FIRST SECTION

CASE OF STANKOV AND THE UNITED MACEDONIAN ORGANISATION ILINDEN v. BULGARIA

(Applications nos. 29221/95 and 29225/95)

JUDGMENT

STRASBOURG

2 October 2001

FINAL

02/01/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Stankov **and the** United Macedonian Organisation Ilinden **v.** Bulgaria**,**

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

Mrs E. Palm, *President*,
Mrs W. Thomassen,
Mr L. Ferrari Bravo,
Mr J. Casadevall,
Mr B. Zupančič,
Mr T. Panţîru,
Mrs S. Botoucharova, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having deliberated in private on 17 October 2000 and 11 September 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 29221/95 and 29225/95) against the Republic of **Bulgaria** lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Boris **Stankov** and the **United Macedonian Organisation Ilinden** ("the applicants"). The applications were introduced on 29 July 1994. Additional complaints were introduced on various dates between 1994 and 1997 (see the annex to the Commission's partial decision of 21 October 1996 and the Commission's final decision on admissibility of 29 June 1998).

2. The applicants appointed as their representative Mr I.K. Ivanov, a Bulgarian citizen residing in Sandanski, who was chairman of the applicant association for an unspecified period. In June 1998 Mr Ivanov, in turn, instructed a lawyer practising in Strasbourg, Mr L. Hincker, who first wrote on 19 June 1998 but did not intervene in the proceedings until the oral hearing (see paragraph 7 below).

The Bulgarian Government ("the Government") were represented by their Agent.

3. The applicants alleged a violation of Article 11 of the Convention in respect of the authorities' refusal to allow the holding of their commemorative meetings on 31 July 1994, 22 April and 30 July 1995, and 20 April and 2 August 1997.

4. Having joined the applications and declared them partly inadmissible on 21 October 1996, the Commission declared the remainder admissible on 29 June 1998. As the Commission had not completed its examination of the case by 1 November 1999, the case was transmitted to the Court on that date in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention.

5. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By letter of 9 May 2000 the parties were invited to submit written observations on the merits before 30 June 2000.

By letter of 22 June 2000 the applicants submitted short observations on the merits. The Government's memorial was filed on 25 July 2000.

7. A hearing, which was initially scheduled for 12 September 2000 but was postponed at the Government's request, took place in public in the Human Rights Building, Strasbourg, on 17 October 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mrs G. Samaras, Ministry of Justice, *Agent*;

(b) *for the applicants*
Mr L. Hincker, Lawyer, *Counsel*,
Mrs M. Lemaitre, *Adviser*.

Mr Ivanov, the chairman of the applicant association, was also present.
The Court heard addresses by Mr Hincker and Mrs Samaras.
8. On 24 October 2000 the applicants' lawyer filed written submissions on the claims for just satisfaction made at the hearing. The Government replied on 29 December 2000.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The **United Macedonian Organisation Ilinden** ("the applicant association" or "**Ilinden**") is an association based in south-western **Bulgaria** (in an area known as the Pirin region or the geographic region of Pirin Macedonia).
Mr Boris **Stankov** is a Bulgarian citizen, born in 1926 and living in Petrich. At the relevant time he was the chairman of a branch of the applicant association.

A. Background of the case

1. The founding and the dissolution of the applicant association

10. The **United Macedonian Organisation Ilinden** was founded on 14 April 1990. Its aims, according to its statute and programme, were to "unite all Macedonians in **Bulgaria** on a regional and cultural basis" and to achieve "the recognition of the **Macedonian** minority in **Bulgaria**". Sections 8 and 9 of the statute stated that the **organisation** would not infringe the territorial integrity of **Bulgaria** and that it "would not use violent, brutal, inhuman or unlawful means".
According to the applicants' submissions before the Court, the main activity of the applicant association was the **organisation** of celebrations to commemorate historical events of importance for Macedonians in **Bulgaria**. Over an unspecified period it published a newspaper.
11. In 1990 **Ilinden** applied for, but was refused, registration. In the proceedings for registration the Blagoevgrad Regional Court and the Supreme Court examined the statute of the association, its programme and other written evidence.
12. In their decisions of July and November 1990 and March 1991 the courts found that the applicant association's aims were directed against the unity of the nation, that it advocated national and ethnic hatred, and that it was dangerous for the territorial integrity of **Bulgaria**. Therefore, its registration would be contrary to Articles 3, 8 and 52 § 3 of the Constitution of 1971, as in force at the time. In particular, the aims of the association included, *inter alia*, the "political development of Macedonia" and the establishment of a "**united**, independent **Macedonian** State". Moreover, in its appeal to the Supreme Court the association had stated that "the **Macedonian** people would not accept Bulgarian, Greek or Serbian rule". The formal declaration in the applicant association's statute that it would not infringe the territorial integrity of **Bulgaria**, appeared inconsistent with the remaining material.
13. The judgment of the Supreme Court of 11 March 1991 stated, *inter alia*:

"[T]he lower courts correctly established that the aims of the [applicant association] under its statute and programme were directed against the unity of the nation ... [The material in the case] demonstrates that the [applicant association] seeks to disseminate the ideas of Macedonianism among the Bulgarian population, especially in a particular geographical area. [Those ideas] presuppose the 'denationalisation' of the Bulgarian population and its conversion into a **Macedonian** population ... It follows that the [applicant association] is directed against the unity of the nation and is therefore prohibited under Article 35 § 3 of the [1971] Constitution ..."

14. The parties do not dispute, it seems, that during the relevant period the applicant association underwent changes of leadership and that there was internal conflict. Its local branches or separate factions differed in their views and activities.

2. Public meetings prior to the period under consideration

15. The applicant association held a meeting for the first time on 22 April 1990 at the Rozhen Monastery, at the grave of Yane Sandanski.

16. On 20 April 1991 the applicant association organised a commemoration meeting at the Rozhen Monastery. The participants adopted a declaration addressed to the President and Parliament, which stated, *inter alia*:

"1. Our rights as a minority, of which we have been deprived, should be guaranteed to us in accordance with the international agreements on minorities.

[We demand:]

2. The introduction of the [study of] the **Macedonian** language, history and culture in all educational institutions in Pirin Macedonia.

3. The right to radio and television broadcasts in the **Macedonian** language ...

...

5. That an end be put to the assimilation process and the destruction of the **Macedonian** culture.

6. The right to publish in the **Macedonian** language ...

7. ... that the **Macedonian** Church should be independent ...

8. That all Bulgarian political parties on the territory of Pirin Macedonia should be dissolved or renamed **Macedonian**; they should defend the national rights of the **Macedonian** people.

...

14. The complete cultural, economic and political autonomy of Pirin Macedonia and the withdrawal of the Bulgarian occupation armies from Pirin Macedonia ...

...

16. Should the Bulgarian government not respond positively to our demands, **Ilinden** shall appeal to the **United** Nations **Organisation**, the [Conference on] Security and Cooperation in Europe, the European Parliament, the Great Powers, in the interest of peace in the Balkans and in Europe and with a view to avoiding military conflicts due to the emerging nationalism in **Bulgaria**, Serbia, Greece and Albania, with the following demands: annulment of the separatist military union of 20 February 1912 between **Bulgaria**, Serbia and Greece, withdrawal of the invaders from the occupied territories, ... unification of Macedonia under the auspices of the **United** Nations and with the protection of the Great Powers ..."

17. According to a police report, drawn up in 1998 by the director of the police in the region and submitted to the Court by the Government, "fierce anti-Bulgarian declarations" had been made at the meetings of 22 April 1990 and 20 April 1991. In particular, on 22 April 1990 a declaration requesting the recognition of a **Macedonian** minority and cultural autonomy had been read out. The report did not mention any incident at that meeting.

As explained in the report, on 20 April 1991 about 300 to 350 **Ilinden** supporters had gathered during the official commemoration of the death of Yane Sandanski, which had been attended by 4,000 participants. Members of **Ilinden**, standing on a separate platform, had

allegedly hissed and booed the police, labelled the Bulgarians "barbarians", "conquerors" and "enslavers" and called on them to leave and "free" the region from their presence. The report further stated that a "shocking" incident had occurred: Mr B., a prominent politician, had been splashed with beer on his face. The police had allegedly prevented any further clashes.

The report concluded:

> "... the events organised by **Ilinden** are provocative. There is a real risk of incidents. For that reason, since 1992 the municipalities in the region normally refuse to allow such events to proceed. With a view to protecting the law, the assistance of the prosecuting authorities and of the police is normally sought."

18. The applicants submitted copies of photographs, written testimonies and statements of persons who claimed that on several occasions between 1990 and 1994 there had been police actions and acts of private individuals obstructing the activities of the applicant association.

They also submitted copies of newspaper articles accusing **Ilinden** of misappropriating Bulgarian national symbols, describing its leaders as uneducated, mentally ill or traitors, and denying the existence of a **Macedonian** minority in **Bulgaria**. The applicants alleged that those articles reflected public opinion in **Bulgaria**, as manipulated by the authorities.

B. Prohibitions against the holding of meetings during the period under consideration

1. The events of July 1994

19. In July 1994 Mr **Stankov**, as chairman of the Petrich branch of the applicant association, requested the mayor of Petrich to authorise a meeting in the area of Samuilova krepost, to be held on 31 July 1994 in commemoration of a historical event. On 13 July 1994 permission was refused by the mayor, but no reasons were given. The applicant association appealed to the Petrich District Court which dismissed the appeal on 16 July 1994. The District Court found that since the applicant association had been banned, there were well-founded fears that the demonstration would endanger public order and the rights and freedoms of others.

On 28 July 1994 Mr Ivanov, the representative of the applicant association, and another person were issued with written warnings by the police to stay away from the official traditional fair at Samuilova krepost. The warnings stated that they were based on the applicable law.

20. Despite the refusal of the authorities, on 31 July 1994 some members of the applicant association (120-150 according to the applicants' assessment) attempted to approach the historical site of Samuilova krepost but the police, who according to the applicants were heavily armed, blocked their way.

In the Government's submission, the allegation that the area had been sealed off was "manifestly ill-founded".

2. The events of April 1995

21. On 10 April 1995 the applicant association requested the mayor of Sandanski to authorise a meeting to be held on 22 April 1995 at the grave of Yane Sandanski at the Rozhen Monastery, on the occasion of the eightieth anniversary of his death.

This was refused on 14 April 1995 as the applicant association was not duly registered by the courts. On 15 April 1995 the applicant association appealed to the Sandanski District Court stating, *inter alia*, that the **Macedonian** people had been deprived of their right to their own cultural life in violation of international law. The District Court never examined the appeal.

22. On 22 April 1995 the municipality of Sandanski held an official ceremony to mark the anniversary of Yane Sandanski's death. The event took place at his grave at the Rozhen Monastery. The ceremony commenced at about 10 a.m.

The applicants submitted that a group of their supporters who had travelled to the Rozhen Monastery on 22 April 1995 had been ordered by the police to leave their cars in the nearby town of Melnik and had been transported to the monastery by local buses. There they had been allowed to visit the grave, to lay a wreath and to light candles. However, they had not been allowed to bring to the site the placards, banners and musical instruments which they were carrying, or to make speeches at the grave. The police had allegedly taken away the ribbon attached to the wreath. The participants had then celebrated the event, without music, near the monastery but away from the grave.

3. The events of July 1995

23. In July 1995, as in previous years, the applicant association again requested authorisation to hold a commemorative meeting on 30 July 1995 at Samuilova krepost, the historical site in the vicinity of Petrich. On 14 July 1995 the mayor of Petrich refused the request without giving any reason. Upon the applicant association's appeal the refusal was upheld by judgment of the Petrich District Court of 18 July 1995. The District Court found that the "holding of a commemorative meeting of **Ilinden** on 30 July 1995 at Samuilova krepost would endanger public order".

4. The events of April 1997

24. On 8 April 1997 the applicant association informed the mayor of Sandanski and the local police that they were organising a meeting to be held on 20 April 1997 at the Rozhen Monastery to commemorate the death of Yane Sandanski. It stated in a letter to the mayor that Yane Sandanski, who is considered in **Bulgaria** as a Bulgarian national hero, was in fact a "**Macedonian** fighter for the national independence of Macedonia from Turkish rule and against the Bulgarian oppressors".

On 11 April 1997 the mayor refused to grant permission. He stated that permission for the commemoration of the same historical event had been requested on 4 April 1997 by the director of the local high school. The mayor further explained that the commemoration would be organised jointly by the school and the municipality and that "every [person], individually, could come".

25. On 15 April 1997 **Ilinden** appealed to the Sandanski District Court against the mayor's refusal stating, *inter alia*, that the mayor had not allowed them, "as a separate ethnic community", to organise a meeting at the tomb of their national hero.

On 17 April 1997 the President of the District Court issued an order refusing to examine the appeal on the merits as it had been submitted on behalf of an unregistered **organisation**.

26. The date on which that order was notified to the applicant association is unclear. The applicants initially denied having received a response to their appeal, but in later submissions to the Commission stated that on 5 May 1997 they had become aware of the order of 17 April 1997.

27. As the defects in the appeal were not remedied within the statutory seven-day time-limit, on 5 May 1997 the President of the District Court ordered the discontinuance of the proceedings. That order was notified to the applicant association on 13 August 1997.

28. The applicants claimed that on 20 April 1997 the police had prevented a group of their supporters from approaching the Rozhen Monastery and that two persons had been ill-treated. They submitted that on 20 April 1997 only thirteen students and two teachers from the local high school had arrived at the Rozhen Monastery. The students had laid a wreath in the presence of the police and had left two minutes later.

5. The events of July and August 1997

29. On 14 July 1997 Mr **Stankov**, as chairman of the association's branch in Petrich, requested authorisation for a commemorative meeting to be held on 2 August 1997 at Samuilova krepost, in the outskirts of Petrich. On 17 July 1997 the mayor refused the request, stating that the applicant association was not "a legitimate **organisation**".

30. On 20 July 1997 the applicant association appealed to the District Court against the refusal of the mayor stating, *inter alia*, that there was no legal provision prohibiting meetings of organisations which were not "legitimate" and that the planned public event would be peaceful and would not endanger public order.

By decision of 1 August 1997 the District Court dismissed the appeal on the merits. It found that the applicant association was not duly registered "in accordance with the laws of the country" and that it had not been shown that the persons who had acted on its behalf actually represented it. As a result, it had been unclear who had organised the event and who would be responsible for order during the meeting under the terms of sections 9 and 10 of the Meetings and Marches Act. The District Court concluded that the lack of clarity as regards the organisers of a public event endangered public order and the rights and freedoms of others.

31. The applicants submitted that on 2 August 1997 the police had not allowed a group of supporters of the applicant association to reach the historical site in the vicinity of Petrich.

C. Other evidence concerning the aims and the activities of the applicant association and its supporters

32. The parties made submissions and presented copies of documents concerning the activities of the applicant association.

It appears that some of the documents relied upon by the Government concern statements of persons adhering to a faction or a branch of the applicant association. Those groups apparently differed in their views and activities.

33. The Government relied on the declaration of 20 April 1991 (see paragraph 16 above), on the police report concerning the meetings of 1990 and 1991 (see paragraph 17 above) and on other material.

The Government submitted that during meetings, in letters to institutions or in statements to the media, persons associated with the applicant association and its supporters had made declarations to the effect that they wanted the Bulgarians to leave the region of Pirin Macedonia and stated that there could be "no peace in the Balkans unless the Bulgarians, the Greeks and all others recognise the national rights of the **Macedonian** people and no democracy in any Balkan country without such recognition".

34. The Government submitted copies of several issues of *Vestnik za Makedonzite v Balgaria i Po Sveta* and *Makedonska poshta*, pamphlets published by one of the factions linked to the applicant association, and copies of press material. These contain information, *inter alia*, about a "secret" private meeting of a faction of the applicant association held on 28 September 1997. The meeting allegedly declared that on 10 August 1998 the region of Pirin Macedonia would become "politically, economically and culturally autonomous" or independent. That was so because on that day, eighty-five years after the Bucharest Treaty of 1913, the States Parties to it were allegedly under obligation to withdraw from the "enslaved" **Macedonian** territories.

Makedonska poshta further invited all Macedonians to a march in Sofia on 3 August 1998. The invitation stressed that the participants should not carry arms.

35. A handwritten poster, allegedly issued by followers of the applicant association in Petrich, called for a boycott of the 1994 parliamentary election "to prevent the establishment of legitimate Bulgarian authorities in the region" of Pirin Macedonia. The document further called for a **united Macedonian** State and for "an international invasion" by the Security Council of the **United** Nations "according to the model of Grenada, Kuwait and Haiti".

36. An appeal for a boycott of the 1997 election stated that the Macedonians should abstain from voting in protest against the lack of recognition of their rights as a minority.

37. In a declaration published in the press in the Former Yugoslav Republic of Macedonia, the leaders of a faction linked to the applicant association criticised the Bulgarian authorities for their refusal to recognise the **Macedonian** language and the **Macedonian** minority in **Bulgaria** and appealed to various international organisations to exert pressure on the Bulgarian authorities in this respect.

38. The Government submitted a copy of a "memorandum" addressed to the **United** Nations, signed by activists of the applicant association or a faction of it, dated 1 July 1997. It contains a short overview of historical events, complaints about the attitude of the Bulgarian authorities and the following main demands: collective minority rights, access to Bulgarian State archives, the return of confiscated material, the revision of the way Bulgarian history is seen, the revision of international treaties of 1912 and 1913, the dissolution of the "political police", the dissolution of nationalistic and violent parties and organisations, the registration of **Ilinden** as the legitimate **organisation** of the Macedonians in **Bulgaria**, radio broadcasts in **Macedonian**, an investigation into violations committed against Macedonians and economic assistance.

The document also stated:

> "... being conscious of the contemporary economic and political realities in the Balkans, Europe and the world, we are not acting through confrontation, tension or violence. Our way to achieve enjoyment of our rights as a **Macedonian** ethnic minority in **Bulgaria** and in Pirin Macedonia, where our ethnic and historical roots lie, is through peaceful means and negotiations ...
>
> Our peaceful and lawful means ... are to the advantage of the authorities who ... deny the existence of a Macedonian minority. Our democratic ways are to our detriment: the authorities can afford political, economic and psychological pressure, and arms."

39. Before the Court the Government relied on a judgment of the Bulgarian Constitutional Court of 29 February 2000 in a case concerning the constitutionality of a political party, the United Macedonian Organisation Ilinden-PIRIN: Party for Economic Development and Integration of the Population ("UMOIPIRIN"), which had been registered by the competent courts in 1999. The Constitutional Court found that that party's aims were directed against the territorial integrity of the country and that therefore it was unconstitutional.

40. The Constitutional Court noted that UMOIPIRIN could be regarded as a successor to or a continuation of the applicant association. On that basis the Constitutional Court relied extensively on submissions about the history and the activities of the applicant association in the assessment of the question whether UMOIPIRIN was constitutional.

In particular, the Constitutional Court took note of the demands made in the declaration of the applicant association of 20 April 1991 (see paragraph 16 above). It also observed that maps of the region, depicting parts of Bulgarian and Greek territory as Macedonian, had been published by the association and that there had been repeated calls for autonomy and even secession. The Constitutional Court further noted that representatives of the applicant association had made offensive remarks about the Bulgarian nation.

41. The Constitutional Court thus found that the applicant association and UMOIPIRIN considered the region of Pirin as a territory which was only temporarily under Bulgarian control and would soon become independent. Their activities were therefore directed against the territorial integrity of the country and were as such prohibited under Article 44 § 2 of the 1991 Constitution. The prohibition was in conformity with Article 11 § 2 of the Convention, there being no doubt that an activity against the territorial integrity of the country endangered its national security.

The judgment was adopted by nine votes to three. The dissenting judges gave separate opinions which have not been published.

D. Evidence submitted by the Government in support of their allegation that some of the members of the applicant association were in possession of arms

42. In support of this allegation the Government have submitted copies of two documents.

43. The first is a copy of an article from the *Kontinent* daily newspaper, dated 1/2 March 1997. The newspaper stated that a Mr D.P.K. had been arrested in Petrich for having threatened police officers with blowing up their homes, as they had impeded his business. During the arrest the police had allegedly discovered explosives in Mr D.P.K.'s home. The short article went on to recall that Mr D.P.K. was allegedly a leader of Ilinden and a "Macedonian activist".

44. The second document appears to be a photocopy of a flyer announcing the founding of an organisation and inviting those interested to join. The document bears no signature. It dates allegedly from 1995 and appears to have been typed on a typewriter.

The flyer explained that the newly created United Macedonian Organisation Nova did not wish to replace Ilinden. It criticised certain leaders of the applicant association.

The flyer further stated that the new organisation would form armed groups with the aim of "helping the Republic of Macedonia to survive".

45. The Government have not provided any comment or additional information on the contents of the two documents submitted by them.

46. During the hearing before the Court, in response to a question put to her, the Government's Agent declared that no criminal proceedings relevant to the present case had ever been brought against members of the applicant association.

E. The Government's summary of the historical context

47. The Government stressed that knowledge of the historical context and of the current situation in Bulgaria and in the Balkans was essential for the understanding of the issues in the present case. Their explanation may be summarised as follows.

> "Historically, the Bulgarian nation consolidated within several geographical regions, one of them being the geographical region of Macedonia. In 1878, when Bulgaria was partially liberated from Turkish dominance, the Berlin Peace Treaty left the region of Macedonia within the borders of Turkey. Between 1878 and 1913 the Bulgarian population of Macedonia organised five unsuccessful uprisings seeking liberation from Turkish rule and union with Bulgaria. There followed massive refugee migrations from the region to the Bulgarian motherland. Hundreds of thousands of Macedonian Bulgarians settled in Bulgaria.
>
> In 1934 the so-called 'Macedonian nation' was proclaimed for the first time by a resolution of the Communist International. Before that no reliable historical source had ever mentioned any Slavic population in the region other than the Bulgarian population. After the Second World War the Communist power in Yugoslavia proclaimed the concept of a separate Macedonian nation. A separate language and alphabet were created and imposed by decree of 2 August 1944. A massive assimilation campaign accompanied by brutalities was launched in Yugoslavia. For a short period of time the Bulgarian Communist Party – inspired by the idea of creating a Bulgarian-Yugoslav federation – also initiated a campaign of forcible imposition of a 'Macedonian' identity on the population in the region of Pirin Macedonia. In the 1946 and 1956 censuses individuals living in that region were forced to declare themselves 'Macedonians'. The campaign was abandoned in 1963, partly due to the refusal of the population to change their identity.
>
> In those parts of the geographical region of Macedonia which were in Yugoslavia the realities of the bi-polar cold-war world – where the relations between Yugoslavia and the socialist block dominated by the USSR were tense – exacerbated the population's feeling of doom and exasperation and their fear that unification with Bulgaria proper would never be possible. The forcible imposition of a Macedonian identity by the Tito regime also played a decisive role.
>
> Therefore, even if a process of formation of a new nation has taken place, it was limited to the territory of the Former Yugoslav Republic of Macedonia.

In the 1992 census, only 3,019 Bulgarian citizens identified themselves as Macedonians and indicated Macedonian as their mother tongue. Another 7,784 declared themselves Macedonians in the geographical sense, while allegedly indicating their Bulgarian national conscience and mother tongue.

Individuals considering themselves Macedonians are far from being discriminated against in Bulgaria. They have their own cultural and educational organisation, Svetlina. There are books and newspapers in the 'Macedonian language'."

II. RELEVANT DOMESTIC LAW

48. The provisions of the Constitution of July 1991 concerning freedom of assembly read as follows:

Article 43

"1. Everyone shall have the right to peaceful and unarmed assembly at meetings and marches.

2. The procedure for organising and holding meetings and marches shall be provided for by act of Parliament.

3. Permission shall not be required for meetings to be held indoors."

Article 44 § 2

"Organisations whose activities are directed against the sovereignty or the territorial integrity of the country or against the unity of the nation, or aim at stirring up racial, national, ethnic or religious hatred, or at violating the rights and freedoms of others, as well as organisations creating secret or paramilitary structures, or which seek to achieve their aims through violence, shall be prohibited."

49. The legal requirements for the organisation of meetings are set out in the Meetings and Marches Act of 1990. Its relevant provisions are as follows:

Section 2

"Meetings and marches may be organised by individuals, associations, political or other public organisations."

Section 6(2)

"Every organiser [of] or participant [in a march or a meeting] shall be responsible for damage caused through his or her fault during the [event]."

Section 8(1)

"Where a meeting is to be held outdoors the organisers shall notify in writing the [respective] People's Council or mayor's office not later than forty-eight hours before the beginning [of the meeting] and shall indicate the [name of] the organiser, the aim [of the meeting], and the place and time of the meeting."

Section 9(1)

"The organisers of the meeting shall take the measures necessary to ensure order during the event."

Section 10

"(1) The meeting shall be presided over by a president.

(2) The participants shall abide by the instructions of the president concerning the preservation of [public] order ..."

50. Prohibitions against meetings are also regulated by the Meetings and Marches Act:

Section 12

"(1) Where the time or the place of the meeting, or the itinerary of the march, would create a situation endangering public order or traffic safety, the President of the Executive Committee of the People's Council, or the mayor, respectively, shall propose their modification.

(2) The President of the Executive Committee of the People's Council, or the mayor, shall be competent to prohibit the holding of a meeting, demonstration or march, where reliable information exists that:

1. it aims at the violent overturning of Constitutional public order or is directed against the territorial integrity of the country;

2. it would endanger public order in the local community;

...

4. it would breach the rights and freedoms of others.

(3) The prohibition shall be imposed by a written reasoned act not later than twenty-four hours following the notification.

(4) The organiser of the meeting, demonstration or march may appeal to the Executive Committee of the People's Council against the prohibition referred to in the preceding paragraph. The Executive Committee shall decide within twenty-four hours.

(5) Where the Executive Committee of the People's Council has not decided within [that] time-limit, the march, demonstration or meeting may proceed.

(6) If the appeal is dismissed the dispute shall be referred to the relevant district court which shall decide within five days. That court's decision shall be final."

51. The Meetings and Marches Act was adopted in 1990, when the Constitution of 1971 was in force. Under the Constitution of 1971 the executive local State organs were the executive committees of the people's councils in each district. The mayors referred to in some of the provisions of the Meetings and Marches Act were representatives of the executive committee acting in villages and towns which were under the jurisdiction of the respective people's councils.

The 1991 Constitution abolished the executive committees and established the post of mayor, elected by direct universal suffrage, as the "organ of the executive power in the municipality" (Article 139).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

52. The Government reiterated and, in the light of recent developments, expanded on their objections made at the admissibility stage of the proceedings. They submitted that certain discrepancies in the applicants' statements before various authorities demonstrated the abusive nature of the applications. The Government further maintained that domestic remedies had not been exhausted and that the applications were manifestly ill-founded.

Commenting on the Commission's decision on Ilinden's *locus standi*, the Government, while not disputing in their memorial the Commission's conclusion, stated that the judicial decisions of 1990 and 1991 (see paragraphs 11-13 above) had the legal effect of a ban on Ilinden's activities as an association and as a group of individuals. At the oral hearing the Government's Agent asked the Court to find, on that ground, that the applicant association had no *locus standi.*

The standing of Mr Stankov was not called into question. The Government considered, however, that he was not validly represented before the Court, as he had not authorised Mr Ivanov, his representative, to delegate his power to act to Mr Hincker, who – moreover – had

only mentioned Ilinden in his letter to the Court announcing his participation as counsel. The Government further questioned, for the first time in their submissions on Article 41, the validity of Mr Hincker's power to represent the applicant association, there having been no collective decision by the association's members authorising Mr Ivanov to delegate his power to act to another person.

53. The applicants invited the Court to rule on the merits.

54. The Court reiterates that, under the Convention system as in force after 1 November 1998, where the respondent Government repeat objections raised and examined at the admissibility stage, its task is to verify whether there are special circumstances warranting re-examination of questions of admissibility (see *Velikova v. Bulgaria*, no. 41488/98, § 57, ECHR 2000-VI, and *Basic v. Austria*, no. 29800/96, § 34, ECHR 2001-I).

The provision of Article 35 § 4 *in fine* of the Convention, which allows the Court to declare an application inadmissible at any stage of the proceedings, does not signify that a respondent State is able to raise an admissibility question at any stage of the proceedings if it could have been raised earlier (see paragraph 88 of the explanatory report to Protocol No. 11 to the Convention and Rule 55 of the Rules of Court) or to reiterate it where it has been rejected.

55. It is true that, unlike with *Velikova* and *Basic*, in the present instance the questions of admissibility were examined by the Commission, prior to the entry into force of Protocol No. 11 to the Convention, and not by the Court. The Court observes nevertheless that, pursuant to Article 5 § 3 *in fine* of Protocol No. 11, applications declared admissible by the Commission and transmitted to the Court without the Commission having completed their examination, shall be dealt with "as admissible cases". The judgment of the Chamber in such cases is not final, subject to the provisions of Article 44 § 2 of the Convention.

The Court finds, therefore, that in cases falling under Article 5 § 3 *in fine* of Protocol No. 11 to the Convention it will re-open questions of admissibility only if there are special circumstances warranting such re-examination.

56. In the present case the Government essentially reiterated their objections as to the admissibility of the applications, which were already examined and rejected by the Commission in its decision of 29 June 1998.

57. The Court notes that the Commission dealt with the Government's arguments in detail and gave full reasons for its decision. Having carefully examined the Government's submissions, including their comments in the light of new developments, the Court finds that there are no new elements which would justify a re-examination of the admissibility issues in the present case.

In respect of Mr Stankov's legal representation before it, the Court is satisfied, on the basis of the authorisation forms signed by him and Mr Ivanov (see paragraph 2 above), that he is validly represented. The Court finally does not find anything which would cast doubt on Mr Hincker's power to represent Ilinden. The Court leaves open the question whether the Government are estopped from raising that question for the first time in their submissions on Article 41 of the Convention.

The Government's preliminary objections are therefore dismissed.

II. SCOPE OF THE CASE

58. The Government relied on evidence which did not directly concern the commemorative meetings of 31 July 1994, 22 April and 30 July 1995, and 20 April and 2 August 1997. They argued that the ban on holding meetings on those dates should be seen against the background of other events – whether before or after those meetings – and that all information about the activities of the applicant association or other connected organisations

and persons should be taken into account. The Government relayed extensive information about events between 1990 and 1993 and also about developments subsequent to the Commission's final admissibility decision of 29 June 1998.

The applicants also relied on evidence concerning events outside the scope *ratione temporis* or *materiae* of the case while disputing the relevance of some of the material submitted by the Government.

59. The Court reiterates that the admissibility decision delimits the scope of the case before it. It follows that it is not its task to decide on complaints concerning events from 1990 to 1993 (which were declared inadmissible by the Commission). Nor is it called upon to express a view in this judgment on the question whether the banning of meetings in 1998, 1999 and 2000 or the Constitutional Court's judgment of 29 February 2000 were consistent with the Convention (those issues being the subject matter of other applications pending before the Court: nos. 44079/98, 59489/00 and 59491/00).

The scope of the present case is confined to the applicants' complaints that the authorities prohibited their meetings on 31 July 1994, 22 April and 30 July 1995, and 20 April and 2 August 1997. The Court will take into account evidence concerning other events in so far as it might be relevant to those complaints.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

60. The applicants alleged a violation of Article 11 of the Convention, the relevant parts of which provide as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...
>
> 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. ..."

A. Arguments of the parties

1. The applicants

61. The applicants submitted that the ban on meetings organised by them in commemoration of certain historical events, and the attitude of the authorities at the relevant time were aimed at suppressing the free expression of ideas at peaceful gatherings. As such they amounted to an interference with their rights under Article 11 of the Convention, seen against this background as *lex specialis* in relation to Article 10 of the Convention.

62. They contended that the interference had not been "prescribed by law" as the lack of registration of their association, which had been relied upon by the mayors, was not among the grounds justifying a prohibition of demonstrations under section 12 of the Meetings and Marches Act.

63. Furthermore, they rejected as groundless the Government's assertion that the gatherings organised by them had posed a threat. They had been entirely peaceful: their purpose had been to commemorate historical events considered as an important part of the history of the Macedonian people. The gatherings, which normally lasted about three hours, had always commenced with texts being read out, and had proceeded with poems, music and songs.

64. The applicants further questioned the legitimacy of the aims pursued by the bans and their justification.

The aim of the authorities – as the applicants saw it – had been to suppress the dissemination of the idea that a Macedonian minority existed in Bulgaria. It might have been

true that the majority of the Bulgarian population considered that there was no Macedonian minority in their country and that the demonstration of the applicants' ideas could shock and appear offensive to that majority. It was however essential, in a pluralist democratic society, to allow the free expression of minority ideas and it was the duty of the authorities to guarantee the applicants the right to demonstrate peacefully.

65. They further maintained that the prohibitions complained of, albeit limited to certain historical sites and to particular dates, amounted in reality to a general ban on meetings of the applicant association, since not a single meeting organised by it had been authorised. Such an absolute ban was disproportionate.

Nothing in the material submitted by the Government could lead to the conclusion that they were seeking secession from Bulgaria. Even if there was some suspicion in this respect, a total ban on commemorations was a disproportionate reaction.

2. The Government

66. The Government doubted the applicants' intention to hold "peaceful" demonstrations, there allegedly being evidence that some of the organisation's members had been armed. Reference was made in this respect to two documents they had submitted (see paragraphs 42-46 above). They also referred to evidence allegedly demonstrating that since 1990 the meetings of Ilinden had always been marked by conflict and clashes, both verbal and physical, between supporters of the association and others. That was inevitable because of the provocative anti-Bulgarian statements made at those meetings and the offensive language used.

67. It was further emphasised that members of the applicant association had never been prevented from visiting the historical sites in question provided that they did not carry posters or other material containing threats against the unity of the nation, the country's territorial integrity or the rights of others. The applicants' freedom of assembly was thus intact.

68. If it was considered that there had been an interference with the applicants' rights under Article 11 of the Convention, that interference had been lawful and had been based on unambiguous provisions of the Constitution and the Meetings and Marches Act.

The Government disputed the applicants' proposition that the reasons for the bans had been changing constantly – thus allegedly disclosing the lack of a clear legal basis. The reasons for all the bans had invariably been the unconstitutional activities and statements of the applicant association (which threatened the country's territorial integrity and national security) and the risk of incidents endangering public order.

69. With reference to the Supreme Court judgments of 1990 and 1991 (see paragraphs 12-13 above) and to the Constitutional Court judgment of 29 February 2000 (see paragraphs 39-41 above), it was stressed that the applicant association had been dissolved as it had been established that its activities threatened the country's territorial integrity and had been unconstitutional. "Reliable information" that a gathering was directed against the territorial integrity of the country was a valid ground for a ban on such a gathering under section 12(2) of the Meetings and Marches Act (see paragraph 50 above). The judgments dissolving Ilinden provided sufficient information in this respect. While an unregistered organisation would undoubtedly be free to organise meetings, the applicant association's activities had been prohibited. The authorities' reliance, in their decisions prohibiting the meetings, on the fact that the applicant association had been refused registration had been in conformity with the law.

70. In addition, the measures complained of pursued a number of legitimate aims: the protection of national security and territorial integrity, the protection of the rights and freedoms of others, guaranteeing public order in the local community and the prevention of disorder and crime.

71. In the Government's view, Ilinden infringed the rights and freedoms of others because it aspired to create a Macedonian nation among people belonging to the Bulgarian nation and demanded the imposition of a Macedonian identity and institutions in the region of Pirin to the exclusion of all Bulgarian institutions. The handful of supporters of those ideas – some 3,000 in a region with a population of about 360,000 – had assumed the right to speak for the people.

Most importantly, the applicant association was a separatist group which sought the secession of the region of Pirin from Bulgaria. It posed a direct threat to national security and the territorial integrity of the country.

72. With reference to the historical and current context of Bulgaria and the Balkans (see paragraph 47 above), the Government submitted that the applicant association's insistence on differentiation and "collective rights", despite the fact that every person in Bulgaria fully enjoyed all rights and freedoms, including cultural and political rights, disclosed that their genuine goal was the imposition on the Bulgarian population of an alien national identity.

Even if a Macedonian minority existed in Bulgaria – the Government continued – the means and propaganda tools used by Ilinden were not aimed at protecting the rights of such a minority, but at converting the Bulgarian population into a Macedonian one and then separating the region from the country.

73. In the context of the difficult transition from totalitarian regimes to democracy, and due to the attendant economic and political crisis, tensions between cohabiting communities, where they existed in the region, were particularly explosive. The events in former Yugoslavia were an example. The propaganda of separatism in such conditions had rightly been seen by the authorities as a threat to national security and peace in the region.

Moreover, the national authorities were better placed to assess those risks. It was conceivable that the same facts might have different implications in other States, depending on the context. The facts of the present case had to be seen, however, against the background of the difficulties in the region.

74. The time and place chosen by the applicant association for their regular meetings had been inappropriate. They had coincided with traditional, widely attended, ceremonies and fairs, commemorating events of historical importance which had involved sensitive issues. The applicant association's provocative attitude had caused incidents in the past and had prompted very negative reactions by the population. The authorities had thus adopted the practice of not allowing Ilinden's meetings at the same time and place as the official celebrations.

Referring to the Commission's decisions in *Rassemblement jurassien and Unité jurassienne v. Switzerland* (no. 8191/78, 10 October 1979, Decisions and Reports (DR) 17, p. 93) and *Christians against Racism and Fascism v. the United Kingdom* (no. 8440/78, 16 July 1980, DR 21, p. 138), the Government submitted that given the State's margin of appreciation, the prohibition of demonstrations in conditions of public tension and where the authorities could reasonably expect clashes was justified for the preservation of public order.

75. In their submission, the bans complained of were proportionate to the legitimate aims pursued and did not violate Article 11 of the Convention.

B. The Court's assessment

1. Applicability

76. The Government expressed doubts as to the peaceful character of the applicant association's meetings and on that basis disputed the applicability of Article 11 of the Convention.

77. The Court reiterates that Article 11 of the Convention only protects the right to "peaceful assembly". That notion – according to the Commission's case-law – does not cover a demonstration where the organisers and participants have violent intentions (see *G. v. Germany*, no. 13079/87, decision of 6 March 1989, DR 60, p. 256, and *Christians against Racism and Fascism*, cited above).

78. In the present case, having carefully studied all the material before it, the Court does not find that those involved in the organisation of the prohibited meetings had violent intentions (see paragraphs 10, 12, 13, 16, 17, 20, 22, 28, 31 and 32-46 above). Article 11 is thus applicable.

2. Whether there has been an interference

79. The Court notes that on all occasions under examination the authorities prohibited the meetings planned by both applicants. That was, indeed, a practice that had been invariably followed ever since 1992 (see paragraphs 17 and 74 above). In July 1994 the chairman of the applicant association and another person were issued police warnings to stay away from the site of their planned commemorative meeting.

In one case, on 22 April 1995, despite the ban imposed by the mayor, supporters of the applicant association were allowed to approach the historical site where they wished to hold their meeting and were able to lay a wreath on the grave of Yane Sandanski and light candles. That was only possible, however, on the condition that the participants abandoned their posters and slogans. No speeches were allowed to be made at the site. The participants were permitted to celebrate the event only from a certain distance (see paragraph 22 above).

That approach by the authorities, allowing members of the applicant association to attend the official ceremonies held at the same place and time on the occasion of the same historical events, provided that they did not carry their posters and did not hold separate demonstrations, was reiterated in the mayor's decision of 11 April 1997 and the Government's submissions to the Court (see paragraphs 24 and 66 above).

80. On the basis of the above, the Court considers that there has undoubtedly been an interference with both applicants' freedom of assembly, within the meaning of Article 11 of the Convention.

3. Whether the interference was "prescribed by law"

81. The Court notes that the reasons given by the authorities for the prohibition of meetings fluctuated and were not elaborate. They repeatedly mentioned the lack of registration of the applicant association, a fact which could not in itself, under the applicable law, serve as ground for a ban on a meeting. On two occasions the mayors did not provide reasons and that was only partially rectified by the district courts in their judgments on appeal (see paragraphs 19, 21, 23, 24, 29 and 30 above).

The Court observes, however, that the authorities referred to an alleged danger to public order which in accordance with domestic law was among the grounds justifying interference with the right to peaceful assembly. The fact that Ilinden had been refused registration was apparently considered relevant in the assessment of the alleged danger to public order (see paragraphs 19 and 30 *in fine* above). Furthermore, the prohibitions complained of were imposed by decisions of the competent mayors and courts in accordance with the procedure prescribed by the Meetings and Marches Act.

82. In these circumstances, the Court accepts that the interference with the applicants' freedom of assembly may be regarded as being "prescribed by law".

In so far as the applicants challenged the soundness of the authorities' finding that there had been a danger to public order, that issue falls to be examined in the context of the question whether or not the interference with the applicants' freedom of assembly had a

legitimate aim and was necessary in a democratic society, within the meaning of Article 11 § 2 of the Convention.

4. Legitimate aim

83. In the Government's view the measures taken against Ilinden's commemorative meetings pursued several legitimate aims: the protection of national security and territorial integrity, the protection of the rights and freedoms of others, guaranteeing public order in the local community and the prevention of disorder and crime.

The applicants disputed that proposition. In their submission the disguised objective of the prohibitions complained of had been the denial of the collective rights of the Macedonian minority.

84. The Court reiterates that the number of exceptions to freedom of expression and assembly, contained in Articles 10 and 11, is exhaustive. The definitions of those exceptions are necessarily restrictive and must be interpreted narrowly (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1613-14, §§ 37-39).

Having regard to all the material in the case the Court accepts that the interference was intended to safeguard one or more of the interests cited by the Government.

5. "Necessary in a democratic society"

(a) General principles in the Court's case-law

85. The Court reiterates that notwithstanding its autonomous role and particular sphere of application, Article 11 of the Convention must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (see *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 37, ECHR 1999-VIII.

Such a link is particularly relevant where – as here – the authorities' intervention against an assembly or an association was, at least in part, in reaction to views held or statements made by participants or members.

86. 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" (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and *Gerger v Turkey* [GC], no. 24919/94, § 46, 8 July 1999, unreported).

Likewise, freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote (see *Plattform "Ärzte für das Leben" v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, § 32).

87. The expression "necessary in a democratic society" implies that the interference corresponds to a "pressing social need" and, in particular, that it is proportionate to the legitimate aim pursued.

The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with the rights protected by the Convention (see *Gerger*, cited above, § 46).

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 took. 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, after having established that it pursued a "legitimate aim", whether it was proportionate to that aim 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 (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, p. 22, § 47).

88. There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see, *mutatis mutandis*, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports* 1996-V, pp. 1957-58, § 58).

One of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when those problems are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a group solely because it seeks to debate in public the situation of part of the State's population and to find, according to democratic rules, solutions capable of satisfying everyone concerned (see *United Communist Party of Turkey and Others*, cited above, p. 27, § 57).

89. The inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics. The fact that an association asserts a minority consciousness cannot in itself justify an interference with its rights under Article 11 of the Convention (see *Sidiropoulos and Others*, cited above, pp. 1616-17, § 44).

90. Admittedly, it cannot be ruled out that an organisation's programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the organisation's actions and the positions it defends (see *United Communist Party of Turkey and Others*, cited above, p. 27, § 58).

An essential factor to be taken into consideration is the question whether there has been a call for the use of violence, an uprising or any other form of rejection of democratic principles (see *Freedom and Democracy Party (ÖZDEP)*, cited above, § 40). Where there has been incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1566, § 48, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

(b) Application of the general principles to the present case

91. The authorities referred to the fact that the applicant association had been refused registration because the courts found that it was anti-constitutional (see paragraphs 11-13 above).

92. The Court considers, however, that while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organisation has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11 § 2 of the Convention a practice of systematic bans on the holding of peaceful assemblies.

The Court must rather scrutinise the particular grounds relied on to justify the interference and the significance of that interference.

(i) Grounds relied on to justify the interference

(α) Alleged possession of arms

93. The Government produced a photocopy of a typewritten flyer announcing the creation of armed groups (see paragraph 44 above). It has not been established, however, that it emanated from the applicant association. The Government have not provided any details. Nor have they explained the relevance of the newspaper article submitted by them (see paragraph 43 above) which reported that a man was suspected of certain offences, some of them apparently concerning a private business conflict.

In the Court's opinion it is evident that if there had been preparation for armed action the Government would have been able to adduce more convincing evidence in this respect.

(β) Alleged threat to public safety

94. The Government argued that incidents had occurred in the past, when the applicant association had held meetings and that there was a likelihood of recurrence.

There is no evidence, however, of serious disturbances having been caused by the applicants. The incidents referred to were of a minor nature and did not result in prosecutions (see paragraphs 17, 18 and 46 above). The decisions of the mayors and the local courts referred only to a hypothetical danger for public order, without providing further details.

The risk of minor incidents thus did not call for a ban on Ilinden's meetings.

(γ) Alleged dangers stemming from Ilinden's goals and declarations

Separatist ideas

95. The Government stressed that the applicant association imperilled Bulgaria's territorial integrity as it sought secession from Bulgaria.

The applicants stated that the sole purpose of their meetings had been to commemorate historical events and that they did not pursue separatist goals.

96. On the basis of all the evidence, the Court finds that at the relevant time it was not unreasonable for the authorities to suspect that certain leaders of the applicant association – or small groups which had developed from it – harboured separatist views and had a political agenda that included the notion of autonomy for the region of Pirin Macedonia or even secession from Bulgaria. That is borne out by various statements made by those leaders (see paragraphs 16, 33, 34 and 35 above). The Court also takes into account the findings of the Supreme Court of 1990 and 1991 and of the Constitutional Court in its judgment of 29 February 2000 (see paragraphs 12, 13 and 39-41 above).

It follows that the authorities could anticipate that separatist slogans would be broadcast by some participants during the commemorative ceremonies.

97. The Court reiterates, however, that the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security.

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 through the exercise of the right of assembly as well as by other lawful means.

98. The Court finds, therefore, that the probability that separatist declarations would be made at meetings organised by Ilinden could not justify a ban on such meetings.

Alleged propagation of violence and rejection of democratic principles

99. The Government referred to statements which could be interpreted as inviting the Bulgarians to leave the Pirin region to the Macedonians (see paragraphs 16, 17 and 33 above) and suggested that, even if the separatist aims of Ilinden had not thus far been pursued by them in an openly violent manner, there had nevertheless been some indications that that would happen.

The applicants rejected these allegations as groundless and stressed the peaceful character of their meetings.

100. There is no doubt that seeking the expulsion of others from a given territory on the basis of ethnic origin is a complete negation of democracy.

It is noteworthy, however, that the Supreme Court, when refusing to allow the registration of the applicant association in 1990 and 1991, and the Constitutional Court in its judgment of 29 February 2000 (see paragraphs 12, 13 and 39-41 above) did not state that Ilinden's goals and activities involved incitement to violence or rejection of democratic rule. Furthermore, no relevant criminal proceedings against members of Ilinden or participants in meetings have ever been brought (see paragraph 46 above).

101. Most of Ilinden's declarations and statements emphasised its reliance on public debate and political pressure for the achievement of its goals and expressly rejected violence (see paragraphs 10, 16, 37 and 38 above). Those statements which could be interpreted as calling for violence or rejection of democracy appear isolated against the background of all the material in the case. Moreover, since various persons and groups associated with Ilinden had divergent views, not all the material cited necessarily reflected ideas and goals that dominated the applicant association's agenda.

102. In its judgment in *Incal* the Court found that the mere fact that a message read out at a commemorative ceremony to a group of people – which already considerably restricted its potential impact on national security, public order or territorial integrity – contained words such as "resistance", "struggle" and "liberation" did not necessarily mean that it constituted an incitement to violence, armed resistance or an uprising (loc. cit., pp. 1566-67, § 50).

In the present case the Court takes into account the fact that some of Ilinden's declarations apparently included an element of exaggeration as they sought to attract attention.

103. In the Court's opinion, there is no indication that the applicant association's meetings were likely to become a platform for the propagation of violence and rejection of democracy with a potentially damaging impact that warranted their prohibition. Any isolated incident could adequately be dealt with through the prosecution of those responsible.

"Conversion" of the Bulgarian population into a Macedonian population

104. The Government submitted that the applicant association had sought the "conversion of the population in the region into a Macedonian population" in order to achieve its final goal – secession from Bulgaria.

The applicants maintained that Ilinden was an association of the Macedonians in Bulgaria.

105. The Court does not accept the argument that it was necessary to limit the applicants' right to demonstrate in order to protect those whom they were allegedly trying to "convert". It

has not been shown that unlawful means of "conversion", infringing the rights of others, have been or were likely to be employed by the applicants.

Statements perceived as offensive by public opinion

106. It appears that Ilinden's meetings generated a degree of tension given the special sensitivity of public opinion to their ideas which were perceived as an offensive appropriation of national symbols and sacred values (see paragraphs 13, 17, 18 *in fine*, 24 and 47 above).

In particular, the applicants sought to commemorate historical events, to which they attached a significance different from that which was generally accepted in the country. They considered as Macedonian martyrs historical personalities who were commonly and officially celebrated in the country as Bulgarian national heroes and therefore sought to organise their meetings at the same time and place as the traditional official ceremonies.

107. However, if every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion.

The fact that what was at issue touched on national symbols and national identity cannot be seen in itself – contrary to the Government's view – 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.

(ii) The significance of the interference

108. The Government suggested that a fair balance was achieved through the relative flexibility shown – when supporters of Ilinden were allowed to approach the historical sites provided that they did not brandish banners or make speeches – and that the applicants should have chosen other sites for their meetings.

109. The Court considers that depriving the applicants of the right to express their ideas through speeches or slogans at meetings cannot reasonably be characterised as evidence of flexibility. Indeed, the authorities had adopted the practice of imposing sweeping bans on Ilinden's meetings (see paragraphs 17 and 74 above).

Furthermore, it is apparent that the time and the place of the ceremonies were crucial to the applicants, as well as for those attending the official ceremony. Despite the margin of appreciation enjoyed by the Government in such matters, the Court is not convinced that it was not possible to ensure that both celebrations proceeded peacefully either at the same time or one shortly after the other.

(iii) The Court's conclusion

110. As the Government have pointed out, the applicant association had only about 3,000 supporters, not all of whom were active.

The authorities nonetheless resorted to measures aimed at preventing the dissemination of the applicants' views at the demonstrations they wished to hold.

111. That approach, in circumstances where there was no real foreseeable risk of violent action or of incitement to violence or any other form of rejection of democratic principles was in the Court's view not justified under paragraph 2 of Article 11 of the Convention.

112. In sum, the Court finds that the authorities overstepped their margin of appreciation and that the measures banning the applicants from holding commemorative meetings were not necessary in a democratic society, within the meaning of Article 11 of the Convention.

There has therefore been a violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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. The applicants' claims

114. Following the Commission's decision of 29 June 1998 declaring the applications partly admissible, the applicants were invited by the Commission to state their claims under former Article 50 of the Convention. The purpose of the invitation had been to speed up the proceedings before the Committee of Ministers of the Council of Europe under former Article 32 of the Convention, in case the applications fell to be examined under that procedure and a violation of the Convention was found.

By a letter of 25 August 1998 Mr Stankov and Mr Ivanov replied stating that the applicants had sustained serious pecuniary and non-pecuniary damage and that they would leave the determination of the amounts to the Strasbourg institutions. The pecuniary damage consisted of, *inter alia*, fines imposed on persons who had driven their cars to the meeting sites, damage allegedly caused by the police to one car in 1993, and some expenses. The applicants explained that they were unable to provide documentary proof as it was difficult to keep financial documentation in the conditions in which their association functioned.

In respect of non-pecuniary damage, the applicants claimed compensation for, *inter alia*, suffering as a result of the actions of the authorities who allegedly sought to wipe out Ilinden.

115. In their memorial before the Court, which was prepared without legal advice, the applicants did not set out claims for just satisfaction. They did so at the hearing on 17 October 2000 giving further particulars in writing shortly thereafter.

116. Before the Court, the applicants did not claim to have sustained any pecuniary or non-pecuniary damage. They requested the reimbursement of their costs, claiming 10,000 marks (DEM) in respect of the domestic proceedings (trips to the local courts, secretarial and legal work), DEM 15,000 in respect of the Strasbourg proceedings (including 8,127 French francs (FRF) for Mr Ivanov's travel and subsistence expenses for the hearing in Strasbourg, FRF 5,000 in translation expenses, and FRF 2,000 in other expenses), as well as an additional FRF 35,000 in legal fees for their counsel.

The applicants submitted a copy of their agreement with Mr Hincker on legal fees and copies of Mr Ivanov's hotel and airline-ticket invoices. They stated that they had been unable to present proof of the remaining costs as they had not been legally represented at the domestic level or before the Commission and had paid all the expenses with the association's resources.

B. The Government's submissions

117. The Government commented on 2 December 1998 on the applicants' claims made in August 1998, stating that if the Committee of Ministers had to rule on them, it should reject them as being unsubstantiated and unrelated to the issues in the case.

The Government's reply to the applicants' claims made in October 2000 was submitted at the hearing and in writing on 29 December 2000. They argued that those claims had been submitted out of time under Rule 60 §§ 1 and 3 of the Rules of Court and had not been corroborated by sufficient documentary proof.

118. The claim in respect of costs in the domestic proceedings – the Government continued – was out of proportion and abusive. The applicants had only submitted, in each

case, standard one-page requests and appeals, evidently prepared without legal advice. No court fees had been due and no other expenses incurred.

The DEM 15,000 claimed in respect of the Strasbourg proceedings had not been itemised. The assertion that providing documentary evidence had been difficult was groundless.

In the Government's view, an award of FRF 35,000 in legal fees would be clearly excessive as it did not correspond to the actual legal work done by the applicants' counsel and also because the economic conditions in the respondent State should be taken into account. The lawyer's claim was equivalent to 146 times the minimum monthly wage in Bulgaria and to about six times the minimum monthly wage in France.

The Government concluded that an award of costs covering Mr Ivanov's travel and subsistence expenses for the hearing before the Court (FRF 8,127) plus FRF 5,000 in legal fees for Mr Hincker would be an acceptable, if the Court decided to award just satisfaction.

C. The Court's assessment

119. The relevant part of Rule 60 § 1 of the Rules of Court provides:

> "Any claim which the ... applicant may wish to make for just satisfaction under Article 41 of the Convention shall, unless the President of the Chamber directs otherwise, be set out in the written observations on the merits or, if no such written observations are filed, in a special document filed no later than two months after the decision declaring the application admissible."

120. The Court notes that on 25 August 1998 the applicants introduced a general just-satisfaction claim in respect of pecuniary and non-pecuniary damage and costs, albeit in the framework of a procedure under former Article 32 of the Convention. That claim has not been withdrawn.

It is true that at the hearing the applicants' lawyer only claimed costs. However, the Court cannot interpret his submissions as withdrawing the claims filed by the applicants directly, without the involvement of Mr Hincker, in the absence of an express statement in that sense.

As regards the Government's objection under Rule 60 § 1 of the Rules of Court, the Court observes that the applicants' memorial was prepared without legal advice and that the claims which were submitted for the first time at the hearing concerned solely their costs. It is clear that certain costs and expenses, and in particular those related to the hearing, could not be specified in advance.

Finally, the Government were given every opportunity to comment in detail on all the applicants' claims and have done so, in December 1998 and December 2000.

In these circumstances, the Court considers that there is a validly submitted claim in respect of pecuniary and non-pecuniary damage and costs, which should be examined.

121. The Court accepts that the applicants have suffered non-pecuniary damage as a consequence of the violation of their right to freedom of assembly. Deciding on an equitable basis, the Court awards under this head to the applicant association and to Mr Stankov the global sum of FRF 40,000, to be paid jointly to Mr Stankov and to the representative of Ilinden, Mr Ivanov.

The claim in respect of pecuniary damage is unsubstantiated and should be dismissed.

122. As regards costs in the domestic proceedings, the Court agrees with the Government that the applicants were not legally represented at that level and have not mentioned any legal fees paid.

The applicants must have incurred certain expenses, however, in translating correspondence and submissions for the purposes of the Strasbourg proceedings. Ruling on an equitable basis, the Court awards FRF 3,000 under this head.

123. In addition, the amounts claimed in respect of Mr Ivanov's appearance before the Court (FRF 8,127) are to be awarded in full.

As regards counsel's fees, the Court, noting that Mr Hincker was only involved in the last stage of the proceedings and ruling on an equitable basis, awards FRF 25,000.

124. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4.26% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* by six votes to one that there has been a violation of Article 11 of the Convention;

3. *Holds* by six votes to one that the respondent State is to pay jointly to Mr Stankov and Mr Ivanov, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, FRF 40,000 (forty thousand French francs) for non-pecuniary damage;

4. *Holds* unanimously that the respondent State is to pay jointly to Mr Stankov and Mr Ivanov, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, FRF 36,127 (thirty-six thousand one hundred and twenty-seven French francs) for costs and expenses, together with any value-added tax that may be chargeable;

5. *Holds* unanimously that simple interest at an annual rate of 4.26% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 2 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle Elisabeth Palm
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs Botoucharova is annexed to this judgment.

E.P.
M.O'B.

DISSENTING OPINION OF JUDGE BOTOUCHAROVA

I voted against the finding of a violation of Article 11 of the Convention in the present case.

My analysis starts from the same general principles as that of the majority: paragraphs 85 to 90 of the judgment, which set out the essence of the Court's case-law on freedom of assembly and expression and, in particular, the criteria on the basis of which an interference with those freedoms in cases such as the present one may be considered justified. I accept fully the summary of those criteria.

In my opinion, however, their application to the facts of the case before us – a borderline case – may lead to a different conclusion if appropriate weight is given to the fact that the applicants' demonstrations posed risks for public order in the local community. The authorities, when restricting the applicants' right to hold commemorative meetings, repeatedly referred to the existing danger of clashes between the supporters of Ilinden and those participating in the official ceremonies which were held at the same place and time. The fears were based on past experience: there had been a number of previous incidents at events organised by Ilinden, and its attitude was characterised as "provocative" (see paragraph 17 of the judgment). That last element was of crucial importance as it meant that the authorities were convinced that Ilinden supporters might seek to provoke disorder and clashes. What is at issue in this case, however, is the freedom of *peaceful* assembly.

The protection of the rights of others, public safety and the prevention of disorder are legitimate aims that may justify, under Article 11 § 2 of the Convention, an interference with freedom of peaceful assembly provided that such interference is proportionate to the aims pursued.

The Bulgarian authorities were apparently conscious of the requirement not to restrict Ilinden's freedoms beyond what was necessary. The prohibitions complained of only concerned specific dates and places. On some of the dates when demonstrations were planned, the authorities did not prevent Ilinden's supporters from reaching the historical sites, but required them to abandon provocative slogans.

The Court has established in its case-law that "by reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of [the necessity of an interference]. The Court, which ... is responsible for ensuring observance of those States' engagements, is empowered to give the final ruling on whether [an

interference was justified]". Consequently, Article 10 § 2 as well as Article 11 § 2 leave to the Contracting States a margin of appreciation. "The domestic margin of appreciation ... goes hand in hand with a European supervision" (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, pp. 22-23, §§ 48-49).

Taking into account the domestic margin of appreciation, the Convention organs found in many cases that restrictions on demonstrations were justified on public-order grounds. To cite some examples, the following prohibitions on assemblies were considered to be in conformity with Article 11 § 2: a two-month ban on public processions other than customary ones in London (see *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports (DR) 21, p. 138); a general ban on demonstrations on issues related to Northern Ireland in Trafalgar Square in London (see *Rai and Others v. the United Kingdom*, no. 25522/94, Commission decision of 6 April 1995, DR 81-A, p. 146); a four-day ban on assemblies within a radius of four miles from the Stonehenge Monument in view of past incidents and disorder caused by Druid followers (see *Pendragon v. the United Kingdom*, no. 31416/96, Commission decision of 19 October 1998, unreported).

In my opinion, the Bulgarian authorities in the particular circumstances of the present case did not overstep their margin of appreciation and restricted the applicants' freedom of peaceful assembly to the extent strictly necessary for the protection of the rights of others, public safety and the prevention of disorder.

As I did not find a violation of Article 11 of the Convention, I also voted against the award in respect of non-pecuniary damage to the applicants.