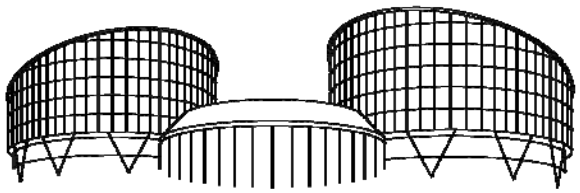

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SINGARTIYSKI AND OTHERS v. BULGARIA

(Application no. 48284/07)

JUDGMENT

STRASBOURG

18 October 2011

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 Singartiyski and Others v. Bulgaria,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva, *judges*,
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 48284/07) 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 five Bulgarian nationals, Mr Ivan Iliev Singartiyski, Mr Angel Ivanov Bezev, Mr Vasil Georgiev Stoychev, Mr Emil Evtimov Evtimov and Mr Botyo Vangelov Tikov ("the applicants"), on 18 October 2007.

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

3. The applicants alleged they were banned from holding a meeting on 22 April 2007, and that that ban was neither prescribed by law nor necessary in a democratic society.

4. On 3 June 2008 the President of the Fifth Section, to which the case had been allocated, decided to give priority to the application under Rule 41 of the Rules of Court and to conduct the proceedings in the case simultaneously with those in *United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 2)* (no. 34960/04), *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (no. 2)* (no. 37586/04), and *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)* (nos. 41561/07 and 20972/08) (Rule 42 (former 43) § 2 of the Rules of Court).

5. On 30 September 2008 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

6. Following the re-composition of the Court's sections on 1 February 2011, the application was transferred to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born respectively in 1953, 1964, 1951, 1960 and 1956, and live in Musomishta, Koprivlen, Sandanski and Blagoevgrad.

8. All five of them are members and followers of the United Macedonian Organisation Ilinden – Party for Economic Development and Integration of the Population ("UMO Ilinden – PIRIN"), a political party founded in 1998 and based in south-western Bulgaria (in an area known as the Pirin region or the geographic region of Pirin Macedonia). The party was declared unconstitutional by the Constitutional Court on 29 February 2000 and as a result dissolved. In a judgment of 20 October 2005 this Court found that the party's dissolution had been in breach of its and its members' right to freedom of association (see *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, 20 October 2005). The party apparently has links with the United Macedonian Organisation Ilinden ("UMO Ilinden"), an association also based in south-western Bulgaria and advocating similar ideas (ibid., §§ 9-12, and *Ivanov and Others v. Bulgaria*, no. 46336/99, § 10, 24 November 2005).

9. On 6 March 2007 the applicants notified the Mayor of Sandanski that UMO Ilinden – PIRIN intended to organise a rally on Sunday 22 April 2007, first at the grave of Yane Sandanski near the Rozhen Monastery and then in front of his monument in the town of Melnik. The programme of the event, which was to take place between 10 a.m. and 4 p.m., included the laying of wreaths on the grave between 10 and 11 a.m. and the singing of folk songs in front of the monument between 11 a.m. and 4 p.m.

10. In a letter to the applicants of 18 April 2007 the Mayor of Sandanski allowed the rally, specifying that the laying of wreaths had to take place between 10 and 11 a.m. and the musical programme between 11 a.m. and 12 noon.

11. On the same date the Regional Governor of Blagoevgrad, acting of his own motion and relying on section 32(2) of the Administration Act and Article 93 § 4 of the Code of Administrative Procedure (see paragraph 24 below), annulled the Mayor's letter. He reasoned that it amounted to an administrative decision, creating legal rights for UMO Ilinden – PIRIN, and that it was unlawful. Firstly, the organisation was not registered; on the contrary, in February 2007 the Supreme Court of Cassation had upheld the

Sofia City Court's judgment turning down its request to be registered as a political party (see *UMO Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, no. 41561/07, §§ 8-19, 18 October 2011). Since it was accordingly unlawful under Bulgarian law, it had no standing to give notice of its intention to hold a rally. Secondly, the proposed rally would put public order at risk. Both the Rozhen Monastery and Melnik were places visited by many tourists, especially on Sundays. It was therefore inappropriate to allow the staging of rallies there. Moreover, rallies and meetings were being organised at those locations at the same time by the local authorities and non-governmental organisations. As clashes between supporters of UMO Ilinden – PIRIN and others had taken place in the past, it was necessary to ban its rally. Finally, the activities of the organisation were contrary to Bulgarian law, as they consisted in propaganda against the country's sovereignty and territorial integrity and aroused national and ethnic hatred. The Governor specified that his decision was to be served on the Mayor of Sandanski for execution. It was not served on UMO Ilinden – PIRIN or on any of the applicants.

12. On 20 April 2007 the members of the managing board of UMO Ilinden – PIRIN, as well as the first and second applicants, Mr Singartiyski and Mr Bezev, were summoned by the police. They were issued orders under section 55 of the 2006 Ministry of Internal Affairs Act (see paragraph 27 below) not to organise or take part in the rally in front of Yane Sandanski's grave near the Rozhen Monastery.

13. On the same day the third applicant, Mr Stoychev, was told by telephone by an employee of the local branch of the National Electricity Company that no electrical power would be provided for the rally in Melnik, as it had been banned by order of the regional governor.

14. On 21 April 2007 a number of drivers of buses hired to transport the participants to the rally in Melnik informed the fourth applicant, Mr Evtimov, that they could not provide the requested service. Mr Evtimov then approached a number of travel agencies in Blagoevgrad, all of which advised him that the police had apprised them of the regional governor's decision and that they would not provide transportation for fear of suffering negative consequences. Mr Evtimov eventually managed to hire four buses in a nearby village.

15. Similar transportation problems were experienced by persons from the towns of Petrich and Razlog who wished to attend the rally.

16. The parties' accounts of the events of 22 April 2007 differed somewhat.

17. According to the Government, on the morning of that day the transport police carried out routine checks of some of the motor vehicles transporting people to the rally. As the police found certain irregularities, they sanctioned individual drivers and then allowed the buses to proceed to Melnik. After that both UMO Ilinden – PIRIN and UMO Ilinden were able to go ahead with the events planned by them, respectively in Melnik and

near the Rozhen Monastery. As required by law, the police dispatched forces to ensure public order during the events. At about 10.30 a.m. a group of about fifty supporters of UMO Ilinden laid a wreath and flowers at Yane Sandanski's grave. UMO Ilinden's chairman made a short speech, and then the rally continued with a musical programme. No breaches of public order were noted. UMO Ilinden – PIRIN was not allowed to hold a rally in front of the Rozhen Monastery. A compromise solution was reached with the organisation to hold the rally in Melnik. At about 12 noon approximately two hundred members and supporters of UMO Ilinden – PIRIN gathered in front of Yane Sandanski's monument in Melnik. They laid a wreath and flowers. Then the organisation's leaders made short speeches about his life and work; in the Government's view, most of those speeches contained insults against the Bulgarian people and State. There were also a number of negative remarks against the police, threats of violence against the Regional Governor and insults against the chairperson of the National Assembly, the Prime Minister and other high-ranking politicians. The musical programme continued after the allotted time slot. The police did not allow drunk individuals to breach public order. Journalists from "the former Yugoslav Republic of Macedonia" interviewed the leaders of UMO Ilinden and UMO Ilinden – PIRIN and a number of supporters.

18. The applicants started by pointing out that two events took place on 22 April 2007. The first was the one which their organisation, UMO Ilinden – PIRIN, held in Melnik, in front of Yane Sandanski's monument. The other was the one held by UMO Ilinden – a similar but separate organisation – at Yane Sandanski's grave near the Rozhen Monastery. UMO Ilinden – PIRIN's members and supporters, including the applicants, were not able to approach the Monastery as originally planned because they were stopped en route by the police. They were allowed to drive only to Melnik. They could not tell whether members and supporters of UMO Ilinden had been allowed to hold a rally near the Monastery.

19. The applicants further stressed the difference between the way in which UMO Ilinden – PIRIN intended to conduct the rally and the way in which it actually unfolded. The original plan was to proceed in the manner described in paragraph 9 above. As a result of the Regional Governor's decision and the ensuing actions of the police, UMO Ilinden – PIRIN's members and supporters were able to go only to Melnik. On their way there, four buses carrying participants in the rally from Blagoevgrad were stopped several times by the police, who carried out lengthy checks of the drivers' and the vehicles' papers and imposed penalties for purported violations of the traffic rules. Buses with participants travelling from Gotse Delchev to Melnik were also stopped by the police three times, for about one hour each time. The third applicant, Mr Stoychev, who was travelling by car, was also stopped by the police, told that the rally was unlawful, and forced to throw away a wreath which he was carrying.

20. Upon their arrival in Melnik the applicants saw that Yane Sandanski's monument was surrounded by about fifty or sixty police officers, who prevented the participants in the rally from laying a wreath, only allowing them to lay flowers individually. The officers also forced the participants to take away ribbons with the inscription "For Yane – from grateful Macedonians" and did not let them make speeches in front of the monument. At about 2 p.m. the officers advised the bus drivers that if they did not leave Melnik in one hour they would be fined.

21. The applicants were adamant that no agreement on how to proceed with the rally was ever made between them and the authorities, and that, contrary to what was asserted by the Government, they did not agree to any changes to their original plan. They also pointed out that the Government's allegations that participants in the rally had made offensive speeches and had acted in a disorderly manner were not supported by any evidence.

II. RELEVANT DOMESTIC LAW

22. The relevant provisions of the 1991 Constitution and the 1990 Meetings and Marches Act are set out in paragraphs 48-51 of the Court's judgment in the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (nos. 29221/95 and 29225/95, ECHR 2001-IX), in paragraphs 72-76 of the Court's judgment in the case of *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (no. 44079/98, 20 October 2005) and in paragraphs 24-28 of the Court's judgment in the case of *Ivanov and Others v. Bulgaria* (cited above). For the purposes of the present case, particular mention needs to be made of section 12(6) of the 1990 Act, which provides for a possibility to seek judicial review of a mayoral ban of a rally, and directs the court hearing such an application to determine it by means of a final decision not later than five days after it has been referred to it.

23. Under section 31(1) of the 1998 Administration Act, regional governors (a) carry out governmental policy and coordinate the operations of the branches of central government in their respective regions; (b) seek to achieve a balance between national and local interests and interact with the local authorities; (c) are responsible for safeguarding State property in their respective regions; (d) uphold legality in their regions and supervise the enforcement of administrative decisions; (e) control the lawfulness of the decisions and the actions of local authorities; (f) coordinate and control the operations of the territorial branches of ministries and other central authorities, as well as the enforcement of their decisions; (g) organise civil defence; (h) preside the regional security councils; and (i) carry out the region's international contacts.

24. Under Article 93 § 4 of the 2006 Code of Administrative Procedure, all mayoral decisions may be challenged before regional governors. Under

section 32(2) of the 1998 Administration Act, regional governors may annul unlawful mayoral decisions. Their decisions to do so are subject to judicial review (section 32(3) of the Act).

25. Regional governors' decisions, like all administrative decisions, are subject to judicial review by the competent regional administrative courts (Article 132 §§ 1 and 2 of the 2006 Code of Administrative Procedure), whose judgments are appealable before the Supreme Administrative Court (Article 208 of the Code).

26. Article 127 § 1 of the Code provides that the administrative courts must rule on each application within a reasonable time. Article 172 § 1 of the Code requires the court to deliver its judgment not later than one month after the last hearing in the case.

27. Under section 55(1) of the 2006 Ministry of Internal Affairs Act, the police may, if necessary for the performance of their duties, issue orders to individuals or organisations. Those orders are binding unless they obviously impose the commission of an offence (section 55(4)). Section 55(5) provides that such orders, when issued in writing, are subject to judicial review in accordance with the provisions of the Code of Administrative Procedure.

28. Section 1(1) of the 1988 State Responsibility for Damage Caused to Citizens Act (on 12 July 2006 its name was changed to "State and Municipalities Responsibility for Damage Act" – hereinafter "the 1988 Act") provides that the State is liable for damage suffered by private persons as a result of unlawful decisions, actions or omissions by civil servants committed in the course of or in connection with the performance of their duties.

III. RELEVANT DOCUMENTS OF THE COMMITTEE OF MINISTERS

29. The Committee of Ministers concluded the examination of application no. 44079/98 (*United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*) and application no. 46336/99 (*Ivanov and Others v. Bulgaria*) on 8 June 2011, by adopting Resolution CM/ResDH(2011)46, which reads, in so far as relevant:

> "The Committee of Ministers, ...
>
> Recalling that the violations of the Convention found by the Court in these cases concern the infringement of the freedom of assembly of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" due to prohibitions of their meetings between 1998 and 2003 (violation of Article 11) and the lack of effective remedies to complain against these prohibitions (violation of Article 13) (see details in Appendix);

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the judgments, the adoption by the respondent state, where appropriate, of

– individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible restitutio in integrum; and

– general measures preventing similar violations;

Having noted that two other applications presently pending before the European Court concern allegations relating to bans or to the holding of certain meetings of the applicants initially scheduled between March 2004 and September 2009;

Having considered, without prejudging the judgment the Court could deliver in respect of these applications, that in view of the positive trend observed concerning the holding of the applicants' meetings in particular since 2008 and the absence of complaints from them as regards 2010, no further individual measure seemed required in these cases;

Having also examined the general measures and in particular the awareness-raising measures taken by the Bulgarian authorities to ensure that applicable domestic law is interpreted in conformity with the Convention and thus to prevent violations similar to that found by the European Court (see details in Appendix);

Having satisfied itself that, within the time-limit set, the respondent state paid the applicants the just satisfaction provided in the judgments (see details in Appendix),

DECLARES, having examined the measures taken by the respondent state (see Appendix), that it has exercised its functions under Article 46, paragraph 2, of the Convention in these cases and

DECIDES to close the examination of these cases."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

30. The applicants complained that they were banned from holding a meeting on 22 April 2007. They relied on Article 11 of the Convention, which provides:

"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."

A. Admissibility

31. The Government submitted that the applicants had failed to exhaust domestic remedies. Under the 1990 Meetings and Marches Act, they could have sought judicial review of the Regional Governor's order, but had failed to do so. In support of that assertion the Government cited a decision and judgment in which the Supreme Administrative Court held that mayoral bans of rallies were subject to judicial review (опр. № 8132 от 14 август 2007 г. по адм. д. № 5942/2007 г., ВАС, III о.) and examined whether one such ban could amount to discrimination (реш. № 11295 от 16 ноември 2007 г. по адм. д. № 6407/2007 г., ВАС, петчленен състав). The Government further submitted that the police orders served on some of the applicants had been subject to judicial review under the Code of Administrative Procedure; there was no indication that such review had been sought. Lastly, they submitted that the applicants could have brought a claim under section 1 of the 1998 Act and sought compensation for any pecuniary or non-pecuniary damage flowing from the alleged breach of their right to freedom of peaceful assembly.

32. The applicants pointed out that, as evident from its plain textual meaning, section 12(6) of the 1990 Meetings and Marches Act concerned only mayoral decisions; the Government had not presented evidence in support of their assertion that it was also applicable to regional governors' orders. There was no indication that the Bulgarian courts would adopt an extensive interpretation of that provision and accept for examination an order issued by a regional governor, who clearly had no powers in connection with the holding of meetings or rallies. The decision and the judgment referred to by the Government were plainly inapposite, as they concerned mayoral decisions. The standard judicial review available in respect of regional governors' orders was not an effective remedy because, unlike the speedy procedure under the Meetings and Marches Act, which was designed to allow the examination of the case before the date of the planned event, it took on average six months. It would thus not allow consideration of the lawfulness of an order banning a rally in time for the event to proceed. The judicial review of police orders under the Code of Administrative Procedure suffered from the same drawback. The possibility to seek damages under the 1988 Act was not an effective remedy either, for two reasons. First, it would clearly not have allowed the applicants to hold

their rally as planned. Secondly, the Government did not cite any relevant precedents showing that such claims had ever been successful.

33. The Court observes at the outset that under its case-law, where assemblies are concerned, and provided their organisers give timely notice to the authorities, the notion of an effective remedy implies the possibility of obtaining a determination of a legal challenge to a ban before the time of the planned event (see *Cisse v. France*, no. 51346/99, § 32 *in fine*, 9 April 2002; *Ivanov and Others*, cited above, § 74; *Zeleni Balkani v. Bulgaria*, no. 63778/00, §§ 44 and 45, 12 April 2007; and *Bączkowski and Others v. Poland*, no. 1543/06, § 81, 3 May 2007; and *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 98, 21 October 2010). In the instant case, the applicants amply complied with the above condition: they gave notice of the rally that they intended to organise a month and a half in advance (see paragraph 9 above). They were therefore entitled to a remedy that would, if successful, make it possible for them to hold the intended rally.

34. Turning to the first prong of the Government's objection, the Court observes that the 1990 Meetings and Marches Act does not envisage any participation of regional governors in the regulation or policing of rallies (see paragraph 22 above). It thus seems that the strict time-limit for determining applications for judicial review of mayoral bans of such rallies under section 12(6) of that Act did not apply to the Regional Governor's decision. The Government, who bear the burden of proof on that point, have not cited any examples in support of their assertion that the Governor's decision was reviewable under the Act. On the contrary, it appears that his decision was amenable to judicial review under the general provisions of the Code of Administrative Procedure (see paragraphs 24 and 25 above). However, unlike section 12(6) of the Act, those provisions do not require the courts to determine the case by means of a final decision within a brief period, and the procedure involves two levels of jurisdiction (see paragraph 26 above). Given that the Regional Governor's decision was made just four days before the planned rally (on a Wednesday, when the rally was to take place the following Sunday) and was not served on the applicants (see paragraph 11 above), it is unrealistic to assume that it would have been reviewed in time for the rally – whose timing was crucial for the organisers – to proceed (see *Stankov and the United Macedonian Organisation Ilinden*, nos. 29221/95 and 29225/95, Commission decision of 29 June 1998, unreported). It does not therefore seem that in the circumstances that remedy would have provided adequate redress to the applicants (see *Bączkowski and Others*, § 83, and *Alekseyev*, § 99, both cited above).

35. The possibility of seeking judicial review of the police orders issued to some of the applicants just two days before the rally (see paragraph 12 above) cannot be regarded as an effective remedy for the same reasons.

Those orders were reviewable under the Code of Administrative Procedure (see paragraph 27 above). There is nothing to indicate that any legal challenges to them – which could involve two levels of jurisdiction – would have been determined in time for the rally to proceed. Moreover, the Government have not cited any examples showing that an application for judicial review of those orders would have stood a reasonable chance of succeeding.

36. Lastly, the Court finds that a claim under section 1(1) of the 1988 Act (see paragraph 28 above) cannot, in the circumstances of this case, be deemed an effective remedy, for two reasons. First, the Government have not shown – by, for instance, citing relevant case-law – that such a claim would have had a reasonable prospect of success (see *Zeleni Balkani*, cited above, § 46, and *Hyde Park and Others v. Moldova (nos. 5 and 6)*, nos. 6991/08 and 15084/08, § 34 *in fine*, 14 September 2010). Secondly and more importantly, such a claim cannot be considered as providing sufficient redress in itself, because it can result solely in an award of compensation. In cases where – as here – the authorities, through deliberate actions, prevent a group of individuals or an organisation from holding a rally in the manner chosen by them, the alleged breach of Article 11 cannot be made good exclusively through such an award. If States were able to confine their response to such incidents to the mere payment of compensation, without putting in place effective procedures ensuring the possibility of staging such rallies, it would be possible in some cases for the authorities arbitrarily to deprive groups of individuals and organisations of their right to freedom of peaceful assembly. Were that to be the case, that right, which, along with the rights to freedom of expression and association, and the right to take part in free and fair elections, is one of the essential features of a vigorous and healthy democracy, would be ineffective in practice (see, *mutatis mutandis*, *Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 79, ECHR 2009-..., with further references).

37. The Government's objection must therefore be dismissed.

38. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

39. The Government submitted that the planned rally had in fact taken place, with the participation of about three thousand people, tourists and officials, including representatives of the Ministry of Foreign Affairs of "the former Yugoslav Republic of Macedonia". The authorities had complied with their positive obligations under Article 11 and ensured that the event proceeded smoothly. The web page of UMO Ilinden – PIRIN indicated that all events planned by them for 2008 had taken place normally.

40. The applicants submitted that the interference with their right to freedom of assembly stemmed from the Regional Governor's order which banned the rallies that they had planned and which was enforced by the police. As a result, the applicants were forced to change their initial plan to celebrate near the Rozhen Monastery. The police also interfered with their rights by carrying out unusually lengthy checks of their vehicles (which delayed the event by almost two hours), and preventing them from approaching the Monastery and from organising the event in Melnik as planned. Those interferences were neither lawful nor necessary in a democratic society.

41. The Court notes the differences between the parties' accounts of the events of 22 April 2007, especially as to what actually happened in Melnik (see paragraphs 17-21 above). It observes that earlier the Regional Governor banned both the rally that UMO Ilinden – PIRIN intended to hold at Yane Sandanski's grave near the Rozhen Monastery and the one it wanted to stage in front of Yane Sandanski's monument in Melnik (see paragraph 11 above). It also notes that as a result the police ordered the members of UMO Ilinden – PIRIN's managing board and the first and second applicants to refrain from organising or taking part in the two rallies (see paragraph 12 above). Those measures clearly indicate an intention to prevent the rally. They had a chilling effect on the individuals concerned and on the other participants in the rallies, and thus amounted in themselves to interference with the applicants' right to freedom of assembly (see *Stankov and the United Macedonian Organisation Ilinden*, § 79; *United Macedonian Organisation Ilinden and Ivanov*, § 101; and *Bączkowski and Others*, §§ 66-68, all cited above).

42. The Court also observes that it is not disputed that the police carried out a number of checks on vehicles transporting participants to the rally (see paragraph 19 above). While describing those checks as "routine", the Government did not dispute the applicants' assertion that they had taken an unusually long time and had thus delayed the rally (see paragraph 17 above). The Government also conceded that, as alleged by the applicants, the police had blocked the road to the Rozhen Monastery and had thus prevented the participants in the rally from approaching their chosen site (see paragraphs 17 and 18 above). Bearing in mind that the time and the place of the event were crucial to the participants, the Court finds that those actions also amounted to interference with the applicants' right to freedom of assembly (see *Stankov and the United Macedonian Organisation Ilinden*, § 109 *in fine*, and *United Macedonian Organisation Ilinden and Ivanov*, § 103, both cited above).

43. The Court observes in that connection that an interference does not need to amount to a outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during

an assembly, and those, such as punitive measures, taken after that (see *Ezelin v. France*, 26 April 1991, § 39, Series A no. 202). For instance, a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities (see *Bączkowski and Others*, cited above, §§ 66-68). A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference as well (see *Djavit An v. Turkey*, no. 20652/92, §§ 59-62, ECHR 2003-III). So do measures taken by the authorities during a rally, such as a dispersal of the rally or arrests of participants (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 7 and 30, ECHR 2006-XIII, and *Hyde Park and Others*, cited above, §§ 9, 13, 16, 41, 44 and 48), and penalties imposed for having taken part in a rally (see *Ezelin*, cited above, § 41; *Osmani and Others v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 50841/99, ECHR 2001-X; *Mkrtchyan v. Armenia*, no. 6562/03, § 37, 11 January 2007; *Galstyan v. Armenia*, no. 26986/03, §§ 100-02, 15 November 2007; *Ashughyan v. Armenia*, no. 33268/03, §§ 75-77, 17 July 2008; and *Sergey Kuznetsov v. Russia*, no. 10877/04, § 36, 23 October 2008).

44. Such interference gives rise to a breach of Article 11 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aims as defined in paragraph 2 and was "necessary in a democratic society" to achieve those aims.

45. The Court has misgivings as to whether the above measures were "prescribed by law", for several reasons. First, the 1990 Meetings and Marches Act envisages no role for regional governors in the policing of rallies (see paragraph 22 above). Secondly, in banning the rally the Regional Governor relied on some clearly irrelevant grounds, such as UMO Ilinden – PIRIN's lack of registration (see paragraph 11 above, as well as *Stankov and the United Macedonian Organisation Ilinden*, § 81, and *United Macedonian Organisation Ilinden and Ivanov*, § 108, both cited above). Thirdly, section 55(1) of the 2006 Ministry of Internal Affairs Act, which served as a basis for the orders issued by the police, is formulated in very general terms and gives no indication of the circumstances in which the police may use the power conferred on them (see paragraphs 12 and 27 above and, *mutatis mutandis*, *United Macedonian Organisation Ilinden and Ivanov*, cited above, § 109). Fourthly, no legal basis has been cited for the police block of the road to the Rozhen Monastery (see paragraphs 17 and 18 above, as well as, *mutatis mutandis*, *Djavit An*, cited above, § 66). However, the Court does not consider it necessary to determine whether the interference was "prescribed by law" or pursued a legitimate aim, as it finds, for the reasons set out in the following paragraph, that, even if it did, it cannot be regarded as being "necessary in a democratic society" (see *Alekseyev*, cited above, § 69).

46. The Regional Governor's decision, which apparently prompted all of the ensuing actions of the police, relied on exactly the same grounds as those given to ban previous rallies of UMO Ilinden or UMO Ilinden – PIRIN, in respect of which the Court has, on no less than three occasions, found violations of Article 11 (see *Stankov and the United Macedonian Organisation Ilinden*, §§ 93-107; *United Macedonian Organisation Ilinden and Ivanov*, § 114; and *Ivanov and Others*, §§ 63 and 64, all cited above). Those grounds were the organisation's unregistered status, a conjectural threat to public order, the holding of meetings of other organisations at the same time and place, and lastly, and most importantly, "propaganda against the country's sovereignty and territorial integrity" (see paragraph 11 above). The fact that the Regional Governor should rely on grounds which the Court had, at the time when the Governor made his decision, already found deficient is indicative of a troubling disregard for the Court's judgments and the applicants' right to freedom of peaceful assembly (see, *mutatis mutandis*, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 83-88, ECHR 2009-..., and *United Macedonian Organisation Ilinden and Ivanov*, cited above, § 116).

47. There has therefore been a violation of 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 applicants claimed 12,000 euros (EUR) in respect of non-pecuniary damage. They submitted that the ban of the meeting in issue in the present case had been only one of many such bans. They also pointed out that despite the numerous rulings by the Court relating to earlier breaches of their rights under Article 11 of the Convention, the Bulgarian Government's policy toward them had improved little if at all. This had made them feel a particularly acute sense of injustice and helplessness, and had exacerbated the distress suffered by them on account of the breach of their right to freedom of peaceful assembly.

50. The Government submitted that the claim was exorbitant. They pointed out that they were working on the adoption of a new legal framework for the conduct of meetings and demonstrations. The draft law had been reviewed by the Venice Commission, and the remarks made were

being examined by the national authorities. In the Government's view, in those circumstances the finding of a violation constituted sufficient compensation. Failing that, the amount of any such compensation should not exceed the sums awarded in similar cases and should take into account the living standard in Bulgaria.

51. The Court notes that the ban imposed on the rally was one of a series of such bans, some of which have given rise to previous applications to the Court and to findings of a violation of Article 11 (see paragraph 46 above). The applicants therefore had reason to feel a heightened sense of distress and frustration (see, *mutatis mutandis*, *Burdov v. Russia (no. 2)*, no. 33509/04, § 156, 15 January 2009). The possible adoption of better rules in that domain in the future, while certainly to be welcomed, can hardly make good the damage already suffered by them. In these circumstances, the Court awards the applicants EUR 9,000. To that amount is to be added any tax that may be chargeable.

B. Costs and expenses

52. The applicants sought reimbursement of EUR 1,520 incurred in fees for nineteen hours of work by their lawyer on the proceedings before the Court, at EUR 80 per hour. They requested that any amount awarded be made payable directly to their legal representative.

53. The Government submitted that the hourly rate was excessive compared with the usual lawyers' fees in Bulgaria.

54. According to the Court's settled case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants the full amount claimed (EUR 1,520), plus any tax that may be chargeable to them. That amount is to be paid into the bank account of the applicants' legal representative, Mr Y. Grozev.

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*

(a) that the respondent State is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance with 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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,520 (one thousand five hundred and twenty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' legal representative, Mr Y. Grozev;

(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;

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

Done in English, and notified in writing on 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President