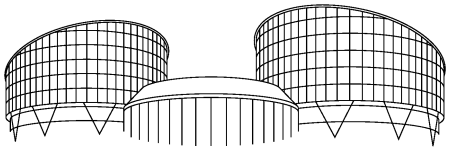

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF KIRIL IVANOV v. BULGARIA

*(Application no. 17599/07)*

JUDGMENT

STRASBOURG

11 January 2018

**FINAL**

11/04/2018

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Kiril Ivanov v. Bulgaria,**

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

Angelika Nußberger, *President*,
Erik Møse,
André Potocki,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges*,
Maiia Rousseva, ad hoc *judge*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 December 2017,

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

# PROCEDURE

1. The case originated in an application (no. 17599/07) against the Republic of Bulgaria lodged with the Court on 16 March 2007 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Kiril Kostadinov Ivanov ("the applicant").

2. The applicant was represented by Mr K. Kanev, chairman of the Bulgarian Helsinki Committee, a non-governmental organisation based in Sofia, and by Mr S. Ovcharov, a lawyer working with the Bulgarian Helsinki Committee and practising in Sofia. On 15 January 2016 the President of the Section gave Mr Kanev leave to represent the applicants in all pending and future cases in which he personally acts as a representative (Rule 36 § 4 (a) *in fine* of the Rules of Court). The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova of the Ministry of Justice.

3. In his original application, the applicant alleged that a rally planned for 30 September 2006 in whose organisation he had taken part had been banned by the authorities, and that he had not had an effective domestic remedy in respect of that. This, he alleged, had been due to the Macedonian ethnic consciousness of the people who had intended to take part in it. In follow-up submissions filed with the Court on 28 November 2007, the applicant alleged that another rally, planned for 12 September 2007, which he had also helped organise, had been banned by the authorities for the same reasons.

4. On 18 December 2012 the Government were given notice of the application. In his observations in reply to those of the Government, filed

with the Court on 21 June 2013, the applicant in addition alleged that he had not had an effective domestic remedy in respect of the second rally either.

5. On 12 April 2015 Mr Yonko Grozev, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 § 3). Accordingly, on 19 October 2017 the President selected Ms Maiia Rousseva as *ad hoc* judge from the list of five persons whom the Republic of Bulgaria had designated as eligible to serve in that office (Article 26 § 4 of the Convention and Rule 29 § 1 (a)).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1942 and lives in Blagoevgrad.

### A. Background

7. The background to the banning of the two rallies at issue in the present case has been set out in detail in the judgments in the following cases: *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECHR 2001-IX; *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, 20 October 2005; *United Macedonian Organisation Ilinden-PIRIN and Others v. Bulgaria*, no. 59489/00, 20 October 2005; *Ivanov and Others v. Bulgaria*, no. 46336/99, 24 November 2005; *United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, 19 January 2006; *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (no. 2)*, no. 37586/04, 18 October 2011; *United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 2)*, no. 34960/04, 18 October 2011; *Singartiyski and Others v. Bulgaria*, no. 48284/07, 18 October 2011; and *United Macedonian Organisation Ilinden-PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, 18 October 2011.

8. The applicant was one of the applicants in *Ivanov and Others* (cited above). He is the brother of Mr Yordan Kostadinov Ivanov, who was one of the applicants in *United Macedonian Organisation Ilinden and Ivanov*, *United Macedonian Organisation Ilinden and Others*, *United Macedonian Organisation Ilinden and Ivanov (no. 2)*, and *United Macedonian Organisation Ilinden and Others (no. 2)* (all cited above).

## B. Rallies in September 2006

### *1. Rally planned for 30 September 2006*

9. On 15 September 2006 the applicant, acting on behalf of the unregistered organisation the Macedonian Initiative Committee, notified Blagoevgrad's mayor that the Committee intended to stage a rally at 4 p.m. on 30 September 2006 in Macedonia Square to commemorate the eighty-second anniversary of "the day of the genocide of Macedonians in Bulgaria – 12 September 1924". The rally would consist of the laying of wreaths and flowers and the reading of a short address.

10. The same day the mayor replied to the applicant that the rally could not proceed as the municipality had planned an event in Macedonia Square for the same date – a concert marking the Day of Music. That parallel event made the staging of the rally impossible.

11. On 18 September 2006, again acting on behalf of the Macedonian Initiative Committee, the applicant sought judicial review of the mayor's decision. He argued that under the applicable international-law agreements, that organisation was entitled to stage peaceful rallies without being registered.

12. In a final decision of 19 September 2006, the Blagoevgrad District Court held that the application was admissible and that the mayor's decision was amenable to judicial review. However, it went on to find that the mayor's decision was lawful, because there was a risk that the rights and freedoms of others might be infringed. It was not appropriate to hold the rally, which, in view of its intended theme, was political in character, alongside the municipality's event. The performance of musical works could not at all be reconciled with political addresses. It was not proper to force music lovers to listen to political speeches and declarations, especially ones not accepted unequivocally by Bulgarian society, which was particularly sensitive to assertions that a Macedonian minority existed in Bulgaria and that its rights were being infringed.

13. As a result, the Macedonian Initiative Committee called off the rally. The applicant submitted that he was not aware of whether the municipality's event had in fact taken place. He had made a request for information in that connection under freedom-of-information laws, but had not received a reply. The municipality's cultural calendar for 2006 showed that the concert marking the Day of Music had been scheduled for 1 October rather than 30 September 2006.

### *2. Rally planned for 12 September 2006*

14. An earlier attempt by the United Macedonian Organisation Ilinden ("Ilinden"), an unregistered association based in south-western Bulgaria, in an area known as the Pirin region or the geographic region of Pirin

Macedonia, to organise a similar rally on 11 or 12 September 2006 had also been fruitless. Blagoevgrad's mayor had banned that rally, and a legal challenge to his decision had been dismissed by the Blagoevgrad District Court on 8 September 2006 (see *United Macedonian Organisation Ilinden and Ivanov (no. 2)*, cited above, §§ 58-63).

### C. Rally on 12 September 2007

15. The circumstances relating to the rally organised by Ilinden on 12 September 2007 are set out in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, §§ 90-95) in the following way:

> "90. On 28 August 2007 Ilinden notified the Mayor of Blagoevgrad of its intention to stage a rally on Macedonia Square, in front of Gotse Delchev's monument, at 4.30 p.m. on 12 September 2007. The event, which was to mark the anniversary of 'the genocide against the Macedonians', would consist of the laying of a wreath and flowers on the monument and a short speech. It would last one hour.
>
> 91. On 29 August 2007 the Mayor replied that the notification could not be examined as Ilinden had not produced documents proving its official registration. It was thus impossible to identify the 'managing bodies of [the] event'. Moreover, the municipality had planned an event on Macedonia Square for the same date, a children's holiday under the name 'Hello, school', to mark the beginning of the school year, which made the holding of the rally impossible.
>
> 92. On 30 August 2007 Ilinden sought judicial review by the newly created Blagoevgrad Administrative Court ..., reiterating the arguments raised in its previous applications. In a decision of 30 August 2007 the Blagoevgrad Administrative Court found that under the 1990 Meetings and Marches Act, which was *lex specialis* in relation to the general rules of administrative procedure, the court competent to examine an application for judicial review of a Mayor's decision to ban a rally was the district court. It therefore sent the file to the Blagoevgrad District Court.
>
> 93. In a final decision of 5 September 2007 the Blagoevgrad District Court dismissed the application. It held that, while the lack of registration did not amount to sufficient grounds to prohibit the rally, the fact that another event, likely to draw a number of people, many of whom were children, was due to take place on the same date in Macedonia Square was enough to justify the ban. In the court's view, it was inopportune to allow two wholly different events to be staged at the same time and place.
>
> 94. According to the applicants, no school event took place at 4 p.m. on 12 September 2007 on Macedonia Square. When a number of members and supporters of Ilinden gathered in front of the American University in Blagoevgrad at about 5 p.m., they were stopped by the police and a number of them were arrested. They were taken to a police station, held for about three hours and charged with committing administrative offences for having tried to take part in a banned rally.
>
> 95. On 22 October 2007 the deputy Mayor of Blagoevgrad imposed administrative punishments (fines of 200 Bulgarian levs (102.26 euros) each) on [Mr Yordan Kostadinov Ivanov] and on a number of members of Ilinden for having taken part in a banned rally, in breach of a public-order regulation issued by the Blagoevgrad Municipal Council. All of them sought judicial review. In a series of judgments

delivered on 18 and 19 February, 11 March, and 22 and 29 May 2008 the Blagoevgrad District Court annulled the fines. In some of the judgments it found that they were invalid, as under the applicable rules the deputy Mayor had no power to impose administrative punishments. In other judgments the court found that the deputy Mayor's decisions were defective because they did not specify which administrative offences had been committed. In others it held that although the Mayor's ban on the rally planned for 12 September 2007 was legally binding, the actions of the members of Ilinden on that date had not amounted to the staging of a rally, as they had been too few and had not tried to wave banners and make speeches, but merely to lay flowers on Gotse Delchev's monument. The court went on to say that every person, regardless of their political convictions, had the right to honour the memory of national heroes in peace."

16. It was the applicant who acted on behalf of Ilinden in its dealings with Blagoevgrad's mayor and the courts in relation to that rally.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice have been set out in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, §§ 107-12).

# THE LAW

## I. STRIKING OUT OF PART OF THE APPLICATION

### A. The parties' submissions

18. The Government submitted that in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above) the Court had already given a broad ruling in relation to interference by the authorities with rallies organised by Ilinden. It was therefore not warranted to take up the same issue in a case brought by an individual claiming to have himself suffered a breach of his rights under Article 11 of the Convention. Although the applicant had not been a party to that earlier case, he did not have any separate legal interest requiring protection, and could not claim that he had suffered separate damage calling for an award of just satisfaction. Nor did the case concern a continuing breach, so as to require consecutive rulings by the Court.

19. The applicant submitted that since in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above) the Court had already examined the authorities' actions in relation to the rally on 12 September 2007 and found a breach of Article 11 of the Convention, it was no longer justified to examine that complaint. By contrast, his complaint under

Article 14 of the Convention in conjunction with Article 11 in relation to that rally still required examination.

20. The applicant went on to say that the rally planned for 30 September 2006 had had nothing to do with Ilinden. It had been planned by the Macedonian Initiative Committee, which was a separate organisation. He therefore maintained his complaints under Articles 11 and 14 of the Convention in relation to that rally. He stated that he also maintained his complaints under Article 13 of the Convention in relation to both rallies.

### B. The Court's assessment

21. In *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, §§ 58-63, 90-95 and 126-37) the Court examined events which had unfolded concomitantly with the applicant's dealings with the authorities in connection with the rally planned for 30 September 2006 (see paragraph 14 above), as well as the events surrounding the rally on 12 September 2007 (see paragraph 15 above).

22. It does not however follow that the present application is "substantially the same as a matter that has been examined by the Court" within the meaning of Article 35 § 2 (b) of the Convention.

23. With respect to the rally on 30 September 2006, the application concerns facts which are related to but do not coincide with those examined in that earlier case. The rally under consideration there was planned by Ilinden and was due to take place on 11 or 12 September 2006, whereas the rally at issue here was planned by a different organisation, the Macedonian Initiative Committee, and was due to take place two and half weeks later, on 30 September 2006. Moreover, both Blagoevgrad's mayor and the Blagoevgrad District Court gave separate decisions in relation to the two rallies (see paragraphs 9-14 above, and *United Macedonian Organisation Ilinden and Ivanov (no. 2)*, cited above, §§ 58-63). Last but not least, the applicants in the two cases are different: Ilinden and the applicant's brother in the earlier one, and the applicant in the one under consideration (see paragraph 8 above).

24. As regards the rally on 12 September 2007, the facts examined in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, §§ 90-95) and here were indeed the same (see paragraph 15 above). However, the applicants in that case and in this one are different. For an application to be "substantially the same as a matter that has already been examined by the Court", it must not only concern substantially the same facts and complaints but also be introduced by the same persons (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 118, ECHR 2009; *Berdzenishvili and Others v. Russia*, nos. 14594/07 and 6 others, § 37, 20 December 2016; *Dzidzava v. Russia*, no. 16363/07, § 65,

20 December 2016; and *Shioshvili and Others v. Russia*, no. 19356/07, § 47, 20 December 2016).

25. Nevertheless, the fact that the Court has already dealt with the events relating to the rally on 12 September 2007 in that earlier case gives rise to the further question of whether the applicant's complaints in relation to those events should be struck out under Article 37 § 1 (c) of the Convention.

26. Under the terms of that provision, "[t]he Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... for any other reason established by [it], it is no longer justified to continue the examination of the application."

27. It is clear from the Court's case-law that the power to strike out under Article 37 § 1 can be exercised with respect to parts of an application as well (see, for example, *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 104, ECHR 2007-I).

28. The wording of Article 37 § 1 (c) shows that the Court has considerable leeway in identifying the reasons why it is no longer justified to examine an application. Although those reasons must invariably reside in the particular circumstances of the case, they can be quite diverse (see *Association SOS Attentats and de Boery v. France* [GC] (dec.), no. 76642/01, § 37, ECHR 2006-XIV).

29. One such reason may be that, owing to the nature of the breach and of the measures required to put it right, the Court's ruling in an earlier case relating to the same facts but lodged by a different applicant has dealt sufficiently with the relevant issues, and that it would hence be superfluous to examine the matter again at the instance of another applicant who has a sufficiently close link with the applicant in the earlier case.

30. Thus, in a case which concerned interference by the authorities in the affairs of the Bulgarian Orthodox Church the Court struck out follow-up applications. In its judgments in the leading case, *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria* (nos. 412/03 and 35677/04, 22 January 2009 (merits) and 16 September 2010 (just satisfaction)), it had found that between 2003 and 2004 the authorities had interfered with that Church's internal organisation in breach of Article 9 of the Convention, and that this breach had affected every active member of the religious community in question. At the same time, the Court had not awarded damages to the individual applicants, but only to the applicant organisation, noting that its claims had been made on behalf of its religious community. The Court had also held that no individual measures were required to execute its judgment (merits judgment, §§ 102 and 114, and just satisfaction judgment, §§ 23-46, both cited above). In the follow-up case, *Pantusheva and Others v. Bulgaria* ((dec.), nos. 40047/04 and 33 others, 5 July 2011), in which several hundred Christian Orthodox believers who regularly attended church services and

took part in the life of the religious community had raised identical complaints in relation to the same events, the Court struck out the applications under Article 37 § 1 (c), chiefly on the basis that in the leading case it had already discharged its duty under Article 19 of the Convention to ensure the observance of the engagements undertaken by Bulgaria, and that nothing was to be gained if it were to repeat its findings in a series of comparable or even identical cases (ibid., §§ 56-57). The Court also took into account the nature of the breach and its effects on the individual applicants (ibid., § 59).

31. The situation at hand is similar to that in *Pantusheva and Others* (cited above). In *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, §§ 126-27), the Court found that the mayor's decision to ban the rally on 12 September 2007 had amounted to a restriction of the right of freedom of assembly of Ilinden and its chairman under Article 11 of the Convention because it had had a "chilling effect on the individuals concerned and on the other participants in the rall[y]". The Court therefore found a violation of Article 11. Its findings thus covered the effect which the ban had had on the applicant, who had been acting on Ilinden's behalf in its dealings with the authorities in relation to that rally (see paragraph 16 above). The finding of violation and the joint award which the Court made to Ilinden and its chairman in respect of non-pecuniary damage (ibid., § 141) must also be regarded as encompassing any damage suffered by the applicant, who had been acting on the organisation's behalf.

32. It follows that in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above) the Court already discharged its duty under Article 19 of the Convention to ensure the observance of the engagements undertaken by Bulgaria under Article 11 of the Convention with respect to the rally on 12 September 2007, and that nothing is to be gained if it were to repeat those findings here. Since the applicant's related complaint under Article 14 of the Convention does not require separate examination (see paragraphs 68-71 below), the fact that no such complaint was raised or determined in that earlier case does not alter that conclusion. Nor can the applicant claim to have suffered additional damage in connection with that rally that calls for a separate award of just satisfaction. It is therefore no longer justified to continue examining these two complaints. There is no need to determine whether this also applies to the complaint under Article 13 of the Convention relating to the rally planned for 12 September 2007, as it is in any event inadmissible (see paragraphs 4 above and 50-52 below).

33. No reason relating to respect for human rights as defined in the Convention requires the Court to continue examining this part of the application under Article 37 § 1 *in fine*.

34. Accordingly, the complaints under Article 11 and 14 of the Convention which relate to the rally on 12 September 2007 are to be struck out of the Court's list of cases under Article 37 § 1 (c) of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

35. The applicant complained that the rally planned for 30 September 2006 had been banned. He relied on Article 11 of the Convention, which provides, in so far as relevant:

> "1. Everyone has the right to freedom of peaceful assembly ...
>
> 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. Admissibility

#### *1. The parties' submissions*

36. The Government submitted that since the notice which the applicant had given to the mayor had concerned a rally sought to be organised by a non-governmental organisation rather than by him personally, he could not complain in his personal capacity in relation to that rally. His complaint was hence incompatible *ratione personae* with the provisions of the Convention.

37. The applicant submitted that the Court regularly examined under Article 11 complaints lodged by individuals on behalf of groups. It was clear that the organisers of rallies were personally affected by restrictions on their conduct.

#### *2. The Court's assessment*

38. The Court already found that the complaint relating to the rally planned for 30 September 2006 is not "substantially the same" as the matter examined in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, §§ 58-63 and 126-37) (see paragraph 23 above). It is therefore not inadmissible under Article 35 § 2 (b) of the Convention.

39. As for the complaint's compatibility *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), it should be noted that, under the Court's case-law, the right to freedom of assembly under Article 11 of the Convention can be exercised not only by the participants in a gathering but also by those who organise it, whether they be individuals or legal persons (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015, with further references). Although when notifying the mayor about the rally planned

for 30 September 2006 and when seeking judicial review of his decision to ban it the applicant purported to act on behalf of the unregistered Macedonian Initiative Committee, he was one of the rally's organisers (see paragraphs 9 and 11 above). He can therefore claim to be a victim with respect to the decision to ban the rally, and his complaint is compatible *ratione personae* with the provisions of the Convention (see *Stankov and the United Macedonian Organisation Ilinden*, nos. 29221/95 and 29225/95, Commission decision of 29 June 1998, unreported, and *Patyi and Others v. Hungary*, no. 5529/05, § 25, 7 October 2008).

40. The complaint is furthermore not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

41. The Government reiterated that the decision to ban the rally had not affected the applicant. In his dealings with the authorities, he had acted on behalf of an organisation rather than in his personal capacity. Nor had he been subjected to any sanctions in connection with the rally. Moreover, the right to freedom of assembly presupposed the existence of a group of people whose wish to hold a gathering had been restricted.

42. The Government went on to say that in upholding the mayor's decision to ban the rally, the Blagoevgrad District Court had not relied on the fact that the organisation staging the rally had not been registered – grounds previously found deficient by this Court – and therefore no issue arose under Article 11 of the Convention in relation to that aspect of its reasoning. That court had relied on public-order considerations and had had regard to the discretion enjoyed by the mayor in such matters. The rally planned for 30 September 2006 had coincided with an event planned by the municipality, and the mayor had been entitled to take measures to ensure that that event unfolded smoothly.

43. The applicant submitted that the decision to ban the rally had not corresponded to any pressing social need and had been disproportionate. Neither the mayor nor the court which had reviewed his decision had assessed the measure's necessity. That court had simply endorsed the mayor's reasoning. It had not sought to ascertain whether the planned rally and the municipal event would have taken place at the same time on 30 September 2006. For his part, the mayor had not proposed to the applicant to reschedule the rally for a different time.

*2. The Court's assessment*

44. The Court has already found that the applicant, who was one of the rally's organisers, was personally affected by the mayor's decision to ban it (see paragraph 39 above). For the same reasons, the Court considers that the ban amounted to a "restriction" of the applicant's right to peaceful assembly under Article 11 of the Convention. The fact that it was only the applicant who complained to the Court in that respect does not mean that that right is not in issue. The applicant was not proposing to hold a "solo demonstration" but to take part in a gathering with others (contrast *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 91, 26 April 2016).

45. There is no need to examine whether the restriction was "prescribed by law" or pursued one or more of the aims set out in Article 11 § 2 because, even assuming that it was and did, it was in any event not "necessary in a democratic society" for the following reasons (see *United Macedonian Organisation Ilinden and Ivanov (no. 2)*, § 131, and *Singartiyski and Others*, § 45 *in fine*, both cited above).

46. The mayor and the court which upheld his decision justified the ban by reference to the holding of a municipal event at the same time and place and by the need to protect the participants in that event from being exposed to controversial statements on historical issues seen as sensitive (see paragraphs 10 and 12 above). In four materially identical cases such grounds have been found to be insufficient for the purposes of Article 11 § 2 (see *Stankov and the United Macedonian Organisation Ilinden*, §§ 106-07; *United Macedonian Organisation Ilinden and Ivanov*, §§ 113-14; *United Macedonian Organisation Ilinden and Ivanov (no. 2)*, § 133; and *Singartiyski and Others*, § 46, all cited above).

47. The domestic authorities provided no details regarding the logistical or security difficulties which two parallel events might have posed and, more importantly, the Government have not explained why justifications considered insufficient in previous cases should suffice in the instant one. In addition, it is noteworthy that on a previous occasion when the authorities did not ban a rally organised by Ilinden, they allowed a counter-demonstration to proceed on the same day (see *United Macedonian Organisation Ilinden and Ivanov*, cited above, § 115).

48. The Court finds therefore that there has been a breach of Article 11 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant complained that he had not had an effective domestic remedy in respect of the alleged breaches of Article 11 of the Convention. He relied on Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

### A. Admissibility

50. In his original application, the applicant complained under Article 13 of the Convention in relation to the rally planned for 30 September 2006. In his follow-up submissions, which concerned the rally on 12 September 2007, he only raised complaints under Articles 11 and 14 of the Convention (see paragraph 3 above). He complained under Article 13 that he had not had an effective remedy in relation to that rally for the first time in his observations in reply to those of the Government, filed with the Court on 21 June 2013 (see paragraph 4 above).

51. According to the Court's case-law, the running of the six-month time-limit under Article 35 § 1 of the Convention with respect to complaints not featuring in the initial application is only interrupted when they are first submitted to the Court, and allegations made after the expiry of that time-limit can only be examined alongside the initial complaints if they constitute legal submissions relating to, or particular aspects of, those complaints (see *Fábián v. Hungary* [GC], no. 78117/13, § 94, 5 September 2017). The Court must verify these points even if they are not raised by the respondent Government (ibid., § 90), since it must monitor compliance with the six-month time-limit of its own motion (see, among other authorities, *Blokhin v. Russia* [GC], no. 47152/06, § 102, ECHR 2016).

52. In this case, the applicant's allegations under Article 13 of the Convention concerned two separate decisions of the Blagoevgrad District Court: one relating to the rally planned for 30 September 2006 and another relating to the rally planned for 12 September 2007 (see paragraphs 12 and 15 above). Insofar as they concerned the latter, the allegations could not therefore be seen as an aspect of the initial complaint or legal submissions relating to it; they were rather a separate complaint under Article 13. That complaint was, however, first raised on 21 June 2013, many years after the rally planned for 12 September 2007 and the Blagoevgrad District Court's decision relating to it. It has therefore been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

53. The complaint under Article 13 of the Convention relating to the rally planned for 30 September 2006 is, for its part, not manifestly

ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

54. The Government submitted that the applicant had had at his disposal two effective remedies.

55. First, the mayor's decision had been amenable to judicial review. In support of their assertion that that remedy was effective, the Government submitted a 2012 decision of the Stara Zagora Administrative Court and a 2013 decision of the Montana Administrative Court which had annulled bans of rallies by reference to, *inter alia*, Article 11 of the Convention and on the basis that the mere fact that the rallies would have been an inconvenience to the participants in concurrent events or bystanders could not have justified banning them, as well as a 2011 decision of the Blagoevgrad Administrative Court which had annulled a ban of a post-election rally on the basis that the mayor had failed to provide any evidence in support of his conclusion that there had been a risk of violence.

56. Secondly, it had been open to the applicant to bring a claim for damages under section 1(1) of the State and Municipalities Liability for Damage Act 1988.

57. The applicant submitted that although it had been possible to seek judicial review of the mayor's decision, the Blagoevgrad District Court had not reviewed the way in which the mayor had assessed the facts, had not engaged with the applicant's arguments and had not examined the ban's necessity and proportionality, thus effectively rubber-stamping the mayor's decision. He observed that, as already noted by the Court, when examining claims for judicial review of decisions to ban Ilinden's rallies the courts in Pirin Macedonia had consistently ruled against Ilinden. A claim for judicial review of the mayor's decision had thus lacked any prospect of success, and could not therefore be seen as an effective remedy. A claim for damages under section 1(1) of the 1988 Act did not constitute an effective remedy either, because it would have likewise not stood a reasonable prospect of success and because it could only have resulted in an award of compensation.

### *2. The Court's assessment*

58. The Court already found that the applicant's rights under Article 11 had been infringed (see paragraph 48 above). His grievance under that provision was therefore arguable and he was entitled to an effective remedy in respect of it (see *Ivanov and Others*, cited above, § 71).

59. The effective remedy required by Article 13 of the Convention is one where the national authority dealing with the case has to consider the substance of the Convention complaint, in line with the principles laid down in the Court's case-law. Thus, if it faces a complaint under Article 11 relating to the right of freedom of assembly, that authority must examine, *inter alia*, whether it is "necessary in a democratic society" to restrict that right with a view to attaining a legitimate aim under the second paragraph of that Article, and carry out a balancing exercise between that right and the interests on account of which it is being restricted, without automatically giving preference to those other interests (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 343 and 356-58, 7 February 2017).

60. In this case, such balancing did not happen. The Blagoevgrad District Court did not explain why it considered that it was necessary in a democratic society to shield the participants in the parallel municipal event from the statements likely to be made in the course of the rally which the applicant sought to organise on the same day, or why it was impossible to reconcile the holding of the two events (see paragraph 12 above). Given that at the time when that court dealt with the case an almost identical point had already been determined by this Court in two judgments against Bulgaria relating to materially indistinguishable facts (see *Stankov and the United Macedonian Organisation Ilinden*, §§ 106-07, and *United Macedonian Organisation Ilinden and Ivanov*, §§ 113-14, both cited above), that omission was striking. It sits in stark contrast with the reasoning given by the courts in the three cases cited by the Government (see paragraph 55 above). The Blagoevgrad District Court's approach in this case thus fell short of the requirements of Article 13 of the Convention.

61. As for the possibility for the applicant to seek damages under section 1(1) of the 1988 Act, the Court notes that in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above, § 121) and *Singartiyski and Others* (cited above, § 36), it found, with reference to Article 35 § 1 of the Convention, that such a claim could not be regarded as an effective remedy in respect of a complaint under Article 11 of the Convention relating to a ban on the holding of a rally because the Government had not shown that it would have stood a reasonable prospect of success and because, more importantly, it could not in itself provide adequate redress since it could only result in an award of compensation. In view of the close link between Article 35 § 1 and Article 13 of the Convention (see, as a recent authority, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 220, ECHR 2014 (extracts)), those findings are equally valid under Article 13 of the Convention.

62. There has therefore been a breach of that provision.

## IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

63. The applicant complained that the restriction of his right to freedom of assembly had been due to his being a member of an ethnic minority. He relied on Article 14 of the Convention, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

### A. The parties' submissions

64. The Government submitted that when notifying the municipal authorities of the two planned rallies, the applicant had not acted in his personal capacity but on behalf of non-governmental organisations. Since both rallies had obviously been intended as group events, the applicant was not, individually, a victim of a violation.

65. The applicant submitted that although the decisions of the mayor and the Blagoevgrad District Court in this case did not overtly suggest a discriminatory intent *vis-à-vis* people asserting a Macedonian ethnic identity, the broader context, and in particular two elements, clearly showed such intent.

66. The first element was the Bulgarian State's policy of denying the existence of a Macedonian ethnic identity in Bulgaria. That policy had also manifested itself in many judicial decisions by the ordinary courts and by the Constitutional Court. Bulgaria's refusal to recognise the existence of a Macedonian minority had prompted repeated expressions of concern by international bodies, such as the Advisory Committee on the Framework Convention for the Protection of National Minorities, the European Commission against Racism and Intolerance, and the Council of Europe's Commissioner for Human Rights.

67. The second element was the systematic restriction of the applicant's rights, as well as the rights of other ethnic Macedonians, under Article 11 of the Convention over the past two and a half decades. Many of those restrictions, whose discriminatory intent the authorities had sought to disguise using ostensibly legitimate reasons, had given rise to findings of violations by this Court.

### B. The Court's assessment

68. The complaint relates to the same facts as the ones based on Articles 11 and 13 of the Convention: the ban of the rally planned for 30 September 2006 and the lack of an effective domestic remedy in that connection. Although the applicant insisted that his grievance under

Article 14 required separate consideration, especially when seen against the overall background to which he referred, the Court, having carefully reviewed his arguments, does not find this to be the case.

69. In general, the Court examines complaints under Article 14 in addition to those under the substantive Article in conjunction with which it is being relied on only if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case and a separate examination is necessary (see, among other authorities, *Airey v. Ireland*, 9 October 1979, § 30, Series A no. 32; *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45; *X and Y v. the Netherlands*, 26 March 1985, § 32, Series A no. 91; *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, § 89, ECHR 1999-III; *Aziz v. Cyprus*, no. 69949/01, § 35, ECHR 2004-V; *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 53, ECHR 2005-XII; *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 100, ECHR 2006-XI; and *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 144, ECHR 2010).

70. Furthermore, in several cases not materially different from the present one – some of which concerned interferences with the rights of persons asserting an ethnic minority consciousness – the Court, having found a violation of the substantive Convention right at issue, saw no need additionally to deal with the complaint under Article 14 (see, among other authorities, *Sidiropoulos and Others v. Greece*, 10 July 1998, § 52, *Reports of Judgments and Decisions* 1998-IV; *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 49, ECHR 1999-VIII; *Emek Partisi and Şenol v. Turkey*, no. 39434/98, § 31, 31 May 2005; *Ivanov and Others*, cited above, § 78; *United Macedonian Organisation Ilinden and Others*, cited above, § 84; *Bekir-Ousta and Others v. Greece*, no. 35151/05, § 51, 11 October 2007; *Emin and Others v. Greece*, no. 34144/05, § 37, 27 March 2008; *Tourkiki Enosi Xanthis and Others v. Greece*, no. 26698/05, § 63, 27 March 2008; *United Macedonian Organisation Ilinden and Others (no. 2)*, cited above, § 49; and *National Turkish Union and Kungyun v. Bulgaria*, no. 4776/08, § 52, 8 June 2017).

71. The Court sees no reason to depart from that approach in this instance. Having regard to its findings in paragraphs 44-48 above, it finds no need to examine separately the admissibility or merits of the complaint under Article 14 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage. He pointed out that the restriction of his right to freedom of assembly had been part of a series of such restrictions, and had thus caused him a heightened sense of distress and frustration.

74. The Government submitted that there were no grounds to make an award in respect of the rally planned for 12 September 2007, as the Court had already dealt with that rally in *United Macedonian Organisation Ilinden and Ivanov (no. 2)* (cited above). The effect of that judgment extended also to persons who, though not party to the proceedings in that case, had associated themselves with Ilinden and had raised identical complaints. In any event, the claim was exorbitant; a finding of a violation would in the circumstances constitute sufficient just satisfaction.

75. The Court notes that in this case, the award of just satisfaction can only be based on the breaches of Articles 11 and 13 of the Convention in relation to the rally planned for 30 September 2006. That said, the applicant must have suffered frustration from the unjustified restriction in September 2006 of his right to freedom of assembly on account of his historical and political views, which came after two previous restrictions, likewise found by the Court to be in breach of Article 11 (see *Ivanov and Others*, cited above, §§ 58-65) and from the lack of an effective remedy in that respect. In those circumstances, the Court awards him EUR 6,000, plus any tax that may be chargeable.

### B. Costs and expenses

76. The applicant sought reimbursement of EUR 2,940 in respect of the fees charged by his two representatives for forty-two hours of work on the case, at EUR 70 per hour. He requested that any award under this head be made directly payable to the Bulgarian Helsinki Committee. In support of his claim, he submitted a time-sheet for the work of his representatives.

77. The Government submitted that there was no proof that the applicant had in fact incurred the fees claimed by him. They were far higher than the rates under Bulgarian law and out of tune with the economic realities in the

country. Also, the number of hours claimed on the case was unreasonable in view of its limited complexity.

78. As regards the costs referable to the complaints relating to the rally planned for 30 September 2006, in respect of which the Court found breaches of Articles 11 and 13, the Court notes that according to its settled case-law, costs and expenses are recoverable under Article 41 if it is established that they were actually and necessarily incurred and are reasonable as to quantum.

79. As for the costs referable to the part of the application which was struck out, under Rule 43 § 4 of the Rules of Court they are at the Court's discretion (see *Sisojeva and Others*, cited above, §§ 130-31). The applicable principles are however essentially the same as those under Article 41 (ibid., § 133).

80. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Luedicke, Belkacem and Koç v. Germany* (Article 50), 10 March 1980, § 15, Series A no. 36; *Artico v. Italy*, 13 May 1980, § 40, Series A no. 37; and *Airey v. Ireland* (Article 50), 6 February 1981, § 13, Series A no. 41), even if that liability is under a conditional-fee agreement, so long as that agreement is enforceable in the respective jurisdiction (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 89, 21 April 2016).

81. The applicant did not submit any documents showing that he had paid or was under a legal obligation to pay the fees whose reimbursement he sought, and there is therefore no proof that the costs claimed by him were actually incurred. His claim must therefore be rejected.

### C. Default interest

82. The Court considers it appropriate that the default interest rate 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. *Decides* to strike the complaints under Article 11 and 14 of the Convention relating to the rally planned for 12 September 2007 out of its list of cases;

2. *Declares* the complaints relating to the exercise of the applicant's right to freedom of peaceful assembly in relation to the rally planned for 30 September 2006, and the alleged lack of an effective remedy in that respect admissible, and the complaint concerning the alleged lack of an effective remedy in relation to the rally on 12 September 2007 inadmissible;

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

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds* that there is no need to examine the admissibility or merits of the complaint under Article 14 of the Convention;

6. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Claudia Westerdiek | Angelika Nußberger |
| Registrar | President |