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La CEDU sulla libertà di espressione
(CEDU, sez. IV, sent. 6 aprile 2021, ric. n. 10783/14)

La Corte Edu si pronuncia sul caso di un uomo politico bulgaro, condannato per teppismo e multato per aver posizionato un berretto di Babbo Natale ed una borsa rossa, con la scritta "dimissioni" sulla statua del signor Dimitar Blagoev il giorno di Natale. Il signor Blagoev è stato il fondatore del Partito socialdemocratico, che aveva operato durante il regime comunista in Bulgaria ed ha continuato a operare come Partito socialista bulgaro. L'azione si è svolta nel contesto delle proteste a livello nazionale contro il governo, sostenuto in Parlamento da una coalizione il cui principale membro era, appunto, il Partito socialista bulgaro. La statua del signor Blagoev era stata precedentemente dipinta da persone non identificate in rosso e bianco in modo da assomigliare a Babbo Natale e dipinta a spruzzo con le parole "Father Frost".
La sanzione inflitta nel procedimento per teppismo contro il ricorrente non era di natura penale, la multa era stata di importo piuttosto modesto e non aveva comportato gravi conseguenze negative per il ricorrente stesso. Tuttavia, nel caso di specie, gli effetti pratici ed in particolare pecuniari sul ricorrente non potevano essere l'unico criterio per valutare se avesse subito uno "svantaggio significativo". Era stato giudicato colpevole e sanzionato per un atto, a suo avviso, qualificabile quale legittimo esercizio del suo diritto alla libertà di espressione su una questione di interesse pubblico. Si trattava, pertanto, di una questione di principio, anche perché il caso aveva ricevuto un'ampia copertura mediatica e suscitato un dibattito pubblico in Bulgaria. Tali circostanze hanno indotto i Giudici Edu a ritenere che "il rispetto dei diritti umani così come definiti nella Convenzione" imponesse un esame nel merito della domanda.
Ebbene, si è convenuto che il comportamento che aveva portato alla condanna del ricorrente potesse essere considerato quale esercizio della libertà di espressione ai sensi dell'articolo 10 § 1: il ricorrente, con il suo gesto, aveva inteso prendere parte alla protesta politica in atto contro il governo in carica, andando a deridere il fondatore del partito politico che lo sosteneva ed invitando alle dimissioni.
La sua condanna e la conseguente multa avevano costituito un'interferenza con il suo diritto alla libertà di espressione che era stata "prescritta dalla legge" e perseguita nel legittimo scopo di proteggere i "diritti degli altri". Né vi era traccia di un rischio per la "sicurezza pubblica", trattandosi di una azione del tutto pacifica e priva di idoneità a causare disordini pubblici (né vi erano elementi per desumere che le autorità lo avessero sanzionato avendo ritenuto sussistere tali aspetti). In termini di proporzionalità, la sanzione inflitta al ricorrente era stata la più blanda possibile, in base alla disposizione legale che era stata ritenuta violata: ed infatti, il ricorrente era stato condannato a pagare una sanzione amministrativa pari a EUR 51, pagamento effettuato immediatamente e apparentemente senza alcuna difficoltà; nessuna registrazione dell'accaduto nella sua fedina penale.
La domanda saliente era, quindi, se fosse stata del tutto giustificata la decisione di sanzionare

l'operato del ricorrente. Come si è visto, l' "espressione" del ricorrente aveva riguardato una questione di interesse pubblico, che in linea di principio gode di una protezione rafforzata. La giustificazione per limitare i canali attraverso i quali le persone e le organizzazioni possono esprimere sé stessi, dovrebbe essere ancora più forte quando l' "espressione" in questione consista, in tutto o in parte, in un comportamento, come nel caso in esame. Tuttavia, al ricorrente non era stato impedito di avvicinarsi al monumento e di appoggiarvi il berretto e il sacco, ma solo in seguito era stato sanzionato per averlo fatto. I monumenti pubblici sono spesso fisicamente unici e fanno parte del patrimonio culturale di una società. Misure intese a dissuadere dal compiere atti idonei a distruggerli o danneggiarne l'aspetto fisico, potrebbero, pertanto, essere considerate "necessarie in una società democratica", per quanto legittime possano essere le motivazioni che potrebbero aver ispirato tali atti. Tuttavia, il ricorrente non aveva posto in essere alcuna forma di violenza e non aveva in alcun modo danneggiato fisicamente il monumento, né vi erano elementi per ritenere che il ricorrente avesse in qualche modo coordinato le sue azioni con le persone non identificate che in precedenza avevano dipinto la statua. In tali situazioni, la natura precisa dell'atto, l'intenzione che era dietro di esso ed il messaggio che cercava di trasmettere non possono essere indifferenti. Per esempio, atti intesi a criticare il governo o le sue politiche, o a richiamare l'attenzione sulla sofferenza di un gruppo svantaggiato, non possono essere equiparati ad atti calcolati per offendere il ricordo delle vittime di un'atrocità di massa. Il significato sociale del monumento in questione, i valori o le idee che simboleggiava e il grado di attaccamento ad esso della comunità, rappresentano elementi di considerazione altrettanto importanti.

Nel caso di specie, l'intenzione dietro l'atto del ricorrente era stata quella di protestare contro il governo in carica ed il partito politico che lo aveva sostenuto, nel contesto di una protesta prolungata a livello nazionale contro quel governo, e non già la condanna del ruolo storico dell'onorevole Blagoev o l'espressione di disprezzo nei suoi confronti. Il ricorrente aveva semplicemente usato il monumento di Blagoev come simbolo del partito politico che intendeva criticare, e quindi difficilmente si potrebbe ritenere che il suo atto avesse voluto mostrare disprezzo per valori sociali radicati. Pur potendo ammettersi che il gesto simbolico del ricorrente sia stato percepito come offensivo da alcune persone, la libertà di espressione è applicabile anche a "informazioni" o "idee" che abbiano offeso, scioccato o disturbato qualcuno.

Di qui la conclusione (con sei voti contro uno) secondo cui la condanna del ricorrente e la conseguente multa non sono stati "necessari in una società democratica", nonostante il margine di apprezzamento di cui godono le autorità nazionali in questo campo.

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

FOURTH SECTION

CASE OF XXXXX v. BULGARIA

(*Application no. 10783/14*)

JUDGMENT

STRASBOURG

6 April 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX v. Bulgaria,

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

Tim Eicke, *President*,

Yonko Grozev,

Faris Vehabović,

Iulia Antoanella Motoc,

Armen Harutyunyan,

Gabriele Kucsko-Stadlmayer,

Ana Maria Guerra Martins, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 10783/14) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Kaloyan Tomov XXXXX ("the applicant"), on 28 January 2014;

the decision to give the Bulgarian Government ("the Government") notice of the complaint concerning an alleged breach of Article 10 of the Convention and to declare the remainder of the application inadmissible; and

the parties' observations;

Having deliberated in private on 16 February 2021,

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

INTRODUCTION

1. The case chiefly concerns the question whether the conviction of the applicant, a local politician, of minor hooliganism in relation to his placing a Santa Claus cap and a red bag on the monument of an early twentieth century political figure on Christmas Day amounted to a violation of Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1971 and lives in Blagoevgrad. He was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

3. The Government were represented by their Agent, Ms I. Stancheva-Chinova of the Ministry of Justice.

I. Background to the case

4. Following parliamentary elections on 12 May 2013, on 29 May 2013 a new government was formed, led by Mr Plamen Oresharski and supported in Parliament by the Coalition for Bulgaria (whose main member was the Bulgarian Socialist Party – see paragraph 8 below), which had eighty-four members of Parliament, the Movement for Rights and Freedoms, which had thirty-six members of Parliament, and the chairman of another political party, Ataka, Mr Volen Siderov, who was also a member of Parliament. Together, these provided a majority of one hundred twenty-one out of the total of two hundred and forty members of Parliament.

5. On the evening of 14 June 2013 a wave of demonstrations against that government erupted in various cities and towns throughout the country. At first, the demonstrators' main grievance was the appointment on the same date of Mr Delyan Peevski, a wealthy businessman and media-owner, as chairman of the State Agency for National Security. The daily demonstrations continued until about mid-January 2014. In an opinion poll carried out in late November and early December 2013, forty-three per cent of the respondents supported those anti-government protests, and forty per cent were of the view that they should continue; twenty-two percent declared that they would themselves participate in them. In another opinion poll carried out during the same period by another agency, forty-one per cent of the respondents said that the best political solution for the country would be for that government to resign and for new parliamentary elections to take place. Several months later, on 23 July 2014, Mr Oresharski's government stepped down.

6. At that time, the applicant was chairman of the Blagoevgrad chapter of the political party Democrats for a Strong Bulgaria (*Демократи за силна България* – "DSB"), which was then not represented in Parliament and which supported the anti-government protests.

II. Events of 25 December 2013

7. In the early hours of 25 December 2013, Christmas day, the statue of Mr Dimitar Blagoev in the central square of Blagoevgrad was painted by unknown persons in red and white so as to resemble Santa Claus, and the plinth of the statue was daubed, using white spray-paint, with the words "Father Frost".[1]

8. Mr Blagoev (1856-1924) was the founder in 1891 of the Bulgarian Social-Democratic Party. In 1919, that party took the name Bulgarian Communist Party, which it kept until April 1990, when, in the wake of the fall of the communist regime in Bulgaria in late 1989, in which it was the dominating political force, it renamed itself Bulgarian Socialist Party. It continues to operate under this name. In 1950 the town of Blagoevgrad was named after Mr Blagoev, and in 1971 his statue was placed in its central square. In 1991, shortly after the fall of the communist regime, the municipal council proposed to the President of Bulgaria to

give the town one of its old names – Gorna Dzhumaya or Skaptopara (Σκαπτοπάρα) – but the President did not act on the proposal, apparently owing to objections by some of the town's inhabitants. In June 2014 there was another unsuccessful initiative to give the town another name.

9. In December 1991 Blageovgrad's municipal council resolved to remove Mr Blagoev's statue from the town centre. From the evidence adduced at the applicant's subsequent trial (see paragraph 14 below), it appears that that resolution was put into effect. However, in May 1996 that decision was repealed by the new municipal council, and, again according to the evidence adduced at the applicant's trial (see paragraph 14 below), the statue was then put back in its place.

10. Shortly before 10 a.m. on 25 December 2013 the applicant went to the already painted statue, which had been surrounded by a number of people and journalists drawn there by media reports that it had been painted over, and placed a red Santa Claus cap on its head and a red sack at its feet. The sack had a white band bearing the word "resignation" attached to it. The applicant said that he had been inspired to do that when seeing the media reports that the statue had been painted over.

11. Some of the journalists who were present took photographs of the statue with the cap and the sack and later published them. Shortly after that municipal workers came, took down the cap and the sack, and began removing the paint from the statue.

III. Proceedings against the applicant

12. At about 2 p.m. the same day, 25 December 2013, the applicant was arrested in his home and taken to a police station, where he was placed in police detention for twenty-four hours, on suspicion of having committed hooliganism contrary to Article 325 § 1 of the Criminal Code (see paragraph 23 below), and searched.

13. The next day, 26 December 2013, the applicant was charged with minor hooliganism contrary to Article 1 § 2 of the 1963 Decree on Combatting Minor Hooliganism ("the 1963 Decree" – see paragraphs 22-23 below) in relation to his having placed the cap and the sack on Mr Blagoev's statue. He was then released from detention.

14. In the course of his trial, which took place four days later, on 30 December 2013, the applicant stated that his act had been intended to express his protest against the government, which was his constitutional right, that that act had been met with universal approval, and that he had in effect made a good political joke. For their part, his counsel argued that he had exercised his constitutional right to express his views.

15. The same day, 30 December 2013, the Blagoevgrad District Court found the applicant guilty of minor hooliganism contrary to Article 1 § 2 of the 1963 Decree (see paragraphs 22-23 below), and fined him 100 Bulgarian levs (BGN) (equivalent to 51 euros (EUR)).

16. The court held, inter alia, that the 1963 Decree did not contravene Article 39 of the 1991 Constitution (see paragraph 21 below), because the right to freedom of expression enshrined in that provision was subject to exceptions. It was immaterial whether Mr Blagoev was a controversial historical figure, as asserted by the applicant. Even if he was one, that did not entitle people to mock his statue, which had stood in the centre of Blagoevgrad for a long time and had to be respected and preserved; that was also a requirement of the cultural-heritage conventions to which Bulgaria had adhered. Cultured people valued historical monuments and treated them with respect. If supporters of the Bulgarian Socialist Party were to paint the statue of a recently deceased anti-communist politician from the 1990s in Sofia as Superman, that would likewise amount to hooliganism. Such acts were unbecoming of the activists of a responsible political party, and had to be sanctioned in a State governed by the rule of law. Mr Blagoev was one of Blagoevgrad's symbols, as attested by the town's very name, which had not been changed after the fall of the communist regime. Contrary to the applicant's assertions, his act had not been met with universal appreciation, as could be seen from a perusal of the numerous comments about it on the Internet, which ranged from approving to extremely disapproving ones. The "thin red line" between a proper political Christmas joke and hooliganism had been crossed.
17. In fixing the quantum of the penalty, the court took into account the preponderance of mitigating circumstances: the absence of any aggression or violence on the part of the applicant, his clean criminal record and good character, and his being unemployed. All those factors militated towards giving him the lowest possible fine.
18. The applicant appealed. At the appeal hearing he argued, inter alia, that his act had been a way of exercising his constitutional right to protest against the government.
19. In a final judgment of 7 January 2014 the Blagoevgrad Regional Court upheld the lower court's judgment. It held, inter alia, that the applicant's act had properly been characterised as minor hooliganism, as it had been indecent and had breached public order. It was not in doubt that the applicant had sought to express a political position, in particular since he was the regional leader of a political party. This had not, however, entitled him to protest by breaching the law, especially since Mr Blagoev's statue had shortly before that been vandalised by an unknown person by being painted over, and the applicant had in effect completed that act by placing a cap and a sack on it, thus expressing his mocking attitude towards it. It was not necessary to establish whether specific bystanders had felt aggrieved by the applicant's act, which had been carried out in front of a multitude of people. The applicant's arguments that his act had not amounted to an offence because it had been an exercise of his right to protest could not be accepted, because fundamental rights could not be exercised by committing acts contrary to the 1963 Decree.
20. The applicant paid the fine on 20 January 2014.

RELEVANT LEGAL FRAMEWORK

21. Article 39 of the Constitution of 1991 provides:

"1. Everyone is entitled to express an opinion or to publicise it through words, written or oral, sound, or image, or in any other way.

2. This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone."

22. Decree no. 904 of 28 December 1963 on Combating Minor Hooliganism ("the 1963 Decree") was passed by the then Presidium of the National Assembly under a simplified legislative procedure, as possible under Article 35 § 5 and Article 36 of the 1947 Constitution, then in force. The Supreme Administrative Court has consistently held that the Decree has the same force as an Act of Parliament (see опр. № 9959 от 07.11.2003 г. по адм. д. № 9327/2003 г., ВАС, I о.; опр. № 10286 от 10.12.2004 г. по адм. д. № 9761/2004 г., ВАС, петчл. с-в; опр. № 14673 от 03.12.2009 г. по адм. д. № 15200/2009 г., ВАС, I о.; and опр. № 12764 от 01.11.2010 г. по адм. д. № 13284/2010 г., ВАС, I о.).

23. Article 1 § 2 of the 1963 Decree defines minor hooliganism as, inter alia, "indecent statements, made in a public place in front of many people", or "[showing an] offensive attitude towards citizens, public authorities or society", which breach public order and quietness but which, owing to their lower degree of seriousness, do not amount to the criminal offence of hooliganism laid down in Article 325 § 1 of the 1968 Criminal Code. Such acts, if committed by people older than sixteen, are punishable with up to fifteen days' detention, or by a fine ranging from BGN 100 to BGN 500 (equivalent to EUR 51 to EUR 256) (Article 1 § 1).

24. Cases under the 1963 Decree fall under the jurisdiction of the district courts (Article 3 § 1 (a) and Article 4). By Article 7 § 2, a district court's decision to impose a penalty is amenable to appeal on points of law before a regional court, on the same grounds as those set out in the Code of Criminal Procedure: a breach of the substantive law, a material breach of the rules of procedure, or manifest disproportionality of the sentence. The regional court's judgment is final (Article 7 § 3 in fine).

25. A conviction under the 1963 Decree is not regarded as criminal or entered in the criminal records of the people concerned (Article 7 § 4).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicant complained that the interference with his right to freedom of expression had not been necessary in a democratic society. He relied on Article 10 of the Convention, which provides, in so far as relevant:

"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 ...
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."

A. Admissibility
1. Exhaustion of domestic remedies

(a) The parties' submissions

27. The Government noted that the applicant had not sought judicial review of his police detention and had not sought damages in relation to it. There was ample case-law of the Bulgarian courts in such cases, including in cases touching upon freedom of expression. In view of that omission, the applicant's police detention was not to be taken into account when assessing the proportionality of the interference with his right to freedom of expression.
28. The applicant replied that any claim for judicial review of his police detention would have been heard long after the latter had ended, and could not thus have served to ensure his release. Such a claim was accordingly not an effective remedy. Moreover, the matters to be examined in such proceedings would have been nearly identical to those considered in the proceedings in which he had been found guilty of minor hooliganism. There was hence no reason to believe that the courts would have approached them any differently and found in his favour.

(b) The Court's assessment

29. The Court notes that the complaint under Article 10 of the Convention, as formulated in the relevant part of the application, concerned solely the judgments finding the applicant guilty of minor hooliganism; it did not relate to his earlier police detention. It is true that the part of the application which set out the facts of the case contained a reference to that

detention. But when articulating his complaint under Article 10, the applicant laid emphasis on the reasons given by the courts for finding him guilty of minor hooliganism and said:

"When finding the applicant guilty of minor hooliganism, the national courts did not take into account the specific social and political context in which he had carried out acts of 'hooliganism', or the harmless artistic means of expression used by [him]. The unjustified police arrest of the applicant supports that conclusion."

30. The Court has had occasion to note that police or pre-trial detention and concomitant hooliganism proceedings constitute distinct interferences with the right to freedom of expression (see Kandzhov v. Bulgaria, no. 68294/01, § 70, 6 November 2008, and Stefanov v. Bulgaria (dec.), no. 51127/18, §§ 74-75, 8 September 2020). It does not find that the last phase of the above quotation from the application form can be construed to mean that the applicant was also complaining of his police detention.

31. The scope of the case referred to the Court in the exercise of the right of individual application is determined by the applicant's complaint, and the Court cannot base its decision on facts not covered by the complaint (see Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). It follows that in the present case the Court has no jurisdiction to deal with the applicant's police detention, and accordingly to examine the Government's non-exhaustion objection in relation to it.

32. In any event, even assuming that the applicant's complaint can be read to encompass also his police detention, that part of it is indeed inadmissible for non-exhaustion of domestic remedies. As noted by the Government, the applicant did not seek judicial review of that detention and damages in relation to it, as possible under Bulgarian law (see Stefanov, cited above, § 77). It cannot be presumed that in such proceedings the Bulgarian courts would have refused to entertain arguments based on freedom of expression, or that a claim founded on such arguments would have been destined to fail (ibid.). It is true that in the minor hooliganism proceedings against the applicant the Blagoevgrad District Court and the Blagoevgrad Regional Court came to the view that it was proper to find him guilty and fine him even though he had sought to exercise his right to freedom of expression (see paragraphs 15-17 and 19 above). But that does not necessarily imply that the Blagoevgrad Administrative Court and the Supreme Administrative Court – the courts competent at the time to deal at first instance and on appeal with legal challenges against police detention – would have seen the matter in the same light and decided that it had been lawful and justified to detain the applicant. He did not therefore exhaust domestic remedies with respect to his grievance – assuming he raised one – that his police detention was in breach of his right to freedom of expression under Article 10 of the Convention.

2. No significant disadvantage

(a) The parties' submissions

33. The Government submitted that the applicant had not suffered a significant disadvantage. He had merely been given a fine which had amounted to the equivalent of EUR 51, which was not criminal under Bulgarian law, and which had not been entered into the applicant's criminal record. Nor had it tarnished his reputation, as attested by the fact that in 2015 and 2019 he had obtained enough votes to be elected as a municipal councillor in Blagoevgrad. His case had been duly considered at two levels of jurisdiction. Respect for human rights did not require his application to be examined on the merits, as the kind of issues raised by it had already been elucidated in judgments against Bulgaria.

34. The applicant replied that the point had to be assessed based on the cumulative effect of his police detention and of his subsequent fine, which had been disproportionate in view of the minor seriousness of his act. It also had to be borne in mind that he was the local leader of an opposition political party, and that his arrest and the minor hooliganism proceedings against him had received broad media coverage and had brought him into disrepute. The fact that the issues thrown up by his case had already given rise to findings of violation against Bulgaria suggested a systemic problem and was an even stronger reason why his application had to be examined on the merits.

(b) The Court's assessment

35. The Court first reiterates that the applicant's police detention cannot be taken into account in determining whether he suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention (see paragraphs 29 to 32 above).

36. As for the minor hooliganism proceedings against him, it is true that the fine imposed in them was not criminal in nature, that its amount was quite modest, and that there is no indication that these matters led to any serious adverse consequences for the applicant (see paragraphs 15 and 25 above, and compare with Sylka v. Poland (dec.), no. 19219/07, §§ 31-34, 3 June 2014; Mura v. Poland (dec.), no. 42442/08, §§ 23, 26 and 27, 2 June 2016; and Savelyev v. Russia (dec.), no. 42982/08, §§ 28-30, 21 May 2019). However, in the present case the practical and in particular the pecuniary effects on the applicant cannot be the sole criterion for assessing whether he has suffered a "significant disadvantage". He was found guilty of and fined for an act which had in his view amounted to a proper exercise of his right to freedom of expression on a matter of public interest. The case thus validly concerns a point of principle for him (see, mutatis mutandis, Konstantin Stefanov v. Bulgaria, no. 35399/05, § 46, 27 October 2015, and Margulev v. Russia, no. 15449/09, § 42, 8 October 2019). Indeed, his complaint under Article 10 of the Convention gives rise to issues of general importance: whether political protest carried out in the manner chosen by the applicant – by profaning a public monument without damaging it – can amount to a legitimate exercise

of the right to freedom of expression (contrast Sylka, § 35; Mura, § 28; and Savelyev, § 31, all cited above) and under what conditions can sanctions imposed in response to such acts be considered "necessary in a democratic society" (see, mutatis mutandis, Berladir and Others v. Russia, no. 34202/06, § 34, 10 July 2012; Yılmaz Yıldız and Others v. Turkey, no. 4524/06, § 28, 14 October 2014; and Yordanovi v. Bulgaria, no. 11157/11, § 51, 3 September 2020). Moreover, the applicant's case appears to have received wide media coverage and to have given rise to public debate in Bulgaria (see, mutatis mutandis, Eon v. France, no. 26118/10, § 34 in fine, 14 March 2013).

37. It cannot therefore be accepted that the applicant has not suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention.

38. The same considerations amount to grounds to find that "respect for human rights as defined in the Convention" in any event requires an examination of the complaint on the merits (see, mutatis mutandis, Gafiuc v. Romania, no. 59174/13, § 40, 13 October 2020).

39. The Government's objection must therefore be rejected.

3. Other grounds for inadmissibility

40. It was already found that the complaint – so far as it concerns the applicant's conviction of minor hooliganism – is not inadmissible on account of a failure to exhaust domestic remedies, or because the applicant has not suffered a significant disadvantage. Nor is that complaint manifestly ill-founded or inadmissible on any of the other grounds set out in Article 34 and Article 35 §§ 1 to 3 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

41. The applicant pointed out that the protection of public order was not among the legitimate aims enumerated in Article 10 § 2 of the Convention. The nearest notion to which that provision referred was "the prevention of disorder or crime", but there was a perceptible difference between the two. His harmless prank had not been capable of causing "disorder of crime" even if it had upset some people. Nor was it clear how precisely it had affected the "rights of others".

42. For the applicant, his case showed that Bulgarian law did not properly distinguish between legitimate political protest and wanton acts of vandalism and hooliganism. It was puzzling to him that thirty years after the fall of the communist regime the authorities still conflated those notions, and perceived political protest as hooliganism without inquiring

into its goals or symbolism. They had disregarded the applicant's motives and had seen his innocuous gesture as vandalism even though it had not damaged the monument in any way. It had to be emphasised in that connection that his act had been a form of protest against a government which had lost its legitimacy and which had shortly after that resigned. Indeed, the courts had acknowledged that fact, and had noted that the applicant was a local politician. It could hardly be said that the proceedings against him had somehow increased his popularity. Only the first-instance court had tried to carry out some sort of balancing exercise, whereas the appellate court had brushed aside the arguments based on his right to freedom of expression.

(b) The Government

43. The Government conceded that the applicant's act had constituted "expression", and that the minor hooliganism proceedings against him had interfered with the exercise of his right to freedom of expression. They were, however, of the view that that interference had met the requirements of Article 10 § 2 of the Convention. The legal basis for the interference – the 1963 Decree – was sufficiently accessible and precise, and the case-law of the Bulgarian courts under it was abundant and settled. The interference had sought to protect public safety and the rights of others; that was evident from the terms of Article 1 § 2 of the 1963 Decree, under which the applicant had been sanctioned, and from the reasons given by the Bulgarian courts in his case.

44. The interference had also been necessary and proportionate. The applicant's sanction had been administrative rather than criminal, and a very mild one – the minimum possible fine under the 1963 Decree, which had equalled less than a third of the minimum monthly salary in Bulgaria at the time. The applicant had been found guilty for desecrating a monument rather than for offending Mr Blagoev's memory or for voicing his political views. It was true that political expression enjoyed heightened protection, but it could be interfered with if the means used for it disturbed public order or the everyday functioning of society. It was clear that the applicant had prepared his act in advance, and that he had sought to attract media attention to it. Apart from its artistic and historical value, Mr Blagoev's monument was also a symbol of the eponymous town. Vandalism against monuments was amenable to sanctions in all Contracting States. The link between the monument and the government in power was neither evident nor perceived by the public as direct. At the time the applicant had not been a well-known politician. Indeed, it had been that very act and the subsequent proceedings against him that had made him popular and had propelled him into being elected as a municipal councillor. When finding him guilty, the courts had carefully weighed up all circumstances, with due regard for his right to freedom of expression, and had spelled out in detail the justification for interfering with that right. There was no evidence that the fine given to the applicant had caused him any hardship.

2. The Court's assessment

45. The Court considers that, seen in its proper context, the conduct which led to the applicant's conviction of minor hooliganism can be regarded as "expression" within the meaning of Article 10 § 1 of the Convention. The applicant was a local opposition politician who combined a symbolic act intended to mock publicly the monument of the founder of the political party which was providing the main parliamentary support for the government in power with a call for that government to resign. Also, he acted in the course of a prolonged nation-wide protest against that government (see paragraphs 4-11 above). It is hence clear that with his act he sought to engage in political protest, and "impart" his "ideas" about the government and the political party which supported it (see, mutatis mutandis, Murat Vural v. Turkey, no. 9540/07, §§ 7-10 and 54-56, 21 October 2014; Shvydka v. Ukraine, no. 17888/12, §§ 37-38, 30 October 2014; Sinkova v. Ukraine, no. 39496/11, §§ 7-8 and 100, 27 February 2018; Mătăsaru v. the Republic of Moldova, nos. 69714/16 and 71685/16, §§ 7-8 and 31, 15 January 2019; and Ibrahimov and Mammadov v. Azerbaijan, nos. 63571/16 and 5 others, §§ 166-67, 13 February 2020).

46. It is furthermore not in doubt that the applicant's conviction of minor hooliganism in relation to that act and the resultant fine amounted to interference with his right to freedom of expression (see Cholakov v. Bulgaria, no. 20147/06, § 25, 1 October 2013). Nor is it in doubt that this interference was "prescribed by law" (ibid., § 26). In particular, it can be accepted that the legal basis for it – Article 1 § 2 of the 1963 Decree (see paragraphs 15-16, 19 and 22-23 above) – was sufficiently foreseeable. It is true that this provision defines "minor hooliganism" in broad terms, but in this case the applicant resorted to a provocative gesture likely to disturb or insult some of the people who witnessed it directly or learned about it from the media. It can thus be accepted that his act could reasonably be characterised by the Bulgarian courts as "minor hooliganism" within the meaning of the 1963 Decree (see, mutatis mutandis, Shvydka, cited above, § 39).

47. In the light of the same considerations, it can also be accepted that the interference pursued the legitimate aim of protecting the "rights of others" (ibid., § 40). There is, however, no indication that it was meant to protect "public safety". As noted by the national courts, the applicant's act was entirely peaceful (see paragraph 17 above). Nor is there any indication that it was likely to cause public disturbances, or that when sanctioning the applicant the authorities had that in mind (see, mutatis mutandis, Perinçek v. Switzerland [GC], no. 27510/08, §§ 152-53, ECHR 2015 (extracts), and contrast Maguire v. the United Kingdom (dec.), no. 58060/13, § 47 in fine, 3 March 2015).

48. The salient issue is whether the interference was "necessary in a democratic society". The general principles governing this point have recently been set out in Perinçek (cited above, §§ 196-97).

49. The sanction imposed on the applicant was the mildest possible under the legal provision that he was found to have breached (see paragraphs 17 and 23 above). It was indeed quite lenient, consisting solely of an administrative fine of BGN 100 (equivalent to EUR 51), which the applicant was able to pay almost immediately and apparently without any difficulty (see paragraphs 15 and 20 above). It was, moreover, not entered in the applicant's criminal record (see paragraph 25 above). If his conviction is considered justified, that sanction cannot hence be seen as disproportionate in itself (contrast Murat Vural, §§ 66-68; Shvydka, § 41; and Mătăsaru, §§ 35-36, all cited above). The salient question thus becomes, more specifically, whether it was at all justified to sanction the applicant's act. Indeed, the adjective "necessary" in Article 10 § 2 implies the existence of a pressing social need, and does not have the flexibility of such expressions as "useful", "reasonable" or "desirable" (see, among other authorities, Handyside v. the United Kingdom, 7 December 1976, § 48, Series A no. 24; The Sunday Times v. the United Kingdom (no. 1), 26 April 1979, § 59, Series A no. 30; and Barthold v. Germany, 25 March 1985, § 55, Series A no. 90).

50. As noted in paragraph 45 above, through that act the applicant, a local opposition politician, sought to protest against the government in power and the political party which provided main parliamentary support for it, in the course of a prolonged nation-wide protest against that government. Expression on matters of public interest is in principle entitled to heightened protection, and there is little scope under Article 10 § 2 for restrictions on it (see, among other authorities, Animal Defenders International v. the United Kingdom [GC], no. 48876/08, § 102, ECHR 2013 (extracts); Perinçek, cited above, § 230; and Mariya Alekhina and Others v. Russia, no. 38004/12, § 212, 17 July 2018). Moreover, the protection of Article 10 extends not only to the substance of the ideas and information expressed but also to the form in which they are conveyed (see, among other authorities, Oberschlick v. Austria (no. 1), 23 May 1991, § 57 in fine, Series A no. 204; Animal Defenders International, cited above, § 100 in fine; and Murat Vural, cited above, §§ 44-53, with further references).

51. Although it was not meant as a form of artistic expression, the applicant's act could also be seen having elements of satirical expression. The Court has had occasion to note that satire, by its inherent features of exaggeration and distortion of reality, aims to provoke and agitate. Accordingly, any interference with the use of this form of expression must be examined with particular care (see, among other authorities, Vereinigung Bildender Künstler v. Austria, no. 68354/01, § 33, 25 January 2007; Alves da Silva v. Portugal, no. 41665/07, § 27, 20 October 2009; and Eon, cited above, § 60), even though its use does not definitively rule out the possibility of restriction under Article 10 § 2 (see Leroy v. France, no. 36109/03, §§ 39 and 44, 2 October 2008, and Instytut Ekonomichnykh Reform, TOV v. Ukraine, no. 61561/08, § 46, 2 June 2016), or even of finding a complaint being inadmissible by reference to Article 17, in cases in which the satire is directed against the Convention's

underlying values (see M'Bala M'Bala v. France (dec.), no. 25239/13, §§ 31-33 and 39-42, ECHR 2015 (extracts)).

52. It is true that Article 10 of the Convention does not bestow freedom of forum for the exercise of the right to freedom of expression (see Appleby and Others v. the United Kingdom, no. 44306/98, § 47, ECHR 2003-VI; Taranenko v. Russia, no. 19554/05, § 78, 15 May 2014; and Mariya Alekhina and Others, cited above, § 213). It is also true that in some cases the authorities may, consistently with that provision, limit the channels through which people and organisations can express themselves (see Mouvement raëlien suisse v. Switzerland [GC], no. 16354/06, §§ 57-77, ECHR 2012 (extracts), in relation to a refusal to allow a poster campaign on public spaces), even on matters of public interest (see Animal Defenders International, cited above, §§ 99-125, in relation to a general ban on paid political advertising on television). Indeed, the justification for such limitations can be even stronger when the "expression" at issue consists, wholly or in part, in conduct, as it did in the case at hand. In this case, however, the applicant was not prevented from approaching Mr Blagoev's monument and placing the cap and the sack on it; he was later sanctioned for having done so. When an interference with the right to freedom of expression takes the form of a "penalty", it inevitably calls for a detailed assessment of the specific conduct sought to be punished. It cannot normally be justified solely because the expression at issue was caught by a legal rule formulated in general terms (see, mutatis mutandis, Perinçek, cited above, § 275).

53. Public monuments are frequently physically unique and form part of a society's cultural heritage. Measures, including proportionate sanctions, designed to dissuade acts which can destroy them or damage their physical appearance may therefore be regarded as "necessary in a democratic society", however legitimate the motives which may have inspired such acts. In a democratic society governed by the rule of law, debates about the fate of a public monument must be resolved through the appropriate legal channels rather than by covert or violent means.

54. The Court observes, however, that the applicant did not engage in any form of violence and did not physically impair Mr Blagoev's monument in any way. He merely placed a cap on its head and a sack at its feet; those were removed by municipal workers a short while later (see paragraphs 10 and 11 above). It was not suggested, either at domestic level or in the proceedings before the Court, that the applicant had somehow coordinated his actions with the unidentified people who had earlier painted Mr Blagoev's statue in red and white and had painted the words "Father Frost" on its plinth (see paragraph 7 above).

55. When it comes to such acts – which, though capable of profaning a monument, do not damage it – the question whether it can be "necessary in a democratic society" to impose sanctions in relation to them becomes more nuanced. In such situations, the precise nature of the act, the intention behind it, and the message sought to be conveyed by it cannot be

matters of indifference. For instance, acts intended to criticise the government or its policies, or to call attention to the suffering of a disadvantaged group cannot be equated to acts calculated to offend the memory of the victims of a mass atrocity. The social significance of the monument in question, the values or ideas which it symbolises, and the degree of veneration that it enjoys in the respective community will also be important considerations.

56. In the present case, the context clearly suggests that the intention behind the applicant's act was to protest against the government of the day and the political party which supported it, in the context of a prolonged nation-wide protest against that government, rather than to condemn Mr Blagoev's historical role or to express contempt towards him (see paragraphs 4-11 above). The applicant simply used Mr Blagoev's monument as a symbol of the political party that he wished to criticise. It can thus hardly be said that his act was meant to show disdain for deep-seated social values. This is further confirmed by the fact that it appears that the reactions to it were mixed (see paragraph 16 in fine above).

57. It should also be noted in this connection that Mr Blagoev's statue was put up during the communist regime in Bulgaria, and appears to have been seen as sufficiently connected to the values and ideas for which that regime stood to have been removed from its place, albeit for a few years only, shortly after the regime came to an end (see paragraphs 8 and 9 above). This can hardly be compared with, for instance, memorials to soldiers who have given their lives for the defence of their country (contrast Sinkova, cited above, § 110).

58. It can be accepted that the applicant's symbolic gesture was hurtful to some of the people who witnessed it directly or learned about it from the media. However, freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (see, among many other authorities, Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24; Müller and Others, cited above, § 33; Perinçek, cited above, § 196 (i); and Stern Taulats and Roura Capellera v. Spain, nos. 51168/15 and 51186/15, §§ 30 and 39, 13 March 2018).

59. It follows that the interference with the applicant's right to freedom of expression – the finding that he was guilty of minor hooliganism and the resultant fine – was not "necessary in a democratic society", notwithstanding the margin of appreciation enjoyed by the national authorities in that domain. There has therefore been a breach of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Pecuniary damage

61. The applicant sought reimbursement of the fine imposed on him, plus default interest calculated in accordance with the Bulgarian statutory rules and running from the date on which he had paid the fine.
62. The Government contested the claim. They submitted in particular that there were no grounds to award the applicant interest at the statutory default rate applicable in Bulgaria.
63. The Court notes that the finding of breach of Article 10 of the Convention was based on the mere fact that the applicant was found guilty of minor hooliganism. He is therefore entitled to recover the fine of 100 Bulgarian levs (BGN), equivalent to 51 euros (EUR), that he had to pay as a result of his conviction (see, among other authorities, Lingens v. Austria, 8 July 1986, § 50, Series A no. 103; Axel Springer AG v. Germany [GC], no. 39954/08, §§ 113 and 115, 7 February 2012; and Marinova and Others v. Bulgaria, nos. 33502/07 and 3 others, § 118, 12 July 2016).
64. It can also be accepted that the applicant suffered some further pecuniary loss as a result of the lapse of time since the time when he paid the fine – 20 January 2014 (see paragraph 20 above, and compare with Bladet Tromsø and Stensaas v. Norway [GC], no. 21980/93, § 83, ECHR 1999-III; Unabhängige Initiative Informationsvielfalt v. Austria, no. 28525/95, § 58, ECHR 2002-I; Krone Verlag GmbH & Co. KG v. Austria (no. 3), no. 39069/97, § 47, ECHR 2003-XII; Albert-Engelmann-Gesellschaft mbH v. Austria, no. 46389/99, § 39, 19 January 2006; and Arbeiter v. Austria, no. 3138/04, § 32, 25 January 2007). But the Court is unable to follow the suggestion that the calculation of that loss should be based on the default statutory interest in Bulgaria; it is not bound by such domestic rules (see Bladet Tromsø and Stensaas, cited above, § 83). The purpose of an award of pecuniary damages under Article 41 of the Convention is to put the applicant, as far as possible, in the position in which he would have been if the breach of his rights had not occurred (restitutio in integrum). The interest rate applied by the Court, meant to compensate the loss of value of money over time, should hence reflect national economic conditions, such as the level of inflation and the rates of interest during the relevant period. Domestic rules on the calculation of default interest, which may reflect considerations going over and above restitutio in integrum, are thus not necessarily an appropriate measure; the Court must rather base itself on a rate of interest which best serves the purpose of its award (see Boyadzhieva and Gloria International Limited EOOD v. Bulgaria, nos. 41299/09 and 11132/10, § 54, 5 July 2018). In the light of these considerations and the available information about the economic conditions in Bulgaria during the relevant period, in this case it is reasonable to apply a rate equal to the base interest rate of the Bulgarian National Bank during the relevant period

(which began when the applicant paid the fine and will end with the delivery of this judgment) plus one percentage point (ibid., § 55). This gives BGN 7.15 (equivalent to EUR 3.66). The global award in respect of pecuniary damage is thus BGN 107.15, equivalent to EUR 54.66.

B. Non-pecuniary damage

65. The applicant claimed EUR 10,000 in respect of the distress, loss of reputation and affront to his dignity caused by his detention and conviction of minor hooliganism, which had according to him received wide publicity. That damage was according to him further compounded by the tenor of the Government's submissions on the merits of his complaint.
66. The Government submitted that the actions taken with respect to the applicant had in fact increased his popularity, and that a finding of violation would amount to sufficient just satisfaction for any non-pecuniary damage suffered by him.
67. The Court notes that its findings on the merits of the complaint under Article 10 of the Convention did not relate to the applicant's police detention – which, depending on how the matter is seen, was either not part of the complaint or was a matter in respect of which the applicant did not exhaust domestic remedies (see paragraphs 29 to 32 above). That said, it can be accepted that the applicant suffered some non-pecuniary damage as a result of the judgment finding him guilty of minor hooliganism and the resultant fine. Ruling on an equitable basis, as required under Article 41 of the Convention, the Court awards him EUR 2,000 under this head, plus any tax that may be chargeable.

C. Costs and expenses
1. The applicant's claim and the Government's comments on it

68. The applicant sought reimbursement of:
(a) EUR 3,960 incurred in fees for thirty-three hours of work by his lawyers on the proceedings before the Court, at EUR 120 per hour;
(b) EUR 6.19 spent by his lawyers on postage;
(c) EUR 15 expended by his lawyers on office supplies; and
(d) EUR 116.57 spent by his lawyers' firm for the translation of the written observations and claims made on his behalf into English.
69. The applicant requested that any award under this head be made directly payable to his lawyers' firm, Ekimdzhiev and Partners.
70. In support of his claim, the applicant submitted a fee agreement with his lawyers' firm, a time-sheet and costs report by that firm (which the applicant accepted), a postal receipt, and a contract between his lawyers' firm and a translator.

71. The Government submitted, with respect to item (a) of the claim, that both the hours claimed and the hourly rate were excessive, in particular in view of the relative simplicity of the issues raised by the case. For their part, items (b) and (c) were operating costs incurred by the firm of the applicant's lawyers, already covered by the fees which they had charged the applicant. The Government made the same point with respect to item (d), and pointed out that the contact for translation services spoke of nineteen pages, whereas the applicant's observations only ran to fourteen pages, and that no invoice had been presented for those services.

2. The Court's assessment

72. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses, but only to the extent that these were actually and necessarily incurred and are reasonable as to quantum.

73. In the present case, the only point in dispute in relation to the lawyers' fees whose reimbursement is sought by the applicant (item (a) of his claim) is whether they were reasonable as to quantum. The hourly rate charged by those lawyers, EUR 120, is much higher than those accepted in recent cases against Bulgaria of similar complexity (see Karaahmed v. Bulgaria, no. 30587/13, §§ 117 and 119, 24 February 2015; Guseva v. Bulgaria, no. 6987/07, §§ 74 and 76, 17 February 2015; and Yordanovi, cited above, §§ 89 and 91). It cannot therefore be seen as reasonable. By contrast, in the light of the degree of complexity of the issues raised by the case and the content of the submissions made on behalf of the applicant, the number of hours claimed appears reasonable. In view of these considerations, the Court awards the applicant EUR 2,640, plus any tax that may be chargeable to him, under this head. As requested by him, this sum should be paid directly into the bank account of the law firm of his representatives, Ekimdzhiev and Partners (see, for instance, Khlaifia and Others v. Italy [GC], no. 16483/12, § 288 in fine, ECHR 2016 (extracts)).

74. For their part, the administrative costs (in this case, postage and office supplies – items (b) and (c) of the applicant's claim) incurred by the applicant's representatives in connection with the proceedings before the Court are in principle recoverable under Article 41 of the Convention (see, among other authorities, The Sunday Times v. the United Kingdom (no. 1) (Article 50), 6 November 1980, § 40, Series A no. 38; Dudgeon v. the United Kingdom (Article 50), 24 February 1983, § 25, Series A no. 59; Özgür Gündem v. Turkey, no. 23144/93, §§ 85-87, ECHR 2000-III; İpek v. Turkey, no. 25760/94, § 242 in fine, ECHR 2004-II (extracts); and Antonov v. Bulgaria, no. 58364/10, §§ 72 and 76, 28 May 2020). Indeed, under the terms of the fee agreement between the applicant and his lawyers' firm, he is liable not only to pay fees for his lawyers' work on the case, but also to cover all administrative costs incurred by their firm in connection with it. That said, there are no documents supporting the claim in respect of office supplies. In those circumstances, the Court makes an award solely with

respect to postage, which according to the documents submitted by the applicant came to BGN 12.10, which equals EUR 6.19. To this should be added any tax that may be chargeable to the applicant. As requested by him, this sum is likewise to be paid directly into the bank account of the law firm of his representatives.

75. Translation costs are also in principle recoverable under Article 41 (see, for instance, The Sunday Times (no. 1) (Article 50), cited above, § 40; Olsson v. Sweden (no. 2), 27 November 1992, § 114, Series A no. 250; Blokhin v. Russia [GC], no. 47152/06, § 229 in fine, 23 March 2016; and Marinova and Others v. Bulgaria, nos. 33502/07 and 3 others, § 133, 12 July 2016). In the present case, the contract between the firm of the applicant's lawyers and the translator specifically stated that the translation concerned the observations and claims made on behalf of the applicant. It also stipulated that the translator's fee was to be calculated on the basis of the amount of standard pages (rather than the actual number of pages) of which those documents consisted, and stated that the fee had been paid via bank transfer. There is hence no reason to doubt that the translation costs were actually and necessarily incurred by the applicant's lawyers. They also appear reasonable as to quantum. The sum expended for translation – EUR 116.57 – is therefore to be awarded in full. To this should be added any tax that may be chargeable to the applicant. As requested by him, this sum is likewise to be paid to into the bank account of the law firm of his representatives.

76. The total award in respect of costs and expenses is thus EUR 2,762.76.

D. Default interest

77. 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

1. Declares, unanimously, the application admissible;
2. Holds, by six votes to one, that there has been a violation of Article 10 of the Convention;
3. Holds, by six votes to one,

(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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 54.66 (fifty-four euros and sixty-six cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 2,762.76 (two thousand seven hundred sixty-two euros and seventy-six cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the law firm of the applicant's representatives, Ekimdzhiev and Partners;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti — Registrar
Tim Eicke — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Vehabović is annexed to this judgment.

T.E.
A.N.T.

DISSENTING OPINION OF JUDGE VEHABOVIĆ

I regret that I am unable to subscribe to the view of the majority that there has been a violation of Article 10 in this case.
This case has many similarities with the case of Sinkova v. Ukraine (no. 39496/11, 27 February 2018), but the outcome is completely different. A comparison of the facts in XXXXX and Sinkova is very important in order to compare the legal arguments used in these cases, which lead the majority to different conclusions.

I

Sinkova v. Ukraine

At the time of the events the applicant belonged to an artistic group called the St Luke Brotherhood, which was known for its provocative public performances.
On 16 December 2010 the applicant, together with three other members of the group, carried out what she described as an "act of performance". They went to the Eternal Glory Memorial to those who perished in the Second World War. The applicant took a frying pan prepared in advance, broke some eggs into it and fried them over the Eternal Flame at the Tomb of the Unknown Soldier. Two of her friends joined her and fried sausages on skewers over the flame. Another member of the group filmed the event. On the same day the applicant posted the video on the Internet on behalf of the St Luke Brotherhood. It was accompanied by the following statement:

"Precious natural gas has been being burned, pointlessly, at the Glory Memorial in Kyiv for fifty-three years now. This pleasure costs taxpayers about 300,000 hryvnias per month. And this is only one 'eternal flame' pagan temple, whereas there are hundreds or even thousands of them throughout Ukraine. On 16 December the St Luke Brotherhood reacted to this by an act of protest in the Glory Park in the capital. It showed that people should use the 'eternal flame'.
We suggest to the outraged representatives of the Communist Party of Ukraine to follow the example of ancient Roman vestal virgins and to carry out around-the-clock duty at the 'eternal flames', keeping the fire lit manually by wood. There is no doubt that communists will have no problems with fulfilling this task, because they already have experience of taking care of the Lenin monument in Kyiv and their financing is much better than that which the vestal virgins had."

On 29 March 2011 at 9 p.m. the applicant was arrested. After three months in prison she was released.
On 4 October 2012 the Pecherskyy District Court found the applicant guilty of desecrating the Tomb of the Unknown Soldier, acting as part of a group of persons following a prior conspiracy, classified as a criminal offence according to Ukrainian law. As a result, she was sentenced to three years' imprisonment, suspended for two years.
The applicant alleged a violation of Articles 5 and 10 of the Convention.

XXXXX v. Bulgaria

The applicant was chairman of the Blagoevgrad chapter of the political party Democrats for a Strong Bulgaria, which was not represented in Parliament at the relevant time and which supported the anti-government protests.

In the early hours of 25 December 2013, Christmas day, the statue of Mr Dimitar Blagoev in the central square of Blagoevgrad was painted by unknown persons in red and white so as to resemble Santa Claus, and the plinth of the statue was daubed, using white spray-paint, with the words "Father Frost".

Shortly before 10 a.m. on 25 December 2013 the applicant went to the painted statue, which had been surrounded by a number of people and journalists drawn there by media reports that it had been painted over, and placed a red Santa Claus cap on its head and a red sack at its feet. The sack had a white band bearing the word "resignation" attached to it. The applicant said that he had been inspired to do that when seeing the media reports that the statue had been painted over.

At about 2 p.m. on the same day, 25 December 2013, the applicant was arrested at his home and taken to a police station, where he was placed in police detention for twenty-four hours on suspicion of having committed hooliganism contrary to Article 325 § 1 of the Criminal Code, and was searched.

The next day, 26 December 2013, the applicant was charged with minor hooliganism contrary to Article 1 § 2 of the 1963 Decree on Combating Minor Hooliganism, for having placed the cap and the sack on Mr Blagoev's statue. He was then released from detention.

In the course of his trial, which took place four days later on 30 December 2013, the applicant stated that his act had been intended to express his protest against the government, which was his constitutional right, that that act had been met with universal approval, and that he had in effect made a good political joke. For their part, his counsel argued that he had exercised his constitutional right to express his views.

The same day, 30 December 2013, the Blagoevgrad District Court found the applicant guilty of minor hooliganism contrary to Article 1 § 2 of the 1963 Decree and fined him 100 Bulgarian levs (equivalent to 51 euros (EUR)).

The applicant relied only on Article 10 of the Convention.

II

It is easy to note that both cases relate to very similar situations, one that can be characterised as an "artistic performance pointing out social, economic and political issues" and the other one constituting purely "political protest". Both applicants spent some time in prison – three months in the case of Ms Sinkova and 24 hours in the case of Mr Handzhiyski. It is worth noting that in the present case the applicant did not rely on Article 5 of the Convention. In Sinkova, the applicant was sentenced to three years' imprisonment, suspended for two years. In the present case the applicant was sentenced to pay a fine of EUR 51.

Notwithstanding all the similarities, the majority reached a different conclusion in the present case. It seems that this conclusion is based on the considerations set forth in paragraphs 57-59 of the judgment, where it is stated that the statue of Mr Blagoev "was put up during the communist regime in Bulgaria" (similarly to the eternal flame monument in Sinkova) "and appears to have been seen as sufficiently connected to the values and ideas for which that regime stood". It appears that the majority are of the opinion that anything that was put up during the communist regime and that can be identified with that regime is by default wrong and that it is acceptable to subject it to mockery. It should be noted that Mr Blagoev lived and died a long time (twenty years) before that regime came into power in Bulgaria.[2] It could well be that in the context of Bulgaria's political life this public figure is considered a part, or even a "founding father", of the communist regime in Bulgaria. However, I am of the opinion that it would be difficult to objectively conclude that twenty years after his death, Mr Blagoev had anything to do with what that regime did – good or bad – during the communist era.

I have difficulty sharing that position, and without wishing to open a discussion on the values attached to statues and monuments in general, I feel bound to say that while we are not able to change history, we can properly evaluate it. We have witnessed many occasions on which historic monuments in Afghanistan, Iraq, Syria, and so on, have been desecrated or completely destroyed for various reasons, but the motives were always a difference of opinion about the values these monuments represent. That behaviour is not acceptable. On the other hand, there are still monuments that glorify events, battles or persons promoting uncivilised actions or aims like slavery, or rulers who committed terrible atrocities during the colonial age, and so forth, but what makes a significant difference is the historical context of these events or personalities. What is acceptable to one person might be unacceptable to another, but one thing is certain – no one can change history and those events and personalities should be evaluated in their particular historical context.

In the context of this case, it was the duty of the authorities to protect those monuments that are in place today in so far as they are still there. It is up to them too to decide whether these monuments should still be left standing in public places, but in the meantime there is a necessity to act according to the law. In protecting them the authorities should also properly evaluate acts by individuals that publicly mock statues and monuments and what they represent, in the light of the "necessity in a democratic society". In the instant case they did so by sentencing the applicant to a fine of 51 euros, which is insignificant compared with the sentence imposed on Ms Sinkova, who spent three months in pre-trial detention as well as being sentenced to three years' imprisonment, suspended for two years.

This different approach to the process of evaluating the facts in these two cases points once again to an inconsistent approach by the Court in dealing with similar cases, which will not enhance its public image.

III

In Sinkova the Court noted in §§ 107 and 108 that the applicant had carried out what she considered to be an artistic performance aimed at protesting against the wasteful use of natural gas by the State while the latter turned a blind eye to the poor living standards of veterans. However, the applicant was criminally prosecuted and convicted only on account of frying eggs over the Eternal Flame, which the domestic courts considered to amount to desecration of the Tomb of the Unknown Soldier, an offence under the Ukrainian Criminal Code. The charge against her concerned neither the subsequent distribution by her of the relevant video nor the content of the rather sarcastic and provocative text accompanying that video. In other words, the applicant was not convicted for expressing the views that she did or even for expressing them in strong language. Her conviction was a narrow one in respect of particular conduct in a particular place (compare Maguire v. the United Kingdom (dec.), no. 58060/13, 3 March 2015). Moreover, it was based on a general prohibition of contempt for the Tomb of the Unknown Soldier forming part of ordinary criminal law.

By contrast, in the instant case, in paragraph 54 the majority turned its attention to the fact that the applicant had not engaged in any form of violence and had not physically impaired the monument in any way (the same was true of Ms Sinkova, who had merely fried eggs on the eternal flame). On that basis the majority concluded that this act of non-violent protest was "covered" by the principle of "necessity in a democratic society" and as such was justified. The message sent out is a dangerous one – whenever any desecration of monuments take place it will be justified as long as it is the result of non-violent protest that caused no damage to the statue or monument itself. This approval might easily undermine the principle of the rule of law and could be understood as an invitation to similar non-violent acts against any statue, monument or sacred places, acts that may well injure the feelings of those who support their existence. This is a potentially dangerous approval that is not consistent with the existing case-law of this Court.

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[1] "Father Frost" (*Дядо Мраз*) is a fictional character similar to Santa Claus. Its tradition is mostly spread in East Slavic countries. Although at the beginning of the Soviet era the character was banned, it later became an important part of Soviet culture. In Bulgaria, it has

since the fall of the communist regime been associated with, inter alia, the impossibility of publicly celebrating Christmas during the regime.

[2] Mr Blagoev was a Bulgarian political leader and philosopher and the founder of the Bulgarian left-wing political movement and of the first social democratic party, the likes of which exist all over Europe today.