

Dimitrova v Bulgaria
Application No 15452/07: European Court of Human Rights (Fourth Section);
Guido Raimondi, President; Päivi Hirvelä, Ledi Bianku, Nona Tsotsoria, Paul Mahoney,
Krzysztof Wojtyczek, JJ; Pavlina Panova, ad hoc judge;
10 February 2015

Human rights - Freedom of religion or belief - Determination of civil rights and obligations “within a reasonable time” - Effective remedy for violation of Convention rights - Public prosecutor instructing police in 1995 to restrict religious organisation’s access to places where it could hold meetings based on concern that the organisation’s influence upon its members could lead to an increased risk of psychological problems - Religious organisation meeting in members’ homes - Police search of home and seizure of property of member of religious organisation declared unlawful by national courts - No damages awarded because police had acted on prosecutor’s orders - Whether state had provided a determination of applicant’s civil rights and obligations “within a reasonable time” - Whether applicant’s right to freedom of religion or belief had been breached - Whether applicant had been denied an effective remedy - European Convention on Human Rights, arts 6 §1, 9, and 9 §2 in conjunction with art 13.

The Sofia District Court had held, in December 1995, that the search and seizure of the applicant’s property had been unlawful because they had not occurred in the context of criminal proceedings. It had ordered approximately €13 damages and the return of her property. On appeal, the Sofia City Court had upheld the order for the return of the applicant’s property, and had remitted the remainder of her case for fresh consideration. At the re-hearing, the District Court had dismissed the applicant’s claim for damages because the police had acted on the orders of the prosecution authorities, who could not be held liable under the relevant domestic law. The final ruling of the City Court, in October 2006, upheld that decision.

The European Court of Human Rights dismissed the applicant’s claim under Article 6 §1, that her civil rights and obligations had not been determined “within a reasonable time”, because Bulgaria had introduced the Judiciary Act 2007. This Act had retrospective effect, and meant that the applicant had not exhausted domestic remedies: she could, under sections 60a *et seq*, apply to a domestic authority within six months of the ECtHR ruling that her claim under Article 6 §1 was inadmissible.

The applicant’s claim that her absolute right to freedom of religion under Article 9 §1 had been breached was dismissed. The ECtHR upheld the applicant’s claim that her right under Article 9 §2 to manifest her religion had been infringed by the search of her home and the seizure of her property, on the ground that 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 in community with others. Both domestic courts had acknowledged that the search and seizure had not been lawful under Bulgarian law; these police actions were thus not “prescribed by law” and so fell outside the lawful limitations on the applicant’s right to manifest her religion.

The applicant’s claim under Article 13, that the domestic courts had failed to provide her with an effective remedy for the violation of her right under Article 9 §2, was upheld on the ground that Bulgaria had not demonstrated that the applicant had another remedy available to her which would have provided her with effective relief.

The ECtHR awarded the applicant €2,000 - rather than the €20,000 that she had claimed - for non-pecuniary damages, and €2,000 - rather than €5,070 - for costs and expenses.

Recorded at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-151006>

Reported by: Dr Stephanie Pywell, Lecturer in Law, Stephanie.Pywell@open.ac.uk