

**ANALYSIS OF THE  
CASE OF THE UNITED MACEDONIAN  
ORGANISATION ILINDEN AND  
IVANOV v. BULGARIA  
JUDGMENT OF THE EUROPEAN  
COURT OF HUMAN RIGHTS  
ISSUED ON 20 October 2005**

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## **Introduction**

This Analysis considers the judgment on 29 September 2005 of the European Court of Human Rights (hereinafter referred to as the “European Court”) on the case of United Macedonian Organisation Ilinden and Ivanov v. Bulgaria. The case concerns the issues on the interference with the attempt to organise political rallies and events guaranteed by the European Convention on Human Rights (hereinafter referred to as “European Convention” or “ECHR”) as well as the positive obligations of the state in the sphere of freedom of assembly.

This Analysis aims to study the facts of the case, including a thorough examination of the applicant’s complaints and the Bulgarian Government’s arguments. The Analysis will also provide an overview of the specific approaches of the European Court regarding the interpretation of the rights and freedoms in question. However, the Analysis will not specifically address the issue of just satisfaction. The analysis will be carried out by applying a checklist which the Court uses when examining violations of each ECHR right and freedom. The Analysis will also highlight the significant features of the case which played an important role and became the principal guide to the interpretation of the rights and freedoms guaranteed by the European Convention.

This Analysis is educational in character and is primarily designed to enable legal professionals, including judges, lawyers, advocates, legal service providers and others involved in the protection of human rights - including law students - to identify the criteria and the standards that the European Court follows when interpreting the rights and freedoms guaranteed by the European Convention.

## **PART I – CASE OF UNITED MACEDONIAN ORGANISATION ILINDEN AND IVANOV V. BULGARIA**

### **A. Short summary of the facts of the case**

The case originated in an application (no. 44079/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of ECHR by the United Macedonian Organisation Ilinden (“Ilinden”) and by its chairperson, Mr Yordan Kostadinov Ivanov, a Bulgarian national who was born in 1932 and lives in Sandanski (“the applicants”), on 9 June 1998. Additional complaints were introduced on various dates between 1998 and 2004.

The applicants alleged that the members and followers of Ilinden had been prevented from holding peaceful meetings on a number of occasions during the period 1998-2003. By a decision of 9 September 2004 the Court (First Section) declared the application admissible.

Ilinden was founded on 14 April 1990 and soon after applied for registration. The courts refused, holding that “its statute and programme were directed against the unity of the nation” (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, §§ 10-14, ECHR 2001-IX). Its second and third attempts to register in 1998-99 and 2002-04 likewise failed (see *The United Macedonian Organisation Ilinden and Others v. Bulgaria* (dec.), no. 59491/00, 9 September 2004).

During the period from 1990 until 1997, Ilinden each year tried to organise meetings at sites in Pirin Macedonia to commemorate certain historical events. All these commemorations were banned by the authorities (see *Stankov and the United Macedonian Organisation Ilinden*, cited above §§ 15-31).

The chronology of further events and legal proceedings, which were held in the case of United Macedonian Organisation Ilinden and Ivanov v. Bulgaria, are described in Table No. 1 below.

**Table No.1**

<b>THE CIRCUMSTANCES OF THE CASE</b>	
<b>Prohibitions against the holding of meetings during the period 1998-2003</b>	
<b>1. The events of March, April and May 1998</b>	
<b>25 March 1998</b>	The second applicant and three other members of Ilinden informed the mayor of Sandanski that the organisation intended to arrange a meeting on 19 April at the Rozhen monastery to commemorate the anniversary of the death of a historical figure buried there – Yane Sandanski.
<b>3 April 1998</b>	The mayor informed them that he would prohibit the meeting as the municipality was already preparing for a commemoration with another association. Members of Ilinden decided to move the event to an earlier date, 18 April.
<b>14 April 1998</b>	The mayor replied that he could not assent to that either, because the other association had informed him that their commemoration would last from 18 until 22 April.
<b>14 and 16 April 1998</b>	Ilinden lodged appeals for judicial review of the mayor's refusals with the Sandanski District Court.
<b>10 April 1998</b>	Ilinden also advised the head of the local police station of its intention to hold the meeting on 18 April.
<b>16 April 1998</b>	The police conducted a search at the home of a member of Ilinden, which served as a club of the organisation, and at another member's home, and seized a copy machine, newspapers, books, leaflets, and some other items.
<b>17 April 1998</b>	The Blagoevgrad Regional Prosecutor's Office issued a decree, based on Article 185 § 1 of the Code of Criminal Procedure (“the CCP”), ordering the police to take measures to prevent Ilinden from holding a meeting.
<b>17 April 1998</b>	The police summoned the second applicant and several other members of Ilinden. They were issued written warnings informing them that the planned meeting had been banned by the Blagoevgrad Regional Prosecutor's Office.
<b>18 April 1998</b>	A number of members and followers of Ilinden from towns and villages in Pirin Macedonia tried to approach Rozhen by cars and by buses. All were turned back by the police. It seems that one person coming by car was taken into custody by the Sandanski police for ten hours for allegedly failing to produce an identification document, and was ill-treated.
<b>24 April 1998</b>	The Sandanski District Court informed Ilinden of its refusal to examine the applications for judicial review on the merits as they had been submitted on behalf of an unregistered organisation and were vague. It invited

	Ilinden to rectify those deficiencies within seven days.
<b>On 29 April 1998</b>	The second applicant and several other members of Ilinden filed complaints against the 16 April search and seizure with the Regional Police Directorate. It seems that no reply was received.
<b>13 May 1998</b>	The second applicant complained to the Sofia Military Prosecutor's Office about the coercive actions of the police before and during the planned commemoration. It seems that he did not receive an answer.
<b><i>2. The events of July and August 1998</i></b>	
<b>10 July 1998</b>	Ilinden notified the mayor of Petrich that it planned to hold a meeting in the area of Samuilova krepost on 2 August.
<b>15 July 1998</b>	The mayor replied that he could not allow the holding of a meeting, as another meeting had been planned for the same date and place by a municipal child centre.
<b>16 July 1998</b>	Ilinden lodged an application for judicial review with the Petrich District Court, arguing that for several years in a row its meetings had been banned. It also stated that the area where it planned to hold the meeting was large enough for two parallel events and if that was deemed impracticable, it was prepared to reschedule the meeting for another date.
<b>20 July 1998</b>	The court dismissed the application. It held that Ilinden was not duly registered "in accordance with the laws of the country". The court concluded that the lack of clarity as to the organisers of a public event endangered public order and the rights and freedoms of others.
<b>28 July 1998</b>	The Blagoevgrad Regional Prosecutor's Office issued a decree under Article 185 § 1 of the CCP, ordering the police to take measures to prevent Ilinden from holding a meeting.
<b>2 August 1998</b>	A number of members and followers of Ilinden travelled by car to Samuilova krepost. All roads leading to the site were blocked by the police who were stopping the cars and turning them back. The plans of Ilinden to have the meeting at the planned spot having failed, its members decided to hold it at the organisation's club in Petrich. On the way there they tried to lay flowers and wreaths at the memorial of a poet. The police blocked their way. Apparently one person was arrested and held for six hours in custody.
<b><i>3. The events of September 1998</i></b>	
<b>7 September 1998</b>	Ilinden notified the mayor of Blagoevgrad that it planned to lay wreaths on 12 September at the memorial of a prominent historical figure – Gotze Delchev, situated in the centre of the town, to observe the seventy-fourth anniversary of the alleged killing of certain Macedonian activists by agents of the Bulgarian government. Upon the call made of the head of the local chapter of Ilinden, the secretary of the municipality informed that Ilinden would not receive a written answer and that the municipality would advise the police so that it could prevent the event.
<b>10 September 1998</b>	Ilinden lodged an application for judicial review with the Blagoevgrad District Court, but it was not examined within the statutory time-limit.
<b>11 September 1998</b>	The Blagoevgrad Regional Prosecutor's Office issued a decree under Article 185 § 1 of the CCP, ordering the police to take measures to prevent Ilinden from holding a meeting. It reasoned that Ilinden was not registered and hence had no right to organisational or political activities.
<b>11 September 1998</b>	The police visited the house of the head of the local chapter of Ilinden and warned him that if he tried to organise the event he would be criminally prosecuted.
<b>12 September 1998</b>	Members and followers of Ilinden tried to approach the memorial of Gotze Delchev, but the police blocked their way. They informed them that the

	Blagoevgrad Regional Prosecutor's Office had banned the event and read them the decree, but refused to give them a copy.
<b>4. The events of April 1999</b>	
<b>7 April 1999</b>	Ilinden notified the mayor of Sandanski that it planned a commemoration at Rozhen monastery on 25 April.
<b>9 April 1999</b>	The mayor informed Ilinden that it would receive a reply after presenting a document establishing that it was a registered organisation.
<b>16 April 1999</b>	The applicants submitted that on 16 April 1999 Ilinden lodged an application for judicial review with the Sandanski District Court, but the court did not reply.
<b>Unspecified date</b>	On an unspecified later date, several members of Ilinden were warned by the police to not organise a meeting on 25 April.
<b>25 April 1999</b>	Members and followers of Ilinden tried to approach Rozhen by cars. The police blocked their way and turned them back. Some drivers were fined, allegedly for driving vehicles in a state of disrepair. On the way back, several tried to lay flowers at the bust of Yane Sandanski, but the police seized the flowers and allegedly arrested one person.
<b>5. The events of the end of April and May 1999</b>	
<b>27 April 1999</b>	Ilinden notified the mayor of Blagoevgrad that it planned to lay wreaths at the memorial of Gotze Delchev on 4 May.
<b>29 April 1999</b>	The mayor asked Ilinden to present a document establishing that was a registered organisation.
<b>29 April 1999</b>	That same day, the Blagoevgrad Regional Prosecutor's Office issued a decree under Article 185 § 1 of the CCP, ordering the police to take measures to prevent Ilinden from holding a meeting.
<b>3 May 1999</b>	A member of Ilinden lodged an application for judicial review with the Blagoevgrad District Court, which refused to examine the application by an order on 4 May, as it was unclear who the organiser of the planned event was.
<b>4 May 1999</b>	Members and followers of Ilinden who tried to approach the memorial were stopped by the police who informed them that the Blagoevgrad Regional Prosecutor's Office had issued a decree prohibiting the event. The police read out the decree, but refused to give them a copy.
<b>25 May 1999</b>	Ilinden complained to the Sofia Military Prosecutor's Office about the coercive actions of the police and the authorities.
<b>25 May 1999</b>	Sofia Military Prosecutor's Office refused to open criminal proceedings, reasoning that the police had acted in pursuance of their duty to preserve public order.
<b>6. The events of July and August 1999</b>	
<b>12 July 1999</b>	Ilinden notified the mayor of Petrich that it planned to hold a meeting at Samuilova krepost on 1 August.
<b>20 July 1999</b>	The mayor replied that he could not allow the holding of a meeting, as another meeting had been planned for the same date and place by another organisation.
<b>21 July 1999</b>	Ilinden lodged an application for judicial review with the Petrich District Court.
<b>26 July 1999</b>	The court dismissed the application. It held that Ilinden was non-existent as it was not registered. Moreover, another meeting had been scheduled for the same date and place.
<b>27 July 1999</b>	The Blagoevgrad Regional Prosecutor's Office issued a decree under Article 185 § 1 of the CCP, ordering the police to take measures to prevent

	Ilinden from holding a meeting. It considered that the holding of a meeting would constitute offences under Article 174a and Chapter 1 of the CC.
<b>1 August 1999</b>	It appeared that no meeting was held at Samuilova krepost by any other organisation. Then the members and followers of Ilinden tried to approach the site by cars but they were stopped by police.
<b><i>7. The events of April 2000</i></b>	
<b>11 April 2000</b>	Ilinden notified the mayor of Sandanski that it intended to organise a commemorative meeting on 22 April at Rozhen monastery.
<b>18 April 2000</b>	The mayor prohibited the meeting, apparently on the ground it would endanger public order. Ilinden did not seek judicial review of this order.
<b>22 April 2000</b>	Members and followers of Ilinden tried to approach Rozhen by cars. They were stopped at police checkpoints, where some of the drivers were fined, allegedly for traffic violations. A vehicle transporting musicians and their instruments was not allowed to continue. The cars were stopped again at a second police post. However, some of the members and followers of Ilinden were allowed to approach the site, which was heavily guarded by police.
<b><i>8. The events of July 2000</i></b>	
<b>10 July 2000</b>	Ilinden notified the mayor of Petrich of its intention to hold a commemorative meeting on 30 July at Samuilova krepost.
<b>18 July 2000</b>	The mayor replied by a letter that he could not allow the event, as another association had already applied for authorisation to organise a meeting on the same date.
<b>24 July 2000</b>	Petrich District Court dismissed the appeal of Ilinden seeking judicial review. It found that Ilinden had not been registered and apparently had links with a political party, "UMO Ilinden – PIRIN", which had been declared unconstitutional. The holding of a meeting by Ilinden could therefore pose a threat to the territorial integrity of the country. The parallel holding of two events could endanger public order.
<b>30 July 2000</b>	Nevertheless, certain members and followers of Ilinden were able to hold a meeting at Samuilova krepost. It seems that the police did not interfere.
<b><i>9. The events of September 2000</i></b>	
<b>1 September 2000</b>	Ilinden informed the mayor of Blagoevgrad that that it wanted to hold a commemoration at the memorial of Gotze Delchev on 12 September. The mayor did not reply. Ilinden then lodged an application for judicial review with the Blagoevgrad District Court, but did not get an answer.
<b>8 September 2000</b>	The Blagoevgrad Regional Prosecutor's Office issued a decree under Article 185 § 1 of the CCP, ordering the police to take measures to prevent Ilinden from holding a meeting. It reasoned that the holding of a meeting would constitute an offence under Chapter 1 of the CC.
<b>12 September 2000</b>	Members and followers of Ilinden tried to approach the memorial, but were stopped by the police. A police officer read out the decree prohibiting the commemoration, but refused to furnish a copy of it.
<b><i>10. The events of April 2001</i></b>	
<b>4 April 2001</b>	Ilinden notified the mayor of Sandanski that it would organise a meeting on 22 April at Rozhen monastery. The mayor did not reply.
<b>22 April 2001</b>	The members and followers of the organisation assembled at the site. Approximately fifty police officers were also present. The police seized the wreath, which the Members and followers of the organisation wanted to place on the grave of Yane Sandanski, and arrested one of the assembled. He was taken to a nearby village, released and warned not to

	try to return to the meeting. Additionally, a poster brought by the members of Ilinden was allegedly taken away by a plainclothes police officer. The police also prevented the placing on the podium of loudspeakers the members of Ilinden had brought. The applicants also alleged that local catering companies were prohibited by the municipal authorities from sending staff and facilities to the site during the meeting.
<b><i>11. The events of the end of April and May 2001</i></b>	
<b>27 April 2001</b>	Ilinden notified the mayor of Blagoevgrad that it intended to lay flowers at the memorial of Gotze Delchev on 4 May. The mayor did not reply.
<b>4 May 2001</b>	A group of members and followers of Ilinden attempted to approach the memorial. The applicants alleged that the police intervened and ordered them to remove the band with the inscription, citing a decree made by the Blagoevgrad Regional Prosecutor's Office. Those who refused were then diverted from the memorial by police officers. The members and followers of Ilinden headed for a nearby church, followed by the police who were allegedly shouting insulting words at them. The applicants averred that two police officers seized a camera held by one of the members. The members laid the wreath at a grave in the churchyard. Later in the day three unknown persons took it away. According to the Government, the police had to disrupt the ceremony and direct the members and followers of Ilinden to the nearby church because other persons who were standing nearby became agitated upon the arrival of news that members of UMO Ilinden – PIRIN had tried to assault the Bulgarian ambassador in Skopje.
<b><i>12. The events of July 2001</i></b>	
<b>12 July 2001</b>	Ilinden notified the mayor of Petrich of its intention to hold a meeting on 29 July at Samuilova krepost.
<b>20 July 2001</b>	The mayor prohibited the meeting because another meeting had been planned for the same date by a municipal child centre.
<b>25 July 2001</b>	The Blagoevgrad Regional Prosecutor's Office issued a decree under Article 185 § 1 of the CCP, ordering the police to take measures to prevent Ilinden from holding a meeting. It reasoned that the holding of a meeting would constitute offences under Article 174a and Chapter 1 of the CC.
<b>29 July 2001</b>	A group of approximately two hundred and fifty people tried to approach Samuilova krepost by buses and cars. They were turned back by the police two kilometres before the site. The applicants allege that the police told them that military exercises were to take place and that they could not continue.
<b><i>13. The events of August and September 2002</i></b>	
<b>23 August 2002</b>	Ilinden notified the mayor of Blagoevgrad that it wanted to hold a commemoration at the memorial of Gotze Delchev in the centre of Blagoevgrad on 12 September. The mayor did not reply.
<b>12 September 2002</b>	At approximately 3.30 p.m. members and followers of Ilinden, who had gathered at a meeting point situated at a little less than a kilometre from the memorial, started marching toward it. However, at first that proved impossible because the memorial was surrounded by a group of about twenty persons who were shouting insults. Several persons from that group attacked individual members and followers of Ilinden, broke the flagstaff one of them was carrying, tried to take another flag, tore a poster and took the ribbon from a wreath carried by one of the members of Ilinden. A member of Ilinden was filming with a camera. One person attacked him from behind and tore the electrical cables of the camera. The police were present and had formed a cordon between the members and followers of

	Ilinden and the hostile group, but failed to prevent the above incidents. However, they secured access for the members and followers of Ilinden to the memorial, where they laid a wreath. The speech of the president of Ilinden was constantly interrupted by the shouting of the hostile group. The members and followers of Ilinden then retreated from the memorial under police escort.
<b>23 September 2002</b>	Ilinden complained to the Blagoevgrad Regional Prosecutor's Office about the actions of the hostile group. That Office ordered a preliminary verification, but apparently nothing ensued.
<b>15 October 2002</b>	Ilinden complained to the Sofia Military Prosecutor's Office about the inactivity of the police officers present during the 12 September meeting and about their failure to secure the peaceful holding of the event. On 10 December 2002, the Sofia Military Prosecutor's Office refused to open criminal proceedings. On appeal of Ilinden its decree was upheld by the Sofia Military Appellate Prosecutor's Office on 20 February 2003. Ilinden further appealed to the Chief Prosecutor's Office, which upheld the refusal in a decree of 6 October 2003, reasoning that Ilinden's allegations were not supported by the facts established during the preliminary verification. The police had strictly complied with the relevant legal provisions.
<b>14. The events of August 2003</b>	
<b>Unspecified date</b>	On an unspecified date in July 2003, Ilinden notified the mayor of Petrich that it planned to hold a meeting at Samuilova krepost on 2 August, to commemorate the one-hundredth anniversary of the Ilinden uprising. Apparently the mayor assented and on 2 August 2003 members and followers of Ilinden gathered at Samuilova krepost. During the entire four hour event a plainclothes police officer was filming. When the chairperson of Ilinden tried to remove the camera, there ensued a scuffle and the police attempted to arrest him.
<b>15. The events of the end of August and September 2003</b>	
<b>28 August 2003</b>	Ilinden notified the mayor of Blagoevgrad that on 12 September it intended to organise a commemoration at the memorial of Gotze Delchev.
<b>1 September 2003</b>	The mayor informed that the remarks made by the group in the notification were unconstitutional and provocative. Also, in order to organise events, Ilinden had to be registered. Finally, there was no need for the planned event to take place in front of the memorial of Gotze Delchev and its timing was inopportune, because another event had been planned for the same time and date. If Ilinden chose another place for holding its commemoration, the mayor would reconsider the matter.
<b>10 September 2003</b>	Ilinden objected to the mayor's decision. It stated that it was willing to shift the time of its commemoration to one hour later, but that the place was closely bound to a specific occasion and could not be changed. The same day the organisation filed an appeal for judicial review with the Blagoevgrad District Court.
<b>11 September 2003</b>	The police summoned two members of Ilinden and cautioned them in writing to refrain from organising the event planned for 12 September.
<b>12 September 2003</b>	The mayor of Blagoevgrad informed Ilinden that he prohibited the planned event, because it would create conditions for the disruption of public order and thus would endanger the rights of others.
<b>12 September 2003</b>	Members and followers of Ilinden gathered in the centre of Blagoevgrad with an intent of marching to the memorial of Gotze Delchev. Approximately fifty police officers were also present. Several officers approached the members and followers of Ilinden and read out a decree of

	the Blagoevgrad Regional Prosecutor's Office prohibiting the commemoration.
<b>16 September 2003</b>	In a decision of the Blagoevgrad District Court, the application for judicial review was declared inadmissible. It found that it had been filed with the court on 10 September and had been brought to the attention of a judge-rapporteur at 4.:37 p.m. on 11 September. By section 12(6) of the Meetings and Marches Act, the time-limit for ruling on the application was five days. As of 16 September the issue whether to allow the event planned for 12 September had become moot and there was no need for the court to rule on it.

### **B. The Applicants' complaints under the European Convention and the arguments of the Government**

The applicants complained that the bans on the attempts to organise rallies during the period 1998-2003 events had not been warranted under the terms of Article 11.

The Government argues that in some of the cases about which the applicants complained there had been no interference with their rights under Article 11 of the Convention.

### **C. Judgment of the European Court of Human Rights**

<b>ARTICLES ALLEGEDLY VIOLATED AND DAMAGE</b>	<b>COURT'S JUDGMENT</b>
<b>Article 11 of ECHR</b>	Violation (unanimous)
<b>Pecuniary damage</b> The applicants claimed 57,140 Bulgarian leva (BGN) as compensation for the alleged pecuniary and non-pecuniary damage suffered on account of the violation of Article 11.	The Court considers that the claim in respect of pecuniary damage is unsubstantiated and must be dismissed. In particular, it has not been shown to the Court's satisfaction that the penal decrees produced by the applicants are directly related to the violation of Article 11 found in the present case.
<b>Non-pecuniary damage</b> The applicants claimed 57,140 Bulgarian leva (BGN) as compensation for the alleged pecuniary and non-pecuniary damage suffered on account of the violation of Article 11.	The Court accepts that the applicants have suffered non-pecuniary damage as a consequence of the violation of their right to freedom of assembly. Deciding on an equitable basis and having regard to its case-law, the Court awards the applicants the global sum of 6,000 euros (EUR), plus any tax that may be chargeable on this amount.
<b>Costs and Expenses</b> The applicants sought the reimbursement of BGN 4,555 for costs and expenses incurred in the proceedings before the domestic authorities and in the Strasbourg proceedings.	The Court noted that the applicants have only supplied proof of the disbursement of BGN 450 in respect to translation expenses. The Court considers, nevertheless, that they must have incurred certain expenses in photocopying and mailing submissions and documents for the purposes of the domestic and the Strasbourg proceedings. Having regard to all relevant factors, the Court awards the applicants EUR 800, plus any tax that may be chargeable on that amount.

## PART II -- STUDY OF THE JUDGMENT OF THE EUROPEAN COURT

The case of the United Macedonian Organisation Ilinden and Ivanov v. Bulgaria clearly emphasises the standing of the European Court with respect of the positive obligations of the States for ensuring effective exercise of the right to the freedom of assembly and also underlines the strict approach of the Court to restrictions of this right. The importance of the freedom of assembly and its role in the promotion of the role of law and a democratic society has been underlined in a number of international and regional human rights treaties. The freedom of Assembly is protected by:

- Universal Declaration of Human Rights (UDHR),<sup>1</sup> Article 20;
- Convention for the protection of Human Rights and Fundamental Freedoms (ECHR)<sup>2</sup>, Article 11;
- African Charter on Human and Peoples' Rights (ACHPR)<sup>3</sup>, Article 11;
- American Convention on Human Rights (ACHR)<sup>4</sup>, Article 15;
- Canadian Charter of Rights and Freedoms (CCRF)<sup>5</sup>.

Freedom of assembly is guaranteed by the legal frameworks of most European Countries<sup>6</sup>. The guarantee of this freedom at the constitutional level of different countries comes to prove the important role of the freedom of assembly in a democratic society.

It is noticeable that the First Amendment to the Constitution of the United States of America went even further in terms of underlining the importance of the freedom of assembly by defining that:

Congress shall make no law respecting an establishment of religion, or prohibiting ... the rights of the people peaceably to assemble, and the petition of Government for a redress of grievances<sup>7</sup>.

Thus, by defining the right to hold public meetings and form associations without interference by the government, the USA shows the approach of the Government towards the importance of the right of assembly in a democratic society. This main meaning of this

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<sup>1</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. URL: <http://www.un.org/Overview/rights.html>

<sup>2</sup> Convention for the protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Rome, 4 November 1950. URL: <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/>

<sup>3</sup> African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. URL: <http://www1.umn.edu/humanrts/instrree/z1afchar.htm>

<sup>4</sup> American Convention on Human Rights "Pact of San Jose, Costa Rica" Adopted at San Jose, Costa Rica on 22 November 1969, entered into force on 18 July 1978. URL: <http://www.oas.org/juridico/english/Treaties/b-32.htm>

<sup>5</sup> The Canadian Charter of Rights and Freedoms is a bill of rights entrenched in the Constitution of Canada. It constitutes the first part of the Constitution Act of Canada of 1982. URL: [http://www.pch.gc.ca/progs/pdp-hrp/canada/guide/index\\_e.cfm](http://www.pch.gc.ca/progs/pdp-hrp/canada/guide/index_e.cfm)

<sup>6</sup> See for example Article 40.6.1 of the Constitution of Ireland; Article 17 of the Constitution of Italy; Article 21 of the Constitution of Spain; Article 9 of the Constitution of Netherlands; Article 8 of the Constitution of Germany; Article 43 of the Constitution of Bulgaria; Article 29 of the Constitution of Armenia and etc.

<sup>7</sup> See the First Amendment on Freedom of Religion, Press, Expression of the Constitution of the United States of America, ratified on 15 December 1791. URL: <http://www.usconstitution.net/const.html#Am1>

right defined by the First Amendment of the Constitution of the USA is the right peaceably to assemble peacefully and to petition the government for redress of grievances.

Freedom of association and assembly guaranteed by Article 11 of the ECHR is one of the foundations of the democracy, and it is closely linked with the freedom of expression guaranteed by Article 10 of the European Convention and the right to freedom of thought, conscience and religion in Article 9<sup>8</sup>.

In the case of the *United Macedonian Organization Ilinden and Ivanov v. Bulgaria*, the European Court closely examined the interferences of the right to peaceful assembly protected by Article 11 by applying the below mentioned test and once more stressed several important features of the rights of peaceful assembly:

### ***1. Scope of the case***

The Court noted that the applicants raised new complaints relating to two rallies which had been planned by Ilinden for 12 September 2001 and 28 July 2002, and made certain allegations about various obstructions on the part of the authorities on their organised activities throughout the years, such as the problems with the leasing of a hall for the holding of Ilinden's congress on 28 April 2002. The Court reiterates that the admissibility decision delimits the scope of the case before it (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 59). It follows that it cannot take into account the newly raised complaints relating to the events planned for 12 September 2001 and 28 July 2002.

The Court concluded that its task in the present case is limited to ruling on the alleged violation of the applicants' rights under Article 11 of the Convention stemming from the hindrances posed by the authorities on the holding of certain public events set out in the admissibility decision.

### ***2. Applicability of Article 11***

The Court, before examining the complaints under Article 11 of the Convention, checks its applicability. The main characteristic for the applicability of Article 11, namely the rights to assembly, is its 'peaceful' nature, i.e. its protection does not extend to demonstrators whose organisers and participants have violent intentions. The Court has acknowledged this principle in a number of other cases, such as the case of *G. v. Germany*<sup>9</sup>.

The Court did not find any indication that the organizers of and the participants in the meetings under consideration in the present case had violent intentions. The Court therefore indicated that Article 11 of the Convention is applicable<sup>10</sup>.

### ***3. Whether there have been interferences***

Paragraph 2 of Article 11 of ECHR provides the grounds for the restriction of the rights guaranteed by the first paragraph of the Article; however "the European Court has adopted a

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<sup>8</sup> Taking a Case to the European Court of Human Rights, Philip Leach; Article 11: Freedom of Peaceful Assembly and Association, para. 7.12 page 331. Second Edition, Oxford University Press.

<sup>9</sup> See the judgment of the European Court on 6 March 1987 on the case of *G. v. Germany*.

<sup>10</sup> See the judgment of the European Court of 15 February 2006 in the case of *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, para. 99.

fairly strict approach to restrictions”<sup>11</sup>. For the restrictions to be in compliance with the Convention it should be “prescribed by law”, the aim of the restriction should be legitimate and the restriction should be necessary in a democratic society<sup>12</sup>. The Court assesses the compliance of any restriction of the rights guaranteed by Article 11 by applying the mentioned principles.

The Court, by examining the facts in the instant case, concluded that there have been interferences with the applicants' freedom of assembly on all occasions under examination, except the events of April 2001, August and September 2002, and August 2003<sup>13</sup>.

#### ***4. Whether the interferences were justified***

##### **(a) Whether the interferences were “prescribed by law”**

In the instant case, the Court notes that on all occasions, save the events of September 1998, April and May 1999, September 2000, and April and May 2001, the meetings were banned by the mayors (see Table No: 1). The Court underlined the fact that:

- a) in some cases the mayors and the domestic courts relied on the fact that Ilinden had not been registered, which was not an express requirement of the law (see Table No.1 above).
- b) In most cases the mayors or the courts also relied on other reasons for banning the meetings or for upholding the bans.
- c) The provision of Article 185 § 1 of the CCP was formulated extremely vaguely and did not circumscribe the situations where the prosecutorial authorities could act and when the authorities have grounds to believe that there is a genuine risk that serious offences may be committed during a public event, that they may act pre-emptively and impose such measures.

The Court, for the reasons mentioned above, accepted for the purposes of the present case, that the interferences in these instances were prescribed by law.

The Court further noted that if the findings of the local and the prosecutorial authorities that there was a threat to public order and a risk that offences would be committed were justified falls to be examined in the context of the question whether or not the interferences with the applicants' freedom of assembly were necessary in a democratic society, which appears to be the central aspect of the case.

##### **(b) Legitimate aim**

The Court, by examining the facts of the case and assessing the submission of the Government of Bulgaria arguing that the interference was aimed at protecting national security and the territorial integrity of the country, guaranteeing public order in the local community, protecting the rights and freedoms of others and preventing disorder and crime,

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<sup>11</sup> Taking Cases to the European Court of Human Rights—the Human Rights Act 1998 and the European Convention on Human Rights, Keir Starmer, Legal Action Group, 1999; paragraph 25.2, page 624.

<sup>12</sup> Article 11 of ECHR, para.2.

<sup>13</sup> See the judgment of the European Court of 15 February 2006 in the case of United Macedonian Organisation Ilinden and Ivanov v. Bulgaria, para. 106.

accepted that the bans were intended to safeguard one or more of the interests indicated herein.

(c) **“Necessary in a democratic society”**

This test is considered to be one of the most arguable ones<sup>14</sup>. The Court has developed a test to assess the compliance of the actions of the state of certain governments as being “necessary in a democratic society”. The test consists of the following features—the nature of democratic necessity, the principle of proportionality and the margin of appreciation<sup>15</sup>.

While examining the present case the Court referred to the case of *Stankov and the United Macedonian Organisation Ilinden*, where, after analysing in detail all grounds for the bans advanced by the Government, including the ones put forward here – threat of disruption of public order, danger for the territorial integrity and the security of the country, and a risk that offences may be committed – it held that the fact that the authorities “resorted to measures aimed at preventing the dissemination of the applicants' views at the demonstrations they wished to hold ... in circumstances where there was no real foreseeable risk of violent action or of incitement to violence or any other form of rejection of democratic principles” was in breach of the proportionality principle enunciated in Article 11 § 2.

The Court perceived no material difference in this case. It noted that, with the few exceptions described above (see Table 1 above) the authorities persisted in their efforts to impede the holding of the commemorative events which Ilinden sought to organise, much as they had during the years from 1994 to 1997, when they had “adopted the practice of imposing sweeping bans on Ilinden's meetings”.

The Court further observed that the authorities' justification for so doing was substantially the same as in *Stankov and the United Macedonian Organisation Ilinden* (cited above) and thus insufficient to make the impugned measures necessary in a democratic society.

The Court then went even further and underlined the duty on positive obligations of the states. The Court noted that on one of the occasions when they did not interfere with the applicants' freedom of assembly, the authorities appeared somewhat reluctant to protect the members and followers of Ilinden from a group of counter-demonstrators. The Court recalled that genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere; it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. Further, the Court noted, that in a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly, as well as by other lawful means. The authorities were therefore bound to take adequate measures to prevent violent acts directed against the participants in Ilinden's rally, or at least limit their extent. However, the Court underlined, while embarking on certain steps to enable the organisation's commemorative event to proceed peacefully, they did not take all the

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<sup>14</sup> The exceptions to Articles 8-11 of the European Convention on Human Rights by Steve Greer, Reader in Law University of Bristol, Directorate General of Human Rights, Council of Europe, 1997; para. II (B)

<sup>15</sup> See for example the judgment of the European Court of 7 December 1976 on the case of *Handyside v. the United Kingdom*; paras. 47-48.

appropriate measures which could have reasonably be expected from them under the circumstances, and thus failed to discharge their positive obligations under Article 11.

Finally, the Court noted with concern that one of the bans was imposed, with almost identical reasoning, even after similar measures had been declared contrary to Article 11 in the Court's judgment in *Stankov and the United Macedonian Organisation Ilinden*. There has therefore been a violation of Article 11 of the Convention.

### **PART III. SIGNIFICANT FEATURES OF THE CASE**

In the case of *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* the European Court had specifically underlined two very important features which are essential for the effective exercise of the right to peaceful assembly:

1. Firstly the Court specifically analysed the proportionality of the interference of the Government of Bulgaria with attempts of *United Macedonian Organisation Ilinden* to hold political rallies and events and came to a conclusion that the interference of the Government of Bulgaria with the right of freedom of peaceful assembly of the applicants was not proportionate to the aim pursued.

In the instant case the Court analysed in detail whether or not the interferences with the applicants' freedom of assembly were necessary in a democratic society and whether the findings of the local authorities and the prosecution stating that there was a threat to public order and a risk that offences would be committed were justified<sup>16</sup>.

The study of the case law of the European Court shows that it gives a very wide margin of appreciation to the states while deciding on the measures to be undertaken to enable lawful demonstrations to proceed peacefully, however:

“... choosing between the 'priority to rights' or 'balance' tests has become a hey [KBS1]source of confusion between the scope of the domestic margin of appreciation and the boundaries of European review...”<sup>17</sup>

Meantime, both the Commission and the European Court have persistently indicated that despite the fact that the margin of appreciation is respected; the States are still obliged to prove whether the interference is proportionate with the aim pursued<sup>18</sup>. However a general ban will only be justifiable if there is a real danger of disorder which cannot be prevented by other less stringent measures<sup>19</sup>.

The Court applies an individual approach to each case while assessing the reasonableness and the appropriateness of the measures taken by the governments.

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<sup>16</sup> See the judgment of the European Court on the case of *United Macedonian Organization Ilinden and Ivanov v. Bulgaria*, para. 110.

<sup>17</sup> The exceptions to Articles 8 to 11 of the European Convention on Human Rights; by Steven Greer, reader in Law to the University of Bristol. Directorate General of Human Rights, Council of Europe 1997, page 15.

<sup>18</sup> See for example the judgment of the European Court of 26 April 1979 in the case of *Sunday Times v. the United Kingdom*.

<sup>19</sup> Taking a Case to the European Court of Human Rights, Phillip Leach, Second Edition, 2005, para. 7.12.1, page 333.

In the case of the *United Macedonian Organization v. Bulgaria*, while assessing the above factors, the Court specifically underlined the importance of the following aspect and principles:

- Effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere; it is the duty of the Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully<sup>20</sup>.
  - The burden and proof and proportionality<sup>21</sup> -- the Court particularly emphasised that the authorities of Bulgaria did not improve their practice in the instant case after the Court's judgment on the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, despite the fact that the Government was asserting that in following the Court's judgment in that case the authorities had undertaken measures to ensure the exercise of the applicants' freedom of assembly. In the Case of *Stankov and the United Macedonian Organisation Ilinden* the Court found that there was a breach of the proportionality principle enunciated in Article 11 § 2<sup>22</sup>. The Court further indicated that there was no material difference in the instant case and observed that the authorities' justification for the interferences was substantially the same as in *Stankov and the United Macedonian Organisation Ilinden* and thus insufficient to make the impugned measures necessary in a democratic society<sup>23</sup>.
2. The second important feature of this case is the implementation of the positive obligations of the authorities of Bulgaria to allow effective exercise of the right to freedom of assembly<sup>24</sup>.

The concept of “positive obligation” has been gradually developing within the machinery of the European Court in the past 30-35 years. The first cases when the European Court specifically underlined the duty of state authorities to implement their “positive obligation” with respect of exercise of certain rights is the case of *Marckx v. Belgium* and also the case of *Airey v. Ireland*<sup>25</sup>. Positive obligation of a state assumes initiating and implementing a positive action for allowing effective implementation of human rights and freedoms. Thus:

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<sup>20</sup> See the judgment of the European Court in the case of 20 October 2005 on the case of UMO Ilinden and Ivanov v. Bulgaria, para. 115.

<sup>21</sup> Ibid.

<sup>22</sup> See the judgment of the European Court of 2 October 2001 in the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, paras. 91-112

<sup>23</sup> See the judgment of the European Court in the case of 20 October 2005 on the case of United Macedonian Organization Ilinden and Ivanov v. Bulgaria, para. 114.

<sup>24</sup> Ibid at para. 115.

<sup>25</sup> See the judgment of the European Court of 13 June 1979 in the case of *Marckx v. Belgium*, the judgment of the European Court of 9 October 1979 in the case of *Airey v. Ireland*, see also the cases of *X and Y v. the Netherlands* and etc.

*Positive obligations require many different forms of action by member states, ranging from effectively investigating killings through to protecting peaceful demonstrators from violent attacks by their opponents. ...*<sup>26</sup>.

When assessing the facts of the case and the question on whether or not a state has complied with its positive obligations, the European Court pays attention to facts such as the types of violations i.e. whether the violations was conducted “by a third private party or have a cause that does not follow from an immediate action by the state or a private party”<sup>27</sup>. The European Court has addressed the positive obligations of the member states rising out of the above-mentioned two situations of human rights violations<sup>28</sup>.

In the instant case, the Court indicated that the authorities were bound to take adequate measures to prevent violent acts directed against the participants in Ilinden's rally, or at least to limit their extent. The Court noted that on one of the occasions when the state authorities did not interfere with the applicants' freedom of assembly; they appeared somewhat reluctant to protect the members and followers of Ilinden *from a group of counter-demonstrators, which resulted in physical violence to some of the participants*. In this respect the Court reaffirmed its standing that:

*... genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere; it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully ...*<sup>29</sup>

It further analysed that the state authorities, while embarking on certain steps to enable the organisation's commemorative event to proceed peacefully, *did not take all the appropriate measures which could have reasonably be expected from them under the circumstances*, and thus failed to discharge their positive obligations under Article 11<sup>30</sup>.

The Court also recalled the importance of expressing political ideas which challenge the existing order and therefore peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly, as well as by other lawful means<sup>31</sup>.

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<sup>26</sup> The development of positive obligations under the European Convention on Human Rights by the European Court of Human Rights, Mowbray, Alastair L, 2004, vol. 2, the introduction.

<sup>27</sup> See Positive Obligations of States under the European Human Rights Convention by Cordula Droge, 2003, page, 381. Copyright @ by Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V.

<sup>28</sup> Ibid at pages 381-383.

<sup>29</sup> See the judgment of the European Court in the case of 20 October 2005 on the case of United Macedonian Organization Ilinden and Ivanov v. Bulgaria, para. 115.

<sup>30</sup> Ibid

<sup>31</sup> Ibid