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

FIFTH SECTION

DECISION

Application no. 11575/24
Yuriy Mykolayovych BORZYKH
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 19 November 2024 as a Chamber composed of:

Mattias Guyomar*, President*,
María Elósegui,
Armen Harutyunyan,
Gilberto Felici,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to the above application lodged on 17 November 2017,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Yuriy Mykolayovych Borzykh, is a Ukrainian national who was born in 1962 and lives in Kyiv.

2. The applicant complained under various Convention provisions about the prohibition on wearing the St George ribbon in public.

A. Background information

3. The ribbon of St George has two orange and three black parallel stripes and is a component of military honours, particularly in relation to the Soviet era. It has been widely used in former Soviet countries, namely during events commemorating the victory in the Second World War. Its common name, for example in Ukraine and Russia, omits the word “Saint” and is, essentially, “George’s ribbon”.

1. Ukraine

4. The St George ribbon was previously a common symbol during events in Ukraine commemorating the victory in the Second World War. In particular, it would be worn by veterans and/or members of their families, either as part of the original honours or on its own.

5. Since 2014 the St George ribbon has no longer been used during official commemorative events in Ukraine. Instead, a red poppy has been adopted, which is a more widespread European symbol. The change was triggered by the occupation of Crimea and the hostilities in the Donetsk and Luhansk regions, during which, as widely reported, the St George ribbon was used by the armed groups opposing the Ukrainian government forces.

6. On 9 April 2015 the Parliament of Ukraine passed the Law on the condemnation of the communist and national-socialist (Nazi) regimes in Ukraine and the prohibition of promotion of their symbols (Law no. 317-VIII). It came into force on 21 May 2015. Law no. 317-VIII condemns, at the legislative level, the communist and national-socialist totalitarian regimes as criminal in order to prevent their crimes from being repeated in the future; to eliminate the threat to the sovereignty, territorial integrity and national security of Ukraine; and to establish historical justice. The law introduced, *inter alia*, a ban on public denial of the criminal nature of those totalitarian regimes, as well as on public use and promotion of their symbols. It also established the State's obligation to investigate the crimes committed by those regimes and make the relevant information public. The law provides that those who breach the prohibitions established by it are to be held liable (for more details see paragraphs 23-25 below).

7. On 16 May 2017 the Code of Administrative Offences of Ukraine was amended by way of insertion of a new Article 173-3, which makes the production and promotion of the St George ribbon an administrative offence (Law no. 2031-VIII). Those amendments came into force on 15 June 2017. The explanatory note to the draft of Law no. 2031-VIII provides reasons for the need to introduce the amendments in question. It mentions that its provisions are based on Law no. 317-VIII and also proceeds from the premise that the St George ribbon has become a symbol of Russian military power and occupation and aggression in Ukraine. The note also gives detailed historical information regarding the St George ribbon (for more details see paragraph 27 below).

8. Since 24 February 2022 the Russian armed forces have continued to use the St George ribbon alongside other symbols and insignia (for example, the letters "Z" and "V") that have become strongly associated with the war. On 22 May 2022 the Ukrainian Parliament passed the Law on the prohibition of propaganda in favour of the Russian Nazi totalitarian regime, the armed aggression of the Russian Federation as a terrorist State against Ukraine and the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine. The Law defines the use of symbols of the military invasion as a

separate type of propaganda of this kind. Examples of such symbols, explicitly indicated in the Law, include the Latin letters "Z" and "V" individually (without a legitimate context or in the context of justifying armed aggression against Ukraine or other hostilities) and symbols of the Armed Forces of the Russian Federation. An exception is provided for where those symbols are used for legitimate purposes which "have no signs of propaganda" (for more details see paragraphs 28-29 below).

2. Russia

9. In 1992 the Order of St George and the St George Cross were re-established as military honours in the Russian Federation following the Resolution of the Presidium of the Supreme Council of the Russian Federation no. 2424-1 on State awards in the Russian Federation.

10. In 2005, in commemoration of the sixtieth anniversary of the victory in the Great Patriotic War, a large-scale campaign for the use of the St George ribbon was launched in Russia, led by the State information agency RIA Novosti. Its key element is mass distribution of St George ribbons, but it also includes, for example, various educational activities, exhibitions, film screenings and marches. The campaign is now held annually and has spread to other countries.

11. In December 2022 the Russian Parliament passed Law no. 579-ФЗ on the St George ribbon. The law provides that the ribbon is one of the symbols of the Russian military's glory and power. Under the law, it can be used by the authorities, organisations and individuals in order to promote the patriotic, including military-patriotic, and spiritual education of young people. Public desecration of the St George ribbon is punishable by law.

3. Other countries concerned

12. Since 2014 many former Soviet republics have gradually started to avoid using the St George ribbon during official commemorative events, including Kazakhstan, Kyrgyzstan and Uzbekistan, but also Belarus. In those countries other symbolic replacements have been found, but the policies regarding the use of the St George ribbon remain permissive.

13. Formal bans on the use of symbols related to glorification of and support for wars of aggression (in general and/or specifically that of Russia against Ukraine) and totalitarian regimes have been voted in by the parliaments of several countries, for example Estonia, Latvia, Lithuania, the Republic of Moldova and Poland. Such bans, mostly introduced after the events of 24 February 2022, carry penalties that in some of those countries go as far as imprisonment.

14. In most instances the bans are worded in rather general terms without giving a precise list of prohibited symbols. For example, in the explanatory note to the relevant amendments to the Estonian Criminal Code, when the

draft law was being prepared it was decided not to give a list of specific symbols but, as the note states, "the ban would 'certainly' cover the letter 'Z' and could also include, for example, the symbols of the totalitarian regimes that occupied the Republic of Estonia". The Estonian Ministry of the Interior, in a publication of April 2022 on its official website[1], explained that the St George ribbon and the "Z" sign were being used by the Russian military in the war against Ukraine and had therefore become controversial symbols that were not neutral and could be regarded as justifying crimes against peace and humanity, which was not appropriate in the Estonian public space. The Ministry therefore recommended that citizens refrain from wearing or otherwise using the St George ribbon or the letter "Z", especially for the commemoration of Victory Day on 9 May.

15. In Lithuania, section 5(3) of the Law on Assemblies, as amended in April 2022, prohibits the use of St George ribbons during assemblies. It provides that the St George ribbon is to be regarded in all cases as a symbol of totalitarian or authoritarian regimes, used to promote their military aggression and crimes against humanity and war crimes committed by them. Article 524 of the Code of Administrative Offences, as amended in April 2022, provides administrative responsibility for distribution, use during assemblies, at public places or other public display of symbols of totalitarian or authoritarian regimes, used to promote their military aggression and crimes against humanity and war crimes committed by them. The explanatory note to the draft law introducing those amendments states that in the context of the war in Ukraine, including the annexation of the Crimean Peninsula, the St George ribbon and the letter "Z" have become symbols of propaganda and overt aggression. The St George ribbon no longer has anything to do with respect for the heroes who died in the Second World War. By equating the ribbon to Nazi and communist symbols, the draft law aims to prevent war propaganda and incitement to hatred in Lithuania.

16. In Latvia, wearing a St George ribbon during public events is prohibited by the Law on the safety of public entertainment and festivities and the Law on meetings, processions and pickets. The relevant amendments, introduced in late 2021, provide that those who breach that prohibition will receive a warning or a fine. The explanatory note to the draft law introducing amendments to the above-mentioned laws states that the St George ribbon has been used during the occupation of the Crimean Peninsula and military actions in the eastern regions of Ukraine, and also by supporters of the Russian aggression throughout the territory of the former USSR, including Latvia. The ribbon has thus become a symbol of Russian neo-imperialism. After giving a short historical background of the usage of the St George ribbon, including in connection with Soviet military honours, the note further

[1] Available at https://www.siseministeerium.ee/tegevusvaldkonnad/kindel-sisejulgeolek/sumbolite-kasutamine

states that the originally sentimental meaning of the ribbon has become more and more obscured by praise for Russian imperialism and has become a unifying symbol for those living under the umbrella of Russian propaganda who look forward to the territorial expansion of Russia in order to reinstate the USSR within its former borders. The note concludes that the threat of fuelling separatist tendencies is very real and that this constitutes an open threat to Latvia. The proposed amendments therefore aim to limit totalitarianism hostile to Latvia as represented by the symbolic dissemination of that ideology in the public space.

17. In the Republic of Moldova, the Law on countering extremist activity was amended in April 2022 in order to expand the category of symbols whose display, manufacture or distribution was considered to fall under the definition of "extremist activity". The newly added category mentions "generally known attributes or symbols used in the context of acts of military aggression, war crimes or crimes against humanity, as well as promotion or glorification of these actions". These encompass "flags, bands and coloured/awareness ribbons (black and orange), emblems ..., badges, uniforms, slogans, greetings and any other such insignia used by participants in acts of military aggression, war crimes or crimes against humanity". The "generally known" nature of those symbols means that they are "objectively known to the general public at the international and local level." A breach of the above prohibition is punishable by fines or unpaid work for the benefit of the community. The explanatory note to the Law states the following:

> "In the context of the war in Ukraine, there is an increase in cases of use, on the territory of the Republic of Moldova, of the symbols used in this war that support, justify and glorify aggression. The use of such symbolism, besides the fact that it indirectly promotes the war, leads to the emergence of social tensions and creates a premise for the spread of inter-ethnic hatred."

The law provides for exceptions to the prohibition on using the symbols concerned for scientific, educational or artistic purposes and if ribbons are part of the insignia, medals or orders awarded for participation in the Second World War.

18. In October 2022 the European Commission for Democracy through Law (Venice Commission), following a request from the Moldovan Government, gave its opinion on the above-mentioned amendments (see paragraph 32 below). The Commission found that the amendments had been couched in a sufficiently precise manner (with certain reservations – see paragraphs 54-57 of the opinion) and served the interests of national security (see paragraphs 59-60); they also seemed to be proportionate to the aims pursued, considering the context surrounding their adoption, the exceptions provided and the nature of possible sanctions (see paragraphs 67-70 and 72-76 of the opinion).

B. The circumstances of the case

19. In his application form the applicant stated that he came from a family of servicemen. He noted that his father and two uncles (his father's brothers) had served in the Second World War and had been awarded honours. In particular, his father had been awarded the Order of the Great Patriotic War, second class.

20. The applicant is himself a former military officer. He studied at the Kyiv Higher Engineering and Radio-Technical College of the Air Force (now known as the Kyiv Military Aviation Engineering Academy). He graduated in 1985 and served in the Armed Forces of the Soviet Union and of Ukraine after the proclamation of its independence. The applicant was discharged from military service in 2008. His last post appears to have been that of colonel, leading officer of the Division for Military Safety of the National Scientific and Research Centre of Defence Technologies and Military Safety.

21. The applicant stated that 9 May, Victory Day, was of special importance to him. On that day he celebrated the bravery of his relatives and wore the St George ribbon. He did not believe that his actions constituted a "provocation", as the elements of that ribbon could be found on the awards given to his father and uncles, and it symbolised for him the unity of the generations of servicemen in his family.

22. With the introduction of administrative liability for wearing the St George ribbon he could no longer lawfully wear it, fearing that proceedings might be brought against him. In that connection he referred to an article published by an online media resource (sud.ua) on 24 July 2017, which alleged that within a month after the adoption of the relevant legislative changes, four individuals had been found liable under Article 173-3 of the Code of Administrative Offences.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Law on the condemnation of the communist and national-socialist (Nazi) regimes in Ukraine and the prohibition of promotion of their symbols ("the Law no. 317-VIII") (in force as of 21 May 2015)

23. Section 1 of the Law, as in force at the material time, set out the list of what could be considered symbols of the above-mentioned totalitarian regimes, including communist and Nazi parties' and State symbols, anthems and flags, monuments and commemorative plaques dedicated to party leaders and public figures. Section 3 provides that propaganda in favour of the communist or national-socialist totalitarian regimes and their symbols is

considered an insult to the memory of the millions of victims of those regimes and is prohibited by law.

24. Section 4 of the Law provides that the production, distribution and public use of symbols of the communist totalitarian regime or symbols of the national-socialist totalitarian regime, including in the form of souvenirs, in addition to public performances of the anthems of the USSR, the Ukrainian SSR, or any other all-Union or autonomous Soviet republics, are prohibited throughout the territory of Ukraine. The exceptions to the ban provided for in section 4(3) include, *inter alia*, cases where such symbols are used in official documents, museum exhibitions or re-enactments; in scientific research and for educational purposes; and in private collections, including as antiques. The use of prohibited symbols is also permitted on original battle flags and State awards, jubilee medals and other honours awarded to individuals before 1991 and in the period 1991-2015 in connection with the anniversaries of the events of the Second World War, as well as on documents certifying such awards, and on burial structures located in cemeteries, including honorary burial grounds.

25. Section 6 provides that persons responsible for a breach of the provisions of the Law are to be held liable in accordance with the legislation. In the transitional provisions, the Law provided for the changes to be made in the Criminal Code by inserting a new Article 436-1 establishing criminal liability for the production, distribution and public use of the symbols of the communist and the national-socialist totalitarian regimes.

B. Code of Administrative Offences

26. Pursuant to Article 173-3 of the Code, the public use, display or wearing of a St George ribbon or its image is punishable by a fine of between fifty and 150 times the non-taxable minimum citizens' income (850 to 2,550 Ukrainian hryvnias (UAH); approximately 30 to 85 euros (EUR) in 2017) coupled with the confiscation of the ribbon or items containing its image. If repeated within a year, those actions are punishable by a larger fine – between 150 and 300 times the non-taxable minimum citizens' income (UAH 2,550 to UAH 5,100; approximately EUR 85 to EUR 170 in 2017) or administrative arrest for a period of up to fifteen days with confiscation of the ribbon or items containing its image. A note to that Article provides that it will not be applied to the exceptions set out in section 4(3) of Law no. 317-VIII.

C. Explanatory note to Law no. 2031-VIII

27. The explanatory note provides as follows:

> "... The St George ribbon was initially used as part of Russian imperial honours. It was introduced in 1769 with the establishment of the Order of St George, upon the order

of the Empress Catherine II. It was used as an element in the design of military honours – the Cross of St George and the St George Medal. It was also used as a military decoration for the banners and standards of the Russian army units, earned for bravery on the battlefield.

After the Bolshevik revolution of October 1917 and during the Russian Civil War of 1917-1920, the St George ribbon continued to be used by the military of the White Movement as a symbol of indivisible Russia and its military glory ... After the defeat of the White Movement and the establishment of the Bolshevik regime, in the 1920s and 1930s the St George ribbon was used by Russian nationalist and fascist groups in exile.

During the Second World War of 1939-1945, the St George ribbon was used by Russian paramilitary organisations that supported Nazi Germany in the fight against the Soviet Union. In particular, it was present on the honours awarded by the Russian Liberation Army (led by General Vlasov), the Committee for the Liberation of the Peoples of Russia and the Cossack Unit[2].

The official Soviet Army system of military honours did not use the St George ribbon as it was considered a symbol of the former empire. However, as of 1943, in order to foster patriotism during the war, it was incorporated into the Soviet Order of Glory as a 'Guards' ribbon'. In 1945 the Guards' ribbon was used on the Soviet medal 'For the victory over Germany in the Great Patriotic War of 1941-1945'.

In 2005 the St George ribbon campaign was launched in Russia to promote its victory in the war of 1941–1945, as a symbol of Russian militaristic power, the glory of the empire and Soviet history. It is no coincidence that this campaign began immediately after the victory of the Orange Revolution and the failure of the plans to take control of Ukraine. In doing so, Russia tried to use the St George ribbon as a means to oppose the orange symbolism of the Orange Revolution and establish it as a symbol of the 'Russian world'. The annual distribution of the ribbon is now an integral part of the Kremlin's propaganda.

As of 2014 the St George ribbon has been used by the so-called "self-defence forces of Crimea" and pro-Russian separatists in Ukraine and has become a symbol of separatism in Ukraine. Currently, the ribbon is also widely used by militants in the east of the country to distinguish between their own forces and the 'enemy' forces.

The above factors led to the refusal, as of 2015, to use the St George (Guards') ribbon [during commemorative events dedicated to the Second World War] in Ukraine. The same was done by the majority of the former USSR countries. The most vivid example is that of Belarus.

Proposals to ban the use of the St George (Guards') ribbon and to establish liability for its promotion are currently being examined by the parliaments of Latvia and the Republic of Moldova.

Considering the above, the public use of the St George (Guards') ribbon in propaganda carries a public danger, is provocative in nature and therefore should be characterised as an administrative offence. ..."

[2] Also known in German as *Kosakenlager*, a military organisation that united the Cossacks in the German Wehrmacht.

D. The Law on the prohibition of propaganda in favour of the Russian Nazi totalitarian regime, the armed aggression of the Russian Federation as a terrorist State against Ukraine and the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine (in force as of 12 June 2022)

28. Section 2(3) states that the use of symbols associated with the invasion of Ukraine is to be regarded as one of the forms of such propaganda. Those symbols, as explicitly indicated in section 2(4) of the Law, include

> "the Latin letters 'Z' and 'V' individually (without a legitimate context or in the context of justifying armed aggression against Ukraine or other hostilities) or by replacing the Cyrillic letters '*З*', '*С*', '*В*' and '*Ф*' or other letters in separate words with a visual emphasis on these letters and the symbols of the Armed Forces of the Russian Federation, including its ground forces, aerospace forces, navy, strategic missile forces, airborne troops, special operations forces, other armed formations and/or bodies of the terrorist/aggressor State".

29. Section 2(6) provides for exceptions to the use of the above-mentioned symbols, in particular for educational, scientific and research purposes, in museums and dedicated exhibitions, on postmarks and trademarks registered before 24 February 2022, and with the overarching requirement that such use has no signs of propaganda.

II. RELEVANT COUNCIL OF EUROPE MATERIALS

A. Resolutions of the Parliamentary Assembly of the Council of Europe

30. On 10 April 2014 the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1990 (2014) on reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, in which the Assembly considered that the actions of the Russian Federation, leading up to the annexation of Crimea and the military occupation of Ukrainian territory constituted, beyond any doubt, a grave violation of international law, including of the United Nations Charter and the Organization for Security and Co-operation in Europe (OSCE) Helsinki Final Act. Those actions were also in clear contradiction with the Statute of the Council of Europe, in particular its Preamble, and the obligations resulting from Article 3, as well as with the commitments undertaken by the Russian Federation upon accession and contained in Assembly Opinion 193 (1996) on Russia's request for membership of the Council of Europe.

31. On 26 January 2023 PACE adopted Resolution 2482 (2023) on legal and human rights aspects of the Russian Federation's aggression against Ukraine, in which it stated that the Russian Federation's armed attack and large-scale invasion of Ukraine launched on 24 February 2022 constituted an "aggression" under the terms of Resolution 3314 (XXIX) of the United

Nations General Assembly adopted in 1974 and were clearly in breach of the Charter of the United Nations.

B. Venice Commission's Opinion on amendments to the Audiovisual Media Services Code of the Republic of Moldova and to some Normative Acts including the ban on symbols associated with and used in military aggression actions

32. The above Opinion was adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022). It states as follows (footnotes omitted):

> "21. The Venice Commission has assessed the compatibility with international standards of national legal acts prohibiting the use of certain symbols in two instances. In 2013, the Venice Commission, together with the [OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)], adopted the Joint *Amicus Curiae* Brief for the Constitutional Court of Moldova on the compatibility with European Standards of Law No. 192 of 12 July 2012 on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies of the Republic of Moldova. In 2015, the two institutions adopted the Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols.
>
> 22. In the two opinions, the Venice Commission and the OSCE/ODIHR noted that 'States are not prevented from banning, or even criminalising, the use of certain symbols ...' but recalled that such a ban or criminalisation needs to comply with the requirements of lawful restrictions foreseen by international human rights instruments (legality, legitimacy, and necessity in a democratic society).
>
> ...
>
> 26. Over the years, some states have adopted legal acts regulating the use of certain symbols. Some symbols, such as state symbols (flags, coats of arms) or internationally recognised symbols (e.g. the red cross, red crescent and red crystal), have been granted special protection. Other symbols, on the contrary, have been subject to restrictions and bans. This has traditionally been the case of symbols related to the Nazi regime (e.g. the swastika), whose use is outlawed in several countries (e.g. in Austria, Belarus, Brazil, France, and the Russian Federation). Since 1990, moreover, the use of communist symbols (e.g. the hammer and sickle and the red star) has been outlawed in several countries as well (e.g. in Czechoslovakia, Hungary, Latvia, Lithuania, Poland and Ukraine). Some countries, moreover, prohibit the use of totalitarian or unconstitutional symbols without specifying which concrete symbols fall under this qualification (e.g. Albania, the Czech Republic, Germany, Italy and Slovakia).
>
> 27. Following the annexation of Crimea by the Russian Federation in March 2014 and, especially, the Russian invasion into Ukraine – amounting to an act of aggression – on 24 February 2022, several countries (mainly those neighbouring the Russian Federation) have adopted regulations banning the use of certain symbols that could be associated with these unlawful acts.
>
> ...
>
> 54. The Venice Commission considers that as far as the new category of prohibited symbols is concerned, Law No. 102 does not suffer [from] the same deficiencies.

Although it does not contain an exhaustive list of 'generally known symbols used in the contexts of acts of military aggression, war crimes and crimes against humanity', the category is made specific through the general description, the indication of an example and the requirement that the symbol be objectively known to the general public at the international and national level. This requirement is crucial, as it limits the number of cases in which authorities can qualify a symbol to fall under the definition in question; in particular, it forms a basis – or at least a legal starting point – for a stringent and uniform interpretation and application of the provision. During the discussions in Chisinau, all the interlocutors of the rapporteurs agreed that the types of symbols which were prohibited (in the present situation, the Saint George's Ribbon, the letters 'Z' and 'V') were well known to the public. The prohibition was also widely publicised, *inter alia* by the police.

...

59. The explanation attached to the legislative proposal introducing the provisions on symbols indicates that '[i]n the context of the war in Ukraine, there is an increase in cases of use on the territory of the Republic of Moldova of the symbols used in this war that support, justify and glorify aggression. The use of such symbolism, besides the fact that it indirectly promotes the war, leads to the emergence of social tensions and creates premises for the spread of inter-ethnic hatred'. This statement seems to refer to the interests of national security, territorial integrity, public safety and prevention of disorder (in terms of the ECHR) and to the interests of national security, territorial integrity and public order aiming at preventing mass riots (in terms of the Constitution). In this context, it should also be noted that Article 20, paragraph 1 of the ICCPR explicitly provides that 'any propaganda for war shall be prohibited by law.' In the same sense, Article 32, paragraph 3 of the national Constitution provides that 'the law shall forbid and prosecute all actions aimed at ... instigation to sedition, war of aggression, ... territorial separatism ...'.

60. The ECtHR has repeatedly held that 'the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith'. While this assumption is rebuttable, there need to be reasonable grounds to believe that national authorities resorted to restrictions for other purposes than those officially declared and that such other, ulterior purposes played the predominant role. The Venice Commission is not aware of any such reasonable grounds, and it concludes that the requirement of legitimacy seems to be met.

...

67. In the present case, Law No. 102 extends the prohibition on the use of certain symbols to a category of symbols which is defined through its association with serious international crimes (aggression, war crimes, crimes against humanity). These symbols need to be 'generally known' to have this association, thus taking account of the question which symbols are generally known to be associated with serious international crime in a certain period of time. As far as the Saint George's Ribbon is concerned, although this symbol can be used to commemorate the victory in 'The Great Fatherland War', in its current use it has predominantly become a symbol 'of the military power of the contemporary Russian state' and of the 'support of the Putin regime' and its annexation of Crimea and the war in Ukraine. The mere use of one of the 'generally known symbols used in the contexts of acts of military aggression, war crimes and crimes against humanity' should be sufficient to 'show support for totalitarian ideas' and to amount, in itself, to 'promoting of totalitarian ideologies dangerous for society'.

68. Moreover, the context in which Law No. 102 was adopted differs from that in the *Vajnai* and *Fratanaló* cases, when the ban on the use of symbols was applied to persons

clearly not holding extremist views and not constituting public danger, and from that assessed in the 2013 Joint *Amicus Curiae* Brief for the Constitutional Court of Moldova, where no risk of 'any actual, immediate or even remote danger of disorder or threat to the rights of others triggered by the public display of the hammer and sickle in Moldova' could be identified.

69. Namely, the Russian attack on Ukraine has worsened the security situation in Central and Eastern Europe. The Republic of Moldova, as one of the former Soviet republics, hosting an important Russian-speaking minority and having a part of its territory effectively occupied by the Russian Federation since the 1990s, has legitimate reasons to have serious concerns for its external security. Russia's aggression against Ukraine and the arrival of a large number of war refugees have also exacerbated internal political, economic and social tensions within the Moldovan society. The Venice Commission considers that in this specific context, the Moldovan authorities are entitled to argue that the display of the symbols used by the Russian armed forces in the current war produces an actual and immediate danger of disorder and a threat to the national security and the rights of others, including those of Ukrainian war refugees, and that there is a pressing social need to impose a ban on such use.

70. The Venice Commission commends that Law No. 102 introduces an exception for the use of all the categories of prohibited symbols for scientific, educational or artistic purposes and that there is a special exception foreseen for ribbons making part of the insignia, medals or orders granted for participation in WWII. The Saint George's Ribbon was indeed attached to various awards used in the Soviet (Red) army during WWII or to commemorate WWII, such as the 'Medal for the Victory over Germany in the Great Patriotic War of 1941-1945', the military Order of Glory of various degrees or certain jubilee medals ('Thirty Years of Victory in the Great Patriotic War 1941-1945', 'Forty Years of Victory in the Great Patriotic War 1941-1945'). These awards and medals are conventionally worn during the celebrations of the 'Day of Victory' (9 May) and on other occasions, and it seems that Law No. 102 leaves space for the continuation of this practice. The Venice Commission underlines the importance of the continued use of the symbol in these limited conditions as it indicates the will of the Moldovan legislator to respect the principle of proportionality."

III. OTHER MATERIAL

33. The use of the St George ribbon in the context of hostilities in the Donetsk and Luhansk regions was on several occasions reported by the OSCE Special Monitoring Mission in Ukraine. Those reports were referenced in the Annex to *Ukraine and the Netherlands v. Russia* ((dec.) [GC], nos. 8019/16 and 2 others, §§ 144, 546, 644 and 1401, 30 November 2022).

COMPLAINTS

34. The applicant complained under Articles 8 and 10 of the Convention that by prohibiting the use of the St George ribbon in public the State had interfered with his freedom of expression. He also complained under Articles 8 and 10 in conjunction with Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention that the legislative prohibition

on wearing the St George ribbon in public was discriminatory on the grounds of ethnic origin.

THE LAW

I. COMPLAINTS UNDER ARTICLE 10 OF THE CONVENTION

35. The applicant complained under Article 10 of the Convention that by prohibiting the use of the St George ribbon in public the State had interfered with his freedom of expression. This provision reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

36. The Court notes at the outset that 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, including the right for a person to express ideas through his or her mode of dress (see, for example, *Vajnai v. Hungary*, no. 33629/06, § 47, ECHR 2008 and *Maguire v. United Kingdom* (dec.), no. 58060/13, § 46, 3 March 2015). In the present case the Court is prepared to proceed on the assumption that the applicant's wish to publicly wear the St George ribbon can be regarded as a way for him to express his views (which he explained as a desire to honour the memory of his relatives who fought against Nazi Germany) and that Article 10 is therefore applicable (see *Donaldson v. the United Kingdom* (dec.), no. 56975/09, § 20, 25 January 2011).

37. The Court further notes that the question concerning the alleged interference with the applicant's right to freedom of expression by way of the statutory prohibition on wearing the St George ribbon hinges upon the prior establishment of whether the applicant has been affected by the impugned measure and can thus claim to be a victim of a violation of his rights under Article 10 of the Convention.

38. In this connection the Court reiterates its established case-law that in order to claim to be the victim of a violation, a person must be directly affected by the impugned measure. The Convention does not, therefore, provide for the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly

affected by it, that it may contravene the Convention (see, for example, *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28).

39. However, it is open to a person to contend that a law violates his or her rights, in the absence of an individual measure of implementation, if he or she is required either to modify his or her conduct because of it or risk being prosecuted (see, for example, *Dudgeon v. the United Kingdom*, 22 October 1981, § 41, Series A no. 45) or if he or she is a member of a class of people who risk being directly affected by the legislation (see *Johnston and Others v. Ireland*, 18 December 1986, § 42, Series A no. 112, and *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, § 44, Series A no. 246-A). Additionally, the existence of legislation very broadly suppressing the expression of specific types of opinion, leading the potential perpetrators to adopt a kind of self-censorship, can amount to interference with freedom of expression (see, *Ali Gürbüz v. Turkey*, nos. 52497/08 and 6 others, § 60, 12 March 2019, with further references).

40. Turning to the circumstances of the present case, the Court wishes to emphasise, firstly, that the applicant complained specifically that it was impossible to wear the St George ribbon in public for the commemoration of Victory Day. The applicant contended that, being a military officer himself, he wished to be able to continue wearing the St George ribbon to show that he belonged to a family of servicemen who had served in the Second World War and had been awarded honours for their bravery. He did not complain that the new legislation precluded him from wearing or otherwise displaying or using his father's or other relatives' original honours.

41. Secondly, the applicant has never been held liable, either administratively or criminally, for wearing the St George ribbon in public. The crux of the present application is that with the entry into force of the relevant legislative amendments, he had to modify his conduct and no longer wear the St George ribbon in public, a requirement with which he apparently complied. In that context the present case is different from those examined previously by the Court and in which the applicants were, in one way or another, held liable for wearing or otherwise using prohibited symbols (see, for example, *Vajnai* and *Maguire*, both cited above, and *Karatayev v Russia* [Committee], no. 56109/07, § 20, 13 July 2021).

42. The Court observes that the impugned Ukrainian legislation prohibiting the St George ribbon, was enacted in the aftermath of the occupation of the Crimean Peninsula and the start of the hostilities in the eastern regions of Ukraine. That legislation has remained in force up until the present day and there is nothing that casts doubt on the authorities' intention to apply it. This can be shown, *inter alia*, by the statistics freely accessible on the official website of the Supreme Court of Ukraine, which reveal that, for example, in 2017 fifteen cases were brought before the courts and five people were actually held liable under Article 173-3 of the Code of Administrative Offences (other cases had not led to a finding of liability for various reasons).

In 2018 sixty-seven cases were brought and thirteen people were held liable; in 2019 forty-two cases were brought and six people held liable; and in 2020 forty-seven cases were brought and four people were held liable[3].

43. In view of the above and the personal circumstances of the applicant, the very existence of the legislation in issue continuously and directly affects him: either he abides by the law and refrains from wearing the St George ribbon in public – despite his wish to demonstrate his pride in belonging to a family of servicemen who showed bravery on the battlefield – or he wears the ribbon and thereby becomes liable to prosecution (see, *mutatis mutandis*, *S.A.S. v. France* [GC], no. 43835/11, § 57, ECHR 2014 (extracts), with further references).

44. The Court accordingly concludes that, in the circumstances of the present case, the applicant can claim to be a victim of the alleged violation of Article 10 and that there has been an interference with his right under that provision. The Court further notes that that interference was "prescribed by law" and the applicant did not argue that the relevant legislative provisions were inaccessible or unclear.

45. The Court will now turn to the assessment of whether that interference was justified and, in particular, whether the interference was necessary in a democratic society.

46. The Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it 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. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 101, ECHR 2012; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 88, ECHR 2015 (extracts); and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

47. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand

[3] https://court.gov.ua/inshe/sudova_statystyka/rik_2017;
https://court.gov.ua/inshe/sudova_statystyka/rik_2018;
https://court.gov.ua/inshe/sudova_statystyka/rik_2019;
https://court.gov.ua/inshe/sudova_statystyka/rik_2020.

with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court (see *Vajnai*, § 43, and *Donaldson*, § 24, both cited above). In determining the breadth of the margin of appreciation, due deference must be given to the national authorities' assessment where the expression in question might have many levels of meaning which could only be fully understood by those with a comprehensive knowledge of the historical, social and political background (see, as regards the wide margin of appreciation in respect of cultural and political emblems, *Donaldson*, cited above, § 28). The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Vajnai*, § 44, and *Donaldson*, § 25, both cited above).

48. In reviewing whether there exists a pressing social need for interference with rights under the Convention, the Court should be sensitive to the context of the High Contracting Party concerned (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, § 121, ECHR 2006-IV and *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, §§ 200 and 204, 14 September 2023). The time factor is likewise pertinent (see *Vajnai*, § 49, cited above).

49. Turning to the present case, the Court notes that the St George ribbon's history is a long one and it shows that the ribbon's meaning and intended use have changed significantly over time. It appears, however, that, at least until very recently, it had been mostly associated with the Soviet era, namely with the Soviet military awards. The prohibition to wear the St George ribbon stems, at least partially, from the general prohibition of communist symbols introduced in Ukraine in 2015 (see paragraph 7 above). In this connection the Court notes that it had previously confirmed its special regard to the burden of the totalitarian, including communist and Nazi, legacy that certain States had experienced (see, for example, *Ždanoka,* cited above, §§ 119-20). It had also accepted that certain measures aimed at distancing from that legacy, including the prohibition of certain symbols, can be justified (see, *Zhablyanov v. Bulgaria*, no. 36658/18, §127, 27 June 2023 and *Nix v. Germany* (dec.), no. 35285/16, 13 March 2018).

50. Most importantly, however, it is apparent in the instant case that the tradition of wearing the St George ribbon has been perpetuated in modern Russia and it has become a recognisable and strong symbol not so much associated with the Second World War and the Soviet army but linked to the perceived Russian military valour and superpower. In this context the Court notes the elements that attest that the St George ribbon has been used as insignia during the hostilities in the eastern regions of Ukraine as of 2014. For example, the use of the ribbon by the forces opposing the Ukrainian Government in the Donetsk and Luhansk regions has been referenced by international monitors (see paragraph 33 above). After the February 2022

invasion in Ukraine, the St George ribbon has also been a widespread symbol used by the Russian military. At the same time, for many people, particularly victims, it has become a symbol of suffering that the Russian aggression brought about.

51. That being so, the St George ribbon is a strong symbol associated with the aggressor and the introduction of the prohibition on wearing it has clear reference to the dramatic events affecting the country. It cannot be said to have become redundant or inappropriate with the passage of time. On the contrary, more recent events have demonstrated that its pertinence has even increased (see, *mutatis mutandis*, *Zhablyanov*, cited above, § 129, and compare *Vajnai*, § 55, cited above). In this context the Court notes that in other European countries the introduction of bans on wearing or otherwise using the St George ribbon has also been justified by clear references to the aggression against Ukraine (see paragraphs 13-17 above).

52. In that connection the Court emphasises that national authorities are better placed than the Court to understand and appreciate the specific societal problems faced in particular communities and contexts. In view of its above observations the Court has no reason to call into question the importance and sincerity of the Ukrainian government's efforts to tackle the problem of modern challenges to State security posed by military conflict (see, *mutatis mutandis*, *Gapoņenko v. Latvia* (dec.), no. 30237/18, § 43, 23 May 2023, and *Kirkorov v. Lithuania* (dec.), no. 12174/22, § 67, 19 March 2024).

53. The Court also observes that the prohibition of the St George ribbon, as established by the new legislation, is not a blanket one and allows for quite a wide range of exceptions (see paragraph 24 above). In particular, its use may be considered lawful if it is present on the original State awards and military honours awarded to individuals before 1991.

54. To sum up, the Court finds that the interference complained of met the requirement of a pressing social need and that there is no appearance that the State has overstepped its margin of appreciation. Accordingly, the Court finds that the complaint under Article 10 of the Convention is manifestly ill-founded and rejects it pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. COMPLAINTS UNDER ARTICLE 8 OF THE CONVENTION

55. Under Article 8 of the Convention, the applicant complained that the legislative prohibition on wearing the St George ribbon in public precluded him from freely doing so on Victory Day in order to show that he belonged to a family of servicemen and to commemorate the bravery of his relatives.

56. The Court notes at the outset that its findings regarding the applicant's victim status under Article 10 above are equally pertinent to his complaints under Article 8. It further reiterates that personal choices as to an individual's desired appearance, whether in public or in private, relate to the expression of his or her personality and thus fall within the notion of private life (see, for

example, as to choice of clothing, *S.A.S. v. France* [GC], §§ 106-07, cited above, and *Gough v. the United Kingdom*, no. 49327/11, §§ 182-84, 28 October 2014).

57. It also follows from the Court's case-law that in order for an issue to arise under Article 8, the consequences for the applicant must be very serious and affect his or her private life to a very significant degree. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating the consequences of the impugned measure (see *Denisov v. Ukraine* [GC], no. 76639/11, § 116, 25 September 2018). Whether or not the requisite level of seriousness was attained will depend on the circumstances of the particular case. If it is not attained, the complaint is inadmissible as incompatible *ratione materiae* with the provisions of the Convention (see *Vučina v. Croatia* (dec.), no. 58955/13, §§ 31-32, 24 September 2019).

58. In the present case the applicant has failed to show that the prohibition complained of has caused him mental suffering or distress or has otherwise had such an impact on his private sphere as to trigger an interference with his private life within the meaning of Article 8 of the Convention. His statements in this respect are rather succinct and lacking in detail and are limited to the mere fact that the prohibition on wearing the St George ribbon precluded him from showing that he belonged to a family of servicemen.

59. The Court therefore considers that the level of seriousness associated with the prohibition on wearing the St George ribbon in public and the inconvenience that the applicant might have suffered do not give rise to an issue under Article 8 of the Convention.

60. The Court therefore finds that the applicant's complaint in this regard must be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

III. COMPLAINTS UNDER ARTICLES 8 AND 10 IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 12 TO THE CONVENTION

61. Relying on Articles 8 and 10 in conjunction with Article 14 of the Convention and on Article 1 of Protocol No. 12 to the Convention, the applicant complained that the legislative prohibition on wearing the St George ribbon in public was discriminatory on the grounds of ethnic origin. He submitted that he was being subjected to discrimination owing to his Russian origins as, notwithstanding the problematic relations that Ukraine might have had with other countries, the legislation in question specifically prohibited Russian symbols.

62. Irrespective of any other possible grounds for inadmissibility, the Court finds, in the light of all the material in its possession and in so far as the matter complained of is within its competence, that there is no appearance

of a violation of the above-mentioned provisions of the Convention arising from the above complaint. In particular, the prohibition to wear the St George ribbon concerns all persons residing in Ukraine, whatever their citizenship or ethnic origin is; the applicant cannot therefore claim to have been subject to any special treatment or suffering different from that applicable to any other person. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 December 2024.

Victor Soloveytchik Registrar	Mattias Guyomar President