

European Court of Human Rights: Budinova and Chaprazov v. Bulgaria and Behar and Gutman v. Bulgaria

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Dirk Voorhoof

Human Rights Centre, Ghent University and Legal Human Academy

In the two judgments of 16 February 2021 the European Court of Human Rights (ECtHR) has highlighted the positive obligations of the member states to combat hate speech (see also *Beizaras and Levickas v. Lithuania*, IRIS 2020-3/21). The ECtHR found that incitement to hatred, violence and discrimination cannot rely on the protection of freedom of expression when the offensive expressions clearly harm the privacy rights of the victims of hate speech, *in casu* Roma and Jews. The member states have a duty under Article 8 in combination with Article 14 of the European Convention on Human Rights (ECHR) to take action against persons publicly inciting hatred, violence or discrimination.

The first case, *Budinova and Chaprazov v. Bulgaria*, primarily concerns a complaint, under Article 8 and Article 14 ECHR, about the dismissal of a claim brought by Bulgarian nationals of Roma ethnic origin. The applicants had sought a court order against Volen Siderov, a well-known journalist and politician compelling him to (a) apologise publicly for a number of public statements in which he had negatively stereotyped Roma in Bulgaria in a crude manner, and (b) refrain from making such statements in the future. The applicants asserted that a number of statements made by Siderov, as leader of the right-wing political party Ataka, in his television programme, interviews, speeches and a book, had amounted to harassment and incitement to discrimination against people of Roma ethnic origin. The Bulgarian courts however found that Siderov's statements had not subjected the applicants to treatment different to that accorded to the rest of the population, and that they neither constituted harassment nor incitement to discrimination.

The ECtHR is not in doubt that the applicants were personally and directly affected by the judicial decisions dismissing their claim against Siderov. Therefore, they had victim status and they could complain about an interference with their rights under Article 8 (right to privacy) and Article 14 (non-discrimination) ECHR. The Court finds that Siderov's statements about Roma were affecting the private life of individual Roma, triggering the application of Article 8 ECHR. The ECtHR refers to (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position *vis-à-vis* to society as a whole), (b) the precise content of the negative statements regarding the group (in particular, the degree to which they could convey a negative stereotype about the group as a whole,

and the specific content of that stereotype), and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group's identity and dignity. The social and political climate prevalent at the time when the statements were made is another relevant factor. The ECtHR finds that Siderov's message, conveyed bluntly and repeated many times over, was, in essence, that Roma were immoral social parasites who abused their rights, lived off the back of the Bulgarian majority, subjected that majority to systematic violence and crime without hindrance, and aimed to take over the country. This amounted to extreme negative stereotyping meant to vilify Roma in Bulgaria and to stir up prejudice and hatred towards them. The Court also refers to the many channels of communication used by Siderov, including television and radio programmes, which meant that his statements reached a wide audience. It acknowledged the disadvantaged and vulnerable position of Roma, the need for their special protection and the need to combat their negative stereotyping.

The ECtHR reiterates that Article 8 ECHR gives rise to positive obligations, and that these obligations may require the adoption of measures designed to secure respect for private lives even in the sphere of the relations of individuals between themselves. In discharging this duty, the national authorities must, however, also have a regard to the rights of the author of the statements under Article 10 ECHR. Thus, in such cases the crucial question is whether the authorities have struck a proper balance between the aggrieved party's right to respect for his or her private life and the right of the author of the statements to freedom of expression. The Court recalls that expression on matters of public interest is in principle entitled to strong protection under Article 10 ECHR, whereas expression that promotes or justifies violence, hatred, xenophobia or any other form of intolerance cannot normally claim protection. It may be justified to impose even serious criminal-law sanctions on journalists or politicians in cases of hate speech or incitement to violence. Statements made by members of parliament deserve little, if any, protection if their content is at odds with the democratic values of the Convention system. Sweeping statements attacking or casting in a negative light entire ethnic, religious or other groups deserve none or very limited protection under Article 10 ECHR. The ECtHR finds that the Bulgarian courts downplayed the capacity of Siderov's statements to stigmatise Roma as a group and arouse hatred and prejudice against them. They apparently saw Siderov's statements as no more than part of a legitimate debate on matters of public concern. For the ECtHR it is clear that Siderov's statements went beyond being a legitimate part of a public debate about ethnic relations and crime in Bulgaria, as they amounted to extreme negative stereotyping meant to vilify Roma. Hence the Bulgarian courts failed to strike a fair balance between the competing interests at stake. By refusing to grant the applicants redress in respect of Siderov's discriminatory statements, the Bulgarian authorities failed to comply with their positive obligation to respond adequately to discrimination on account of the applicants' ethnic origin and to secure respect for the applicants' private life. This brings the ECtHR, unanimously, to the conclusion that there has been a breach of Article 8 ECHR read in conjunction with Article 14 ECHR.

The second case, *Behar and Gutman v. Bulgaria*, is very similar to the first one, with the difference that the applicants are Bulgarian nationals of Jewish ethnic origin, complaining about the lack of action taken by the Bulgarian authorities against a series of anti-Semitic statements uttered by Siderov on several occasions. The ECtHR points to the fact that Siderov's statements were targeting Jews, a group that in view of the historical persecutions to which they have been subjected, in particular during the Second World War, can be seen as a vulnerable minority. The ECtHR refers to the virulent anti-Semitic narratives by Siderov, in particular his statements denying the reality of the Holocaust. The ECtHR considers these statements as attacks on the Jewish community and as incitement to racial hatred, anti-Semitism and xenophobia. This extreme negative stereotyping was meant to vilify Jews and to stir up prejudice and hatred towards them. With a similar reasoning as in *Budinova and Chaprazov v. Bulgaria*, the ECtHR, unanimously, reaches the conclusion that Article 8 and Article 14 ECHR have been violated. The Bulgarian authorities have not

adequately reacted against Siderov's discriminatory statements, as they failed to respond to discrimination on account of the applicants' ethnic origin and to comply with their positive obligation to secure respect for the applicants' private life.

