case-law, the rule that domestic remedies need to be exhausted does not apply to just satisfaction claims submitted under Article 41 (formerly Article 50) of the Convention (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 15, Series A no. 14; *Salah v. the Netherlands*, no. 8196/02, § 67, ECHR 2006-IX (extracts); and *Dimitrovi v. Bulgaria* (just satisfaction), no. 12655/09, § 16, 21 July 2016). The mere fact that an applicant has not sought compensation at domestic level is therefore no bar to his or her claiming just satisfaction from the Court (see *KIPS DOO and Drekalović v. Montenegro*, no. 28766/06, § 144, 26 June 2018).

103. That said, in the circumstances of the case the finding of a breach of Article 8 of the Convention, read in conjunction with Article 14 of the Convention, can be seen as amounting to sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants as a result of the dismissal of their claim against Mr Siderov.

B. Costs and expenses

104. The applicants sought the reimbursement of the EUR 5,100 that (they submitted) they had incurred in lawyers' fees for a total of fifty-one hours of work on the domestic proceedings against Mr Siderov and on the proceedings before the Court, at the hourly rate of EUR 100. They submitted that their representatives – two lawyers working with the Bulgarian Helsinki Committee and the chairman of the Committee – had spent twenty-two hours on the domestic proceedings and twenty-nine hours on the proceedings before the Court. The applicants requested that any award under this head be made directly payable to the Bulgarian Helsinki Committee. In support of their claim, they submitted fee agreements between each of them and the Bulgarian Helsinki Committee. Those agreements, concluded on 3 September 2012, related solely to the proceedings before the Court.

105. The Government pointed out that the claim relating to the domestic proceedings was not supported by any documents, since the agreement between the applicants and the Bulgarian Helsinki Committee only covered the proceedings before the Court. They furthermore argued that the hourly rate was excessive, and that the case had not required as much work as claimed, given the fact that it had been of a relatively simple nature.

106. According to the Court's case-law, applicants are entitled to the reimbursement of their 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 (see, among many other authorities, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017).

107. In this case, the claim relating to the lawyers' fees allegedly incurred by the applicants in the domestic proceedings against Mr Siderov was not supported by any documents. There is therefore no basis on which to establish that these have actually been incurred by them. This head of claim must accordingly be rejected.

108. As regards the fees incurred in respect of the proceedings before the Court, the main point of contention is whether they were reasonable as to quantum. The Court is not bound by domestic scales or standards in that assessment (see *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 190, 1 July 2014, with further references). It notes that the hourly rate charged by the applicants' representatives for their work is the same as that charged in respect of two relatively recent cases against Bulgaria (see *Myumyun v. Bulgaria*, no. 67258/13, § 83, 3 November 2015, and *Tomov and Nikolova v. Bulgaria*, no. 50506/09, § 66, 21 July 2016). It can thus be seen as reasonable. In view of the relatively high complexity of the issues raised by the case and the length and content of the submissions made on behalf of the applicants, the number of hours claimed can also be seen as reasonable. The applicants are hence to be awarded EUR 2,900, plus any tax that may be chargeable to them. As requested by them, this sum is to be paid directly into the bank account of the Bulgarian Helsinki Committee.

C. Default interest

109. 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. *Declares* the complaint under Articles 8 and 14 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention read in conjunction with Article 14 of the Convention;

3. *Holds* that there is no need to examine the admissibility or merits of the complaint under Articles 6 § 1 and 14 of the Convention;

4. *Holds* that the finding of a violation of Article 8 of the Convention read in conjunction with Article 14 of the Convention constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicants;

5. *Holds*

(a) that the respondent State is to pay the applicants, in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,900 (two thousand nine hundred euros), plus any tax that may be chargeable to the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, and to be paid directly into the bank account of the Bulgarian Helsinki Committee;[5]

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President

[5] Rectified on 4 March 2021. The following text was added: ", and to be paid directly into the bank account of the Bulgarian Helsinki Committee".