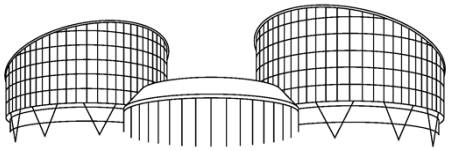

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GENOV AND SARBINSKA v. BULGARIA

(Application no. 52358/15)

JUDGMENT

Art 10 • Freedom of expression • Unjustified conviction and fine for spray-painting a monument connected to communist regime in the context of political protest

STRASBOURG

30 November 2021

FINAL

28/02/2022

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

In the case of Genov and Sarbinska 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. 52358/15) 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 two Bulgarian nationals, Mr Asen Georgiev Genov and Ms Tsvetelina Ognyanova Sarbinska ("the applicants"), on 8 October 2015;

the decision to give the Bulgarian Government ("the Government") notice of the complaint under Article 10 of the Convention concerning the applicants' conviction of hooliganism for spray-painting a public monument and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The two applicants, a popular blogger and a political activist, were found guilty of hooliganism and fined for spray-painting a monument to "partisans" on the anniversary of the 1917 Bolshevik Revolution, in the context of nation-wide protests against a government chiefly supported by the Bulgarian Socialist (former Communist) Party, the dominant political force during the communist regime in Bulgaria. The case concerns the question whether that was compatible with their rights under Article 10 of the Convention.

THE FACTS

2. The applicants were born in 1969 and 1973 respectively and live in Sofia. They are represented before the Court by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

3. The Government were represented by their Agent, Ms B. Simeonova of the Ministry of Justice.

I. BACKGROUND TO THE CASE

A. The 2013-14 anti-government protests

4. In April 1990 the Bulgarian Communist Party ("BCP"), which had been the dominant political force in the country between 1946 and 1989, throughout the communist regime, renamed itself Bulgarian Socialist Party.

5. Following parliamentary elections on 12 May 2013, on 29 May 2013 a new government was formed, led by Mr Plamen Oresharski and chiefly supported in Parliament by Coalition for Bulgaria whose main member was the Bulgarian Socialist Party.

6. 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, media-owner and member of Parliament from the political party Movement for Rights and Freedoms, as chairman of the State Agency for National Security. The nomination was formally made by the Prime Minister, Mr Oresharski, and was approved in Parliament with the votes of seventy-eight members from Coalition for Bulgaria (out of a total of eighty voting) and of all thirty-six members from the Movement for Rights and Freedoms.

7. One of the main slogans of those protests became the question "Who?", interpreted to mean "Who proposed Mr Peevski for that post?".

8. On 19 June 2013 the chairmen of the parliamentary groups of "Coalition for Bulgaria" and the Movement for Rights and Freedoms proposed to Parliament to revoke Mr Peevski's appointment, citing the vigorous public reaction to it. All one hundred and twenty-eight members of Parliament present voted in support of the proposal, and it was adopted.

9. In spite of that, the daily protests 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 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 (see *Handzhiyski v. Bulgaria*, no. 10783/14, § 5, 6 April 2021). Several months later, in July 2014, Mr Oresharski's government stepped down.

B. The applicants' political activism and role in those protests

10. Both applicants took part in those protests and were active members of the informal organisation "Protest Network" which was coordinating them.

11. The first applicant, a blogger, was also frequently posting public comments and videos about the situation in Bulgaria on his Facebook page and YouTube channel, and was thus quite well known in Bulgarian society.

12. The second applicant is an architect by profession. During the communist regime her grandfather, an activist of the Bulgarian Agrarian People's Union, spent five years in a labour camp on account of his political views. In 2015 the second applicant ran for municipal councillor in Sofia on the ticket of the Reformist Block, an electoral alliance formed in December 2013 and existing until 2017.

II. SPRAY-PAINTING OF THE "PARTISAN" MONUMENT

13. At about 4 a.m. on 7 November 2013 – anniversary of the 1917 Bolshevik Revolution – the two applicants and four other people were near the central office of the Bulgarian Socialist Party in Sofia. At about 4.40 a.m. they were spotted by three police officers and tried quickly to move away. The officers saw that a monument standing in front of the building, put there in the 1970s and consisting of seven metal figures representing "partisans"[1], had been freshly spray-painted in rose and magenta (the heads in rose and the bodies in magenta), and had the words "WHO? BCP–SHAME! WHO!" written in rose spray-paint on its base.

14. Two of the officers followed the applicants and the four other people who were with them, and intercepted the group two blocks away from the monument. The officers saw that the second applicant wore latex gloves and held two spray-cans. They also noticed that in his bag the first applicant had four spray-cans, two pairs of latex gloves and a protective face-mask. The applicants handed those items to the officers. In reply to a question what they were doing there, they said that they had gone out for a walk and a coffee.

15. The officers took the applicants and their four companions to a police station. The applicants agreed to have their hands and clothes swabbed for samples; their companions refused. The applicants remained under arrest for about twenty hours.

16. It was later established that the applicants' clothes and shoes, as well as the face-mask found in the first applicant's possession, bore traces of the

[1] Anti-government resistance fighters active on the territory of Bulgaria between June 1941 and September 1944, affiliated with the Bulgarian Communist Party and supported by, *inter alia*, the Soviet Union, whose troops occupied Bulgaria in September 1944.

same spray-paints as the ones used to paint over and write on the monument.

17. The spray-paint was later cleaned from the monument. There is no evidence in the case file about who did that or how much effort or cost it entailed (see also paragraph 29 below).

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

A. At first instance

18. The same day, 7 November 2013, the authorities opened criminal proceedings against the applicants in relation to the above events. In February 2014 they were charged with hooliganism contrary to Article 325 § 1 of the Criminal Code (see paragraph 34 below).

19. In June 2014 the prosecuting authorities brought the applicants to trial. They maintained the charges, but proposed to the Sofia District Court to waive the applicants' criminal liability and replace it with administrative penalties, in application of Article 78a § 1 of the Criminal Code (see paragraph 41 below). Counsel for each of the applicants argued, *inter alia*, that they had duly exercised their right to freedom of expression.

20. On 31 October 2014 the Sofia District Court acquitted the applicants (see реш. от 31.10.2014 г. по н. а. х. д. № 11698/2014 г., СРС).

21. The court found that the available evidence did not categorically show that it had been them, rather than any of the four other people also present at the scene, who had spray-painted the monument. But even if it had been established that this had been done by the applicants, their act had not amounted to hooliganism. In the light of the applicants' explanations, the act was rather to be seen as a non-verbal expression of political views. The applicants' right to freedom of expression, protected under both Article 10 of the Convention and Article 39 of the 1991 Constitution (see paragraph 33 below), had thus been engaged. Political expression enjoyed heightened protection, and that comprised also the form in which it had been made. It was not for the criminal courts to assess the views advocated by the applicants or the monument's artistic or historical value. What mattered was whether the interference with the applicants' right to freedom of expression would pursue a legitimate aim and would be proportionate to attain it. That required a balancing exercise. In view of the context in which the applicants had painted the monument (widespread anti-government protests and an intense public debate about the legacy of the communist regime, in particular the fate of the monuments remaining from it), and the reasons for which they had done so (to express their disapproval of the political party in power during that regime), their act could not be qualified as hooliganism. Holding otherwise would amount to using penal repression for political ends.

22. The court went on to note that the applicants had impaired someone else's artistic work and property, and could thus be held liable to restore the *status quo ante* and make good the damage resulting from their act. But the proceedings against them, being conducted on charges of hooliganism rather than of property damage, did not concern that point. The question who owned the monument was hence irrelevant.

B. On appeal

23. The prosecuting authorities appealed. However, when the Sofia City Court heard the appeal, the prosecutor appearing on behalf of the prosecution did not support it, and instead argued that the lower court had been correct to acquit the applicants. In response to the appeal, counsel for the applicants reiterated, *inter alia*, that the applicants had duly exercised their right to freedom of expression. In the course of the appeal hearing the first applicant presented letters from Sofia's regional governor and Sofia Municipality attesting that the monument was neither State- nor municipally-owned.

24. In a final judgment of 31 July 2015 (реш. № 882 от 31.07.2015 г. по н. а. х. д. № 5398/2014 г., СГС) a three-judge panel of the Sofia City Court by a majority quashed the lower court's judgment and found the applicants guilty of hooliganism contrary to Article 325 § 1 of the Criminal Code (see paragraph 34 below). It waived their criminal liability and replaced it with administrative fines of 1,500 Bulgarian levs (BGN) (equivalent to 767 euros (EUR)) each (see paragraphs 19 above and 41 below). It also ordered each of the applicants to pay the Ministry of Internal Affairs BGN 452.57 (equivalent to EUR 231.40) in respect of costs incurred in the pre-trial proceedings.

25. The court held that the available evidence, although circumstantial, was sufficient to find that it had been the two applicants, rather than any of their four companions, who had spray-painted the monument. In particular, the police officers who had intercepted them had stated that the paint on the monument had been fresh; the investigation had found on the applicants cans of spray-paint and traces of the same paint as the one used to paint the monument; and it had been established that when intercepted by the officers both applicants had had on them latex gloves, and the second applicant also a protective face-mask (which had also borne traces of the same paint). All of that unequivocally showed that they had themselves carried out the spray-painting.

26. The court went on to say that the applicants' act had amounted to hooliganism. Hooliganism could take various forms; one of them was wantonly painting public monuments. Such conduct was contrary to public order and revealed a wish on the part of the applicants to demonstrate that they did not feel bound by generally accepted rules of proper conduct. Even

if it could be accepted that they had not damaged the monument, their act had been contrary to morals, and could thus properly be characterised as hooliganism within the meaning of the former Supreme Court's and the Supreme Court of Cassation's case-law. Who owned the monument was irrelevant in this respect, since hooliganism was an offence against public order, not against property. Nor was it relevant what the monument stood for or how it was being perceived by the public, or that the legislature had declared the communist regime criminal (see paragraphs 42 to 44 below). What mattered was that the monument was part of the country's cultural heritage.

27. It could not be accepted that the applicants had sought to express their views publicly, since they had carried out their act at night, and had then attempted to flee, to deceive the police officers who had intercepted them, and more generally to conceal their participation in the events. All of that denoted an intent to scandalise society and demonstrate contempt toward it rather than to express one's views on a matter of public importance. The questions what the monument represented, what kind of artistic, cultural or historical value it did or did not have, and how some sectors of the population felt about it were irrelevant; what mattered, again, was that the target of the applicants' act was part of the country's cultural heritage.

28. The interference with the applicants' right to freedom of expression was not in breach of Article 10 of the Convention or Article 39 of the 1991 Constitution (see paragraph 33 below), both of which permitted such interferences. One had to express oneself in an overt way to enjoy protection under those provisions, and not by means of criminal acts. People were of course entitled to engage in political protest, but not when that took the form of a criminal offence.

29. As regards the punishment, the court noted, in particular, that neither of the two applicants had a previous conviction or waiver of criminal liability, and that their act had not caused pecuniary damage (since no evidence had been presented about how much it had cost to clean the monument and who had covered that cost). The applicants' criminal liability therefore had to be waived under Article 78a § 1 of the Criminal Code (see paragraph 41 below), and replaced by administrative fines. Since neither the applicants' act nor they themselves presented a high degree of dangerousness, the fines were to be fixed towards the minimum: BGN 1,500 (equivalent to EUR 767) each.

30. One of the three judges who heard the appeal dissented. According to her, the evidence did not permit a categorical conclusion that it had been the applicants who had spray-painted the monument. Six people altogether had been present at the scene, and the only reason why charges had been brought only against the applicants was that they had allowed the police to swab their clothes and hands, whereas the other four had refused. Moreover,

it could not be said that by spray-painting the phrase "WHO? BCP–SHAME! WHO!" on the base of the monument the applicants had showed overt disrespect toward society and had thus engaged in hooliganism. They had merely expressed their views about the monument and about a past political regime perceived by the bulk of the population in a negative way. Holding otherwise ran counter to Article 10 of the Convention.

C. Steps taken to collect the fines imposed on the applicants

31. In 2016 the National Revenue Agency opened enforcement proceedings against the first applicant in relation to the fine and the costs which he had been ordered to pay (see paragraph 24 above). He paid them in six instalments between February 2017 and June 2020.

32. In 2015 the National Revenue Agency opened enforcement proceedings against the second applicant as well, and in November 2017 froze some of her bank accounts. According to a letter from the Agency presented by the Government, the second applicant had paid part of the fine and costs which she had been ordered to pay; the letter did not set out the exact sums. The second applicant did not provide any evidence on that point.

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION

33. Article 39 of the 1991 Constitution 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."

II. THE CRIMINAL OFFENCE OF HOOLIGANISM

34. Article 325 § 1 of the 1968 Criminal Code makes it an offence (hooliganism) to carry out indecent actions which grossly infringe public order and show overt disrespect toward society. The penalty on conviction is up to two years' imprisonment or probation, coupled with a public reprimand.

35. The former Supreme Court and the Supreme Court of Cassation have held that even acts not carried out in public can be qualified as hooliganism, so long as they have or could become known to others (see пост. № 2 от 29.06.1974 г. по н. д. № 4/1974 г., ВС, Пл., point 5; реш. № 656 от 17.09.1991 г. по н. д. № 533/1991 г., ВС, II н. о.; реш. № 387

от 30.09.2009 г. по н. д. № 407/2009 г., ВКС, III н. о.; and реш. № 175 от 22.05.2012 г. по н. д. № 2934/2011 г., ВКС, II н. о.).

36. It does not appear that, apart from the applicants' case, there has ever been a final conviction under Article 325 § 1 in relation to the profaning of a public monument.

37. On 9 September 2013 a well-known poet and journalist was charged with painting a rose circle over the monument of the Soviet Army in Sofia, but on 25 October 2013 the prosecuting authorities discontinued the criminal proceedings against him on the basis that his act had not amounted to hooliganism because, although infringing public order, it had not done so "grossly" (an account of those proceedings may be found in реш. № 4029 от 19.06.2018 г. по гр. д. № 2159/2017 г., СГС, and реш. № 1265 от 01.05.2019 г. по в. гр. д. № 6142/2018 г., САС).

38. On 7 September 2014 (about ten months after the applicants' act) three people were arrested in Sofia for spray-painting the words "occupiers" and "conquerors" on the monument of the Soviet Army, on suspicion that this had amounted to hooliganism contrary to Article 325 § 1. One of the arrestees sought judicial review of his police detention. While those proceedings were pending, in January 2015 the prosecuting authorities discontinued the concurrent criminal investigation against him. They found, with reference to the Court's rulings under Article 10 of the Convention in *Murat Vural v. Turkey* (no. 9540/07, 21 October 2014) and *Shvydka v. Ukraine* (no. 17888/12, 30 October 2014), that it had not been wrongful to spray-paint the monument, and that this had therefore not amounted to an offence. On the back of that discontinuance, in June 2015 the Sofia City Administrative Court annulled the police detention order (see реш. № 3885 от 05.06.2015 г. по адм. д. № 9173/2014 г., АдмС-София-град). On an appeal by the police, however, in January 2017 the Supreme Administrative Court quashed that judgment and dismissed the judicial review claim. It held, *inter alia*, that the police had been entitled to suspect that the arrestees' act had amounted to hooliganism. The court went on to note that the spray-painting had impaired the monument, that the detention had lasted less than twenty-four hours, and that the arrestee had not specified the reasons which had prompted his act, which had to be seen as a protest against a political regime (the communist regime in Bulgaria) which had ceased to exist more than twenty-five years previously. In those circumstances, the police detention could not be seen as a measure disproportionately restricting his right to freedom of expression. It was unhelpful to draw automatic comparisons with Turkey and Ukraine because the political situations there were vastly different (see реш. № 363 от 12.01.2017 г. по адм. д. № 10527/2015 г., ВАС, V о.).

39. In December 2103 and January 2014 a local politician in Blagoevgrad was found guilty of "minor hooliganism" – which in Bulgaria is outlawed by a 1963 Decree – in relation to his having placed a cap and a

sack on a statue in the centre of the town where he lived (see *Handzhiyski*, cited above, §§ 7-19 and 22-23).

40. In November 2018, when Marine Le Pen, president of the French political party *Rassemblement national*, was in Sofia to take part in an international conference organised by a Bulgarian political party, a university student spray-painted in English the words "REFUGEES WELCOME! LE PEN GO HOME" on the base of the monument of the Soviet Army in Sofia. He was charged with hooliganism contrary to Article 325 § 1, and convicted at first instance and given a BGN 2,000 (EUR 1,023) administrative fine instead of a criminal penalty (see прис. от 11.11.2019 г. по н. о. х. д. № 474/2019 г., СРС). On appeal, the Sofia City Court overturned the conviction and acquitted the student, holding, for reasons similar to those given by the Sofia District Court in the present case (see paragraphs 21 and 22 above), that his act had not amounted to hooliganism (see прис. № 260026 от 12.10.2020 г. по в. н. о. х. д. № 2843/2020 г., СГС). Following an appeal by the prosecution, in July 2021 the Supreme Court upheld the acquittal (see реш. № 73 от 26.07.2021 г. по н. д. № 259/2021 г., ВКС, III н. о.). It held, with reference in particular to *Handzhiyski* (cited above), that the spray-painting had been reversible and had not damaged the monument. The student had moreover not impinged on the monument's symbolic message, but had simply used it as a vehicle to convey his message – which was political speech on a matter of public interest even though he was not a politician or a member of a political party – to a larger audience. It followed that even an administrative penalty was not necessary in a democratic society with respect to that act, and that the act could not be characterised as hooliganism contrary to Article 325 § 1 of the Criminal Code, or even as minor hooliganism contrary to Article 1 § 3 (former § 2) of the 1963 Decree (see paragraph 39 above).

III. REPLACING CRIMINAL PENALTIES WITH ADMINISTRATIVE ONES

41. By Article 78a § 1 of the Criminal Code, the courts must replace criminal liability with an administrative penalty – a fine ranging from BGN 1,000 to BGN 5,000 (EUR 511 to EUR 2,556) – if (a) the criminal offence of which the accused has been convicted is punishable by up to three years' imprisonment or a lesser penalty, in respect of a wilful offence; (b) the accused has not previously been convicted of a publicly prosecutable offence or had his or her criminal liability waived and replaced by an administrative penalty; and (c) any pecuniary damage caused by the offence has been made good.

IV. ACT DECLARING THE COMMUNIST REGIME CRIMINAL

42. In 2000 the National Assembly passed an Act Declaring the Communist Regime in Bulgaria Criminal.

43. Section 1(1) of that Act proclaimed that the Bulgarian Communist Party had come to power on 9 September 1944 with the help of a "warring hostile power"[2] and in breach of the (then in force) 1879 Constitution, and section 1(2) declared that that party had been responsible for governing the country between 9 September 1944 and 10 November 1989.

44. Section 3(1) proclaimed the communist regime, deemed to be in power between the two above dates, to be "criminal", and section 3(2) branded the Bulgarian Communist Party a "criminal organisation ... aimed at supressing human rights and the democratic system".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

45. The applicants complained about the judgment finding them guilty of hooliganism for spray-painting the monument and the ensuing fines. They relied on Article 10 of the Convention, which provides, 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 and regardless of frontiers. ...
>
> 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. The parties' submissions

1. The applicants

46. The applicants emphasised the participation of "partisans" in acts of terrorism and diversion before the occupation of Bulgaria by the Soviet Army in September 1944, and their role in the repressions which had engulfed the country after that. They also underlined the role of the

[2] On 5 September 1944 the Soviet Union declared war on Bulgaria, and on 8 September 1944 the Soviet Army entered the country without facing resistance and occupied it until December 1947.

Bulgarian Communist Party (later Bulgarian Socialist Party) in the country's history before, during and after the communist regime.

47. The applicants went on to point out that (a) the monument at issue did not represent specific persons but "partisans" in general, which in their view meant that acts directed against it could not affect the memory of specific individuals, and that (b) the act for which they had been sanctioned had been part of the wave of anti-government protests in 2013-14. They had not destroyed or seriously damaged the monument, and had spayed words of protest – not insulting in themselves – on the monument's base rather than on the sculptures of the partisans themselves.

48. The severity of the sanctions against the applicants – which had in any event been quite harsh, both in terms of their potential consequences in case of future offending and in terms of quantum – did not ultimately matter, because it had not at all been necessary to interfere with their right to freedom of expression by way of a criminal prosecution. This followed not only from Article 10 of the Convention but also from the manner in which the Bulgarian Constitutional Court had construed Article 39 of the 1991 Constitution (see paragraph 33 above). The applicants' case highlighted a broader issue: that Bulgarian law, as construed by the criminal courts, did not duly differentiate between legitimate political protest and hooliganism. It was puzzling that decades after the fall of the communist regime the courts still conflated those notions, and saw legitimate political protest as hooliganism without inquiring into its goals or symbolism.

49. It was unclear how the applicants' conviction had contributed to public safety, or how their act had been inimical to morals, especially in view of the prevailing state of public opinion at the time. That act's furtive character could not be held against them. If they had acted overtly, the police would have stopped them from painting over the whole monument and thus prevented them from fully articulating their intended symbolic message. Moreover, they would have probably incurred heavier sanctions if they had painted the monument in full public view. They had proceeded covertly to avoid unconstitutional repression against them. It also had to be borne in mind that both of them were politically active, especially with regard to issues relating to the former communist regime.

50. The form of expression was also protected under Article 10 of the Convention, and it was not for the State to assess its legitimacy – a point not properly assessed by the majority of the Sofia City Court.

2. The Government

51. The Government submitted that Article 10 of the Convention did not apply. The applicants' act had amounted to vandalism, and after their arrest they had tried to distance themselves from it. Even though during their trial they had argued that the act had amounted to a form of political protest, they had not admitted to in fact having carried it out. Moreover, they had never

been prevented from manifesting their political views in other ways, and had been found guilty of hooliganism rather than of expressing their opinion.

52. Even if Article 10 of the Convention applied, the interference with the applicants' rights under that provision had been lawful and justified. The legal basis for the interference had been accessible and foreseeable, and the interference had been intended – as apparent from the terms of Article 325 § 1 of the Criminal Code and the reasons given by the Sofia City Court (see paragraphs 24 to 29 and 34 above) – to protect public safety and the rights of others and to prevent crime.

53. The interference had also been "necessary in a democratic society", for several reasons. The first was the nature of the applicants' act. They had, after careful preparation, covertly painted a monument which formed part of the country's cultural heritage. Even the first-instance court, which had acquitted them, had noted that they had impaired the monument's appearance and artistic value. The appellate court had underlined their efforts to conceal their act, which showed that they had not sought to express their views openly. Such vandalism against the country's heritage was outlawed not only in Bulgaria but in all Contracting States; it could not be equated to acts which profaned public monuments without affecting their physical integrity.

54. Secondly, at the time the applicants had not been journalists or politicians. Their participation in the anti-government protests could not entitle them to express their political views in any way they saw fit. Their conviction had not stopped them from airing those views; it had simply signalled that it was inacceptable to do so through acts of vandalism. Indeed, both applicants had later gone on to take an active part in public life.

55. Thirdly, the court which had convicted the applicants had analysed the specifics of the case, had responded to all points raised by them, and had properly balanced the competing interests.

56. Lastly, the applicants had been given moderate administrative fines rather than harsh criminal punishments, and nothing suggested that those fines had been too onerous for them to pay.

B. The Court's assessment

1. Admissibility

57. The Government's contention that Article 10 of the Convention does not apply (see paragraph 51 above) concerns the compatibility of the complaint *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and thus the Court's subject-matter jurisdiction. Since there is no special reason to defer examining that issue until the merits stage (contrast *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020, and *Centre for*

Democracy and the Rule of Law v. Ukraine, no. 10090/16, § 55, 26 March 2020), it must be taken up as an admissibility point (compare with *N.Š. v. Croatia*, no. 36908/13, § 60, 10 September 2020, citing *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018).

58. The applicability of Article 10 of the Convention turns on whether the conduct for which the applicants were convicted of hooliganism – spray-painting a monument standing in front of the central office of the Bulgarian Socialist Party and writing the words "WHO? BCP–SHAME! WHO!" with spray-paint on its base (see paragraph 13 above) – can be regarded as "expression" within the meaning of that provision.

59. Considered in its proper context, that conduct can be so regarded. The applicants were active anti-government protesters who carried out their act in the course of prolonged protests against the government in power, chiefly supported by that political party (see paragraphs 5, 6, 7, 9 and 10 above). They combined (a) a symbolic act (the painting of the "partisan" statues in rose and magenta on the anniversary of the 1917 Bolshevik Revolution – see paragraph 13 above) intended to mock a monument associated with that party (which was not only providing core parliamentary support for the government in power, but had also overwhelmingly voted in favour of the nomination which had sparked the anti-government protests) with (b) a query addressed to that party and the government (the words written on the monument's base) about the person or persons who had in reality come up with that nomination. It is thus plain that through their act – irrespective of how it was characterised under Bulgarian criminal law – the applicants sought to engage in political protest, and "impart" their "ideas" about that political party and its record (see, *mutatis mutandis*, *Handzhiyski v. Bulgaria*, no. 10783/14, § 45, 6 April 2021, with further references). The stealthy character of their act and their subsequent attempt to conceal their participation in it cannot alter that conclusion. Holding otherwise would be tantamount to saying that authors publishing anonymously, for instance under a pen name, enjoy for that reason no protection under Article 10 of the Convention. The manner in which the applicants proceeded rather concerns the question – should it be reached – whether it was "necessary in a democratic society" to interfere with their rights under that provision.

60. It follows that Article 10 of the Convention applies and that the applicants' complaint under that provision is compatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a).

61. The complaint is, furthermore, not manifestly ill-founded or inadmissible on other grounds. It must therefore be declared admissible.

2. Merits

(a) Existence of an interference

62. The applicants' conviction of hooliganism for having spray-painted the monument and the resultant fines can be regarded as interference, in the form of a "penalt[y]", with their right to freedom of expression (see, *mutatis mutandis*, *Handzhiyski*, cited above, § 46).

63. It is true that the applicants did not overtly admit that it had been them who had spray-painted the monument, and attempted to conceal their participation in that (see paragraphs 14 *in fine* and 27 above). A question might hence arise about whether there was at all interference with the exercise of their right to freedom of expression. The fact remains, however, that their conviction of hooliganism was directed at activities falling within the scope of freedom of expression. That conviction must therefore be regarded as interference with their exercise of that right. Holding otherwise would be tantamount to requiring the applicants to acknowledge the act of which they stood accused, whereas the right not to incriminate oneself, although not specifically set out in Article 6 of the Convention, is a generally recognised international standard which lies at the heart of the notion of a "fair hearing" under that provision. Moreover, not accepting that the conviction constituted an interference on the ground that the applicants denied involvement in the act in respect of which that conviction was handed down would lock them in a vicious circle depriving them of the protection of the Convention (see *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015; *İmrek v. Turkey*, no. 45975/12, § 29, 10 November 2020; and *Kilin v. Russia*, no. 10271/12, § 55, 11 May 2021).

(b) Whether the interference was justified

64. Such interference is compatible with Article 10 of the Convention only if it was "prescribed by law" and was "necessary in a democratic society" to attain one or more of the aims referred to in its second paragraph.

(i) "Prescribed by law"

65. The interference, which was based on Article 325 § 1 of the Bulgarian Criminal Code (see paragraph 34 above), can be seen as having been "prescribed by law".

66. It is not for the Court to say whether the Sofia City Court properly characterised the applicants' act as hooliganism within the meaning of that provision. The Court is not a court of appeal from the national courts, and the scope of its task when assessing whether an interference was in line with domestic law, and thus "prescribed by law", is subject to limits inherent in the subsidiary nature of the Convention: the Court cannot gainsay the way in which the national courts have interpreted and applied domestic law

except in cases of flagrant non-observance or arbitrariness (see *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 41, 2 October 2012, and *Nenkova-Lalova v. Bulgaria*, no. 35745/05, § 54, 11 December 2012). The majority of the panel of the Sofia City Court which dealt with the applicants' case on appeal explained in enough detail why, unlike the lower court and the dissenting judge, they were of the view that the applicants' act had amounted to hooliganism within the meaning of Article 325 § 1 of the Bulgarian Criminal Code (see paragraph 26 above). It cannot be said that their ruling on the point was arbitrary or manifestly contrary to that provision (see, *mutatis mutandis*, *Nenkova-Lalova*, cited above, § 54). The applicants' argument that when interpreting the provision those judges did not pay proper heed to their right to freedom of expression, as laid down in Article 39 the Bulgarian Constitution (see paragraph 33 above) and Article 10 of the Convention, concerns the necessity of the interference rather than its lawfulness.

67. Nor can it be said that Article 325 § 1 of the Bulgarian Criminal Code (see paragraph 34 above) was insufficiently foreseeable to the applicants. It is true that that provision defines the offence of hooliganism in broad terms. But in this case the applicants, though furtively, resorted to a provocative gesture likely to infringe public order and disturb or insult some of the people who later saw the spray-painting or learned about it. It can thus be accepted – in particular in the light of the pre-existing case-law of the former Supreme Court and the Supreme Court of Cassation under Article 325 § 1 (see paragraph 35 above) – that the applicants' act could reasonably be characterised by the Bulgarian courts as hooliganism within the provision's meaning (see, *mutatis mutandis*, *Shvydka v. Ukraine*, no. 17888/12, § 39, 30 October 2014, and *Handzhiyski*, cited above, § 46). Indeed, the very fact that the applicants acted by stealth and attempted to avoid detection after their act (see paragraphs 13 and 14 above) tends to suggest that they were aware of the possibility of incurring criminal liability in relation to it (see, *mutatis mutandis*, *Perinçek v. Switzerland* [GC], no. 27510/08, § 138, ECHR 2015 (extracts)). Although the profaning of public monuments had until their case apparently never been adjudged to be hooliganism contrary to Article 325 § 1 (see paragraphs 36 to 39 above), the Sofia City Court's judgment against them cannot be seen as a sudden and unforeseeable change in case-law (see, *mutatis mutandis*, *Perinçek*, cited above, § 138).

(ii) Legitimate aim

68. It can further be accepted that the interference pursued the legitimate aims of protecting morals – as held by the Sofia City Court (see paragraph 26 above) – as well as the rights of others (see *Handzhiyski*, cited above, § 47). Indeed, the general public have an interest in preserving

cultural heritage (see *Margulev v. Russia*, no. 15449/09, § 37, 8 October 2019).

69. There is, however, no indication that the interference sought to protect specifically the property rights of the monument's owner, whose identity remains unclear (see paragraph 23 *in fine* above). Both the Sofia District Court and the Sofia City Court underlined that that aspect of the case lay outside the scope of the criminal proceedings against the applicants (see paragraphs 22 and 26 *in fine* above), and the Sofia City Court also noted that no evidence had been led about how much it had cost to clean the monument and who had covered that cost (see paragraph 29 above).

70. Nor does it appear that the interference was intended to protect "public safety". The applicants' act was peaceful and was carried out surreptitiously in the early hours of the morning (see paragraph 13 above). Nothing suggests that it was likely to cause public disturbances, or that when convicting the applicants the Sofia City Court had that in mind (see, *mutatis mutandis*, *Handzhiyski*, cited above, § 47). It is true that that court held that the applicants' act had been contrary to public order (see paragraph 26 above). But, as the Court has had occasion to note, that term most often refers to the body of political, economic and moral principles essential to the maintenance of the social structure, rather than simply to riots or other forms of public disturbance (see *Perinçek*, cited above, § 146). As apparent from the way in which Article 325 § 1 of the Bulgarian Criminal Code has been interpreted by the Bulgarian courts (see paragraph 35 above), the term "public order" in that provision is used there in this wider sense.

(iii) "Necessary in a democratic society"

71. The salient issue in this case is whether the interference, which took solely the form of a "penalt[y]" rather than of an order requiring the applicants to repair any damage which their act had caused to the monument, was "necessary in a democratic society".

72. The sanctions imposed on each of the applicants – administrative fines amounting to the equivalent of EUR 767 (see paragraph 24 above) – were mild, veering towards the minimum possible for the offence with which they had been charged (see paragraphs 29, 34 and 41 above, and compare, *mutatis mutandis*, with *Stângu and Scutelnicu v. Romania*, no. 53899/00, § 56, 31 January 2006, and *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 69, 14 February 2008). There is no evidence that those fines caused either of them financial hardship (see, *mutatis mutandis*, *Vesselinov v. Bulgaria*, no. 3157/16, § 38, 2 May 2019). The applicants' failure to pay the fines without delay and of their own accord (see paragraphs 31 and 32 above) does not in itself detract from that conclusion.

73. It follows that if the applicants' conviction is considered justified, the sanctions which it entailed cannot be seen as disproportionate in themselves (see *Handzhiyski*, cited above, § 49).

74. The question thus becomes, more specifically, whether it was at all "necessary in a democratic society" to penalise the applicants' act.

75. The Court recently held that measures, including proportionate sanctions, designed to dissuade acts which could destroy or damage a public monument could be seen as "necessary in a democratic society", however legitimate the motives which may have inspired those acts. This was because (a) public monuments were often physically unique and formed part of a society's cultural heritage, and because (b) in a democratic society governed by the rule of law, debates about the fate of a public monument had to be resolved through the appropriate legal channels rather than by covert or violent means (see *Handzhiyski*, cited above, § 53). Here, it would add that in this context the physical damage to a monument, though not the exclusive factor for assessing the necessity of interferences with such acts, would in principle carry the greatest weight.

76. In *Handzhiyski* (cited above, § 55), the Court went on to say that this principle did not apply to acts which, although capable of profaning a public monument, did not damage it. The question whether it could be "necessary in a democratic society" to sanction such acts was more nuanced. In those situations, the precise nature of the act, the intention behind it, and the message sought to be conveyed by it could not be matters of indifference. The social significance of the monument in question, the values or ideas which it symbolised, and the degree of veneration which it enjoyed in the respective community were also important considerations.

77. It follows that the first point for decision under this rubric is whether the spray-painting of the monument damaged it.

78. There is no evidence that the applicants caused any sort of irreversible harm to the monument. It is true that spray-painting, though usually not impairing an underlying surface, alters that surface visually. It is also true that spray-painting affects the visual appearance of a monument in way which can be permanent, or at least long-lasting, in the absence of appropriate efforts to remove the paint and thus restore the monument to its unadulterated state. It remains the case, however, that the visual impairment which spray-painting produces, although requiring some inconvenience and expense to eliminate, is, as recently noted by the Bulgarian Supreme Court of Cassation (see paragraph 40 above), usually fully reversible. It does not therefore harm a monument in a way or to an extent which prevents it, after being cleaned, from continuing to form part of a country's cultural heritage. That is exactly what happened in this case, since the spray-painting was indeed cleaned from the monument (see paragraph 17 above).

79. In this context, the court which convicted the applicants found that their act had not caused any pecuniary damage (see paragraph 29 above),

and the Government did not submit any evidence about how much it had cost to clean the spray-paint and who had covered that cost (see paragraph 17 above). Nor is there any indication that the fines imposed on the applicants were intended to contribute, or did in fact contribute, towards those expenses. Indeed, that was not the purpose of the hooliganism proceedings against them (see paragraphs 22 and 26 *in fine* above).

80. In those circumstances, it cannot be said that the applicants' act affected the monument to a degree sufficient to consider that it damaged it.

81. It follows that the necessity of penalising the applicants' act must be assessed in the light of the range of context-specific factors identified in *Handzhiyski* (cited above), which have been set out in paragraph 76 above.

82. As already noted, there is no evidence that the applicants' act caused serious or irreversible damage to the monument, or that the removing of the spray-paint required significant resources. Nor can that act be qualified as vulgar or gratuitously offensive. The covert manner in which it was carried out does not detract from that conclusion. As underlined in paragraph 59 above, the context clearly suggests that the intention behind the act was to express disapproval toward the recent parliamentary record of the political party which provided main parliamentary support for the government of the day, in the context of a prolonged nation-wide protests initially sparked by that very parliamentary record (see paragraphs 5 to 9 above, and compare with *Handzhiyski*, cited above, § 56). The act in addition sought to condemn the overall role which that political party, which had ruled during the communist regime, and the "partisans" associated with it, had played in Bulgaria's history (see paragraphs 4 and 13 above). It can thus hardly be said that it was meant to express disdain for deep-seated social values – in contrast to, for instance, the desecration of tombstones.

83. It should also be noted in this connection that the monument had been put up during the communist regime in Bulgaria, and was clearly connected to the values and ideas for which that regime stood (see paragraph 13 above and compare with *Handzhiyski*, cited above, § 57). It can thus hardly be seen as enjoying universal veneration in the country. The first-instance court dealing with the case against the applicants specifically underlined the intense public debate about the regime's legacy and in particular about the fate of the monuments remaining from it (see paragraph 21 above). It cannot be overlooked in that connection that Bulgaria's legislature has condemned that regime as "criminal" and has formally branded the Bulgarian Communist Party, which dominated the country throughout that regime, as a "criminal organisation ... aimed at supressing human rights and the democratic system" (see paragraphs 42 to 44 above).

84. It follows that the interference with the applicants' right to freedom of expression – the finding that they were guilty of hooliganism and the resultant fines – has not been shown to be "necessary in a democratic society" within the meaning of Article 10 of the Convention. There has therefore been a breach of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

1. The applicants' claims and the Government's comments on them

86. The first applicant claimed 2,491 Bulgarian levs (BGN), which he had allegedly paid with respect to his BGN 1,500 fine and the costs imposed on him (see paragraphs 24 and 31 above). In support of his claim, he submitted six bills issued by the National Revenue Agency and attesting that between February 2017 and June 2020 he had paid the entirety of the fine and of the costs (BGN 1,952.57), plus BGN 71.26 in interest with respect to the costs, and BGN 445.56 for unrelated traffic fines and income tax.

87. The second applicant sought reimbursement of the BGN 1,500 fine imposed on her. She pointed out that the authorities could still collect that sum from her. She did not submit any documents in support of her claim.

88. The Government were of the view that any additional sums which the first applicant had paid owing to his failure to pay his dues voluntarily should not be reimbursed to him. Moreover, the documents presented by him showed that he had paid less than he claimed. As for the second applicant, there was no evidence that she had paid her fine before the expiry of the relevant limitation period.

2. The Court's assessment

89. The finding of breach of Article 10 of the Convention was based on the mere fact that the applicants were found criminally liable for their act. They are therefore entitled to recover the entirety of the fines and costs which they had to and did pay as a result of that conviction, which represent direct pecuniary loss suffered by them on account of that breach (see *Marinova and Others v. Bulgaria*, nos. 33502/07 and 3 others, §§ 118-19, 12 July 2016, and *Handzhiyski*, cited above, § 63, with further references).

90. There is evidence that the first applicant paid the fine and the costs whose repayment he seeks (see paragraphs 31 and 86 above). He is hence entitled to obtain their reimbursement (see *Marinova and Others*, cited above, § 120). However, the documents submitted by him show that the total sum which he paid under this head – and to the reimbursement of which he is accordingly entitled – comes not to BGN 2,491, as asserted by him (see paragraph 86 above), but to BGN 1,952.57 (equivalent to EUR 998.33) (compare with *Orban and Others v. France*, no. 20985/05, § 58, 15 January 2009). The Court therefore awards the first applicant EUR 998.33 under this head. To this sum is to be added any tax that may be chargeable.

91. By contrast, the interest paid by the first applicant with respect to the costs (BGN 71.26 – see paragraph 86 above) was not a direct result of the breach of Article 10 of the Convention. That interest accrued solely because the first applicant did not pay the costs awarded against him in due time and of his own accord (see paragraph 31 above). Holding that he is entitled to recover that interest would be tantamount to giving applications to the Court suspensive effect, which they do not have (see *Marinova and Others*, cited above, § 119). The Court therefore makes no award with respect to the interest paid by the first applicant.

92. As for the second applicant, there is some evidence, presented by the Government, that during the course of the enforcement proceedings against her she paid part of her fine and of the costs awarded against her (see paragraph 32 above). But that evidence was silent on the exact sums already paid (contrast *Aurelian Oprea v. Romania*, no. 12138/08, § 86, 19 January 2016). More importantly, the second applicant did not submit any documents in support of her claim (see paragraph 87 *in fine* above, and compare with *Kanat and Bozan v. Turkey*, no. 13799/04, § 26, 21 October 2008), as required by Rule 60 § 2 of the Rules of Court. In the absence of a sufficient basis to assess the quantum of the pecuniary loss actually suffered by the second applicant, her claim under this head must be rejected in full, in application of Rule 60 § 3 (see, *mutatis mutandis*, *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 49, ECHR 2005-I; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 157, ECHR 2015 (extracts); and *Hajibeyli and Aliyev v. Azerbaijan*, nos. 6477/08 and 10414/08, § 73, 19 April 2018).

93. It remains however the case that the second applicant has paid and remains liable to pay sums as a direct consequence of a domestic judgment found by the Court to be in breach of her rights under Article 10 of the Convention. It should be pointed out in this connection that the most appropriate way of remedying the consequences of such a breach is to reopen the proceedings whose outcome gave rise to it (see *Marinova and Others*, cited above, § 122).

B. Non-pecuniary damage

1. The applicants' claims and the Government's comments on them

94. The applicants claimed EUR 6,000 each in respect of the distress, loss of reputation and affront to their dignity caused by their arrest and conviction, which had according to them received wide publicity. That damage had according to them been compounded by the way in which the Sofia City Court had justified the conviction and by the length of the proceedings against them.

95. The Government argued the applicants' arrest could not be taken into account, since their complaint before the Court had only concerned their conviction and the ensuing fines. They went on to note that the proceedings against the applicants had not prevented them from participating actively in public life. In the Government's view, the finding of a violation would be sufficient just satisfaction for any non-pecuniary damage suffered by the applicants, and the sums claimed by them were in any event exorbitant and out of line with the awards made in previous similar cases.

2. The Court's assessment

96. The applicants' complaint under Article 10 of the Convention – which delimited the scope of the Court's jurisdiction on the merits in this case (see *Handzhiyski*, cited above, § 31, citing *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018) – did not concern their arrest, but solely the subsequent judgment finding them guilty of hooliganism (see paragraph 45 above). Accordingly, the Court's findings on the merits of that complaint did not relate to that arrest (see paragraphs 62 to 84 above and compare with *Handzhiyski*, cited above, § 67). Under Article 41 of the Convention, the Court may only "afford just satisfaction" if it "finds that there has been a violation of the Convention or the Protocols thereto", and then also finds that the damage alleged to have been suffered stems from that particular violation (see *Apostolovi v. Bulgaria*, no. 32644/09, § 116, 7 November 2019, with further references). It follows that the applicants' arrest cannot be taken into account when assessing the quantum of the award.

97. That said, it can be accepted that the judgment finding the applicants guilty of hooliganism and the resultant fines caused some non-pecuniary damage to each of them. Nothing suggests that this damage was greater with respect to one or the other applicant; they were affected in equal measure by that judgment, and were given identical penalties (see paragraph 24 above). Assessing that damage on an equitable basis, as required under Article 41 of the Convention, the Court awards each of them EUR 4,000, plus any tax that may be chargeable.

C. Costs and expenses

1. The applicants' claims and the Government's comments on them

98. The first applicant sought reimbursement of BGN 1,500 incurred in fees paid to his defence counsel in the domestic proceedings. The second applicant claimed BGN 300 under this head.

99. The applicants also sought reimbursement of:

(a) EUR 4,320 incurred in fees for thirty-six hours of work by their lawyers on the proceedings before the Court, at EUR 120 per hour;

(b) EUR 12.37 spent by those lawyers' firm on postage;

(c) EUR 15 expended by those lawyers' firm on office supplies; and

(d) EUR 263.83 spent by those lawyers' firm on the translation of the observations and claims made on the applicants' behalf into English.

100. The applicants requested that any award in respect of the costs and expenses referable to the proceedings before the Court be made directly payable to their lawyers' firm, Ekimdzhiev and Partners.

101. In support of their claims, the applicants submitted (a) retainers and fee agreements with their respective defence counsel in the domestic proceedings; (b) a fee agreement with the firm of their lawyers in the proceedings before the Court; (c) a time-sheet and costs report by that firm (which the first applicant had accepted); (d) postal receipts; and (e) a contract between their lawyers' firm and a translator.

102. The Government disputed all those claims. They submitted that both the hours claimed and the hourly rate referable to the proceedings before the Court were exorbitant. As regards the expenses allegedly incurred by the firm of the applicants' lawyers on the proceedings before the Court (see paragraph 99 (b), (c) and (d) above), there were no invoices or other documents attesting their actual payment. Moreover, the administrative expenses incurred by that firm in connection with the case were operating costs already covered by the fees which it had charged to the applicants.

2. The Court's assessment

103. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses – including those incurred at domestic level to prevent or redress the alleged breach – but only to the extent that these costs and expenses have been actually and necessarily incurred and are reasonable as to quantum (see, as regards specifically domestic costs, *König v. Germany* (Article 50), 10 March 1980, § 23, Series A no. 36; *Lingens v. Austria*, 8 July 1986, § 52, Series A no. 103; and *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 49, ECHR 2002-IV).

(a) Domestic costs

104. One of the arguments on the basis of which counsel for the applicants in the criminal proceedings against them sought to contest the hooliganism charges against the applicants was that by painting the monument they had duly exercised their right to freedom of expression (see paragraphs 19 and 23 above). The fees which the applicants paid for the services of those counsel were therefore incurred to prevent the breach of Article 10 of the Convention. Although the fees paid by the first applicant (BGN 1,500, equivalent to EUR 767) were five times higher than those paid by the second applicant (BGN 300, equivalent to EUR 153), the Court has not been presented with any arguments to the effect that the former were unreasonable as to quantum, and sees no reason to question that point, especially since the applicants were entitled to instruct their lawyers as they chose (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 80 (b), Series A no. 216). It therefore allows both of those claims in full.

(b) Costs relating to the proceedings before the Court

105. The only point in dispute in relation to the lawyers' fees referable to the proceedings before the Court (see paragraph 99 (a) above) was whether they are reasonable as to quantum. The hourly rate charged by those lawyers, EUR 120, is higher than those accepted in recent cases against Bulgaria of similar complexity, and cannot be accepted as reasonable (see *Handzhiyski*, cited above, § 73). Since the observations on behalf of the applicants were filed after the delivery of *Handzhiyski* (cited above), where the Court dealt with very similar issues and laid down the relevant principles, and since those observations were to a large extent based on that judgment, the number of hours claimed in respect of them cannot be accepted as reasonable either. In view of these considerations, the Court awards jointly to both applicants EUR 2,000, plus any tax that may be chargeable to them, under this head. As requested by the applicants, this sum is to be paid directly into the bank account of the law firm of their representatives, Ekimdzhiev and Partners (see, for instance, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, ECHR 2016 (extracts)).

106. For their part, the administrative costs (in this case, postage and office supplies – see paragraph 99 (b) and (c) above) incurred by the firm of the applicants' lawyers in connection with the proceedings before the Court are in principle recoverable under Article 41 of the Convention (see *Handzhiyski*, cited above, § 74, with further references). Indeed, under the terms of the fee agreement between the applicants and their lawyers' firm, they are liable not only to pay fees for their work on the case, but also to cover all administrative costs incurred by that 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 applicants came to BGN 24.20, which equals EUR 12.37. To this should be added any tax that may be chargeable to the applicants. As requested by them, this sum is likewise to be paid directly into the bank account of the law firm of their representatives, Ekimdzhiev and Partners.

107. Translation costs (see paragraph 99 (d) above) are also in principle recoverable under Article 41 (see *Handzhiyski*, cited above, § 75, with further references). In the present case, the fee agreement between the applicants and their lawyers' firm stipulated they the applicants had to cover all translation costs incurred by that firm in connection with their case before the Court. The contract between the firm of the applicants' lawyers and the translator in turn specifically noted that the translation concerned the observations and claims made on behalf of the applicants. That contract also stated that the translation fee had been paid to the translator via bank transfer. There is therefore no reason to doubt that the translation costs were actually incurred by the applicants' lawyers. They also seem reasonable as to quantum. The sum expended for translation – EUR 263.83 – is therefore to be awarded in full. To this should be added any tax that may be chargeable to the applicants. As requested by them, this sum is likewise to be paid directly into the bank account of the law firm of their representatives, Ekimdzhiev and Partners.

108. The total award in respect of the costs and expenses referable to the proceedings before the Court is thus EUR 2,276.20, plus any tax that may be chargeable to the applicants.

D. Default interest

109. 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 complaint under Article 10 of the Convention 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 applicants, 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) to the first applicant, EUR 998.33 (nine hundred ninety-eight euros and thirty-three cents), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) to each of the two applicants, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) to the first applicant, EUR 767 (seven hundred sixty-seven euros), plus any tax that may be chargeable to him, in respect of domestic costs;

(iv) to the second applicant, EUR 153 (one hundred fifty-three euros), plus any tax that may be chargeable to her, in respect of domestic costs;

(v) jointly to both applicants, EUR 2,276.20 (two thousand two hundred and seventy-six euros and twenty cents), plus any tax that may be chargeable to them, in respect of the costs and expenses incurred in the proceedings before the Court, to be paid directly into the bank account of the law firm of the applicants' 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 30 November 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.

When comparing it with the cases of *Handzhiyski v. Bulgaria* (no. 10783/14, 6 April 2021) and *Sinkova v. Ukraine* (no. 39496/11, 27 February 2018), it is easy to note that all three 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".

Notwithstanding all the similarities, the majority have reached different conclusions, i.e. differing here once again from those in *Sinkova*.

I have difficulty sharing the position that has been adopted in the present case, 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 that these monuments represented. Such 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 the present case, it is 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 also to decide whether these monuments should 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 "necessary in a democratic society" test.

This different approach to the process of evaluating the facts in the present case, in relation to the two cases mentioned above, points once again to some inconsistency on the part of the Court in dealing with similar cases, and this will not serve to enhance its public image.