CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

CASE OF SIDIROPOULOS AND OTHERS v. GREECE

(57/1997/841/1047)

JUDGMENT

STRASBOURG

10 July 1998

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,
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SUMMARY[1]

Judgment delivered by a Chamber

Greece – refusal of courts to register an association suspected of undermining the country's territorial integrity

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Failure to exhaust domestic remedies

Notwithstanding its autonomous role and particular sphere of application, Article 11 can also be considered in the light of Articles 9 and 10. Applicants' complaints under Articles 9, 10 and 14 of the Convention also went to the very substance of Article 11 – applicants had relied on grounds of equivalent effect within the meaning of the Court's case-law.

Complaints under Article 6 § 1 identical with those raised under Article 11.

Conclusion: objection dismissed (unanimously).

B. Abuse of right of individual petition

There was nothing in the relevant association's memorandum of association to warrant the conclusion that the association had relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it.

Conclusion: objection dismissed (unanimously).

II. ARTICLE 11 OF THE CONVENTION

A. Whether there had been an interference

Interference with exercise of right to freedom of association: Greek courts' refusal to register applicants' association had deprived applicants of any possibility of jointly or individually pursuing the aims they had laid down in the memorandum of association and thus of exercising the right in question.

B. Justification for the interference

1. "Prescribed by law"

Articles 79 to 81 of the Civil Code allowed courts to refuse an application to register an association where they found that the validity of its memorandum of association was open to question.

1. This summary by the registry does not bind the Court.

2. Legitimate aim

Protection of national security and prevention of disorder.

3. "Necessary in a democratic society"

That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of the right to freedom of association – way in which national legislation enshrined that freedom and its practical application by the authorities revealed state of democracy in the country concerned.

Aims of association set out in its memorandum of association had been exclusively to preserve and develop traditions and folk culture of Florina region – perfectly clear and legitimate.

Relevant press articles had reported matters some of which were unconnected with applicants and drawn inferences derived from a subjective assessment by authors of the articles – courts had taken those articles into consideration and also the political dispute that then dominated relations between Greece and the Former Yugoslav Republic of Macedonia and had held that the applicants and their association represented a danger to Greece's territorial integrity – statement based on a mere suspicion as to true intentions of association's founders.

Greek law did not lay down a system of preventive review for setting up non-profit-making associations – Article 105 of the Civil Code empowered courts to order that the association should be dissolved if after its registration it pursued an aim different from the one laid down in its memorandum of association.

Refusal to register association disproportionate to objectives pursued.

Conclusion: violation (unanimously).

III. ARTICLE 6 § 1 OF THE CONVENTION

Complaints largely the same as those raised under Article 11.

Conclusion: unnecessary to rule on complaint (unanimously).

IV. ARTICLES 9, 10 AND 14 OF THE CONVENTION

Complaint related to same facts as ones based on Article 11.

Conclusion: unnecessary to rule on complaint (unanimously).

V. ARTICLE 50 OF THECONVENTION

A. Non-pecuniary damage : sufficiently compensated by finding of violation.

B. Costs and expenses: assessed on equitable basis.

Conclusion: respondent State to pay the applicants specified sum for costs and expenses (unanimously).

COURT'S CASE-LAW REFERRED TO

13.8.1981, Young, James and Webster v. the United Kingdom; 20.9.1993, Saïdi v. France; 30.1.1998, United Communist Party of Turkey and Others v. Turkey

In the case of Sidiropoulos and Others v. Greece [1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A [2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr C. RUSSO,
Mr N. VALTICOS,
Mr I. FOIGHEL,
Mr J.M. MORENILLA,
Mr L. WILDHABER,
Mr D. GOTCHEV,
Mr U. LOHMUS,
Mr V. BUTKEVYCH,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 30 March and 27 June 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 29 May 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 26695/95) against the Hellenic Republic lodged with the Commission under Article 25 by seven Greek nationals, Mr Christos Sidiropoulos, Mr Petros Dimtsis, Mr Stavros Anastassiadis, Mr Constantinos Gotsis, Mr Anastassios Boules, Mr Dimitrios Seltsas and Mr Stavros Sovislis, on 16 November 1994.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to

Notes by the Registrar

1. The case is numbered 57/1997/841/1047. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6, 9, 10, 11 and 14 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30). The lawyers were given leave by the President to use the Greek language at the hearing (Rule 27 § 3).

3. The Chamber to be constituted included *ex officio* Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 3 July 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Mr C. Russo, Mr I. Foighel, Mr J.M. Morenilla, Mr L. Wildhaber, Mr U. Lohmus and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr D. Gotchev, substitute judge, replaced Mr Walsh, who had died (Rules 22 § 1 and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 5 January 1998. The applicants stated that they wished to rely on their memorial before the Commission, and on 21 February 1998 they filed their claims under Article 50 of the Convention.

5. On 27 February 1998 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 March 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr V. KONDOLAIMOS, Adviser,
State Legal Council, *Delegate of the Agent*,
Mr V. KYRIAZOPOULOS, Legal Assistant,
State Legal Council, *Counsel*;

(b) *for the Commission*
Mr L. LOUCAIDES, *Delegate*;

(c) *for the applicants*
Ms I. KOURTOVIK, of the Athens Bar,
Mr L. BALTZIOTIS, of the Athens Bar, *Counsel*.

The Court heard addresses by Mr Loucaides, Ms Kourtovik, Mr Kyriazopoulos and Mr Kondolaimos.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants all live at Florina, in northern Greece, on the border of the Former Yugoslav Republic of Macedonia. Mr Sidiropoulos, an electrician, was born at Kastoria in 1949; Mr Dimtsis, a teacher, was born at Florina in 1957, Mr Anastassiadis, a farmer, was born at Florina in 1944; Mr Boules, a farmer, was born at Florina in 1941; Mr Sovislis, a farmer, was born at Florina in 1950; and Mr Seltsas, a dentist, was born at Florina in 1956.

8. On 18 April 1990 the applicants, who claim to be of "Macedonian" ethnic origin and to have a "Macedonian national consciousness", decided together with forty-nine other people to form a non-profit-making association (*somatio*) called "Home of Macedonian Civilisation" (*Stegi Makedonikou Politismou*). The association's headquarters were to be at Florina. According to clause 2 of its memorandum of association, the association's objects were "(a) the cultural, intellectual and artistic development of its members and of the inhabitants of Florina in general and the fostering of a spirit of cooperation, solidarity and love between them; (b) cultural decentralisation and the preservation of intellectual and artistic endeavours and traditions and of the civilisation's monuments and, more generally, the promotion and development of [their] folk culture; and (c) the protection of the region's natural and cultural environment".

A. The proceedings in the Florina Court of First Instance

9. On 12 June 1990 the applicants, who constituted the provisional management committee of the association, lodged an application under Article 79 of the Civil Code with the Florina Court of First Instance for registration of their association under the name of "Home of Macedonian Civilisation".

10. On 9 August 1990 the court, having heard the applicants, refused their application on the following grounds:

> "It is apparent from the documents lodged by the applicants and from the information which the Court may take into consideration of its own motion … that recognition of the association under this same name has already been sought, in an application on 19 January 1990 which was dismissed by this Court on 19 March 1990... Now that the words [the defence of national independence] that constituted the ground on which the aforementioned application was dismissed as being contrary to law have been deleted, a fresh application has been made for recognition of the association in question. Some of the founder members of the association who are on the provisional management committee … have engaged in promoting the idea that there is a Macedonian minority in Greece (see, for example, the newspapers *Makhitis*, *Ellinikos Voras*, *Nea* and *Stokhos* of 28 June 1990, 24 June 1990, 18 June 1990 and 28 June 1990 respectively); these newspapers strengthen the Court all the more in its previous opinion as none of the applicants has so far cast any doubt on the matters set out in these newspapers …, namely that they travelled to Copenhagen on 9 June 1990 and took part in the Conference on Security and Co-operation in Europe (CSCE), where they maintained that there was a Macedonian minority in Greece and even congratulated Professor Ataov, a Turk, who read out a text containing provocative and unacceptable allegations against Greece. One of the members of the provisional management committee, Mr Constantinos Gotsis, refused, in the course of proceedings in the Florina Court of First Instance against the publisher of the newspaper *Stokhos*, to accept that he was Greek… Besides, sixteen founder members of the above-mentioned association reportedly contributed money so that Christos Sidiropoulos and Stavros Anastassiadis could go to Copenhagen to defend their ideas… On the basis of the foregoing circumstances, which have been proved, the Court considers that the true object of the aforementioned association is not the one indicated in clause 2 of the memorandum of association but the promotion of the idea that there is a Macedonian minority in Greece, which is contrary to the country's national interest and consequently contrary to law.
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> …"

B. The proceedings in the Salonika Court of Appeal

11. On 7 September 1990 the applicants appealed against that judgment to the Salonika Court of Appeal. After hearing the applicants, that court dismissed their appeal on the following grounds:

> "…
>
> III. In view of the strong public interest at stake, the court, when examining the grounds of an application being heard under the special procedure, as in the present case, may and indeed must take into consideration, of its own motion, matters over and above the evidence submitted to the court by the parties – in particular, real events and situations reported in publications (books, magazines, newspapers, etc.) accessible to any interested person – and this notwithstanding the ordinary rules on the burden of proof. On the basis of the well-known facts set out below, whose validity the Court does not doubt, the Court accepts the following in relation to the case. Ancient (classical) Macedonia is delimited to the south by the Aegean Sea and the Kamvounia,

Pieria and Olympus mountains; to the north by Lake Ohrid, the Prespa lakes, and the Babuna-Skomion (*Rila Planina*) and Rhodope mountains; to the east by the river Nestos; and to the west by Mount Grammos and the Pindus range (see: *Makedonia*, Ekdotiki Athinon, pp. 10 et seq.; A. Vakalopoulos, *Synchrona Valkanika Ethnologika Provlimata*, p. II; G. Mintsis, *Istoria tou Makedonikou Zetematos*, p. 29). Its inhabitants (the Macedonians) were one of the most ancient Greek tribes, closely related to the Thessalians, who were also of Aeolian origin, and especially to the Magnesians. Their language was one of the oldest Greek dialects, akin to Aeolian and Arcado-Cyprian and also to the Mycenean dialect. Their religion was that common to the Greeks and their myths and traditions were similar to those elsewhere in the Greek world (see H.G. Wells, *The Outline of History*, trans. K. Yeroyannis as *Pankosmios Istoria, Pergaminai*, Chapter B 1, p. 439, and Chapter I, p. 367; Will Durant, *Pankosmios Istoria tou Politismou*, ed. A. Daskalakis, 1965, p. 483V; Pandit Jawaharlal Nehru, *Maties stin Pankosmia Istoria*, trans. P. Drakou, Faros, 1954, p. 25; A. Vakalopoulos, op. cit., pp. 14 et seq.; M. Sakellariou, *I taftotita ton Makedonon*, communication to the Academy of Athens on 8 November 1988; K. Vavouskos, correction of the draft article on Macedonia for the new Australian encyclopedia *Australian People*, speech to the special meeting of the Academy of Athens on 7 March 1989; N. Andriotis, *The Language and the Greek Origin of the Ancient Macedonians*, Salonika, 1978). The Macedonian kings Philip II and Alexander the Great acted not just as Greeks but as pan-Hellenists, in the sense that they incarnated the old idea of the creation of a unified Greek State by bringing together the smaller Greek territories; they were bearers, and the latter was a disseminator, not of an incomplete Macedonian civilisation but of Greek civilisation (see Johann Gustav Droysen, *Istoria tou Megalou Alexandrou*, trans. with commentary etc. by Renos Apostolidis, 1988, pp. 1–9 and 28 et seq.; *Istoria tou Ellinikou Ethnous*, Ekdotiki Athinon, vol. D, pp. 10 et seq.). And in later years, especially after the appearance in the Balkans of the Bulgars and Slavs (6th–7th cent. A.D.), the Macedonian region as defined above was a stronghold and bastion of Hellenism just as it had been in ancient times. Polybius describes Macedonia as a 'shield' and praises the Macedonians because they fought the barbarians (non-Greeks) to ensure the safety of the (other) Greeks (Polybius, *Historiae*, Leipzig edition, 1898, vol. 3, book 9, p. 35). For the Byzantine period the same is affirmed by the French historian Paul Lemerle in his classic work *Philippe et la Macédoine orientale*, Paris, 1945, pp. 516–17. In addition, a guide to Salonika written by German historians and archaeologists during the last world war states that 'the waves of migrating peoples which frequently swamped the Balkan peninsula broke on this most powerful bastion of Hellenism' (see A. Vakalopoulos, op. cit., pp. 17 et seq.). Nowhere in either the recent or the distant past are Macedonia and the Macedonians mentioned in any official document as a specific ethnic group. The Treaty of Berlin, and the Treaty of San Stefano which it replaced, make no reference to such a notion. In the official Turkish census of 1905 there is mention of Greeks and Bulgarians, or inhabitants whose identity was partly Bulgarian, in the vilayets of Salonika and Monastir, where there were Greek ethnic majorities; but no mention of Macedonians, since nobody declared such descent (A. Vakalopoulos, op. cit., pp. 84 et seq.; G. Roussos, *Neoteri Istoria tou Ellinikou Ethnous*, vol. 5, pp. 83 et seq., which includes a reproduction of the census tables). In his work *Voyage dans la Macédoine* (Paris, 1831) E.M. Cousinery, the French Consul in Salonika, says that the Bulgarians (as all speakers of Slavic were then called) never penetrated the forests beyond Vermion, where the population remained Greek (see vol. 1, pp. 67–68, and vol. 2, p. 140). With reference to the same area, the German geographer Leonard D. Schultze observes that in their language, traditions, cultural affinities, ethnic preferences and religion, its inhabitants are as legitimately and

authentically Greek as their brothers further to the south (*Macedonien Landschafts- und Kulturbilder*, Jena, 1927, p. 106). He reiterates the words of Lord Salisbury, Great Britain's representative at the Congress of Berlin, on 19 June 1878, when he said that 'Macedonia and Thrace are just as Greek as Crete' (K. Vavouskos, op. cit., p. 84). The fact that a small part of this region's population also speaks a language which is basically a form of Bulgarian with admixtures of Slavic, Greek, Vlach and Albanian words, does not prove that this minority is of Slavic or Bulgarian origin; in isolation this criterion is of no value whatsoever, as is borne out by the experience in the recent past of the forced migration from Asia Minor to Greece of populations which were indisputably Greek but totally ignorant of the Greek language. It is indicative that among the fighters of the Macedonian campaign (1904–08) there were men who spoke the Bulgarian-Slav dialect but who had a purely Greek national consciousness; for example Kotas, Dalipis, Kyrou, Gonos and others. In his *Short History of the Bulgarian, Serb and Romanian Orthodox Churches* (Moscow 1871), the Russian historian E. Golubinstii wrote of these non-Greek-speaking Greeks that they had an implacable hatred of and scorn for all Slavs and Bulgarians (see K. Vavouskos, op. cit., pp. 85 et seq.). After the Balkan Wars of 1912–13, 51.57% of the region corresponding to ancient Macedonia was under Greek domination, 38.32% under Yugoslav domination, and 10.11% under Bulgarian domination (see *Makedonia*, Ekdotiki Athinon, p. 504, which includes a map). In this way a territorial status came into being. There were exchanges of population, either voluntary or following bilateral agreements such as the Kafantari-Molov agreement between Greece and Bulgaria in 1926; and Greeks from Turkey populated the Greek part of Macedonia, so that only Greeks remained in this part of Macedonia, even if some of them were bilingual. Greek Macedonia thus became a completely homogeneous part of Greek territory (see K. Vavouskos, op. cit., p. 92; and A. Vakalopoulos, op. cit., p. 31, who refers to the work of the German Stephan Ronart, *Griechenland von heute*). This was especially true in the period immediately following the Second World War (1945–49), when almost all the bilingual inhabitants of this region who did not have a Greek national consciousness emigrated to neighbouring countries (see E. Kofos, *Nationalism and Communism in Macedonia*, Salonika, 1964, pp. 185 et seq.). There they experienced a mutation of their partly Greek or partly Bulgarian nationality into a 'Macedonian', i.e. a Slav-Macedonian, nationality (see E. Kofos in *Yugoslavia Today*, Athens, 1990, p. 50; *Kentron Apodimu Ellinismou*, *Makedonia, Istoria kai Politismos*, Ekdotiki Athinon, 1989, pp. 29 et seq.). This situation was preceded by a number of violent incidents, such as the Ilinden revolt, in which the Bulgarians claim to have revolted against the Turks on 2 August 1903 at Krusevo, a town near Monastir whose ethnic composition was overwhelmingly Greek. In fact they turned against the town's Greek inhabitants, whom they tried to wipe out with the cooperation of the Turks and without causing the rest of the population any significant harm (see K. Vavouskos, op. cit., p. 89; Douglas Dakin, *The Greek Struggle in Macedonia* 1897–1913, Salonika, 1966, pp. 92 et seq.; Douglas Dakin, E.K. Mazarakis-Ainianos, E. Kofou and I. Diamantourou, *O Makedonikos Agonas*, Athens, 1985, pp. 30 et seq.; G. Mintsis, op. cit., pp. 53 et seq.). Until 1914 'Macedonia' as a Slavic State and 'the Macedonian nation' as a specific nation were unheard of. The part of Macedonia which fell under Yugoslav domination, like that which fell to Bulgaria, is a narrow strip of land along the Greek border and represents only a small part of Serbia. Skopje, which today is the capital of the misleadingly named Socialist Republic of Macedonia of the Federal Yugoslav State, is far away from Macedonia. The S.R.M. was founded under the German occupation (see E. Kofos, *The Impact of the Macedonian Question on Civil Conflict in Greece* 1943–1948, Athens, 1989). Its foundation was part of a deliberate

strategy according to which, when the regions of Skopje and Tetovo (which belonged to ancient Dardania, a non-Macedonian country) were ceded, a Serb population could be said to exist in the sparsely populated part of Macedonia that lay beyond the Greek borders and contained Serbs, Greeks, Greek Vlachs, Muslims with a partly Turkish identity, and Bulgarians; a Slav-speaking population with a specific dialect and an unstable national consciousness (see A. Vakalopoulos, op. cit., pp. 12 et seq.; N. Andriotis, *The Confederate State of Skopje and its Language*, Athens, 1957, with relevant bibliography). The long-term purpose of founding the S.R.M. was to re-establish a Slav Macedonian State with access to the Aegean. One of the means to this end is to enlist in various ways bilingual Greeks from Greek Macedonia. Setting up an association called 'Home of Macedonian Civilisation' at Florina is part of this effort and applies a directive issued by Slav organisations abroad. The aim is to create a Macedonian Question with international ramifications (see statements by Serb politicians to the *Borba* newspaper, 8 November 1990 and to *Nin* magazine, 1 February 1991). The parties applying for recognition of the above association are the enablers in this operation. Among them are Christos Sidiropoulos and Stavros Anastassiadis, who appeared at an international conference to dispute the Greek identity of (Greek) Macedonia, the former in particular by distinguishing between Macedonians and Greeks (see the *Makedonikos Voras* newspaper of 17 March 1991, which includes photographs of the above persons among sixteen members of the 'Macedonian' delegation at the CSCE in Copenhagen; and the *Ethnos* newspaper of 5 February 1991, p. 10). This, in combination with the name of the proposed association and with the whole content of its memorandum of association, renders at least dubious the association's aims, which according to the founder members' seemingly lawful statement in clause 2 of the memorandum of association, consist in the cultural, intellectual and artistic advancement of its members, cultural decentralisation, etc. This assessment is supported by the content of clause 3, paragraph 2, of the same memorandum of association, which states that all youths in the Florina area will be enrolled in the proposed association's youth section. It is clear from this that there is a danger that the immaturity of young people will be exploited and that youths will be trapped by suitable propaganda in an ethnologically non-existent and historically evacuated Slav-Macedonian minority. Clause 4 of the same memorandum of association lays down the condition that enrolment in the association is subject to written acceptance of the association's principles. Nowhere in the association's memorandum of association, however, are these principles defined. Thus the memorandum of association does not provide a clear idea of who will enrol, since a clear definition of the principles governing the proposed association is deliberately omitted. Lastly, the very name of the association may be a source of confusion, because at first sight it creates the impression that it refers to Macedonia's Greek civilisation, whereas in reality it envisages a specifically Slavic civilisation which does not exist in the region in question. Altogether, this Court has good reasons in the light of the foregoing to believe that the purpose of using the term 'Macedonian' is to dispute the Greek identity of Macedonia and its inhabitants by indirect and therefore underhand means, and discerns an intention on the part of the founders to undermine Greece's territorial integrity. The impugned refusal of the application in question was therefore justified, notwithstanding that it was based on shorter and partly different reasoning; and the arguments to the contrary put forward in the present appeal must fail.

…"

C. The proceedings in the Court of Cassation

12. On 20 June 1991 the applicants appealed on points of law to the Court of Cassation, relying, in particular, on Articles 2, 4, 5 and 12 of the Greek Constitution and the corresponding provisions of the Convention. They maintained that, contrary to law, the Court of Appeal had (a) not confined itself to reviewing the lawfulness of the establishment of their association – namely whether the requirements of Articles 78 to 80 of the Civil Code had been satisfied – but had reviewed its desirability, relying on the presumed intentions of the founder members, which (assuming them to have any reality) could not, however, be the subject of judicial review at the stage of granting the association legal recognition; (b) taken into consideration information (in particular, irresponsible and unfounded press articles concerning some of the founder members) that had not been produced by the parties; (c) accepted as true certain matters that were of decisive importance for the outcome of the proceedings without ordering evidence to be taken to establish whether they were in fact true; (d) distorted the content of the association's memorandum of association; and (e) not given sufficient reasons in its judgment.

In a pleading filed on 25 February 1994 the applicants essentially reiterated the complaints they had set out in their appeal on points of law and stated that the refusal to authorise the founding of their association was based on assessments and assumptions as to their personalities and ideological and historical convictions which in turn rested not on the association's memorandum of association but on suspect anonymous publications.

13. In a judgment of 16 May 1994 the Court of Cassation upheld the Court of Appeal's judgment. It considered that the grounds of appeal were vague and unfounded. It pointed out that under the special procedure for granting recognition to associations, the inquisitorial system allowed the court to take into account, of its own motion, matters which had not been mentioned by the parties and that the court was not bound by the parties' evidence and assertions. As to the "matters that were of decisive importance for the outcome of the proceedings", the parties had not specified the matters in question in their appeal. The Court of Appeal had accepted the truth of certain circumstances in reliance on the content of the association's memorandum of association and on matters that were common knowledge and supported by documents such as the press articles; and there had not, moreover, been any distortion of the content of the memorandum of association. The Court of Cassation also held that sufficient reasons had been given in the Court of Appeal's judgment. It further noted that the assertion that Articles 2, 4, 5 and 12 of the Constitution, together with the Rome Convention, had been infringed referred not to the Court of Appeal's judgment but to the judgment of the Florina Court of First Instance; even

supposing that the applicants had put forward a ground of appeal based on Article 559 § 1 of the Code of Civil Procedure, it would have had to be dismissed as vague since they had not stated in what way the Court of Appeal had made a mistake in interpreting or applying those provisions.

II. EXTRACTS FROM THE PRESS ARTICLES ON WHICH THE GREEK COURTS RELIED

14. Article in the 5 February 1991 issue of the *Ethnos* newspaper:

"Skopje: Skopje has made use of three Greeks – one of them a public employee – who made allegations of repression against the Greek Government to a representative of the American embassy visiting villages in Florina.

The three testified against Greece at a meeting of the Conference on Security and Co-operation in Europe which was held in Denmark on 15 June 1990. According to the American Macedonian Association, the men in question are Christos Stergiou Sidiropoulos, Constantinos Gotsis, and Stavros Anastassiadis.

Sidiropoulos is a forestry official employed by the Greek State. These and other Greeks belonging to an association called 'Home of Macedonian Civilisation' are controlled by Vasil Tuvorkovsky, a member of the central committee of Yugoslavia's Presidential Council and a frequent visitor to Greece, where he stays in a mobile home in Halkidiki."

15. Article in the 17 March 1991 issue of the *Ellinikos Voras* newspaper:

"First headline: Skopje's Trojan horse in Salonika's Court of Appeal tomorrow – Expulsion of ringleader S. Todorovski – Decisive documents.

Second headline: Leader of secret organisation is a public servant – Spectre of 'Aegean Macedonians' – How the international plot against Greece was set up; who will be promoting it tomorrow – Tomorrow's appeal hearing in Salonika carries out a directive issued in 1989. Radin, Popov, Skopje and 'Consul' Todorovski control the local leader – Application is a trap designed to vilify Greece in the International Court.

As dramatic developments in a rapidly disintegrating Yugoslavia and the broader Balkan region begin to resemble a thriller, with the emergence of a 'new order' in the Balkans whose targets include Greek Macedonia and Thrace, the leader of a secret organisation called 'Macedonians of the Aegean', Christos Sidiropoulos, also a full-time employee of the Greek State, will be trying in Salonika tomorrow to embroil Greece in a satanic plot organised abroad by Skopje and the independence movements it runs in Australia. This accounts for the announcement that the Yugoslav consul in Salonika, Sasko Todorovski, is to be expelled just 72 hours before tomorrow's hearing. Todorovski's cover was blown when *Ellinikos Voras* revealed on 17 February that he was the leader of a triangle opposed to Greek Macedonia and including the American vice-consul, Colonel Donald Miller, and the educational adviser of the American embassy in Athens, John Kiesling.

It is also known that Donald Miller left Salonika 'overnight' for the United States when *Ellinikos Voras* exposed his dark 'triangular' role in the State Department's contemptible report. Todorovski is a tool of the Yugoslav secret service and used agents to lead an international destabilisation operation in Greek Macedonia.

One stage of this destabilisation operation unfolds tomorrow in Salonika. The city's Court of Appeal will consider the application by seventeen inhabitants of the prefecture of Florina for approval of their memorandum of association for establishing an association called 'Home of Macedonian Civilisation'. The memorandum of association is drafted with expert care so as to provide full international legal cover for a well-planned destabilisation of the country – the legal wrapping of a Trojan horse on Greece's borders. The application in question was refused by the lower court at Florina, where an earlier, less veiled version drawn up by the same persons had also been refused. The new application in the Salonika Court of Appeal tomorrow will be heard as 'a straightforward everyday case'.

However, evidence and information from Slavic sources reveals the following.

(a) The leaders of the seventeen, most of whom were ensnared by what seemed an innocent 'cultural' project, are Christos Sidiropoulos from Amindaio, a forester with the Ministry of Agriculture, and Stavros Anastassiadis, a wealthy businessman from Meliti in the prefecture of Florina, both of whom are signatories of the application. The two also appeared last June at a meeting of the Conference on Security and Co-operation in Europe (CSCE) held in Copenhagen on the subject of human rights, declaring that they were Greek citizens but Macedonian nationals, and denounced the Greek State for 'oppressing' the 'Macedonians' of 'Aegean Macedonia' and 'depriving' them of all human rights. In fact, according to the newspaper run by the *émigré* independence movement in Australia, *Australian Macedonian* (1/8/1990), the two men carried letters containing similar allegations from Petros Dimtsis of Kato Klines, a village in the prefecture of Florina, who lodged a complaint in Strasbourg in May 1989, and from Stefos Skenderis, a teacher in the Greek State education service who lives at Florina.

(b) As disclosed by the 'Australian-Macedonian Committee for Human Rights' on 1 August 1990, Christos Sidiropoulos is the invisible leader of a secret phantom organisation of 'Aegean Macedonians', the 'Central organising committee for the Macedonian human rights of the Macedonians of Aegean Macedonia'. In 1984 this organisation distributed by post a manifesto containing the 'demands of the Macedonians of Aegean Macedonia' which caused the Greek people profound unease and distress at the activities of invisible agents belonging to an independence movement within Greek Macedonia. This secret phantom movement remains unknown; however, it claims to be based in Salonika and it is certain that it is directed from abroad and imports all its printed propaganda against Greek Macedonia from foreign countries.

(c) The application to be heard tomorrow in the Salonika Court of Appeal for registration of the 'Home of Macedonian Civilisation' will in fact set in motion a provocation of the Greek system of justice which was planned abroad as far back as 1989. The aim is to trap Greece into a series of legal refusals which will then be used against Greece by Skopje in the European Court of Human Rights and the Committee of Ministers at the Council of Europe in Strasbourg. The plot is satanic because if the Greek courts accept the application by the leader of the 'Aegean Macedonians', Greece will be legalising a Trojan horse sent by Skopje to trap unwitting bilingual Greek Macedonians and deliver them into the claws of foreigners and of propaganda inspired from abroad.

The Slavic plot which is to be submitted tomorrow in Salonika to unsuspecting appeal court judges is part of a directive released by independence activists in Australia two years ago, in 1989, following their first appearance on the international stage at the Council of Europe in Strasbourg. At the time 'Macedonian' professors Michael Radin and Chris Popov, who are Australian citizens, released a plan of action entitled 'The road to Macedonian human rights' on behalf of the Salonika 'section'. The report was written in English and printed abroad and its title mentions that it is a publication of Christos Sidiropoulos's secret phantom organisation in Salonika. It contains 55 pages; page 38 contains the following revelations:

'The following scenario is a convincing way of lawfully challenging the denial of Macedonians' rights by the Greek State. Macedonians from Aegean Macedonia could, for instance, set up an association for popular dances with the name "Macedonian Folklore Association". The association will undoubtedly be forbidden by the laws mentioned above, which prohibit establishing groups on the ground of nationality. Provided that all appeals to the lower courts are turned down, the case will go through the Greek judicial system until it reaches the country's highest court, the Court of Cassation. The refusal of an appeal at that level will mean that all domestic legal remedies have been exhausted. One of the conditions for submission of a case to the Convention for the Protection of Human Rights will thus have been fulfilled. Within six months of the Supreme Court's decision an application can be submitted on the ground that the right to freedom of peaceful assembly and association has been violated, with the result that the Court of Human Rights, or the Committee of Ministers of the Council of Europe, will deliver a decision against Greece.'

This foreign directive will be carried out to the letter tomorrow when the Salonika Court of Appeal considers the application to establish the 'Home of Macedonian Civilisation'.

Christos Sidiropoulos and Stavros Anastassiadis are acting under the control of independence activists Radin and Popov who drew up the above report or directive. With them as leaders, along with two others from Skopje and about ten other representatives of 'Macedonian' independence movements from the United States, Canada and Europe, Sidiropoulos and Anastassiadis appeared in Copenhagen at a meeting of the Conference on Security and Co-operation in Europe to accuse Greece at a press conference organised by Yugoslavia's official diplomatic delegation to the CSCE. At the conference Sidiropoulos was seated beside the secretary of the Yugoslav embassy, who directed the discussion with the foreign journalists.

On 15 July 1990 *Macedonia*, a newspaper in the service of Slav independence activists fighting in the United States and Canada for the separation of Greek Macedonia and its incorporation into Skopje, published a revealing photograph in which Sidiropoulos and Anastassiadis appear beside their instructors Radin and Popov and their leaders from Skopje in the midst of the group of agents presented by the Yugoslavian diplomatic mission at the CSCE. In this newspaper, which is run by Slav independence activists, the photograph and report appear under the headline 'Yugoslavia protecting minority rights'."

III. RELEVANT DOMESTIC LAW

A. Constitution

16. Article 4 § 1 of the Constitution provides:

"All Greeks shall be equal before the law."

17. Article 12 § 1 of the Constitution provides:

"All Greeks shall be entitled to form non-profit-making unions and associations, in accordance with the law, which may not, however, make the exercise of this right subject to prior authorisation."

B. Civil Code

18. The Civil Code contains the following provisions concerning non-profit-making associations:

Article 78
Associations

"A union of persons pursuing a non-profit-making aim shall acquire legal personality as soon as it has been entered in a special public register (of associations) held at the Court of First Instance for the place where it has its headquarters. At least twenty persons shall be necessary to form an association."

Article 79
Application for the registration of an association

"In order to have an association registered, its founders or its management committee must lodge an application with the Court of First Instance. The application must be accompanied by the document establishing the association, a list of the names of the members of the management committee and the memorandum of association dated and signed by the committee's members."

Article 80
Memorandum of association

"To be valid, the memorandum of association must specify (a) the object, name and headquarters of the association; (b) the conditions of admission, withdrawal and expulsion of its members, together with their rights and obligations; …"

Article 81
Decision to register an association

"The Court of First Instance shall allow the application if it is satisfied that all the legal requirements have been complied with…"

Article 105
Dissolution of an association

"The Court of First Instance shall order the dissolution of an association … (c) if the association pursues aims different from those laid down in its memorandum of association or if its object or its functioning prove to be contrary to law, morality or public order."

C. Code of Civil Procedure

19. The non-contentious procedure (*ekoussia dikeodossia*) followed by the courts when they examine, among other things, applications to register an association is governed by the following provisions:

Article 744

"The court may of its own motion order any measure which might lead to the establishment of relevant facts, even if these are not mentioned in the parties' submissions…"

Article 759 §§ 2 and 3

"2. Where the court directs that evidence is to be taken, such evidence shall be brought by one of the parties.

3. The court may of its own motion order any measure that it considers necessary for establishing the facts, even if in so doing it departs from the provisions governing the taking of evidence."

Furthermore, Article 336 § 1 provides:

"The court may, of its own motion and without directing that evidence is to be taken, have regard to matters which are so widely known that their truth cannot reasonably be put in doubt."

Lastly, Article 345 allows a party who does not have to discharge the burden of proof to adduce refuting evidence.

PROCEEDINGS BEFORE THE COMMISSION

20. The applicants applied to the Commission on 16 November 1994. They alleged violations of Articles 6, 9, 10, 11 and 14 of the Convention.

21. On 24 June 1994 the Commission declared the application (no. 26695/95) admissible in respect of six of the seven applicants, the seventh, Mr Constantinos Gotsis, having died in the meantime. In its report of 11 April 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 11 of the Convention, that it was unnecessary to consider whether there had been violations of Articles 6 and 14 and that no separate issue arose under Articles 9 and 10. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

22. In their memorial the applicants asked the Court to allow their application in its entirety and to order the Greek Government to pay compensation and legal expenses.

23. The Government submitted that the application should be dismissed as inadmissible for failure to exhaust domestic remedies or as being manifestly unfounded or as being unfounded on the merits as to all the complaints.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Failure to exhaust domestic remedies

24. The Government submitted that the applicants had not exhausted domestic remedies as they had failed to raise Articles 6, 9, 10 and 14 of the Convention in the national courts; in the Court of Cassation they had relied only on Article 2 (State's obligation to respect and protect the inviolability of the person), Article 4 (equality before the law), Article 5 (free development of personality) and Article 12 (freedom of association) of the Greek Constitution and the corresponding provisions of the Convention.

25. The applicants maintained that it had not been possible to mention explicitly the complaints relating to Articles 9, 10 and 14 of the Convention, particularly in the Court of Cassation, regard being had to the prevailing atmosphere at the time; the Greek courts and especially the Court of Cassation would have taken offence and rejected such allegations unceremoniously inasmuch as all the judiciary subscribed to the idea that there was no Macedonian minority in Greece and that the very mention of Macedonian consciousness amounted to treason.

26. In its decision on admissibility the Commission considered that the applicants had raised in substance in the Court of Cassation the complaints they had brought before the Convention institutions.

27. In its judgment in the Young, James and Webster v. the United Kingdom case (13 August 1981, Series A no. 44) the Court held that Article 11, notwithstanding its autonomous role and particular sphere of application, could also be considered in the light of Articles 9 and 10. The protection of personal opinion afforded by those Articles in the shape of freedom of conscience and freedom of expression was also one of the purposes of freedom of association as guaranteed by Article 11 (ibid., p. 23, § 57).

The Court notes that in refusing to register the applicants' association, the Florina Court of First Instance and the Salonika Court of Appeal relied partly on the fact that the applicants had publicly claimed to be of "Macedonian" ethnic origin and to have a "Macedonian national consciousness" and at the Conference on Security and Co-operation in Europe ("the CSCE") in Copenhagen had disputed the Greek identity of Greek Macedonia (see paragraphs 10 and 11 above).

In the circumstances of the case the Court considers that the applicants' complaints under Articles 9, 10 and 14 of the Convention also go to the very substance of Article 11, so that in the national courts the applicants did rely on grounds of equivalent effect within the meaning of the Court's case-law.

As to the complaints under Article 6 § 1, inasmuch as they concern the way in which the national courts used certain evidence to refuse the application to register the association, they are identical with those raised by the applicants under Article 11.

This objection must therefore be dismissed.

B. Abuse of the right of individual petition

28. Before the Commission the Government raised a plea of inadmissibility on the ground of abuse of the right of individual petition, alleging, among other things, that the applicants were trying to bring before the Convention institutions the dispute between Greece and the Former Yugoslav Republic of Macedonia ("the FYROM") over the latter's name. The Commission had not allowed the objection, taking the view, on the one hand, that it went to the merits of the case and, on the other, that "it would be failing in its duty under Article 19 of the Convention … if it were to refuse to examine the application on the basis of the possible impact, if any, that it might have on the dialogue between Greece and 'the Former Yugoslav Republic of Macedonia'".

Before the Court the Government again raised that objection, this time combining it with Article 17 of the Convention and maintaining that the objectives being pursued by the applicants through the instant case were contrary to the agreement concluded between Greece and the FYROM on 13 September 1995.

29. The Court does not accept the Government's argument and does not consider that Article 17 can apply as there is nothing in the relevant association's memorandum of association (see paragraph 8 above) to warrant the conclusion that the association relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it (see, *mutatis mutandis*, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 35, § 60).

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

30. The applicants alleged that the national courts' refusal of their application to register their association had infringed their right to freedom of association, as guaranteed by Article 11 of the Convention, which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Whether there was an interference

31. The Court considers, as the applicants and the Commission did, that the Greek courts' refusal to register the applicants' association amounts to an interference by the authorities with the applicants' exercise of their right to freedom of association; the refusal deprived the applicants of any possibility of jointly or individually pursuing the aims they had laid down in the association's memorandum of association and of thus exercising the right in question. This interference was not denied by the Government.

B. Justification for the interference

32. Such an interference will contravene Article 11 unless it was "prescribed by law", pursued one or more of the legitimate aims under paragraph 2 and was "necessary in a democratic society" for achieving them.

1. "Prescribed by law"

33. In the applicants' submission, the interference in question was not "prescribed by law" since, by Article 12 of the Constitution, freedom of association could not be made subject to a system of prior authorisation; that was why the legislature had made the registration of associations subject to purely formal requirements, as appeared from Articles 78 to 81 of the Civil Code (see paragraph 18 above). Under those provisions, the courts

were obliged to grant recognition to an association if those requirements were satisfied.

34. The Government maintained that the national courts had correctly interpreted and applied domestic law, in particular Article 81 of the Civil Code, according to which "the Court of First Instance shall allow the [registration] application if it is satisfied that all the legal requirements have been complied with…"; the inquisitorial nature of the non-contentious procedure which applied to the registration of associations (Articles 741, 744 and 759 § 3 of the Code of Civil Procedure) allowed the courts to obtain evidence of their own motion and to establish the facts decisive for the outcome of the proceedings.

35. The Commission did not consider it necessary to determine this issue as it concluded that the interference in question was incompatible with Article 11 in other respects.

36. The Court considers that the interference was "prescribed by law", as Articles 79 to 81 of the Civil Code allowed the courts to refuse an application to register an association where they found that the validity of its memorandum of association was open to question. More especially, the Court notes like the Government that an association's aim, as set out in its memorandum of association, must be the one really pursued by it and not be contrary to law, morality or public order; Article 105 of the Civil Code, moreover, provides for the dissolution of an association already constituted where it proves to be pursuing an aim different from the one laid down in its memorandum of association (see paragraph 18 above).

2. Legitimate aim

37. The Government submitted that the interference in question pursued several aims: the maintenance of national security, the prevention of disorder and the upholding of Greece's cultural traditions and historical and cultural symbols.

38. The Court is not persuaded that the last of those aims may constitute one of the legitimate aims set out in Article 11 § 2. Exceptions to freedom of association must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.

39. The Court notes nevertheless that the Salonika Court of Appeal based its decision on the conviction that the applicants intended to dispute the Greek identity of Macedonia and its inhabitants and undermine Greece's territorial integrity. Having regard to the situation prevailing in the Balkans at the time and to the political friction between Greece and the FYROM (see paragraph 42 below), the Court accepts that the interference in issue was intended to protect national security and prevent disorder.

3. "Necessary in a democratic society"

40. The Court points out that the right to form an association is an inherent part of the right set forth in Article 11, even if that Article only makes express reference to the right to form trade unions. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.

Consequently, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts.

When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, the United Communist Party of Turkey and Others judgment cited above, p. 22, §§ 46 and 47).

41. In the applicants' submission, all the arguments put forward by the national courts and the Government against the association's founders were baseless, vague and unproved and did not correspond to the concept of "pressing social need".

There was nothing in the case file to suggest that any of the applicants had wished to undermine Greece's territorial integrity, national security or public order. Mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture could not be said to constitute a threat to "democratic society". Similarly, the presence of

some of the founders at the CSCE in Copenhagen could not be interpreted as an attack on national security, since the Greek Government themselves had, by signing all the relevant CSCE documents, recognised that citizens could take part in such proceedings. Nor had Mr Sidiropoulos in any way challenged the Greek identity of the Greek province of Macedonia; he had merely claimed that the Macedonian minority there was oppressed.

Furthermore, the allegation that the association's founders were plotting against Greece was unfounded. The press article that referred to a "directive" from Slav organisations abroad was manifestly untrue and a complete fabrication; that was apparent from the very use of the word "directive", which was not a current term in the latter part of the twentieth century, and from the fact that the Greek Government had not to date confirmed the existence of such a directive. The irresponsible publications of a newspaper could not be used as evidence by a court, or indeed by the government of a State which respected the rule of law.

Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region's culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a "democratic society" had to tolerate and even protect and support according to the principles of international law.

42. The Government maintained that the national authorities had been right to refuse to register the applicants' association. More specifically, the Florina Court of First Instance and the Salonika Court of Appeal had made an acceptable assessment of the circumstances of the case and had reached the reasonable conclusion that the association's real aim was quite different from the one referred to in its memorandum of association. In order to reach that view, the judges of those courts had, of their own motion, taken into consideration as evidence – as Articles 741, 744 and 759 § 3 of the Code of Civil Procedure entitled them to do in such proceedings – certain press articles and matters of common knowledge such as the threat to Greece that the FYROM's propaganda against it represented at the time, the attempted "Slavicisation" of the term "Macedonia" by that State, certain provisions of that State's Constitution and the systematic campaign to promote the idea of a "United Macedonia".

Furthermore, the courts had noted that clause 4 of the association's memorandum of association provided that acceptance of its principles was an essential prerequisite for becoming a member, without however stating those principles, such that potential members ran the risk of being "trapped" as soon as they had joined. The association's name was also likely to cause confusion, since the applicants had sought to conceal the type of culture to

which they referred; it was only before the Commission that the applicants had revealed for the first time which ethnic group they really believed they belonged to. The deceptive name "Home of Macedonian Civilisation" was part of a propaganda exercise whose objective was to create a favourable climate for disputing the Greek identity of Macedonia and sustain irredentist aspirations.

Relying on the Court's case-law, the Government emphasised that the authorities were better placed than the international court to assess whether an interference was "necessary in a democratic society". They submitted that some respect should be paid to the authorities' judgment when they weighed conflicting public and individual interests in view of their special knowledge of the country and their general responsibility under national law. Given the breadth of their margin of appreciation, in particular where matters affecting national security were concerned, the Greek courts had in the instant case satisfied the criterion of proportionality.

43. The Commission, having examined the evidence produced to the domestic courts, considered that it had not been established that the applicants had harboured separatist intentions. Admittedly, the national courts could reasonably have concluded that the association's true aim was to promote the idea that there was a "Macedonian" minority in Greece and that the rights of that minority's members were not fully respected. However, in the Commission's opinion, that would not in itself have justified restricting the applicants' right to freedom of association; although the applicants had indeed stated that they had a "Macedonian" national consciousness, there was nothing to indicate that they had advocated the use of violence or of undemocratic or unconstitutional means. The Commission concluded that the reasons adduced by the domestic authorities to justify the interference had not been "relevant and sufficient" and that the interference had not been "proportionate to the legitimate aim pursued".

44. The Court notes, in the first place, that the aims of the association called "Home of Macedonian Civilisation", as set out in its memorandum of association, were exclusively to preserve and develop the traditions and folk culture of the Florina region (see paragraph 8 above). Such aims appear to the Court to be perfectly clear and legitimate; the inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics, for historical as well as economic reasons. Even supposing that the founders of an association like the one in the instant case assert a minority consciousness, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Section IV) of 29 June 1990 and the Charter of Paris for a New Europe of 21 November

1990 – which Greece has signed – allow them to form associations to protect their cultural and spiritual heritage.

In the second place, in justifying its refusal of the application for registration, the Salonika Court of Appeal decided that it had "good reasons … to believe that the purpose of using the term 'Macedonian' [was] to dispute the Greek identity of Macedonia and its inhabitants by indirect and therefore underhand means, and discern[ed] in it an intention on the part of the founders to undermine Greece's territorial integrity".

In reaching that decision, the Court of Appeal, of its own motion, took into consideration as evidence material which the applicants maintained they had not been able to challenge during the proceedings as it had not been placed in the case file.

45. The Court reiterates that the taking of evidence is governed primarily by the rules of domestic law and that it is in principle for the national courts to assess the evidence before them (see, among many other authorities, the Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 56, § 43).

However, careful study of the press articles in question (see paragraphs 14 and 15 above), which had a decisive influence on the outcome of the proceedings, shows that they reported matters some of which were unconnected with the applicants and drew inferences derived from a subjective assessment by the authors of the articles. Relying on those articles and having regard to the political dispute that then dominated relations between Greece and the FYROM (the latter of which had not yet even proclaimed its independence at the material time), the national courts held that the applicants and the association they wished to found represented a danger to Greece's territorial integrity.

That statement, however, was based on a mere suspicion as to the true intentions of the association's founders and the activities it might have engaged in once it had begun to function.

The Court also takes into account in this context the fact that Greek law does not lay down a system of preventive review for setting up non-profit-making associations. Article 12 of the Constitution provides that the forming of associations cannot be made subject to prior authorisation (see paragraph 17 above); Article 81 of the Civil Code allows the courts merely to review lawfulness and not to review desirability (see paragraph 18 above).

46. In the United Communist Party of Turkey and Others judgment cited above (p. 35, § 58) the Court held that it could not rule out that a political party's programme might conceal objectives and intentions different from the ones it proclaimed. To verify that it did not, the content of the programme had to be compared with the party's actions and the positions it defended.

Similarly, in the instant case the Court does not rule out that, once founded, the association might, under cover of the aims mentioned in its memorandum of association, have engaged in activities incompatible with those aims. Such a possibility, which the national courts saw as a certainty, could hardly have been belied by any practical action as, having never existed, the association did not have time to take any action. If the possibility had become a reality, the authorities would not have been powerless; under Article 105 of the Civil Code, the Court of First Instance could order that the association should be dissolved if it subsequently pursued an aim different from the one laid down in its memorandum of association or if its functioning proved to be contrary to law, morality or public order (see paragraph 18 above).

47. In the light of the foregoing, the Court concludes that the refusal to register the applicants' association was disproportionate to the objectives pursued. That being so, there has been a violation of Article 11.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

48. The applicants also alleged a violation of Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations …, everyone is entitled to a fair … hearing … by an … impartial tribunal…"

According to them, the Greek courts had lacked objectivity and impartiality in using in their decisions expressions and terms degrading to the applicants' person, language and origin. Furthermore, they had relied of their own motion on evidence that was not in the case file and had not ordered any supplementary investigative measures as they were required to do by the Code of Civil Procedure; they had thus infringed not only the relevant provisions of domestic law but also the right to a fair trial guaranteed in Article 6 § 1.

49. The Commission, having held that Article 11 of the Convention had been contravened on the ground, among others, that the domestic courts should not have reached their conclusions without ordering further evidence to be taken, considered it unnecessary to ascertain whether there had also been a violation of Article 6 § 1.

50. The Court notes that the applicants' complaints under Article 6 § 1 are largely the same as those raised under Article 11. Having regard to its decision in relation to that Article, the Court does not consider it necessary to examine them.

IV. ALLEGED VIOLATIONS OF ARTICLES 9, 10 AND 14 OF THE CONVENTION

51. Lastly, the applicants asserted that the reason why the establishment of their association had been prohibited lay in the origin and consciousness of some of its founders and also in the fact that they had publicly expressed the opinion that they belonged to a minority. They relied on Articles 9, 10 and 14 of the Convention, which provide:

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 14

"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."

52. The Court notes, as the Commission did, that this complaint relates to the same facts as the ones based on Article 11. Having regard to the conclusion in paragraph 47 above, it does not consider that it must deal with it.

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION

53. Article 50 of the Convention provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

54. The applicants pleaded non-pecuniary damage that they said did not arise only from the sadness caused them by the refusal of their application to register the association. The damage had social and political dimensions, since the refusal was accompanied by insulting and degrading expressions which had been a slur on the applicants' person, had influenced their relations with a section of Florina society and had had repercussions on their private and professional lives. They sought 15,000,000 drachmas (GRD) each, that is to say a total of GRD 90,000,000.

55. The Government conceded that there had been damage but maintained that as the association was a non-profit-making one, it could not claim financial compensation.

56. The Delegate of the Commission did not express a view.

57. The Court accepts that the applicants sustained non-pecuniary damage. It considers it sufficiently compensated, however, by the finding of a violation of Article 11.

B. Costs and expenses

58. For costs and expenses the applicants sought GRD 9,295,000, GRD 1,085,000 of which were for the proceedings in the domestic courts and GRD 8,210,000 of which were for those before the Convention institutions.

59. The Government said they were prepared to reimburse any costs that had been necessarily incurred, were reasonable as to quantum and could be vouched for.

60. The Delegate of the Commission did not put forward any opinion.

61. The Court considers the costs incurred in the domestic courts to be reasonable. On the other hand, there was no hearing before the Commission and the applicants did not file a memorial in the proceedings before the Court. Making its assessment on an equitable basis, the Court awards them the sum of GRD 4,000,000.

C. Default interest

62. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

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

3. *Holds* that it is unnecessary to rule on the complaints under Articles 6 § 1, 9, 10 and 14 of the Convention;

4. *Holds* that the present judgment constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, 4,000,000 (four million) drachmas for costs and expenses;
   (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 July 1998.

Signed: Rudolf BERNHARDT, President

Signed: Herbert PETZOLD, Registrar

1. This summary by the registry does not bind the Court.

Notes by the Registrar

1. The case is numbered 57/1997/841/1047. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.