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

FIRST SECTION

CASE OF IVANOV AND OTHERS v. BULGARIA

(Application no. 46336/99)

JUDGMENT

STRASBOURG

24 November 2005

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 Ivanov 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 3 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 46336/99) 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 Mr Kiril Kostadinov Ivanov, Mr Vladimir Ivanov Kotzelov, Mr Dimcho Dimitrov Hristov and Mr Angel Georgiev Sharov, Bulgarian nationals who were born in 1942, 1939, 1955 and 1934 respectively and live(d) in Blagoevgrad ("the applicants"), on 15 January 1999.

2. The applicants were represented before the Court by Mr Y. Grozev and Ms V. Terzieva, lawyers practising 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 the bans on two rallies they had intended to organise in Sofia on 10 August and 12 September 1998 had not been imposed in accordance with the law and had not been necessary in a democratic society. The applicants further alleged that the courts had improperly refused to examine the appeal against the second ban and thus denied them an effective remedy in that respect.

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) decided to join to the merits the Government's objection of non-exhaustion of domestic remedies in respect of the applicants' complaint about the bans on the rallies, and 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).

8. In a letter of 16 November 2004 the applicants' representative informed the Court that the third applicant, Mr Dimcho Dimitrov Hristov, had died on an unspecified date after the introduction of the application. The Court has not been informed of the wish of any heir or next-of-kin of Mr Hristov to continue the proceedings on his behalf.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants describe themselves as being of Macedonian ethnicity and are members of the United Macedonian Organisation Ilinden – PIRIN ("UMO Ilinden – PIRIN").

A. Background

10. UMO Ilinden – PIRIN apparently has close links with the United Macedonian Organisation Ilinden, an association based in south-west Bulgaria (in an area known as the Pirin region or the geographic region of Pirin Macedonia), that makes yearly attempts to organise commemorative events on various sites in Pirin Macedonia. During the period 1994-2003 these rallies were, with minor exceptions, systematically banned by the authorities (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECHR 2001-IX, and *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, 20 October 2005). Also, this association was refused registration in 1990-91 and again in 1998-99 (see *The United Macedonian Organisation Ilinden and Others v. Bulgaria* (dec.), no. 59491/00, 9 September 2004).

11. On 29 February 2000 UMO Ilinden – PIRIN, which had in the meantime obtained registration as a political party, was declared unconstitutional by the Constitutional Court, and as a result dissolved (see *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, 20 October 2005).

B. The rally planned for 10 August 1998

12. On 3 August 1998 the second applicant, acting on behalf of the members and the followers of UMO Ilinden – PIRIN, informed the mayor of Sofia that a rally had been planned for 10 August 1998 – the anniversary of the 1913 Bucharest Treaty[1] – in the public garden in front of the National Theatre. Approximately one hundred people were expected to turn up. The applicant assured the mayor that no disturbances would occur during the event.

13. The same day, 3 August 1998, the mayor of Sofia issued an order prohibiting the rally pursuant to section 12(2)(2) of the Meetings and Marches Act. He opined, without giving further reasons, that the event would "create conditions for breaches of the public order". A copy of the order was sent to the Sofia police authorities for enforcement.

14. Apparently no appeal was made against the order.

C. The rally planned for 12 September 1998

15. On 1 September 1998 the first applicant, acting on behalf of the members and the followers of UMO Ilinden – PIRIN, informed the mayor of Sofia that a rally had been planned for 12 September 1998 between 12 noon and 2 p.m. in front of the National Theatre. He stated that the event would be in commemoration of the "[d]ay of the genocide against the Macedonians". Approximately one hundred and twenty persons were expected to take part. The applicant assured the mayor that the event would be entirely peaceful and that no disturbances would occur.

16. The next day, 2 September 1998, the mayor issued an order banning the rally pursuant to section 12(2)(2) of the Meetings and Marches Act. The order stated that the event would "create conditions for breaches of the public order", without giving further reasons. A copy of the order was sent to the Sofia police authorities for enforcement.

17. The same day the first applicant lodged an appeal against the order with the Sofia District Court. He argued that the order was not reasoned and that there were no grounds to anticipate that the planned rally would pose a threat to public order. If the local authorities were allowed to prohibit public events without specifying the reasons for doing so, that would render nugatory the legal guarantees of freedom of assembly.

18. On 8 September 1998 the Sofia District Court ruled in private that it had no jurisdiction to examine the appeal. It held that the mayor's order had to be appealed first before the Executive Committee of the People's Council, as provided in section 12(4) of the Meetings and Marches Act. The

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

person concerned could resort to the court only if such an appeal was unsuccessful. Accordingly, the court discontinued the judicial proceedings and sent the appeal to the Executive Committee of the People's Council. The ruling was apparently not notified to the first applicant.

19. Since on 12 September 1998 the mayoral ban had not been overturned, the applicants informed the members and followers of UMO Ilinden – PIRIN that the rally would not take place.

20. On 17 September 1998 the first applicant, who had in the meantime apparently learned about the Sofia District Court's ruling of 8 September 1998 (see paragraph 18 above), appealed against it to the Sofia City Court. He argued that the court had erred in referring the appeal to the Executive Committee of the People's Council. This body was mentioned in the Meetings and Marches Act, which had been enacted prior to the Constitution of 1991, when the municipal authorities had been structured differently. Under the Constitution of 1991 the Executive Committee, which had been part of the executive branch of the local authorities, had ceased to exist. It was erroneous to hold that the Municipal Council – the municipal legislative body – was the successor to the Executive Committee, and as such competent to examine appeals against orders of the mayor. Moreover, the Municipal Council convened at long intervals, which had prevented it from examining the appeal in time for the planned rally.

21. The Sofia City Court dismissed the appeal in a decision of 19 March 2002. It held that, by section 12(4) of the Meetings and Marches Act, the organiser of a rally could appeal against the mayoral ban to the Municipal Council, which had to rule on the appeal within twenty-four hours. Only if the Municipal Council dismissed the appeal the dispute could be brought before the court. By section 35(2) of the Administrative Procedure Act, judicial review of administrative acts was only possible if the administrative remedies had been exhausted, or the time-limit for doing so had expired. In the case at hand no administrative appeal had been lodged, whereas the appeal to the Sofia District Court had been lodged on 2 September 1998, i.e. before the expiry of the twenty-four hours' time-limit laid down in section 12(4) of the Meetings and Marches Act. The court went on to state that the argument that the Municipal Council convened at long intervals and was hence not in a position to examine the appeal in time was unavailing, because, on the one hand, an infelicitous legal rule still had to be complied with, and on the other, if the administrative body failed to rule on the appeal within twenty-four hours, the planned event could take place, as provided by section 12(5) of the Meetings and Marches Act. Furthermore, it could not be said that the Municipal Council did not have the power to rule an appeal against the mayoral ban, because by the terms of section 21(2) of the Local Self-Government and Local Administration Act it could decide on all questions of importance for the local community.

22. The first applicant appealed to the Supreme Court of Cassation, reiterating his arguments.

23. The Supreme Court of Cassation dismissed the appeal in a final decision of 11 March 2003. It held that the Sofia City Court's disposition of the case had been correct, although it did not support the reasoning given by that court. By the time the Sofia City Court had decided the case – more than three and a half years after the date of the planned event – the first applicant had no longer had any interest in appealing against the ban. Moreover, such an interest had been lacking even at the time of the lodging of the appeal against the Sofia District Court's ruling.

II. RELEVANT DOMESTIC LAW

24. The relevant provisions of the Constitution of 1991 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 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."

25. The legal requirements for the organisation of meetings are laid down in the Meetings and Marches Act of 1990 („Закон за събранията, митингите и манифестациите"). Its relevant provisions are as follows:

Section 2

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

Section 8(1)

"Where a meeting or rally is to be held outdoors, the organisers shall notify the [respective] People's Council or mayor's office in writing at least forty-eight hours before its beginning and shall indicate the [name of] the organiser, the aim [of the meeting or rally], and its venue and time."

26. The prohibitions against meetings are also set out in the Meetings and Marches Act:

Section 12

"1. Where the time or venue of the meeting or rally 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, rally 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 after the notification.

4. The organiser of the meeting, rally 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 [the above] time-limit, the march, rally or meeting may proceed.

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

27. The Meetings and Marches Act was enacted in 1990, when the Constitution of 1971 was still in force. Under the Constitution of 1971 the executive local state organs were the Executive Committees of the district People's Councils. 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 Council.

28. The Constitution of 1991 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 § 1).

29. The general rules of procedure for administrative appeals and judicial review of administrative acts are set out in the Administrative Procedure Act of 1979 („Закон за административното производство"). Section 19(1) of that Act provides that administrative acts may be appealed

hierarchically before the higher administrative body or official. The appeal must be examined by the administrative body or the official which is immediately superior to the body or the official which has issued the act (section 27(1)). The acts of the mayors may be appealed before the regional governors (section 27(3)). Administrative acts may also be appealed before the competent courts (section 33(1)). The appeal must be lodged after the administrative remedies have been exhausted or the time-limit for doing so has expired (section 35(2)).

30. Section 21(1) of the Local Self-Government and Local Administration Act of 1991 („Закон за местното самоуправление и местната администрация“) contains a list of the powers of the Municipal Council. No mention is made therein of a power to examine appeals against acts of the mayor. Section 21(2) provides that the Municipal Council is generally competent to decide on matters of importance for the local community which do not fall within the competence of other bodies.

THE LAW

I. PRELIMINARY ISSUE

31. In a letter dated 16 November 2004 the applicants' representative informed the Court that the third applicant, Mr Dimcho Dimitrov Hristov, had died on an unspecified date after the introduction of the application. The Court has not been informed of the wish of any heir or close relative of Mr Hristov to continue the proceedings on his behalf (see paragraph 8 above).

32. Having regard to the foregoing, the Court considers, in accordance with Article 37 § 1 (c) of the Convention, that it is no longer justified to continue the examination of the application insofar as it concerns Mr Hristov (see *Özgür Gündem v. Turkey*, no. 23144/93, §§ 34 and 36, ECHR 2000-III). Accordingly, this part of the case shall be struck out of the list.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

33. The applicants complained under Article 11 of the Convention that the two bans on the peaceful rallies they had intended to organise had been imposed in violation of the requirements of domestic law and had not been necessary in a democratic society.

34. Article 11 provides, as relevant:

> "1. Everyone has the right to freedom of peaceful assembly...
>
> 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 Government's objection of non-exhaustion of domestic remedies

1. The submissions of the parties

35. In their observations on the admissibility and merits of the application, the Government raised an objection, claiming that the applicants had not exhausted domestic remedies.

36. They firstly submitted that the applicants could have lodged administrative appeals against the two mayoral bans with the Municipal Council. By section 12(5) of the Meetings and Marches Act, in such a case the events would continue to be banned only if the Council had upheld the bans within the twenty-four hours following the lodging of the appeals.

37. The Government secondly argued that there was no indication that the applicants had lodged an appeal against the first ban with the Sofia District Court.

38. The applicants submitted that neither a supposed appeal to the Municipal Council, nor an appeal to the Sofia District Court could be deemed available and effective remedies. They contended that a remedy against the ban of a planned public event – where timing was of the essence – should, in addition to complying with the other requirements of Article 35 § 1 of the Convention, also be speedy and resulting in a decision delivered before the date of the planned event. None of the remedies suggested by the Government satisfied this requirement.

39. Concerning the possibility to lodge an administrative appeal with the Municipal Council, the applicants firstly submitted that domestic law did not clearly provide for such a procedure. Section 12 of the Meetings and Marches Act made reference to a nonexistent body, the Executive Committee of the People's Council. There were no legal grounds to conclude that that body had been superseded by the Municipal Council. Secondly, such a construction of section 12 of the Meetings and Marches Act was illogical, because it provided that the appeal had to be examined within twenty-four hours, whereas the Municipal Council was in session only once or twice a month. Thirdly, the Government had not produced a single decision of a municipal council delivered pursuant to an appeal

against a mayoral ban of a public event. Fourthly, the facts of the case indicated that an appeal to the Municipal Council would be pointless, because the Council had never ruled on the appeal referred by the Sofia District Court to the Executive Committee of the People's Council. Finally, the applicants averred that the Sofia Municipal Council could not have considered an appeal in a timely manner, because it had not held sessions in August 1998 and after that had held a session only on 17 September 1998, whereas the planned events had been scheduled for 10 August and 12 September 1998 and had been banned on 3 August and 1 September 1998 respectively.

40. The applicants further conceded that no appeal had been lodged with the Sofia District Court against the first ban, but pointed out that when they had lodged an appeal against the second ban, the Sofia District Court had not examined it, but had referred it to the Executive Committee of the People's Council instead. The construction of section 12 of the Meetings and Marches Act given by the Sofia District Court was not the only one possible, as evidenced by the facts of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (nos. 29221/95 and 29225/95, §§ 24 and 25, ECHR 2001-IX). There, another district court had proceeded to examine an identical appeal without referring it to the Executive Committee of the People's Council. In the case at hand the Sofia District Court had not referred the appeal to the Municipal Council, but to the Executive Committee of the People's Council, a body which had ceased to exist in 1991. It was only the Sofia City Court that had clarified that this body no longer existed and that its functions in respect of the examination of appeals against mayoral bans of public events had been taken over by the Municipal Council. In the applicants' view, this stance of the courts had served as an excuse to not examine the appeal on its merits and had operated to deny them an effective remedy. The applicants concluded that in view of this interpretation of section 12 of the Meetings and Marches Act by the courts in Sofia, an appeal against the first ban would have been futile.

2. The Court's assessment

41. In its admissibility decision in the present case the Court found that the question of exhaustion of domestic remedies in respect of the complaint under Article 11 of the Convention about the bans of the rallies was closely related to the merits of the complaint under Article 13 of the Convention about the lack of effective remedies in this respect. Accordingly, the Court decided to join the Government's objection to the merits (see paragraph 5 above), and will examine it now.

42. The Court starts by noting the particular context surrounding the facts of the case (see paragraphs 10 and 11 above). The present application is one of several cases concerning interferences by the authorities with the

organised activities of persons declaring to have a Macedonian ethnic consciousness.

43. In the first of these cases – *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* – the Court, after reviewing in detail the systematic prohibitions imposed by mayors on public events planned by the United Macedonian Organisation Ilinden (see paragraph 10 above), found that "the authorities had adopted the practice of imposing sweeping bans on Ilinden's meetings" (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 109). The Court further found that on each occasion the competent courts had rejected Ilinden's appeals against the bans with fluctuating arguments (ibid., §§ 19, 21, 23 and 25).

44. In the second case – *the United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* – the Court likewise found the existence of a firm trend of rejecting, on various grounds, the applications for judicial review of the mayoral bans on meetings organised by Ilinden (see *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (dec.), no. 44079/98, 9 September 2004). Indeed, on the basis of this finding the Court concluded that the appeals to the respective district courts in various towns in Pirin Macedonia were not, in the particular circumstances, a "remedy offering reasonable prospects of success" (ibid.).

45. Turning to the specific circumstances of the present case, the Court observes the following.

46. Concerning the first limb of the Government's objection (see paragraph 36 above), the Court notes that a substantially similar argument was found unavailing in *Stankov and the United Macedonian Organisation Ilinden* (cited above, Commission decision of 29 June 1998, unreported). There the former Commission held:

> "Insofar as the Government refer to section 12(4) of the [Meetings and Marches Act] which provides for an appeal to the Executive Committee of the People's Council, the Commission notes that no such state organ has existed in Bulgaria since 1991. The Government initially suggested that after the abolition of the Executive Committees the power to examine appeals resided with the local municipal councils. However, the Commission notes that under the relevant law the municipal councils do not act as judicial bodies and are not competent to examine appeals. The Government have not provided any example which would lead to a different conclusion."

47. The facts of the present case do not disclose a material difference. Contrary to the Government's assertion, there is nothing in domestic law to suggest that after 1991 the Executive Committee of the People's Council's powers were transferred to the Municipal Council, or that the Municipal Council is empowered to examine appeals against orders of the mayor (see paragraphs 27-30 above).

48. In particular, the grant of a power to decide on other questions of importance for the local community in section 21(2) of the Local Self-Government and Local Administration Act of 1991 (see paragraph 30

above) is too vague to be construed as empowering the Municipal Council to examine appeals against orders of the mayor. Moreover, by section 27(1) of the Administrative Procedure Act of 1979, an administrative appeal is examined by the body which is immediately superior to the body or the official which has issued the act (see paragraph 29 above), whereas it does not seem that under Bulgarian law the Municipal Council is the immediate superior of the mayor.

49. On the contrary, it appears that under the Constitution of 1991 the Executive Committee of the People's Council was superseded by the mayor himself (see paragraph 28 above). Therefore, the applicants cannot be blamed for not having tried to appeal to a nonexistent body. When it referred the appeal submitted by the applicants to it, the Sofia District Court did not indicate that it was referring it to the Municipal Council (see paragraph 18 above). It was only the Sofia City Court, three and a half years later, which held that the Executive Committee of the People's Council had been superseded by the Municipal Council (see paragraph 20 above). The Supreme Court of Cassation stated that it did not share this view (see paragraph 23 above). In any event, the Sofia Municipal Council apparently never examined the appeal despite the referral. There is nothing in the case file to suggest that it would have acted differently and examined an appeal lodged directly with it.

50. Concerning the second limb of the Government's objection (see paragraph 37 above), the Court notes that indeed the applicants appealed to the Sofia District Court only against the second ban (see paragraph 14 above). However, it also notes that this appeal, which was lodged less than a month after the first ban, was not examined by the Sofia District Court, but was instead referred to a nonexistent body, the Executive Committee of the People's Council, and thus remained without examination (see paragraph 18 above). The ensuing appeals against this referral were not successful either. Moreover, they consumed an inordinate amount of time (see paragraphs 20-23 above). It is true that other district courts have proceeded to examine appeals against mayoral bans in similar situations (see *Stankov and the United Macedonian Organisation Ilinden*, §§ 23 and 30). In spite of this, given that the Sofia District Court refused to examine an identical appeal only a month later, in September 1998, there is nothing to indicate that such a procedure would have proven effective one month earlier.

51. Therefore, the complaint with regard to both bans cannot be declared inadmissible for failure to exhaust domestic remedies.

B. The merits of the complaint

1. The submissions of the parties

52. The Government submitted that the restrictions of the applicants' freedom of assembly had been justified.

53. Firstly, since the body to which the Sofia District Court had referred the appeal against the second ban – the Municipal Council – had failed to rule in time, the applicants could have proceeded with the event planned for 12 September 1998, as provided in section 12(5) of the Meetings and Marches Act. This had been confirmed by the Sofia City Court in its decision of 19 March 2002.

54. The Government further argued that the bans had been prescribed by law, namely section 12(2)(2) of the Meetings and Marches Act. Also, the measures complained of had pursued a wide range of legitimate aims: protecting national security and public safety, guaranteeing public order in the local community, protecting the rights and freedoms of others and preventing disorder and crime. They had also been necessary in a democratic society, because the authorities had acted in conformity with the laws of the country, their actions had not been arbitrary and they had complied with their positive obligations to guarantee the citizens' rights under Article 11 of the Convention. Referring to the case of *Gustafsson v. Sweden* (judgment of 25 April 1996, *Reports of Judgments and Decisions* 1996-II, pp. 652-53, § 45), the Government submitted that the Contracting States enjoyed a wide margin of appreciation in their choice of the means to be employed to attain a legitimate aim.

55. The applicants submitted that there had clearly been interferences with their freedom of assembly with regard to both events they had intended to organise. It was not them who had appealed to the Municipal Council, it was the Sofia District Court that had referred the appeal to a nonexistent body – the Executive Committee of the People's Council. It was therefore hardly surprising that that body had not ruled on the appeal. It would be unrealistic to conclude that in these circumstances the second ban had ceased to have effect. Neither the applicants, nor the police, which were under strict orders to prevent the applicants from holding the event, had been informed in due time that the appeal had been referred.

56. The applicants further submitted that the bans of the planned rallies had not been reasoned and had thus been arbitrary and not prescribed by law. The lack of reasoning also made it impossible to assess the proportionality of these measures. In any event, in the applicants' view, the bans had not been based on relevant and sufficient reasons.

2. The Court's assessment

(a) Applicability of Article 11

57. It has not been argued by the Government that the organisers and the participants in the events planned by UMO Ilinden – PIRIN had violent intentions. The Court sees no reason to hold otherwise. Article 11 is thus applicable (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, §§ 76-78).

(b) Whether there were interferences

58. The Government have not disputed that the first rally planned by UMO Ilinden – PIRIN was effectively banned by the authorities and that this ban constituted an interference with the applicants' freedom of assembly. The Court sees no reason to reach a different conclusion.

59. Concerning the second rally, the Court notes that under the Constitution of 1971 the Executive Committee of the People's Council was the executive authority within the municipality (see paragraph 27 above). As noted above, in 1991 it was superseded by the mayor, not by the Municipal Council (see paragraphs 28 and 49 above). The failure of a nonexistent body to rule on the applicants' appeal was therefore only natural, whereas, contrary to what was suggested by the Government, the Municipal Council was apparently under no obligation to examine the appeal. In these circumstances, it may hardly be concluded that the ban had in reality ceased to have effect by reason of the fact that the Municipal Council had not examined it.

60. It may thus be concluded that the authorities interfered with the applicants' freedom of assembly with respect to both events.

61. The Court must therefore verify whether the interferences were prescribed by law and were necessary in a democratic society for the achievement of a legitimate aim, as required by paragraph 2 of Article 11.

(c) Justification for the interferences

62. Concerning the lawfulness of the interferences, the Court notes that although the mayor did not provide detailed reasons for imposing the bans, he nevertheless referred to an alleged threat to public order, which under domestic law could justify an interference with the right to peaceful assembly (see paragraphs 13, 16 and 26 above). Moreover, the bans were imposed in accordance with the procedure laid down in the Meetings and Marches Act. It may thus be accepted that they were prescribed by law (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, §§ 81 and 82). Insofar 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 (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 82 *in fine*).

63. As to the legitimate aim for and the necessity of the interferences, the Court must scrutinise the reasons given by the national authorities. In this connection, it notes that both mayoral bans only made brief references to an alleged threat to public order, without stating the basis for such a conclusion or going into further detail (see paragraphs 13 and 16 above). Thus, even assuming that the legitimate aims pursued were public safety and the prevention of disorder, it can hardly be concluded that the authorities gave relevant and sufficient reasons justifying the prohibitions of the rallies, substantiating their finding that there was a risk to public order, and that the bans were thus necessary in a democratic society. It should also be noted that in their observations the Government did not specify any particular reasons to justify the bans, but merely stated that the authorities had acted in conformity with national law and that their actions had not been arbitrary (see paragraph 54 above).

64. Even if it was not unreasonable for the authorities to suspect that certain leaders of UMO Ilinden – PIRIN (which was later declared unconstitutional – see paragraph 11 above), 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 and could hence expect that separatist slogans would be broadcast by some participants during the planned rallies, such a probability could not *per se* justify their banning (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 96).

65. There has therefore been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

66. The applicants complained under Article 13 of the Convention that the courts had refused to examine the merits of the appeal against the second ban.

67. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The submissions of the parties

68. The Government submitted that section 12 of the Meetings and Marches Act provided a sufficient mechanism for obtaining redress against the mayoral bans of public events. It provided a possibility to lodge an

administrative appeal and then to seek judicial review by the competent district court. The Government conceded that that Act was not fully consistent with the changes in the structure of local authorities which took place after the adoption of the Constitution of 1991, but submitted that overall it was a democratic statute providing effective guarantees against interferences with the right to peaceful assembly, and that in applying it the authorities were taking into account all intervening modifications in the law.

69. The applicants argued that they had not had effective remedies in respect of their complaint under Article 11.

B. The Court's assessment

70. The Court reiterates that Article 13 guarantees the availability at national level of a remedy in respect of grievances which can be regarded as arguable in terms of the Convention. Such a remedy must allow the competent domestic authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they discharge their obligations in this respect. The remedy required by Article 13 must be effective in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 96, ECHR 2000-XI).

71. In the present case the Court found that the applicants' rights under Article 11 were infringed (see paragraph 65 above). Therefore, they had an arguable claim within the meaning of the Court's case-law and were thus entitled to a remedy satisfying the requirements of Article 13.

72. As noted above, there is nothing in domestic law to indicate that the mayoral bans were appealable before the Municipal Council (see paragraphs 47-49 above). The possibility to appeal to a nonexistent body, the Executive Committee of the People's Council, provided by section 12(4) of the Meetings and Marches Act (see paragraph 26 above), did not constitute an effective remedy either.

73. The remedy provided by section 12(6) of the Meetings and Marches Act: the possibility to seek judicial review of the mayoral ban from the competent district court (see paragraph 26 above) could in principle operate effectively. However, it was rendered ineffective in the instant case through the holdings of the Sofia District and the Sofia City courts that the judicial authorities would have jurisdiction to examine an appeal against a mayoral ban only after the Executive Committee of the People's Council had already dismissed it (see paragraph 18 and 21 above). It is true that the Supreme Court of Cassation eventually stated that it did not share this position, but nevertheless rejected the appeal against the Sofia City Court's decision on the ground that it had become moot (see paragraph 23 above).

74. Moreover, the Supreme Court of Cassation's decision was delivered approximately four and a half years after the planned event was due to take place (see paragraphs 19-23 above). Confronted with a similar situation, in *Stankov and the United Macedonian Organisation Ilinden* (cited above, Commission decision of 29 June 1998, unreported) the former Commission held that "it [was] undisputed that had the applicants attempted [an appeal against the refusal of the district court to examine the appeal against the mayoral ban], the proceedings would have lasted for at least several months and any favourable outcome would have resulted long after the date of a planned meeting or manifestation". Likewise, bearing in mind that the timing of the rallies was crucial for their organisers and participants (see paragraphs 12 and 15 above and also *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 109) and that the organisers gave timely notices to the competent authorities, the Court considers that, in the circumstances, the notion of effective remedy implied the possibility to obtain a ruling before the time of the planned events (see, *mutatis mutandis*, *Cisse v. France*, no. 51346/99, § 32, 9 April 2002). Similar concerns are also apparent from the text of section 12(3), (4) and (6) of the Meetings and Marches Act, which sets very short time-limits for deciding whether to ban a particular event, and for ruling on the appeals against such a ban (see paragraph 26 above). However, that did not happen in the case at hand.

75. It does not seem that any other remedies were available. In particular, even though section 27(3) of the Administrative Procedure Act of 1979 allows the mayors' acts to be appealed before the regional governors (see paragraph 29 above), the Government have not relied on this provision in their observations and have not provided any examples indicating that it could be used effectively in the context of bans on public events (see, *mutatis mutandis*, *Stankov and the United Macedonian Organisation Ilinden*, cited above, Commission decision of 29 June 1998, unreported).

76. There has therefore been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

77. The applicants asserted that the approach of the authorities in the case at hand was influenced by their proclaimed Macedonian ethnic consciousness. They relied on Article 14 of the Convention, which provides:

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

78. The Court notes that this complaint relates to the same facts as the ones based on Articles 11 and 13. Having regard to the conclusions in paragraphs 65 and 76 above, it does not consider that it must deal with it (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports* 1998-IV, p. 1619, § 52).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The remaining three applicants (see paragraphs 8, 31 and 32 above) claimed 4,000 euros (EUR) each as compensation for the non-pecuniary damage sustained on account of the violations found in the present case. They submitted that, even if the violations found in the present case did not have an immediate impact on their daily lives, they all the same warranted a higher award of non-pecuniary damages, because they were demonstrative of the overall attitude of the Bulgarian authorities towards Bulgarian citizens claiming to be of Macedonian ethnic origin, as evidenced by several other cases before the Court.

81. The Government did not comment.

82. The Court accepts that the applicants have sustained non-pecuniary damage as a consequence of the violation of their right to freedom of assembly and the lack of effective remedies in that respect. It considers it sufficiently compensated, however, by the finding of violations of Articles 11 and 13 of the Convention.

B. Costs and expenses

83. The applicants sought EUR 3,000 for costs and expenses, made up of EUR 600 for work on the domestic proceedings and EUR 2,400 for their representation before the Court.

84. The Government did not comment.

85. Having regard to all relevant factors, the Court awards jointly to all applicants EUR 2,000, plus any tax that may be chargeable on this amount.

C. Default interest

86. 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

1. *Decides* unanimously to strike the case out of the list insofar as it concerns Mr Dimcho Dimitrov Hristov;

2. *Dismisses* unanimously the Government's objection of non-exhaustion of domestic remedies;

3. *Holds* by five votes to two that there has been a violation of Article 11 of the Convention;

4. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

5. *Holds* unanimously that it is not necessary to rule on the allegation of a violation of Article 14 of the Convention;

6. *Holds* unanimously that the finding of violations constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

7. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses, to be converted into Bulgarian levs at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

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

C.L.R.
S.N.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE BOTOUCHAROVA, JOINED BY JUDGE HAJIYEV

I agreed with my colleagues in finding a separate violation of Article 13 of the Convention in this case. However, my approach to the issue under Article 11 of the Convention was somewhat different, namely finding a violation of Article 11 in conjunction with Article 13.

The reasons for this are the following:

Firstly, unlike the situation in *Stankov and the United Macedonian Organisation Ilinden* (nos. 29221/95 and 29225/95, ECHR 2001-IX) and *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (no. 44079/98, 20 October 2005), in the case at hand the two events were to take place in Sofia, that is, outside the Pirin region. The two rallies in issue here were apparently isolated occurrences.

The other feature which distinguishes the present case is that its main element is the impossibility to obtain a proper judicial review of the mayor's bans of the rallies. Any perceived deficiencies in the mayor's orders could have been remedied by the courts, which could have reviewed them on the merits. They could have then either given relevant and sufficient reasons, within the meaning of Article 11, for upholding the bans, or quashing them if they found that such did not exist. The need for this stemmed from the respondent State's obligation under Article 13 to provide an effective remedy to the applicants, who had an arguable claim under Article 11. It is a well-established principle that it is first and foremost the role of the Contracting States to afford redress for interferences with the rights protected under the Convention.

When the first applicant appealed against the second ban, the first- and the second-instance courts stated that they would have jurisdiction to examine an appeal against a mayoral ban only after the Executive Committee of the People's Council – a body which no longer existed at that time – had already dismissed it. That holding was based on outdated and, as conceded by the domestic courts (see paragraph 21 of the judgment), infelicitous legal provisions, section 12(4) and (6) of the Meetings and Marches Act of 1990. It is true that the Supreme Court of Cassation eventually stated that it did not subscribe to this holding (see paragraph 23 of the judgment). However, it still rejected the first applicant's appeal on the ground that it had become moot. The reason for that was that the procedure before the courts lasted for years after the date of the planned event, whereas, in the circumstances, the notion of effective remedy implied the possibility to obtain a ruling before that.

To sum up, as a result of the lack of effective remedies the applicants were not able to obtain the quashing of the bans, while the authorities were not placed in a position to provide relevant and sufficient reasons for the interferences with the applicants' freedom of assembly.

Thus, the issue under Article 11 arose because of the lack of proper remedies, which was, as explained above, in breach of Article 13. Because of this, I am of the view that the two were to be examined together, which could have resulted in a finding of a violation of Article 11 in conjunction with Article 13.