



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Bulgaria
<b>Title:</b>	Cassation Court refuses to hear incitement (instruction) to discrimination case against non-traditional faith group
<b>Date:</b>	18 September 2020
<b>Expert:</b>	Margarita Ilieva
<b>Update of flash report:</b>	<a href="#">Bulgaria - Appeals court ruling denies incitement (instruction) to discrimination against non-traditional faith group (PDF 76 kB)</a>
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Instruction (incitement) to discrimination
<b>Grounds of discrimination:</b>	Religion or belief
<b>Field of application:</b>	Goods and services
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Article 5 in conjunction with §1.5 of the Protection Against Discrimination Act

### **Content**

**Case law development:** The Supreme Court of Cassation has refused to admit to cassation review a decision by the Sofia City Court, which had dismissed a civil claim by minority believers against an employee and activist of a Bulgarian Orthodox Church entity.<sup>1</sup> The non-traditional faith group, Shri Chinmoy Centre, had filed a claim against a pro-Orthodox, anti-minority advocate who had successfully instructed various service providers to deny the minority group access to renting premises for faith-related concerts and other in-door gatherings. The advocate had done so by publishing and propagating an article against the minority group and by directly engaging with premises providers, seeking to influence their decisions with regard to renting their venues to the group. The first-instance civil court had ruled in favour of the minority claimants, finding incitement to discrimination on grounds of belief, ordering the respondent to terminate, and abstain from, the impugned conduct, and awarding damages (the equivalent of EUR 175 to each of the two minority believers). The appeals court found that the same facts, as established by the trial court, did not amount to incitement to discrimination as the respondent had been entitled to publish and propagate her article against the minority group as a part of her right to free expression. Her article had not contained hate speech, therefore, it had not contained incitement (implicitly including instruction) to discriminate. Her article had not mentioned specifically the group's concerts; it had discussed the minority group's activities in general. In addition, the claimants had not proven that the respondent had treated them less favourably as compared to others.<sup>2</sup>

The claimants' representatives applied for cassation review, formulating a number of questions to do with the appraisal of evidence by the appeals court, its manner of applying

---

<sup>1</sup> Supreme Court of Cassation Ruling No. 221 of 25 March 2020 in Case No. 2958/ 2019.

<sup>2</sup> Sofia City Court Decision No. 553 of 24 January 2019 in case No. 16814/ 2017.

the shifting burden of proof rule to the facts, the interpretation of the concept of incitement to discrimination under domestic law, in particular whether it required a comparison.

**Decision of the court:** The Supreme Court of Cassation ruled that the questions filed on behalf of the minority group were inadmissible as they were poorly formulated or irrelevant from the standpoint of general procedural law as it pertains to the grounds for cassation review and/ or were inadequately substantiated. The Court did not engage with any issues of discrimination law but refused to hear the case on general procedural grounds (incompetently formulated cassation review grounds).

**Key points of analysis:** This failure means that the appeals court decision is final. The latter amounts to a declaration that, in order for incitement to discrimination to be at hand (including instruction to discriminate), intent must be established, as well as less favourable treatment in comparison to third parties, and, in terms of content of the impugned expression, hate speech. This decision contradicts EU law.

**Internet link source:**

<http://www.vks.bg/pregled-akt?type=ot-spisak&id=92A568B1FF053D16C2258536004456A7>.