



Refusal of Bulgarian authorities to register an association promoting the rights of the Muslim minority was not “necessary in a democratic society”

In today’s Chamber judgment¹ in the case of [National Turkish Union and Kungyun v. Bulgaria](#) (application no. 4776/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the refusal of the Bulgarian authorities to register an association promoting the rights of the Muslim minority in Bulgaria.

Referring back to its case-law, the Court found that there was no “pressing social need” to require any association wishing to pursue political aims to constitute a political party if it was not the intention of the founders to take part in elections.

The Court further noted that the domestic courts had not referred to any action of the association or its members which might have compromised the territorial integrity or unity of the nation, or any action or speech which might have been regarded as a call to hatred or violence.

It concluded that the refusal to register the applicant association had not been “necessary in a democratic society”.

Principal facts

The applicants are the association National Turkish Union, and Menderes Mehmet Kungyun, a Bulgarian national who was born in 1950 and lives in Kazanlak. Mr Kungyun, a founder member and chair of the association, complained of the Bulgarian authorities’ refusal to register the association.

In 2006 Mr Kungyun announced his intention to form an association dedicated to promoting the rights of the Muslim minority in Bulgaria. Following his announcement several hostile articles appeared in the press, criticising the association’s aims and claiming variously that the applicant wanted to create an ethnic Turkish party and that he was receiving funding from secret services abroad. In May 2006 Mr Kungyun and five other founder members applied to the Plovdiv Regional Court to have the association registered. The court refused their application on the grounds that one of the association’s declared aims was political. Under the Constitution, only political parties were allowed to conduct political activities. The court also observed that commercial activities could not feature among the primary aims of a non-profit association. Lastly, the court noted a lack of precision in the association’s constitution concerning its representative bodies.

Mr Kungyun appealed. The Court of Appeal upheld the original judgment and observed that an association’s name should not be misleading or contrary to public morals. The name “National Turkish Union” referred to the existence of a Turkish nation in Bulgaria and implied a separatist objective. Mr Kungyun appealed on points of law.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 10 July 2007 the Supreme Court of Cassation dismissed his appeal and upheld the Court of Appeal's judgment.

Complaints, procedure and composition of the Court

The applicants alleged that the refusal to register the association "National Turkish Union" constituted a breach of their rights under Article 11 of the Convention (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 4 January 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan) and,
Pavlina **Panova** (Bulgaria), *ad hoc Judge*,

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 11

The Court observed that, in refusing registration of the association, the Supreme Court of Cassation had based its judgment on two grounds: the fact that the purpose of the association was political in nature and that the association sought to conduct political activities; the aims and name of the association breached Article 44 of the Constitution and presented a danger to national security. The other grounds set out by the lower courts had not been used by the highest court.

As regards the political nature of the association's aims, the Court had already taken the view in its case-law that such a ground could not justify a refusal to register an association. It found that there was no "pressing social need" to require any association wishing to pursue political aims to set up a political party if it was not the intention of its founders to take part in elections. The Court took the view that in the present case, the association's declared aim to "contribute to the development of political pluralism in the country" did not seem to imply that the association wished to take part in elections or in the exercise of power. Otherwise it could have been justified to impose on its founders the more restrictive legal form of political party.

Concerning the possibility of danger to national security, the Court observed that the expression of separatist views did not in itself imply a threat to the territorial integrity of the State or national security and did not as such justify a restriction of the rights secured by Article 11 of the Convention. The use of the words "National Turkish" in the name of the association did not appear capable of undermining the territorial integrity or unity of the Bulgarian nation. Moreover, the Court did not see how the association's challenge to the monopoly of a political party in ethnically mixed regions would represent a risk for ethnic peace and would thus compromise the country's security.

The Court noted that the domestic courts had not referred to any action of the association or its members which might have compromised the territorial integrity or unity of the nation, or any action or speech which might have been regarded as a call to hatred or violence. It further observed that the national authorities would not have been powerless if that were the case. The regional court could order the dissolution of an association whose activities were incompatible with the

Constitution, with the law, or with public morals. The mere supposition that an association could have engaged in such activities did not therefore justify a refusal to register it.

The Court thus concluded that the refusal to register the applicant association was not “necessary in a democratic society” and constituted a violation of Article 11.

Article 14

Having regard to its finding of a violation of Article 11, the Court took the view that it did not need to examine the complaint under Article 14 of the Convention.

Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicants 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.