

CASE OF IVANOVA v. BULGARIA

(Application no. 52435/99)

JUDGMENT

STRASBOURG

12 April 2007

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 *Ivanova v. Bulgaria*,

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

Mr P. Lorenzen, *President*,

Mrs S. Botoucharova,

Mr K. Jungwiert,

Mr V. Butkevych,

Mrs M. Tsatsa-Nikolovska,

Mr R. Maruste,

Mr M. Villiger, *judges*,

and Mrs C. Westerdiek, *Section Registrar*,

Having deliberated in private on 20 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 52435/99) 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 Kalinka Todorova Ivanova, who was born in 1950 and lives in Ruse (“the applicant”), on 27 May 1999.
2. The applicant was represented by Mr Y. Grozev, a lawyer practising in Sofia.
3. The Bulgarian Government (“the Government”) were represented by their Agents, Ms M. Dimova and Ms M. Kotzeva, of the Ministry of Justice.
4. The applicant alleged that her right to freedom of religion had been violated because her employment had been terminated on account of her religious beliefs (Article 9), which had amounted to discrimination on religious grounds (Article 14, in conjunction with Article 9).
5. By a decision of 14 February 2006 the Court declared the application partly admissible.
6. The parties did not submit further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

1. General background

7. In February 1994 the Persons and Family Act was amended to require the registration with the Council of Ministers of non-profit organisations which had religious or related activities. Seventy-eight requests for registration were submitted, but only twenty-three organisations were registered. Those turned down were primarily Protestant groups.

8. Denial of legal status made it impossible for those organisations to hire public lecture halls or sign contracts in the name of the organisation. The unregistered organisations were unable to open

bank accounts or publish journals or newspapers in the name of the organisation and were denied certain tax advantages.

9. Among the organisations whose registration was turned down was “Word of Life”, a Christian Evangelical group that had become active in Bulgaria in the early 1990s.

2. Word of Life

10. As a result of the authorities' refusal to register Word of Life, the religious organisation began clandestine activities. Meetings were periodically thwarted by the police followed by media propaganda against the organisation and its members.

11. On 20 June 1994, acting on an order from the Sofia's Prosecutor's Office, the police closed a hall used by Word of Life in Sofia and prevented members from using it.

12. On 22 June 1994 a Swedish citizen was expelled from Bulgaria because of his participation in a Word of Life course (see *Lilja v. Bulgaria* (dec.), no. 41574/98, 20 November 2003).

13. On 23 June 1994 a force of around thirty policemen prevented members of Word of Life from attending a meeting at a hall, because it had purportedly been cancelled.

14. On 23 February 1995 the police raided private homes in the town of Veliko Turnovo and a conference hall in the Hotel Etur. They confiscated religious literature, audio tapes and video cassettes, which they displayed at a press conference the next day. No charges were subsequently brought against any members of Word of Life.

15. On 20 July and 27 September 1995 the police raided two gatherings of Word of Life followers in private homes. Religious literature was confiscated and the hosts were required to declare in writing that they would no longer organise religious gatherings in their homes.

3. The River Shipbuilding and Navigation School in Ruse

16. Throughout 1994 and 1995 the local Ruse media reported regularly on “unlawful” gatherings and religious activities by Word of Life followers. The media campaign intensified, with the national press joining in, during the summer and autumn of 1995. Press coverage was focused on the River Shipbuilding and Navigation School (Техникум по речно корабостроене и корабоплаване – “the School”) in Ruse because several of the non-academic staff were allegedly followers of Word of Life. The media also waged a personal campaign against some of those individuals by naming and condemning them as followers of the religious organisation. It called for their dismissal and named the applicant as one of the individuals whose employment should be terminated (see, for example, paragraph 22 below).

17. As a direct result, the Regional Prosecutor's Office and the National Security Service initiated inquiries into the religious activities of the School's staff members.

18. On 18 September 1995 the Regional Prosecutor's Office, in summarising the findings of the National Security Service, found that there were insufficient grounds for opening a preliminary investigation. At the same time it stated that, *inter alia*, the activities at the School were “not free of criminal culpability”, and that they were in contravention of the Religious Denominations Act and “probably” the relevant education Acts and regulations. Moreover, the allegedly “unlawful” religious activities were considered to have been carried out with the tacit approval of its principal.

19. Soon thereafter, the Regional Governor (областният управител) and a local member of parliament (“the MP”) called for radical measures to be taken to curb the alleged religious activities at the School and to dismiss the principal. They made public threats that, if such measures were not taken, they would petition the Ministry of Education, Science and Technology (“the Ministry”) to dismiss the Chief Educational Inspector for Ruse (“the Educational Inspector”).

20. On 23 October 1995 the principal of the School was dismissed by the Ministry. The dismissal order directly referred to the negative media coverage and the findings of the Regional Prosecutor's Office and accused her of tolerating the activities of Word of Life at the School to the detriment of its staff and pupils. It also suggested that the principal should have dismissed those members of staff who were Word of Life followers. It is unclear whether the principal appealed against her dismissal.

21. A new principal was appointed soon thereafter.

22. In a broadcast on the Hristo Botev radio station, aired on 7 December 1995, the MP stressed that there were still members of Word of Life working in the School, such as the swimming pool manager (the post occupied by the applicant), and inferred from this that the Ministry had not conclusively resolved the matter with the dismissal of the former principal.

B. The applicant's career at the School

23. The applicant was a mechanical engineer and had a second university degree in pedagogical sciences. She had been involved in the religious activities of Word of Life since 1994.

24. On 14 October 1994 the applicant was appointed by the School to the post of “mechanic” at its swimming pool on a temporary employment contract until 23 February 1995.

25. On an unspecified date, the Ministry approved a new roster of posts (щатно разписание) for the School effective as of 1 January 1995, which provided for the post of “swimming pool manager” with a requirement for the holder of the post to have completed a course of secondary education. By a further amendment of 1 April 1995 the holder of the post was required to have a higher-education qualification.

26. On 6 April 1995 the applicant was promoted to the post of “swimming pool manager” and concluded a temporary employment contract with a term up to 31 August 1995.

27. On 31 August 1995 the applicant's temporary employment contract was extended until 31 August 1996.

28. On 20 September 1995 the applicant concluded an employment contract of indefinite duration, which provided for her appointment to the post of “swimming pool manager” as of 1 July 1995. Her job description indicated that her responsibilities included, *inter alia*, managing and supervising the staff of the swimming pool, organising their work schedules, monitoring the regular accounting of the proceeds from the swimming pool and organising the swimming lessons. The job description did not expressly refer to any education or professional qualification requirements for the post. The applicant's basic salary was set at 4,992 old Bulgarian levs (approximately 111 Deutsche marks (DEM)) with a 16% bonus for length of service.

29. On an unspecified date the Ministry approved a new roster of posts for the School effective as of 1 October 1995. It provided for the post of “swimming pool manager” with a requirement that the holder of the post have a higher-education qualification.

C. The applicant's dismissal from the School

30. On 23 October 1995 the principal of the School was dismissed and a new one was appointed soon thereafter.

31. On 2 November 1995 the applicant was summoned to a meeting with the Educational Inspector and his deputy. Another member of staff, Mrs M., was also summoned to the meeting, which took place on the premises of the School. At the meeting, the inspectors asked for their resignations as a means of easing public tensions. The applicant contended, although this was disputed by the Government, that the inspectors had threatened them that if they did not resign of their own accord or did not renounce their faith, they would be dismissed on disciplinary grounds. The inspectors claimed that irrespective of their work performance they “could instruct the [new] principal” to dismiss them. Mrs M. denied being a member of Word of Life, while the applicant did not and also refused to resign. No assessment or mention was made during the meeting as to whether the applicant was performing her job well and whether she met the requirements for holding her post.

32. On 3 November 1995 the applicant informed the new principal of the School in writing of her meeting of the previous day with the Educational Inspector and his deputy. No action was taken in response.

33. Thereafter, the new principal alienated the applicant – her office phone was removed, the locks to the swimming pool were changed without her being provided with a set of keys and the supervision of the renovation of the swimming pool was entrusted to a subordinate even though it should allegedly have been her responsibility. The new principal also made enquiries as to the applicant's work performance.

34. On 24 November 1995 the human resources department of the School prepared a list of thirty-one employees allegedly without job descriptions. The applicant's name and post were among them.

35. On 7 December 1995 Hristo Botev radio aired the interview with the MP in which he implied that the applicant's post was one of those still being occupied by a member of Word of Life (see paragraph 22 above).

36. By an order of 28 December 1995 the applicant was dismissed, with immediate effect, on the grounds of not meeting the education and professional qualification requirements for the post of "swimming pool manager" (Article 328 § 1 (6) of the Labour Code). When she was served with the order, the applicant enquired as to which requirements she did not meet, but the new principal did not inform her.

D. The proceedings against the dismissal

1. Proceedings before the Ruse District Court

37. On 27 May 1996 the applicant initiated proceedings before the Ruse District Court challenging the lawfulness of the dismissal. She also sought reinstatement in her previous post and compensation for loss of income.

38. The applicant maintained that her dismissal was directly related to her religious beliefs and her refusal to resign of her own accord. Such a reason for terminating her employment contract, she argued, was a violation of Article 8 § 3 of the Labour Code and Article 37 of the Bulgarian Constitution, which prohibited religious discrimination.

39. During the trial it was established that in December 1995 there had been a further amendment to the School's roster of posts, which the Ministry had approved in a letter of 30 January 1996, but with effect from 1 January 1996. The amended roster of posts no longer envisaged the post of "swimming pool manager", but provided for the post of "sports complex organiser". On an unspecified date a job description had also been prepared for the new post which set out the requirements for the holder of the post as follows: "university degree in sports, university degree in economics, as an exception – secondary education with specialisation in the relevant sport, qualified lifeguard, certified swimming instructor."

40. The applicant argued before the Ruse District Court that the changes to the School's roster of posts should have taken place in accordance with standard practices and should not have been arbitrary. She claimed that the standard practice was to make changes to the roster of posts before the beginning of the academic year. The applicant also claimed that the changes were arbitrary because there had not been any objective necessity, stemming from the work being performed, to change the requirements for the post.

41. A hearing was held on 9 July 1996 at which the respondent party presented the new job description for the post of "sports complex organiser".

42. At a hearing on 19 November 1996 several witnesses gave evidence. The Educational Inspector testified that the standard practice was to make changes to the roster of posts before the academic year unless an urgent need, usually of a financial nature, required otherwise. He confirmed that he had met with the applicant in early November 1995 in connection with the findings of the Regional Prosecutor's Office and that he had invited her to resign in view of the mounting discontent and public opinion. He stated that he had not enquired as to the activities of Word of Life at the School and that he was not familiar with the applicant's work performance.

43. Mrs M. also testified and informed the court that the new principal had threatened her with dismissal if she talked about her work at the School. She testified as to the meeting of 2 November 1995 with the Educational Inspector and stated that, faced with the claim of being a follower of Word of Life, she had denied it. She stated that she had broken down and cried during the meeting because she had two children to support and did not want to be left without a job. Mrs M. also informed the court that, as far as she was aware, the applicant had been a good and diligent employee, who had maintained good relations with the other members of staff.

44. A teacher from the School also testified at the hearing. He informed the court that since its construction in 1974 the swimming pool had always had a manager, but that there had never been a

requirement of a university degree in sports for the post. The teacher also testified as to the content of the radio broadcast of 7 December 1995, in which the applicant had been singled out for dismissal by the MP.

45. On 25 November 1996 the applicant filed her written submissions with the Ruse District Court, contending that the evidence in the case supported her claim. She maintained that the School's roster of posts had been changed in the middle of the academic year with the sole aim of introducing such requirements for her post as to allow her dismissal on those grounds.

46. On 5 May 1997 the Ruse District Court dismissed the applicant's claims. In its judgment the court noted that the burden of proof as to whether the dismissal had been lawful or not lay with the School. It found, *inter alia*, that the School had complied with the procedure for changing the roster of posts and that the new job description for the post was in conformity with the standard job descriptions for such posts as approved by the Ministry. In addition, the court found that with the changes to the requirements for the post the School had envisaged the possibility that the person appointed to the job would not only manage and organise the activities of the swimming pool but could also act as a lifeguard or swimming instructor, a factor which the court deemed to be of "vital importance". Based on these considerations, the court found that "there really had been preconditions [which entailed] changing the requirements for the post" and that the dismissal was therefore lawful. Separately, the Ruse District Court found that the applicant's claims that her dismissal had been motivated by her religious beliefs were not supported by the evidence in the case, that in fact the applicant had had very good relations with the other members of staff and that there were no complaints as to her work performance. The court also reasoned that the applicant's assertions in this respect were refuted by the fact that Mrs M. was still employed by the School.

2. Proceedings before the Ruse Regional Court

47. On 27 June 1997 the applicant appealed against the judgment of the Ruse District Court. She claimed, *inter alia*, that its findings were not based on the evidence established in the case and were therefore unfounded. She claimed that the Ruse District Court had failed to make a proper assessment of key evidence, such as the testimonies of the Educational Inspector and Mrs M.

48. The applicant also questioned the grounds of the first-instance court for dismissing her claim and contended that they were frivolous and at odds with the substance of her complaint alleging religious discrimination. Firstly, she had never claimed that her personal relations with her colleagues had suffered as a result of her religious beliefs. Secondly, she submitted that the first-instance court's reasoning that there had been no discrimination against her, considering that Mrs M. was still employed by the School, was incorrect as there were various possible reasons for Mrs M.'s continued employment, such as the fact that the media had not singled her out for dismissal.

49. The applicant also claimed that the Ruse District Court had never analysed in substance her complaint alleging religious discrimination, but had dealt with the matter purely as an issue of unfair dismissal.

50. Finally, she maintained that the facts of the case clearly showed that following her refusal to resign on 2 November 1995 the School had simply tried to find a legal ground for dismissing her and that the chosen method was to change the requirements for the post she occupied so that she would become ineligible to hold it.

51. On 22 July 1997 the former principal of the School filed submissions with the Ruse Regional Court, attesting to a conversation she had had in June 1995 with the Educational Inspector. At the meeting he had identified four employees in respect of whom there had been "information that they were members of a sect" and whose employment he had insisted be terminated. At the time, the former principal had suggested that those employees resign of their own accord, but they had refused and no further action had been taken against them. It is unclear whether the applicant was one of those employees.

52. In a judgment of 23 July 1997 the Ruse Regional Court dismissed the applicant's appeal. The court found, *inter alia*, that the School had both a need and the right to change the roster of posts and the requirements for the applicant's post and to dismiss her because she did not meet those

requirements. It also found that the Ruse District Court had adequately addressed the applicant's allegations of religious discrimination and found them to be “totally and irrefutably ... irrelevant” based on the fact that she had maintained good relations with her colleagues and had been a good employee. Any allegations of subjective reasons or discriminatory grounds for her dismissal were therefore considered unfounded.

3. Proceedings before the Supreme Court of Cassation

53. On 18 September 1997 the applicant filed a petition for review (cassation appeal), claiming, *inter alia*, that the lower courts had failed to properly evaluate the evidence before them and had never addressed the substance of her complaint alleging religious discrimination. She maintained that they had failed to assess the circumstances surrounding her dismissal and especially the events leading up to it, which clearly demonstrated the real reason why this legal method had been used to terminate her employment.

54. A hearing was conducted on 16 November 1998, which the applicant and her counsel, though duly summoned, did not attend. They presented their submissions to the court in writing.

55. In a final judgment of 9 December 1998 the Supreme Court of Cassation dismissed the applicant's appeal. The court found, *inter alia*, that the applicant's arguments were unsubstantiated, and upheld the findings of the lower courts. It stressed that the School had the right to change the requirements for the post and that such changes were not subject to judicial review. In addition, it compared the duties and responsibilities of the posts of “swimming pool manager” and “sports complex organiser” and found them to be essentially the same. The Supreme Court of Cassation also noted that the old job description had lacked any education or professional qualification requirements for the post, while the new one had included such requirements. It reasoned, therefore, that the employer had simply filled a gap that had previously existed in that respect.

56. The court refused to address the remainder of the arguments of the applicant as it found them to be irrelevant to the proceedings and to the issue of the dismissal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Freedom of religion

57. The relevant provisions of the 1991 Constitution read as follows:

Article 13

“(1) Religions shall be free.

...”

Article 37

“(1) The freedom of conscience, the freedom of thought and the choice of religion or of religious or atheistic views shall be inviolable. The State shall assist in the maintenance of tolerance and respect between the adherents of different denominations, and between believers and non-believers.

(2) The freedom of conscience and religion shall not be exercised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.”

58. The relevant provisions of the Religious Denominations Act 1949 read as follows:

Section 1

“All citizens in the Republic of Bulgaria shall be afforded the freedom of conscience and religion.”

Section 4

“No one shall be persecuted or restricted in his civil and political rights, nor be dismissed from the performance of duties entrusted to him by law, on account of belonging to one or another religious denomination or for not associating with any one religious denomination...”

B. Protection against discrimination

59. The Bulgarian Constitution (Article 38), the Education Act of 1991 (section 4) and the Labour Code (Article 8 § 3) provide for protection against discrimination grounded on, *inter alia*, religious beliefs.

60. An amendment of Article 8 § 3 of the Labour Code of 31 March 2001 widened the scope of protection against discrimination in the workplace to include “indirect discrimination”, which was defined in item 7 of § 1 of the Supplementary Provisions to the Labour Code as follows:

“Indirect' [refers to] the discrimination whereby ostensibly legal solutions are used in exercising labour rights and duties, but they are applied, in the light of the criteria under Article 8 § 3 [of the Labour Code], in a manner which in reality and in fact places some workers and employees in [a] less favourable or privileged position compared to others. Discrimination [does not exist where] the differences or the preferences [are] based on the qualification requirements for performing a specific job, or where special protection is given to certain [types of] workers and employees (juveniles, pregnant women and mothers of young children, disabled people, those with reduced working capacity and other similar groups), as established by normative acts.”

61. The above definition was repealed on 1 January 2004 with the entry into force of the Protection Against Discrimination Act, which provides a comprehensive framework for protection against discrimination. Section 4(3) of the Act introduced the following new definition of “indirect discrimination”:

“Indirect discrimination is placing a person on the basis of the criteria in section 1 [sex, race, nationality, ethnicity..., religion and belief...] in a less favourable position in comparison to other persons by way of an ostensibly neutral provision, criterion or practice, unless the said provision, criterion or practice is objectively justified in view of a statutory aim and the means of attaining the said aim are appropriate and necessary.”

C. Termination of employment contract

62. An employer may terminate a contract of employment by giving notice in writing to an employee where he or she does not have the necessary education or vocational training for performing the work assigned (Article 328 § 1 (6) of the Labour Code).

63. In reviewing such terminations the domestic courts have as their established practice that for a dismissal to be lawful (under Article 328 § 1 (6) of the Labour Code) it is sufficient for the courts to establish that there were new requirements in terms of education or vocational training for performing the assigned work which the employee no longer met, without their being required to assess the necessity for introducing such requirements (see, for example, решение на ВС № 77 от 22.II.1995 г. по гр. д. № 1062 от 1994 г., III г. о.).

D. The secular nature of the system of education

64. Section 5 of the Education Act (1991) proclaims the system of education to be secular.

III. REPORTS ON RELIGIOUS FREEDOMS IN THE COUNTRY DURING THE RELEVANT PERIOD

A. Country Reports of the European Commission against Racism and Intolerance (ECRI)

65. The European Commission against Racism and Intolerance (“ECRI”), in its three reports on Bulgaria for the years 1997–1999, found that during the period there had been a high degree of intolerance in the media towards minority religious groups, particularly new religions. It also found the authorities to be somewhat passive in the face of acts of intolerance, which were not sufficiently combated or punished.

66. ECRI also reported that there had been religious discrimination in the field of education and that there had been cases of dismissal in the public sector for religious beliefs.

B. Reports by NGOs

67. Human Rights Watch and the Bulgarian Helsinki Committee, in their annual reports for the years 1994–1996, noted that violations of religious freedoms in Bulgaria had significantly increased over the period, especially with regard to what had been referred to as “non-traditional” religious denominations. They observed that the authorities had sought to impose restrictions on thought and religion and to restrict religious diversity, for example by introducing a requirement that non-profit organisations which pursued religious or related activities or dispensed religious education must first obtain the approval of the Council of Ministers before they registered as such.

68. The NGOs also reported that there had been cases of dismissal in the public sector for religious beliefs and mentioned specific instances involving followers of Word of Life.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

69. The applicant complained under Article 9 of the Convention that she had been dismissed from her job because of her religious beliefs and that this had constituted a violation of her right to freedom of religion.

Article 9 of the Convention provides:

“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.”

A. The parties' submissions

70. The Government contended that the applicant's complaint was unfounded and unsubstantiated as it was grounded on assertions, which were not supported by tangible evidence.

71. The Government questioned the reliance on various media and other reports in substantiating the applicant's complaints and considered them immaterial to the case. Nevertheless, in respect of the media campaigns, the Government contended that they did not infringe on the applicant's right to freedom of religion. To the contrary, they considered them a legitimate exercise of the media's right of freedom of expression, in so far as they were expressing the reservations of the public towards members of a religious organisation allegedly proselytising among the pupils of the School with the tacit support or approval of the institution's former principal. In any event, the Government considered that the media's singling out of the applicant had not, in itself, infringed her right to freedom of religion.

72. In respect of the investigations of the Prosecutor's Office into the activities of Word of Life, the Government argued that they had been justified and that they had simply been in response to the community's suspicions of its members' activities at the School. Moreover, they submitted that the investigations had been initiated in response to credible information that the School's premises were being used for religious activities in apparent violation of the secular nature of the institution. Thus, the Government contended that these investigations could not be considered, in themselves, an infringement of the applicant's right to freedom of religion.

73. In respect of the termination of the applicant's employment, the Government argued that it had not been grounded on her religious beliefs or activities. They submitted that it was simply the result of the elimination of certain deficiencies in the administration of the School in order to provide all employees with complete job descriptions and, in the case of the applicant, to lay down justified education and professional qualification requirements for her post. The Government further noted that her dismissal had been based on the applicable legislation, which provided for termination of an employment agreement if the requirements for a post changed and the employee holding it no longer met those requirements.

74. Separately, the Government submitted that any limitations imposed on the applicant's right to manifest her religion within the confines of the School had been justified. They referred to the secular nature of the system of education in Bulgaria and submitted that this principle applied both to the teaching activities of the School and to its premises, contending that this was a justified limitation of the right to manifest one's religion. They pointed out in this connection that one of the grounds for dismissing the School's former principal had been her failure to maintain the secular nature of the institution by allegedly allowing proselytising on the premises by Word of Life, but argued that that had had no direct relevance or effect on the applicant.

75. In her submissions in reply, the applicant referred to the sequence of events leading up to her dismissal and considered them clearly indicative of the real reason for her dismissal. In addition, she argued that the new principal of the School had been aware of the reasons for the dismissal of her predecessor. Considering her good working relationship with her colleagues and her satisfactory work performance, the applicant argued that it had not been possible to dismiss her on grounds

directly relating to her work. Accordingly, the applicant asserted that in order to effect the desired dismissal, the new principal had settled on the unusual method of changing the roster of posts and the requirements for her post. The use of this legal technique, she contended, had not, however, changed the real reason for her dismissal, namely her religious beliefs.

76. Lastly, the applicant noted that the standard of proof required under Article 9 of the Convention was proof beyond reasonable doubt, but observed that the Court had previously stated that “such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of facts” (she cited *Anguelova v. Bulgaria*, no. 38361/97, § 111, ECHR 2002-IV). The applicant submitted that, considered in its entirety, the evidence in her case clearly met the requisite burden of proof and established beyond reasonable doubt that the substantive reason for her dismissal had been her religious beliefs.

B. General principles

77. The Court reiterates that, as enshrined in Article 9 of the Convention, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31).

78. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to “manifest [one's] religion”. According to Article 9 of the Convention, freedom to manifest one's religion is not only exercisable in community with others, “in public” and within the circle of those whose faith one shares, but can also be asserted “alone” and “in private”; furthermore, it includes in principle the right to try to convince one's neighbour, for example through “teaching”, failing which, moreover, “freedom to change [one's] religion or belief”, enshrined in the said Article, would be likely to remain a dead letter (*ibid.*).

79. The fundamental nature of the rights guaranteed in Article 9 § 1 of the Convention is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11 of the Convention, which cover all the rights mentioned in the first paragraphs of those Articles, that of Article 9 of the Convention refers only to “freedom to manifest one's religion or belief”. In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, p. 18, § 33). At the same time, it emphasises the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs.

80. In the context of complaints under Article 9 of the Convention for dismissal from service, the Commission stated on several occasions that pressuring an individual to change his religious beliefs or preventing him from manifesting them would be an interference at variance with the said Article (see *Knudsen v. Norway*, no. 11045/84, Commission decision of 8 March 1985, Decisions and Reports 42, pp. 247-58, at p. 258, and *Konttinen v. Finland*, no. 24949/94, Commission decision of 3 December 1996, unreported). The Court has come to a similar conclusion in the context of a teacher's complaints under Articles 10 and 11 of the Convention that she was dismissed from service on account of her political allegiance (see, *mutatis mutandis*, *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 23 and 31, §§ 44 and 65).

C. Application of these principles to the present case

81. The Court considers that the issue at the heart of the present case is whether the applicant's employment was terminated solely as a result of the School's justified need to change the requirements for her post, as the Government claimed, or whether, as the applicant argued, she was dismissed because of her religious beliefs.

82. The Court notes that the Government made lengthy submissions on the secular nature of the system of education and the need to preserve it as such (see paragraphs 70-74 above). They referred to certain alleged instances of proselytising at the School by members of staff, from which they

attempted to infer (a) that the authorities had legitimate fears that unlawful activities were occurring, (b) that the applicant, as a follower of Word of Life, was probably involved in them, and (c) that the authorities had a justified aim of stopping the alleged proselytising. However, the Government did not provide any evidence that there had ever been any credible accusations that the applicant had proselytised at the School. The Government's submissions on this point are somewhat ambiguous and contradictory, because despite the lengthy arguments submitted in respect of the applicant's alleged involvement in proselytising at the School, they explicitly claimed that the termination of her employment had had nothing whatsoever to do with her religious beliefs (see paragraph 73 above).

83. On the contrary, by assessing the facts in the case and considering the sequence of events in their entirety, rather than as separate and distinct incidents, the Court finds evidence of a causal link between the various events which resulted in the applicant's dismissal. In particular, as a result of the ongoing campaigns in the media (see paragraph 16 above), the Regional Prosecutor's Office and the National Security Service initiated inquiries into the religious activities of the School's staff members (see paragraph 17 above). This resulted in a report of 18 September 1995 by the Regional Prosecutor's Office, which stated, *inter alia*, that "unlawful" religious activities were allegedly being carried out at the School with the tacit approval of its principal (see paragraph 18 above). On 20 September 1995 the applicant's employment contract was changed from a fixed-term contract to one of indefinite duration (see paragraph 28 above). A new roster of posts for the School was introduced as of 1 October 1995, which required the holder of the applicant's post to have a higher-education qualification but without specifying any particular type of degree (see paragraph 29 above). The Educational Inspector was threatened with dismissal by the Regional Governor and the MP unless he took radical measures to curb the religious activities at the School and dismiss the principal (see paragraph 19 above). On 23 October 1995 the principal of the School was dismissed by the Ministry for, *inter alia*, tolerating the activities of Word of Life at the School and for not having dismissed those members of staff who were followers of the organisation (see paragraph 20 above). A new principal was appointed soon afterwards (see paragraph 21 above). At the meeting on 2 November 1995 with the Educational Inspector and his deputy, the applicant and Mrs M. were asked to resign or renounce their faith, otherwise the inspectors would "instruct the [new] principal" to dismiss them irrespective of their work performance (see paragraphs 31 and 42-43 above). Mrs M., faced with being unable to support her two children if she were dismissed, denied being a member of Word of Life and there were apparently no subsequent repercussions for her (see paragraphs 43 and 46, last sentence, above). The applicant meanwhile refused to resign or renounce her faith, which led to her being alienated by the new principal (see paragraphs 31 and 33 above). Enquiries were also made as to her work performance, which appears to have been satisfactory (see paragraphs 33, 43, 46 and 52 above). In a radio interview on 7 December 1995 the MP singled out the applicant's post as still being occupied by a member of Word of Life (see paragraphs 22 and 44 above). The applicant was dismissed in an order of 28 December 1995 on the ground of not meeting the requirements for the post to which she had been promoted more than eight months previously and which featured on a roster of posts approved by the Ministry (see paragraphs 25-29 and 36 above). Finally, a new roster of posts for the School was approved by the Ministry on 30 January 1996, effective as of 1 January 1996, which transformed the applicant's post into the new post of "sports complex organiser" with a requirement that its holder have a "university degree in sports, university degree in economics, as an exception – secondary education with specialisation in the relevant sport, qualified lifeguard, certified swimming instructor" (see paragraph 39 above). It should be noted, however, that since the construction of the School's swimming pool in 1974 there had never been a requirement for its manager to have a university degree in sports (see paragraph 44 above). In addition, when the Supreme Court of Cassation compared the duties and responsibilities of the posts of "swimming pool manager" and "sports complex organiser", it found them to be essentially the same (see paragraph 55 above).

84. Considering the above facts and the sequence of events, the Court finds that the termination of the applicant's employment was not simply the result of a justified amendment of the requirements for her post, but in fact took place on account of her religious beliefs and affiliation with Word of Life, thus constituting an interference with her right to freedom of religion at variance with Article 9 of the Convention. The fact that the applicant's employment was terminated in accordance with the applicable labour legislation – by introducing new requirements for her post which she did not meet – fails to eliminate the substantive motive for her dismissal. Most telling in this respect is the meeting of 2 November 1995 at which the applicant was pressured by two Government officials to renounce her religious beliefs in order to keep her job (see paragraphs 31 and 42-43 above), which the Court considers a flagrant violation of her right to freedom of religion guaranteed under Article 9 of the Convention (see the general principles and case-law references in paragraphs 77-80 above).

85. In respect of the State's responsibility, the Court considers it to be engaged by the fact that the applicant was employed as a non-academic staff member at the School, which was under the direct supervision of the Ministry. Moreover, it notes the ongoing activities in breaking up gatherings of Word of Life around the country, the involvement of other authorities and officials such as the Regional Prosecutor's Office, the National Security Service, the MP and the Educational Inspector, and the resulting disciplinary dismissal of the former principal because of her alleged tacit approval of religious activities in the School. These events hint at a policy of intolerance by the authorities during the relevant period towards Word of Life, its activities and followers in Ruse, and at the School in particular. The dismissal of the applicant soon after the appointment of the new principal appears, therefore, to have resulted directly from the implementation of that policy.

86. In view of the above, the Court finds that the applicant's right to freedom of religion was violated because her employment had been terminated on account of her religious beliefs. There has therefore been a violation of Article 9 of the Convention on that account.

II. ALLEGED VIOLATION OF ARTICLE 14, IN CONJUNCTION WITH ARTICLE 9 OF THE CONVENTION

87. The applicant complained under Article 14, in conjunction with Article 9 of the Convention, that her dismissal from the School had been inconsistent with the requirement of non-discrimination set forth in the Convention.

Article 14 of the Convention provides:

“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.”

88. The Government contended that the applicant's complaint was unfounded and completely unsubstantiated. They noted that the applicant had had a very good working relationship with the other employees at the School and that she had not had any criticism of her work, a fact which they considered could not be reconciled with her complaint of discrimination. The Government reiterated their argument that the applicant's dismissal was the result of the elimination of certain deficiencies in the administration of the School.

89. The Government also claimed that of the four persons named by the media as members of Word of Life working at the School, only the applicant's employment had been terminated. They argued that this lack of any repercussions for the other alleged members of Word of Life indicated that there had not been a concerted effort or intent by the authorities to terminate their employment.

90. Separately, the Government submitted that in the years preceding the applicant's dismissal more than twenty other employees had been dismissed and inferred that the termination of her employment should be considered within the context of ongoing redundancies at the institution. They also found it inappropriate and discriminatory against other employees to be required to grant special protection to religious employees faced with termination of their employment.

91. In her submissions in reply, the applicant reiterated her complaint. She did not submit separate observations on her complaint of discrimination on religious grounds, other than those provided in

the context of Article 9 of the Convention, which she considered equally relevant. However, in her submissions under Article 9 of the Convention the applicant stated that by the time of her meeting on 2 November 1995 with the Educational Inspector, the other members of Word of Life employed at the School, with the exception of Mrs M., had already left the institution of their own accord for personal reasons or as a result of the negative publicity.

92. The Court notes that the applicant's complaint relating to Article 14 of the Convention amounts to a repetition of her complaints under Article 9 of the Convention. Accordingly, it considers that there is no cause to examine it separately (see, *mutatis mutandis*, *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 134, ECHR 2001-XII).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 590 euros (EUR) in respect of pecuniary damage in compensation for the loss of earnings resulting from her dismissal from the School. Her claim was based on the domestic statutory provisions, which provided that an unlawfully dismissed employee was entitled to compensation for the period in which he or she remained unemployed, but for no more than six months. The applicant stated that she had remained unemployed for more than six months after her dismissal and was therefore making a claim for the full six-month compensation for loss of earnings. The last salary she claimed to have received from the School had been in the amount of 6,043.52 old Bulgarian levs, which the applicant stated to have been equivalent to approximately DEM 120 or EUR 60. Thus, she calculated the six-month compensation claimed for loss of earnings to be approximately equivalent to DEM 622.80 or EUR 311.40. The applicant also claimed interest at a rate of 6% per annum for the period May 1996 to May 2006, which, together with the compensation claimed, made a total of EUR 589.23.

95. The applicant also claimed EUR 6,000 in respect of non-pecuniary damage for the emotional pain and suffering caused by the violation of her rights under Articles 9 and 14 of the Convention. She stressed that as a result of the actions of the School's authorities she had been discriminated against on the basis of her religious beliefs and that the domestic courts had failed to provide redress for her complaints. In addition, the applicant claimed that, on account of the accompanying media campaigns during the period, she had also suffered significant public prejudice. Accordingly, she had been unable to find employment for a considerable length of time and had had to start work as a self-employed trader at an open-air market. Lastly, the applicant argued that the domestic courts' refusal to examine in substance her discrimination complaint had further contributed to her feeling of distress and helplessness, and had increased her emotional suffering.

96. The Government did not submit any comments on the applicant's claims in respect of pecuniary and non-pecuniary damage.

97. The Court has found that the authorities were responsible for violating the applicant's right to freedom of religion because her employment was terminated on account of her religious beliefs (see paragraph 86 above). Following her dismissal she remained without employment for more than six months. Thus, there is a direct causal link between the established violation of the Convention and the applicant's loss of earnings. In respect of the amount of compensation claimed, the Court notes that the Government challenged neither its basis nor the applicant's calculations in respect of the amounts due. Accordingly, the Court awards the amount of EUR 589.23.

98. In respect of the non-pecuniary damage claimed, the Court considers it reasonable to accept that as a result of the violation of the applicant's right under Article 9 of the Convention she suffered a certain degree of emotional pain and suffering, possibly even public prejudice. As with her claim for pecuniary damage, the Government challenged neither the grounds nor the amount of the compensation sought by the applicant. Taking into account the specific circumstances of the

case and making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 4,000 as compensation for the non-pecuniary damage arising out of the violation of her right under Article 9 of the Convention.

B. Costs and expenses

99. The applicant claimed EUR 500 for the legal work by her lawyer before the domestic courts. She also sought EUR 3,290 for 47 hours of legal work by her lawyer before the Court, at the hourly rate of EUR 70. She submitted a legal fees agreement with her lawyer and a timesheet for the work relating to the proceedings before the Court. The applicant requested that the costs and expenses incurred should be paid directly to her lawyer, Mr Y. Grozev.

100. The Government did not submit any comments on the applicant's claims for costs and expenses.

101. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Noting the particular complexity of the case, both before the domestic courts and the Court, the associated submissions of the applicant's lawyer and the other relevant factors, and the fact that the applicant was paid EUR 701 in legal aid by the Council of Europe, the Court considers it reasonable to award the sum of EUR 2,500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

102. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 9 of the Convention;

2. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention;

3. *Holds*

(a) that the respondent State is to pay to 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 leva at the rate applicable on the date of settlement:

(i) EUR 589.23 (five hundred and eighty-nine euros and twenty-three cents) in respect of pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;

(iii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria, Mr Y. Grozev;

(iv) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Peer Lorenzen
Registrar President

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