FIRST SECTION

CASE OF THE UNITED MACEDONIAN ORGANISATION ILINDEN – PIRIN AND OTHERS v. BULGARIA

(Application no. 59489/00)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of the United Macedonian Organisation Ilinden **– PIRIN and Others v.** Bulgaria**,**

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

Mr C.L. Rozakis, *President*,
Mr P. Lorenzen,
Mrs N. Vajić,
Mrs S. Botoucharova,
Mr A. Kovler,
Mrs E. Steiner,
Mr K. Hajiyev, *judges*,
and Mr S. Nielsen, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 59489/00) 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** – Party for Economic Development and Integration of the Population ("UMO **Ilinden** – PIRIN" or "the applicant party"), a political party founded in 1998 and dissolved by the Constitutional Court in 2000, by Mr Ivan Iliev Singartiyski, a Bulgarian national born in 1953 and living in Mosomishte, who was its chairman, by Mr Ivan Georgiev Bikov, a Bulgarian national born in 1938 and living in Samuilovo, who was its vice-chairman, and by Mr Atanas Mihaylov Orozov, a Bulgarian national born in 1948 and living in Razlog, who was its secretary ("the applicants"). The application was introduced on 3 July 2000.

2. The applicants were represented before the Court by Mr Y. Grozev, a lawyer practicing in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. The applicants alleged that UMO **Ilinden** – PIRIN's dissolution by the Constitutional Court in February 2000 had not been prescribed by law and had not been necessary in a democratic society.

4. The application was 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.

5. By a decision of 9 September 2004 the Court (First Section) declared the application admissible.

6. Neither the applicants, nor the Government filed observations on the merits.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. UMO **Ilinden** – PIRIN was a political party founded on 28 February 1998 and based in south-west **Bulgaria** (in an area known as the Pirin region or the geographic region of Pirin Macedonia). It was declared unconstitutional by the Constitutional Court on 29 February 2000 and as a result dissolved.

A. Background

9. Between 1990 and 1998 more than fifteen organisations of persons declaring to have **Macedonian** ethnic consciousness were formed and were active on the territory of **Bulgaria**. Apparently most of these never sought to be registered.

10. One of them, the **United Macedonian Organisation Ilinden** ("UMO **Ilinden**"), was founded on 14 April 1990. Its aims, according to its articles of association 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**". The same year it applied for, but was refused, registration. In their judgments of July and November 1990 and March 1991 the competent courts found that the 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**. The aims of the association included the "political development of Macedonia" and the "**united**, independent **Macedonian** State" (see ***Stankov and the United Macedonian Organisation Ilinden v. Bulgaria***, nos. 29221/95 and 29225/95, §§ 10-14, ECHR 2001-IX).

11. UMO **Ilinden** made an additional attempt to register in 1998-99 (see *The **United Macedonian Organisation Ilinden** and Others v. **Bulgaria*** (dec.), no. 59491/00, 9 September 2004). Registration was again refused.

B. Formation of the applicant party

12. The applicant party was founded in the town of Gotze Delchev on 28 February 1998 by fifty-one persons. Some of its founders had previously been members of UMO **Ilinden**. It applied for registration at the Sofia City Court.

13. In the course of the proceedings the public prosecutor, who participated *ex officio*, maintained that the party's aims were contrary to Article 44 § 2 of the Constitution and that registration should therefore be refused. In connection with these remarks the founders decided to amend one point of the party's constitution. They did so at a meeting on 14 November 1998 and presented the amended copy to the court.

14. By a judgment of 12 February 1999, a notice of which was published in the State Gazette on 23 February 1999, the Sofia City Court registered the applicant party, holding that its aims, as set out in its constitution and programme, were not contrary to the proscriptions of Article 44 § 2 of the Constitution and of section 3(2) of the Political Parties Act of 1990.

C. Dissolution of the applicant party

1. *Proceedings before the Constitutional Court*

15. On 4 March 1999 sixty-one members of the Bulgarian parliament requested the Constitutional Court to declare the applicant party unconstitutional, more specifically, contrary to Articles 11 § 4 and 44 § 2 of the Constitution of 1991. They argued that the party had in fact been formed in 1990 and was a successor of the "illegal" UMO **Ilinden**. They further argued that the party's ultimate aim was the formation of an independent **Macedonian** state through the secession of Pirin Macedonia from **Bulgaria**. The party's members and leaders had on numerous occasions declared such goals. The party's original constitution, amended in the course of the proceedings before the Sofia City Court, contained language to the effect that it would "protect the interests of the population of Pirin Macedonia [and] of the

refugees from Aegean and Vardar Macedonia". This indicated its separatist character. Also, the applicant party's chairman, Mr Ivan Singartiyski (the second applicant), had sent letters to the state institutions and media of a neighbouring country, urging them to look for a "**Macedonian** minority" in **Bulgaria**. It was true that the party's public influence was negligible, but its registration had created a dangerous precedent.

16. On 9 March 1999 the Constitutional Court declared the request admissible and invited the applicant party, the National Assembly, the Council of Ministers, the Ministers of Internal Affairs and of Justice, the Prosecutor-General, the Bulgarian Helsinki Committee and the Bulgarian Centre for Human Rights to submit written observations within thirty days.

17. The second applicant, Mr Singartiyski, acting in his capacity of chairman of the applicant party, filed written observations in which he argued that UMO **Ilinden** – PIRIN was a democratic party and its activities were fully compliant with the Constitution and the laws of the country.

18. In a joint memorial the Bulgarian Helsinki Committee and the Bulgarian Centre for Human Rights argued against the applicant party's dissolution. They pointed out that it had existed for only a short time and that it was therefore too early to judge whether its activities rendered it unconstitutional. The few public statements of its leaders and members could not lead to a firm conclusion in that respect. On the contrary, the applicant party had never questioned the country's territorial integrity. A measure as radical as dissolution would be justified only if there was an immediate and direct threat to national security or public order, which was clearly not the case.

19. A hearing was held on 25 November 1999 at which the Constitutional Court heard oral argument. At the hearing the Ministry of Internal Affairs presented as evidence a letter written by Mr Kiril Ivanov, former chairman of the applicant party, and sent by him on the party's behalf to the Open Society Institute in Budapest. In the letter Mr Ivanov had stated that "Pirin Macedonia ha[d] to gain cultural, political and economic autonomy" and that "the human rights of Macedonians in Pirin Macedonia [stood] higher than **Bulgaria**'s national sovereignty".

20. That letter was discussed at a meeting of the National Executive Council of the applicant party held on 28 November 1999. The Council distanced itself from the letter and expressed the opinion that Mr Ivanov's actions had been contrary to the party's constitution and aims. The Council recommended that Mr Ivanov be expelled from the party. The applicant party informed the Constitutional Court of this resolution.

2. The Constitutional Court's judgment

21. The Constitutional Court gave judgment on 29 February 2000, declaring the applicant party unconstitutional (реш. № 1 от 29 февруари 2000 г. по конституционно дело № 3 от 1999 г., обн., ДВ брой 18 от 7 март 2000 г.).

22. The court started by observing that the constitutionality of a party should mainly be assessed on the basis of its activity. It was not sufficient to make the assessment solely on the basis of the statements contained in its constitution and programme. The constitution of a party could be just a façade for facilitating its registration; this is why it was necessary to have regard to the party's real activities. It could not be ruled out that the documents could conceal objectives, intentions and activities that were different from those which were publicly proclaimed. It was therefore necessary to compare their content with the party's practical actions. The European Court of Human Rights had ruled on this issue in its judgment in the case of ***United*** *Communist Party of Turkey and Others v. Turkey* (judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I).

23. The court went on to hold that although the applicant party had been registered in February 1999 on the basis of a constitution which had been adopted at a founding meeting on

28 February 1998, it was not a novel **organisation**. It had a predecessor and was continuing its activities. The court described the founding of UMO **Ilinden** in 1990 and its unsuccessful attempt to register in 1990-91 (see paragraph 10 above). It further found that UMO **Ilinden** had split in 1994, the radicals remaining on one side and the more moderate members forming two separate organisations: UMO **Ilinden** – Democratic Action and UMO **Ilinden** – Blagoevgrad. Most of the applicant party's current leaders, including Mr Ivan Singartiyski (the second applicant) and Mr Kiril Ivanov, had been members of these two organisations, which had merged and, after an unsuccessful attempt to register as an association at the Blagoevgrad Regional Court, had managed to register as a political party at the Sofia City Court. It could thus be concluded that the applicant party was not a novel **organisation**, but was closely connected with the former unregistered association UMO **Ilinden**. The two had almost the same name and the same persons were their leaders and members. Moreover, the second applicant and another leader of the applicant party had intimated in newspaper interviews that they considered the applicant party and UMO **Ilinden** as one and the same **organisation**. The court therefore concluded that the activities of the applicant party's predecessor organisations should be taken into account for purpose of assessing its constitutionality.

24. The court then turned to the specific grounds invoked by the sixty-one members of parliament for declaring the applicant party unconstitutional.

25. With regard to its alleged incompatibility with Article 11 § 4 of the Constitution, the court found that there was no **Macedonian** ethnos in **Bulgaria**. Therefore, it could not be said that the applicant party was based on ethnic origin. Moreover, it was clear from its constitution that every Bulgarian citizen could become its member. This part of the request was therefore unfounded.

26. As to the other ground for declaring the applicant party unconstitutional, incompatibility with Article 44 § 2 of the Constitution, the court pointed to a number of specific instances in which members of the applicant party and its predecessor organisations had engaged in conduct prohibited under Article 44 § 2 of the Constitution:

– A meeting on 20 April 1991 at the Rozhen Monastery. At this meeting a declaration had been adopted, demanding full cultural, economic and political autonomy of the Pirin region; withdrawal of the Bulgarian troops, referred to as "occupational"; dissolution of all Bulgarian political parties and organisations; the establishment of a **Macedonian** orthodox church independent of the Bulgarian orthodox church, etc.

– A commemorative rally held on 1 August 1993 in the area Samuilova krepost. A brochure announcing the event had featured a map of Macedonia, which had included territories that are part of **Bulgaria** (the Pirin region) and Greece, and in the middle of the map there had been depicted the sixteen-ray **Macedonian** star symbol[1].

– In 1994 the newspaper *Skornuvane*, published by UMO **Ilinden**, had printed a map of Macedonia featuring territories belonging to **Bulgaria** and Greece.

– On 2 August 1997 the faction of UMO **Ilinden** lead by Mr Kiril Ivanov had issued a memorandum according to which in **Bulgaria** there existed "modern-day genocide, discrimination and assimilation" and the Macedonians there were deprived of the right to honour the memory of the thousands of fighters who had fallen in the struggle for "free and independent Macedonia". That memorandum had been circulated abroad.

– Immediately after the applicant party's founding, the newspaper *New Macedonia* in its issue of 21-22 March 1998 had reprinted an interview of Mr Ivan Gargavelov, the party's secretary, in which he had allegedly insulted the Bulgarian nation and had attacked representatives of the Bulgarian authorities. He had portrayed the Pirin region as part of Macedonia and had indicated that the unique folklore, culture, traditions and individuality of

the **Macedonian** people had been destroyed, that its history and customs had been stolen, and that its national identity had been denied.

– In February 1999 Mr Ivan Gargavelov had attended a press conference of the Conservative Party held in Skopje, as a representative of UMO **Ilinden**. When asked why he spoke Bulgarian, he had replied: "This is not Bulgarian, but **Macedonian**, and this is the language spoken in **Bulgaria**, whereas the Bulgarians there speak Tatar language".

– In an interview for the ***Macedonian*** *Sun* newspaper of 27 March 1998 the applicant party's deputy-chairman, Mr Anguel Bezev, had accused **Bulgaria** of genocide and lack of democracy, and had spoken of a "Pirin part of Macedonia", as if of a non-Bulgarian territory. He had obviously agreed with its secession from **Bulgaria** but had thought that it was not the opportune time and had concluded: "I believe time works for us".

– A declaration of UMO **Ilinden**, signed by its chairman, Mr Ivan Singartiyski (the second applicant), and its secretary, Mr Ivan Gargavelov, had been published in the issue of ***Macedonian*** *Sun* of 10 April 1998. In this declaration the Pirin region had been referred to as "part of Macedonia". The **organisation** had proclaimed that it was a defender of "the Macedonians in Pirin Macedonia and **Bulgaria**", that is, a distinction had been drawn between Pirin Macedonia and **Bulgaria**.

– The issues of the newspaper *Dnevnik* of 16 and 20 February 1999 had contained publications relating to a letter issued by the applicant party and to a press conference given by its chairman, Mr Ivan Singartiyski, in Skopje. It had been indicated in them that "**Bulgaria** even [then] continue[d] to misappropriate Macedonia's cultural heritage" and that "**Bulgaria** [had] incited Macedonia's partition".

– the applicant party had, together with several foreign organisations, participated in the issuing of a Declaration for the protection of the **Macedonian** people's national distinctiveness, addressed to the former Yugoslav Republic of Macedonia's Government. Point five of the declaration had requested an affirmation to the effect that part of the **Macedonian** people lived on **Macedonian** territory given in temporary trusteeship to Albania, **Bulgaria** and Greece by the 1913 treaty of Bucharest[2]. It had been once again proclaimed that this part of **Bulgaria**'s territory was only temporarily under Bulgarian administration.

– On 8 October 1999 Mr Atanas Manushkin, running for mayor of Razlog on the applicant party's ticket, had declared at a press conference: "In several statements made by members of the Bulgarian Government it was said that if the [**United** Democratic Forces[3]] do not win the elections in Razlog, no funding will be forthcoming to the region. Thus, if we win, the government gives us the right to freely choose and declare that this is a free territory, which may decide subsequently where to turn to."

– In an interview of 20 October 1999 the applicant party's chairman, Mr Ivan Singartiyski (the second applicant), had been even more radical. He had noted that the party should be firm and assert the interests of Pirin Macedonia. He had gone on to say that the prime minister should be presented with the following statement: "We have certain demands, or else we will secede Macedonia".

– The letter sent by Mr Kiril Ivanov on 20 July 1999 on behalf of the applicant party to the Open Society Institute in Budapest (see paragraphs 19 and 20 above) was also significant. In it he had expressed the wish that "Pirin Macedonia gain cultural, political and economic autonomy". He had also stated that "the human rights of the Macedonians in Pirin Macedonia [stood] higher than **Bulgaria**'s national sovereignty". In the court's view, the fact that the applicant party's leadership had distanced itself from Mr Ivanov was not relevant, as this had happened only after the letter had reached the addressee and had become known to the public.

27. The Constitutional Court continued:

"The facts set out above indicate that the [applicant party's] activity is focused around the Pirin region. It treats this part of the country's territory as non-Bulgarian land. In its view, it is foreign territory, given to **Bulgaria** for temporary administration pursuant to an international treaty. [The applicant party's] activity is in that direction, going as far as secession of the territory in question from **Bulgaria**.

This is indicated by the calls for autonomy, which is expressly proscribed by Article 2 § 1 of the Constitution. It is also indicated by the maps of Macedonia issued and circulated [by the applicant party], by the definition of the Pirin region as part of Macedonia and by the interpretations of the Balkan War and the Bucharest treaty of 1913. Its culmination is the threat to secede the Pirin region if the party's demands are not met. Such a threat, when made by the chairperson of a party, could not only be in words. It is real and shows the positions of the party itself; moreover, it has been supported by its other leaders.

The actions in question constitute an activity aimed against the territorial integrity of the country within the meaning of Article 44 § 2 of the Constitution. Each and every one of them [goes against this Article's proscription].

The constitutional rule protects a value of the highest calibre, namely the territorial integrity of the Republic of **Bulgaria**, which Article 2 § 2 of the Constitution proclaims as inviolable. That is why [the proscription has been breached] even in the absence of effective damage to the protected value – the country's territory. An activity aimed against the territorial integrity, such as the one present here, is quite sufficient.

A political party which declares part of Bulgaria's territory as foreign and engages in actions for its secession is an unconstitutional party. It has no right to exist.

The Constitutional Court deems it necessary to underscore that its notion of unconstitutionality is in line with Article 22 § 2 of the International Covenant on Civil and Political Rights sand Article 11 § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. These provisions allow restrictions of the freedom of association when necessary in the interests of national security, as here. There is no doubt that an activity aimed against the territorial integrity of the Republic of Bulgaria imperils its national security."

28. Three judges voted against the majority. In their dissenting opinions they, *inter alia*, expressed the view that the activities of UMO Ilinden should not be taken into account for the purpose of evaluating the applicant party's constitutionality. They went on to say that the Constitutional Court had erred in taking into account only certain statements of members and leaders of the applicant party. Its most fundamental activity since its registration was rather its normal and fully democratic participation in the local government elections in October 1999. However, the court had chosen to ignore that fact. Lastly, the dissenting judges expressed the opinion that the applicant party was being penalised for expressing its views, which it was entitled to convey, although they were shocking and probably offensive for the majority of Bulgarians.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of 1991

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

Article 2

"1. The Republic of Bulgaria is a unitary country with local self-government. No autonomous territorial entities shall be allowed [on its territory].

2. The territorial integrity of the Republic of Bulgaria shall be inviolable."

Article 11 § 4

"No political parties shall be formed on ethnic, racial, or religious basis, nor parties which aim to accede to power by force."

Article 39

"1. Everyone is entitled to express an opinion or to publicise it through words, written or oral, sound, or image, or in any other way.

2. This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone."

30. In its interpretative judgment no. 7 of 1996 (реш. № 7 от 4 юни 1996 г. по конституционно дело № 1 от 1996 г., обн., ДВ брой 55 от 28 юни 1996 г.), in which it gave a binding interpretation of Article 39 of the Constitution, the Constitutional Court held, *inter alia*, that "speech which is deprived of constitutional protection is that which calls for a violent change of the constitutional order, i.e. for the destruction of the democratic constitutional order in a non-peaceful way, which may even lead to the suspension of the Constitution".

Article 44

"1. Citizens may freely associate.

2. Organisations whose activities are directed against the country's sovereignty or territorial integrity or against the nation's unity, or which aim at stirring 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. ..."

Article 149 § 1

"The Constitutional Court shall:

...

5. rule on the constitutionality of political parties..."

B. The Political Parties Act of 1990 („Закон за политическите партии")

31. This Act, which was superseded by new legislation in 2001, regulated the formation, registration, functioning and dissolution of political parties at the material time. Its relevant provisions read as follows:

Section 3(2)

"No political parties shall be formed:

1. which are aimed against the country's sovereignty or territorial integrity, the nation's unity, or the citizens' rights and freedoms;

2. whose aims are contrary to the Constitution and the laws of the country;

3. [which have] religious or ethnic basis or [aim to stir] racial, national, ethnical or religious hatred;

4. which advocate a fascist ideology or seek to achieve their aims through violence or other illegal means."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

32. The applicants complained under Article 11 of the Convention that UMO Ilinden – PIRIN had been declared unconstitutional and as a result dissolved. They submitted that this interference with their freedom of association had not been prescribed by law, as in its interpretative judgment no. 7 of 1996 the Constitutional Court had held that restrictions of

freedom of speech – which, in the applicants' view, applied *mutatis mutandis* to freedom of association – would only be justified if the speech in issue posed an immediate threat of violent overturning of the constitutional order and democracy. The applicants further submitted that the interference had not been necessary in a democratic society, as the Constitutional Court had failed to adduce relevant and sufficient reasons for declaring the applicant party unconstitutional.

33. Article 11 provides, as relevant:

> "1. Everyone has the right ... to freedom of association with others...
>
> 2. No restrictions shall be placed on the exercise of [this right] 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. The submissions of the parties

1. The applicants

34. The applicants submitted that interferences with the rights protected by Articles 10 and 11 of the Convention were justified only when the exercise of these rights endangered the principles of democratic government. In the Court's hitherto case-law such interferences had been considered warranted only in two types of cases: when there was threat to use violence and when the political project put forward was incompatible with the rules of democracy. Other political action enjoyed the full protection of the Convention. In particular, with regard to separatism, as long as such a policy was advanced within the bounds of the democratic process, there was no reason for banning it. The territorial integrity of a State was open to debate, just as any other issue of public concern. This had been recently confirmed by the Court in its judgment in the case of *Socialist Party of Turkey (STP) and Others v. Turkey* (no. 26482/95, 12 November 2003).

35. The applicants argued that UMO Ilinden – PIRIN's dissolution had not been necessary in a democratic society, because it was a democratic political party. There was nothing in its activity or in the activities of its leaders of members which could suggest hostility towards the democratic form of government. Nor had it made any calls for the use of violence.

36. The applicants conceded that the facts on which the Constitutional Court had grounded its judgment were true. They further agreed that certain weight could be given to past statements of members and leaders of the applicant party. They submitted however that the Constitutional Court had given undue weight to these facts, while in the same time had disregarded a number of other facts – such as the party's participation in the local government elections in October 1999 – which indicated that it had in fact rejected a separatist agenda.

37. In reality, the applicants submitted, UMO Ilinden – PIRIN had never resolved to pursue separatist activities. It had merely promoted the rights of ethnic Macedonians living in Bulgaria and had thus raised the issue of regional autonomy. While some of its members may have expressed secessionist views in the past or even at present, there had never been an official party resolution to that effect and this was not the party's policy.

38. Even assuming that separatism was the applicant party's policy, as deemed by the Constitutional Court on the basis of the statements of members of the party prior to its founding, that would still not constitute sufficient grounds for its dissolution. These statements had not expressed hostility towards the principles of democracy, nor had there been any calls for the use of violence. Quite the contrary, a number of the statements cited by the Constitutional Court had been permeated by democratic values.

39. With regard to the Government's averment that the very fact that the applicant party could participate in elections created a high risk that it would put into practice its separatist

ideas, the applicants stated that the possibility to participate in elections could not under any circumstances justify limitation of political rights. Nothing in the party's activities suggested any threat to the rules of democracy.

40. The applicants submitted that the dissolution of UMO Ilinden – PIRIN had not been based on relevant and sufficient reasons. The Constitutional Court had merely established that the party had advocated separatist ideas and had held that this was sufficient to ban it, without embarking on any analysis of the proportionality of this measure. Thus, that court had not considered whether there had existed sufficient evidence that the party was advocating the use of violence or other undemocratic means to achieve its goals. The court had also failed to address the question whether the party accepted or rejected the principles of democracy. Its judgment had instead focused on irrelevant issues such as nationality, ethnicity and the proper interpretation of historical events.

41. The applicants concluded that that there had existed no pressing social need justifying the dissolution of UMO Ilinden – PIRIN, and that the reasons given by the Constitutional Court for ordering this measure had not been relevant and sufficient. Therefore, the party's dissolution could not be considered necessary in a democratic society.

2. The Government

42. The Government firstly submitted that the applicant party's dissolution had been prescribed by law, namely the Constitution of 1991 and the Political Parties Act of 1990. By Article 149 § 1 (5) of the Constitution, the Constitutional Court had the power to rule on the constitutionality of political parties. The grounds for declaring the applicant party unconstitutional were Article 44 of the Constitution and section 3 of the Political Parties Act of 1990. Furthermore, the Constitutional Court had exercised its powers in a lawful manner.

43. The Government further argued that the interference complained of had pursued a wide range of legitimate aims: protecting national security, public safety, the territorial integrity of the country and the rights and freedoms of others.

44. In the Government's submission, the applicant party's dissolution had been due to a pressing social need and had been proportionate to the legitimate aims pursued. They argued that the applicants' complaint should be examined against a broader historical context and in the light of the Court's findings of fact in the case of S*tankov and the United Macedonian Organisation Ilinden* (cited above).

45. The right to freely associate was not absolute and was subject to restrictions prescribed by law; otherwise its exercise could affect the interests of the society and of the State. The Court's case-law under Articles 10 and 11 of the Convention indicated that the States enjoyed a wide margin of appreciation in choosing the means to restrict this right. The State's interference would be in line with the Convention only if the means employed were proportionate to the aim sought to be achieved, namely the protection of a social value of the highest calibre. An interference with the rights protected by the Convention could not be based on conjectures and formal reasons; in deciding to ban a political party or movement the authorities had to have regard mainly to their activity and their compliance with the principles of democracy. The Constitutional Court had held, quite in line with these principles, that the constitutionality of a party should be assessed on the basis of its activities, not solely its constitution and programme.

46. The Constitutional Court had also examined the link between the applicant party and UMO Ilinden and whether there had existed a certain continuity between the two. The facts of the case indicated that the applicant party's beginnings could be traced back to 1990, when UMO Ilinden had been founded. Therefore, the Constitutional Court's finding that the applicant party was not a novel organisation and had a predecessor, UMO Ilinden, was logical. UMO Ilinden's split-up in 1994 had produced two organisations: UMO Ilinden –

Democratic Action, headed by Mr Ivan Singartiyski (the second applicant), and UMO Ilinden, headed by Mr Kiril Ivanov, both leaders of the applicant party. In 1998 the two organizations had decided to merge and had applied for registration to the Sofia City Court. The Constitutional Court was right in taking into account the entire period of ten years preceding the applicant party's dissolution for assessing its constitutionality. It was beyond doubt that declaring a party unconstitutional solely on the basis of its leaders' statements would be wrong. However, in the instant case the conclusion that the applicant party was unconstitutional was made on the basis of evidence about a long series of incidents outlined by the Constitutional Court in its judgment. The applicant party's activities could be described as promoting separatist ideas, calls for autonomy of the Pirin region, dissemination of maps depicting Bulgarian territory included in the envisaged territory of Macedonia, describing the Pirin region as part of Macedonia, making open invectives and grave allegations against the Bulgarian State, making threats of seceding the Pirin region if the party's demands were not fulfilled, etc.

47. The Government contended that the very fact that after its registration the applicant party could effectively strive towards power and thus get hold of the mechanisms to achieve its separatists ideas posed an immediate threat to national security, the State's sovereignty, the country's territorial integrity and the nation's unity. This threat was much graver than that stemming from the holding of a meeting. In the light of all the evidence, the Constitutional Court's findings that the applicant party treated the Pirin region as non-Bulgarian land and that its activity was going as far as attempting the secession of this territory from Bulgaria were fully warranted.

48. The Government argued that the right of the followers of UMO Ilinden and of the applicant party to identify themselves as Macedonians was fully secured, as evidenced by the 2001 census, in which 5,071 persons had declared themselves as Macedonians. Furthermore, after the local government elections in October 1999 the applicant party had won two mayor's posts and three municipal councillor's posts. Despite the party's dissolution, the persons occupying these posts had remained in office.

49. In sum, the Government were of the view that the interference with the applicants' freedom of association had been provided for by law and necessary in a democratic society for the protection of national security and public safety, the prevention of disorder or crime and the protection of the rights and freedoms of others.

B. The Court's assessment

1. Applicability of Article 11

50. It was not disputed by the parties that Article 11 was applicable to the applicant party. The Court sees no reason to hold otherwise (see *United Communist Party of Turkey and Others*, cited above, pp. 16-19, §§ 24-34, *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1252, § 29, *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 32, ECHR 2002-II, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, § 30, 10 December 2002).

2. Whether there was an interference

51. The applicant party's dissolution undoubtedly represented an interference with both its and the other applicants' (who were its chairman, vice-chairman and secretary – see paragraph 1 above) freedom of association (see *United Communist Party of Turkey and Others*, cited above, p. 19, § 36, *Socialist Party and Others*, cited above, p. 1252, § 30, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 27, ECHR 1999-VIII, *Yazar and Others*, cited above, § 33, *Dicle for the Democratic Party (DEP) of Turkey*,

cited above, § 31, *Refah Partisi (The Welfare Party) and Others v. Turkey*, [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 50, ECHR 2003-II, and *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, § 25, 12 November 2003).

3. Whether the interference was justified

(a) "Prescribed by law"

52. The Court reiterates that it is primarily for the national authorities – in the case at hand, the Constitutional Court – to interpret and apply domestic law. It is not its task to question their construction thereof, unless the Court finds an element of arbitrariness in their decisions.

53. The main thrust of the applicants' argument was that the Constitutional Court's judgment was inconsistent with its own case-law on the permissibility of restrictions of freedom of speech. In particular, it was submitted that in its interpretative judgment no. 7 of 1996 (see paragraph 30 above) the Constitutional Court had held that restrictions of freedom of speech – which, in the applicants' view, applied *mutatis mutandis* to freedom of association – would only be justified if the speech at issue posed an immediate threat of violent overturning of the constitutional order and democracy, whereas in the case at hand it applied a less exacting standard (see paragraph 32 above).

54. However, the Court is not convinced that this was indeed the case. It notes that the Constitutional Court did not explicitly state the standard against which it assessed the applicant party's constitutionality. It held, *inter alia*, that the party had threatened "to secede the Pirin region" and that "[s]uch a threat, when made by the chairperson of a party, could not only be in words". It also held that "[t]here [was] no doubt that an activity aimed against the territorial integrity of the Republic of Bulgaria imperil[ed] its national security" (see paragraph 27 above). It is thus apparent that the Constitutional Court was of the view that the applicant party's activities presented a real and tangible danger for the territorial integrity of the country (which is part of the constitutional order of Bulgaria – see Article 2 of the Constitution at paragraph 29 above), even in the absence of any practical results. In these circumstances, the Court does not find it established that the Constitutional Court's judgment was at such variance with its prior case-law as to become arbitrary and hence make the interference not "prescribed by law". Whether the Constitutional Court's view was warranted and whether its conclusion that the applicant party presented a real and tangible danger was based on an acceptable assessment of the facts are issues to be decided in the context of the question whether or not the interference with the applicants' freedom of association was necessary in a democratic society.

(b) Legitimate aim

55. The Constitutional Court declared the applicant party unconstitutional because it considered that it posed a threat to the territorial integrity of the country and imperilled its national security (see paragraph 27 above). That being so, the Court accepts that the interference pursued the legitimate aim of protecting national security.

(c) "Necessary in a democratic society"

56. The Court reiterates at the outset that in view of the essential role played by political parties in the proper functioning of democracy (see *United Communist Party of Turkey and Others*, cited above, p. 17, § 25), the exceptions set out in paragraph 2 of Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association (see *Freedom and Democracy Party (ÖZDEP)*, cited above, § 44). It also notes that the interference at issue in

the present case was radical: the applicant party was dissolved with immediate effect. Such a drastic measure requires very serious reasons by way of justification before it could be considered proportionate to the legitimate aim pursued; it would be warranted only in the most serious cases (see *Freedom and Democracy Party (ÖZDEP)*, § 45, and *Refah Partisi (The Welfare Party) and Others*, § 100, both cited above).

57. The Court further notes that in its judgment dissolving the applicant party the Constitutional Court did not consider whether the party's constitution and programme were in conformity with the Constitution. It rather relied on certain statements and activities of the party's leaders and members, both before the party's founding and after that (see paragraph 26 above). Consequently, the Court can confine itself to examining these statements and activities (see *Yazar and Others*, § 53, and *Dicle for the Democratic Party (DEP) of Turkey*, § 50, both cited above).

58. The grounds which the Constitutional Court invoked to order the applicant party's dissolution were that it and its predecessor organisations had advocated separatist ideas. It thus found that the party presented a threat to the territorial integrity of the country and was hence contrary to Article 44 § 2 of the Constitution (see paragraphs 26 and 27 above). However, that court did not find that any of the party's leaders or members had made any calls for the use of violence or for the rejection of democratic principles. Indeed, it conceded that the applicant party had not engaged in any practical actions which could effectively endanger the country's territorial integrity (see paragraph 27 above).

59. The Court considers that it was not unreasonable for the authorities to suspect that certain leaders or members of the applicant party harboured separatist views and had a political agenda that included the notion of autonomy for the region of Pirin Macedonia or even its secession from Bulgaria (see S*tankov and the United Macedonian Organisation Ilinden*, cited above, § 96). However, it reiterates that a political party may campaign for a change in the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic, and secondly, the change proposed must itself be compatible with fundamental democratic principles (see *Yazar and Others*, § 49, and *Refah Partisi (The Welfare Party) and Others*, § 98, both cited above). There is no indication that these conditions were not present in the case at hand.

60. As regards the first condition, it is noteworthy that on none of the occasions cited by the Constitutional Court in its judgment the applicant party's leaders and members hinted at any intention to use violence or any other undemocratic means to achieve their aims. There is, furthermore, no indication in the case file that any practical actions were undertaken by the applicant party which could pose a threat to Bulgaria's national security. In this connection, the Court observes that the incidents referred to by the Constitutional Court were rallies, speeches, press conferences, letters or maps, in which members of the applicant party or of its predecessor organisations had stated that there existed a Macedonian minority in Bulgaria and that the Pirin region was not part of Bulgaria, and had made certain peaceful demands in that respect (see paragraph 26 above).

61. Concerning the second condition, the Court considers that even if it may be assumed that the political project advocated by the applicant party was indeed the autonomy or even secession of Pirin Macedonia, this does not automatically mean that it was at variance with the principles of democracy. In a previous case which concerned bans of meetings organised by UMO Ilinden, which organisation is apparently closely connected with the applicant party, the Court examined the question whether the probable expression of separatist ideas at public meetings constituted sufficient grounds for the banning of such meetings, and held that "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" (see *Stankov and the United*

Macedonian Organisation Ilinden, cited above, § 97). It also held that "the probability that separatist declarations would be made at meetings organised by [UMO] Ilinden could not justify a ban on [its] meetings" (ibid., § 98). In that case the Court had regard, *inter alia*, to the Constitutional Court's findings which are at issue in the present case (ibid., § 96). The Court considers that the reasoning adopted in *Stankov and the United Macedonian Organisation Ilinden* applies in the case at hand as well. The mere fact that a political party calls for autonomy or even requests secession of part of the country's territory is not a sufficient basis to justify its dissolution on national security grounds. In a democratic society based on the rule of law, political ideas which challenge the existing order without putting into question the tenets of democracy, and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through, *inter alia*, participation in the political process. However shocking and unacceptable the statements of the applicant party's leaders and members may appear to the authorities or the majority of the population and however illegitimate their demands may be, they do not appear to warrant the impugned interference. The fact that the applicant party's political programme was considered incompatible with the current principles and structures of the Bulgarian State does not make it incompatible with the rules and principles of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (see *Socialist Party and Others*, p. 1257, § 47, and *Freedom and Democracy Party (ÖZDEP)*, § 41, both cited above). Moreover, there is no indication that the applicant party had any real chance of bringing about political changes which would not meet with the approval of everyone on the political stage (see *Yazar and Others*, cited above, § 58 *in fine*). Indeed, it was recognised in the request for its dissolution that its public influence was negligible (see paragraph 15 above). In this connection, it should also be noted that some of UMO Ilinden's and the applicant party's declarations apparently included an element of exaggeration and provocativeness as they sought to attract attention (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 102 *in fine*). It thus appears that the Constitutional Court's holding that the applicant party's activity truly "imperil[ed] [Bulgaria's] national security" was not based an acceptable assessment of the relevant facts.

62. In sum, the Court considers that there did not exist a pressing social need to order the applicant party's dissolution and that the dissolution was thus not necessary in a democratic society, within the meaning of Article 11 of the Convention.

63. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicants claimed jointly 50,000 euros (EUR) as compensation for the non-pecuniary damage they had sustained as a result of the violation of Article 11 of the Convention found in the present case. In support of their claims they stressed that the applicant party had been politically active for approximately a year before being dissolved and had successfully participated in local government elections. They further argued that as persons who identify themselves as ethnic Macedonians they faced a long-standing policy of denial of their political rights, which was apparent from the Court's judgment in the case of

S*tankov and the United Macedonian Organisation Ilinden* (cited above). In their view, this called for a higher award of non-pecuniary damages.

66. The Government did not comment.

67. The Court notes that the applicant party's constitution was approved by the Sofia City Court and the party was active for approximately one year before being dissolved by the Constitutional Court (see paragraphs 12, 15 and 21 above). The applicants therefore sustained definite non-pecuniary damage on account of its dissolution (see *Socialist Party and Others*, cited above, § 67 *in fine*). Having regard to all relevant factors and making its assessment on an equitable basis, the Court awards jointly to all applicants EUR 3,000, plus any tax that may be chargeable on this amount.

B. Costs and expenses

68. The applicants sought EUR 4,570 for costs and expenses, made up of EUR 1,250 for their representation in the domestic proceedings for the registration of the applicant party by the Sofia City Court and the dissolution of the applicant party by the Constitutional Court, and of EUR 3,320 for their representation in the Strasbourg proceedings. They submitted a fees agreement with their lawyer and a time-sheet.

69. The Government did not comment.

70. The Court reiterates that only expenses necessarily incurred in seeking redress for the violations of the Convention are recoverable under Article 41. Therefore, the costs incurred during the proceedings for the registration of the applicant party cannot be awarded. Concerning the costs incurred in the proceedings before the Constitutional Court and the Strasbourg proceedings, having regard to all relevant factors, the Court awards the applicants EUR 3,000, plus any tax that may be chargeable on this amount.

C. Default interest

71. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 11 of the Convention;

2. *Holds*

(a) that the respondent State is to pay jointly to the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;

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

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

3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Christos Rozakis
Registrar President

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

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE BOTOUCHAROVA

I support the Court's conclusion and the principles on which it is based, as set out in paragraphs 56-59 and 63 of the judgment. However, my approach in applying these principles to the particular facts of the case is somewhat different.

The salient issue in the present case is whether the interference with the applicant's freedom of association was a proportionate response of the authorities to the activities of the applicant party (see, as a recent example, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-105, ECHR 2003-II). The answer to this question should be based on two main considerations.

The first of these is whether, having regard to the specific circumstances of the case, it was justified, in keeping with the principles set out in the Court's case-law, to have recourse to a measure as radical as the one employed here. As the Court has many times stressed, such a drastic measure requires very serious reasons by way of justification before it could be considered proportionate to the legitimate aim pursued; it would be warranted only in the most serious cases (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 100, with further references). It should be noted in this connection that, prior to its dissolution, the applicant party had been registered, had existed for some time, and had participated in local elections, thus being a participant in the political life. Admittedly, during its existence the applicant party could have shown through its actions and public statements that it merited to be declared unconstitutional and dissolved. However, it was for the national authorities to convincingly establish the need for such a measure. The Constitutional Court should thus have placed a heavier emphasis on UMO Ilinden – PIRIN's behaviour on the political stage and the manner in which it participated in the democratic process. Had they done so, the outcome of the case could have been different.

The second consideration has to do with the Constitutional Court's reasoning. Its analysis, which contained cogent arguments, did not however conclusively establish, on the basis of the available evidence, that there existed sufficient reasons to find that there was a genuine and serious risk that the means which the applicant party intended to use for achieving its aims would not be legal and democratic in every respect, as required by this Court's case-law (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 98).

For these reasons, it could be accepted that "there did not exist a pressing social need to order the applicant party's dissolution and that the dissolution was thus not necessary in a democratic society, within the meaning of Article 11 of the Convention" (see paragraph 62 of the judgment).

1. In 1991 the former Yugoslav Republic of Macedonia designated the yellow sixteen-ray star symbol (the Vergina Sun, generally believed to belong to king Philip II of Macedonia) as its national symbol, and displayed it on its flag. It was removed from the country's flag in 1995.

2. Treaty, concluded between Bulgaria, Greece, Montenegro, Romania and Serbia on 10 August 1913, which brought an end to the Second Balkan War (1913).

2. The coalition then in power in **Bulgaria**.