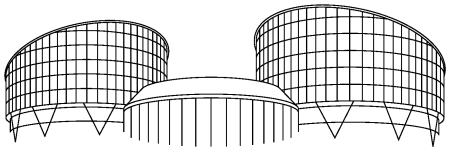

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DIMITROVA v. BULGARIA

(Application no. 15452/07)

JUDGMENT

STRASBOURG

10 February 2015

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 Dimitrova v. Bulgaria,

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

Guido Raimondi, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
Pavlina Panova, ad hoc *judge,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 20 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 15452/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms Petya Atanasova Dimitrova ("the applicant"), on 12 March 2007.

2. The applicant was represented by Mr R. Kiska, a lawyer practising in Vienna. The Bulgarian Government ("the Government") were represented by their Agent, Ms K. Radkova, Ministry of Justice.

3. The applicant complained under Articles 8, 9 and 11 of the Convention that measures taken against her by the police breached her rights to respect for private life and freedom of religion and assembly; she also complained under Article 13 of the Convention that she had no effective domestic remedies in relation to the complaints above and under Article 6 § 1 that the civil proceedings to which she was a party were excessively lengthy.

4. On 6 May 2013 the application was communicated to the Government.

5. Ms Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the Chamber (Rule 28). The Government accordingly appointed Ms Pavlina Panova to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29).

THE FACTS

A. The circumstances of the case

1. The legal status of Word of Life in Bulgaria in 1994/1995

6. Word of Life is an international religious organisation based in Uppsala, Sweden. In the early 1990s, three non-profit organisations affiliated with Word of Life (*Слово на живот*) were registered by the Sofia City Court under the Persons and Family Act, and one of these organisations opened a Bible study centre in Sofia. However, on 1 April 1994 the Supreme Court reversed the Sofia City Court's decision to register the three organisations, on the ground that they had not submitted the necessary applications to renew their registration within the three month time-limit which had been introduced on 18 February 1994 following amendment of the Persons and Family Act. Following the Supreme Court's decision, the three organisations affiliated with Word of Life were deleted from the registry of non-profit organisations. Moreover, the organisations were not registered in accordance with the Religious Denominations Act and the Bible study centre was not registered with the Ministry of Education. Word of Life therefore had no legal status in Bulgaria at the time of the events in question.

7. On an unknown date in 1994 a complaint was submitted to the office of the Sofia City Public Prosecutor by the Directorate of Religious Denominations with the Council of Ministers, raising concerns about the activities of Word of Life in Bulgaria. On 13 May 1994, having carried out an investigation, the prosecutor's office adopted a decision stating that the "sect" had an influence on its followers which increased the risk of suicide and other psychological problems. Membership might lead to the severance of family and social ties with the wider community; followers were prohibited from watching television or reading literature other than the Bible or from undergoing any form of surgical intervention. In conclusion, the prosecutor decided to order the restriction of the right of members of the three organisations linked to Word of Life from assembling to promote their beliefs and from continuing to operate the Bible study centre. Relying on Article 185 of the 1974 Code of Criminal Procedure ("the 1974 Code"), which allowed the prosecutor to take all measures necessary to prevent the commission of a criminal offence where there was a suspicion that an offence might be committed, the prosecutor ordered the police to take measures to restrict the organisation's access to places where it could hold meetings and preach about its beliefs and convictions. Following an appeal by members of the community, the above decision was upheld by a higher prosecutor.

2. Measures taken by the authorities against the applicant

8. At all relevant times the applicant was a member of Word of Life. Following the prosecutor's decision of 13 May 1994, groups of Word of Life members organised meetings in private homes, including that of the applicant. On 8 September 1995 a prosecutor granted permission for a search of the applicant's flat. On 27 September 1995 the applicant was summonsed and interviewed by the police in relation to her religious beliefs and to meetings of members of Word of Life in her home. The police then accompanied the applicant to her flat and searched it. They seized a number of items, including audio tapes with religious content, notebooks with sermons, brochures, books, magazines and video tapes.

9. After the search the police issued a warning order (*протокол за предупреждение*) under the Public Education Act instructing the applicant not to host further meetings of members of the religious community. The order relied also on the decision of the prosecutor of 13 May 1994.

3. Civil proceedings

10. On 1 December 1995 the applicant brought an action against the Sofia police, seeking return of her chattels and damages under the 1988 State and Municipalities Responsibility for Damage Act ("the 1988 Act") in respect of the above measures, which she claimed breached her right to freedom of religion and freedom of assembly.

11. In a judgment of 28 February 1998 the Sofia District Court partially allowed the action, finding that the applicant's questioning by the police and the warning order had been lawful, but that the search and the seizure had been unlawful as they had not been undertaken in the framework of any criminal investigation and as the items seized had not been intended to be used in criminal proceedings. Making an assessment under the general law of tort rather than the 1988 Act, the court awarded the applicant 25,000 Bulgarian levs (the equivalent of about 13 euros (EUR) at current rates of exchange) for damages and ordered that the items seized on 27 September 1995 be returned.

12. Upon appeals by the parties, on 29 July 2002 the Sofia City Court upheld the District Court's judgment insofar as it concerned the order for the police to return to the applicant the chattels seized. It remitted the remainder of the case concerning liability for damages for fresh consideration under the 1988 Act.

13. Following a new examination of the case, on 8 February 2005 the Sofia District Court dismissed the claim for damages. It found that the impugned actions of the police could not be qualified as administrative acts because the police had acted pursuant to the orders of the prosecution authorities. As to the prosecution authorities themselves, they could not be held liable under the 1988 Act for decisions of the type in question.

14. Upon an appeal by the applicant, in a final judgment of 2 October 2006 the Sofia City Court upheld the District Court's findings under the 1988 Act. The Sofia City Court observed that the prosecution service had ordered the measures and that the police officers who were involved had merely assisted the prosecution authorities as they were obliged to do under Article 185 of the 1974 Code.

B. Relevant domestic law and practice

15. The relevant domestic law concerning freedom of religion, the activities of unregistered religious organisations, searches and seizures and the prosecution's power to order measures for the prevention of crime was summarised in the Court's judgment in *Boychev and Others v. Bulgaria* (no. 77185/01, §§ 25-26 and 31-38, 27 January 2011).

16. The relevant provisions of the 1988 Act on State responsibility are set out in *Krasimir Yordanov v. Bulgaria*, no. 50899/99, §§ 25-26, 15 February 2007.

17. The relevant domestic law regarding remedies for unreasonably long civil proceedings was set out in *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, 18 June 2013.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicant complained that the civil proceedings brought by her against the Sofia Police Directorate were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

19. The Government submitted that the complaint under Article 6 § 1 was inadmissible on grounds of non-exhaustion of domestic remedies. The Court, in *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, 18 June 2013, decided that the domestic remedy introduced by the Government in respect of unreasonably long civil proceedings was effective and accessible. The Government pointed out that the remedy, created by newly inserted provisions in the Judiciary Act 2007, had been designed to operate retrospectively, so that persons who had already applied to this Court but had not yet obtained a decision on the admissibility of their applications could make use of it. The applicant in the present case could likewise apply

to the domestic authority for compensation for the allegedly excessive length of the proceedings in her case.

20. The applicant underlined that a delay of twelve years in the completion of the proceedings amounted to a gross violation of the right to trial within a reasonable time. In her submission, the Amendments and Supplements to the Judiciary Act, promulgated in the State Gazette No. 50 of 2012, did not provide a remedy that needed to be exhausted in light of the fact that her application was filed in 2007, a full five years prior to the promulgation of the new measures. To split the Article 6 § 1 complaint from the remainder of the application would be both judicially inefficient and cruel and unusual, considering the already excessive lapse of time since the events of 1994.

21. The Court recalls that in *Balakchiev*, cited above, it held that the remedy created by sections 60a et seq. of the Judiciary Act 2007 could be regarded as an effective domestic remedy in respect of complaints about the unreasonable length of proceedings before the civil and administrative courts in Bulgaria. In particular, the Court held that the remedy was designed with retrospective effect, to allow individuals who had already lodged complaints with the Court to apply for compensation to the domestic authority, with a six-month time-limit running from the date when the applicant was notified that his or her complaint to the Court under Article 6 § 1 of the Convention had been declared inadmissible for non-exhaustion of domestic remedies. The Court further held that the applicants in *Balakchiev* should be required to make use of the new domestic remedy, despite the fact that their applications had been lodged with the Court prior to its creation (see *Balakchiev*, cited above, §§ 78-85).

22. There are no grounds for taking a different approach in the present case. It follows that the applicant's complaint concerning the length of the proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention as inadmissible for non-exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

23. The applicant complained of a breach of her rights under Article 9 of the Convention, which reads as follows:

> "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."

24. The Government submitted that, in contrast to the facts found in *Boychev and Others*, cited above, there was no evidence in the present case to support the view that the police action of 27 September 1995 interrupted a religious meeting. As could be seen from the summons requiring the applicant to appear at the police station, she was informed of the search well in advance. The summons was issued under the Public Education Act and decree no. 367/194 of the Supreme Prosecution Office (see paragraph 8 above) and was aimed at regulating educational activities. It followed, in the Government's view, that there had been no interference with the applicant's right to freedom of religion. In addition, the Government argued that the law in force at the material time allowing for interference with the rights under Article 9 should be assessed in context. Arguments had been put forward at the relevant time to suggest that followers of Word of Life, particularly minors, were at risk of isolation and lower standards of protection in medical, educational and civil terms. The prosecutorial authorities were part of the judiciary, not the executive and the police took action as sanctioned by the prosecutor's office. The actions of the police were well founded and fully in compliance with the Supreme Court's judgment of 1 April 1994, refusing registration of the three organisations affiliated with Word of Life (see paragraph 6 above). Moreover, the lack of registration as a religious denomination had never been an obstacle for its followers to profess their religion or practice their activity.

25. The applicant complained under Article 9 of the Convention that the measures taken against her, namely her questioning by the police, the search and seizure and the warning order, interfered with her right to worship collectively with like-minded adherents of the Evangelical faith in a home environment. In addition, the denial of legal registration to her church was done is a spirit which lacked any semblance of State neutrality. At all stages, the State authorities acted on the basis of discriminatory value judgments rather than evidence. The applicant considered that the measures were not prescribed by law, since they were arbitrary and based on legal provisions which allowed an unfettered discretion to the executive. Finally, the measures were not necessary in a democratic society. There was no evidence that that the religious beliefs of the members of the applicant's church were responsible for family separation, isolation and suicide. The action of the state authorities failed to respect the need for true religious pluralism, which is inherent in the concept of a democratic society.

A. Admissibility

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

B. Merits

27. The general principles relating to the right to manifest religion, as protected by Article 9 of the Convention, were recently set out in *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, §§ 79-84, ECHR 2013 (extracts); see also *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 84, ECHR 2005-XI.

28. The Court must first determine whether the facts of the present case disclose an interference with the applicant's rights under Article 9. It notes that the applicant was summonsed to appear at the police station and that a search of her flat was carried out, with a number of personal items seized, for the sole reason that she was known to be a member of the Word of Life community and had organised religious meetings at her home. Following the search, she was issued by the police with an order warning her not to host further meetings of Word of Life (see paragraphs 8-9 above). In these circumstances, since the police action was taken in direct response to the applicant's manifestation of her religious belief and was intended to discourage her from worshipping and observing her religion further in community with others, the Court finds that it constituted a limitation on her freedom to manifest religion within the meaning of Article 9 § 2.

29. Such a limitation must, *inter alia,* be "prescribed by law" if it is not to breach the rights protected by Article 9 (see *Leyla Şahin*, cited above, § 84). In this connection, the Court recalls its findings in *Boychev and Others*, cited above. That case concerned a search and seizure operation carried out by the police during a meeting of several members of an unregistered religious community in a private home. The Court found that the police measures were not "prescribed by law", since they were not carried out in the context of any pre-existing criminal investigation and since the power accorded to the prosecutor under Article 185 of the 1974 Code (see paragraph 7 above) was so wide that it did not provide sufficient protection against arbitrariness (see *Boychev and Others*, cited above, §§ 49-50). Lastly, the Court noted that the rules of domestic law, as applied by the courts, were not sufficiently clear as to the legality of the activities of unregistered religious communities (see *Boychev and Others*, cited above, § 51).

30. The Court does not consider that the present case can be distinguished. The search and seizure measures against the applicant were not taken in the framework of a criminal investigation, and were therefore unlawful under domestic law, as the Sofia District Court found in its judgment of 28 February 1998 (see paragraph 11 above). Although, following appeals and remittal, the domestic courts found that the applicant was not entitled to damages under the 1988 Act, the District Court's finding that the search of the applicant's flat was unlawful was not overturned (see paragraphs 12-14 above). In addition, to the extent that the prosecutor, in

granting permission for a search of the applicant's flat, acted pursuant to Article 185 of the 1974 Code, the Court's criticism in *Boychev and Others* of the breadth of that discretionary power apply equally here (and see also *Zlínsat, spol. s r.o. v. Bulgaria*, no. 57785/00, § 99, 15 June 2006). Finally, the events in question in the present application occurred two years prior to those in *Boychev and Others*, a time when the uncertainty under domestic law as to the activities of unregistered religious groups was the same.

31. In the light of the above considerations, the Court finds that there has been a violation of Article 9 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 9 OF THE CONVENTION

32. The applicant also complains under Article 13 of the Convention that she had at her disposal no effective domestic remedies in relation to her complaint under Article 9. Article 13 provides:

> "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."

33. The Government were of the opinion that the applicant had a domestic remedy under the 1988 Act, of which she availed herself.

34. The applicant submitted that, as shown by the verdicts of the Sofia district Court and the Sofia City Court on 8 February 2005 and 2 October 2006 respectively, because the actions of the prosecutor's office under Article 185 of the 1974 Code were not subject to an award of damages, no effective remedy was available to the applicant.

A. Admissibility

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

B. Merits

36. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to

grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

37. The applicant in the present case brought a claim for damages in respect of the actions of the police which she claimed breached her right to freedom of religion and freedom of assembly. Her claim was finally dismissed on the ground that the police had acted in implementation of the orders of the prosecution authorities, which, in their turn, could not be held liable under domestic law for the specific decisions at issue (see paragraph 14 above). The Government have not demonstrated to the Court that the applicant had at her disposal another remedy which would have provided her with effective relief in respect of her complaint under Article 9 of the Convention (see *Krasimir Yordanov*, cited above, §§ 50-55; see also *Boychev and Others*, cited above, § 56).

38. It follows that there has been a violation of Article 13 in the present case, because of the lack of a remedy under domestic law for the applicant's grievance under Article 9.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant also complained under Articles 8 and 11 of the Convention about the police measures taken against her.

40. The Court notes that these complaints are similar to the one examined above under Article 9. It finds that they are admissible, but that there is no need to examine them separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

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

A. Damage

42. The applicant claimed non-pecuniary damages of EUR 20,000 in respect of the mental suffering she had experienced as a result of her questioning by the police about her deeply-held faith and the subsequent search of her flat and seizure of her possessions. These measures had also left her in doubt as to whether she was free to continue to worship in her own home with other members of her church.

43. The Government submitted that this claim was exorbitant and unjustified. They expressed the view that, if the Court were to find a violation, this finding would constitute sufficient just satisfaction.

44. Deciding on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage (see, for example, *Boychev and Others*, cited above, § 78).

B. Costs and expenses

45. The applicant also claimed a total of EUR 5,070 for the costs and expenses incurred before the Court.

46. The Government submitted that this claim was excessive. They pointed out that, in support of her claim, the applicant had submitted only a work sheet from the lawyer who had initially represented her. He was claiming 31 hours' work at EUR 100 per hour. The claim by her other representatives of EUR 1,950 was not supported by any time sheet.

47. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the length of the civil proceedings inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 9 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 9;

4. *Holds* that there is no need to examine the complaints under Articles 8 and 11 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 10 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Guido Raimondi
President