



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

FOURTH SECTION

**CASE OF THE UNITED MACEDONIAN ORGANISATION
ILINDEN AND OTHERS v. BULGARIA (No. 2)**

(Application no. 34960/04)

JUDGMENT

STRASBOURG

18 October 2011

FINAL

08/03/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of the United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 2),

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 34960/04) 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 the United Macedonian Organisation Ilinden (“Ilinden”), an organisation based in south-west Bulgaria, in an area known as the Pirin region or the geographic region of Pirin Macedonia, and by thirteen Bulgarian nationals, Mr Boris Georgiev Pavlov, Mr Bozhidar Kostadinov Kiryanov, Mr Boris Dimitrov Kerezhev, Mr Yordan Kostadinov Ivanov, Mr Lyubcho Kirilov Popchev, Mr Ivan Timchev Ivanov, Mr Georgi Stefanov Andonov, Mr Kiril Serafimov Tilev, Mr Velik Dimitrov Hristovski, Mr Slavcho Vangelov Barakov, Mr Aleksandar Velez Manchev, Mr Atanas Dimitrov Urdev and Mr Yordan Sotirov Alekov (“the applicants”), on 15 September 2004.

2. The applicants were represented by the Bulgarian Helsinki Committee. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged, in particular, that the refusal to register Ilinden was unlawful and unwarranted, that the registration proceedings were unfair, and that those matters were a result of their asserted Macedonian ethnicity which the Bulgarian State was refusing to recognise.

4. On 3 June 2008 the President of the Fifth Section, to which the case had been allocated, decided to give priority to the application under Rule 41 of the Rules of Court and to conduct the proceedings in the case simultaneously with those in *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (No. 2)* (no. 37586/04), *Singartiyski and Others*

v. Bulgaria (no. 48284/07), and *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria* (No. 2) (nos. 41561/07 and 20972/08) (Rule 42 (former 43) § 2 of the Rules of Court).

5. On 30 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the fairness of the registration proceedings, the interference with the applicants' right to freedom of association and the alleged discrimination in the enjoyment of the applicants' Convention rights to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

6. Following the re-composition of the Court's sections on 1 February 2011, the application was transferred to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The individual applicants were born in 1938, 1954, 1940, 1932, 1949, 1931, 1948, 1951, 1933, 1952, 1964, 1929 and 1944 and live in Krupnik, Sandanski, Gotse Delchev, Ilindentsi, Katuntsi, Kamena, Petrich and Kolarovo. They are all members of Ilinden's managing council.

A. Background to the case

8. The relevant background circumstances are described in detail in paragraphs 9-21 of the Court's judgment in the case of *United Macedonian Organisation Ilinden and Others v. Bulgaria* (no. 59491/00, 19 January 2006).

B. The founding meeting

9. On 20 October 2002 a group of one hundred and eleven supporters of Ilinden held a meeting at which they resolved to form a non-profit association. They adopted its articles and elected its bodies, including thirteen members of its managing council.

10. Clause 6(1) of the articles, which defined the association's goals, said, *inter alia*, that Ilinden was "a successor and continuer of the national liberation struggle of the Macedonian nation", including the "Macedonian fighters who fell victim to Bulgarian state terrorism and genocide". Clause 6(2) specified that Ilinden "recognise[d] and respect[ed] the territorial integrity of the Republic of Bulgaria and its laws and constitution,

but only if they [were] consonant with international law and international agreements on human rights, fundamental freedoms and minorities' rights". Clauses 6(4) and 6(5) stated that Ilinden's goals included "expressing and defending the civil, national, social and economic rights of the Macedonians who live on Macedonian soil under Bulgarian occupation (jurisdiction), and of the Macedonians who live in Bulgaria" and "requesting cultural autonomy status for Pirin Macedonia in order for the assimilation process to be stopped".

11. Clause 7(1) to (6) of the articles provided that to attain its goals Ilinden would propagate Macedonian culture and traditions, hold meetings to commemorate historical dates, "nominate Macedonians for Members of Parliament", petition the government and various international institutions for the "national rights of the Macedonians", and organise conferences and seminars.

12. Clause 32(1) said that the association would be run and represented by a managing council. According to clause 32(3), it would have three to seven members. However, clause 32(5) specified that the first managing council would have three members.

C. The registration proceedings

13. On 21 October 2002 Ilinden applied for registration to the Blagoevgrad Regional Court. In a judgment of 18 November 2002 the court refused to register the association. It gave the following reasons:

"The evidence ... shows ... that the activities of the organisation seeking registration are directed against the sovereignty and the territorial integrity of the country and the unity of the nation. This is apparent from the association's main goals ... and the means for attaining them...

Their wording ... shows their political character. ...The organisation says that it is a successor of and continues the 'national liberation struggle of the Macedonian nation', including the 'Macedonian fighters who fell victim to Bulgarian State terrorism and genocide'[, Its articles of association] specify that [the organisation] will respect the territorial integrity of the Republic of Bulgaria, but only if '[it is] consistent with international law and international agreements on human rights, fundamental freedoms and the rights of minorities'; [that the organisation] will 'express and safeguard the civil, social and economic rights of the Macedonians who live on Macedonian soil under Bulgarian occupation (jurisdiction) and of the Macedonians who live in Bulgaria'[, The articles also] insist that 'the process of assimilation in Pirin Macedonia must be stopped'. Obviously, the aim is to distort the historical truth, to ignore the Bulgarian character of certain geographical regions [and] to provoke overt opposition by one part of the population to another. This also threatens the territorial integrity of the country, whereas Article 44 § 2 of [the Constitution] prohibits organisations from engaging in such activities.

Even if, despite [what was found] above, it is assumed that the activities of [Ilinden] do not run counter to [the Constitution], its Article 12 § 2 provides that associations

may not pursue political goals and carry out political activities that are characteristic solely of political parties. The political character of the aims [of Ilinden] is clearly shown by [its articles of association], while the [applicable law] provides that organisations seeking to engage in political, trade-union or religious activities must be regulated in a separate statute.

All this leads to the conclusion that what is sought is the registration of an association whose aims are illegal. It cannot be accepted that what is at issue is an organisation seeking to preserve the historical traditions and the cultural riches of a specific community. ... The realisation of the true aims [of Ilinden] would no doubt be at the expense of the unity of the Bulgarian nation [and] the sovereignty and the territorial integrity [of the country], which is declared inviolable by Article 2 § 2 of the Constitution.”

14. Ilinden appealed to the Sofia Court of Appeal, arguing, *inter alia*, that it was not threatening the country’s sovereignty and territorial integrity, nor trying to distort the “historical truth”. The refusal to register it was in breach of Article 38 of the Constitution (see paragraph 18 below), as it was based on the fact that it expressed views which differed from the officially sanctioned ones. It was not proposing to engage in activities characteristic solely of a political party either.

15. On 11 July 2003 the Sofia Court of Appeal upheld the lower court’s judgment. It held, in so far as relevant:

“The Blagoevgrad Regional Court ... received an application by the managing council of the newly formed non-profit association [Ilinden], requesting it to be registered ... in the special register kept by the court... In [the impugned judgment the Blagoevgrad Regional Court] refused to register the association..., holding that [Ilinden]’s goals and the means for attaining them have a political character and run counter to the spirit of [the 2000 Non-Profit Legal Persons Act] and the provisions of the [Constitution]. This court shares those conclusions.

The evidence submitted alongside the application for registration, namely the articles of the non-profit association [Ilinden], the minutes of its founding meeting, held on 20 October 2002, a list of the founders, thirteen sample signatures of the members of the managing council, notarised and expressly stating that these persons wish to take part in the association’s management and representation, and their criminal records, shows that a founding meeting was held on 20 October 2002. It was attended by 111 individuals, who unanimously resolved to form a non-profit association named [Ilinden], adopted its articles and elected a managing council consisting of thirteen members. However, the wording of the articles – clauses 6 and 7, [which set out] the association’s goals and the means for attaining them – reveal their political character, which is impermissible for a non-profit association. This follows from the interpretation of paragraph 2 of [the 2000 Non-Profit Legal Persons Act], which provides that organisations intending to carry out political, trade-union or religious activities must be regulated by separate statutes. For instance, in clause 6(1), (4) [and] (5) of its articles the organisation proclaims itself as being a successor of and continuing the ‘national liberation struggle of the Macedonian nation’, including ‘the Macedonian fighters who fell victim to Bulgarian State terrorism and genocide’, declares that ‘it will express and defend the civil, social and economic rights of the Macedonians who live on Macedonian soil under Bulgarian occupation (jurisdiction) and of the Macedonians living in Bulgaria’, insists that ‘the

assimilation process in Pirin Macedonia must stop', etc. All those goals set by the newly formed organisation are directed towards distorting the historical truth and ignoring the Bulgarian character of certain geographical regions, with a view to stirring overt confrontation between one group of Bulgarian citizens and another, which imperils both the territorial integrity of the country and the unity of the nation. This is in breach of the imperative rule of Article 44 § 2 of [the Constitution] which provides that 'organisations whose activities are directed against the sovereignty [or] the territorial integrity of the country and the unity of the nation, towards the incitement of racial, national, ethnical or religious enmity ... are prohibited'. Moreover, the political goals and the ways of attaining them, set by the organisation in clause 7(2), (3) and (4) of its articles, are in breach of paragraph 2 of [the 2000 Non-Profit Legal Persons Act] and Article 12 § 2 of [the Constitution]. Apart from that, the founders have elected thirteen members of the managing council, in breach of the articles which provide, in clause 32(5), that the first managing council will consist of three members who will manage and represent the association (clause 32(1)). This was equally in breach of section 20(6) and (9) in conjunction with section 18(1)(3) of [the 2000 Non-Profit Legal Persons Act], because it engenders uncertainty as to the manner of managing and representing the organisation.

In view of the foregoing, this court finds that the newly formed organisation [Ilinden] has goals, ways of attaining them and representation which run counter to the provisions of [the 2000 Non-Profit Legal Persons Act]. For this reason, it should not be entered on the register of non-profit legal persons kept by [the Blagoevgrad Regional Court]. ..."

16. On 3 November 2003 Ilinden appealed on points of law. It argued, *inter alia*, that, contrary to the Sofia Court of Appeal's ruling, its articles, when read properly, showed that it did not intend to participate in political life. Nor was it trying to distort the historical truth – its aim was to promote it. The refusal to register it violated its right to freedom of association, enshrined in Article 44 § 1 of the Constitution, and was in breach of Article 38 of the Constitution (see paragraph 18 below). Ilinden also contested the Sofia Court of Appeal's findings concerning its managing council.

17. In a final judgment of 12 May 2004 (реш. № 342 от 12 май 2004 г. по гр. д. № 1992/2003 г., ВКС, търговска колегия) the Supreme Court of Cassation upheld the Sofia Court of Appeal's judgment in the following terms:

"The Sofia Court of Appeal founded the refusal to register the association on the wording of the articles of association, more specifically clauses 6 and 7, which show that the goals sought to be attained by the association and the means for their attainment are political in character. The [Constitution] guarantees freedom of association, but only in line with the requirements of the law. It is not permissible for a non-profit association to carry out political, trade-union or religious activities. The assertion in the appeal that [Ilinden] does not seek to engage in political struggles is not substantiated. As correctly observed by [the Sofia Court of Appeal], an organisation which proclaims itself as being a successor and continuing the 'national liberation struggle of the Macedonian nation', and its founders as spiritual successors of 'the Macedonian fighters who fell victim to Bulgarian State terrorism and genocide' has a markedly political character. The [lower court] correctly held that an

activity consisting in ‘safeguarding the social and economic rights of the Macedonians who live on Macedonian soil under Bulgarian occupation and of the Macedonians living in Bulgaria’ is in breach of Article 44 § 2 of the [Constitution], which prohibits organisations whose activities are directed against the sovereignty [or] the territorial integrity of the country and the unity of the nation, or towards the incitement of racial, national, ethnical or religious enmity. But even if [the court] were to accept the argument in the appeal that the organisation does not seek to attain goals which run counter to the constitutional order, those goals run counter to the [2000 Non-Profit Legal Persons Act], as they are characteristic of a political party, not of a non-profit association. Thus, the alleged violation of Article 38 of the [Constitution] has not been made out.

The argument in the appeal that the articles of association in reality merely mention the *minimum* number of members of the managing council, without further restrictions, is unfounded. Clause 32(3) of the articles enclosed in the case file says that the managing council consists of three to seven members. Clause 32(5) makes special provision for the first managing council and says that it will consist of three members serving three years. That is, clause 32(5) does not merely set a minimum, as claimed in the appeal. For this reason, [the Sofia Court of Appeal] correctly found that the imperative rule of section 20(6) and (9) in conjunction with section 18(1)(3) of the [2000 Non-Profit Legal Persons Act] has not been complied with – the manner of managing and representing the organisation is unclear.

For the foregoing reasons, the court is of the opinion that the grounds of appeal have not been made out and that [the impugned judgment] should be upheld.”

II. RELEVANT DOMESTIC LAW

A. The Constitution

18. The relevant provisions of the 1991 Constitution read:

Article 2 § 2

“The territorial integrity of the Republic of Bulgaria shall be inviolable.”

Article 12 § 2

“Associations ... may not pursue political goals or carry out political activities that are characteristic solely of political parties.”

Article 38

“No one may be persecuted or restricted in his rights because of his views, nor detained or forced to provide information about his or another’s convictions.”

Article 44

“1. Citizens may freely associate.

2. Organisations whose activities are directed against the sovereignty [or] the territorial integrity of the country and the unity of the nation, towards the incitement of racial, national, ethnical or religious enmity ... and organisations which seek to achieve their goals through violence are prohibited.

3. The law shall specify the organisations which are subject to registration, the manner of their dissolution and their relations with the State.”

B. The 2000 Non-Profit Legal Persons Act

19. Under paragraph 2 of the transitional and concluding provisions of the 2000 Non-Profit Legal Persons Act (“Закон за юридическите лица с нестопанска цел”) – the Act which regulates the formation, registration and activities of non-profit legal persons such as associations – organisations which intend to engage in political, trade union and religious activities were to be regulated by separate statutes.

20. Section 18 (1)(3) of the Act provides that the names and the offices of the persons who represent the association must be entered in the register. Section 20 (6) and (9) provide that an association’s articles must set out its managing bodies and the manner of its representation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

21. The applicants complained that the refusal to register Ilinden was in breach of Article 11 of the Convention, which provides as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. The parties' submissions

22. The Government submitted that the legal basis for the interference with the applicants' right was the Constitution, the 2000 Non-Profit Legal Persons Act and the 2001 Political Parties Act. The restrictions which Article 44 § 2 of the Constitution imposed on that right were similar to those allowed under Article 11 § 2 of the Convention. By Article 44 § 3 of the Constitution, the registration and the functioning of associations were to be regulated by law. That law was the Non-Profit Legal Persons Act. The restrictions imposed by those provisions were uniform and applied to all associations, regardless of their membership or aims. The fact that a person claimed to belong to a minority did not attract any special privileges, but did not give rise to any particular restrictions either.

23. The Government further submitted that the interference sought to safeguard a wide range of societal interests. All three levels of court rightfully refused to register Ilinden. Firstly, they found that the association's articles did not comply with the statutory requirements, because there was a disparity between the number of members of its managing council envisaged by its articles and the number actually elected. It was important to point out in that connection that the procedure for registering an association did not result in a ruling having *res judicata*, and that it was thus open to Ilinden to re-apply for registration. To avoid another refusal, it simply had to bring its founding documents in line with the applicable requirements. Secondly, the courts found that the association pursued political aims, which could be pursued only by a political party. While an association's founders were free to choose its aims, their choice could not run counter to the Constitution and the laws of the country.

24. The applicants submitted that the interference was not prescribed by law because the national courts failed to give them clear indications on how to proceed to obtain registration, and construed arbitrarily the constitutional restrictions on freedom to associate. The interference was not necessary in a democratic society either, because the national courts did not have before them any evidence showing that the registration of Ilinden would endanger Bulgaria's sovereignty or national security. However, those courts accepted uncritically the "official position" on the so-called "Macedonian question" and justified the refusal on grounds that had nothing to do with the principles of democracy.

25. The applicants also pointed out that the constitutional prohibition on associations pursuing political aims, as construed by the national courts in their case, had already been found deficient by the Court. In Bulgaria, as could be seen from a number of publications, associations routinely supported independent candidates for elections, which showed that the national courts' ruling on that point was arbitrary.

26. The applicants went on to say that the refusal to register Ilinden could not be justified on the basis of its goals and declarations. Nothing had changed in that respect since the Court's judgment in *United Macedonian Organisation Ilinden and Others* (cited above). The ostensible problem with the number of members of its managing council was not sufficient to refuse registration either. Indeed, under the applicable rules of procedure, the national courts should not even have inquired into the matter. It was first mentioned only by the court of appeal, whereas the first-instance court had not given any instructions for its rectification.

B. The Court's assessment

1. Admissibility

27. In so far as the Government's argument that Ilinden could re-apply for registration may be regarded as an objection of non-exhaustion of domestic remedies, the Court observes that the present case concerns one individual refusal of the national courts to register the association. The Court has in a number of cases treated such refusals in themselves as interferences with the right to freedom of association (see *Sidiropoulos and Others v. Greece*, 10 July 1998, § 31, *Reports of Judgments and Decisions* 1998-IV; *APEH Üldözötteinek Szövetsége and Others v. Hungary* (dec.), no. 32367/96, 31 August 1999; *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52, ECHR 2004-I; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 27, 3 February 2005; *United Macedonian Organisation Ilinden and Others*, cited above, § 53; *Tsonev v. Bulgaria*, no. 45963/99, § 43, 13 April 2006; *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 71, ECHR 2006-XI; *Ramazanov and Others v. Azerbaijan*, no. 44363/02, § 60, 1 February 2007; *Zhechev v. Bulgaria*, no. 57045/00, § 37, 21 June 2007; *Bekir-Ousta and Others v. Greece*, no. 35151/05, § 40, 11 October 2007; and *Emin and Others v. Greece*, no. 34144/05, § 37, 26 March 2008). In one of those cases the Court specifically noted that although it could have regard to earlier or later registration proceedings, in so far as they could be relevant to the complaints before it, such proceedings fell outside the scope of the case (see *United Macedonian Organisation Ilinden and Others*, cited above, §§ 30 and 31). Separate registration proceedings are therefore of no relevance for the exhaustion of domestic remedies in the case at hand. Indeed, to hold otherwise might erect a permanent barrier to bringing such matters before the Court, because, as rightly pointed out by the Government, in Bulgaria a refusal to register a political party or an association does not preclude the possibility of making further applications for registration an indefinite number of times (see, *mutatis mutandis*, *Guzzardi v. Italy*, 6 November 1980, § 80, Series A no. 39; *Nenov v. Bulgaria*, no. 33738/02, § 38, 16 July

2009; and *Naydenov v. Bulgaria*, no. 17353/03, § 58, 26 November 2009). Moreover, the possibility of requesting an authority to reconsider the decision taken by it does not as a rule constitute an effective remedy (see *Granger v. the United Kingdom*, no. 11932/86, Commission decision of 9 May 1988, Decisions and Reports (DR) 56, p. 199, and *Roseiro Bento v. Portugal* (dec.), no. 29288/02, ECHR 2004-XII (extracts)). Lastly, it cannot be overlooked that the instant refusal to register Ilinden was the third in a row (see *Stankov, Trayanov, Stoychev, the United Macedonian Organisation Ilinden, Mechkarov and Others v. Bulgaria*, nos. 29221/95, 29222/95, 29223/95, 29225/95 and 29226/95, Commission decision of 21 October 1996, unreported, and *United Macedonian Organisation Ilinden and Others*, cited above, § 30).

28. It follows that the complaint under Article 11 cannot be dismissed for failure to exhaust domestic remedies.

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

2. Merits

30. The refusal to register the association undoubtedly amounted to interference, in itself, with both Ilinden's and its members' right to freedom of association (see the cases cited in paragraph 27 above). The possibility for the association to re-apply for registration – while capable of being taken into account in assessing the proportionality of the interference (see, *mutatis mutandis*, *Lajda and Others v. the Czech Republic* (dec.), no. 20984/05, 3 March 2009) – does not, as already noted, alter that conclusion.

31. Such interference gives rise to a breach of Article 11 unless it can be shown that it was “prescribed by law”, pursued one or more legitimate aims as defined in paragraph 2 and was “necessary in a democratic society” to achieve those aims.

32. The Court does not consider it necessary to determine whether the interference was “prescribed by law” or pursued a legitimate aim, as it finds, for the reasons set out in the following paragraphs, that it cannot be regarded as being “necessary in a democratic society”.

33. The Court summarised the principles relevant for the determination of this point in paragraphs 57-62 of its judgment in the case of *United Macedonian Organisation Ilinden and Others* (cited above) as follows (references omitted):

(a) The right to form an association is an inherent part of the right set forth in Article 11, even if that Article only makes express reference to the right to form trade unions. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national

legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.

(b) While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.

(c) Given that the implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions, the Court has also recognised that the protection of opinions and the freedom of expression within the meaning of Article 10 of the Convention is one of the objectives of the freedom of association. Such a link is particularly relevant where – as here – the authorities' intervention against an association was, at least in part, in reaction to its views and statements.

(d) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society" (on this point, see also *Association of Citizens Radko and Paunkovski v. "the former Yugoslav Republic of Macedonia"*, no. 74651/01, § 64, 15 January 2009).

(e) Consequently, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision

embracing both the law and the decisions applying it, including those given by independent courts (on this point, see also *Sidiropoulos and Others*, § 40, and *Association of Citizens Radko and Paunkovski*, § 66, both cited above).

(f) When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

34. More recently, in *Association of Citizens Radko and Paunkovski* (cited above, § 65, citing *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 40, ECHR 2005-X (extracts)) the Court made the point that although tension could be created in situations where a community becomes divided, that is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of that tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.

35. The Court must scrutinise the reasons given by the national courts to justify the interference in the light of the above principles. It observes that the refusal to register Ilinden was based on three grounds (see paragraphs 13, 15 and 17 above).

36. The first of those – alleged separatist ideas capable of arousing confrontational attitudes and based on historical interpretations considered absurd by the authorities and the majority of the population – was found clearly insufficient in a case concerning a previous refusal to register Ilinden (see *United Macedonian Organisation Ilinden and Others*, cited above, §§ 75 and 76), and a case concerning the ban of a political party closely connected with the applicant association and sharing its ideas (see *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, §§ 58-62, no. 59489/00, 20 October 2005). The Court also considers it important to repeat what it said in its first judgment concerning interferences with the Article 11 rights of Ilinden – *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (nos. 29221/95 and 29225/95, ECHR 2001-IX):

“97. ... Freedom of assembly and the right to express one’s views through it are among the paramount values of a democratic society. The essence of democracy is its capacity to resolve problems through open debate. Sweeping measures of a preventive

nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.

In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression ...

107. ... The fact that what was at issue touched on national symbols and national identity cannot be seen in itself ... as calling for a wider margin of appreciation to be left to the authorities. The national authorities must display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views, no matter how unpopular they may be.”

37. Indeed, the Court recently noted that political parties advocating independence participate in local government in some areas of Spain, and confirmed its position that the expression of separatist ideas cannot be regarded as in itself threatening a State’s territorial integrity and national security (see *Etxebarria and Others v. Spain*, nos. 35579/03, 35613/03, 35626/03 and 35634/03, § 55, 30 June 2009).

38. The second ground – characterisation of Ilinden’s goals as political and thus capable of being pursued solely by a political party – was found insufficient in a case concerning a previous refusal to register Ilinden (see *United Macedonian Organisation Ilinden and Others*, cited above, § 73), and also in a case concerning the refusal to register another association on exactly the same ground (see *Zhechev*, cited above, §§ 52-57).

39. In that latter case the Court, after surveying a number of rulings by the Bulgarian courts, observed that there existed uncertainty surrounding the meaning of the term “political” in Article 12 § 2 of the 1991 Constitution (see paragraph 18 above). It was quite conceivable that the Bulgarian courts could label any goals which were in some way related to the normal functioning of a democratic society as “political” and accordingly direct the founders of legal entities wishing to pursue such goals to register them as political parties instead of “ordinary” associations. Therefore, a classification based on that criterion was liable to produce incoherent results and engender considerable uncertainty among those wishing to apply for registration of such entities. The Court went on to observe that if associations in Bulgaria could, when registered as such, participate in elections and accede to power, it could prove necessary to require some of them to register as political parties, so as to make them subject to, for instance, stricter rules concerning party financing, public control and transparency. However, under Bulgarian law associations could not participate in national, local or European elections. There was therefore no pressing social need to require every association deemed by the courts to pursue “political” goals to register as a political party. That would mean

forcing the association to take a legal shape which its founders did not seek. It would also mean subjecting it to a number of additional requirements and restrictions, such as for instance the rule that a political party cannot be formed by less than a certain number of enfranchised citizens, which could in some cases prove an insurmountable obstacle for its founders. Such an approach ran counter to freedom of association, because, in case it was adopted, the liberty of action that would remain available to the founders of an association could become either non-existent or so reduced as to be of no practical value. On that basis, the Court concluded that alleged “political” character of an association’s aims was not a sufficient ground to refuse its registration (see *Zhechev*, cited above, §§ 55-57).

40. The third ground to refuse to register Ilinden, an apparent problem with the number of members of its managing council, was noted for the first time by the Sofia Court of Appeal (see paragraph 15 above). It is true that it was apparently due to a certain lack of diligence on the part of Ilinden’s founders. However, the domestic courts did not explain why they regarded that defect as so significant as to preclude registration and impossible to cure in the course of the registration proceedings (see, *mutatis mutandis*, *United Macedonian Organisation Ilinden and Others*, §§ 65-69, and *Tsonev*, §§ 55 and 57, both cited above). While States are entitled to require organisations seeking official registration to comply with reasonable legal formalities, that is always subject to the condition of proportionality (see *Ertan and Others v. Turkey* (dec.), no. 57898/00, 21 March 2006; *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 72, 8 October 2009; *Hayvan Yetiştiricileri Sendikası v. Turkey* (dec.), no. 27798/08, 11 January 2011; and *Republican Party of Russia v. Russia*, no. 12976/07, § 87, 12 April 2011). For this Court, the defect appears to be of a relatively trivial character. Failing further explanations, it can hardly be regarded in itself as a sufficient reason to refuse to register Ilinden. Such a refusal is a radical measure, because it prevents the association or a political party in issue from even commencing any activity (see *Gorzelik and Others*, § 105; *United Macedonian Organisation Ilinden and Others*, § 80; *Tsonev*, § 63; and *Zhechev*, § 58, all cited above).

41. In view of the foregoing, the Court finds that the refusal to register Ilinden was not necessary in a democratic society. There has therefore been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 14 OF THE CONVENTION

42. The applicants complained that the registration proceedings were unfair and that the courts examining the registration request were biased. They also complained that the refusal to register Ilinden was based on their asserted Macedonian ethnicity which the Bulgarian State was refusing to

recognise. They relied on Articles 6 § 1 and 14 of the Convention, which provide, in so far as relevant:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an ... impartial tribunal...”

Article 14

“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.”

A. The parties’ submissions

43. The Government submitted that the national courts’ decisions had been in line with the applicable law. The allegations of bias and discrimination were therefore groundless.

44. The applicants submitted that the courts examining Ilinden’s registration request had been biased and had conducted the proceedings unfairly. The grounds that they gave for their refusal to register the organisation varied. They had not allowed its founders an opportunity to bring the registration papers in line with the applicable formal requirements as construed by the courts. They had ventured into matters which were outside the subject matter of the case, and given biased rulings on historical questions.

45. The applicants also submitted that the refusal to register Ilinden had been discriminatory. In examining that issue, one had to bear in mind the general situation in the country in relation to the so-called “Macedonian question”. The interference with the applicants’ rights was a result of the lack of recognition of the Macedonian minority in Bulgaria and of the resulting infringement of that minority’s rights. The non-execution of a number of the Court’s judgments in previous cases concerning Ilinden showed that even now individuals asserting a Macedonian ethnic consciousness were being denied the rights to freedom of assembly and association. The Macedonian minority was the only one not recognised by Bulgaria, and had as a result suffered diverse instances of discrimination. That had been noted by various Council of Europe bodies, such as the Advisory Committee on the Framework Convention for the Protection of National Minorities, the European Commission against Racism and Intolerance, and the Commissioner for Human Rights. The national courts systematically refused to register any organisation which endeavoured to

defend the rights of the Macedonian minority, because they feared that such registration would amount to a recognition of that minority.

46. The grounds given by the national courts for their refusal to register Ilinden could be split in two groups. The first consisted of the real ones – that the registration of an organisation of the Macedonian minority would, by endowing it with a legal status, imperil the country’s sovereignty and the nation’s unity. All three levels of court had relied on such grounds, which were indicative of the authorities’ enduring prejudice against the Macedonian minority. The second group consisted of formal grounds whose purpose was to conceal the real ones. The first such ground – a purported problem with the number of members of Ilinden’s managing council – could have been spotted by the first-instance court and easily rectified. The second one – the bar on associations pursuing political aims – was equally just a pretext to refuse registration, as evident from the earlier refusals to register Ilinden.

47. In the applicants’ view, the above made it particularly important for the Court to examine the complaint under Article 14. Only a ruling under that provision would spur a real solution to the problem and show that the situation under consideration consisted in the denial of the existence of a whole ethnos. Otherwise, the authorities would feel encouraged to continue their practice of searching for various pretexts not to register Ilinden and thus refuse to recognise the right to freedom of association of Macedonians in Bulgaria.

48. All the elements of discrimination were in place. The more unfavourable treatment was the refusal to register Ilinden. The “badge” of discrimination was the asserted Macedonian ethnic consciousness of its members. The “hypothetical comparator” was any other ethnic group that would try to register an association. Any such group would have received far more favourable treatment. Indeed, the asserted ethnicity of Ilinden’s founders was the decisive factor behind the refusal to register it. That refusal stemmed from the systematic negation of the existence of a Macedonian minority in Bulgaria. The reasons for it were closely related to the asserted ethnicity of Ilinden’s founders and its character. No such reasons had been given in respect of associations of other ethnic minorities. Those elements amounted to *prima facie* evidence of discrimination, and it was for the Government to prove otherwise; that was in line with established anti-discrimination case-law, which in such circumstances required a shift of the burden of proof. However, the Government had not put forward any meaningful arguments to counter that allegation.

B. The Court’s assessment

49. The Court considers that those complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or

inadmissible on any other grounds. They must therefore be declared admissible. However, the Court notes that the complaints relate to the same facts as the one based on Article 11. Although the applicants insisted that their grievances under Articles 6 § 1 and 14 merited separate consideration, the Court, having carefully reviewed their arguments, finds that they do not raise any issues additional to those already examined under Article 11. Having regard to its conclusion in paragraph 41 above, it does not consider that it must deal with them. In that respect, the present case presents no material difference from a number of similar cases – some of which concerning interferences with the rights of persons asserting minority ethnic consciousness – in which the Court, having found a breach of the substantive Convention right at issue, perceived no need to address separately the complaint under Article 14 (see, among other authorities, *Sidiropoulos and Others*, cited above, § 52; *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 49, ECHR 1999-VIII; *Emek Partisi and Şenol v. Turkey*, no. 39434/98, § 31, 31 May 2005; *Ivanov and Others*, cited above, § 78; *United Macedonian Organisation Ilinden and Others*, cited above, § 84; *Bekir-Ousta and Others*, cited above, § 51; *Emin and Others*, cited above, § 37; and *Tourkiki Enosi Xanthis and Others v. Greece*, no. 26698/05, § 63, 27 March 2008) or that under Article 6 § 1 (see *Sidiropoulos and Others*, § 52; *United Macedonian Organisation Ilinden and Others*, § 84; and *Tsonev*, § 66, all cited above). It sees no reason to hold otherwise in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicants claimed 9,000 euros (EUR) in respect of the non-pecuniary damage flowing from the alleged breach of their right to freedom of association. They submitted that that amount was justified in view of the systemic and persistent nature of the breach, which continued in spite of a number of earlier judgments by the Court with which Bulgaria failed to comply. The applicants further claimed EUR 2,000 in respect of the alleged breach of their right to a fair trial, and EUR 3,000 in respect of the alleged breach of their right not to be discriminated against. They

requested that any amounts awarded under those heads be paid into the bank account of the fifth applicant.

52. The Government submitted that the finding of a violation would amount to sufficient just satisfaction, and that the amounts claimed by the applicants were exorbitant. In their view, the amount of any award should not exceed the sums awarded in similar cases and should take into account the living standard in Bulgaria.

53. The Court observes that the only violation found in the present case was that of Article 11 of the Convention. An award of just satisfaction can therefore be based only on the fact that the applicants were hindered in the exercise of their right to freedom of association (see, *mutatis mutandis*, *Zanghi v. Italy* (Article 50), 10 February 1993, § 12, Series A no. 257-A). That said, it cannot be overlooked that four years prior to the events in issue in the present case Ilinden was likewise denied registration, on grounds found insufficient by the Court (see *United Macedonian Organisation Ilinden and Others*, cited above, §§ 64-79). The applicants therefore had reason to feel a heightened sense of distress and frustration (see, *mutatis mutandis*, *Burdov v. Russia* (no. 2), no. 33509/04, § 156, 15 January 2009). In these circumstances, the Court awards the amount claimed by them in that respect (EUR 9,000) in full. To that amount is to be added any tax that may be chargeable.

54. The Court also considers it important to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress the effects, the aim being to put the applicants, as far as possible, in the position they would have been in had the requirements of the Convention not been disregarded (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, § 85, ECHR 2009-..., with further references). While it is for the respondent State to choose what such measures should involve, they must be compatible with the conclusions set out in the Court's judgment (see *Church of Scientology Moscow v. Russia*, no. 18147/02, § 106, 5 April 2007, and *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, § 109, 1 October 2009) and with the State's duty to abide by those conclusions and their spirit (see *Verein gegen Tierfabriken Schweiz (VgT)* (no. 2), cited above, § 90).

B. Costs and expenses

55. The applicants sought reimbursement of EUR 1,280 incurred in fees for thirty-two hours of work by employees of their representative on the proceedings before the Court, at EUR 40 per hour. They submitted a fee

agreement between them and their representative and a time sheet. They also sought reimbursement of 456.27 Bulgarian leva (BGN) incurred for translation of their observations into an official language. They requested that any amount awarded under that head be paid directly into the bank account of their representative.

56. The applicants further sought reimbursement of BGN 875 in respect of costs incurred for the translation into Bulgarian of two of the Court's earlier judgments in cases concerning their organisation and of documents received from the Court in the course of the present proceedings. The applicants requested that any amount awarded under that head be paid into the bank account of the fifth applicant.

57. The Government submitted that the fees claimed were excessive. Only expenses duly supported by documents were to be allowed. The sums paid for the translation of two of the Court's earlier judgments in cases concerning Ilinden were not necessarily incurred, as translations of those judgments in Bulgarian had been posted on the Ministry of Justice's website.

58. The applicants replied that the translation of the two judgments had been completed before the official translation was posted on the Ministry of Justice's website.

59. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court awards the full amount claimed by the applicants in respect of legal fees and the translation of their observations into an official language. Converted into euros, the total comes to EUR 1,513.29. To that amount should be added any tax that may be chargeable to the applicants, and it is to be paid into the bank account of the applicants' representative, the Bulgarian Helsinki Committee. As to the sum claimed by the applicants in respect of the Bulgarian translation of the Court's judgments in two previous cases and of documents sent to them by the Court, the Court, bearing in mind that the applicants were legally represented, and having regard to Rule 36 § 5 (a) of its Rules, does not consider that it was an expense which was necessarily incurred. It therefore rejects that part of the claim.

C. Default interest

60. 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. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds* that there is no need to examine separately the complaints under Articles 6 § 1 and 14 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months of 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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,513.29 (one thousand five hundred and thirteen euros and twenty-nine cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' representative, the Bulgarian Helsinki Committee;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President