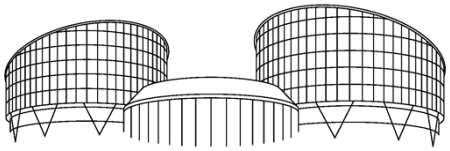

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ILAREVA AND OTHERS v. BULGARIA

(Application no. 24729/17)

JUDGMENT

Art 8 (+ Art 14) • Positive obligations • Private life • Discrimination • Ineffective investigation into complaints of death threats, incitement to violence and hate speech, made on Facebook by private individuals against the applicants in connection with their work for the protection of the rights of migrants and minorities • Domestic authorities' failure to make credible attempts to investigate • Scope of investigation unreasonably and artificially restricted • Non-compliance with requirement of effectively involving the applicants, as victims, in the investigation • Gravity of events downplayed • Legal provisions not objectively capable of preventing authorities from complying with their Convention responsibilities • States' human rights obligations to act in order to protect fundamental rights apply as much online as they do offline • Failure to specifically engage with the prejudice at the origin of the threats • Applicants not provided with the required protection of their right to personal integrity • Manner in which criminal law mechanisms implemented deficient

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 September 2025

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 Ilareva and Others v. Bulgaria,

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

Ioannis Ktistakis*, President*,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović,
Vasilka Sancin*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 24729/17) 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 three Bulgarian nationals, Ms Valeria Ilareva ("the first applicant"), Ms Lidia Staykova ("the second applicant"), and Mr Krasimir Kanev ("the third applicant"), collectively the three referred to below as "the applicants", on 24 March 2017;

the decision to give notice to the Bulgarian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 8 July 2025,

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

INTRODUCTION

1. The case concerns complaints about the domestic authorities' failure to conduct an effective investigation into attacks on the applicants, made in connection with the applicants' professional activities, by private individuals in the digital space.

THE FACTS

2. The three applicants were born on various dates as indicated in the appendix. They were represented initially by Ms M. Dimova, from the Bulgarian Helsinki Committee, and subsequently by Ms A. Kachaunova, a lawyer practising in Sofia with the Bulgarian Helsinki Committee.

3. The Government were represented by their Agent, Ms V. Hristova, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicants are three individuals involved with non-governmental organisations working for the protection of human rights, including refugees' rights.

I. EVENTS BETWEEN 12 AND 15 JANUARY 2015

6. On 12 January 2015, a Facebook user with the profile name P.G. shared a hyperlink leading to a publication on the site of the Bulgarian Helsinki Committee which concerned, in particular, the nomination of the second applicant for the "Person of the Year", a prize awarded annually by the organisation. This and some of the other Facebook profiles listed below were identified by full names. They appear with initials hereunder in line with the Court's practice. The Government submitted that the comments on Facebook were related to the "refugee issue" widely discussed in society and contained verbal aggression towards the applicants.

7. Specifically, a user with the profile name G.U. posted a comment under the hyperlink which said:

> "Damn, how these monsters mock us? I am out of my skin with rage, that one has to be eliminated ... brother, I feel like shooting them, there are loads of vermin to eliminate!"

8. On the same day the Facebook user P.G. shared a hyperlink to an interview given by the first applicant, under which he wrote:

> "Die, carrion. Cyanide for you and for all traitors to the nation."

9. The user G.U. commented underneath that:

> "I will skin this one alive, the treacherous bitch! Memorise the office and crumble!"

10. On 13 January 2015, P.G. posted on his account a montage made up of pictures of the three applicants under a title "Freaks of the year". He wrote underneath:

> "For this country and for so many years,
> countless heroes have shed their blood,
> and today the country is being ruined,
> by various scumbags without a drop of Bulgarian blood – they are garbage and trash.
> They unleash the Taliban [fundamentalists] in our town,
> teach them how to trick and hide,
> drive them around in their private cars,
> lying to policemen to get away.
> They break our laws, helping each other
> to hide away in the forest, in lorries,
> they are teaching unwanted intruders.
> These are not people but carrion,
> who do not see the sick people in our land,
> so many poor people's lives have ended,

but they do not care about them since they are Bulgarians.
The mosques and veils are everywhere,
one can hardly hear Bulgarian spoken,
our kids are being enslaved,
they are barefoot for want of shoes.
Our salaries are scant and measly
they only cover food, water and taxes,
the world is modern they say
but the have-nots only exist.
And the anti-Bulgarian beasts
cover themselves with awards
"Person of the Year" – oh, my heart is burning,
and I want to tie them to a stake and whip them."

11. The following Facebook users commented underneath the above post:

D.I.

"Let lightning strike you and all pikeys (*мангали*) shake you,
For the national traitors, beatings and sex from admirers."

K.M.

""The Apostle said DEATH to the traitors!"

P.P.

"I say hang them at Parliament, exhibit them there as Christmas decorations
so that their bones hang there forever,
so that when new ones decide to join ... they think twice about their actions!"

12. Facebook user K.M. wrote under the comment immediately above:

"I vote FOR"

Thereafter, Facebook user S.H. wrote:

"Let's not hang them...but smear honey over them
and tie them up in an ants' nest in the forest ...
then just afterwards taking pleasure from that
... slowly, slowly, ..."

13. Facebook user G.D.L. wrote:

"... these whores are to be eliminated! They likely work for Mityo-the-eyes!"

14. Facebook user D.N. wrote:

"We need a list with their names and addresses"

15. Facebook user with the name "Mister Bulgaria Holy Man" wrote under the comment immediately above:

"Smart, Nilson, smart"

16. This was followed by a comment by Facebook user I.N.:

"death to these corrupt bastards"

17. On 15 January 2015, Facebook user "Anton Proper-Massage" sent the following direct message to the second applicant via Facebook:

"I continue to think that national traitors like you must be killed,

you do not deserve to live"

18. In a second message to the second applicant that user sent a picture of a woman with bloodied body and head, with a gun placed between her legs, to which he had added the words "go ahead".

II. COMPLAINTS BY THE APPLICANTS TO THE AUTHORITIES

19. On 19 January 2015 the applicants, assisted by the Bulgarian Helsinki Committee, complained to the Sofia District Prosecutor's Office about the above posts on Facebook. In particular they stated that they had been targeted in those posts because of their work for the protection of the rights of minorities and migrants. The statements amounted to a call and incitement to violence, and included death threats to the applicants. They claimed that the posts comprised offences under several provisions of the Criminal Code ("the CC"), namely Article 144 (death threats), Article 162 § 1 (hate speech), and Articles 320 (incitement to crime) and 164 (incitement to religious hatred) (see paragraphs 66 and 68-72 below). The content of the posts was inhuman and degrading treatment within the meaning of the Convention, of which the applicants had been victims. The applicants pointed out that the posts had been "liked" 44 times as well as widely disseminated – the publication with the montage of photographs had been shared over 120 times in the course of only four days. They asked the prosecutor to act without delay since, if the posts in question were deleted, Facebook itself would only store them for a limited period of time, after which they would be deleted definitively.

III. CRIMINAL PROCEEDINGS

A. Actions of the Sofia District Prosecutor's Office

1. Initial steps

20. A Sofia district prosecutor issued a decision dated 28 January 2015 initiating criminal proceedings against a person unknown for an offence contrary to Article 162 § 1 of the CC (see paragraph 68 below). The decision

set out the investigative steps to be undertaken by the investigating officer, which consisted in questioning of each of the three applicants as witnesses.

21. The first applicant was interviewed for the investigation on 16 February 2015, the second applicant on 17 March 2015 and the third applicant on 18 February 2015. They described coming across and reading the various threatening posts listed in paragraphs 6 to 18 above on their Facebook accounts.

22. The first applicant stated during her interview that she had been working as a lawyer specialising in immigration law for 14 years. On 13 January 2015 she had seen that she had been tagged in a post on her Facebook page. She emphasised how worried she had been about her safety when she realised that, if her name was typed into an internet browser, her office address popped up. She also referred to a link to a newspaper interview with her entitled "Refugees will turn into a threat if we do not help them integrate", which had been shared by Facebook user P.G. on 12 January 2015. She claimed the posts incited people to murder her in a particularly aggressive way. She also informed the authorities that content found on a separate internet site, whose exact address she gave them during the interview, was identical to the posts shared by Facebook user P.G. She said it was likely that that site and the Facebook account of user P.G. were managed by the same person, who had given his full name and the name of the city in which he lived.

23. The second applicant stated during the interview that she worked as a volunteer with the State Agency for Refugees and in a refugee camp in Bulgaria. Her activities were publicly known, she had given interviews about her work and she was active in a Facebook group called "Friends of Refugees" which was open to the public. She said that she did not know the person behind the Facebook user P.G. but had discovered cached versions of a site of his which contained a photograph of him and personal information about him. She had also received death threats via a direct message in Facebook sent by user "Anton Proper Massage". She had taken screenshots of all of the above, which she would share with the authorities. Since 12 January 2015 she had been receiving sporadic messages by Facebook users who said they wished she were dead; she was not sure those were related to the posts in question.

24. The third applicant stated during the interview that he was the head of the Bulgarian Helsinki Committee. In the context of the annual "Person of the Year" prize, which that organisation awarded each year, he had browsed the internet in order to see whether there were any reviews in connection with the award. He came across a publication on the Facebook account of user P.G., which was entitled "Freaks of the Year" and contained the names and photographs of himself and the other two applicants. He had been very worried to read a post under the above-mentioned publication which ended with "I want to tie them to a stake and whip them". There were numerous

other posts under that publication which threatened him and the other two applicants with death and one even inquired about their addresses. He did not know the person behind the Facebook user named P.G. He believed all the online threats targeting him and the other two applicants' were made in connection with their work on the protection of refugees' human rights, and were motivated by ethnic and racial intolerance. The publications by Facebook user P.G. resembled those on another Facebook site, whose title he provided. He had on occasion been threatened with death while walking in the street.

25. On 20 March 2015 an investigating officer from the Sofia Directorate of Internal Affairs made a written proposal to the prosecutor that the investigation be suspended for failure to identify the perpetrator of the offence. He observed that the law, the Electronic Communications Act, allowed an application for the disclosure of digital traffic data only in respect of serious offences, that was to say, those which attracted imprisonment of five years or more (see paragraph 80 below). Since the maximum penalty for the offence under investigation, namely under Article 162 § 1 of the CC, was four years' imprisonment, it was impossible to apply for the disclosure of digital traffic data to identify the persons behind the publications referred to in the interviews. He referred in that connection to the decision of the Constitutional Court of 12 March 2015 (see paragraph 82 below in respect of that decision).

2. Suspension of the investigation

26. In a decision dated 30 March 2015 the Sofia District Prosecutor's Office suspended the criminal proceedings for failure to identify the perpetrator. The prosecutor observed that, since the authors of the comments in question had identified themselves either with pseudonyms or with commonly used names, it could not be said that the names they had chosen to display in Facebook corresponded to their real identity, especially because of the ease of making an account in Facebook. Consequently, given how the offence had been committed, the only way to identify the perpetrator would be to obtain disclosure of digital traffic data and the IP address from which the posts had been made, something which was not possible. He referred in that connection to the Constitutional Court's decision (see paragraph 82 below). The prosecutor concluded that "at that point in time, all possible and lawful investigative steps and measures had been carried out" and the file had to be sent to the investigating police for them to continue searching for the perpetrator and to periodically report to the prosecutor on any results.

27. On 21 May 2015 a police inspector approved an action plan comprising additional investigative steps, as follows:

(1) maintaining ongoing cooperation with other departments in the Ministry of the Interior with a view to prompt receipt of any information which might lead to the identification of the perpetrator;

(2) asking various informers in an appropriate manner to act in order to obtain information about the offence in question;

(3) undertaking intelligence talks with active members of criminal groups, with an emphasis placed on people living or present in the vicinity of the incident scene;

(4) on identifying perpetrators of offences similar to the one in question, checking whether they might also have been involved in this offence;

(5) where individuals linked to the offence in question (for example witnesses) were identified, carrying out further interviews with them with a view to obtaining additional information about the offence;

(6) on identifying the perpetrator, informing the prosecutor immediately for the purposes of continuing the criminal proceedings and bringing the individual criminal to justice.

3. Actions by the applicants upon learning of the suspension

28. At the end of September 2015, the applicants consulted the prosecutor's database and learned that criminal proceedings had been opened following their complaint but suspended by the prosecutor on 30 March 2015. Since the decision suspending the proceedings had not been sent to them and they had not been informed of it otherwise, on 28 October 2015 they asked for a copy of it in their capacity as victims within the meaning of the law (on victims' rights in the pre-trial proceedings, see paragraph 74 below).

29. A prosecutor from the Sofia District Prosecutor's Office refused their request in a decision of 2 November 2015. He found that the offence under Article 162 § 1 of the CC was one in which there were no victims, as it had been directed against equality as a societal and legal concept. Even if the hypothesis that the offence had identifiable victims could be accepted, those victims would be the refugees themselves, not the applicants as they did not belong to that group. The applicants were therefore not entitled to a copy of the prosecutor's decision they had asked for, nor were they entitled to be informed what investigative steps had been carried out.

B. Actions of the Sofia City Prosecutor's Office

30. The applicants challenged the above decision (of 2 November 2015) before the higher prosecutor, the Sofia City Prosecutor, who issued a decision on 1 February 2016. He observed that, following the applicants' complaint that offences under several provisions of the CC had been committed (see paragraph 19 above), an investigation had been opened solely under Article 162 § 1 of the CC. The applicants had been questioned as witnesses (see paragraph 21 above) and no other investigative steps had been carried out.

31. The conclusion of the lower prosecutor that no victims could be identified in the context of offences under Article 162 § 1 and Articles 164

and 320 of the CC was correct, as "[this was] a notion derived from the new criminal law doctrine". However, the information provided by the applicants during their questioning by the authorities also suggested that an offence under Article 144 § 3 of the CC had been committed. The investigation of that offence presented extraordinary difficulties, particularly because of the poor statutory basis for collecting evidence of digital traffic data set out in Article 159a of the Code of Criminal Procedure ("the CCP", see paragraph 83 below). In this case it was impossible to ask a court to order the collection of digital traffic data, since such a request could not concern a period of more than six months before the [date of] the request for such an order, which was clearly not sufficient to cover the period of the offence (see paragraphs 6 to 18 above). Moreover, orders could be made under this Article only in respect of serious offences, and only the one falling under Article 144 § 3 of the CC satisfied that condition.

32. Irrespective of the above, however, the lower prosecutor had to pursue efforts to investigate and to provide reasons for his decision in respect of all the offences complained of. Since that had not been done, it was necessary to make redress.

33. The Sofia City Prosecutor quashed the decision of 30 March 2015 (which had suspended the investigation, see paragraph 26 above) as wrong and unlawful, and ordered that copies of the decision of 1 February 2016 (see paragraph 30 above) be sent to the lower prosecutor, so that the investigation would be continued, and to the applicants. The applicants also had to be informed of their rights as victims in the context of the investigation under Article 144 § 3 of the CC.

C. Further investigation ordered by the Sofia District Prosecutor's Office

1. Investigative measures

34. In a decision of 15 February 2016, a prosecutor from the Sofia District Prosecutor's Office ordered that the following additional investigative measures be carried out by the investigating officers:

(1) further interviews with the applicants, who had to be informed of their rights (as victims) in the criminal procedure (see paragraph 33 above) and

(2) the identification of two individuals – P.G. (or P.P., born in Ruse in 1978) and G.U. through enquiries with the "Bulgarian Identity Documents" system and their questioning as witnesses.

A time-limit of four months counting from 1 February 2016 was set.

35. The three applicants were questioned again on 10, 12 and 22 March 2016 respectively. The second applicant said that the threats she had received via direct messages in Facebook, screenshots of which she had provided to the authorities already, were made by an individual whom she suspected had

lived at that time somewhere in the United Kingdom and worked as a masseur.

36. On 29 February 2016 the investigating police officer from the Sofia Directorate of Internal Affairs (see paragraph 25 above) requested the relevant services to inform him of P.G.'s addresses, of any pending criminal proceedings against him and of efforts made to locate him. A picture of P.G. was also requested and he was identified with his personal identity number in addition to his name. A reply in a letter of 2 March 2016 said that none of the requested information was available in the Ministry of the Interior's information systems.

37. Apparently also on 29 February 2016, the same investigating police officer wrote to the Department for information and analysis of the National Investigation Service, asking whether G.U., identified by his personal identification number and name, was detained at that time, where and in connection with what offence if yes, and whether there were any other pending criminal proceedings against him. On 8 March 2016 the authorities provided to the investigating officer the latest information available in the police files about G.U. That included his picture (dating from 2013), his birthplace (the town of Ruse), his "permanent" address, dating from 2004, and his "current" address, dating from 2001 (both located in Ruse). It also listed measures taken against him by the authorities over the years (between 1983 and 2015), such as his being prohibited from leaving the country and being put on the list of people wanted by the national authorities.

38. Summonses were issued in respect of P.G. and G.U., who were called for questioning as witnesses at the Sofia premises of the investigating authorities on 11 March 2016 and 28 March 2016 respectively.

39. A letter of 1 March 2016, signed by the investigating police officer (see paragraph 25 above) and addressed to the head of the police in Ruse, accompanied the summons in respect of G.U. The letter said that if the police did not find G.U. at the address given in the summons, the people at that address or neighbours should be asked about his whereabouts. Results had to be reported without delay. In a letter of 9 March 2016 a police officer from Ruse reported that he had visited the address and that G.U. was not to be found there. The officer said he had asked a third party about G.U.'s whereabouts but had been told that he had not lived there for a number of years.

40. A record of findings (*констативен протокол*), signed by the same investigating police officer (see paragraph 25 above) and dated 11 March 2016, noted as follows. The officer had spoken with P.G., who had been reached on a mobile telephone number, on four occasions between 29 February and 9 March 2016. The officer had explained to P.G. that he was being summoned by telephone, which was a legally valid method, to report to the authorities' premises in Sofia to be questioned as a witness in connection with the criminal proceedings opened following the applicants'

complaints. P.G. had expressed unwillingness to do so unless a written summons was sent to him and his related expenses were reimbursed. P.G. did not turn up for questioning on 10 March 2016, having been invited by telephone the previous day.

41. The summons issued in respect of P.G. was handed to him in person on 12 March 2016. He was summoned to report to the Sofia investigating authorities on 28 March 2016.

42. The investigating officer also wrote, on 21 March 2016, both to the National Investigation Service and to the Chief Directorate for the Execution of Punishments at the Ministry of Justice, enquiring whether G.U. was detained at that time either awaiting trial or serving a sentence and, alternatively, whether he had been released recently from detention anywhere in the country. It is unclear whether he received a reply.

43. The material submitted by the Government in relation to the investigation carried out into the applicants' complaints included an untitled and undated sheet of paper, which was however signed by the same investigating police officer mentioned above (see paragraph 25 above). That sheet appeared to be part of the record of an interview with P.G., who was named in it as a witness and who had also signed the record. In particular, it contained the following information. Several separate documents, or copies of such, had been handed to the witness who was asked to answer related questions. Those questions included:

(a) whether he had a Facebook profile under the exact names – P.G. – and which displayed a specific picture of a statue of a lion taken from a particular telephone identified by the authorities by its brand and model;

(b) whether he had created a separate internet site with a certain address; whether it was him in a photograph published on that site; and

(c) whether publications of his were hosted on the site; and whether he had posted three particular posts related to the Bulgarian Helsinki Committee's annual award (see paragraph 6 above).

44. The answers of the witness were as follows, listed in the order in which they were recorded:

(a) as far as he could remember, neither of the two names – P. or G. – featured in his Facebook profile;

(b) he might have made comments on Facebook about the third applicant whom he did not like;

(c) he had had a Facebook profile with the picture showed to him but he could not remember for how long;

(d) his Facebook profile which had that picture had been hacked numerous times;

(e) he did not remember whether he had posted a specific comment showed to him relating to refugees;

(f) it was indeed him on the photograph of the website showed to him, he had opened a site at around 2011 in order to post his own material, but he did

not know the name of the site, other than that it contained the word "literature", nor whether the name of the site showed to him was the one opened by him;

(g) he specified that the site he had created contained poems and short stories written by him;

(h) he might have shared a link, showed to him and entitled "Again that freak nominated for person of the year by the Bulgarian-hating xenophobic organisation Bulgarian Helsinki Committee", on his Facebook profile but then he might not have done so, it was impossible to remember for sure;

(i) he used to have another Facebook account whose profile picture was a statue of a lion and that profile had been hacked repeatedly;

(j) he did not know anyone by the name G.U., neither whether he had among his "Facebook friends" a person with those names.

45. On 6 and 13 April 2016 the first and third applicants took cognisance of the investigating file in the proceedings opened into an offence under Article 162 § 1 of the CC. They did not object to the evidence that had been collected but reiterated their requests for further investigation. The first applicant referred to a specific 2011 sentence delivered by the Varna District Court (see paragraph 70 below), emphasising that it showed how it was possible to establish IP addresses and from there the identity of the people behind them, even in the context of an offence which did not qualify as serious. She suggested that the investigating officers in her case should make contact with the officers who had conducted the investigation in the case referred to and find out how they had gone about it. She also asked that P.G. be questioned again and asked to provide the IP address he was currently using and, if he were to provide that address, she wanted the authorities to carry out a search and seizure operation. Lastly, she asked the authorities to establish whether G.U. had been tried and sentenced, and whether he had left the country lawfully, and she asked them to obtain a Bulgarian court order asking the United Kingdom authorities to disclose his address (see on the last point also paragraphs 34 and 39 above).

2. Suspension of the investigation

46. On 14 April 2016 the investigating police officer (see paragraph 25 above) filed an opinion on the case, giving reasons. He observed that the criminal proceedings had been opened against persons unknown under Article 162 § 1 of the CC in relation to the posts made in Facebook between 12 and 15 January 2015 (see paragraphs 6 to 18 above). The prosecutor's instructions of 15 February 2016 (see paragraph 34 above) had been complied with. The individuals in question had been identified. It had been established from conversations with G.U.'s relatives that he lived in the United Kingdom. P.G. had been interviewed. He had neither confirmed nor denied whether he had posted the statements in question and whether the Facebook profile of interest to the authorities belonged to him. It was impossible to apply for the

disclosure of digital traffic data, in view of the consequences of the Constitutional Court's decision of 12 March 2015. In particular, since in accordance with Article 159a of the CCP (see paragraph 83 below) such a request could not concern a period of more than six months before the request for such an order, this was clearly not sufficient to cover the period of the offence (see paragraphs 6 to 18 above). Therefore, it would be futile to question P.G. a second time since, even if he were to provide his IP address, the authorities could not compare it with the address from which the posts were sent as they had no means of obtaining it. Lastly, there was no indication that an offence under Article 144 § 3 of the CC had been committed. The officer recommended that the investigation be suspended.

47. On 25 April 2016 the Sofia District Prosecutor suspended the investigation.

48. On the one hand, the prosecutor found that while it could indeed be concluded that offences under Articles 162 § 1, 164 § 1 and 320 of the CC had been committed, in view of the specific method of their commission, namely via the internet, it was necessary to seek the disclosure of digital traffic data about their authors' IP addresses in order to be able to establish the identity of the perpetrators. The decision then repeated the reasoning on this point as discussed in paragraphs 25 and 26 above. The decision further stated that, as could be seen from what had already been said, all possible and lawful investigative measures had already been carried out, but it was impossible to establish with certainty who the perpetrators were, given the statutory limits on what could be ordered.

49. On the other hand, the decision continued, in respect of the offence under Article 144 of the CC, it had not been established that an act had been committed which met the nature and gravity of that offence. The vast majority of the comments made on Facebook did not contain a specific criminal threat but were rather negative assessments expressing their authors' dislike of the applicants. Even if it were to be accepted that certain individual comments did contain direct threats towards the applicants, when they were examined in the context in which they had been made, those threats could not have provoked a justified fear that they would be carried out. The reason was that the threats had been made via the internet and the authors of the threats had not been certain that their statements would ever reach the persons targeted by them. The context, namely discussions on the internet, was indicative of the incidental and topical but short-lived (*злободневен*) character of the comments. That was also evidenced by the fact that, since the dates in question, the applicants had not been approached by the same individuals online nor had they been threatened directly by anyone else. A distinction had to be made between an uninhibited demonstration of antipathy and making a threat capable of provoking a feeling of immediate danger to life. Article 144 of the CC required there to have been some reason to believe that the threat might be implemented. The posting of semi-anonymous and general remarks

during internet discussions by individuals who in all likelihood had never met the person at whom their threatening comments were targeted and who did not live in the same city (and sometimes even country) as them could neither cause a justified fear that they would be fulfilled nor suggest that the threat could materialise. The decision stated that it could be appealed against to the Sofia District Court in accordance with Article 244 § 5 of the CCP (see paragraph 78 below).

D. Judicial review

50. The applicants challenged the above decision in the Sofia District Court.

51. The Sofia District Court declared their appeal inadmissible in a decision of 21 June 2016 which stated that it was final.

52. The court observed that the comments on Facebook were a form of verbal aggression towards people who supported the rights of refugees, and that that aggression could be seen as directly concerning the applicants. However, the proceedings opened under Article 162 § 1 of the CC had been suspended for failure to identify the perpetrators. Notwithstanding the Sofia City Prosecutor's quashing of the suspension and instructions in relation to the applicants' complaint under Article 144 § 3 of the CC (see paragraphs 31-33 above), no criminal proceedings in connection with the latter provision had been opened. The investigating authorities had interviewed the applicants and informed them of their rights as victims, without however specifying the offence.

53. The court found that the prosecutor's decision (discussed in paragraphs 47-49 above) was not subject to judicial review and neither were the applicants entitled to appeal against it. The reason was that the offences for which the criminal proceedings had been opened did not presuppose the existence of a victim as such but protected the constitutionally established principle of equality before the law.

54. The court commented that the European Court of Human Rights had repeatedly held that racial violence damaged people's dignity and that the authorities should be especially diligent in investigating it. In the present case, not all possible investigative measures had been carried out in order to establish the authors of the anti-refugees statements.

55. Irrespective of the above, judicial review was strictly limited by the law. The court could therefore only examine whether a given procedural decision by a prosecutor to temporarily suspend proceedings was lawful. It could not give instructions to the prosecutor as to how to apply the law and gather evidence. It was exclusively within the prosecutors' remit to decide what charges to bring and that decision was subject to appeal to the higher prosecutor but not subject to judicial review. Because of that the court could not pronounce on the applicants' arguments that an offence under

Article 144 § 3 of the CC had been committed against them. If the applicants considered that the prosecutor had in effect refused to open criminal proceedings, they could challenge such a refusal solely to the higher prosecutor, namely the Sofia City Prosecutor's Office (see, in respect of the applicable legal framework, paragraphs 75-77 below).

E. Further proceedings by the prosecutors

56. Following a challenge made to the higher prosecutor by the applicants, in a decision of 16 September 2016 the Sofia City Prosecutor confirmed the lower prosecutor's decision (discussed in paragraphs 47-49 above), fully accepting its reasoning as to the lack of evidence that an offence under Article 144 § 3 of the CC had been committed.

57. On 17 January 2017 the Sofia Appellate Prosecutor found the applicants' challenge to the decision of 16 September 2016 inadmissible where it concerned offences under Articles 162 § 1, 164 § 1 and 320 of the CC. At the same time, he quashed the decision concerning the offence under Article 144 § 3 of the CC. He found that the district prosecutor should have either explicitly refused to open criminal proceedings into that offence (and such a decision could be appealed against before a higher prosecutor, see paragraphs 75-77 below) or terminated the proceedings if he had concluded that no such offence had been committed (which could be appealed against in court, see paragraph 79 below). The Sofia Appellate Prosecutor instructed the Sofia District Prosecutor's Office to explicitly reach a decision in respect of the offence under Article 144 § 3 of the CC.

58. Following an objection by a prosecutor in the Sofia District Prosecutor's Office, on 7 February 2017 the Supreme Cassation Prosecutor's Office confirmed the decision of 17 January 2017.

59. On 14 February 2017 the same prosecutor from the Sofia District Prosecutor's Office who had made the decision of 25 April 2016 to suspend the proceedings (see paragraphs 47-49 above) severed the proceedings concerning the complaints under Article 144 § 3 of the CC. In a decision of 21 February 2017, he refused to open criminal proceedings under that provision. That decision was for the most part a verbatim reproduction of the text of the decision of 25 April 2016 (see in particular paragraph 49 above).

60. The applicants appealed before the higher prosecutor. On 1 June 2017 the Sofia City Prosecutor upheld the decision of 21 February 2017 as well-reasoned and lawful, saying there had not been sufficient elements of a publicly-prosecutable offence present to initiate criminal proceedings.

61. The applicants appealed. On 25 July 2017 a prosecutor from the Sofia Appellate Prosecutor's Office upheld the lower prosecutor's decision. Referring to the posts complained about, she found that it had been justified to investigate whether an offence under Article 144 § 3 of the CC had been committed, given that some of the comments in effect contained a call for the

sensational killing (*зрелищно умъртвяване*) of the applicants. She then reiterated the constitutive elements of the offence under that provision, as applied by the domestic courts (see paragraph 67 below). She further held that cursing or swearing at a person did not constitute making a threat against them, since there was no causal link with an act capable of hurting the person being targeted.

62. Undoubtedly, the decision continued, the statements in question had been filled with hatred and called for death primarily of the first and second applicants. However, it was evident that the aim had been to provoke a sensational effect among other internet users. Those threats did not amount in themselves to an action capable of provoking reasonable fear among the people they were targeted at, given the manner in which they had been made, including the somewhat literary methods used (including photo-collages). Those actions lacked the necessary indication of an intention to do harm, being rather an expression by their authors of their opinion of the applicants in a shocking manner.

63. The decision concluded that the uttering or making a death threat in that way was not sufficient to make it criminal in nature, unless it was established that its author indeed intended to make a death threat which it had not been. It was also necessary for the person making the threat to know that the threat had reached its target and had been received as real and capable of causing actual fear in them, and that had not been established either.

F. Subsequent events

64. The applicants submitted that the harassment and assaults against asylum seekers and minorities, as well as against those who spoke up for their protection, continued after the events complained about.

65. It was reported in Bulgarian media that on the morning of 27 October 2016, at 9.30 a.m., the third applicant was physically attacked by two unknown persons in the centre of Sofia after he had expressed concerns about the spread of anti-immigrant hate speech on a television programme the previous day. He was hit twice in the face and in the stomach. The attackers fled into nearby streets and were apparently never discovered.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The offences of death threat, hate speech, incitement to crime and religious hatred

66. Under Article 144 § 1 of the Criminal Code of 1968 (“the CC”), a person who puts another in reasonable fear that a threat against his person or

property or against the person or the property of his next of kin will be carried out will be sentenced to a term of imprisonment of up to three years. At the time of the events, the penalty was imprisonment of up to six years when the threat was one of murder (Article 144 § 3(1)). Since 2023 the sentence for a threat made with racist or xenophobic motivation is also up to six years (Article 144 § 3(4)). The offence under Article 144 § 1 is subject to private prosecution (Article 161 § 1 of the CC), while the offence under Article 144 § 3 is subject to public prosecution.

67. The domestic courts have consistently held, referring to an interpretative decision adopted in 1989 by the then Supreme Court (see тълк. реш. № 53 от 18.09.1989 г. по н.д. № 47/89, ОСНК), that the following elements constitute a death threat. Firstly (in terms of *actus reus*), a threatening statement or act which could objectively provoke a reasonable fear of the threat being carried out, made by an individual and directed at an identified addressee and of which statement or act the addressee is aware. Secondly (in terms of *mens rea*), the person making the threat must understand its meaning and that the addressee has perceived it as a threat. It is not necessary for the addressee to have been frightened in reality (see also реш. № 37 от 31.I.1991 г. по н. д. № 876/90 г., I н. о.; реш. № 421 от 18.01.2012 г. на ВКС по н. д. № 1970/2011 г., III н. о., НК; реш. № 567 от 15.12.2012 г. на ВКС по н. д. № 1982/2012 г., II н. о., НК; присъда № 7 от 10.02.2014 г. на РС - Карлово по н. о. х. д. № 875/2013 г.).

68. Article 162 § 1 of the CC, as worded at the relevant time, criminalises hate speech in the following terms:

> "Anyone who, by means of oral or written addresses, other means of mass communication, electronic information systems or otherwise foments or incites discrimination, violence or hatred based on race, nationality or ethnic identity shall be punished by one to four years' imprisonment and a fine ranging from five thousand to ten thousand levs, as well as by public reprimand."

69. The Supreme Court of Cassation has explained that (a) the conduct element of this offence consists in the dissemination of value judgments developing, justifying and making known views capable of inciting racial enmity or hatred or of leading to racial discrimination; (b) the communication medium used to this end is irrelevant and may consist in articles, pictures, symbols, posters, video-clips, and so on, including materials published on the internet (see реш. № 80 от 24.02.2009 г. по к. н. д. № 34/2009 г., ВКС, I н. о.).

70. The Government submitted copies of several domestic judicial decisions. In one of them, the Varna District Court sitting at first-instance had convicted in 2011, in criminal proceedings brought by the public prosecutor under Article 162 § 1 of the CC, an individual for having posted on his Facebook profile calls for violence against the Roma (мотиви към присъда № 430 от 13.10.2011 г. по нохд. № 5980/2011 г. на ВСР); the sentence had not been appealed against and had become final (see also paragraph 45

above). In another one, a second-instance court had upheld the findings of the lower court convicting an individual of an offence under Article 162 § 1 of the CC for having publicly expressed hatred towards, and called for violence against, people on the basis of their skin colour (присъда № 157319 от 27.06.2017 на СРС по нохд. № 4224/2014 потвърдена от СГС в реш. №1215 от 29.11.2018 на СГС по в.н.о.х.д. № 1857/2018 г.).

71. Under Article 164 of the CC, as worded at the relevant time, a person who uses speech, printed material or other mass media, electronic information systems or any other means to incite religious hatred will be punished by a term of imprisonment of up to four years or by probation, and by a fine of between five thousand and ten thousand levs. Subsequently, in September 2015 the text was expanded as follows: "A person who uses speech, printed material or other mass media, electronic information systems or any other means to justify or incite religious discrimination, violence or hatred will be punished by a term of imprisonment of up to four years or by probation, and a fine of between five thousand and ten thousand levs."

72. Under Article 320 of the CC, as worded at the relevant time, a person who openly incites the public to commit a crime by influencing a large number of people through the dissemination of printed materials or in any similar way will be punished by a term of imprisonment of up to three years, provided that the penalty is not more severe that that set for the substantive crime itself.

B. The offence of insult

73. An insult is an offence subject to private prosecution (Article 146 in conjunction with Article 161 of the CC). The Government submitted a copy of a 2019 decision of the Sofia City Court delivered in private prosecution proceedings in which the victim had complained about insults made in respect of him on Facebook (реш. № 186 от 25.02.2019 г. на СГС по в.н.ч.х.д. № 4323/2018). They pointed out that the decision was an example of different methods used by the domestic authorities for establishing the author(s) of disputed publications on the internet. In particular, the court had "ordered a stylistic and language expert opinion to establish the language specifics of certain Facebook posts, compare them with texts and statements by the alleged author" with a view to establishing the author. Since 2023 an insult made with racist or xenophobic motivation is an aggravated offence subject to private prosecution (Article 148 of the CC).

C. Victims

74. Article 74 § 1 of the Code of Criminal Procedure of 2005 ("the CCP") defines the victim of an offence as "the person who has suffered pecuniary or non-pecuniary damage as a result of the offence". Since 2010, the authority

which opened the criminal proceedings has to immediately notify the victim thereof (Article 75 § 2). The victim can exercise his or her procedural rights if he or she expressed the wish to take part in the pre-trial proceedings (Article 75 § 3). Those rights include the right to (a) participate in the pre-trial investigation (in line with the rules of criminal procedure), (b) make requests or objections, (c) challenge decisions to discontinue or stay the proceedings, and (d) have the assistance of a lawyer (Article 75 § 1).

D. Refusals to open criminal proceedings

75. Article 213 of the CCP, as worded between April 2006 and August 2016, consisted of two paragraphs. The first provided that a prosecutor could refuse to open criminal proceedings, in which case he or she had to inform the victim (or the next of kin) and the person who had reported the alleged offence. The second paragraph provided that a prosecutor from the "higher prosecutor's office" could quash that decision, either of his or her own initiative or following an appeal by the persons mentioned in the first paragraph, and order the opening of criminal proceedings.

76. In August 2016 Article 213 was amended, so that the second paragraph was deleted, and a sentence was added to the first paragraph, saying that the refusal to open criminal proceedings was subject to appeal before the "higher prosecutor's office".

77. Although the CCP did not explicitly say so during the relevant period, it is settled that a prosecutor's refusal to open criminal proceedings was not subject to judicial review until 2023.

E. Other prosecutorial decisions

78. Article 46 § 3 of the CCP has provided since August 2016 that a higher prosecutor may, *proprio motu*, revoke or amend a decision of a lower prosecutor that has not been reviewed in court. The higher prosecutor's instructions are binding on the lower prosecutor. In such cases, the higher prosecutor may carry out the necessary investigative and other procedural actions. Article 244 § 5 of the CCP provides that a decision of the prosecutor suspending the criminal proceedings can be challenged by the accused and the victim before the respective first-instance court within seven days of receipt of a copy thereof. The court rules within seven days, in a single-judge panel, in camera, in a final decision. According to Article 200 of the Code, any decision by a prosecutor which is not amenable to judicial review is amenable to appeal before a prosecutor from the "higher prosecutor's office", whose decision is not amenable to appeal.

79. A prosecutor's decision terminating criminal proceedings can be appealed against by the accused and the victim before the first-instance court,

whose decision is subject to appeal before the second-instance court. The decision of the latter is final (Article 243 of the CCP).

F. Electronic Communications Act 2007

80. Between 2010 and 30 March 2015 the Act's provisions, which governed the rules for retention, storage, access, exploitation and destruction of digital traffic data, imposed an obligation on legal entities operating public electronic communications networks or services to store for a year (this period could be extended by six months) all data created or processed by them and related to the communications traffic. The data was stored for the purposes of investigating serious offences and cybercrime offences, as well as for the search for individuals. In particular, digital traffic data was necessary, under section 250a(1), to trace and identify (1) the source and (2) direction of the connection, as well as (3) the connection's date, time, duration and (4) type, (5) the end electronic communications device of the user, and (6) the used cells.

81. According to the Act, digital traffic data comprised as follows:

Section 251a

(1) The data referred to in point 1 of section 250a(1) shall be:

1. concerning a public telephone service: the calling telephone number and data necessary to identify the subscriber or user;

2. concerning internet access, internet electronic mail and internet telephony: the user ID as allocated, the user ID and telephone number as allocated to any communication entering the public telephone network; data necessary to identify the subscriber or user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication.

(2) The data referred to in point 2 of section 250a(1) shall be:

1. concerning a public telephone service: the telephone number dialled (the telephone number called) and, in cases involving supplementary services such as call forwarding or call transfer, the number or number to which the call is routed and data necessary to identify the subscriber or user;

2. concerning internet electronic mail and internet telephony: the user ID or telephone number of the intended recipient(s) of an internet telephony call, data necessary to identify the intended recipient of the communication.

(3) The data referred to in point 3 of section 250a(1) shall be:

1. concerning a public telephone service: the date and time of the start and end of the communication;

2. concerning internet access, internet electronic mail and internet telephony: the date and time of the log-in and log-off of the internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the internet access service provider to a communication, and the user ID of the subscriber or register, the date and time of the log-in and log-off of the internet electronic mail service or internet telephony service, based on a certain time zone.

(4) The data referred to in point 4 of section 250a(1) shall be:

1. the type of the public telephone service used;

2. concerning internet electronic mail or internet telephony: the internet service used.

(5) The data referred to in point 5 of section 250a(1) shall be:

1. concerning a fixed telephone service: the calling and the called telephone numbers;

2. concerning a public telephone service provided through a terrestrial mobile network: the calling and called telephone number, the International Mobile Subscriber Identity (IMSI) of the calling party, the International Mobile Subscriber Identity (IMSI) of the called party, the International Mobile Equipment Identity (IMEI) of the mobile electronic communications terminal equipment of the calling party, the International Mobile Equipment Identity (IMEI) of the mobile electronic communications terminal equipment of the called party; in the case of pre-paid services: the date and time of the initial activation of the service and the location label (Cell ID) from which the service was activated, and data necessary to identify the subscriber or user;

3. concerning internet access, internet electronic mail and internet telephony: the calling telephone number of dial-up access, the digital subscriber line (DSL) or other end point of the originator of the communication.

(6) Data referred to in point 6 of section 250a(1) shall be administrative addresses of a terrestrial mobile electronic communications network in which a call originated or terminated."

G. Decision of the Constitutional Court

82. The Constitutional Court, in a decision of 12 March 2015 (реш. № 2 от 12.03.2015 г. по к.д. № 8/2014, КС, обн. ДВ, бр.23 от 27 март 2015 г.), declared unconstitutional sections 250a to 250f, as well as sections 251 and 251a of the Electronic Communications Act 2007 (see paragraphs 80 and 81 above; see also information about domestic law in *Ekimdzhiev and Others v. Bulgaria*, no. 70078/12, §§ 151-57, 11 January 2022). The court observed that the data generated and retained under the challenged legal provisions comprised information about who, with whom, when, how, with which device and where exactly had been communicating, even though that data did not include the actual contents of the communications (such as voice recordings of conversations, actual text of text messages, etc.). The court found that generating and retaining the above significant volume of data without there being a concrete reason, for a period as long as twelve months, and in respect of an undefined number of people (practically all persons using contemporary communication tools) allowed to create a rather accurate picture about various aspects of people's private life, such as their usual activities, everyday habits, their contacts, social environment, location and travel, including the frequency, timing and exact destination of travel. When such data was examined and analysed in detail, it was possible to come to conclusions about people's intimate life, their sexual orientation, mental health, professional or political belonging, preferences or addictions, and any

problems with the justice system they might have. The above represented a serious interference with people's private life, which was neither necessary, nor adequate or proportionate. The court's decision was published in the State Gazette on 27 March 2015 and came into effect three days later, which was also the date when the above-mentioned provisions of the Electronic Communications Act ceased to apply.

H. Provisions of the CCP on computerised data

83. Article 159 § 1 of the CCP provided between 2006 and 30 March 2015 that at the request of the court or the pre-trial investigation bodies, all institutions, legal entities, officials and citizens were obliged to preserve and hand over objects, papers, computerised data (*компютърни информационни данни*), including traffic data, in their possession, which may be relevant to the case. On 31 March 2015 the phrase "traffic data" was deleted from this provision.

84. A new provision, Article 159a of the CCP, entered into force on 31 March 2015. According to it, a judge can order enterprises which provide public electronic communication networks and services to make available digital traffic data generated by them in the course of the performance of their activities. The data is to be collected where required for investigation of serious premediated crimes. The time period for which data can be requested or authorised to be provided shall not exceed six months.

I. Relevant provisions related to civil claims and domestic practice

85. Article 127 § 1(2) of the Code of Civil Procedure provides that a civil claim should indicate, *inter alia*, the respondent's name and address (or of his or her representatives, if any). According to the leading treatise on Bulgarian civil procedure (*Живко Сталев, Българско гражданско процесуално право, деветo издание, София, 2012 г.*, p.p. 146 and 148), the clear identification of both main parties to civil proceedings (claimant and respondent) is a necessary precondition for proceedings to be initiated.

86. The general rules of the law of tort are set out in the Obligations and Contracts Act of 1950. Section 45(1) of the Act provides that everyone is obliged to make good the damage which they have, through their fault, caused to another. Under section 45(2), fault is presumed until proven otherwise. In accordance with section 110 of the Act, the limitation period for tort claims is five years.

87. The Government submitted several domestic judicial decisions in which first and second-instance domestic courts had awarded damages in civil proceedings for threats, insults or defamation made by identified individual respondents in posts on Facebook, among others (реш. № 159 от 24.09.2021 г. на РС Враца по гр.д. № 2210/2021; реш. № 412 от 27.03.2023 г. на РС Плевен по гр.д. № 5791/2022; реш. № 46 от 19.02.2016 г. на ОС Стара Загора по в.гр.д. № 1587/2015; реш. № 433 от

18.01.2021 г. на РС Разград по гр.д. № 614/2020; реш. № 2189 от 9.08.2022 г. на СГС по в.гр.д. № 7499/2021; реш. № 127 от 1.10.2021 г. на ОС Разград по в.гр.д. № 69/2021; реш. № 24624 от 27.01.2020 г. на СРС по гр.д. № 67047/2017, and реш. № 261452 от 29.04.2022 г. на СГС по в.гр.д. № 266/2021).

J. Anti-discrimination provisions

88. The relevant domestic law provisions concerning protection against discrimination under the Protection Against Discrimination Act 2003 have been set out in the Court's judgment in *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, §§ 21-34, 16 February 2021. In essence, the authority chiefly responsible for ensuring compliance with this Act is the Commission for Protection from Discrimination. People who have obtained a favourable decision delivered by the commission 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. 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 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.

89. The relevant provision (section 4(3)) of the Bulgarian Protection Against Discrimination Act) was modified by expanding the definition of "indirect discrimination". Since 30 December 2016 it has read as follows:

> "4(3) Indirect discrimination is the placement of a person or persons, bearers of a sign under section 4(1), or of persons who, without being the bearers of such a characteristic, together with the former suffer less favourable treatment or are placed in a particularly unfavourable situation resulting from an apparently neutral provision, criterion or practice, unless the provision, criterion or practice are objectively justified in view of a legitimate aim and the means to achieve the aim are appropriate and necessary."

II. INTERNATIONAL MATERIALS

A. Council of Europe materials on communication on the Internet and hate speech

90. The provisions of the main relevant instruments have been set out in the Court's judgment in the case of *Sanchez v. France* ([GC], no. 45581/15, §§ 49-54, §§ 60-69 and § 71, 15 May 2023). In addition, the following is of relevance. The Appendix to Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users (adopted on 16 April 2014), and more specifically its Introduction, paragraph 1, reads as follows:

"Human rights and fundamental freedoms apply equally offline and online."

91. The Appendix to Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries (adopted on 7 March 2018) provides, in particular, as follows:

"Guidelines for States on actions to be taken vis-à-vis internet intermediaries with due regard to their roles and responsibilities
1. Obligations of States with respect to the protection and promotion of human rights and fundamental freedoms in the digital environment

1.1. Legality

...

1.1.3. States have the ultimate obligation to protect human rights and fundamental freedoms in the digital environment. All regulatory frameworks, including self- or co-regulatory approaches, should include effective oversight mechanisms to comply with that obligation and be accompanied by appropriate redress opportunities.

...

1.2.2. Any legislation should clearly define the powers granted to public authorities as they relate to internet intermediaries, particularly when exercised by law-enforcement authorities...

92. On 16 September 2014, the European Commission against Racism and Intolerance (ECRI) published its report on Bulgaria from its fifth monitoring cycle, and on 16 May 2017 ECRI published its Conclusions on the implementation of the recommendations in respect of Bulgaria subject to interim follow-up.

In the 2014 report ECRI observed:

"Summary

... Racist and intolerant hate speech in political discourse is escalating; the main target is now refugees. In the media and on Internet, expressions of racism and xenophobia against foreigners, Turks and Muslims are commonplace, as is abusive language when referring to Roma....Racist violence continues to be perpetrated against Roma, Muslims, Jews and nontraditional religious groups and their property. It is seldom prosecuted under the criminal law provisions specifically enacted for this purpose; very often hooliganism is invoked instead.

...

34. The situation throughout Bulgaria became extremely tense in the final months of 2013 with an explosion of xenophobic hate speech against refugees who entered the country in large numbers as a consequence of the conflict in Syria. Certain politicians, including the Minister of Interior, sent strong messages that asylum seekers were a burden on society and dangerous. This led to a wave of protests and manifestations of anger towards the setting up of additional refugee camps...

38. ... ECRI is astonished that so few cases of hate speech have reached court and that the conviction rate is so low. It regrets that the criminal law provisions in force to combat hate speech are rarely invoked and hardly ever successfully. This sends a strong message to the public that hate speech is not serious and can be engaged in with impunity...

51. As observed above, hate speech targeting refugees has resulted in actual violence against this group and persons perceived as belonging to this group."

ECRI's Conclusions of 2017 included the following:

"1. In its report on Bulgaria (fifth monitoring cycle) published on 16 September 2014, ECRI strongly recommended that the authorities urgently organise an awareness-raising campaign promoting a positive image of and tolerance for asylum seekers and refugees and ensuring that the public understands the need for international protection.

ECRI recalls that the above recommendation was made in the context of the extremely tense situation throughout Bulgaria in the final months of 2013 with an explosion of xenophobic hate speech, fuelled by certain politicians, against refugees who had entered the country in large numbers as a consequence of the conflict in Syria.

ECRI notes that the situation for asylum seekers and refugees has not improved since then and that organised anti-migrant protests have sparked tensions between local residents and refugees. For example, in November 2016, riots broke out in the refugee reception centre in the town of Harmanli when quarantine measures were put in place, reportedly to stop the spread of infectious diseases following complaints from locals.

Regrettably, no relevant information indicating implementation of the above recommendation was provided by the authorities, the national specialised body, international organisations or civil society. ECRI concludes, therefore, that its recommendation has not been implemented.

In view of the high levels of intolerance for asylum seekers and refugees in Bulgaria, it calls upon the authorities to take urgent action."

93. Several months prior to the above ECRI report, the Advisory Committee on the Framework Convention for the Protection of National Minorities had published its third opinion on Bulgaria after carrying out a fact-finding mission in November 2013. In it the Committee observed:

"64. Anti-Roma and anti-immigrant rhetoric have become an increasingly regular part of the political scene. In the latter case, the Government's policy responses to the influx of approximately 12 000 asylum-seekers in 2013 – including proposing the building of a fence along part of its border with Turkey – have tended to aggravate rather than attenuate these messages...

65. While legal remedies do exist in cases of hate speech, it appears that they are not very effective in practice. The Advisory Committee notes with concern that the case-law of the Supreme Administrative Court in this field appears to be inconsistent, making the parameters of the prohibition on hate speech hard to grasp and weakening the overall impact of the relevant criminal law provisions...

67. Anti-Roma, anti-Turkish, anti-Macedonian and anti-immigrant discourse are reportedly also frequent in the media, notably (but not only) on the stations with links to far right-wing parties...

68. The Advisory Committee is concerned that the overall climate as regards racism and intolerance in Bulgaria has deteriorated since its previous Opinion..."

B. Liability of Internet hosts or intermediary service providers

94. The relevant European Union law and case-law of the Court of Justice of the European Union ("the CJEU") have been set out in the case of *Sanchez* (cited above, §§ 74-78). In addition, the Grand Chamber of the CJEU addressed the question of discrimination by association on the grounds of ethnic origin (see CHEZ Razpredelenie Bulgaria, C-83/14, ECLI:EU:C:2015:480 of 16 July 2015). It focused on the interpretation of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Charter of Fundamental Rights of the European Union. In particular, it considered whether the principle of equal treatment should benefit only persons who actually possess the racial or ethnic origin concerned or also persons who, although not of the racial or ethnic origin in question, nevertheless suffer less favourable treatment on those grounds. The relevant part of the judgment reads:

> "56. ... the Court's case-law, already recalled in paragraph 42 of the present judgment, under which the scope of Directive 2000/43 cannot, in the light of its objective and the nature of the rights which it seeks to safeguard, be defined restrictively, is, in this instance, such as to justify the interpretation that the principle of equal treatment to which that directive refers applies not to a particular category of person[s] but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favorable treatment or a particular disadvantage on one of those grounds (see, by analogy, judgment in Coleman, C-303/06, EU:C:2008:415, paragraphs 38 and 50)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 14

95. The applicants submitted that the authorities had failed to effectively investigate their complaints that they had been the victims of threats of and calls for violence, including murder, made in Facebook posts by private individuals in connection with the applicants' professional activities, which bring them into association with the groups of people for whose rights they work. They relied on Articles 3 and 8 of the Convention, alone or in conjunction with Articles 13 and 14 of the Convention. These provisions read as follows:

Article 3

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

Article 8

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... or other status."

96. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court finds as follows. The crux of the applicants' complaints is that no effective investigation was carried out into the threats and violent attacks against the applicants online; therefore the complaint falls to be examined under Article 8 of the Convention. To the extent that the complaint is also about the authorities having overlooked the discriminatory grounds on which the applicants had been abused and threatened, by virtue of their association with the groups for whose members' rights they worked, the complaint will be examined under Article 8 in conjunction with Article 14 of the Convention (compare *Alković v. Montenegro*, no. 66895/10, § 46, 5 December 2017; *Škorjanec v. Croatia*, no. 25536/14, § 38, 28 March 2017, and *Guberina v. Croatia*, no. 23682/13, §§ 77-79, 22 March 2016).

A. Applicability of Articles 8 and 14 of the Convention

97. Given that the question of applicability is an issue concerning the Court's jurisdiction *ratione materiae*, it is a matter which the Court will examine of its own motion.

98. The Court reiterates that the concept of "private life" is a broad term that is not susceptible to exhaustive definition and that also covers the physical and psychological integrity of a person. In certain areas of private life, in order for Article 8 to be engaged, the alleged violation must attain a certain level of seriousness and must have been committed in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 137 with further

references, ECHR 2015, and *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 109, 14 January 2020).

99. In the present case, the applicants complained that the authorities had failed to investigate personal attacks made on them in the virtual space and motivated by hatred towards their professional activities and affiliations.

100. The acts complained of appear to have occurred in the context of a wider public discussion of what the Government in their observations called "the refugee issue" (see paragraph 6 above) and included aggression towards the applicants because of their association, on the basis of their work with refugees and migrants groups (compare, *mutatis mutandis*, *Guberina*, cited above, §§ 77-79). Since those posts identified and targeted the applicants personally, comprised threats of violence and even calls for death, they affected the applicants' psychological well-being and dignity, so falling within the sphere of their private life. The Court finds that these attacks have attained the level of seriousness required to engage Article 8 even though they were made in the virtual space (compare *Beizaras and Levickas*, cited above, § 117). Consequently, the facts of the case fall within the scope of Article 8 of the Convention. Article 14 is therefore also applicable.

B. Admissibility

1. The parties' submissions

(a) Non-exhaustion of domestic remedies

101. The Government argued that the applicants had failed to exhaust domestic remedies before turning to the Court. In particular, they could have:

(a) brought a tort claim under section 45 of the Obligations and Contracts Act (see paragraphs 85-87 above), either against the individuals who had posted the statements complained of on Facebook or against Facebook itself whom they could have also asked to remove the posts in question (the Government referred in this connection to the Court's judgments in *Delfi AS*, cited above, and *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, no. 22947/13, § 91, 2 February 2016);

(b) brought a private prosecution under Article 146 § 1 the CC (see paragraph 73 above); or

(c) pursued anti-discrimination proceedings under the Protection Against Discrimination Act (see paragraph 88-89 above).

However, they failed to do any of these things. Also, they did not raise their complaints at the domestic level.

102. The applicants submitted that each of the three types of remedies suggested by the Government required the identity of the perpetrators to have been established. Since the applicants were not in a position to do that, those remedies were ineffective.

103. Furthermore, tort claims as such were inadequate in view of the gravity of the acts of which they were complaining, namely violent comments and death threats expressing intolerance and prejudice. The same was true for private prosecutions: such proceedings could not appropriately deal with the nature of the acts of which they had been victims. Only public criminal law mechanisms could sufficiently respond to their complaints by providing adequate protection and deterrence.

(b) Victim status

104. The Government submitted that the applicants had no victim status because they did not suffer any direct or indirect damage or consequences. They did not elaborate further.

105. The applicants emphasised that they had been targeted with verbal abuse and repeated threats to their lives in posts on Facebook, in relation to their activism for the protection of refugees. Both the discriminatory derogatory statements and the death threats were racist hate crimes; the applicants were therefore victims of those crimes.

2. The Court's assessment

(a) Non-exhaustion of domestic remedies

106. The rules on exhaustion of effective remedies have been summarised, among other authorities, in *Association ACCEPT and Others v. Romania* (no. 19237/16, §§ 76-80, 1 June 2021).

107. In the present case, the Court notes that the applicants lodged a criminal complaint with the prosecutor in which they raised both the issue of the alleged violation of their right to respect for their private life as a result of the threats made against them and the issue of discrimination on the basis of the origin and religion of people whose rights the applicants defended in their work (see paragraph 19 above). They thus raised their complaints before the national authorities; the Government's related objection is therefore dismissed.

108. When properly conducted, a criminal investigation constitutes an effective domestic remedy for such complaints: abuse such as that allegedly suffered by the applicants is punishable under the domestic law (see paragraphs 66 and 68-72 above and, *mutatis mutandis*, *M.C. and A.C. v. Romania*, no. 12060/12, §§ 61 and 64, 12 April 2016). Allegations that such acts were based on racist or xenophobic motives, or on intolerance on other grounds, should also be taken into account by investigators. The applicants had no reason to doubt the effectiveness of this remedy (see *Association ACCEPT and Others*, cited above, § 81).

109. Indeed, criminal sanctions, including in the context of most serious expressions of hatred and incitement to violence, could be invoked only as an *ultima ratio* measure. That said, the Court has already held that where acts

that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor (see *Beizaras and Levickas*, cited above, § 111, with further references). The Court has likewise accepted that criminal-law measures are required with respect to direct verbal assaults and physical threats motivated by discriminatory attitudes (ibid., and *Hanovs v. Latvia*, no. 40861/22, § 32, 18 July 2024). The applicants in the present case were the target of undisguised calls for attacks on their physical and mental integrity, capable of instilling real and justified fear in them, which required criminal-law protection (compare *Beizaras and Levickas*, cited above, § 128). Furthermore, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance (see, among other authorities, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

110. In view of these considerations, the Court finds that the applicants have used a remedy which was potentially effective as being capable of adequately responding to their grievances. The Court will explain in paragraphs 111-114 below why the remedies suggested by the Government do not meet that requirement.

(i) Tort claim

111. As to the potential for bringing civil proceedings, against either the authors of the statements and threats and/or Facebook itself, the Court reiterates that, where an applicant has an arguable claim of being a victim of verbal assaults and physical threats motivated by discriminatory attitudes, only effective criminal-law mechanisms can ensure adequate protection and serve as a deterrent (compare *Hanovs*, cited above, § 32, with further reference). The possibility of obtaining compensation, but not identification and prosecution of those responsible for the acts complained of, would not suffice for the State to fulfil its procedural obligation to investigate such acts (ibid.).

(ii) Private prosecution

112. As to the possibility of pursuing a private prosecution (for insult, see paragraph 101 above), the Court reiterates that public prosecution is the most appropriate way to deal with serious hate speech (see paragraphs 109-111 above). Moreover, at the time of the events the relevant domestic law governing private prosecution (see paragraph 73 above) did not cover discriminatory motives for such attacks; since the existence of discriminatory motives was a fundamental part of the applicants' complaint, a private prosecution would have been inadequate for that reason also (compare,

mutatis mutandis, *Škorjanec*, cited above, § 46; and *Hanovs*, cited above, § 34).

(iii) Removal of the posts by Facebook

113. Lastly, the Government stated that the applicants could have asked Facebook to take the offensive statements down. The Court acknowledges that the taking down of offensive content has been recommended in relevant sources as one of the measures to address hate speech in general (see paragraphs 90-101 above). However, as the applicants were *prima facie* affected by the criminally prescribed behaviour, it reiterates its conclusion in paragraphs 109-111 above.

114. In addition, it has already held (see *Sanchez*, cited above, § 197) that deletion of clearly unlawful comments, in that case by their author within twenty-four hours after they had been posted, does not exempt either the author or the account holder from liability if their comments have been shared and echoed by third parties. The reason was that deleting the comments would not reverse the consequences for the victim, since the deleted comments were part of a coherent whole. The Court finds that those considerations are of relevance to the present case too.

(iv) Conclusion on exhaustion of domestic remedies

115. For these reasons, the Court is satisfied that the applicants used a remedy that was available and sufficient for the purpose of the present application. Therefore, the applicants must be regarded as having brought the substance of their complaints to the notice of the national authorities and as having sought redress through the appropriate national channels. The Court therefore dismisses the Government's preliminary objection of non-exhaustion of domestic remedies.

(b) Victim status

116. As to the Government's objection related to the victim status of the applicants, the Court observes that the acts complained of – namely the threatening statements directed at the applicants, which had been posted by private parties on public Facebook pages – were serious and denigrating and an affront to the psychological integrity and dignity of their addressees. Since those statements had reached the applicants, who had accessed them online and experienced distress and fear, there can be no doubt that the applicants were directly affected by the acts complained of and can therefore claim to have been victims of a breach of the Convention (compare *Yevstifeyev and Others v. Russia*, nos. 226/18 and 2 others, § 63, 3 December 2024). The Court accordingly dismisses the Government's objection to the victim status of the applicants (see paragraph 104 above).

(c) Conclusion on admissibility

117. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. Submissions by the applicants

118. The applicants submitted that the authorities had failed in their positive obligations under the Convention. The Government had downplayed the aggressiveness of the comments and their effects on the applicants. However, the wide publicity given to those comments, which had reached many Facebook users, coupled with the fact that the applicants were easily recognisable public figures, made them vulnerable in public places. The events had taken place in a social and political context marked by widespread demonstrations of extreme forms of racism and racist incitement practised with impunity by members of parliament, public officials and private individuals in Bulgaria. Not long before the events in question two Council of Europe bodies had published reports expressing serious related concerns (see paragraphs 92-93 above).

119. In particular, the prosecutors had failed to conduct a prompt, thorough and impartial investigation into the death threats and aggressive hate speech against them in accordance with the standards established in the Court's case-law. There were various possible lines of investigation that could have revealed the identity of the perpetrators, but they failed to carry them out.

120. In particular, the prosecutors failed to ask the court to order the collection of digital traffic data from the IP addresses of the authors of the statements, even as regards those containing death threats motivated by discriminatory prejudice, a serious offence under domestic law for which collection of data could be ordered.

121. Only two of the eleven persons who had racially insulted the applicants and made death threats against them had been identified. Of those, only one had been questioned. The prosecution had unreasonably denied that the threats were crimes, groundlessly assuming that they had no particular target and that their authors did not intend to intimidate the applicants but were simply expressing their personal opinions using pejorative expressions.

122. Those groundless findings by the authorities led to impunity for the perpetrators and left the applicants without protection. Inaction by the authorities had encouraged future perpetrators to continue and escalate their conduct as evidenced by the physical assault on the third applicant a year and half later (see paragraph 65 above).

2. Submissions by the Government

123. The Government asserted that the comments at issue had not reached a level at which they could be considered criminal. The national authorities had taken all steps necessary to establish the facts by conducting an effective investigation into the applicants' allegations.

124. The preliminary inquiry was initiated remarkably rapidly – a few days after the complaint had been submitted to the Sofia District Prosecutor's Office – so complying with the Convention requirement of promptness.

125. The authorities then pursued various investigative steps. Charges were brought against a person unknown for the offence under Article 162 § 1 of the CC. Evidence was collected expeditiously, the victims having been questioned as witnesses.

126. Although the criminal proceedings were suspended several times because of the failure to establish the identity of the perpetrators, the investigative authorities continued to search for and gather evidence. The investigation was moreover independent, objective and comprehensive.

127. Crucially, the circumstances of the present case, where comments and threats were made on social networks, complicated the criminal investigation, and also required the authorities to exercise special diligence in order to establish the facts. The authorities had looked through registers of identity documents and, despite the difficulties linked to the multitude of results under most of the pseudonyms used to sign the posts, had managed to identify two persons, one of whom was found to live abroad. That identification might not have been sufficient to engage the persons' criminal liability, if no sufficient corroboration was established, but was fully valid within the framework of a criminal investigation.

128. Despite all the action taken, it was not possible to establish the identity of the authors of the offences. The reason was that national law limited the tracking of digital traffic data from IP addresses to cases where the data was collected for the investigation of serious crimes. The Government referred to domestic case-law (see paragraph 70 above) and pointed out that it showed that numerous sentences had been handed down by the judiciary for glorifying and inciting violence and hatred based on ethnicity.

129. Regarding the applicants' allegations that they had been the victims of an offence under Article 144 of the CC, the prosecutors found that the evidence collected did not point to an act which, either as to its nature or as to its gravity, would fall under that provision and justify public prosecution.

130. For the above reasons, according to the Government there has been no violation of the State's positive obligations under Article 8.

3. The Court's assessment

(a) General principles

131. The general principles of the positive obligations of States under Article 8 have recently been reiterated by the Court on many occasions. In particular, effective deterrence against grave actions, where fundamental values and the essential aspects of private life are at stake, requires effective criminal law provisions and their application through effective investigation and prosecution (see, among other authorities, *Hanovs*, cited above, § 38; *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, §§ 115-17, 10 January 2019, and *M.C. v. Bulgaria*, no. 39272/98, § 152, ECHR 2003-XII).

132. It is part of the authorities' responsibilities under Article 14, taken in conjunction with Articles 2, 3 or 8, to investigate the existence of a possible link between racist attitudes and acts of violence (see, in particular with respect to Article 14 in conjunction with Article 8, *R.B. v. Hungary*, no. 64602/12, § 84, 12 April 2016). This is the case even where it is alleged that treatment motivated by prejudice did not reach the threshold necessary for Articles 2 or 3 but where a person makes credible assertions that he or she has been subjected to harassment motivated by racism, including verbal assaults and physical threats (see *R.B. v Hungary*, cited above, § 84).

(b) Application of these principles to the instant case

133. The actions complained of – death threats and inciting discrimination, violence or hatred based on race, nationality or ethnicity – were punishable under domestic criminal law and subject to public prosecution (see paragraphs 66 and 68-72 above). However, it appears that under the prevailing domestic practice (see paragraphs 31 and 53 above) the offences complained of, other than the one under Article 144 § 3 of the CC, did not presuppose the existence of a victim. The effect of that interpretation was that the applicants, while directly affected by the incriminated conduct, were found not to have standing to challenge relevant procedural decisions during the investigation (see paragraph 29 above). The Court finds that a question may arise whether such domestic legal provisions, or their interpretation, could be considered adequate in the context of States' obligation to investigate effectively alleged criminal offences. In particular, it reiterates that while there is no automatic requirement for a victim be granted access to the investigation as it goes along and that requisite access may be provided in other stages of the available procedures (see *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 109, 20 April 2021), victims must be involved in the procedure to the extent necessary to safeguard their legitimate interests (see, among many other authorities, *X and Others v. Bulgaria* [GC], no. 22457/16, § 189, 2 February 2021). Being able to

challenge procedural decisions decisive for the progress of the proceedings appears necessary and essential to ensure victims' effective participation.

134. However, the Court considers that it is not necessary for it to expressly pronounce on the legal provisions as they stood at the relevant time, something the applicants did not take specific issue with either, since it appears that the question of victim status in the domestic proceedings was a matter of interpretation of the law rather than its very wording. The Court will thus focus its examination on how the legal provisions in question were applied in practice (see paragraph 131 above).

135. In that context, the Court reiterates that for an investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible; however, this is not an obligation of result, but one of means (see, among many other authorities, *Alković*, cited above, § 65). The Court is not concerned with allegations of minor errors or isolated omissions in the investigation: it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on possible alleged perpetrators or their criminal responsibility (see *Khadija Ismayilova*, cited above, § 118, with further references).

136. The above notwithstanding, in the present case the Court considers that there were a number of flaws in the domestic authorities' related actions that put the overall effectiveness of the investigation into question. In particular, the authorities' steps can be summarised as the issuing of mostly procedural decisions on the applicants' complaints, not making any credible attempts to investigate in the process. In that connection, although at some point the applicants appear to have been apprised, apparently in their capacity as victims, of the measures carried out by the investigators (see paragraph 45 above), the authorities consistently found that the applicants had no standing to challenge the decisions suspending the investigation into that offence precisely because there were no victims under it (see paragraphs 29, 31, 53 and 57 above). In view of the conclusion in paragraph 116 above as to the applicants' victim status, such an approach can hardly be compatible with the requirement that victims be effectively involved in the investigation (see paragraph 133 above).

137. Shortly after the applicants had complained to the prosecutor about the abuse in question, criminal proceedings were effectively opened. However, the scope of the investigation appears to have been unreasonably and artificially restricted, since proceedings were opened only in respect of one of the alleged offences despite the district prosecutor's related findings (see paragraph 48 above).

138. Further, although the applicants complained that they had received death threats motivated by discriminatory animus, the decision initiating criminal proceedings remained silent also in respect of this offence (see paragraph 20 above). Even after a higher prosecutor had quashed the decision

suspending the proceedings, finding that not all efforts had been made to investigate all the offences complained about, the district prosecutor did not investigate the complaints related to the death threats and even repeatedly failed to explicitly pronounce in respect of those complaints (see paragraphs 52 and 57 above).

139. The prosecutors repeatedly referred to difficulties in identifying the perpetrators and considered themselves in essence prevented from investigating. To explain that, they placed significant emphasis on the applicable law which they considered did not allow them to obtain disclosure of digital traffic data from Facebook (see paragraphs 25-26, 31 and 48 above). The Court does not find that the legal provisions in question (see paragraphs 80, 83 and 84 above) were objectively capable of preventing the authorities from complying with their related responsibilities under the Convention.

140. The Court observes that serious hate speech had been articulated in social media posts and those posts had been rapidly and repeatedly shared and had reached the applicants. The statements had been explicit and violent, the applicants had been clearly identified and exposed in public and their work addresses were easily identifiable (see paragraphs 7-18 above). The nature of the language used and the hatred expressed in those posts cannot be equated with a mere expression, even an exaggerated one, of a negative opinion towards the applicants. The anonymity of their authors, facilitated by the threats of violence being made online, was, if anything, capable of augmenting any fear provoked by such statements. The Court deems that, given the essential role of the internet as an unprecedentedly powerful platform for exchange of ideas and information which carry a risk of harm to the exercise and enjoyment of human rights (see *Sanchez*, cited above, §§ 158-62), States' human rights obligations to act in order to protect fundamental rights apply as much online as they do offline (see also paragraph 90 above). Accordingly, this situation created public interest in the prosecution, which required an appropriate official response.

141. The Court also does not lose sight of the overall context in which the events had taken place, namely heightened tensions in society amid recurring public expressions of hate speech and intolerance towards groups of people associated with the applicants' professional activities (see paragraphs 6, 118 and 92-93 above). However, the prosecutors downplayed the seriousness of the events. The Court notes that, although that incident did not form part of the applicants' specific complaint in this case, the third applicant was physically assaulted in the street subsequently to the Facebook comments and shortly after he had spoken on television against anti-immigrant hate-speech (see paragraph 65 above). Regrettably, in the investigation into the applicants' complaints in the present case, the authorities did not specifically engage with the prejudice at the origin of the threats, as that prejudice related to the applicants (see in particular paragraphs 29 and 54 above), despite their association, through their professional activities, with the groups of people

for whose rights they work. This in itself raises an issue as to the adequacy and effectiveness of the investigation (compare, *mutatis mutandis*, *Škorjanec*, cited above, § 70, and *Beizaris*, cited above, § 127).

142. Finally, in terms of obvious lines of inquiry outside the framework of the legal provision discussed above (see paragraph 84 above), the authorities did not seriously attempt to gather information distinct from the digital traffic data related to the posts in question (see, in respect of what constitutes digital traffic data, paragraph 81 above). The Government themselves had provided an example of earlier domestic case-law in which the authorities had established the perpetrator of an offence under Article 162 § 1 of the CC (see paragraph 70 above; the first applicant also signalled this case to the authorities, see paragraph 45 above). They also emphasised the existence of different methods that could be used to establish authors of publications on the internet (see paragraph 73 above), yet the authorities did not pursue any of those.

143. As regards the majority of the individuals of interest who had not been identified, the authorities could have requested from Facebook the information provided by the owners of the accounts in question at the time of the creation of the accounts – which may have included personal data (names, addresses, occupation), email addresses and/or telephone numbers – and followed up on any such leads.

144. In respect of the two individuals who had been identified as potential witnesses or even suspects, the authorities never attempted to obtain forensic evidence from their IT devices (e.g. computers, mobile phones). As concerns P.G., it cannot be said that he was properly questioned, or that relevant conclusions were drawn from his elusive responses. As regards the internet site (see paragraph 22 above) which appeared to be run by P.G., it does not appear that the authorities sought to establish the site's owner and its IP address. In respect of the other identified individual of interest, G.U., they did not show that they even considered seeking international cooperation (see paragraphs 45-46 above).

(c) Conclusion

145. In these circumstances, the Court finds that the above-mentioned course of action was not capable of leading to the establishment of the facts of the case and did not constitute a sufficient response to the applicants' complaints. The cumulative effect was that the threats, incitement to violence and hate speech, motivated by intolerance and prejudice and directed against the applicants because of their association, through their professional activities, with the groups of people for whose rights they worked, remained virtually without legal consequences, and the applicants were not provided with the required protection of their right to personal integrity (compare, *mutatis mutandis*, *Király and Dömötör v. Hungary*, no. 10851/13, § 80, 17 January 2017).

146. In view of the above, the Court considers that the manner in which the criminal law mechanisms were implemented in the present case by the investigative authorities was deficient to the point of constituting a violation of the State's obligations under Article 8 of the Convention in conjunction with Article 14 of the Convention (compare, *mutatis mutandis*, *Škorjanec*, cited above, §§ 70-72).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The first and third applicant each claimed 7,000 euros (EUR) in respect of non-pecuniary damage, and the second applicant claimed EUR 8,000.

149. The Government submitted that the claims were unjustified and should be dismissed in full or reduced substantially.

150. The Court accepts that the applicants suffered distress and frustration on account of the violations of their rights under Articles 8 and 14 of the Convention. The resulting non-pecuniary damage would not be adequately compensated for by the mere finding of those breaches (see *Identoba and Others v. Georgia*, no. 73235/12, § 110, 12 May 2015). Having regard to the relevant circumstances of the case, the Court finds it appropriate to grant EUR 4,500 to the first and third applicants each, and EUR 5,500 to the second applicant. As requested by the applicants, the above amounts are to be paid into the applicants' respective personal bank accounts.

B. Costs and expenses

151. The applicants also jointly claimed EUR 2,521.77 in costs and expenses incurred in the proceedings before the Court, of which EUR 2,500 for legal representation and EUR 21.77 for postal expenses. They asked the Court to order the Government to pay any amount awarded for costs and expenses directly into the bank account of the Bulgarian Helsinki Committee.

152. The Government claimed that the amount for legal representation was excessive and exaggerated.

153. Regard being had to the documents in its possession and the above criteria, the Court awards the applicants' claim in full. As requested by the applicants, this amount is to be paid directly into the bank account of the Bulgarian Helsinki Committee.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, the application admissible;

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

3. *Holds*:
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros) to each of the first and third applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be paid into their respective personal bank accounts;
      (ii) EUR 5,500 (five thousand five hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be paid into her personal bank account;
      (iii) EUR 2,521.77 (two thousand five hundred and twenty-one euros and seventy-seven cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the account of the Bulgarian Helsinki Committee;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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

Done in English, and notified in writing on 9 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Valeria Borisova ILAREVA	1980	Bulgarian	Sofia
2.	Lidia Kirilova STAYKOVA	1971	Bulgarian	Haskovo
3.	Krasimir Ivanov KANEV	1958	Bulgarian	Sofia