FIRST SECTION

CASE OF TSONEV v. BULGARIA

(Application no. 45963/99)

JUDGMENT

STRASBOURG

13 April 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 Tsonev 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 23 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 45963/99) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Anguel Tsonev Anguelov, a Bulgarian national who was born in 1958 and lives in Sofia ("the applicant"), on 10 September 1998. The applicant requested to be referred to in the judgment as Tsonev, his middle name, with which he was publicly known in Bulgaria. On 23 March 2006 the Court decided to grant his request.

2. The applicant was represented by Mr I. Vasilev, a lawyer practising in Varna. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged, in particular, that the refusal of the courts to register the Communist Party of Bulgaria, whose chairman he was, had infringed his freedom of association. In his view, the refusal had been unlawful and unnecessary in a democratic society. The applicant also alleged that the registration proceedings had been unfair, as the courts had ignored relevant evidence and arguments.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

6. 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).

7. By a decision of 14 December 2004 the Court (First Section) declared the application partly admissible.

8. Neither the applicant, nor the Government filed additional observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. In 1990 the applicant founded and became the chairman of the Bulgarian Revolutionary Youth Party („Българска революционна младежка партия“). He ran for parliament in 1990 and in several later elections, unsuccessfully. Apparently he was also a presidential candidate in later elections on that party's ballot.

A. The founding of the Communist Party of Bulgaria

10. At a meeting held on 10 November 1996 in Varna the applicant and forty-nine other persons formed a party named Communist Party of Bulgaria („Комунистическа партия на България“). They adopted its constitution and elected its management organs. The applicant was elected the party's chairman. The party's aims, set out in the preamble to its constitution, were as follows:

> "...
>
> The main aim of the Communist Party shall be the revolutionary change of the Bulgarian society – democratisation of the society as a road to true power of the people. The primary goal of the party shall be the practical improvement of the socialist democracy – broadening of the direct participation of the people in the government of the state; economic freedom of the enterprises within the framework of an economy changed and armed with the new philosophy of central planning; active shift towards self-government of the municipalities and the economic units as a transition towards self-governing communities within a society of social homogeneity.
>
> ...
>
> The Communist Party is convinced of the need for the union of the political parties, movements and eminent personalities into one political coalition – 'Union for

National Cooperation 'Civic Forum'', as the most proper way out of the societal antagonisms and divisions.

...

The Party shall advocate a policy of rapprochement between peoples which are at different socio-political stages of development; of deepening of the economic, political and cultural ties between them. The Communist Party's ultimate aim is the 'constant improvement of society'.

The Communist Party is a party of a new type. It shall struggle for political power and shall work dedicatedly for the triumph of the communist ideal – building of a civil society with the economic nature of a society ruled by the principles of scientific socialism and the political nature of a society free of class divisions, political parties and movements: a society in which the vehicle of development shall be the Man – a universally developed and harmonious personality."

11. Articles 1 – 8 of the party's constitution dealt with membership in the party and the members' rights and obligations. Article 8 set out, *inter alia*, the grounds for expelling members.

12. Articles 9 – 26 of the constitution set out the organisational structure of the party and the powers of its organs.

13. Article 28 of the constitution, which described the party's symbols, stated, *inter alia*, that they stood for the "idea of a revolutionary socio-political order".

B. The proceedings for registering the Communist Party of Bulgaria

14. On 3 December 1996 the applicant, in his capacity of chairman of the party, applied to the Sofia City Court to have it registered.

15. The court held a hearing on 18 December 1996. It noted that the manner of liquidation of the party had not been provided for in its constitution, that the declarations submitted by the founders were incomplete, and that there were certain other irregularities. Accordingly, it adjourned the case for 26 February 1997 with a view to allowing the party to remedy the deficiencies it had spotted.

16. In order to rectify the deficiencies noted by the court, the applicant and the other founders held another meeting on 26 January 1997 and decided to amend the party's constitution. On 17 February 1997 they submitted the amendments and updated declarations to the court, which admitted them in evidence.

17. A second hearing took place on 26 February 1997.

18. In a decision of 6 March 1997 the Sofia City Court refused to register the party, holding:

"In the course of the proceedings the court found that the applicants have failed to comply with the requirements of sections 7, 8 and 9(2) of the Political Parties Act [of 1990], in order to make the entering of the party in the register possible. [The case-file

contains] minutes from the general meeting of the [party] held on 26 January 1997, which are not duly signed. The introduction to the party's constitution contains aims which are identical to the aims of other, already registered parties. The party's structure is not fully and clearly set out [in its constitution]; the powers of its different organs are not clearly described, are repeated in the different provisions of the party's constitution and thus the powers [of the party's organs] are not clearly spelled out. The party's constitution does not specify the manner of termination of membership in the party."

19. On 14 March 1997 the applicant appealed to a three-member panel of the Supreme Court.

20. The court held a hearing on 4 June 1997.

21. On 9 June 1997 the three-member panel of the Supreme Court upheld the lower court's decision. It opined:

"The name of the Communist Party of Bulgaria formally does not already exist in the register [of political parties], but it does not set it apart from an already registered party – [the Bulgarian Communist Party], as required by section 8(1) of the [Political Parties Act of 1990], because in fact it contains the same words; their rearranging does not change the purport and the essence of the political party. This name does not individualise it and does not clearly set it apart from another, already registered party.

[The party's] aims, as indicated in part I of its constitution ... are contrary to section 3(2) of the [Political Parties Act of 1990].

The manner of termination of membership in the party is not set out [in its constitution], contrary to section 8(1) of the [Political Parties Act of 1990]."

22. On 1 August 1997 the applicant lodged a petition for review with a five-member panel of the Supreme Court.

23. A hearing was held on 4 March 1998.

24. In a final decision of 19 March 1998 the five-member panel of the Supreme Court dismissed the petition in the following terms:

"The impugned decisions should not be quashed first and foremost because the name of the party – Communist Party of Bulgaria – does not set it apart from other parties, in violation of section 8(1) of the [Political Parties Act of 1990], as correctly found by the two courts below. The name is an individualising feature of the party and for that reason it should not duplicate [the names of] other parties, organisations and movements, which may ... engage in political activities. The rule of section 8(1) of the [Political Parties Act of 1990] concerning the party's name sets the bounds of the founders' autonomy and initiative in choosing the name. [The founders] must see to it that from a grammatical and a logical point of view there is no duplication of the purport and the essence [of the name] with the name of another party.

In the case at hand the separate words which constitute the party's name, on the one hand, and the particular wording used, on the other, although not identical to those used in other existing parties' names, convey a similar meaning. The name "Communist Party of Bulgaria" uses the ideological term "communist", which term, viewed in a historical context, resembles a party from the not so distant past – the Bulgarian Communist Party – and also resembles the Bulgarian Communist Party ... even though there is a rearrangement of the words...

Regarding the contents of the party's constitution, as required by section 8(1) of the [Political Parties Act of 1990], the courts [below] have correctly found that the constitution does not indicate the manner of termination of membership in the party. [The constitution sets forth] rules about the admission [of new members], about the members' rights and the obligations and the [penalties which may be imposed on them], but there are no rules regarding the termination of the membership. Likewise, the powers of the [party's] organs and its organisational structure are chaotically scattered throughout its constitution.

The [courts below] have correctly found that the aims of the party are contrary to section 3(2) of the [Political Parties Act of 1990]. Part I of the constitution indicates that the main aim of the party [is] the 'revolutionary change of Bulgarian society' and the support for the idea of a revolutionary socio-political order – part V of the constitution."

C. Background information

25. It appears that in Bulgaria at least eight other political parties are registered with the word "communist" in their names, e.g. Bulgarian United Communist Party („Българска единна комунистическа партия"), Bulgarian Communist Party of the Bolsheviks („Българска комунистическа партия на болшевиките"), Renewed Bulgarian Communist Party („Обновена българска комунистическа партия"), Bulgarian Communist Party "Georgi Dimitrov" („Българска комунистическа партия 'Георги Димитров'"), Bulgarian Communist Party "Fatherland" („Българската комунистическа партия 'Родина'").

26. In the beginning of 1997 the Sofia City Court registered a party named Communist Party. On 22 April 2000 it changed its name into Communist Party of Bulgaria, which fact was likewise registered by the Sofia City Court in a decision of 16 November 2000, and published in the State Gazette on 22 November 2000 (ДВ, бр. 106 от 22 декември 2000 г.).

II. RELEVANT DOMESTIC LAW

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

Article 44

"1. Citizens may freely associate.

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

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

28. The relevant provisions of the Political Parties Act of 1990 („Закон за политическите партии“), as in force at the relevant time, read:

Section 3(2)

“No political party shall be founded:

1. [which is] aimed against the sovereignty and the territorial integrity of the country, [or] the rights and freedoms of its citizens;

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

3. [which is based] on ethnicity or religion, or [aims] to spur racial, national, ethnical or religious hatred;

4. which advocates a fascist ideology, or tries to achieve its goals through violence or other unlawful means.”

Section 7

“A political party shall be formed at a founding meeting upon the agreement of at least fifty enfranchised citizens. The founding meeting shall adopt its constitution and elect the management organs.”

Section 8(1)

“The constitution of a political party shall set forth: its name, which shall set it apart from other parties; its seat; its aims and objectives; the manner of becoming a member and of terminating the membership; the rights and obligations of the members; the managing organs; the party’s symbols; the sources of financing, as well as the manner and conditions for the party’s liquidation.”

Section 9

“1. The political party shall be entered in a separate register kept by the Sofia City Court, on application by the organ which represents it according to its constitution.

2. The application shall be accompanied by copies of: the minutes of the founding meeting, the party’s constitution, and a list of the names and addresses of the members of the party’s managing organ, which represents it according to its constitution.

...”

Section 22(1)

“A political party ceases to exist:

...

4. when it is dissolved by decision of the Supreme Court [of Cassation].”

Section 23

"1. [A political party may be dissolved] upon the proposal of the Chief Prosecutor, if the party engages in activities which run counter to section 3 [of this Act].

2. The decision of the Supreme Court [of Cassation] to dissolve a party may be appealed to a five-member panel [of that court]."

29. By section 12(1) and (2) of the Political Parties Act of 2001, in force until April 2005, a party could be dissolved by decision of the Sofia City Court on the application of a public prosecutor if, *inter alia*, the party systematically contravened the Act's provisions, its activities ran counter to the provisions of the Constitution, or it had been declared unconstitutional by the Constitutional Court. By section 40(1) and (2) of the Political Parties Act of 2005, presently in force, the Sofia City Court, acting pursuant to the application of a public prosecutor, may order the dissolution of a party if its activities systematically contravenes the Act's requirements or the provisions of the Constitution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

30. The applicant complained about the refusal of the courts to register the Communist Party of Bulgaria. He relied on Article 11 of the Convention, which 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 parties' submissions

1. The applicant

31. The applicant submitted that the right to associate and form political parties was guaranteed by the Constitution and the Political Parties Act of 1990. The only precondition for that was the observance of the formalities set out in the Act.

32. In the applicant's view, the party whose registration had been refused could not reapply for registration after rectifying the alleged formal deficiencies in its documents. The refusal to enter it in the relevant register had in fact been a complete ban on the existence of a political party of persons having communist ideas and progressive aims.

33. In the applicant's submission, the courts which refused to register the party had been biased and had conducted the proceedings unfairly, as evidenced by the fluctuating reasons on which they had relied to do so, as well as by the fact that in 2000 they had registered another party with the same name. According to the applicant, the courts were in fact politically motivated. Their finding that the party's constitution had certain formal deficiencies was not supported by the facts of the case. Quite the contrary, the party's constitution had clearly set out the party's organs, their powers and the manner of terminating membership in the party.

34. The applicant maintained that the real reason why the courts had refused registration had been the party's name – Communist Party of Bulgaria. While there were a number of parties whose name included the word "communist" in some form, its name did not coincide with that of any other party. Moreover, in 2000 the Sofia City Court had registered a party with exactly the same name. It was therefore unnecessary to put forward any arguments indicating that this name did not in fact coincide with that of the former ruling Bulgarian Communist Party.

35. The applicant further maintained that the Sofia City Court's holding that the party's aims had been an impediment to registration because they had coincided with those of other parties had been indicative of the lack of political pluralism in Bulgaria. The Supreme Court's holding that the aims – "revolutionary change of Bulgarian society" and "support for the idea of a revolutionary socio-political order" – were contrary to the Constitution and the law, was unfounded. The mere fact that the party wished to be registered was indicative of its desire to participate in the democratic political process and use democratic and non-violent means. The word "revolutionary" did not mean that the party wished to resort to violence to achieve its goals. If interpreted properly and in context, it rather had a historical connotation, meaning "progressive". The order towards which the applicant's party strived was one in which "the vehicle of development [was to] be the Man – a universally developed and harmonious personality". It was illogical to consider that a revolutionary socio-political order would be an order of political violence. In the applicant's submission, the Government failed to differentiate between aims and means to achieve these aims. The party's constitution did not contain even a hint at violence. The other party of which the applicant was chairman – the Bulgarian Revolutionary Youth Party – also used the word "revolutionary" both in its name and in its manifesto. Yet it had been registered without any hindrances, had participated in all elections since 1990, had never resorted to violence to

achieve its aims and had never been considered as unlawful or having aims which were contrary to the Constitution.

2. The Government

36. The Government submitted that the interference with the applicant's freedom of association had been prescribed by law, namely Article 44 of the Constitution and the Political Parties Act of 1990.

37. They further submitted that the legitimate aims sought to be achieved had been the national security and public safety and the protection of the rights and freedoms of others.

38. Concerning the necessity of the interference, the Government were of the view that the refusal to register the party had corresponded to a pressing social need and had been proportionate to the aim sought to be achieved. The interference did not go as far as an outright ban, but consisted only in a refusal to register the party. This refusal had been necessary because the party's founders had failed to comply with the formal requirements for its formation, as found by all three levels of court.

39. Firstly, by section 8(1) of the Political Parties Act of 1990, the name of a political party had to set it apart from other parties. The only difference between the name of the applicant's party and that of the already registered Bulgarian Communist Party was the word order. Secondly, the party's constitution did not indicate the manner of terminating membership in the party, which fell short of the requirements of section 8(1) of the Political Parties Act of 1990. Thirdly, the powers of the party's organs were scattered throughout its constitution and were not clearly defined. It was precisely because of these formal omissions, which the courts had pointed out and had allowed the party's founders to rectify, that registration had been refused.

40. Aside from these formal omissions, the courts had had regard to the contents of the party's constitution and programme. More specifically, the courts had found the aims of the party – the revolutionary change of Bulgarian society and the support for the idea of a revolutionary socio-political order – problematic and contrary to section 3(2) of the Political Parties Act of 1990. These aims indicated that the party would not seek to come to power through peaceful means, but in a revolutionary manner.

41. The proceedings in which a party sought registration were intended to safeguard a number of public interests: to control the legality of political parties, to bring clarity in their relations with third parties, etc. On the other hand, the rulings of the courts in these proceedings did not have *res judicata* and thus did not prevent the applicant and the other founders to reapply for registration of the party after having remedied the deficiencies noted by the courts.

42. In sum, the Government were of the view that the interference with the applicant's freedom of association had been the result of his having failed to conform with the requirements prescribed by law for the registration of political parties.

B. The Court's assessment

1. Whether there was an interference

43. The Court considers that the domestic courts' refusal to register the Communist Party of Bulgaria, whose chairman the applicant is, amounts to an interference by the authorities with the exercise of his right to freedom of association (see, *mutatis mutandis*, *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1612, § 31; *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52, ECHR 2004-I; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 27, 3 February 2005; and *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, p. 19, § 36).

44. This interference will not be justified under the terms of Article 11 unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of that Article and was "necessary in a democratic society" for achieving those aims.

2. Whether the interference was "prescribed by law"

45. The Court notes that the reasons given by the domestic courts for refusing registration in the proceedings at issue fluctuated. It observes, however, that their decisions were based on the provisions of the Constitution of 1991 and the Political Parties Act of 1990. In these circumstances, and recalling that it is primarily for the national courts to interpret and apply domestic law, the Court is prepared to accept that the interference in question was prescribed by law (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, §§ 107-10, ECHR 2001-XII; and, *mutatis mutandis*, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, §§ 81 and 82, ECHR 2001-IX). Insofar as the applicant challenged the soundness of the courts' assessment of the relevant facts and the quality of their reasoning, these issues fall to be examined in the context of the question whether or not the interference with his freedom of association was necessary in a democratic society, which appears to be the central aspect of the case (see *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 34).

3. Whether the interference pursued a legitimate aim

46. The Court recalls that exceptions to freedom of association must be narrowly interpreted. Their enumeration therefore is strictly exhaustive and their definition is necessarily restrictive (see *Sidiropoulos and Others*, cited above, pp. 1613-14, § 38).

47. It nevertheless notes that the reasons invoked by the domestic courts for refusing registration were the party's founders failure to comply with certain formal requirements of the law, and the party's aim to bring about a revolutionary change of Bulgarian society. That being so, the Court is prepared to accept that the interference was intended, as argued by the Government, to safeguard the rights and freedoms of others and national security.

4. Whether the interference was "necessary in a democratic society"

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

48. The Court reiterates that, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy (see *United Communist Party of Turkey and Others*, pp. 20-21, §§ 42 and 43; and *Partidul Comunistilor (Nepeceristi) and Ungureanu*, § 44, both cited above).

49. Given that the implementation of the principle of pluralism is impossible without a party being able to express freely its ideas and opinions, the Court has also recognised that the protection of opinions and the freedom of expression within the meaning of Article 10 of the Convention is one of the objectives of the freedom of association (see, *mutatis mutandis*, *Gorzelik and Others*, cited above, § 91). Such a link is particularly relevant where – as here – the authorities' intervention against a party was, at least in part, in reaction to its views and statements (see, *mutatis mutandis*, *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 85 *in fine*).

50. A political party may campaign for a change in the legal and constitutional structures of the State on two conditions: firstly, the means used 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 v. Turkey,* nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II; and *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 98, ECHR 2003-II).

51. 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) v. Turkey* [GC], no. 23885/94, § 44, ECHR 1999-VIII). In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *United Communist Party of Turkey and Others*, p. 22, § 46; and *Sidiropoulos and Others*, pp. 1614-15, § 40, both cited above).

52. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Sidiropoulos and Others*, pp. 1614-15, § 40; *United Communist Party of Turkey and Others*, p. 22, § 47; and *Partidul Comunistilor (Nepeceristi) and Ungureanu*, § 49, all cited above).

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

53. The Court must now, in light of the principles set out above, scrutinise the particular grounds relied on to justify the interference and the significance of that interference.

(i) Grounds relied on to justify the interference

54. The Court notes that the domestic courts in their judgments and the Government in their pleadings relied on two groups of arguments justifying the interference. That being so, the Court will examine these groups in turn.

(α) Alleged formal deficiencies in the party's registration documents

55. The domestic courts and the Government first pointed to certain formal deficiencies in the party's constitution and other registration documents. The Court accepts that initially there may have been certain shortcomings in the documents submitted to the Sofia City Court. However,

it seems that after they were noted by it during the first hearing, the applicant and the other founders re-submitted fresh documents with a view to rectifying them (see paragraphs 15 and 16 above). The later holdings of the courts that the minutes of the general meeting held on 26 January 1997 had not been duly signed, that the powers of the party's organs and its organisational structure were not clearly set out in its constitution, and that the constitution did not set out the manner of terminating membership in the party (see paragraphs 18, 21 and 24 above) did not make clear, as is apparent from their wording, what was the exact import of the formal requirements for allowing registration. It must be noted in this connection that section 8(1) of the Political Parties Act of 1990 did not specify the exact manner in which the party's constitution had to be drafted. Nor did it lay down any guidelines as to how its organs and their powers, or the procedure or grounds for terminating membership in the party should be described therein. It merely provided that the constitution had to set forth the party's organs and the manner of terminating membership in it. In a similar vein, section 7 of that Act did not indicate the technical manner in which the registration documents had to be signed, it merely provided that a political party was formed at a founding meeting upon the agreement of at least fifty enfranchised citizens, and that the founding meeting adopted its constitution and elected its management organs (see paragraph 28 above). It was the national courts' task to elucidate the true tenor of these provisions and thus give the party's founders clear notice how to draft the relevant documents in order to be able to obtain registration. In view of this and of the insufficient clarity of these courts' holdings on the formal shortcomings which they identified in the party's registration documents, the Court considers that this ground for refusing registration has not been made out.

56. The courts also had regard to the party's name. While conceding that it did not fully coincide with that of any other existing party, they opined that its similarity (Communist Party of Bulgaria) to that of another party (Bulgarian Communist Party) constituted sufficient grounds to deny registration under the requirement of section 8(1) of the Political Parties Act of 1990 that a party's name must set it apart from other parties (see paragraphs 21 and 24 above). However, it seems that several parties exist in Bulgaria whose names include the word "communist" (see paragraph 25 above) and that later, in 2000, the Sofia City Court accepted to amend the registration of a party called Communist Party of Bulgaria – a name exactly matching that of the applicant's party (see paragraph 26 above). In view of this, the Court is unable to subscribe to the domestic courts' holding that the applicant's party's name was in fact an obstacle to its registration because of its similarity to that of another registered party and to that of the former ruling Bulgarian Communist Party (see, on this latter point, *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 55 *in fine*).

57. In conclusion, having regard to all the materials in the case file, the Court is not satisfied that the national courts' findings concerning the alleged formal deficiencies in the documents submitted by the party's founders constituted in the circumstances a sufficient reason to deny registration.

(β) Alleged dangers stemming from the party's goals and declarations

58. The national courts found a problem in the fact that the party's aims were identical to those of certain other parties (see paragraph 18 above). The Court fails to perceive how this can serve as grounds to refuse the registration of a party in a pluralistic and democratic society.

59. The courts also based their refusal to register the party on its aims, which, in their view, ran counter to Article 44 § 2 of the Constitution and section 3(2) of the Political Parties Act of 1990. Article 44 § 2 of the Constitution prohibits organisations whose "activity is directed against the sovereignty [or] the territorial integrity of the country and the unity of the nation, towards the incitement of racial, national, ethnical or religious enmity ..., as well as organisations which seek to achieve their goals through violence". Section 3(2) of the Political Parties Act of 1990 prohibited parties which were aimed against the sovereignty and the territorial integrity of the country, or the rights and freedoms of its citizens, whose aims were contrary to the Constitution and the laws of the country, or which advocated a fascist ideology or tried to achieve their goals through violence or other unlawful means (see paragraphs 27 and 28 above). According to the Supreme Court, the word "revolutionary" in the party's constitution was alone sufficient to deem that its aims fell within the ambit of the above prohibitions (see paragraph 24 above). The Court, for its part, finds no indication that the party was seeking, despite its name, to establish the domination of one social class over the others (see *United Communist Party of Turkey and Others*, cited above, p. 26, § 54). Nor is there any evidence that in choosing to include that word in the preamble to its constitution, it had opted for a policy that represented a real threat to the Bulgarian society or State (ibid.). Moreover, there are other parties in Bulgaria which use the same word in their names and manifestoes and where it is apparently not interpreted as meaning that they are likely to resort to violence if allowed to exist and participate in the political process (see paragraph 25 above). Nor is there anything in the party's declarations, as set out in the preamble to its constitution, which could lead to the conclusion that its aims were undemocratic or that it intended to use violence to attain them (see paragraph 10 above).

60. Admittedly, the political experience of the Contracting States has shown that political parties with aims contrary to the fundamental principles of democracy have not revealed such aims in their official publications until after taking power. A party's political programme may conceal objectives

and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the party's leaders and the positions they defend (see *Refah Partisi (The Welfare Party) and Others*, § 101; and *Partidul Comunistilor (Nepeceristi) and Ungureanu*, § 56, both cited above). However, in the present case the party's programme could hardly have been belied by any practical action it took, since its application for registration was refused and it consequently did not even have time to take any action. It was thus penalised for conduct relating to the exercise of freedom of expression (see *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 57).

61. It should finally be noted that in case the party subsequently tried to engage in any violent or antidemocratic action, the authorities would not have been powerless; under former sections 22 and 23 of the Political Parties Act of 1990, former section 12 of the Political Parties Act of 2001, and section 40 of the Political Parties Act of 2005, the competent court could dissolve the party if its functioning proved to be contrary to the Constitution or the law (see paragraphs 28 *in fine* and 29 above; *Sidiropoulos and Others*, p. 1618, § 46; and, as an example to the contrary, *Gorzelik and Others*, § 101, both cited above).

62. In sum, the Court considers that the goals and the declarations of the applicant's party were likewise not a sufficient ground to refuse its registration.

(ii) The significance of the interference

63. The Court notes that, in its impact on the party, the impugned measure was radical: it went so far as to prevent it from even commencing any activity (see, *mutatis mutandis*, *United Communist Party of Turkey and Others*, p. 26, § 54; and *Gorzelik and Others*, § 105, both cited above).

(iii) The Court's conclusion

64. In the light of the foregoing, the Court concludes that the reasons invoked by the authorities to refuse the registration of the party were not relevant and sufficient. That being so, the interference with the applicant's freedom of association cannot be deemed necessary in a democratic society. It follows that there has been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

65. The applicant asserted the decisions of the courts had been arbitrary and that they had ignored relevant evidence and arguments. He relied on Article 6 § 1 of the Convention, which provides, as relevant:

Article 6 § 1

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

66. The Court notes that the applicant's complaint under Article 6 § 1 is largely the same as the one raised under Article 11. Having regard to its decision in relation to that Article, the Court does not consider it necessary to examine it (see *Sidiropoulos and Others*, pp. 1618-19, § 50, cited above; and, *mutatis mutandis*, *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1260, § 60).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed compensation for non-pecuniary damage without specifying the exact amount. He invited the Court to rule on an equitable basis, taking into account the monthly incomes of certain classes of professionals and the prices of certain goods and services in Bulgaria, as well as the pecuniary sanctions for certain breaches of domestic law. He further emphasised that the refusal to register his party had prevented him from taking part in elections.

69. The Government did not comment.

70. The Court cannot speculate on whether the applicant's party, if registered, would in fact be able to take part in elections. This part of the claim must therefore be dismissed, there being no causal link between the violation found and the alleged damage (see, *mutatis mutandis*, *United Communist Party of Turkey and Others*, cited above, p. 29, § 69). As regards the remainder of the claim, the Court accepts that the applicant sustained non-pecuniary damage. It holds, however, that a finding of a violation of Article 11 constitutes sufficient compensation for it (ibid., p. 30,

§ 73; and *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 70).

B. Costs and expenses

71. The applicant sought the reimbursement of the sums of EUR 2,240 incurred in legal fees for the proceedings before the Court, EUR 60 in legal fees for the proceedings before the domestic courts, EUR 120 for telephone, postage and photocopying, and EUR 235 for translation expenses. He submitted an invoice for translation services.

72. The Government did not comment.

73. The Court recalls that, by Rule 60 § 2 of the Rules of Court, as in force at the material time, "[i]temised particulars of all claims made, together with the relevant supporting documents or vouchers, shall be submitted, failing which the Chamber may reject the claim in whole or in part". It notes that, although the applicant was advised of this, he has not submitted a fees agreement between him and his lawyer, nor any other proof that he has actually incurred the costs and expenses claimed, save for the invoice for translation services. Having regard to this and noting that the applicant was paid EUR 701 in legal aid from the Council of Europe, the Court makes no award under this head (see *Socialist Party and Others*, cited above, p. 1261, § 67).

C. Default interest

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

2. *Holds* unanimously that it is not necessary to rule on the allegation of a violation of Article 6 § 1 of the Convention;

3. *Holds* by five votes to two that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 April 2006, 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 dissenting opinion of Mrs Botoucharova and Mrs Steiner is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGES BOTOUCHAROVA AND STEINER

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

2. We accept, as did the majority, that the refusal to register the applicant's political party constituted an interference with his freedom of association, and that this interference was prescribed by law and pursued a legitimate aim. Where we disagree is in the assessment of whether this interference was "necessary in a democratic society". While we fully accept the general principles underlying the majority's analysis of this matter, we differ in their application to the particular circumstances of the present case.

3. Insofar as the domestic courts in their judgments and the Government in their pleadings relied on two groups of arguments justifying the interference, we would, as did the majority, examine these groups in turn.

4. The courts first had regard to certain deficiencies in the party's constitution and other registration documents. They noted that the minutes of the party's general meeting held on 26 January 1997 had not been duly signed, that the powers of its organs and its organisational structure were not clearly set out in its constitution, and that the constitution did not set out the manner of terminating membership in the party. Their holdings and the wording of the relevant legal provisions, while succinct, set out in enough detail the requirements which needed to be fulfilled for the party to obtain registration. It is reasonable for a State to expect political parties or other entities seeking registration to comply with certain legitimate formal conditions relating in particular to the manner in which their registration documents are drafted. Therefore, the courts' refusal, in accordance with their practice, to register the party on account of its founders' failure to fulfil them does not appear arbitrary or an onerous obstacle (see, *mutatis mutandis*, *Movement for Democratic Kingdom v. Bulgaria*, no. 27608/95, Commission decision of 29 November 1995, unreported).

5. The courts also had regard to the party's name. While conceding that it did not fully coincide with that of any other existing party, they were of the view that its similarity (Communist Party of Bulgaria) to that of another existing party (Bulgarian Communist Party) constituted sufficient grounds to deny registration under the requirement of section 8(1) of the Political Parties Act of 1990 that a party's name must set it apart from other parties. That being so, we accept that the courts' desire to avoid confusion in the names of different parties was reasonable. That conclusion is not altered by those courts' decisions in other cases, where they apparently did not apply such exacting standards, as the Court's task is to rule on the particular facts of the case before it.

6. The second group of arguments invoked by the national courts and the Government for the refusal to register the party had to do with its aims, which they considered to be contrary to certain constitutional and statutory proscriptions. It is true that such grounds for refusing registration may appear problematic if they were the only ones for the impugned interference, as in other cases examined by the Court (see, for example, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 51, 3 February 2005). However, in the particular circumstances of the instant case they were only supplementary and not decisive for the refusal to register the party.

7. For these reasons, we are of the view that there has been no violation of Article 11 of the Convention.