Ivanov and Others v. Bulgaria (Application No. 46336/99)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights
Date of decision: 24 November 2005
Link to full case:
http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=790221&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

2) Facts

The applicants, members of the United Macedonian Organization Ilinden-PIRIN and ethnic Macedonians, alleged that the bans on two rallies they had intended to organize were imposed in accordance with the law, and that the courts that the courts had improperly refused to examine their appeal against the second ban.

UMO Ilinden-PIRIN has close links with UMO Ilinden. From 1994-2003, the authorities banned many attempts by UMO Ilinden to hold rallies and have denied them registration, as a political group, on a number of occasions.

UMO Ilinden PIRIN had obtained registration as a political party. Nevertheless, on February 29, 2000, the party was declared unconstitutional by the Bulgarian Constitutional Court and dissolved.

On August 3, 1998, one of the applicants informed the mayor of Sofia of a rally planned for August 10, 1998. The mayor issued an order banning the rally pursuant to section 12(2)(2) of the Meetings and Marches Act, summarily stating that the event would "create conditions for breaches of the public order." The applicant did not appeal the order.

On September 1, 1998 the applicants informed the mayor of Sofia that a rally was planned for August 12 in memory of the "day of genocide against the Macedonians". Once again the mayor banned the rally, giving the same reasons as before. The same day the applicants lodged an appeal in the Sofia District Court, arguing that local authorities should be required to give a reason for banning activities. Without notifying the applicant, the district court decided it did not have jurisdiction and sent the case to the Executive Committee of the People's Council.

Upon learning of the District Court's decision, the first applicant appealed to the Sofia City Court, arguing it was an error to send the case to the Executive Committee and stating that the Municipal Council, the successor to the Executive Committee, which had ceased to exist in 1991, rarely convened. The City Court dismissed the appeal. The City Court held that by section 12(4) of the Meetings and Marches Act, the applicant could only appeal to the City Court if the Municipal Council had dismissed the appeal.

The Supreme Court of Cassation dismissed the appeal on March 11, 2003. It held that Sofia City Court's disposition of the case had been correct. The case was decided three and a half

years after the event, and the applicants state they had lost interest in the appeal at that point.

3) Admissibility

The Application was found admissible.

4) Merits

The government objected to the violation of Article 11 on the basis of a non-exhaustion of domestic remedies. The government argued that there was no appeal made regarding the August rally. Furthermore, the applicants could have lodged administrative appeals with the Municipal Council. In such a case the events would have remained banned only if the Council had upheld the bans within twenty four hours following the lodging of the appeals. The applicants responded by stating that domestic law did not clearly provide for an administrative appeal.

The Court noted that the application is one of several cases concerning interferences by the authorities with the organized activities of persons declaring to have a Macedonian ethnic consciousness. The Court found a firm trend towards banning these activities. (See Stankov and the United Macedonian Organisation Iliden v. Bulgaria, and The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria) In these earlier cases, the Court found that the Municipal councils do not act judicial bodies and therefore do not provide effective remedies. The facts in this case do not provide a material difference. The Court held that the complaints cannot be declared inadmissible for failure to exhaust domestic remedies.

The government argued that the interference had been justified. For interference to be justified according to the convention the interference must be lawful, have a legitimate aim, and be necessary for a democratic society. The Government claimed section 12(2)(2) of the Meetings and Marches Act made its acts lawful. The government claimed the interference had the legitimate aims of protecting national security and public safety, guaranteeing public order in the local community, protecting the rights and freedoms of others and preventing disorder and crime. It argued that their actions had not been arbitrary and were necessary to comply with the positive obligations of Article 11.

The applicants argued that the government's actions had been arbitrary and there had been clear interference. The Sofia District Court had referred their appeal to a nonexistent body. They argued that there was no effective remedy and not sufficient reason to uphold the bans.

The Court held that the authorities interfered with the right to assembly in both instances. The Court held that the bans were lawful according to the Meetings and Marches Act. However, the government did not give sufficient reasons for justifying the aims that they claimed to pursue or for claiming that the interference was necessary for a democratic society.

The applicants complained under Article 13 that the courts had refused to examine the merits of the appeal against the second ban. The government argued that the Meetings and Marches Act provided sufficient redress in the form of an administrative appeal. The Court found that there was nothing in the domestic law to indicate that the ban was appealable

not before the Municipal Council, but only to a nonexistent body, the Executive Committee. While the Supreme Court was available, their decision was much too late to provide an effective remedy.

The applicants alleged a violation of Article 14 asserting that the authorities were influenced by their proclaimed Macedonian ethnic consciousness. The Court decided that these facts were the same as those based on Article 11 and 13 and they do not need to consider this complaint.

5) Decision

The Court held by 5-2 there was a violation of article 11 and unanimously that it is not necessary to rule on Article 14.

The Court awarded damages in the amount of 2000 Euros.

6) Dissenting Opinion

Judge Botoucharova joined by Judge Hajiyev, partly concurring and partly dissenting. The dissent argues that the finding should have been a violation of Article 11 in conjunction with Article 13. The main issue was the lack of effective remedy and the impossibility of obtaining proper judicial review.