FIFTH SECTION

CASE OF ZHECHEV v. BULGARIA

(Application no. 57045/00)

JUDGMENT

STRASBOURG

21 June 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 Zhechev v. Bulgaria,

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

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

Having deliberated in private on 29 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 57045/00) 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 Mr Petar Zhechev Zhechev, a Bulgarian national who was born in 1928 and lives in Plovdiv.

2. The applicant was represented by Mr by Mr M. Ekimdzhiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant complained, in particular, about the refusal of the domestic courts to register an association chaired by him.

4. By a decision of 2 May 2006 the Court declared the application partly admissible.

5. Neither the applicant, nor the Government filed written observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is the chairman of the association "Civil Society for Bulgarian Interests, National Dignity, Union and Integration – for Bulgaria" („Гражданско общество за български интереси, национално достойнство, единение и обединение – за България" – "the association").

7. The association was founded on 19 December 1996 in Plovdiv. At a meeting on that date the founders adopted its articles and elected its management bodies. The applicant was elected as its chairman.

8. The association's articles read, as relevant:

> "1. [The association] is a Bulgarian patriotic non-profit organisation. It shall be DEMOCRATIC in form and NATIONAL in content.
>
> OBJECT: mass, historically and morally enlightening, societal and political, cultural and educational, scientific and research, sport and technical, publishing, advertising, charitable and all other types of activities and services which are allowed (not prohibited) under the [Persons and Family Act of 1949] in respect of non-profit associations.
>
> 2. [The association] is founded with the aims of: uplifting the Bulgarian spirit; protecting the Bulgarian interests and creating a wealthy, prosperous and patriotic nation; elevating, developing and preserving the Bulgarian national dignity; uniting the Bulgarian identity within and outside the boundaries of the promised Bulgarian land, under the flag of historical truth; protecting and restoring the coat of arms of the Bulgarian Kingdom as a coat of arms of Bulgaria.
>
> 3. [The association] is for the creation of a people's court to judge those responsible for the gravest economic, spiritual, moral and demographic crisis of the Bulgarian society, Bulgarian banking and Bulgarian statehood since 9 September 1944, in particular the period 1994, 1995, 1996 and the following years. ...
>
> 4. [The association] is for a wide discussion ... of the illegal trampling and repealing of our first constitution after our liberation in 1878, the most democratic Constitution of Tarnovo and the imposition of the present [Constitution]...
>
> [The association] is for the reinstatement (possibly with amendments) of the unlawfully abolished 'CONSTITUTION OF TARNOVO'...
>
> [The association] is for ... changing the form of government of Bulgaria, for the returning of H.M. KING SIMEON II to the motherland and the throne. ...
>
> 8. ... The core of the [association's] activity shall be the spiritual unification of all Bulgarians, contacts with and consolidation of the Bulgarian Diaspora, establishment of sincere relations with ... all Bulgarians outside Bulgaria, and, in the international relations – point one shall be: abolition (opening) of the border between Bulgaria and Macedonia..."

9. On an unspecified later date the association submitted to the Plovdiv Regional Court an application for registration.

10. The Plovdiv Regional Court refused the application in a judgment of 6 June 1997. It held:

> "[According to] clause 2 of [its articles], [the association] intends to protect and restore the coat of arms of the Bulgarian Kingdom as a coat of arms of Bulgaria. According to clause 3 of the articles, the association is for the establishment of a 'people's court to judge those responsible for the gravest economic, spiritual, moral and demographic crisis of the Bulgarian society, Bulgarian banking and Bulgarian

statehood since 9 September 1944, in particular the period 1994, 1995, 1996 and the following years'. Clause 4 of the articles provides for a debate on the repealing of the Constitution of Tarnovo and the adoption of the [C]onstitution [of 1991] which is presently in force.

The goals which have been enumerated thus far are sufficient to refuse the association's registration. They are clearly political in nature and are characteristic of a political party, whose registration is to be carried out under the Political Parties Act [of 1990]."

11. The applicant, acting in his capacity of chairman of the association, appealed to the Supreme Court of Cassation. He argued, *inter alia*, that the association's aims were not political, but goals which could be pursued by every citizen.

12. Following an amendment to the Code of Civil Procedure of 1952 providing that the judgments of the regional courts were no longer appealable before the Supreme Court of Cassation, but before the newly established courts of appeals, on 1 April 1998 the Supreme Court of Cassation forwarded the applicant's appeal to the newly created Plovdiv Court of Appeals.

13. On 10 March 1999 the Plovdiv Court of Appeals upheld the lower court's judgment. It held as follows:

"The articles of [the association] contain provisions which are contrary to the ... Constitution of the Republic of Bulgaria. For instance, clause 2 of the articles provides for the restoration of the coat of arms of the Bulgarian Kingdom as the country's coat of arms. Clause 4 provides for a change of the form of government from republic to monarchy and for the restoration of the Constitution of Tarnovo [of 1879]. Clause 8 of the articles – abolition of the border between Bulgaria and [the former Yugoslav Republic of] Macedonia. These goals, as formulated in the above-cited clauses, run counter to Articles 1, 2 § 2 and 164 of the Constitution. Moreover, the association indeed has political goals, whereas by Article 12 § 2 of the Constitution associations may not pursue political goals and carry out political activities that are characteristic solely of political parties."

14. The applicant appealed on points of law to the Supreme Court of Cassation. He argued that the lower court had incorrectly held that the association's aims were contrary to the Constitution. Furthermore, the association did not pursue political aims, because it was not aspiring to accede to power. The courts' refusal to register it was an infringement of its founders' freedom of expression.

15. On 17 May 1999 the Supreme Court of Cassation directed the applicant to specify the grounds on which he sought the quashing of the judgment below. In line with these instructions, the applicant submitted additional observations. He reiterated his contention that the association's aims were not political, because it was not seeking to accede to power through elections or otherwise, or exercise it. Its aims were characteristic of the civil society and were to be achieved through other, non-political means. Furthermore, the association's articles did not provide for the creation of a

people's court, it did not in fact object to the new coat of arms of Bulgaria and was not seeking to change the form of government from republic to monarchy. These were erroneous findings of the lower court. Finally, the association was seeking to achieve the spiritual union of all Bulgarians, not the abolition of the border between Bulgaria and the former Yugoslav Republic of Macedonia.

16. On 11 October 1999 the Supreme Court of Cassation upheld the Plovdiv Court of Appeals' judgment in the following terms:

> "The [lower court] correctly found that the goals set out in clauses 2, 3 and 4 of the association's articles have a certain political tenor and are characteristic of a political party, whose registration is to be carried out under the Political Parties Act [of 1990]. These goals are contrary to Articles 1, 2 § 2 and 12 § 2 [of the Constitution of 1991]."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of 1991

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

Article 1 § 1

"Bulgaria is a republic with a parliamentary form of government."

Article 2 § 2

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

Article 11

"...

3. Parties shall facilitate the formation of the citizens' political will. The manner of forming and dissolving political parties, as well as the conditions pertaining to their activity, shall be established by law.

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

Article 12

"1. The citizens' associations shall serve to further and safeguard their interests.

2. Associations ... may not pursue political goals or carry out political activities that are characteristic solely of political parties."

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."

Article 164

"The Coat of Arms of the Republic of Bulgaria shall depict a gold lion rampant on a dark gules shield."

B. The Persons and Family Act of 1949

18. At the material time this Act („Закон за лицата и семейството"), the relevant provisions of which were superseded by new legislation in 2001, regulated the formation, status and dissolution of non-profit legal entities, i.e. associations and foundations. Its pertinent provisions were:

Section 134

"An association shall acquire legal personality after its entry in the register [kept by] the Regional Court."

Section 136(1)

"An association shall be registered pursuant to an application by [its] management committee [to which shall be enclosed] a resolution for its founding and its articles of association, signed by the founders..."

Section 138

"Associations shall be managed in accordance with [their] articles of association, which must contain provisions in respect of [their] name, aims, means..."

C. The Political Parties Act of 1990

19. At the material time this Act („Закон за политическите партии"), which was superseded by new legislation in 2001, regulated the formation, registration, functioning and dissolution of political parties. Its relevant provisions read as follows:

Section 1

"1. Citizens may freely associate in political parties to influence the formation and expression of the political will of the people through elections or other democratic means.

...

3. Other organisations and movements may also carry out political activities within the bounds set by the Constitution and the laws."

Section 7

"A political party may be formed [by] not less than fifty enfranchised citizens."

Section 13

"1. A public organisation which has not been registered as a political party may not carry out the activity of a political party.

2. A [public organisation] which has not been registered as a political party may not carry out organised political activities [on the premises of] enterprises, government agencies and organisations.

3. 'Organised political activities' shall mean the holding of meetings, demonstrations, assemblies and other forms of campaigning in favour of or against a political party or an election candidate.

4. If a public organisation ... clearly carries out the activity of a political party, the regional prosecutor shall propose that it be dissolved or [re-]register as a political party within one month.

5. If the organisation under the foregoing subsection does not cease its political activity or [re-]register as a political party, it shall be dissolved..."

20. The Act also regulated the manner in which political parties were financed, providing for certain upper limits on the donations that they could receive and prohibiting their receiving anonymous donations and donations from foreign states and organisations (section 17).

D. Other relevant statutory provisions

21. Only political parties (and coalitions of such parties), and not associations, may participate in parliamentary, presidential, local and European elections and nominate candidates (section 41(2), (3) and (4) of the Electing of Members of Parliament, Municipal Councillors and Mayors Act of 1991 („Закон за избиране на народни представители, общински съветници и кметове"), section 43(1) of the Electing of Members of Parliament Act of 2001 („Закон за избиране на народни представители"),

section 3(1) and (2) of the Electing of a President and a Vice-President of the Republic Act of 1991 („Закон за избиране на президент и вицепрезидент на републиката“), section 35(1) of the Local Elections Act of 1995 („Закон за местните избори“), and section 48(1) and (3) of the Electing of Members of the European Parliament Act from the Republic of Bulgaria of 2007 („Закон за избиране на членове на Европейския парламент от Република България“)).

E. Relevant case-law of the Constitutional Court

22. In a judgment of 21 April 1992 (реш. № 4 от 21 април 1992 г. по к.д. № 1 от 1991 г., обн., ДВ, бр. 35 от 28 април 1992 г.) the Constitutional Court stated, *inter alia*, that “political activities that are characteristic solely of political parties”, within the meaning of Article 12 § 2 of the Constitution of 1991, were defined by Article 11 § 3 thereof as those which facilitate “the formation of the citizens' political will” through “elections or other democratic means”, as specified by section 1(1) of the Political Parties Act of 1990. The court also stated that “what was essential for this type of political activity [was] the direct participation in the process of forming the bodies through which, according to the Constitution, the people exercise[d] its power”. Of course, the activities of a party in connection with upcoming elections embraced the holding of meetings, assemblies and other forms of public campaigning in support of the party and the candidates nominated by it, which were also activities aimed at “forming” the citizens' political will.

F. The Constitution of 1879

23. The Constitution of 1879 was the first written constitution of Bulgaria, adopted by a Constituent National Assembly on 16 April 1879, shortly after the creation of Bulgaria as an independent State in 1878. It was repealed in 1947. It provided for constitutional monarchy (Articles 4, 5, 9, 10 and 12), with a directly elected parliament and universal suffrage (Article 86), a government accountable to the parliament (Article 153), and separation of powers (Articles 9, 12 and 13). It prohibited torture (Article 75 § 2) and punishment without law and due process (Articles 73 and 75 § 1), enshrined the right to property (Articles 67 and 68), the right to respect for one's home and correspondence (Articles 74 and 77), and the freedoms of the press and of assembly and association (Articles 79, 81, 82 and 83).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 10 AND 11 OF THE CONVENTION

24. The applicant complained about the refusal of the courts to register the association chaired by him. In his initial application he alleged a breach of Article 10 of the Convention, whereas in his observations in reply to those of the Government he additionally relied on its Article 11.

25. Article 10 provides, as relevant:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

26. Article 11 provides, as relevant:

> "1. Everyone has the right to ... freedom of association with others...
>
> 2. No restrictions shall be placed on the exercise of [this right] other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

A. The parties' submissions

27. The applicant submitted that as the association's registration had been denied on account of the contents of its articles, which had in a way constituted a "penalty" for the views expressed therein, the complaint fell to be examined under both Articles 10 and 11 of the Convention.

28. He further argued that the interference with his rights had not been prescribed by law. The Plovdiv Regional Court had not relied on a specific provision of the Political Parties Act of 1990 to justify its refusal to register the association, which was only natural in view of the text of section 1(3) of that Act. That court's proposition that only political parties could pursue political goals showed a fundamental lack of understanding of the role of non-governmental organisations in a democratic society. These were frequently founded in order to promote various causes and influence public

policies. Their goals were thus often political. The fundamental difference between them and political parties, however, were not these goals, but the means to achieve them. Political parties participated in elections and in the government, whereas associations did not. They merely influenced public opinion on various issues, thus indirectly shaping the government's policies. Likewise, the Plovdiv Court of Appeals' holding that the association's aims fell under the proscription of Article 12 § 2 of the Constitution of 1991 was erroneous. The association's aims, as was apparent from the wording of its articles, consisted of various reform ideas, but did not amount to a concrete and coherent political programme and ideology. There was no reason why such ideas could not be backed by various entities in a pluralistic society. It was important to underscore that the association's articles contained no language pointing to an intention to participate in elections or in the government, which were indeed goals solely characteristic of political parties. On the other hand, Article 12 § 2 of the Constitution of 1991 was not framed with sufficient precision, as it could be read as prohibiting to associations all types of political goals. Nor did it make clear what was exactly prohibited: political goals or also political activities. The interference had also been arbitrary, as evidenced by the lack of genuine reasons for the Supreme Court of Cassation's judgment, whose holding was packed in just four lines.

29. The applicant additionally submitted that the interference had not been necessary in a democratic society. He referred to the principles developed in Court's case-law on this issue and argued that he had been penalised solely for the ideas expressed in the association's articles. The association had not engaged in any action which could characterise it as propagating violence or undemocratic principles. The idea of a monarchy and the related insignia were not undemocratic or violent, as evidenced in particular by the fact that the name of the coalition which had ruled the country as between 2001 and 2005 had been "National Movement Simeon II", after the former heir to the throne Simeon Saxe-Coburggotski, who had become prime minister. Even before his starting into office in 2001 Bulgaria's coat of arms had featured a crown, whereas the public debate over the form of government – republic or monarchy – continued. While the Constitution indeed needed stability, it was by no means carved into stone. Its amendment could be envisaged for the purpose of bringing it in line with the dominant public views on the form of government, whereas suppressing any ideas in this respect could harm democracy and constituted unfettered majority rule.

30. The Government argued that the applicant's complaint was solely under Article 10 of the Convention. He had not relied on Article 11 thereof in his initial application and this complaint was therefore out of the scope of the case and was not to be examined by the Court.

31. The Government were further of the view that the interference with the applicant's rights had been prescribed by law, namely the Constitution of 1991, the Persons and Family Act of 1949 and the Political Parties Act of 1990. It had been intended to safeguard a wide range of public interests. All three levels of court had lawfully and justifiably refused to register the association.

32. In the Government's submission, the founders of an association were in principle free to determine the contents of its articles, but always subject to the requirements of the law. Under Bulgarian law, associations and trade unions were formed with a view to vindicating non-political interests. All three levels of court had found that certain clauses in the association's articles, which could not be construed otherwise, had been contrary to the Constitution of 1991 (Articles 1, 2 § 2 and 164) and the laws of Bulgaria, and that its aims had been political, contrary to the principle spelled out in Article 12 § 2 of the Constitution of 1991. They were at odds with Bulgaria's current form of government and thus irreconcilable with the principles of democracy and the commands of the Constitution of 1991. The association's founders could always amend the contentious clauses in its articles and reapply for registration.

B. The Court's assessment

1. Legal characterisation of the applicant's complaint

33. The Court notes that it is free to attribute to the facts of the case a characterisation in law different from that given by the parties (see, among many other authorities, *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, pp. 15-16, § 44; *Camenzind v. Switzerland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2895-96, § 50; and *K.-H.W v. Germany* [GC], no. 37201/97, § 107, ECHR 2001-II (extracts)). It notes that it has consistently stressed in its case-law that the protection of opinions and the freedom to express them is one of the objectives of the freedom of association (see, among many other authorities, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 91, ECHR 2004-I; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 44, 3 February 2005; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 59, 19 January 2006; and *Tsonev v. Bulgaria*, no. 45963/99, § 49, 13 April 2006). The Court therefore considers that the applicant's complaint should be examined under Article 11 considered in the light of Article 10 (see *APEH Üldözötteinek Szövetsége and Others v. Hungary* (dec.), no. 32367/96, 31 August 1999; and, *mutatis mutandis*, *Maestri v. Italy* [GC], no. 39748/98, §§ 23 and 24, ECHR 2004-I; and *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, §§ 71-75, ECHR 2006-...).

2. General principles in the Court's case-law on freedom of association

34. The right to form an association is an inherent part of the right set forth in Article 11 of the Convention. The ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1614-15, § 40; *The United Macedonian Organisation Ilinden and Others*, cited above, § 57; *The Moscow Branch of the Salvation Army*, cited above, § 59; and *Ramazanova and Others v. Azerbaijan*, no. 44363/02, § 54, 1 February 2007).

35. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see *Gorzelik and Others*, § 92; and *The Moscow Branch of the Salvation Army*, § 61, both cited above).

36. Given that the implementation of the principle of pluralism is impossible without an association 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 paragraph 33 above and *Gorzelik and Others*, cited above, § 91, with further references). Such a link is particularly relevant where – as here – the authorities' stance towards an association was in reaction to its views and statements (see *The United Macedonian Organisation Ilinden and Others*, cited above, § 59, citing *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 85 *in fine*, ECHR 2001-IX).

2. Was there an interference?

37. The Court considers that the domestic courts' refusal to register the association chaired by the applicant amounted to an interference with the exercise of his right to freedom of association (see *Sidiropoulos and Others*, p. 1612, § 31; *Gorzelik and Others*, § 52; *Partidul Comunistilor (Nepeceristi) and Ungureanu*, § 27; *The United Macedonian Organisation Ilinden and Others*, § 53; *Tsonev*, § 43; *The Moscow Branch of the Salvation Army*, § 71; and *Ramazanova and Others*, § 60, all cited above).

38. The Court must therefore examine whether the interference was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of Article 11 and was "necessary in a democratic society" for the achievement of those aims.

3. Was the interference "prescribed by law"?

39. On this point, the Court notes that to refuse registration the domestic courts relied on several articles of the Constitution of 1991 (see paragraphs 10, 13 and 16 above). The applicant argued that these courts had erred in the interpretation and application of these legal provisions. However, the Court notes that it is primarily for the national courts to interpret and apply domestic law (see *The United Macedonian Organisation Ilinden and Others*, § 55; and *Tsonev*, § 45, both cited above). Firstly, it is prepared to accept that their holding that the aims of the association were contrary to the Constitution of 1991 did not go so far as to become arbitrary. Secondly, it is true that their categorization of these aims as "political" within the meaning of Article 12 § 2 of the Constitution of 1991 and their holding that the association could not pursue them without being a political party may appear questionable in view of the construction of this Article by the Constitutional Court and the tenor of the other relevant provisions of domestic law (see paragraphs 17, 19 and 22 above). However, the Court is mindful that legal opinions on the exact purport of such a wide notion open to largely diverse interpretations – "political" – may differ. It is therefore likewise prepared to accept that these holdings were not as patently unreasonable as to become arbitrary. Moreover, while the reasoning of the national courts, and especially that of the Supreme Court of Cassation, was indeed very scant, it was not altogether lacking, as claimed by the applicant.

40. The Court does not furthermore perceive a problem in the alleged vagueness of Article 12 § 2 of the Constitution of 1991. It is not possible to attain absolute rigidity in the framing of laws, and many of them – especially a national constitution – are inevitably couched in terms which, to a greater or lesser extent, are vague. The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question and the field it is designed to cover (see *Maestri*, cited above, § 30 *in fine*). It must also be borne in mind that, however

clearly drafted a legal provision may be, its application involves an inevitable element of judicial interpretation, since there will always be a need for clarification of doubtful points and for adaptation to particular circumstances. The mere fact that such a provision is capable of more than one construction does not mean that it fails to meet the requirement of "foreseeability" for the purposes of the Convention. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (see *Gorzelik and Others*, cited above, § 65).

41. The Court is thus satisfied that the interference was "prescribed by law".

4. Did the interference pursue a legitimate aim?

42. While the Government were not specific on this point, the Court is prepared to accept that the interference aimed at protecting national security, preventing disorder and protecting the rights and freedoms of others.

5. Was the interference "necessary in a democratic society"?

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

43. The exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the 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, among many other authorities, *Sidiropoulos and Others*, cited above, pp. 1614-15, § 40; *The United Macedonian Organisation Ilinden and Others*, § 61; *Tsonev*, § 51; and *The Moscow Branch of the Salvation Army*, § 76, all cited above).

44. 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 were "relevant and sufficient". In so doing, the Court has to satisfy itself that these 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; *Partidul Comunistilor (Nepeceristi) and Ungureanu*, § 49; *The United Macedonian Organisation Ilinden and Others*, § 62; *Tsonev*, § 52; and *The Moscow Branch of the Salvation Army*, § 77, all cited above).

(b) Application of these principles to the present case

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

(i) Grounds relied on to justify the interference

46. 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 (see paragraphs 10, 13, 16 and 32 above). That being so, the Court will examine these groups in turn.

(α) Alleged incompatibility of the association's aims with the Constitution of 1991

47. Regarding the alleged incompatibility of the association's aims with the Constitution of 1991, the Court considers that even if it may be assumed that what the association was trying to achieve – repealing that Constitution, reinstating the Constitution of 1879, and restoring the ancient coat of arms and the monarchy – was indeed contrary to Articles 1 § 1 and 164 of the Constitution of 1991, that does not mean that the interference was justified. An organisation may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental democratic principles (see *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II; *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 98, ECHR 2003-II; and *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, § 59, 20 October 2005). There is no indication that these conditions were not present. Monarchy is not incompatible in itself with the principles of democracy, as shown by the example of a number of member States of the Council of Europe. Nor has it been argued that the Constitution of 1879 was undemocratic. It provided for a parliamentary monarchy, separation of powers, universal suffrage, and enshrined a number of fundamental rights (see paragraph 23 above).

48. Moreover, it does not seem that the proposed “abolition” or “opening” of the border between the former Yugoslav Republic of Macedonia and Bulgaria, found to be contrary to Article 2 § 2 of the Constitution of 1991, could jeopardise in any conceivable way those countries' territorial integrity or national security. Firstly, it does not appear

that it truly amounted to a request for territorial changes. Secondly, even if it was so, the mere fact that an organisation demands such changes cannot automatically justify interferences with its members' freedoms of association and assembly (see *The United Macedonian Organisation Ilinden – PIRIN and Others*, cited above, § 61, citing *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 97).

49. There is furthermore no indication, and it has not been suggested by the domestic courts or the Government, that the association would use violent or undemocratic means to achieve its aims.

50. Finally, it does not appear that the association had any real chance of bringing about changes which would not meet with the approval of everyone on the political stage (see *Yazar and Others*, § 58 *in fine*; and *The United Macedonian Organisation Ilinden – PIRIN and Others*, § 61, both cited above). It appears that its public influence was negligible (see, as an example to the contrary, *Refah Partisi (The Welfare Party) and Others*, cited above, §§ 107-10).

51. In sum, the Court considers that the aims of the association were not as such a sufficient ground to refuse its registration.

(β) Alleged "political" character of the association's aims

52. The national courts found that some of the aims of the association – the restoration of the Constitution of 1879 and of the monarchy – were "political goals" within the meaning of Article 12 § 2 of the Constitution of 1991 and could hence be pursued solely by a political party.

53. The Court has already expressed certain misgivings in relation to these holdings (see paragraph 39 above). However, it is not for it to give an authoritative opinion on the correct interpretation of domestic law, that task being reserved for the national courts. It will therefore proceed on the assumption that this law was construed correctly and will examine whether its application with regard to the applicant led to results compatible with the Convention (see *Gorzelik and Others*, cited above, § 100).

54. The Court must therefore verify whether it is necessary in a democratic society to prohibit organisations, unless registered as political parties, from pursuing "political goals". In so doing it must examine whether this ban corresponds to a "pressing social need" and whether it is proportionate to the aims sought to be achieved (ibid., §§ 94-105).

55. The first thing which needs to be noted in this connection is the uncertainty surrounding the term "political", as used in Article 12 § 2 of the Constitution of 1991 and as interpreted by the domestic courts. For instance, in the present case these courts deemed that a campaign for changes in the constitution and the form of government fell within that category. In another recent case these same courts had, more questionably, stated that the "holding of meetings, demonstrations, assemblies and other forms of public campaigning" by an association campaigning for regional autonomy and

alleged minority rights also amounted to political goals and activities within the meaning of Article 12 § 2 of the Constitution of 1991. The Court found this holding unwarranted (see *The United Macedonian Organisation Ilinden and Others*, cited above, §§ 17, 19, 21 and 73). The Constitutional Court has, for its part, adopted a different definition of "political", which was centred on "participation in the process of forming the bodies through which ... the people exercise[d] its power" (see paragraph 22 above). Against this background and bearing in mind that this term is inherently vague and could be subject to largely diverse interpretations, it is quite conceivable that the Bulgarian courts could label any goals which are in some way related to the normal functioning of a democratic society as "political" and accordingly direct the founders of legal entities wishing to pursue such goals to register them as political parties instead of "ordinary" associations. A classification based on this criterion is therefore liable to produce incoherent results and engender considerable uncertainty among those wishing to apply for registration of such entities.

56. If associations in Bulgaria could, when registered as such, participate in elections and accede to power, as was the case in *Gorzelik and Others* (cited above), it might be necessary to require some of them to register as political parties, so as to make them subject to, for instance, stricter rules concerning party financing, public control and transparency (see paragraph 20 above). However, under Bulgarian law, as it stood at the material time and as it stands at present, associations may not participate in national, local or European elections (see paragraph 21 above). There is therefore no "pressing social need" to require every association deemed by the courts to pursue "political" goals to register as a political party, especially in view of the fact that, as noted above, the exact meaning of that term under Bulgarian law appears to be quite vague. That would mean forcing the association to take a legal shape which its founders did not seek. It would also mean subjecting it to a number of additional requirements and restrictions, such as for instance the rule that a political party cannot be formed by less than fifty enfranchised citizens (see paragraph 19 above), which may in some cases prove an insurmountable obstacle for its founders. Moreover, such an approach runs counter to freedom of association, because, in case it is adopted, the liberty of action which will remain available to the founders of an association may become either non-existent or so reduced as to be of no practical value (see, *mutatis mutandis*, *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, Series A no. 44, p. 23, § 56; *Sigurður A. Sigurjónsson v. Iceland*, judgment of 30 June 1993, Series A no. 264, pp. 15-16, § 35; and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 114 *in fine*, ECHR 1999-III).

57. The Court therefore considers that alleged "political" character of the association's aims was also not a sufficient ground to refuse its registration.

(ii) The significance of the interference

58. The Court notes that, in its impact on the applicant, the impugned measure was radical: it went so far as to prevent the association from even commencing any activity (see *Gorzelik and Others*, § 105; *The United Macedonian Organisation Ilinden and Others*, § 80; and *Tsonev*, § 63, all cited above).

(iii) The Court's conclusion

59. In the light of the foregoing, the Court concludes that the reasons invoked by the respondent State to refuse the registration of the association chaired by the applicant 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 5,000 euros (EUR) for the non-pecuniary damage resulting from the refusal of the domestic courts to register the association chaired by him.

62. The Government did not express an opinion on the matter.

63. The Court accepts that the applicant sustained non-pecuniary damage from the domestic courts' refusal to register the association chaired by him. It holds, however, that the finding of a violation of Article 11 constitutes sufficient compensation for it (see *Partidul Comunistilor (Nepeceristi) and Ungureanu*, § 70; and *Tsonev*, § 70, both cited above).

B. Costs and expenses

64. The applicant sought the reimbursement of EUR 1,802.50 incurred in legal fees and EUR 35 for expenses for the proceedings before the Court. He submitted a fees agreement between him and his lawyer and a time-sheet, and requested that any amount awarded by the Court under this head be paid into the bank account of his lawyer.

65. The Government did not express an opinion on the matter.

66. The Court accepts that the applicant incurred costs and expenses for the proceedings. His claim is supported with relevant materials. The Court notes that part of the application was declared inadmissible (see paragraph 4 above), but, taking into account the complexity of the complaint which was examined on the merits, does not consider that this warrants a reduction in the award. Having regard to the elements in its possession and the above considerations, and deducting EUR 715 received in legal aid from the Council of Europe, the Court awards the applicant the full amount of his claim (EUR 1,087.50), plus any tax that may be chargeable, to be paid into the bank account of his representative, Mr M. Ekimdzhiev.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,087.50 (one thousand eighty-seven euros and fifty cents) 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, to be paid into the bank account of the applicant's representative, Mr M. Ekimdzhiev;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK	Peer LORENZEN
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:

(a) Concurring opinion of Ms Tsatsa-Nikolovska;

(b) Concurring opinion of Mr Maruste.

P.L.
C.W.

CONCURRING OPINION OF JUDGE TSATSA-NIKOLOVSKA

I was able to vote that there had been a violation in this case as the operative part of the judgment is a very general one, but I would like to explain my position.

In paragraphs 48, 49 and 50 of the judgment, the Court assessed the association's aim concerning "abolition" of the border between Bulgaria and Macedonia, which was indicated in clause 8 of its articles of association.

The applicant, when directed by the Supreme Court of Cassation to state the grounds for appeal, said that the association did not seek the abolition of the border. The Supreme Court of Cassation delivered judgment after holding a hearing and upheld the Plovdiv Court of Appeals' judgment only as regards clauses 2, 3 and 4 of the association's articles, without making any assessment on clause 8.

As the applicant expressed in the clarification he gave to the Supreme Court of Cassation, the association had abandoned the aim in clause 8 – the abolition of the border and since the final interference with the applicant's rights came with the Supreme Court of Cassation's judgment, in which abolition was not the subject of assessment, I consider that there is no place for the Court to consider that aim as well, or to assess whether or not there were sufficient grounds to refuse registration. The aim indicated in clause 8 – abolition of the border, as explained by the applicant, simply does not exist any more.

CONCURRING OPINION OF JUDGE MARUSTE

While being in agreement with the majority in finding a violation of Article 11 of the Convention, I would like to add some more considerations in this respect.

My first and main point is that the problem of registration or non-registration of associations stems at least in part from the insufficient and somewhat contradictory provisions governing associations other than political parties in the Bulgarian legal system. Article 12 § 2 of the Constitution stipulates that "associations ... may not pursue political goals or carry out political activities that are characteristic solely of political parties". A simple reading of that provision would imply that all other political goals are accepted. This is exactly what one would expect in a normal democratic order. The question is: on what basis, by whom and in what manner can this be decided?

Article 44 § 3 of the Constitution stipulates that "the law shall specify the organisations which are subject to registration, the manner of their dissolution, as well as their relations with the State". Fine. But if we look at the *lex specialis* in that respect – the Persons and Family Act of 1949 –, we see that it does not cover all these aspects. I would specifically point to the lack of clearly listed legal grounds for non-registration or dissolution and of a procedure for challenging and making decisions in disputes of this kind. Maybe this is the reason why the courts have had to rely only on the general provisions of the Constitution. This in itself is acceptable, but leaves the courts to decide on rather abstract and even speculative grounds and allows them rather broad powers of discretion.

My second point is that freedom of association is closely linked to freedom of speech and opinion. Very often an association is created to express certain views and opinions. Therefore, the statutes of the association inevitably reflect certain views and goals which might also be regarded as political; all this depends very much on interpretation. Because of the close link between freedom of expression and freedom of association, the most appropriate and best way of assessing the nature of the association and its conformity with the Constitution and the Convention is to conduct an assessment based not just on a formal reading of the association's goals as set down in the statutes, but also on the means the association intends to employ and, especially, its actions and activities in real life. Hence, an assessment of the legality of an association *in abstracto*, such as has been conducted here, confers an undue degree of discretion on the authorities.