FIFTH SECTION

CASE OF ZELENI BALKANI v. BULGARIA

(Application no. 63778/00)

JUDGMENT

STRASBOURG

12 April 2007

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 Zeleni Balkani v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 63778/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by "Zeleni Balkani" (which translated means "Green Mountains"), a Bulgarian non-profit environmental protection organisation founded in 2000 and based in the city of Plovdiv ("the applicant organisation"), on 31 August 2000.

2. The applicant organisation was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

4. The applicant organisation claimed that there had been an unlawful interference with its right to freedom of peaceful assembly on account of the prohibition by the Plovdiv Municipality of a public rally planned for 19 April 2000. It also claimed that it did not have an effective domestic remedy for the aforesaid complaint.

In its initial submissions, the applicant organisation also raised complaints under Articles 6 and 8 of the Convention. With a letter of 15 March 2005 it informed the Court that it no longer maintained those complaints.

5. On 20 May 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. On an unspecified date the Plovdiv Municipality (the municipality) started clearing the banks and the riverbed of the river "Maritza", which runs through the city. The procedure involved the uprooting and eradication of trees and plant life, which were blocking the flow of the river.

7. The applicant organisation believed that the actions of the municipality were in violation of the domestic environmental protection legislation and that the disorderly uprooting and eradication of the trees and the plant life would disrupt the biological balance of the river.

8. On 18 April 2000 the applicant organisation informed the municipality of its intention to hold a public rally on the following day, the 19th, in front of the municipality. The aim of the public rally was to protest against the municipality's actions and to demand that the disorderly uprooting and eradication of the river's plant life be stopped because it was destroying important alluvial trees and the habitat of rare, endangered birds.

9. In a letter of 19 April 2000 the municipality informed the applicant organisation that it would not permit the rally to go ahead as planned. The full text of the letter, signed by the secretary of the municipality, read as follows:

> "We inform you that the Plovdiv Municipality does not permit the conducting of the [planned] public rally."

10. Later on the same day, police officers visited the offices of the applicant organisation and obtained signed declarations from its leaders that they were aware of the prohibition and would not organise the rally as planned.

11. The applicant organisation did not hold a rally on 19 April 2000 and the clearing the banks and the riverbed of the river "Maritza" continued unabated.

12. On 26 April 2000 the applicant organisation appealed against the municipality's prohibition of its public rally. The appeal was filed with the municipality which did not forward it, as required under the applicable legislation, to the domestic courts together with all relevant documents.

13. On 7 June 2000 the applicant organisation re-filed its appeal with the Plovdiv Regional Court.

14. On 21 June 2000 the Plovdiv Regional Court requested the municipality to provide it with its file and all other relevant documents regarding the public rally planned by the applicant organisation.

15. The municipality sent the requested documents to the Plovdiv Regional Court on 22 June 2000 with the exception of the applicant organisation's appeal of 26 April 2000.

16. On 5 July 2000 the Plovdiv Regional Court requested that the municipality also provide it with the applicant organisation's appeal of 26 April 2000. On the same day it also instructed the applicant organisation to deposit the required court fee, which the latter did on 9 October 2000.

17. On 25 October 2000 the municipality provided the Plovdiv Regional Court with the applicant organisation's appeal of 26 April 2000.

18. At a hearing on 24 January 2001 the applicant organisation's appeal was examined by the Plovdiv Regional Court.

19. In a judgment of 28 March 2001 the Plovdiv Regional Court declared null and void the municipality's prohibition of the public rally planned by the applicant organisation for 19 April 2000. It established that the prohibition had been issued in violation of the provisions of the Meetings and Marches Act, as it had been decided not by the mayor but by the secretary of the municipality. Furthermore, it lacked reference to any of the statutory grounds for issuing such prohibitions.

20. The applicant organisation claimed, which the Government did not challenge, that it was informed of the judgment of the Plovdiv Regional Court on 10 July 2001.

21. No appeal was filed against the judgment of 28 March 2001 and it became final on an unspecified date.

B. Relevant domestic law and practice

1. The Constitution (1991) and the Meetings and Marches Act (1990)

22. The relevant provisions of the Constitution (1991) and the Meetings and Marches Act (1990) have been summarised in the Court's judgment in the case of *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (no. 44079/98, §§ 72-79, 20 October 2005).

2. The Administrative Procedures Act (1979)

23. Section 39 (1) of the Administrative Procedures Act provided at the relevant time that the administrative authority, whose act was being appealed, had an obligation to forward the appeal filed with it to the competent court within three days together with its full file on the matter. The second paragraph of this section provided that if the appeal and file were not forwarded to the courts then the appellant had the right to re-file his appeal directly with the courts.

3. The State Responsibility for Damage Act (1988)

24. Before 1 January 2006 the State Responsibility for Damage Act of 1988 (the "SRDA") provided, *inter alia*, that the State was liable for damage caused only to private persons by (a) the illegal acts, actions or omissions of its bodies and officials acting within the scope of, or in connection with, their administrative duties; and (b) the organs of the investigation, the prosecution and the courts (sections 1 and 2: see Решение № 1307 от 21.10.2003 г. по гр. д. № 2136/2002 г., V г. о. на ВКС and Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС).

25. Currently, the State and local municipalities are also liable for damage caused to juridical entities by the illegal acts, actions or omissions of their bodies and officials acting within the scope of, or in connection with, their administrative duties (section 1). The amendment does not have retroactive effect in respect of damage cause prior to its date of introduction.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 11 AND 13 OF THE CONVENTION

26. The applicant organisation complained that there had been an unlawful interference with its right to freedom of peaceful assembly, as provided in Article 11 of the Convention, on account of the prohibition issued by the municipality of the public rally planned for 19 April 2000. It also complained of the lack of an effective domestic remedy for its complaint under Article 11 of the Convention on account of the domestic courts having declared null and void the prohibition issued by the municipality almost a year after the date of the planned event and also in view of the alleged inability to seek redress for the actions of the municipality.

Articles 11 and 13 of the Convention provide as follows:

Article 11

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the

protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Article 13

"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. Preliminary objection of non-exhaustion

27. The Government submitted that the applicant organisation had not exhausted the available domestic remedies because it failed to appeal against the judgment of the Plovdiv Regional Court of 28 March 2001, with which it was evidently unsatisfied.

28. The applicant responded that the Government's position was contradictory as they insisted that it should have appealed against the said judgment in order to obtain adequate redress for its Convention complaints. However, they then also argued that the same judgment should, in any event, be considered to have fully remedied the alleged interference with the applicant organisation's rights under the Convention (see paragraph 30 below). Thus, it considered the Government's objection contradictory, unsubstantiated and requested that it be rejected.

29. The Court finds that the Government have failed to demonstrate that the applicant organisation had a right of appeal against the judgment of the Plovdiv Regional Court of 28 March 2001 (see paragraph 21 above), given that the decisions of the domestic courts under section 12 (6) of the Meetings and Marches Act (1990) were final (see paragraph 22 above). Moreover, they did not specify how such an appeal could have remedied the applicant's complaints currently before the Court.

It follows, therefore, that the Government's objection must be rejected.

B. The parties' further submissions

30. The Government consented that there had been an interference with the applicant organisation's right to freedom of peaceful assembly as provided in Article 11 of the Convention. However, they argued that that interference had been fully remedied by the judgment of the Plovdiv Regional Court of 28 March 2001 which had declared the prohibition null and void.

Separately, the Government claimed that the applicant organisation had contributed to any alleged delay by the domestic courts because it belatedly

and wrongly re-filed its appeal with the Regional Court instead of filing it with the District Court immediately after the municipality failed to forward it itself. They also noted that the applicant organisation had not promptly paid the required court fees. The Government further argued that, once the documents had been received from the municipality and the court fees had been paid, the Regional Court had examined the appeal in only one hearing and had promptly delivered its judgment.

The Government also claimed that the applicant organisation could have organised a similar rally on some other day, but never tried to do so.

Lastly, they argued that if the applicant organisation considered that it had suffered damage as a result of the prohibition of its event, then it should have filed a tort action for damage, which the Government considered to be an effective domestic remedy.

31. The applicant organisation responded that it was irrelevant how long it had taken for it to re-file its appeal with the domestic courts. What it did consider relevant was that the municipality had unlawfully prohibited its rally of 19 April 2000 without citing any grounds. It had then employed the police to force its leaders to sign declarations that they would not violate the said prohibition. The applicant organisation therefore considered immaterial any delay on its part in utilising its right to re-file its appeal with the domestic courts after the municipality had failed to forward it to them.

In addition, the applicant organisation argued that the municipality had protracted the proceedings before the Regional Court by at least four months as it had failed promptly to provide the domestic court with the full file regarding the public rally. The applicant organisation further noted that the rally of 19 April 2000 was planned to coincide with the municipality's actions in clearing the banks and the riverbed of the river “Maritza”. However, as a result of the aforesaid delay in providing the Regional Court with the required documents, the latter's review of the actions of the municipality became redundant. This was additionally exacerbated by the Regional Court which, despite of the requirement of the Meetings and Marches Act to examine such appeals within five days, heard the appeal only on 24 January 2001 while having received all the required documents on 25 October 2000. In addition, despite of the simple and straightforward nature of the case, the domestic court took another two months to deliver its judgment on 28 March 2001. In conclusion, the applicant organisation considered that any delay on its part was greatly outweighed by the authorities' failure to promptly examine the said appeal.

In respect of whether the interference with its right to peaceful assembly had been prescribed by law, the applicant organisation referred to the findings in the judgment of 28 March 2001 of the Plovdiv Regional Court where the latter found that the municipality's prohibition had been issued in violation of the Meetings and Marches Act. In view of the aforesaid, the applicant organisation did not consider it necessary to examine whether the

interference was necessary in a democratic society, nor whether it was proportionate. Nevertheless, noting that the Government did not claim that the interference had a legitimate aim, it referred to the findings of the Court in the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (nos. 29221/95 and 29225/95, §§ 84-87, ECHR 2001-IX) which it considered relevant to the present case.

C. Admissibility

32. In respect of the applicant organisation's victim status following the domestic court's judgment of 28 March 2001, the Court recalls its case-law that a decision or measure favourable to an applicant is not in principle sufficient to deprive the said applicant of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *mutatis mutandis*, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI and *Roşca v. Moldova*, no. 6267/02, §§ 18-22, 22 March 2005).

33. In the present case, the Court notes that in its judgment of 28 March 2001 the Plovdiv Regional Court declared null and void the municipality's prohibition on a technicality stemming from the fact that it had been decided not by its mayor but by its secretary (see paragraph 19 above). Despite finding that the prohibition had been unlawfully issued, the domestic court neither acknowledged a breach of the applicant organisation's right to freedom of peaceful assembly nor afforded redress for it (see paragraph 19 above). In addition, it declared the prohibition as null and void almost one year after the planned event when, in the view of the applicant organisation, the need for such a public rally no longer existed (see paragraph 31 above).

34. Considering the above, the Court finds that the domestic court's judgment of 28 March 2001 did not deprive the applicant organisation of its "victim" status (see, *mutatis mutandis*, *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports 21, p. 138; *Christian Democratic People's Party (1) v. Moldova* (dec.), no. 28793/02, 22 March 2005; and, for a similar consideration in respect of exhaustion see *Stankov and United Macedonian Organisation "Ilinden" v. Bulgaria*, nos. 29221/95 and 29225/95, Commission decision of 29 June 1998, unreported).

35. In conclusion, the Court finds that the applicant's complaints under Articles 11 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

D. Merits

1. Alleged violation of Article 11 of the Convention

(a) Whether there was interference

36. The parties agreed that there had been an interference with the exercise of the applicant organisation's right to freedom of peaceful assembly within the meaning of the second paragraph of Article 11 of the Convention (see paragraphs 30 and 31 above). That view is shared by the Court.

(b) Whether the interference was justified

37. The Court reiterates that such an interference will constitute a breach of Article 11 of the Convention unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

38. The Court observes that the Plovdiv Regional Court established in its judgment of 28 March 2001 that the municipality's prohibition of the applicant organisation's public rally of 19 April 2000 was issued in violation of the Meetings and Marches Act (see paragraph 19 above). Accordingly, the said prohibition represented an interference with the exercise of the applicant organisation's right to freedom of peaceful assembly which was not "prescribed by law" within the meaning of the second paragraph of Article 11 of the Convention.

39. In the light of this conclusion, the Court is not required to determine whether the interference pursued one or more legitimate aims under paragraph 2 and whether it was "necessary in a democratic society" for the achievement of those aims (see, *mutatis mutandis,* in respect of a similar conclusion in reference to Article 8 of the Convention*, Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82, p. 37, § 82, *Khan v. the United Kingdom*, no. 35394/97, § 28, ECHR 2000-V and *Yordanov v. Bulgaria*, no. 56856/00, § 116, 10 August 2006; and, in reference to Article 1 of Protocol No. 1 to the Convention*, Amat-G Ltd and Mebaghishvili v. Georgia*, no. 2507/03, § 62, 27 September 2005).

40. Neither is it of relevance, as the Government claimed, whether or not the applicant organisation could have organised a similar public rally on

another day as the prohibited event was in any event time specific to coincide with the clearing of the banks and the riverbed of the local river (see paragraphs 30 and 31 above).

41. Considering all of the above, the Court finds that there has been a violation of Article 11 of the Convention on account of the municipality's unlawful prohibition of the applicant organisation's public rally of 19 April 2000.

2. Alleged violation of Article 13 of the Convention

42. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

43. The Court further reiterates that, in general, actions for damages in the domestic courts may provide an effective remedy in cases of alleged unlawfulness or negligence by public authorities (see, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 162-63, ECHR 2001-III (extracts) and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 99, ECHR 2002-II).

44. The Court notes at the outset that the applicant organisation had a procedure available under the Meetings and Marches Act which provided for a juridical review, within five days, of the municipality's prohibition of its public rally (see paragraph 22 above). The applicant organisation made use of this procedure and appealed against the said prohibition on 26 April 2000 (see paragraph 12 above). However, the domestic court failed to examine the applicant organisation's appeal within the prescribed five-day deadline. In fact, it delivered its judgment and declared the municipality's prohibition null and void ten months later on 28 March 2001 (see paragraph 19 above). In so far as its conclusion in respect of the lawfulness of the prohibition rested solely on the question of whether the mayor or the secretary of the municipality could issue such a prohibition, the Court does not find it justified that the domestic proceedings took such a period to conclude. The Court does recognise that the municipality and the applicant

organisation contributed to some extent to part of the delay in the proceedings by failing to provide the domestic court with all the relevant documents and to timely deposit the required court fees (see paragraphs 14-17 above). However, that does not excuse the lack of expedience on the part of the domestic court once the case file was fully compiled on 25 October 2000 (see paragraphs 17-19 above).

45. Thus, the Court finds that in the present case the applicant organisation use of the appeal procedure under the Meetings and Marches Act was not effective as it resulted in the domestic court declaring the municipality's prohibition as null and void almost a year after the planned event when the need for such a rally no longer existed.

46. In respect of the possibility for the applicant organisation to seek redress for the unlawful actions of the municipality, the Court observes that it not have such a right under the State Responsibility for Damage Act. The Court is also not convinced by the Government's argument that the applicant organisation could have filed a tort action for damage, as there are no relevant reported domestic cases, and the Government does not cite or rely on any such, where such an organisation has successfully obtained damage from the State in a similar situation.

47. Considering all of the above, the Court finds that there has been a violation of Article 13, in conjunction with Article 11 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant organisation claimed 10,000 euros (EUR) as compensation for the non-pecuniary damage arising out of the violation of its Convention rights. It claimed that its opposition to the actions of the municipality had been frustrated which had been further intensified by the involvement of the police and the latter's insistence that its leaders sign declarations that they would not violate the issued prohibition. The applicant organisation also claimed that the lengthy proceedings before the domestic courts and the uselessness of the resulting judgment created further frustration and a sense of helplessness in the face of the unlawful actions of the authorities. It also referred to other cases against Bulgaria, where the Court had found a violation of Article 11 of the Convention and

had awarded compensation for non-pecuniary damage to the applicants in those cases (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 121; *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, cited above, § 122; and *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, § 67, 20 October 2005).

50. The Government stated that these claims were excessive and did not correspond to the size of awards made by the Court in previous similar cases. Referring to the award of 10,000 Bulgarian levs (BGN: approximately EUR 5,128) in the case of *Hasan and Chaush v. Bulgaria* [GC] (no. 30985/96, § 121, ECHR 2000-XI), they noted that the applicant organisation's claim was twice as large as what the Court had awarded in that case.

51. Taking into account the circumstances of the case, the Court accepts that the applicant organisation suffered non-pecuniary damage as a consequence of the violation of its right to freedom of peaceful assembly. Making its assessment on an equitable basis and having regard to its case-law (see the cases referred to in the previous paragraphs), the Court awards the applicant organisation the sum of EUR 2,500 on that account, plus any tax that may be chargeable on this amount.

B. Costs and expenses

52. The applicant organisation also claimed EUR 2,324 for cost and expenses. The amount included (a) 6 hours of legal work of its lawyer on the proceedings before the domestic authorities at an hourly rate of EUR 70, (b) 27 hours of legal work by its lawyer in the proceeding before the Court at the same hourly rate and (c) EUR 49 for postal, stationary and photocopies expenses. The applicant organisation submitted a legal fees agreement, a timesheet and registered mail receipts. It also requested that the costs and expenses be paid directly to its lawyer minus BGN 500 (approximately EUR 256), which he received as advance payment for his services from the applicant organisation.

53. The Government stated that the claim was excessive and that the postal, photocopy and stationery expenses were not supported by receipts to evidence that they had actually been incurred.

54. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicant failed to present supporting documents in respect of the allegedly incurred expenses for stationary and photocopies. Having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 1,500 covering costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13, in conjunction with Article 11 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay to the applicant organisation, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, of which EUR 1,244 payable into the bank account of the applicant organisation's lawyer in Bulgaria, Mr M. Ekimdjiev;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant organisation's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President