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**La Corte EDU sulla libertà religiosa e la costruzione dei luoghi di culto**
**(CEDU, sez. IV, sent. 10 novembre 2020, ric. n. 5301/11)**

La decisione della Corte EDU scaturisce dal ricorso presentato da un'organizzazione religiosa bulgara - denominata Testimoni di Geova - contro la Repubblica di Bulgaria, per violazione degli articoli 9, 11, 13 e 14 della Convenzione nonché dell'articolo 1 del Protocollo n. 1 alla Convenzione. La ricorrente aveva lamentato il reiterato diniego da parte delle autorità pubbliche del permesso di costruire un edificio di culto, ove professare la propria fede e riunire i fedeli per svolgere riti cultuali. A parere della ricorrente tale impedimento si era basato su misure amministrative ritenute illegittime e, in particolare, l'ordinanza del sindaco con la quale era stata disposta la sospensione dei lavori era stata adottata in seguito alle pressioni pubbliche ricevute dagli abitanti del quartiere e sulla base di considerazioni fondate unicamente su pregiudizi discriminatori.

Di contro, per le autorità pubbliche e i tribunali nazionali tale sospensione era giustificata per le gravi irregolarità riscontrate nel processo di costruzione, all'esito di un'ispezione relativa al rispetto delle norme di cantiere. E parimenti infondata era la dedotta violazione dell'art. 9 in combinato disposto con l'art. 11 CEDU. Il Governo, in merito, sosteneva infatti l'impossibilità di dedurre da tali disposizioni il diritto dei richiedenti di riunirsi per manifestare le loro credenze religiose così come il diritto di ottenere un luogo di culto dalle autorità pubbliche.

La Corte EDU investita della questione, prima di scrutinare il caso di specie, ha ribadito alcuni principi generali. Essa ha ricordato che, sebbene la Convenzione non garantisca il diritto alla concessione di un luogo di culto da parte delle autorità, le restrizioni all'istituzione dei medesimi possono di fatto costituire un'interferenza con il diritto garantito dall'articolo 9 CEDU. La possibilità di utilizzare e disporre di edifici di culto costituisce un aspetto fondamentale per l'esercizio della libertà religiosa sia nella sua dimensione individuale che associata. Resta però, in ogni caso, ferma la regola generale che riconosce alle autorità nazionali un ampio margine di discrezionalità nella scelta e attuazione delle loro politiche di pianificazione urbana.

Riaffermati tali principi la Corte EDU è passata ad analizzare il caso di specie. Per i giudici di Strasburgo le diverse misure amministrative adottate nel torno di tempo considerato si sono tradotte in un'interferenza con la libertà religiosa della ricorrente. Difatti, anche l'applicazione di disposizioni come i regolamenti di pianificazione urbana può in alcuni casi costituire un'ingerenza con tale fondamentale diritto. Simili restrizioni possono giustificarsi, come ha ricordato la Corte, solo se prescritte dalla legge e se "necessarie in una società democratica" secondo la lettera del secondo paragrafo dell'articolo 9 CEDU. Per conseguenza, la Corte ha rilevato la violazione dell'articolo 9 della Convenzione, interpretato alla luce della protezione offerta dall'articolo 11. Riguardo, invece, all'art. 13 CEDU la Corte ha ritenuto tale dedotta violazione assorbita nella precedente; mentre quella concernente l'art. 14 è stata dichiarata inammissibile. Conclusivamente e

con riguardo alla richiesta di risarcimento del danno patrimoniale avanzata dalla ricorrente la Corte ha ricordato come tale pretesa debba essere accompagnata dalla dimostrazione dell'esistenza di un nesso di causalità tra la violazione e il danno finanziario subito. Per il caso di specie, quindi, alla ricorrente è stato riconosciuto il ristoro per danno morale, ma non anche il risarcimento per danno patrimoniale.

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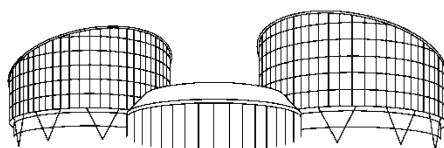

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

**CASE OF THE RELIGIOUS DENOMINATION OF JEHOVAH'S WITNESSES IN BULGARIA v. BULGARIA**

(*Application no. 5301/11*)

JUDGMENT

STRASBOURG

10 November 2020

*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 The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria,**

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

Iulia Antoanella Motoc, *President,*
Yonko Grozev,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian organisation, The Religious Denomination of Jehovah's Witnesses in Bulgaria ("the applicant"), on 11 January 2011;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints, made under Articles 9 and 13 of the Convention and under Article 1 of Protocol No. 1 to the

Convention, about the authorities preventing the applicant from constructing and using its house of worship on its own property and to declare the remainder of the application inadmissible;
the parties' observations;
Having deliberated in private on 29 September 2020,
Delivers the following judgment, which was adopted on that date:

**INTRODUCTION**

1. The case concerns a complaint by the applicant, in particular under Article 9 of the Convention, that the authorities continually prevented it, unlawfully and without good reason, from constructing its house of worship.

**THE FACTS**

2. The applicant, the Religious Denomination of Jehovah's Witnesses in Bulgaria, is a legal entity registered in Bulgaria in 2003. It is represented before the Court by Mr D. Kalaitzis, lawyer practising in Greece, and Mr A. Carbonneau, lawyer, authorised to practise in France. Mr A. Carbonneau was granted leave under Rule 36 § 4 (a) by the President of Section to represent the applicant despite not residing in any of the Contracting States to the Convention.
3. The Government were represented by their Agent, Ms M. Dimitrova, from the Ministry of Justice.
THE CIRCUMSTANCES OF THE CASE
4. The facts of the case, as submitted by the parties, may be summarised as follows.
Mayoral order approving a change to the urban planning regulations regarding a plot of land and initial challenges to that order
5. A plot of land situated in the municipal district "Mladost" of the city of Varna, on which the applicant started to construct a house of worship in 2007, had been subject to amendments in its designation over the years. More specifically, it was returned to the pre-nationalisation owner at some point between 1990 and 1998. Pursuant to the local urban development plan of 1976, in force at the time of the restitution, the land was not designated for construction. It was land located between residential buildings and part of it was set aside for green areas.
6. On 5 January 1998 the owner of the land initiated proceedings for amending the local urban development plan (застроителен и регулационен план). He requested a change of designation of the impugned area from an "area earmarked for green spaces between residential buildings" to "two plots designated for construction" (plots nos. 168 and 169). On 12 January 2001, while the administrative proceedings for amendments in the local urban development plan were pending, three individuals, members of the applicant organisation, purchased plot no. 168.
7. On 16 May 2001 an announcement dated 11 May 2001 was posted in the neighbourhood to the effect that a change to the planning regulations was pending as regards the area in question, which was going to be used "for public services". Interested parties could consult the plans and object to them within a seven-day period.

8. In a reaction to that announcement, a group of twenty-one individuals living in the immediate vicinity ("the neighbours"), including Mr B. and Mr U., sent a letter to the mayor of Varna's municipal district "Mladost" on 23 May 2001. The neighbours expressed their concern about the lack of clarity of the term "public services". They also stated their worries about the possibility of buildings for public services being erected in close proximity to their homes because of the potential nuisance and air pollution which they could generate. It would appear that the mayor did not reply to that letter.

9. After the amendments to the local development plan were finalised by the Varna municipal council, they were approved by the mayor of Varna municipality (hereafter "the mayor") under an order of 16 August 2001 (hereafter, the "2001 mayoral order"). The 2001 mayoral order stated that the property was to be converted into two separate lots, namely plots nos. 168 and 169, designated for the construction respectively of a one-storey building and a three-storey building, the latter specifically designated as a residential property.

10. In accordance with the relevant statutory rules for town planning, the 2001 mayoral order had to be reasoned, in particular, by pointing to the specific public interest and need for the amendment (see section 32 § 1 of the Territorial and Urban Planning Act 1973 – hereinafter, "the 1973 Act" – in relation to section 84 of the regulations for its implementation, both quoted in paragraph 64 below). The reasons had to be provided in either the 2001 mayoral order or in the documents in the administrative file. As later established by the domestic courts (see paragraph 35 below), neither the order, nor the accompanying documents contained reasons for the amendments. The request for amendments lodged in 1998 was not found either.

11. Furthermore, the mayoral order had to be served on the chairpersons of the adjacent residential properties (see section 194 of the 1973 Act, quoted in paragraph 62 below), so that interested neighbours could challenge the order in court if they so wished.

12. Some of the neighbours were notified of the 2001 mayoral order. The applicant submitted, to that effect, a number of copies of postal delivery notices received on different dates in the second half of August 2001 by individuals living in different streets in Varna's municipal district "Mladost" and in a number of separate buildings (blocks nos. 2, 24, 307, 212, 206, 13 and 118). It is unclear from the notices what exactly was delivered to those recipients. The Government pointed out that two domestic judicial levels had found that the municipality had failed to provide, or at least had not kept, a record of serving the statutorily required notices on the interested parties – the neighbours of the impugned plots (see paragraphs 34 and 36 below).

13. On 11 September 2001 some of the neighbours, including Mr B., who lived in neighbouring block no. 2, challenged the 2001 mayoral order before the Varna Regional Court, which had jurisdiction to hear the case at the time. In particular, they were concerned that the height of any future residential construction on plot no. 169 would block daylight to the lower floors of their buildings, obstruct their view and potentially cause air pollution and other types of nuisance. They also pointed out that when they had purchased their apartments the area covering plots nos. 168 and 169 had been designated as free from construction, with possible plans to convert it into a park or a children's playground.

14. These proceedings were terminated on 20 October 2002, on procedural grounds and without a ruling on the merits. The court found, in a final decision, that the complainants had failed to

correct irregularities in their appeal despite an earlier specific instruction by the court to that effect. It accordingly returned the complaint to them without examining it.
15. In the meantime, on 3 October 2001 the consultative council for territorial planning attached to the Varna municipality decided that the 2001 mayoral order should be amended, and plot no. 169 be redesignated for the construction of a three-storey building "for public services" (see paragraph 9 above). The council also stated that the new order had to be notified accordingly.
16. On 29 November 2001 the mayor amended his 2001 order (see paragraph 9 above). There is no indication that Mr B., Mr S. or Mr U. were notified of this order. According to the applicant, the individuals who had challenged the 2001 mayoral order in court (see paragraph 13 above) were notified of this amendment. According to the Government, the order was sent to three families living in the adjacent residential building.
17. On 12 July 2006 a group of neighbours challenged the 2001 mayoral order in court, claiming that it was null and void. Mr B., Mr S. and Mr U. were not among those neighbours. On 27 September 2006 the Varna Regional Court terminated the proceedings in respect of all but one of the neighbours, finding that the plaintiffs had failed to correct a number of irregularities in the complaint, in breach of the court's instructions. On 4 December 2006 the same court also terminated the proceedings in respect of the remaining plaintiff for the same reason. The Supreme Administrative Court (hereinafter, "the SAC") declared his appeal inadmissible in February 2007.
Building permits in respect of plot no. 168
18. On 7 July 2005 the "Mladost district" of Varna municipality issued a building permit to the three individuals who had bought plot no. 168 on 12 January 2001 (see paragraph 6 above). The permit concerned the construction on that plot of a one-storey building "for public services", specifically, lecture halls.
19. On 18 January 2006 the applicant obtained title to plot no. 168. On 30 March 2006 the chief architect of the "Mladost district" of Varna municipality approved an amendment to the building permit, following a request to that effect by the applicant.
20. On 7 May 2007 the municipality authorised the continuation of the construction and the applicant immediately started building works.
Suspension of the construction on the property and related judicial review proceedings
21. Less than two months later, on two occasions, that is to say on 29 June and 2 July 2007 respectively, the municipal buildings-control authorities carried out an inspection of the construction site and found breaches of some of the relevant regulatory requirements, in particular section 160(2) of the Territorial Organisation Act 2001 (hereinafter, "the 2001 Act") taken in conjunction with section 224(1)(3) and (5) of the same Act (see paragraph 65 above). More specifically, it was established that the construction was proceeding in the absence of an authorised technical supervisor, of a signed orders book and of a signed record of the starting date of the construction work.
22. On 4 July 2007 the mayor imposed a fine of EUR 1,500 on the applicant for the breaches of construction regulations. On the same day the applicant wrote to the mayor objecting to the building-control authorities' findings, and asking the mayor to annul them. On an unidentified date the applicant challenged before the regional governor the mayoral order imposing the fine. Neither the mayor nor the governor reacted to these challenges.

23. On 9 July 2007 the mayor ordered the suspension of construction on the basis of the findings of the building-control authorities concerning the breaches of construction regulations. The mayor acted pursuant to section 224 of the 2001 Act, as relevant at the time (see paragraph 65 below).
24. On 19 July 2007 the applicant challenged that suspension order in court, and requested that its enforcement be stayed. The Varna Administrative Court (hereinafter, "the VAC") rejected the applicant's complaint on the merits on 28 November 2007. The court, having carried out a review of the lawfulness of the mayoral order of 9 July 2007, found that the supervisory authorities had found a number of breaches which had occurred during the construction works. Those breaches had impeded the lawful start and continuation of construction. The applicant had not shown, either before the administrative authorities or before the court, that those breaches had not occurred. Consequently, the mayor had been authorised in law to suspend construction, and he had acted in accordance with that prerogative.
25. The applicant appealed to the SAC. It argued that the administrative measures applied to it had been draconian in nature and inadequate in terms of the law. The applicant claimed that the "severe and pedantic attitude" demonstrated by the authorities in its regard, "in a context of a sea of unlawful constructions happening throughout the city of Varna", amounted to a breach of its right to manifest its religion and be free from discrimination. It pointed out that the right to manifest one's religion comprised the possibility to use one's own premises for religious meetings. The authorities had to refrain from imposing overly strict or prohibitive conditions for practising a religion, which included using an excessively restrictive interpretation of otherwise flexible rules as grounds for suspending the construction of a place of worship for a minority religious group. The mayoral order for suspension of the construction had been clearly discriminatory, and had been issued as a result of public pressure and an open demonstration of intolerance towards their religion. The applicant submitted that it therefore had been a victim of discrimination on the basis of its religion, in breach of Articles 9 and 14 of the Convention.
26. The SAC upheld the lower court's findings on 16 July 2008. In particular it found that the irregularities in the construction process which had been established by the administrative authorities had been sufficiently serious and, in view of the imperative relevant legal requirements, the suspension of construction had been justified. As to the applicant's claim that the authorities had acted with unreasonable formalism, in a prejudiced and discriminatory manner, and had thus interfered unlawfully with the applicant's freedom of religion, the court held that it was without merit and out of the scope of the examined case. More specifically, suspension orders of the type issued in this case were given in all cases and to all persons in respect of whom the relevant authorities had established similar breaches. Such orders were based on the applicable legal requirements and were unrelated to the religious convictions of the persons to whom they were addressed.
Instances of public opposition to the applicant's religion
27. İn May and June 2007, once the applicant had begun constructing its house of worship, a well-known Bulgarian nationalist political party displayed posters at the building site and held a large-scale protest against the building project. Slogans such as "Orthodoxy – Yes! Sects – No!" and "No to sectarian poison" were exhibited.

28. On 3 July 2007 the Municipality issued a declaration which stated in part: "We, members of the Public Council on topics regarding ethnic and religious communities in Varna, operating under the mayor of the city, declare our explicit support for the protests by the citizens of the Varna neighbourhood Mladost against the construction of the church of prayer of Jehovah's Witnesses ...We express our serious worries about the official invasion of our town by that foreign religious community, one which is outlandish for Bulgaria. We are deeply anxious about the influence of this sect, which aggressively and arrogantly plants dubious religious values in the population of our town and especially in our children". The Municipality's declaration was published in the Narodno Delo newspaper on 5 July 2007.
29. In September 2009, a local internet television channel reported that the mayor had declared that the people of Varna had the right to protest against the construction of a house of worship by the applicant. While the protest planned for later that day would be unlawful as the mayor had not been put on notice by the organisers (a political party and the people living in Mladost neighbourhood), he was ready to authorise such a protest as in his opinion the people were right. The mayor clarified that judicial proceedings were pending in connection with the construction of a house of worship by the Jehovah's Witnesses and that he personally was not inclined to issue an order allowing them to build.
Complaints by the applicant to the Directorate for Religious Denominations
30. On 14 March, 6 July and 24 July 2007 respectively, a representative of the applicant wrote to the General Director of the Directorate for Religious Denominations ("the Directorate") about growing intolerance and opposition to its religion by the general population, by a certain political party and by representatives of the municipality, which included a targeted campaign aimed at obstructing its endeavours to build a place of worship. The applicant asked for assistance towards ensuring that the arbitrary obstruction of its activities by various local authorities in Varna was brought to an end.
31. The Directorate did not react to those complaints and requests and the applicant did not pursue the matter further.
New challenge to the mayoral order approving a change to the urban planning regulations regarding plot no. 168
32. In the meantime, on 6 November 2006, Mr B., Mr S. and Mr U., all three of them neighbours who lived in blocks nos. 1 and 2 in the vicinity of plots nos. 168 and 169, complained before the VAC about the 2001 mayoral order (see paragraph 9 above). They submitted their complaint via the mayor's office. In particular they complained that they had not been properly informed of the purpose for which the change to the urban planning regulations had been authorised. On 19 June 2007, in the absence of a reply from the mayor, they reiterated their challenge in court. The VAC invited the complainants to provide further details on their complaint. On 23 November 2007 a lawyer acting on their behalf clarified that the complaint concerned the mayoral order of 16 August 2001, as modified by his subsequent order of 29 November 2001 (see paragraph 16 above). The lawyer specified alternative grounds for the challenge, namely the fact that the interested parties had not been properly notified and that the order had been unlawful, as well as null and void.

33. In the proceedings before the VAC, the representative of the municipality argued that the complaint by Mr B., Mr U. and Mr S. was unfounded and should be rejected. The representative of the applicant, which had joined the court proceedings as an interested party, argued that the plaintiffs were not "interested parties" within the meaning of section 131 of the 2001 Act, as a result of which they had no legal interest in challenging the mayoral order in court.

34. On 4 December 2009 the VAC found that the complaint against the 2001 mayoral order was admissible as it had not been demonstrated that the procedural requirement of notifying all interested parties had been complied with. The court acknowledged that earlier proceedings challenging the same order had been brought by interested groups of neighbours and that those proceedings had been terminated on 20 October 2002 and 27 September 2006 respectively (see paragraphs 14 and 17 above). There was, however, no evidence that the current claimants had taken part in those earlier proceedings against the mayoral order.

35. Thereafter, ruling on the merits, the court quashed the 2001 mayoral order, finding it unlawful as lacking reasons to justify the change to the planning regulations, in breach of the legal requirements at the time (see section 32(1) of the 1973 Act, quoted in paragraph 64 below). The order had affected the lives of a large number of individuals, namely those living in the immediate vicinity of the property in question, and specific reasons had to be given if the change to the regulations were to be lawful.

36. The SAC rejected the related appeal, brought by the applicant, in a final judgment of 12 July 2010. The court found, in particular, that the lower court had correctly accepted that the challenge to the 2001 mayoral order was admissible. On the other hand, no evidence had been presented demonstrating that the order in question had been properly notified to all interested parties. In particular, the individuals who had challenged the order were interested parties as they had demonstrated that they held ownership rights to property adjacent to the plots covered by the said order.

37. The SAC also concluded that the applicant's claim of having been subject to discrimination was not germane to the case and did not fall within the jurisdiction of the court adjudicating in those proceedings (see paragraph 68 below). The court further found that the mayoral order of 29 November 2001, "correcting a factual error" (see paragraph 16 above), had been null and void, given that it had in fact modified the grounds for the reclassification of the land and that could not be said to be a factual error. However, as that finding did not alter the court's conclusion in respect of the validity of the lower court's decision, the SAC upheld that decision in its entirety.

Proceedings for continuing the construction on the plot

First set of judicial proceedings

38. On 15 May 2009, the applicant asked the mayor in writing to allow the continuation of the construction which he had suspended on 9 July 2007 (see paragraph 23 above). The applicant emphasised that it had complied with all previous orders issued by the mayor and had indeed paid the EUR 1,500 fine (see paragraph 22 above).

39. On 20 July 2009, the applicant provided documentary evidence to that effect.

40. As no reply by the mayor followed, the applicant challenged in court the absence of an administrative decision authorising the continuation of its construction. In a decision of 14 December 2009 the VAC found that the limitation period for such a challenge had lapsed. In

particular, the mayor had been obliged to react within fourteen days counted as from 20 July 2009, and the applicant had a further fourteen days to challenge the mayor's failure to act. The applicant appealed, pointing out that the absence of a decision authorising the continuation of the construction was in breach of its right to build a place for religious worship, protected both under the Bulgarian Constitution and under the Convention. On 23 March 2010, in a final decision, the SAC upheld the lower court's decision.

41. In the meantime, on 20 November 2009, the mayor suspended the proceedings started on 15 May 2009 by the applicant (see paragraph 38 above), pending completion of the court proceedings brought by the neighbours on 6 November 2006 against the 2001 mayoral order (see paragraph 32 above). The order suspending the proceedings could have been challenged in court within fourteen days, and the applicant omitted to do so. Subsequently, on 5 January 2010 the applicant asked the mayor in writing to lift the suspension of the proceedings ordered on 20 November 2009. The mayor did not reply.

Second set of judicial proceedings

42. In the meantime, on 7 October 2009 the applicant again asked the mayor to allow continuation of the construction. As no reply followed, on 27 October 2009 the applicant challenged in court, under Article 58 of the Code of Administrative Procedure in conjunction with section 224(5) of the 2001 Act (see paragraph 65 below), the mayor's tacit refusal to allow the resumption of the construction. The applicant emphasised that the mayor's silence was a serious breach of its right to freedom to manifest its religion, protected under the Convention and referred to case-law of the Court in support of its submission. It specified explicitly that the silence of the mayor had been the result of external pressure caused by public opposition to its religion (see paragraph 29 above). In particular, the applicant pointed out that in September 2009 two local newspapers had published an interview with the mayor in which he had declared that he was not inclined to authorise the resumption of the construction and that, if a political party had asked for his permission to demonstrate against continuing the construction of the applicant, he would have allowed such a demonstration. During the same month, a local internet television and the leader of a political party, also on television, had announced that following conversations with the mayor it had become clear that the resumption of the applicant's construction would not be authorised.

43. In a decision of 21 January 2010 the VAC dismissed the challenge, finding it inadmissible. It held in particular that the tacit refusal of the mayor to authorise the construction following the applicant's request of 15 May 2009 (see paragraph 38 above) had become final in the absence of a timely appeal by the applicant. The applicant could therefore not bring further proceedings concerning the same subject matter. Upon an appeal by the applicant, in which it stated that the municipality was deliberately finding different ways to prevent its construction, the SAC quashed the lower court's decision on 7 July 2010. The SAC observed that the lower court had found that there had been no new tacit refusal by the mayor on the merits of the applicant's request, but that the mayor's silence concerned a question on the admissibility of such a request. Thus, the SAC found, the lower court had without justification ruled on a different issue to that at the core of the applicant's challenge and had, as a result, delivered an unlawful decision. The mayor's silence following the applicant's request of 7 October 2009 (see paragraph 42 above) had undoubtedly represented a tacit refusal and, not only were the courts not prevented from pronouncing on the

challenge to it, but were indeed called upon to exercise judicial control over its lawfulness. The SAC accordingly returned the case to the VAC for examination.

44. On 7 December 2010, in a final judgment, the VAC found that the mayor's tacit refusal to issue an order in reply to the request to allow the resumption of the construction had been unlawful and repealed it. The court observed in the first place that the applicant had specifically complained that the mayor had acted with ulterior motives and that his inaction had breached the applicant's human rights. The court went on to establish that, as stated in an expert report commissioned in the course of the judicial proceedings and confirmed by the legal representative of the respondent, the applicant had rectified all the irregularities which had led to the construction's suspension in the first place. Consequently, under section 224(5) of the 2001 Act, the mayor had been required to issue an order allowing the requested continuation of the construction. The mayor's failure to reply at all had represented an abuse of authority. In the same judgment, the court returned the case to the mayor, instructing him to issue a decision on the applicant's request in line with the court's reasoning. The court did not deal with the applicant's explicit arguments about the religious prejudice demonstrated by the mayor and about it having breached the applicant's right to manifest its religion.

45. The mayor initially failed to act upon this court's judgment.

Third set of judicial proceedings

46. On 19 January 2011 the applicant wrote to the municipality requesting permission to resume its construction works. As no reply ensued, the applicant brought proceedings before the VAC on 28 June 2011, seeking a court order for the mayor to implement the judgment of 7 December 2010 (see paragraph 44 above) and asking the court to fine the mayor, under the Code of Administrative Procedure, if no implementation followed. The applicant did not allege, either explicitly or implicitly, that the mayor's failure to act upon the judgment negatively affected its freedom to manifest its religion.

47. The VAC rejected the claim in a final decision of 27 September 2011. The reason for it was that the mayor had in the meantime issued a decision on 20 September 2011 in which he had explicitly refused to allow resumption of the construction (see paragraph 46 above). The court held that the mayor had therefore implemented the final judgment of 7 December 2010 which had obliged him to act. It had been immaterial, for the purposes of implementing final court decisions, what the result of the mayor's decision was. The court held that the mayor's decision of 20 September 2011 could be challenged on the merits in separate judicial proceedings.

Fourth set of judicial proceedings

48. On 10 October 2011 the applicant challenged the mayor's explicit refusal of 20 September 2011 to allow the resumption of the construction (see the preceding paragraph). It claimed that the refusal was unlawful, that it had been given because of political motives and that it was in breach of the applicant's freedom to manifest its religion.

49. In a final judgment of 19 March 2012, the VAC rejected the challenge to the mayor's explicit refusal to allow resumption of the construction. The court ordered an expert report which established, following an inspection and some excavation on the suspended construction site, that the foundations of the construction had been laid. The court examined the applicant's arguments relating to the continuation of the construction works. The court rejected those arguments, giving

detailed reasons. The court observed more specifically that the mayor had established that the applicant had indeed rectified all the irregularities which had originated the 9 July 2007 suspension order (see paragraph 23 above). In the meantime, however, as stated in the expert report as accepted in the court proceedings, the earlier mayoral order of 2001 designating the plot of land as an area where building was permitted had been quashed as unlawful (see paragraphs 35-36 above). Consequently, the building permit of 2005 (see paragraph 18 above) had been invalidated as no longer corresponding to the urban planning order of 1976 (see paragraph 5 above), which had remained in force after the 2001 mayoral order had been quashed.

50. The court further observed that, pursuant to domestic law, in particular paragraph 22 of the Transitional Provisions taken in conjunction with section 159 of the 2001 Act (see paragraph 67 below), the construction works could have continued despite the quashing of the 2001 mayoral order. The relevant legal provisions required, in particular, that the physical laying of the foundations had been completed and that this had been duly recorded in the requisite construction documentation which had to be filled in and recorded. An expert report commissioned in the context of the proceedings established that foundation work had been realised on the applicant's construction site. However, in the absence of a proper record concerning the laying of the foundations, which also served to ascertain the compliance of the foundations with the relevant building regulations, the legal requirement for considering the construction "tolerable" had not been met. The court concluded that, in the circumstances, it would have been unlawful for the mayor to order the continuation of the construction.

51. Finally, the court held that, as the SAC had found on 16 July 2008 (see paragraph 26 above), the applicant's allegations of demonstrated formalism, discrimination and ulterior motives behind the refusal to allow resumption of the construction, were unrelated to the concrete dispute in the case and could not be considered to have been the reason for the impugned mayoral order. The applicant appealed against this decision, but the courts confirmed that no appeal lay against it.

Proceedings for damages brought by the applicant in connection with the suspension of the construction

52. In the meantime, on 27 October 2009, the applicant brought a claim for damages against the municipality, under section 1 of the State and Municipalities Responsibility for Damage Act ("the SMRDA" – see paragraph 66 below). It specified that it sought compensation for the municipality's tacit refusal to allow the resumption of the construction, and from public statements by representatives of the municipal authorities concerning the applicant's case. The VAC dismissed the claim as inadmissible on 1 February 2010.

53. The applicant appealed against that decision, stating also, without elaborating further, that the municipal authorities' actions had breached its fundamental rights, in particular those protected under Articles 6, 9, 11, 13 and 14 of the Convention, as well as under Articles 1 and 2 of Protocol No. 1 to the Convention. On 18 June 2010, the SAC quashed the lower court's decision and returned the case to it for a fresh examination.

54. On 18 January 2011 the VAC asked the applicant to specify its claim. The applicant clarified that it was claiming compensation for pecuniary damage in respect of the tacit refusal of the mayor, which had been quashed as unlawful, to allow the resumption of the construction of its planned house of worship. The applicant had incurred pecuniary damage from having had to pay

rent for alternative premises in order to hold its religious meetings. It also claimed compensation for non-pecuniary damage in respect of the mayor's negative statements in the media, which had included insults, defamatory claims and discriminatory threats against the applicant. It reiterated its statement (see the paragraph immediately above) about this having breached its Convention rights.

55. On 5 May 2011 the VAC rejected the claim. The court observed in particular that the applicant had concluded two contracts for rental of premises: one on 1 July 2007 and the second one in July 2009. Those contracts concerned a period of time when the mayoral order of 9 July 2007 for the suspension of the construction (see paragraph 23 above) had been lawfully in force. Similarly, the applicant had not demonstrated that it would have accrued material gains from the potential future completion of the construction and its exploitation for profit. No causal link had been established therefore between the unlawful act of the administration and the pecuniary loss incurred by the applicant. As to non-pecuniary damages, such compensation could only be awarded to physical persons.

56. The SAC confirmed the lower court's judgment in a final judgment of 2 November 2011. It found that the applicant's request for permission to continue its construction work had been made after it had signed the contracts for rent of alternative premises. Consequently, the applicant had knowingly concluded those contracts for a specific period of time which had been unrelated to and not conditional on its ability to complete the construction. The court also concluded that no unlawful action or inaction had been established on the part of an administrative authority which had been in a direct causal link to the pecuniary and non-pecuniary damage which the applicant claimed it had incurred.

Further developments

57. In the absence of any ability to continue the construction of its worship house, the applicant's members have been meeting at rented hotel facilities which are neither designed nor suitable for that purpose.

58. In 2017 the applicant brought tort proceedings, under sections 45 and 49 of the Obligations and Contracts Act, which were unrelated to any of the proceedings described above. The applicant sought compensation from a television company and the leading presenter on one of its programmes for non-pecuniary damage sustained as a result of denigrating statements made by the presenter on television in 2014. In a final judgment of 18 March 2019 the Supreme Court of Cassation ("the SCC") granted the applicant's claim in its entirety. The court observed that the possibility, as a matter of principle, for legal persons to be awarded non-pecuniary damages was introduced in the Bulgarian legislation in the mid-2000s, following and in line with the case-law of the Court.

59. In 2013, the applicant had brought another set of tort proceedings against a media company for the publication of denigrating statements. In a final judgment of 26 March 2019 the SCC granted the claim for part of the amount sought by the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

60. Article 13 § 1 of the Constitution provides that religions shall be free. Article 37 of the Constitution guarantees freedom of conscience, thought and choice of religion or of religious or

atheistic views. Freedom of conscience and religion cannot be exercised to the detriment of national security, public order, public health and morals, or the rights and freedoms of others.

61. In Bulgarian administrative law, administrative acts that affect the rights of individuals or organisations must be notified to them in accordance with the statutory provisions. Proper notification is an obligation incumbent on the administrative body and it marks the beginning of the running of the time-limit for challenging the act. The lack of proper notification does not allow for this time-limit to start running. It is irrelevant whether the individuals or organisations concerned learned about the act in another manner (see реш. № 1310 от 14.02.2003 г. на ВАС по адм.д. № 9787/2002 г., II о.; опр. № 4797 от 27.05.2004 г. на ВАС по адм.д. № 3941/2004 г., II о.; опр. № 2060 от 9.03.2005 г. на ВАС по адм.д. № 416/2004 г., II о.; реш. № 3908 от 25.03.2009 г. на ВАС по адм.д. № 11159/2008 г., II о.).

62. Pursuant to section 194 of the 1973 Act, notifications to owners of flats in multi-storey shared buildings had to be served on the chairpersons of the residential property (председатели на етажна собственост) in which the interested persons resided. According to paragraph 6 § 3 of the transitional provisions of the 2001 Act, the rules under the 1973 Act applied in respect of the procedures for approving, notifying and challenging urban development plans submitted for approval before 31 May 2001.

63. Administrative proceedings start on the date when a request is made before an administrative body (Article 25 § 1 of the Code of Administrative Procedure ("the Code")). Administrative acts are to be issued within a fourteen-day period from the request being made (Article 57 § 1 of the Code). As a general rule, an administrative body has to issue the requested act, or refuse to do so, in an explicit motivated decision, which has to contain a number of mandatory elements, such as factual and legal grounds, as well as an operative part (Article 59 §§ 1 and 2 of the Code). The failure of an administrative body to pronounce on a request, when required by law to decide on it, represents a tacit refusal (Article 58 § 1 of the Code). A tacit refusal can be challenged in court within one month counted from the end of the period within which the administrative body had been obliged to reply (Article 149 § 2 of the Code). The domestic courts have consistently applied these provisions by quashing tacit refusals of administrative bodies when the latter were required in law to explicitly issue a motivated decision on a request addressed to them, but had failed to do so (реш. № 41 от 8.04.2008 г. на адм. съд - Добрич по адм. д. № 396/2007 г.; реш. № 1 от 18.05.2007 г. на адм. съд - Враца по адм. д. № 20/2007 г.; реш. № 17 от 1.08.2008 г. на адм. съд - Враца по адм. д. № 193/2008 г.; реш. № 44 от 24.06.2009 г. на адм. съд - София по адм. д. № 737/2009 г. ; реш. № 7492 от 8.06.2009 г. на ВАС по адм. д. № 2835/2009 г; реш. № 13576 от 12.11.2009 г. на ВАС по адм. д. № 5748/2009 г).

64. According to section 32(1) of the 1973 Act, changes to the local development plan can be made in the public interest for the purposes and needs of urban planning. In particular, such amendments were allowed when there were significant changes to socio-economic or town planning instruments, or to the technical conditions under which the plan had been put together, and when new public needs emerged for which it was necessary to provide plots of land (section 84 of the regulations for the implementation of the 1973 Act).

65. Under section 160(2) of the 2001 Act, the working relations among different construction actors are defined in written contracts. Under section 224(1)(5) of the 2001 Act, as worded at the time of

the relevant facts, the mayor must suspend work on a construction and prohibit access to the site if the work is being carried out, among other things, without an entry in the signed records book and a signed record of the starting date of construction. Under section 224(5) of the 2001 Act, as worded at the time, construction works which had been previously suspended may resume after an order to that effect has been issued by the body having suspended it.

66. Section 1(1) of the SMRDA provides that the State and, since 2006, municipalities are liable for damage suffered by private persons as a result of unlawful acts or omissions by State or municipal bodies or civil servants, committed in the exercise of administrative duties. Section 4 provides that compensation is due for all damage which is the direct and proximate result of the unlawful act or omission.

67. Paragraph 22 of the Transitional Provisions of the 2001 Act, in conjunction with section 159 of the 2001 Act, is a protective clause, essentially allowing, under certain conditions, for the continuation of construction works where the relevant zoning plans have been declared unlawful.

68. Under section 71(1) of the Protection Against Discrimination Act 2004 ("the PADA"), every individual who considers himself or herself to be a victim of discrimination can bring a claim before the first-instance civil court, seeking in particular to establish that he or she has been discriminated against, that the defendant be made to discontinue the discriminatory treatment and to refrain for the future from it, and that compensation be paid to the victim. Between 19 May 2015 and 16 January 2019, the administrative, and not civil, courts were competent to hear discrimination claims against public bodies or officials under section 71(1) of the PADA, pursuant to two interpretative decisions of a joint bench of judges from the SCC and SAC.

**THE LAW**

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

69. The applicant complained that it had been prevented by the authorities from using its own property for its intended purpose. It relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

70. The Government submitted in the first place that the applicant had failed to use all the available and effective domestic remedies for this complaint. In particular, the applicant had not brought proceedings under the SMRDA (see paragraph 66 above) in connection with the quashed 2001 mayoral order. In such proceedings it could have sought compensation for the pecuniary damage resulting from the loss which it had sustained from having invested in the construction work that had been discontinued following the quashing of the 2001 mayoral order. The Government further stated that, inasmuch as there had been an interference with the applicant's property, it had resulted from the quashing of the 2001 mayoral order. However, that quashing

had been lawful and been effected in the public interest and within the broad margin of appreciation enjoyed by States in the area of territorial planning. Nor had the applicant been made to bear any excessive individual burden.

71. The applicant disagreed. It pointed out that it had attempted to claim damages in relation to the mayor's refusal to lift the suspension of the construction works, without success. It was therefore unreasonable to argue that filing a similar claim in relation to the 2001 mayoral order would have had a different result.

72. The Court observes that the applicant's stated intention has been to build a house of worship on its land and to use it for religious meetings of its members. The quashing of the 2001 mayoral order, which had initially designated the land as an area where building was permitted (see paragraph 9 above), resulted in its inability to do so, as established by the domestic authorities (see paragraph 49 above). Therefore, the applicant has an arguable claim that the measure in question negatively affected the peaceful enjoyment of its possession and Article 1 of Protocol No. 1 to the Convention is therefore applicable. The Court considers that the interference by the authorities amounted to control over the use of the applicant's property.

73. The Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see Vučković and Others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014). Thus, the complaint submitted to the Court must first have been made before the appropriate national courts. The rule of exhaustion of domestic remedies requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged (see Micallef v. Malta [GC], no. 17056/06, § 55, ECHR 2009).

74. The Court then notes that the State and, as of 2006, the municipalities, are liable under the SMRDA for damage caused to individuals or legal entities as a result of unlawful decisions, actions or omissions of their bodies and officials (see paragraph 66 above). In the present case, it was on the basis of the authorities' own acts, namely initial amendment of the urban development plan and issuing of a building permit, that the applicant pursued its investment in the building project. Those acts were subsequently invalidated and that ultimately caused it to incur losses from its inability to build. The Court accordingly finds that the actions for damages under the SMRDA relating to the quashing of the 2001 mayoral order could have resulted in payment of compensation for any pecuniary loss incurred in connection with the investment in the construction work which was unable to continue as a result of an act by the authorities declared unlawful by the domestic courts (see, mutatis mutandis, Kateliev v. Bulgaria (dec.), no. 18594/06, § 54, 25 June 2013). Therefore, as advanced by the Government, a claim for damages stemming from the quashed 2001 mayoral order appears to be an adequate remedy potentially capable of remedying any pecuniary loss sustained by the applicant in breach of its right under Article 1 of Protocol No. 1 to the Convention.

75. The Court observes that the applicant has not attempted to bring such proceedings. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

ALLEGED VIOLATION OF ARTICLES 9 AND 11 OF THE CONVENTION

76. The applicant organisation complained under Article 9 of the Convention that the domestic authorities had prevented it from having a house of worship on its chosen site, which it needed in order to carry out weekly religious services for its members.

77. It further complained under Article 11, taken alone and in conjunction with Article 9, that it had not been able to organise meetings for its members in its worship house which it never built on its property.

78. The applicant also complained, under Article 14 in conjunction with Articles 9 and 11, of discriminatory actions by the mayor, who had publicly voiced his support for public protests attacking the religious beliefs and practices of the Jehovah's Witnesses.

79. Articles 9, 11 and 14 of the Convention provide as follows:

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Article 14

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

Scope of the case

80. Being master of the characterisation to be given in law to the facts of the case (see), the Court considers that the complaints fall to be considered under Article 9 of the Convention. In so far as they touch upon the organisatio Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018n of meetings for the members of the applicant's religious community, the Court will interpret Article 9 in the light of the protection afforded by Article 11 of the Convention (see, for a similar approach, Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria, no. 40825/98, § 60, 31 July 2008, and the references therein).

81. As to the complaint under Article 14 of the Convention about religious prejudice and discrimination allegedly manifested by the mayor vis-à-vis the applicant's religion by means of public statements, the Court declared this complaint inadmissible at the time of communicating the other complaints to the Government. This complaint will therefore not be examined in the present judgment.

Admissibility

Applicability

82. The Government submitted that Article 9, taken alone or in conjunction with Article 11 of the Convention, did not bestow a right for applicants to gather to manifest their religious beliefs wherever they wished. Also, the Convention did not guarantee the right of a religious community to obtain a place of worship from the public authorities. In this relation the complaints of the applicant organisation were incompatible ratione materiae or manifestly ill-founded.

83. The applicant pointed out that the rights guaranteed by Article 9 of the Convention were directly linked to the right of religious organisations to have houses of worship especially designed for the performance of acts of worship and devotion.

84. The Court has held that a Church or an ecclesiastical body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (see Cha'are Shalom Ve Tsedek v. France [GC], no. 27417/95, § 72, 27 June 2000, and Leela Förderkreis e.V. and Others v. Germany, no. 58911/00, § 79, 06 November 2008). Also, given that Article 9 of the Convention protects the right to provide, open and maintain places or buildings devoted to religious worship, the operation of religious buildings is capable of having an impact on the exercise of the right of members of religious groups to manifest religious belief (see The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom, no. 7552/09, § 30, 4 March 2014, and Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey, no. 32093/10, § 41, 2 December 2014).

85. In view of the applicant's complaints, the Court finds Article 9 of the Convention to be applicable in the present case. Accordingly, it rejects the Government's objection of incompatibility ratione materiae.

Exhaustion of domestic remedies

86. The Government submitted that the applicant had failed to seek compensation for pecuniary damage in relation to the loss it had sustained as a result of the quashing of the 2001 mayoral order.

87. The applicant disagreed. It pointed out that it had attempted to claim damages in relation to the mayor's refusal to lift the suspension of the construction works, without success. In particular, the constant judicial practice at the time had been to refuse to award compensation for non-pecuniary damage to legal entities; that practice had changed only in 2019. It was therefore unreasonable to argue that filing a similar claim in relation to the 2001 mayoral order would have had a different result. Claiming damages in relation to the quashed 2001 mayoral order was not an effective remedy as it could not have addressed the core issue of this case, namely the blatant discrimination by the mayor, whose actions had prevented the applicant from building its house of worship.

88. The Court notes that the core of this complaint by the applicant concerns its inability to build its house of worship for the holding of religious meetings as a result of the authorities' various

actions and inactions. It thus finds that, contrary to the complaint under Article 1 of Protocol No. 1 to the Convention (see paragraphs 74-75 above), proceedings for damages as such would not have been capable of providing appropriate and adequate redress in respect of this complaint. The reason for it is that a compensatory remedy in the form of a claim for damages could not provide adequate redress in a situation where the authorities were called upon to take specific, i.e. non-substitutable measures, as was the case for example where they had to accelerate and complete the process of restitution of agricultural land, or provide access to public information (see, mutatis mutandis, Guseva v. Bulgaria, no. 6987/07, § 46, 17 February 2015).

89. It follows that the Government's objection of non-exhaustion of domestic remedies should be rejected.

Conclusion

90. The Court further finds that the complaints about the applicant's inability to build a house of worship on its own land and to hold its religious meetings there, as lodged under Articles 9 and 11 of the Convention, are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

Merits

The parties' submissions

(a) The applicant

91. The applicant submitted that, instead of being guided by neutral considerations or relying on generally applicable neutral rules, the city municipal council and the mayor had yielded to public pressure and demonstrated religious intolerance which had resulted in the mayor suspending the applicant's construction. If the mayor had been neutral and had complied with the law, he would have allowed the construction to proceed immediately after the adoption of the 7 December 2010 judgment ordering him to pronounce on the applicant's request to lift the suspension (see paragraph 44 above). However, he had not done so. Likewise, had the mayor acted in good faith, he could have easily resolved the problem for the applicant by adopting a new urban planning order that satisfied the criteria set out by the domestic courts.

92. In addition, the applicant stated that it had been unforeseeable that the relevant legislation would be applied arbitrarily by the court which quashed the 2001 mayoral order as unlawful. In particular, the courts which had decided on it had done so wrongly, given that the three individuals who had been at the origin of that challenge – Mr B., Mr U. and Mr S. – had been aware of the 2001 order and had taken part in the earlier proceedings against it, in 2002 and 2006.

93. Similarly, the applicant could not have foreseen the mayor's refusal to implement the final judgment of 7 December 2010 ordering the mayor to decide on the applicant's request for permission to continue with the construction works.

(b) The Government

94. The Government emphasised that the instant case concerned administrative judicial proceedings related to the review of amendments to the urban development plan and to the suspension of the construction works of the applicant. Those proceedings involved purely town-planning issues and revealed failures, dating back to 2001, of the municipal authorities to conduct a lawful procedure for amendments to the urban development plan. As a result of that failure, the building permit, which had been issued subsequently on the basis of the 2001 mayoral order,

allowing the applicant to build, had become invalid. Therefore, the applicant's submissions to the effect that the construction of the worship house had been suspended on grounds of religious considerations were ill-founded and based on misconceived facts.

95. The Government pointed out that in the proceedings before the VAC challenging the 2001 mayoral order, the municipality had defended the legality of the order (see paragraph 33 above). Consequently, despite the applicant's allegations of religious prejudice, the positions of the municipality and the applicant had overlapped on that issue. Between 19 June 2007 and 12 July 2010 the construction works could not have resumed because of the pending proceedings against the 2001 mayoral order amending the urban development plan. The mayoral order to continue the construction works in this situation would have been either premature (during the pending proceedings) or unlawful (after the judgment of 12 July 2010 – see paragraph 36 above). This conclusion was clearly supported by the reasons in the judgments by the VAC, respectively of 27 September 2011 and 19 March 2012 (see paragraphs 47 and 49 above).

96. Finally, in reply to the applicant's arguments, the Government underlined that, in Bulgarian administrative law, administrative acts that affect the rights of third parties had to be notified to the latter in accordance with the applicable statutory provisions. They pointed out to a number of cases in which the domestic courts had examined challenges to administrative acts years after they had been issued, finding that the lack of proper notification had not triggered the start of the time-limit for challenging the act (see paragraph 61 above). The Government accepted that in the instant case one of the neighbours, Mr B., had taken part in the 2002 proceedings against the 2001 mayoral order. However, there had been no proof that the other two plaintiffs, Mr. S. and Mr U., who had brought the 2007 challenge against the 2001 order, had been properly notified as interested parties.

The Court's assessment

(a) General principles

97. The Court reiterates that, while the Convention does not guarantee the right to be given by the authorities a place of worship as such (see Griechische Kirchengemeinde München and Bayern E.V. v. Germany (dec.), no. 52336/99, 18 September 2007), restrictions on establishment of places of worship may constitute an interference with the right guaranteed by Article 9 (see, for example, Manoussakis and Others v. Greece, 26 September 1996, § 38, Reports of Judgments and Decisions 1996-I; Vergos v. Greece, no. 65501/01, §§ 36-43, 24 June 2004, and Association for Solidarity with Jehovah's Witnesses and Others v. Turkey, nos. 36915/10 and 8606/13, §§ 90 and 91, 24 May 2016). The possibility of using buildings as places of worship is important for the participation in the life of the religious community and thus for the right to manifestation of religion (see Religious Community of Jehovah's Witnesses of Kryvyi Rih's Ternivsky District v. Ukraine, no. 21477/10, § 50, 3 September 2019, and the references therein).

98. The Court has been confronted with a number of situations where restrictions on the establishment of places of worship were imposed for planning-related reasons (see, for example, Johannische Kirche and Peters v. Germany (dec.), no. 41754/98, 10 July 2001; Vergos, cited above, §§ 40-43, and Tanyar and Küçükergin v. Turkey (dec.), no. 74242/01, 7 June 2005). It is also a well-established principle of the Court's case-law that domestic authorities enjoy a wide margin of appreciation in the choice and implementation of planning policies (see, for example, Chapman v.

the United Kingdom [GC], no. 27238/95, § 92, ECHR 2001-I, and Association for Solidarity with Jehovah's Witnesses and Others, cited above, § 103).

(b) Application of the general principles to the present case

99. In the present case, the Court notes that the applicant complained that the authorities continually prevented it, unlawfully and without good reasons, from constructing its house of worship. In particular, its inability to build was the result of a number of measures taken by the municipal authorities and several decisions of the courts. Those measures included the mayoral order suspending the construction in 2007 (see paragraph 23 above), his continuous refusal to lift it thereafter, and the courts' decisions confirming the suspension (see paragraphs 24-26 above) as well as finding lawful the mayor's ultimate explicit refusal in 2011 to allow the construction to continue (see paragraphs 48-51 above). In addition, the measures also comprised the allegedly arbitrary judicial decision to accept to examine in 2007 the neighbours' challenge to the 2001 mayoral order and to conclude that the latter had been unlawful (see paragraphs 32, 34, 35 and 36 above).

100. The Court observes that the measures complained of were not directly related to the applicant's freedom to manifest its religion. In that sense the impugned measures and domestic proceedings did not concern matters such as the granting of an authorisation to construct a place of worship, an authorisation to practice one's religion in it or a closure by the authorities of a place of worship (compare and contrast with Association for Solidarity with Jehovah's Witnesses and Others, cited above). Neither did they concern the registration of a religious community, the punishment or sanctions for conducting religious services, the ban on the applicant's functioning, or excessive restrictions on its ability to conduct religious services (see Association for Solidarity with Jehovah's Witnesses and Others, cited above), or a restriction of its ability to lawfully establish a place of worship elsewhere (see, mutatis mutandis, Juma Mosque Congregation and Others v. Azerbaijan (dec.), no. 15405/04, 8 January 2013). None of the measures in question in the instant case, acts by the mayor or judicial decisions alike, dealt directly with any such issues. Instead, the various measures concerned urban planning and construction-related matters which affected indirectly the applicant's ability to conduct religious meetings on its own property.

101. However, to the extent that the result of those measures and proceedings was an inability for the applicant to construct a house of worship on its own land where to gather its members and practice its religion, the Court finds that the different measures identified in paragraph 99 above represented an interference with the applicant's rights under Articles 9 of the Convention. Even the enforcement of generally applicable neutral provisions, such as urban planning regulations, can in some cases amount to an interference with the exercise of religious freedom (see Vergos, § 40; Johannische Kirche and Peters, and Religious Community of Jehovah's Witnesses of Kryvyi Rih's Ternivsky District, § 55, all three cited above). Any such interference can only be justified if the obtaining limitations may be considered as having been "prescribed by law" and "necessary in a democratic society" for one or more of the purposes set out in the second paragraph of Article 9 (see, inter alia, Jehovah's Witnesses of Moscow v. Russia, no. 302/02, § 108, 10 June 2010).

102. Given that the applicant invoked several different measures which affected its exercise of its Convention rights, the Court will examine them grouped below. Thus, it will consider (a) the proceedings related to the 2001 mayoral order, and (b) the proceedings related to the suspension of

the construction. As the parties differed on the question of whether the decisions taken in those proceedings had been the result of neutral considerations and application of generally relevant laws, the Court will examine this question in its related analysis.

(i) Proceedings related to the 2001 mayoral order

103. The Court notes that in those judicial proceedings, which lasted between 19 June 2007 and 12 July 2010 and were brought by some of the neighbours (see paragraph 32 and 36 above), the municipality had defended the legality of the 2001 order which had designated the applicant's plot as constructible (see paragraph 33 above). Thus, their position had overlapped with that of the applicant who had taken part in the proceedings as an interested party. Consequently, no alleged prejudice on the part of the mayor can be discerned during those proceedings.

104. As to whether the courts acted arbitrarily in accepting to hear the challenge on the merits and in delivering the decision that they did, the Court notes that two of the plaintiffs in those proceedings had neither taken part in the earlier challenges to the 2001 order, nor been properly informed of the order itself (see paragraphs 34, 36 and 96 above). The Government provided examples of case-law in which the SAC had explained the importance in domestic law of proper notification of administrative acts affecting the rights of interested parties (see paragraph 61 above).

105. In particular, given that the lack of proper notification did not allow for the limitation period for legal challenges to start domestically, as well as that the individuals who had brought the challenge were interested parties (see paragraph 36 above), the Court finds that the decision to accept to hear the challenge was in accordance with domestic law. In view of the accumulated clear domestic case-law on the matter (see paragraph 61 above), the consequences of the application of that law were also foreseeable. Referring to the judicial findings on the merits (see paragraph 35 above), the Court finds further that they were the result of the application of generally applicable neutral rules, were not arbitrary and were taken for the purpose of protecting the rights and freedoms of others (contrast with Religious Community of Jehovah's Witnesses of Kryvyi Rih's Ternivsky District, cited above, § 54).

(ii) Proceedings related to the suspension of the applicant's construction

106. The Court observes that the applicant's construction was suspended by order of the mayor of 9 July 2007 (see paragraph 23 above). That order had been based on a legal provision of general application relevant in the context of constructions which, like the one in the present case, had proceeded in breach of the relevant requirements (see paragraph 65 above).

107. In the judicial review proceedings, which the applicant brought against that suspension order (paragraphs 24-26 above), the courts carried out an analysis of the situation and confirmed that the suspension had been lawful. The last-instance court further dealt with the applicant's allegation that the order had been issued as a result of prejudice and intolerance, and concluded that it was without merit and out of the scope of the case. In view of the specific reasoning advanced by that court (see paragraph 26 above), namely that such suspension orders were given in all cases and to all persons in respect of whom the relevant authorities had established similar breaches, and that they had no relation to religious convictions, the Court finds that the authorities did not aim their decision to reject the applicant's judicial challenge at the applicant as a religious community. Consequently, the courts' decision to confirm the suspension was justified and the outcome

proportionate to the aim pursued (see, mutatis mutandis, Johannische Kirche and Peters, cited above).

108. The applicant brought subsequent judicial proceedings challenging the mayor's tacit refusal to lift the suspension order.

109. The Court observes in that connection that between 20 July 2009, when the applicant submitted evidence before the municipal authorities that it had eliminated all deficiencies at the origin of the suspension of its construction (see paragraph 39 above), and 7 December 2010, when the VAC held that the mayor's tacit refusal to pronounce on the applicant's request had been unlawful (see paragraph 44 above), a sequence of events took place which were not inconsequential for the applicant's rights.

110. In particular, in September 2009 the mayor was repeatedly reported to have publicly expressed his intention not to allow resumption of the applicant's construction (see paragraph 29 above). This followed a public declaration made by the municipal council earlier in time in which that collective body had expressed their opposition to the construction of the applicant's house of worship, specifically on the grounds of the applicant's religion considered as "foreign" and disseminating "dubious religious values" (see paragraph 28 above). Furthermore, the mayor continually kept silent on the applicant's requests to lift the suspension, until 20 September 2011, when he ultimately explicitly refused to allow the construction to continue (see paragraph 47 above).

111. In addition, for the administrative courts, which the applicant had seized with a challenge against that silence, it took more than thirteen months and three separate judicial decisions to decide on the challenge, despite the existence of clear legal provisions and domestic case-law on the questions of what was considered a tacit refusal and what represented a valid administrative act when an administrative body was required in law to issue one (see paragraph 63 above). The court, which ultimately held that the mayor's silence had been unlawful, remained in turn silent on the applicant's arguments that the tacit refusal had been the result of the mayor's prejudice against the applicant, and in breach of its right to manifest its religion (see paragraph 44 above). By the time that court found that the mayor had unlawfully failed to act on the applicant's request, and that he should have authorised continuation of the construction as all the irregularities had been redressed by the applicant, the developments in the proceedings challenging the 2001 mayoral order (see paragraph 36 above) had precluded the lawful continuation of the construction.

112. The Court finds, on the basis of the conclusion of the domestic court in the final judgment of 7 December 2010 (see paragraph 44 above), that the applicant had been unlawfully deprived of the opportunity to proceed with its construction. On the basis of the other elements of relevance, namely that on 20 July 2009 the applicant had demonstrated compliance with the requirements to continue with its construction (see paragraph 39 above) and that on 12 July 2010 the mayoral order designating the plot in question as "constructible" was quashed as unlawful (see paragraph 36 above), the Court considers that this was the case for about a year. The Court notes in this connection that the building works started immediately after permission had been given in 2007 (see paragraph 20 above), that they had advanced in the two months before being suspended (see paragraph 49 above), as well as that the applicant made numerous subsequent attempts to have that suspension lifted and the resumption of the construction authorised (see paragraphs 38, 42, 46

and 48 above). The Court therefore finds that it is not unreasonable to consider that a period of about a year is sufficiently long for the applicant to have realistically advanced with and completed the necessary stages of the construction which would have allowed for it to be considered "tolerable" under national law.

113. Accordingly, the Court finds that the combination of the measures examined above, for which either the mayor or the administrative courts were responsible, led to the applicant being prevented, without justification, from constructing its house of worship and from subsequently being able to conduct religious services for its members. This applied more specifically to the mayor's unlawful failure for about two years to reply to the applicant, the unreasonable and unjustified delay on the part of the administrative courts in pronouncing on the applicant's challenge to that silence (see paragraph 43 above).

114. A factor of special relevance is the fact that all those measures took place against the background of the mayor's publicly demonstrated overt opposition to the applicant's intention to build its house of worship, because of its religious activities (see paragraphs 28 and 29 above). Despite the public opposition and the applicant's explicit related arguments in the domestic judicial proceedings, namely that the measures preventing it from constructing its house of worship were improperly motivated by an opposition to its religious activities, the administrative courts did not engage with the matter (see paragraphs 43 and 44 above). They failed to address the evidence and arguments submitted by the applicant in this respect, and to rule on the applicant's complaint about a breach of its rights under Articles 9 and 11 of the Convention, limiting instead their analysis to exclusive examination of the formal legal reasons for unlawfulness of the mayor's silence (contrast, albeit in the context of Article 8 and mutatis mutandis, with Fernández Martínez v. Spain [GC], no. 56030/07, § 151, ECHR 2014 (extracts)). The Court thus finds that those measures, and the particular context in which they were implemented, resulted in serious limitations on the applicant's ability to exercise its freedom to manifest its religion. The measures were either unlawful, or unjustified, and as such consequently not necessary in a democratic society.

115. Accordingly, the Court finds that there has been a violation of Article 9 of the Convention, interpreted in the light of the protection afforded by Article 11.

ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

116. The applicant complained that it had no remedy in connection with the above complaints. It relied on Article 13 of the Convention, which reads as follows:

"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."

117. The Government advanced that the applicant had no arguable claim, and that its complaint under Article 13 was therefore incompatible ratione materiae with the Convention. Alternatively, they pointed out that it was not necessary to examine the complaints also under Article 13 given that the central issue had been whether a fair balance had been drawn domestically, which issue had been decided under Article 9 of the Convention.

118. The Court notes that as it found above the complaint under Article 1 of Protocol No. 1 to the Convention inadmissible for failure to exhaust domestic remedies (see paragraphs 74-75 above),

the related complaint under Article 13 in conjunction with Article 1 of Protocol No. 1 has to be dismissed as manifestly ill-founded in accordance with Article 35 § 3 (a) and 4 of the Convention.

119. As regards Article 9 of the Convention, the Court finds that the issue raised by the applicant under Article 13 is intrinsically linked to the question whether a fair balance was achieved under Article 9, and that was dealt with by the Court under the latter provision. The Court finds, therefore, that it is not necessary to examine separately the admissibility and merits of the applicant's complaint under Article 13 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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."

Damage

121. The applicant claimed 49,495 euros (EUR) in respect of pecuniary damages. More specifically, that sum referred to EUR 18,495 for the rental of the premises it had had to pay between June 2007 and April 2011 in order to hold its religious meetings, as well as EUR 31,000 in respect of building costs it had incurred before the construction was suspended. As regards the rent, the applicant had paid EUR 12,319 for the period between June 2007 and June 2009, and EUR 6,176 for the period between June 2009 and April 2011.The applicant also sought EUR 5,000 in compensation for non-pecuniary damage, resulting from the State's wilful actions and inaction which prevented it from building a place of worship.

122. The Government contested in full the claim in respect of pecuniary damages for lack of any causal link between it and the alleged violations of Articles 9 and 11 of the Convention and/or Article 1 of Protocol No. 1 to the Convention. In respect of the claim for non-pecuniary damages, the Government submitted that the applicant could have sought this amount under the PADA and invited the Court to dismiss the claim in full.

123. The Court reiterates that for an award to be made in respect of pecuniary damage the applicant must demonstrate that there is a causal link between the violation and any financial loss alleged (see, for example, Družstevní záložna Pria and Others v. the Czech Republic (just satisfaction), no. 72034/01, § 9, 21 January 2010). The Court found above, under Article 1 of Protocol No. 1 to the Convention, that the applicant had failed to seek damages domestically in connection with the investment it had made in the construction works before they were suspended (see paragraphs 74-75 above). Consequently, no award is due to the applicant in that respect. As regards the claim related to the rent which the applicant had paid to hold its meetings, the Court observes that the construction was lawfully suspended in 2007. It was in July 2009 when the applicant presented proof to the administration of having redressed the deficiencies at the origin of the suspension and, thereafter, on 7 October 2009 that it asked the mayor to order the resumption of the construction. The Court finds that it is not possible to establish with certainty when the construction would have been concluded, had it proceeded in 2009 after the applicant had redressed all irregularities in it. In any event, it finds that at least part of the rent which the applicant paid between June 2009 and April 2011 would not have been paid, had the violation it has found above under Article 9 in relation with Article 11 not occurred. Therefore, ruling in

equity, the Court awards the applicant EUR 3,000 in respect of pecuniary damage as a result of the rent the applicant paid in order to conduct its religious meetings.
124. In respect of non-pecuniary damages, the Court considers that the applicant sustained non-pecuniary damage owing to the nature of the limitations on its rights under Article 9, interpreted in the light of the protection afforded by Article 11 of the Convention. Bearing in mind its case-law in this area (see, among others, Religious Community of Jehovah's Witnesses of Kryvyi Rih's Ternivsky District, cited above, § 77, and Association for Solidarity with Jehovah's Witnesses and Others, cited above, § 114) and ruling on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.
Costs and expenses
125. The applicant claimed EUR 6,823 in respect of legal fees, of which EUR 3,323 in respect of the domestic proceedings it pursued, and EUR 3,500 in respect of the proceedings before the Court, the latter amount to be split evenly between the two lawyers representing it before the Court.
126. The Government contested those claims in full. Nonetheless, if the Court decided to award costs under this head, the Government invited it to take into account only the proceedings related to the 2001 mayoral orders and not the various other proceedings undertaken by the applicant which were irrelevant.
127. According to the Court's settled case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see Merabishvili v. Georgia [GC], no. 72508/13, § 370, 28 November 2017). The Court, noting that not all of the complaints by the applicant have led to the finding of a violation, awards the applicant EUR 2,800 in respect of the domestic proceedings and EUR, 2,800 in respect of the proceedings before the Court, the latter amount to be evenly split between the applicant's two representatives before the Court, and to be paid directly into their respective bank accounts (see, mutatis mutandis, Khlaifia and Others v. Italy [GC], no. 16483/12, § 288, ECHR 2016 (extracts)).
Default interest
128. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT**

Declares, unanimously, the complaint under Article 9 of the Convention, admissible, and the complaints under Article 1 of Protocol No. 1 to the Convention and under Article 13 in conjunction with the latter provision, inadmissible;
Holds, by six votes to one, that there has been a violation of Article 9 of the Convention, interpreted in the light of the protection afforded by Article 11;
Holds, unanimously, that it is not necessary to examine separately the admissibility and merits of the complaint under Article 13 of the Convention in conjunction with Article 9;
Holds, by six votes to one,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 5,600 (five thousand and six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, half of this sum to be in turn evenly split in two parts which are to be paid directly into the respective bank accounts of the applicant's two representatives before the Court;
(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;
Dismisses, unanimously, the remainder of the applicant's claim for just satisfaction.
Done in English, and notified in writing on 10 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.
Andrea Tamietti Registrar
Iulia Antoanella Motoc President
In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mourou-Vikström is annexed to this judgment.
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ANT

**DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM**
(Translation)

1. I cannot share the opinion of the majority finding a violation of Article 9 of the Convention in this case.
2. The applicant is a legal entity representing a well-known religious group which is lawfully registered in Bulgaria under the name "Jehovah's Witnesses".
3. It complained that for years the municipal and judicial authorities had prevented it from building a place of worship, in an unlawful manner and on the basis of considerations solely founded on prejudices and negative assumptions
4. On 9 July 2007 the Mayor did in fact order the suspension of the construction of the church initiated by the applicant. However, this first stoppage had not been the result of an unfounded decision but had been based on the findings of an inspection concerning compliance with building site regulations. That was the conclusion reached by the administrative courts.
5. The applicant did lodge administrative appeals against the Mayor's decision to suspend the work. Thus on 28 November 2007 the Varna Administrative Court concluded that the decision had been perfectly lawful in the light of the non-compliance with building site regulations. As for the

Supreme Administrative Court, on 16 July 2008 it ruled that the allegations of unlawful discriminatory action had been groundless.
6. The applicant subsequently commenced several further sets of proceedings challenging the Mayor's tacit refusal to lift the decision to suspend the construction works.
7. In fine, those proceedings failed to find against the Mayor for discrimination or for any arbitrary decision to impede the construction of the place of worship. The courts, moreover, appointed an expert to draw up a neutral, well-informed technical opinion, and even conducted a legal analysis of the exceptions which might potentially have enabled the building work to resume.
8. One of the fundamental aspects of the case is that the applicant failed to raise before the domestic court the argument that the impugned decisions had infringed the right to manifest one's religion within the meaning of Article 9 of the Convention. We should remember that the religious organisation had been authorised and been granted full legal existence.
9. The case therefore exclusively concerns a building permit for a church on land which was not designated for building purposes on the municipal development plan. A municipality cannot be deemed bound to accede to all requests for construction of a place of worship, at the risk of being accused of discriminatory and arbitrary treatment of a specific religion.
10. The fact that the municipality, explicitly placing itself under the authority of the Mayor of Varna, made a public statement against the building of a church for the Jehovah's Witnesses is insufficient to establish arbitrary bias in the domestic decisions in question.
11. The objective review conducted by the domestic courts enabled them to establish that the decisions prohibiting the resumption of the building work on the church had not been based on reasoning likely to be unacceptable from the angle of the Convention. The exercise of balancing the competing rights and freedoms was conducted satisfactorily and objectively, and there could be no question of the municipality's decisions having in fact been based on covert reasons of religious intolerance.
12. Furthermore, it should be noted that the Jehovah's Witnesses at no stage submitted that the land on which they had wished to build their place of worship had any special sacred or symbolic value for their religion. The State authorities must have a broad margin of appreciation on issues of urban development in their municipality.