

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

THIRD SECTION

CASE OF ZHABLYANOV v. BULGARIA

(Application no. 36658/18)

JUDGMENT

Art 10 • Freedom of expression • Removal of a Deputy Speaker of Parliament for speeches and behaviour justifying repressions of the communist regime • Distinction between removal from professional posts and from political posts as that held by the applicant • Statements not deserving the heightened protection normally accorded to expression on public-interest issues • Necessity of measure assessed against backdrop of post-WWII history of Bulgaria and totalitarian nature of communist regime • States which had experienced communist repressions under a special moral responsibility to distance themselves from them • Removal symbolic and preventive rather than punitive • Measure "necessary in a democratic society"

STRASBOURG

27 June 2023

FINAL

27/09/2023

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



In the case of Zhablyanov v. Bulgaria,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Yonko Grozev,
Armen Harutyunyan,
Georgios A. Serghides,
Peeter Roosma,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 36658/18) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Valeri Mirchev Zhablyanov ("the applicant"), on 25 July 2018;

the decision to give the Bulgarian Government ("the Government") notice of the complaint concerning an alleged interference with the applicant's right to freedom of expression, and to declare the remainder of the application inadmissible; and

the parties' observations;

Having deliberated in private on 30 May 2023,

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

INTRODUCTION

1. The case chiefly concerns two questions under Article 10 of the Convention. The first is whether the removal of a Deputy Speaker of the Bulgarian Parliament from his post on account of public statements of his can be seen as "interference" with his right to freedom of expression within the meaning of Article 10 § 1, in particular in the light of the nature of that post. The second question is whether that removal, which was chiefly based on a statement justifying "the People's Court" – an extraordinary criminal tribunal operating during the first year of the communist takeover of Bulgaria in 1944-48 – may be seen as meeting the requirements of Article 10 § 2, and in particular, to have been "necessary in a democratic society".

THE FACTS

2. The applicant was born in 1965 and lives in Sofia. He was 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 S. Sobadzhieva of the Ministry of Justice.

I. THE APPLICANT'S ELECTION AS DEPUTY SPEAKER

4. In March 2017 the applicant was elected as a member of Bulgaria's Parliament – the National Assembly – on the ticket of the Bulgarian Socialist Party (until April 1990, the Bulgarian Communist Party).[1]

5. At its first plenary sitting in April 2017, the newly elected Assembly adopted special rules of procedure for the election of its Speaker and Deputy Speakers. According to those rules, there were to be five Deputy Speakers – one for each of the parties or coalitions whose candidates had been elected as members of the Assembly (see paragraph 46 below) – and they were to be voted on *en bloc* rather than one by one. The parliamentary group of the Bulgarian Socialist Party, which held eighty out of the 240 seats, nominated the applicant. He, as well as the other four Deputy Speakers (one for each of the other four parliamentary groups), was elected by 235 votes, with no votes against and no abstentions.

II. THE APPLICANT'S STATEMENTS IN ISSUE

A. About the treaty with the former Yugoslav Republic of Macedonia

6. At its plenary sitting on 18 January 2018, the National Assembly debated a proposal by the government to ratify a "Treaty of friendship, good-neighbourliness and cooperation" concluded in August 2017 between Bulgaria and (as it then was) the former Yugoslav Republic of Macedonia. After reports on the treaty were presented by members of the two parliamentary committees tasked with analysing it, nine members of the Assembly, including the applicant, were given the floor to speak about it.

7. The applicant noted at the outset that he would speak in his personal capacity as member of the Assembly. He went on to criticise the manner in which the treaty had been concluded, as well as some of its clauses and

1. The Bulgarian Social-Democratic Party was founded in 1891. In 1903 it split into two factions: "wide" and "narrow" socialists. In 1919 the "narrow socialist" faction took the name Bulgarian Communist Party (narrow socialists) and aligned itself with the Bolsheviks in Russia. In 1924 it was judicially dissolved under a newly enacted statute prohibiting "any ... organisations or groups which, to attain their goals, preach or use ... criminal offences, armed actions, violence or terrorist acts, or set up clandestine branches". In 1938 it merged with the Bulgarian Workers' Party (communists). The first time it came to power was as a member of the Fatherland Front Government formed after the *coup d'état* on 9 September 1944 (see footnote 13). In 1948, when it was already the dominating political party in Bulgaria, it took the name Bulgarian Communist Party. It kept that name until April 1990, when, in the wake of the fall of the communist regime in late 1989, it renamed itself the Bulgarian Socialist Party. It continues to operate under that name.

language – which in his view revived the doctrine of "Macedonism", in particular because the treaty recognised Bulgarians and Macedonians as two separate peoples speaking different languages. The applicant also expressed concern about the effect of a clause whereby the two States undertook to "take effective measures to counter hostile propaganda" against each other.

8. The applicant continued:

> "[S]uch treaties, voted upon in such a light-hearted manner, without grasping their content, without taking into consideration our nation's historical value, our self-consciousness and the perspective for Bulgaria's development, the perspective for us to be a factor in Europe and the Balkans. Precisely such treaties! Because they tear apart our national consciousness, because the nation is a spirit – not cheap labour at Europe's construction sites. The nation is a spirit, the nation is self-consciousness, the nation is an understanding of our own worth, as a people within this whole union – and we are frivolously selling all of that! We are selling it to the South-East, we are selling it to the West, and on top of that we are explaining that this is wise policy. This is cheap wheeling and dealing, dear colleagues – political, geopolitical, and I do not wish to use other qualifications – wheeling and dealing of the lowest order! This is not State policy. ...
>
> Dear colleagues, the treaty is a stillborn, the treaty is a fabrication! The treaty is an apotheosis of the Atlantic ambitions of the Balkans, [advanced] to the detriment of the peoples, just like the series of treaties signed a hundred years ago, when Bulgaria lost territories and walked into several national catastrophes. ..."

9. Immediately after the debate the Assembly ratified the treaty.

B. About the commemoration of the victims of the communist regime

10. At the outset of the National Assembly's plenary sitting on 1 February 2018, a member from GERB (*Граждани за европейско развитие на България*), the political party which held the highest number of parliamentary seats and which was the main member of the ruling coalition, proposed a minute of silence to commemorate the victims of the communist regime.[2] In his speech, that member – a former mayor of Plovdiv – mentioned in particular the thousands of people sentenced to death, life imprisonment and long terms of imprisonment by "the People's Court".[3]

11. A member from the political party Movement for Rights and Freedoms (*Движение за права и свободи*) then proposed that the minute of

2. In January 2011 the Bulgarian Government proclaimed 1 February as the "Day of gratitude and respect towards the victims of the communist regime". The date was chosen because "the People's Court" had handed down its first judgments on 1 February 1945 (see footnote 3 , and paragraph 62 below).

3. "The People's Court" (*Народният съд*) was a criminal tribunal set up by government decree in late 1944, following the *coup d'état* in Bulgaria on 9 September 1944 and the accession to power of the Fatherland Front Government (see footnote 13), in which the Bulgarian Communist Party (at that time calling itself the Bulgarian Workers' Party (communists) – see footnote 1) held the Ministries of Internal Affairs and Justice. For details, see paragraphs 54-62 below.

silence be dedicated also to the Turks and Muslims in Bulgaria who had suffered repressions under the communist regime.

12. The applicant spoke immediately after those two members, on behalf of the parliamentary group of the Bulgarian Socialist Party. He got down from his Deputy Speaker's seat and went to the parliamentary tribune, and made the following statement:

> "I will express regret for the way in which Bulgarian parliamentarism is developing after thirty years of almost democratic political experience.
>
> I consider that the Bulgarian Socialist Party cannot be put in the dock, for one simple reason: because it was the party which led the armed fight against fascism and monarcho-fascism in Bulgaria.
>
> I wish to focus on concrete historical facts rather than the literary fiction that we have heard to some degree. On 1 November 1943 the foreign ministers of the Soviet Union, the United States of America and the United Kingdom signed the Secret Protocol of the Moscow Conference, point 18 of which explicitly set out a declaration about the responsibility of the Hitlerites for their atrocities and the political responsibility of fascism. This declaration was published, and expressly specified that it was without prejudice to the case of the major war criminals whose offences had no particular geographical localisation and who were to be punished by the joint decision of the governments of the Allies – point 18, 1 November 1943.
>
> During the Crimean Conference, held between 4 and 11 February 1945, the leaders of the three Allied States – the Soviet Union, the United States of America and the United Kingdom – reaffirmed the decision of the Moscow Conference, and after that the Prime Minister of the United Kingdom, Winston Churchill, made the following statement: 'It would be best to shoot all war criminals and fascists, together with the main criminals, whenever they are caught.' During the same conference, the statement of Joseph Stalin was as follows: 'Please, before the shooting I insist that they nonetheless be tried.'
>
> The decision for the Nuremberg trial, as well as for the trials held in Europe, outside the territory of Germany, was taken by the international organs and conferences of the Allies. The home-made interpretations of former municipal and town mayors about the fight against fascism would hardly be understood outside the borders of the localities which they ruled. Thank you for your attention."

13. After his speech, the applicant went back up to his Deputy Speaker's seat, and the Speaker invited all members to observe a minute of silence to "commemorate the victims of communism and the victims of the Revival Process".[4] As the Speaker and all the members of parliament were rising from their seats for the minute of silence, the applicant, who again went down to the parliamentary tribune, took the floor and interjected that he proposed to also "commemorate the victims of fascism – the tens, the hundreds of shot

4. "The Revival Process" (*Възродителният процес*) was the name of the policy of the communist regime in Bulgaria to assimilate the country's Turkish and other Muslim minorities. It chiefly consisted of a name-changing campaign in 1984-85, during which Turks living in Bulgaria were forced to change their names to Bulgarian ones, and of the forced emigration in mid-1989 of more than 360,000 Bulgarian Turks to Turkey (see *Abiloğlu and 96 Others v. Bulgaria*, no. 39553/98, Commission decision of 20 May 1998, unreported).

partisans, soldiers in the Patriotic War[5] ...". The Speaker admonished the applicant that the minute of silence was already under way, and that "[it was] 1 February". The applicant carried on "... hanged and killed in the prisons of the State Safety.[6] To commemorate Geo Milev[7], Joseph Herbst[8] ...", which prompted the Speaker to cut off the applicant's microphone. The Speaker reiterated "One minute of silence for the victims of the communist regime and the victims of the Revival Process! It is 1 February, colleagues!" The applicant, who had already moved down to the parliamentary floor, shouted at her "... and for the victims of fascism!", and she continued "Please, bow your heads, one minute of silence to commemorate the victims". After that all the members of the Assembly, including the applicant, stood silent for one minute.

C. About "the People's Court"

14. In a declaration issued on 13 February 2018 in protest against the holding of a torch march commemorating a lieutenant-general assassinated in Sofia by communist partisans on 13 February 1943, the Bulgarian Socialist Party proclaimed, *inter alia*, that "the People's Court"[9] had been required by the Allied Powers in the Second World War, and had been "necessary and inevitable wartime justice". Shortly after publication of the declaration, the party's press officer clarified that the party's bureau had not approved its text but had simply asked for it to be prepared. According to some media, the declaration had been drawn up by the applicant, who at that time was a member of that bureau. In a television interview given two days later, on 15 February 2018, the chairman of the party's parliamentary group said that the statement about "the People's Court" did not represent the party's official position, and that the publication of the declaration with the "out-of-place" sentence about that court had been a "misunderstanding", but declined to answer whether it had been the applicant who had caused that sentence to be put in.

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5. "The Great Patriotic War" (Russian: *Великая Отечественная война*; Bulgarian: *Велика отечествена война*) is a term used mostly in the Russian Federation and some other former republics of the Soviet Union to describe the conflict fought from 22 June 1941 to 9 May 1945 along many parts of the Eastern Front of the Second World War, mainly between the Soviet Union and Nazi Germany.
6. "State Safety" (*Обществената безопасност*) was a police branch in Bulgaria which was used in 1923-25 to supress pro-communist activists.
7. Geo Milev (1895-1925) was a Bulgarian poet, journalist and translator who was arrested and killed during the wave of repressions following the April 1925 terrorist bombing of the St Nedelya Church in Sofia by the military branch of the Bulgarian Communist Party.
8. Joseph Herbst (1875-1925) was a Bulgarian journalist, writer and political activist who was arrested and disappeared in the course of the same wave of repressions.
9. See footnote 3.

15. In his submissions to the Court, the applicant denied being the author of that sentence but stated that he was nonetheless against "one-sided assessments" of "the People's Court".

III. REMOVAL OF THE APPLICANT FROM THE POST OF DEPUTY SPEAKER

16. On 15 February 2018 GERB's parliamentary group called on the applicant to resign from the post of Deputy Speaker, citing his conduct on 1 February 2018 and the statement about "the People's Court" (see paragraphs 10-14 above). They stated that members of the Bulgarian Socialist Party's parliamentary group had acknowledged that the statement – which they qualified as "offensive to the whole Bulgarian people" – had been written by the applicant, and warned that if he did not accept political responsibility for his actions and resign, they would seek to remove him.

17. The same day, in response to a question by a journalist to explain why he had characterised "the People's Court" as "necessary and inevitable wartime justice", the applicant said that it was a number of international documents rather than him that had characterised it like that, and urged all of the journalists present to "read and check" that, adding that those documents "even characterised it as mandatory".

A. Proposal for the applicant's removal from his post

18. On 20 February 2018 eighty-one Assembly members, mainly from GERB (see paragraph 10 above), proposed that the applicant be removed from the post of Deputy Speaker. Citing the three incidents described in paragraphs 6 to 14 above, they asserted that he had systematically abused his powers within the meaning of Rule 5 § 1 (2) of the Assembly's Rules (see paragraph 48 (b) below). In their view, his statement on 18 January 2018 that the treaty with (as it then was) the former Yugoslav Republic of Macedonia was "wheeling and dealing of the lowest order", "a stillborn" and "a fabrication" had "disparaged all efforts of the two States throughout a period of twenty years to achieve good neighbourly relations and mutual understanding". The applicant's actions on 1 February 2018 had infringed Rule 155 § 1 of the Assembly's Rules (see paragraph 53 below) and parliamentary decorum, and had impeded the commemoration of the victims of the communist regime and of "the Revival Process".[10] The "linking" of the applicant's name with the declaration about "the People's Court"[11] had "discredited the National Assembly as an institution and [had] directly impinged on its authority", whereas in his capacity as Deputy Speaker the applicant had a duty to uphold the Assembly's institutional and political

10. See footnote 4.
11. See footnote 3.

authority. He deserved to bear political responsibility for that declaration and be stripped of his "representative functions" as Deputy Speaker.

B. Debate and vote on the proposal

19. The following day, 21 February 2018, the National Assembly debated the proposal. The debate began with a presentation of the proposal by a member of parliament from GERB.

20. When he was given the floor for a personal statement, the applicant pointed out, *inter alia*, that he had merely exercised his constitutional right to express his views, not only in his personal capacity but also in his capacity as representative of the people who had voted for his political party, and that he occupied the post of Deputy Speaker in his capacity as a member of that party. Most of the remainder of his speech was devoted to his views on the question whether fascism had existed in Bulgaria before 9 September 1944 and on the role of "the People's Court" in the country's history. He said, in particular:

> "The question about the historical truth will not be resolved and we harbour no illusions on the point. No illusions should be entertained. The positions are clear, the truth – likewise. The victims are a fact. The monuments, half-destroyed in the oblivion of time, unite again on 2 June[12] the combatants against fascism in Bulgaria. This is known by our whole party. Not because of something else, but because those monuments stand on the bones of people killed unlawfully – beheaded, burned, cut to pieces by the fascist executioners of Bulgaria. And this conviction and sentence was given precisely against those executioners, and it chimes with the dozens, hundreds and thousands of convictions and sentences handed down in Europe, by the courts in France – more than ten thousand convictions, by the courts organised in the United Kingdom, even in Italy, in Trieste, against the high command of the German army, against the war criminals, against the political head-choppers, against those who tried to behead freedom and democracy in Europe, who you now pretend to protect."

21. Another member from GERB who spoke after the applicant noted that his statements justifying "the People's Court" were contrary to section 2(1)(3) of the Act Declaring the Communist Regime in Bulgaria Criminal (see paragraph 71 below).

22. The leader of the applicant's political party, the Bulgarian Socialist Party, stated, *inter alia*, that the applicant's removal from his post would be in breach of the Assembly's Rules and his constitutional right to freedom of expression. She also said that her party had no intention of proposing another

12. 2 June has since 1901 been the day of commemoration of the people who have died for the freedom of Bulgaria. The date was chosen because the Bulgarian poet and revolutionary Hristo Botev (1848-76) was shot and killed on that day in 1876, in the wake of an uprising of the Bulgarians in the Ottoman Empire. In the period 1953-88, during the communist regime, it was called "Day of Botev and of those who died in the fight against the Turkish yoke, capitalism and fascism, and in the Patriotic War [see footnote 5]". Since 1993 the official name has been "Day of Botev and of those who have died for the freedom of Bulgaria".

Deputy Speaker, and would wait for the applicant to be reinstated by the Constitutional Court or by "the European Court".

23. Another member from GERB pointed out, *inter alia*, that in 1998 "the People's Court" had been "quashed as unlawful" (see footnote 3 above) and that in 2000 the communist regime had been officially declared criminal (see paragraphs 69-72 below). For his part, the chair of GERB's parliamentary group stated, *inter alia*, that the Bulgarian Socialist Party was entitled to nominate another Deputy Speaker, and noted that it had waived that right.

24. The proposal to remove the applicant from the post of Deputy Speaker was adopted by 110 votes to seventy-one. There were no abstentions, but the members for the Movement for Rights and Freedoms had left the sitting before the vote, saying that they disagreed with the proposal.

IV. CHALLENGE AGAINST THE REMOVAL BEFORE THE CONSTITUTIONAL COURT

A. The course of the proceedings

25. Nine days later, on 2 March 2018, sixty members of the National Assembly asked the Constitutional Court to declare the applicant's removal from the post of Deputy Speaker contrary to the provisions of the 1991 Constitution guaranteeing the rule of law (Article 4 §§ 1 and 2), political pluralism (Article 11 § 1), freedom of thought (Article 37 § 1), freedom of belief (Article 38), freedom of expression (Article 39), and the freedom of members of the Assembly to be guided solely by the Constitution, the laws, and their personal convictions (Article 67 §§ 1 and 2 – see paragraphs 40-41 below). They also argued that the removal had been in breach of the constitutional provision authorising the Assembly to adopt its own rules (Article 73 – see paragraph 42 below). They argued that none of the three acts for which the applicant had been reproached had engaged Rule 5 § 1 (2) of the Assembly's Rules (see paragraph 48 (b) below). Each of those acts had been carried out in his capacity as a regular member of the Assembly rather than as its Deputy Speaker, and had moreover been a legitimate exercise of, *inter alia*, his constitutional right to freedom of expression as such a member. He could not be sanctioned for having duly availed himself of that right.

26. On 22 May 2018 the Constitutional Court accepted the request for examination and invited the applicant and the Assembly to intervene in the proceedings and make written submissions. Neither the Assembly nor the applicant did so.

B. Judgment of the Constitutional Court

27. Having examined the case on the papers, on 6 November 2018 the Constitutional Court dismissed the request by seven votes to five (see *реш. № 16 от 06.11.2018 г. по к. д. № 4/2018 г., обн. ДВ, бр. 95/2018 г.*).

1. Majority judgment

28. The majority held that it was implicit in Article 76 § 3 of the 1991 Constitution (see paragraph 39 below) that the terms of office of the National Assembly's Speaker and Deputy Speakers could be terminated prematurely; the grounds on which that could be done had not been set out in the Constitution itself, but in the Assembly's Rules. Since the Speaker and the Deputy Speakers were internal organs of the Assembly rather than fully-fledged State authorities, they had no "mandate" – a term used in the 1991 Constitution solely with respect to State authorities. It was not a coincidence that the Rules spoke not of premature termination of their mandate but of premature removal from their post. The resolution for the applicant's removal had set out its legal basis, as well as the facts which in the view of the members who had voted for it had justified the application of Rule 5 (see paragraph 48 below).

29. By Article 67 § 2 of the 1991 Constitution (see paragraph 41 below), members of the Assembly had to comply with the Constitution and the laws. That applied even more for the Speaker and the Deputy Speakers. According to the resolution for his removal, the applicant had infringed Rule 5 § 1 (2) of the Assembly's Rules by systematically (*системно*) abusing his powers (see paragraph 48 (b) below). In the specific case, the systematic character (*системността*) of his conduct did not have a simply quantitative dimension. A law gave expression to the values synthesised by the members of Parliament on behalf of the people, which meant that each act running against that law could in a sense bear the hallmarks of an attack on the system of social values enshrined in it. It had to be pointed out in that connection that in 2000 the Assembly had passed an Act Declaring the Communist Regime in Bulgaria Criminal (see paragraphs 69-72 below). Though purely declaratory, that Act reflected Bulgarian society's assessment of that period in the country's history. The basis for characterising the applicant's conduct as "a systematic abuse of his powers" in the resolution for his removal had been that this conduct had run against the value choice expressed in section 2(1)(3) of that Act by the members of Parliament on behalf of the people. The statement which the majority in the Assembly had understood as having been written by the applicant – that "the People's Court" had been "necessary and inevitable wartime justice" – had run counter to that section, which had condemned "the unprecedented reprisals against ... all innocent [people] convicted by the so-called 'People's Court'" (see paragraphs 14

and 18 above, and paragraph 71 below). The statement had thus also infringed Article 67 § 2 of the Constitution (see paragraph 41 below).

30. The Assembly's resolution and the reasons in the proposal for it showed, moreover, that on 1 February 2018 the applicant had violated parliamentary decorum, in breach of Rule 155 § 1 of the Assembly's Rules (see paragraph 53 below), which had the force of law. Regular members were amenable to disciplinary sanctions for such breaches; a Deputy Speaker, who had a heightened duty to uphold the Assembly's authority, had to bear additional liability for them. It was irrelevant that when engaging in that conduct the applicant had not acted in his capacity as Deputy Speaker, since he had a general duty to behave in a collected and reasonably balanced way conducive to upholding the Assembly's authority.

2. Dissenting opinions

(a) First dissenting opinion

31. In a dissenting opinion, one judge said that since Deputy Speakers remained members of the Assembly, their freedom to express themselves could not be curbed more than that of any other member, so long as their statements did not run counter to the Constitution and the laws. That was demanded by the constitutional principle of pluralism. It followed that a Deputy Speaker would systematically abuse his powers or fail to carry out his or her duties within the meaning of Rule 5 § 1 (2) of the Assembly's Rules only if he or she failed to comply with the duties laid down in Article 77 of the 1991 Constitution (see paragraphs 36, 38 and 48 (b) below). The removal of a Deputy Speaker which did not properly fall under that Rule was contrary to the constitutional principle of the rule of law.

32. It was true that on 1 February 2018 the applicant had deliberately violated parliamentary decorum and had impeded the carrying out of the Speaker's duties, in breach of his constitutional duty to assist the Speaker. That conduct had fallen squarely within the ambit of Rule 5 § 1 (2). But the other two acts for which he had been reproached had not. They had amounted to an exercise of the right of any Assembly member freely to express his or her views, regardless of whether they were true or acceptable to others. The applicant's statements about the treaty and "the People's Court" had had nothing to do with his constitutional functions as Deputy Speaker. Since those two acts could not have fallen foul of Rule 5 § 1 (2), the applicant's failure to carry out his duties had not been "systematic". His removal from his post had therefore been unconstitutional.

(b) Second dissenting opinion

33. In a common dissenting opinion, four other judges emphasised that the applicant could be removed prematurely from his post only under the conditions laid down in Rule 5 § 1 (2) of the Assembly's Rules (see

paragraph 48 (b) below) rather than on the basis of political expediency. If the removal did not meet those conditions, it was contrary to the rule of law. An abuse by the applicant of his powers or a failure by him to carry out his duties as Deputy Speaker could only relate to the exercise of his specific powers and duties under Article 77 of the 1991 Constitution and Rule 8 of the Assembly's Rules (see paragraphs 36, 38 and 43-45 below). None of the three incidents of which he had been charged with a view to his removal had concerned those specific powers and duties, since during each of them he had acted in his capacity as a regular Assembly member rather than purporting to speak on behalf of the Assembly's management, and had simply exercised, on each of those occasions, *inter alia*, his constitutional right to freedom of expression. It was moreover doubtful whether he had been the author of the statement about "the People's Court" in his political party's declaration. His actions had not therefore engaged Rule 5 § 1 (2), which in addition required the Deputy Speaker's misconduct to be "systematic" – a notion which could not be construed in the way the majority had done (see paragraph 29 above). That meant that the removal had no proper factual basis, and was hence contrary to the rule of law and unconstitutional. It had in effect been a political sanction imposed by the parliamentary majority in response to the applicant's views. The removal was thus in breach of the applicant's constitutional right to freedom of expression, which was particularly extensive for members of the Assembly. Neither the majority's judgment nor the resolution for the applicant's removal had elucidated why it had been justified to interfere with that right.

V. REMAINDER OF THE APPLICANT'S TERM IN THE NATIONAL ASSEMBLY

34. The applicant remained a member of the National Assembly until the end of its term in March 2021. In September 2020 he left the parliamentary group of the Bulgarian Socialist Party and served the remainder of his term as an independent member of the Assembly.

VI. ELECTION OF A NEW DEPUTY SPEAKER IN THE APPLICANT'S STEAD

35. On 10 July 2019 the parliamentary group of the Bulgarian Socialist Party nominated another member of parliament from that group, Mr K.V., as Deputy Speaker. He was elected without debate, by 106 votes to four, with four abstentions. He remained in that post until the end of the National Assembly's term in March 2021. On 30 June 2019 the applicant had been removed from the executive bureau of the Bulgarian Socialist Party.

RELEVANT LEGAL FRAMEWORK

I. 1991 CONSTITUTION

A. Provisions relating to the National Assembly's Deputy Speakers

36. By Article 77 § 1 and Article 78 of the 1991 Constitution, the National Assembly's Speaker: (a) represents the Assembly; (b) calls it; (c) proposes agendas for its sittings; (d) presides over those sittings and ensures their orderly conduct; (e) certifies the Assembly's acts; (f) publishes those acts; and (g) organises the Assembly's international relations. He or she may also give permission to arrest or criminally charge a member when the Assembly is not in session (Article 70 § 1). If the Vice-President of the Republic is unable to replace the President (in case of death, incapacity or resignation), the Speaker may act as President *ad interim* (Article 97 § 4).

37. The Constitutional Court has clarified that the Speaker's powers with respect to the Assembly's core functions (enacting legislation and controlling the executive) did not exceed those of any other member. Although the Speaker enjoyed special political prestige, he or she had no right to a veto or to a casting vote, or special prerogatives to propose legislation in addition to those of any other member. The Speaker was thus not an independent State authority in the traditional sense, even though he or she certified the Assembly's acts and could exceptionally act as President of the Republic *ad interim* (see *реш. № 16 от 10.11.1992 г. по к. д. № 25/1992 г., КС, обн. ДВ, бр. 94/1992 г.*).

38. The Deputy Speakers assist the Speaker and carry out the functions which he or she has entrusted to them (Article 77 § 2).

39. The Speaker and the Deputy Speakers must be elected at the first sitting of each new National Assembly (Article 76 § 3). The Constitution does not fix their term of office.

B. Provisions governing the mandate of National Assembly members

40. Article 67 § 1 provides that members of the National Assembly represent not only their constituents but the whole nation, and that they cannot be bound by an imperative mandate.

41. By Article 67 § 2, members of the Assembly must act solely on the basis of the Constitution and the laws, as well as their personal convictions.

II. RULES OF THE NATIONAL ASSEMBLY

42. By Article 73 of the 1991 Constitution, the organisation and business of the National Assembly are governed by the Constitution itself and by rules adopted by the Assembly. The forty-fourth National Assembly, whose term began in April 2017 and ended in March 2021, adopted its rules on 27 April 2017, and they came into force on 2 May 2017.

A. Provisions relating to the Assembly's Deputy Speakers

43. Rule 8 § 1 of the 2017 Rules enumerates the Speaker's functions.

44. Rule 8 § 2 provides that the Deputy Speakers assist the Speaker and carry out the functions which he or she has delegated to them. The Deputy Speakers preside the Assembly alongside the Speaker; he or she fixes which ones among them do so each week (Rule 8 § 3). One of the Deputy Speakers presides whenever the Speaker steps down to take part in the parliamentary debates (Rule 8 § 6).

45. If the Speaker decides permanently to delegate one of his or her functions to a Deputy Speaker, he or she must do so in writing (Rule 8 § 4). If the Speaker is absent, he or she must authorise one of the Deputy Speakers to replace him or her; if he or she fails to do so, the replacement is ensured by the Deputy Speaker nominated by the largest parliamentary party or coalition (Rule 8 § 5).

46. Ever since 1991, the tradition has been for each parliamentary group to have one Deputy Speaker – a position enshrined in special rules adopted by each successive Assembly in 1991, 1995, 1997, 2001, 2005, 2009, 2013, 2014, 2017 and 2021.

47. The Deputy Speakers' remuneration is 45% higher than that of regular members (Rule 6 § 1 of the Assembly's 2017 Financial Rules).

B. Provisions relating to the removal of Deputy Speakers

48. By Rule 5 §§ 1 and 2 of the 2017 Rules, Deputy Speakers may be removed from their post before the end of their term of office if:

(a) they resign (Rule 5 § 1 (1));

(b) one-third of the Assembly's members propose their removal owing to (i) an objective impossibility for them to carry out their duties, (ii) a "systematic (*системно*) abuse of their powers", or (iii) a "systematic (*системно*) failure to carry out the duties [falling] within the ambit of their competence" (Rule 5 § 1 (2));

(c) the parliamentary group which has nominated them proposes their removal (Rule 5 § 1 (3)); or

(d) they leave that parliamentary group or are excluded from it, or that group ceases to exist (Rule 5 § 2).

49. In situations under (a) and (d) above, the removal is simply announced rather than debated and voted on, whereas in situations under (b) and (c) it is put to a vote, which must be preceded by a hearing of the person concerned. The proposal for the removal is accepted if supported by more than half of all members present (Rule 5 §§ 3 and 4).

50. All earlier Rules of the National Assembly adopted under the 1991 Constitution (in 1991, 1995, 1997, 2001, 2005, 2009, 2013 and 2014) contained similar provisions.

51. In 1992 a group of members of the Assembly challenged the provisions then in force before the Constitutional Court with the argument that the premature removal of the Speaker could not be regulated in the Assembly's Rules. The court dismissed the challenge, holding that Article 73 of the 1991 Constitution (see paragraph 42 above) authorised the Assembly to regulate itself by means of those Rules; this included the premature removal of its Speaker. That solution was fully in line with the Speaker's constitutional role (see paragraph 36 above) and was similar to the way the matter was regulated in the constitutions of many other European States (see *реш. № 16 от 10.11.1992 г. по к. д. № 25/1992 г., КС, обн. ДВ, бр. 94/1992 г.*).

52. A 1998 amendment to Rule 5 introduced the possibility to remove a Deputy Speaker without a vote if the parliamentary group which nominated him or her ceases to exist (see paragraph 48 (d) *in fine* above). A group of members of the Assembly challenged the amendment before the Constitutional Court with the argument that it was contrary to the constitutional principle of the rule of law. The court dismissed the challenge, reiterating that under the 1991 Constitution the Assembly could regulate its internal organisation autonomously; this included the grounds on which it could remove its Speaker or Deputy Speakers and the procedure to be followed in such cases (see *реш. № 13 от 04.06.1998 г. по к. д. № 11/1998 г., КС, обн. ДВ, бр. 67/1998 г.*).

C. Provisions relating to parliamentary behaviour

53. By Rule 155 § 1 of the 2017 Rules, the behaviour of Assembly members must be based on esteem for the Assembly's authority and respect towards other members and outsiders; it must not impede normal parliamentary business or order in the Assembly building.

III. LEGAL PROVISIONS AND CASE-LAW RELATING TO "THE PEOPLE'S COURT"

A. Legal basis for "the People's Court"

54. "The People's Court" was established by a decree (*наредба-закон*) – entitled "Trial by a People's Court of those guilty of dragging Bulgaria into the [Second] World War against the allied peoples and the misdeeds connected therewith" – which was adopted by the Government on 30 September 1944, and was published and came into force on 6 October 1944. By Article 1 of the decree, its task was to try (a) government ministers who had been in office between the beginning of 1941 and 9 September 1944; (b) members of parliament from the twenty-fifth National Assembly (the term of which had lasted from February 1940 to 23 August 1944); and (c) "other civilian or military persons" for the offences set out in Article 2 of the decree.

55. Article 2, as initially worded and amended in late November 1944, provided that the following categories of persons were punishable by an unspecified term of imprisonment, a life sentence or death, as well by a fine:

(a) persons who had after 1 January 1941 "exposed the security of the State or placed the people's interest in jeopardy, either by making international treaties with belligerent States or by deciding to declare or conduct a war" (point 1);

(b) persons in positions of authority who had after 22 June 1941 "ordered acts infringing Bulgaria's neutrality towards the Soviet Union and ha[d] thereby aggravated Bulgaria's international position" (point 2);

(c) persons in positions of authority who had, "in connection with the declaration and conduct of the war with England and the United States of America, failed to carry out their duties by taking due and timely measures to protect the people and the State from moral and material impairment" (point 3);

(d) persons who had after 1 January 1941 "within the old borders of the country, in Macedonia, Thrace or elsewhere used their links with the authorities or the belligerent States, or their office, to procure for themselves or someone else an illicit pecuniary gain" (point 4);

(e) persons who had "been in the service of Germany or its allies and, while carrying out that service, had actively and substantially contributed to the carrying out of that State's policies to the detriment of the Bulgarian people" (point 5);

(f) persons who "had during the same period sent [Bulgarian] troops to Yugoslavia and Greece, so as to persecute the people-liberation troops of those countries, as well as those commanding military persons who had, through their actions or omissions, become a cause for the endangerment of [the Bulgarian] troops" (point 6);

(g) persons who had "in the country or outside it, ordered, encouraged or committed murders, serious bodily injuries, arsons, burglaries, robberies and torture in connection with the domestic or foreign policies put in place by the governments after 1 January 1941" (point 7);

(h) persons who had "voluntarily served the police, the gendarmerie or the army and had given them information concerning the safety or important interests of partisans or other people-liberation fighters" (point 8);

(i) "investigators, prosecutors and judges who in the course of preliminary investigations or trials or through their decisions ha[d] demonstrated manifest bias and gross overzealousness with a view to supporting the terror, lawlessness and violence carried out against the people" (point 9);

(j) persons who had "in the country or out of it, from 1 January 1941 to 9 September 1944, by their actions, writings, words or otherwise, actively and substantially contributed to the commission or carrying out of the above acts, or to the persecution of the Jews" (point 10).

56. By Article 4 § 2 of the decree, all or part of the convicted person's assets were to be forfeited.

57. "The People's Court" was also competent to try, convict and sentence people who had died, even if the death had occurred before he or she had been charged (Article 4 § 3).

58. "The People's Court" consisted of two types of judges: "people's judges", elected by the regional committees of the Fatherland Front[13], and judges appointed by the Minister of Justice (at that time, a representative of the Bulgarian Workers' Party (communists), subsequently the Bulgarian Communist Party – see footnote 1) from among the judges and lawyers in the country (Article 6 § 1). Its panels were likewise constituted by the Minister of Justice: (a) central panels consisting of thirteen judges (four appointed and the rest elected), to try "the regents, government ministers, members of parliament, palace advisors, and high-ranking spiritual and military persons", and (b) regional panels consisting of one appointed judge and four elected judges (Article 7). The court had a chief people's prosecutor and other prosecutors, all appointed by the government on the proposal of the Minister of Justice (Article 5 § 1).

59. "The People's Court" had to set down all of its cases for trial "within the shortest time-limit", and finish all of its trials before 31 March 1945 (Article 9 §§ 1 and 4). Its judgments were not amenable to appeal and were to be carried out immediately (Article 10).

13. The Fatherland Front was a political organisation formed in 1942. The Bulgarian Workers' Party (communists) (see footnote 1) was one of its main founders. The Fatherland Front carried out the *coup d'état* on 9 September 1944 (see footnote 3) and then formed a government which remained in office until 1946.

B. Operation of "the People's Court"

60. "The People's Court" had thirteen central and sixty-eight regional panels. According to data published by Bulgaria's State Archives Agency (see https://narodensud.archives.bg/), the first central panel was tasked with trying the three former regents (in office between September 1943 and 9 September 1944), nine former royal councillors, and all the ministers from the five governments in power between February 1940 and 9 September 1944; altogether, fifty-one people. The second central panel was tasked with trying former members of parliament; altogether, 134 people. The third central panel was tasked with trying the six Bulgarian members of the 1943 Katyn and Vinnytsia investigation commissions.[14] The fourth central panel was chiefly tasked with trying former military officers; altogether, 341 people. The fifth panel was chiefly tasked with trying various former police, gendarmerie and intelligence officers; altogether, 115 people. The sixth central panel was tasked with trying various journalists, writers, caricaturists, radio hosts, newspaper editors and directors, and leaders and activists of nationalist organisations alleged to have carried out propaganda in favour of Fascist Italy and Nazi Germany; altogether, about a hundred people. The seventh central panel was tasked with trying officials alleged to have engaged in anti-Jewish persecution in Bulgaria or in the territories occupied by it during the Second World War; altogether, about seventy people. The eighth central panel was tasked with trying military, police and gendarmerie officers and various other officials alleged to have taken part in punitive actions against partisans and their supporters; altogether, 104 people. The ninth central panel was tasked with trying former military judges and prosecutors, and police officials and collaborators; altogether, about 230 people. The tenth central panel was tasked with trying officials and businesspersons allegedly responsible for tying Bulgaria's economy to that of Germany; altogether, eighty-four people. The eleventh central panel was tasked with trying officials alleged to have carried out offences in the territories occupied by Bulgaria during the Second World War; altogether, about 180 people. The twelfth central panel was tasked with trying Gestapo and German intelligence agents, leaders of various non-governmental organisations, and various former police officers and secret collaborators; altogether, about 170 people. The thirteenth central panel was tasked with trying former police officers and collaborators, and military officers and servicemen alleged to have persecuted or killed partisans or their supporters in several regions.

61. Among the people convicted by the seventh panel was Mr Aleksandar Belev, the former head in 1942-43 of the Commissariat for Jewish Affairs. On 2 April 1945 he was convicted for "having contributed actively and

14. For the Katyn commission, see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 20, ECHR 2013.

substantially, through his actions and writings, to the persecution of the Jews". In the reasons for its judgment, the panel noted that he had taken part in the preparation of various anti-Semitic regulations, had agreed with a German representative to deport the Jews from Bulgaria, had carried out the deportation of the Jews from the Yugoslav and Greek territories occupied by Bulgaria during the Second World War in a most cruel way, had organised the creation of concentration camps, and had actively driven the passing of regulations for the forced resettlement of Jews living in Sofia to the countryside. Mr Belev had been killed extrajudicially before his trial. The seventh panel also convicted other employees of the Commissariat for Jewish Affairs. Other people in positions of responsibility who had taken part in the adoption and implementation of the racist Defence of the Nation Act 1941 – which provided, in its sections 21 to 32, for wide-ranging repressive measures against Jews in Bulgaria, including stripping them of civil rights and property – were also among those convicted by various panels.

62. From December 1944 to April 1945, the central and regional panels of "the People's Court" held in total more than 130 trials against about 11,000 accused, more than 9,000 of whom were convicted and sentenced – nearly 2,700 to death. Some of the people sentenced to death had already been executed extrajudicially before or during the proceedings. The first convictions and sentences – those of the former regents, royal councillors, government ministers and members of parliament – were handed down on 1 February 1945 and the people sentenced to death were executed the same night.

C. 1964 amnesty for some people convicted by "the People's Court"

63. A 1964 amnesty law amnestied all people convicted of offences under the decree establishing "the People's Court" committed before 9 September 1944, except those convicted of offences under Article 2, points 1, 2 and 6 of the decree (see paragraph 55 (a), (b) and (f) above) and those sentenced to death or life imprisonment (section 5(1) of the Amnesty Act 1964).

D. 1994 request to the Constitutional Court to declare the decree establishing "the People's Court" unconstitutional

64. In 1994, a few years after the fall of the communist regime in Bulgaria, the Chief Prosecutor asked the (then) Supreme Court to set aside, in supervisory-review proceedings – a procedural possibility which ceased to exist in June 2000 – some of the judgments of "the People's Court". The Supreme Court stayed the proceedings and in March 1994 its Plenary Meeting invited the Constitutional Court to decide whether the decree establishing "the People's Court" was compatible with the 1991 Constitution, the treaties to which Bulgaria was party, and the generally recognised rules

of international law. It pointed out that the decree had (a) retrospectively criminalised past acts, in breach of the prohibition against doing so in the Constitution and in Article 7 § 1 of the Convention; (b) established an extraordinary tribunal, in breach of the constitutional prohibition of doing so; (c) provided for criminal prosecutions against dead people, contrary to the constitutional rule that only people who were still alive could be criminally prosecuted; (d) excessively restricted the rights of the defence; (e) barred appeals, contrary to Article 2 § 1 of Protocol No. 7 to the Convention; (f) not laid down any rules of evidence, leading to arbitrariness; and (g) had been adopted in breach of the proper constitutional procedure.

65. In July 1994 the Constitutional Court refused to deal with the Supreme Court's request on the basis that the decree establishing "the People's Court" had only had a one-off legal effect which had come to an end in March 1945. It was no longer part of the law in effect in Bulgaria, and the Constitutional Court thus had no jurisdiction to assess whether it was compatible with the 1991 Constitution. All international treaties cited in the Supreme Court's request had been concluded after the decree had already ceased operating, and it could hence not be reviewed for compatibility with them either (see *опр. № 3 от 14.07.1994 г. по к. д. № 7/1994 г., КС*).

E. Setting aside of two of the judgments of "the People's Court" in 1996

66. In a 1995 interpretative decision, the (then) Supreme Court held that the heirs of people convicted by "the People's Court" had no standing to seek supervisory review of its judgments; that possibility was reserved for the Chief Prosecutor (see *тълк. реш. № 1 от 17.02.1995 г. по н. д. № 3/1994 г., ВС, ОСНК*).

67. In 1995 the Chief Prosecutor asked the (then) Supreme Court to set aside the judgments given by the first and second panels of "the People's Court" (see paragraph 60 above). In April and August 1996, the Supreme Court acceded to those requests (see *реш. № 243 от 12.04.1996 г. по н. д. № 707/1995 г., ВС, II н. о.*, and *реш. № 172 от 26.08.1996 г., по н. д. № 120/1995 г., ВС, I н. о.*). In the first of those two judgments, in which it reviewed the convictions of 126 members of parliament, the Supreme Court noted, *inter alia*, that the judgment of "the People's Court" had been based on a politicised and one-sided account, giving the impression that the accused had been convicted on the basis of a preconceived idea of their collective guilt as members of a government deposed by force. It went on to say that all but one of the counts in the indictment had not set out acts capable of constituting the charged offences, that the convicted members of parliament had not acted with *mens rea* with respect to those offences, and that they had in effect been punished for their political views and actions. The remaining count, relating to the offence of ordering, encouraging or committing various violent acts

(see paragraph 55 (g) above) required a case-by-case assessment. For most of the convicted, the judgment of "the People's Court" did not concretely refer to any such acts. For twenty-six of them, that judgment had mentioned circumstances linking them with such acts of violence, but it was necessary to analyse each case carefully to see whether those findings had been substantiated. In all but two cases, that was not so. It was hence necessary to set aside the convictions of 124 out of the 126 convicted members of parliament and acquit them.

F. 1998 ruling of the Constitutional Court on "the People's Court"

68. In a 1998 judgment dealing, *inter alia*, with the question whether a statute providing for the restitution of assets forfeited by judgments of "the People's Court" (see paragraph 56 above) had, by reversing the effects of judicial decisions, impermissibly impinged on the separation of powers and on judicial independence, the Constitutional Court stated that "'the People's Court' [had not been] a court existing and operating as part of the regular judiciary", but "an extraordinary tribunal ... whose members [had] even [been] people without legal qualifications" and which had acted under "charges brought against even people who had already died". For the Constitutional Court, that tribunal's judgments "could not be characterised as judicial decisions", since they "[had not met] the requirements of due process laid down in the Constitution" (see *реш. № 4 от 11.03.1998 г. по к. д. № 16/1997 г., КС, обн., ДВ, бр. 30/1998 г.*).

IV. 2000 ACT DECLARING THE COMMUNIST REGIME IN BULGARIA CRIMINAL

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

70. Section 1(1) of that Act stated that the Bulgarian Communist Party had come to power on 9 September 1944 with the help of a "warring hostile power"[15] 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.

71. Section 2(1)(3) stated that the management and chief activists of that party had been responsible for "the unprecedented reprisals against ... all innocent [people] convicted by the so-called 'People's Court'".

15. On 5 September 1944 the Soviet Union declared war on Bulgaria (which, although it had become an ally of Nazi Germany in 1941 and had declared war on the United Kingdom and the United States of America in December 1941, had not declared war on the Soviet Union and had kept its diplomatic relations with it), and on 8 September 1944 the Soviet army entered Bulgaria without facing resistance. That army occupied the country until 1947.

72. Section 3(1) proclaimed the communist regime, deemed to have been 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".

V. POLITICAL AND CIVIL REHABILITATION OF PERSECUTED PERSONS ACT 1991

73. Section 1(1) of the Political and Civil Rehabilitation of Persecuted Persons Act 1991, as amended in 2010, rehabilitates all persons convicted by the third panel of "the People's Court" (see paragraph 60 above). The explanatory notes to the bill (no. 054-01-25) which led to the 2010 amendment specified that they were the four Bulgarian members of the 1943 Katyn and Vinnytsia investigation commissions[16] who had adhered to the position that the Soviet authorities had been responsible for those massacres, and stated that it was impermissible that people who had spoken out about the crimes of the Soviet regime should remain without rehabilitation, which could no longer be effected judicially for procedural and practical reasons (see paragraphs 64 and 66 above).

RELEVANT COUNCIL OF EUROPE MATERIALS

74. Parliamentary Assembly of the Council of Europe (PACE) Resolution 1481 (2006) on the need for international condemnation of crimes of totalitarian communist regimes (link) reads as follows:

> "1. The Parliamentary Assembly refers to its Resolution 1096 (1996) on measures to dismantle the heritage of the former communist totalitarian systems.
>
> 2. The totalitarian communist regimes which ruled in central and eastern Europe in the last century, and which are still in power in several countries in the world, have been, without exception, characterised by massive violations of human rights. The violations have differed depending on the culture, country and the historical period and have included individual and collective assassinations and executions, death in concentration camps, starvation, deportations, torture, slave labour and other forms of mass physical terror, persecution on ethnic or religious grounds, violation of freedom of conscience, thought and expression, of freedom of the press, and also lack of political pluralism.
>
> 3. The crimes were justified in the name of the class struggle theory and the principle of dictatorship of the proletariat. The interpretation of both principles legitimised the 'elimination' of people who were considered harmful to the construction of a new society and, as such, enemies of the totalitarian communist regimes. A vast number of victims in every country concerned were its own nationals. It was the case particularly of the peoples of the former USSR who by far outnumbered other peoples in terms of the number of victims.

16. See footnote 14.

4. The Assembly recognises that, in spite of the crimes of totalitarian communist regimes, some European communist parties have made contributions to achieving democracy.

5. The fall of totalitarian communist regimes in central and eastern Europe has not been followed in all cases by an international investigation of the crimes committed by them. Moreover, the authors of these crimes have not been brought to trial by the international community, as was the case with the horrible crimes committed by National Socialism (Nazism).

6. Consequently, public awareness of crimes committed by totalitarian communist regimes is very poor. Communist parties are legal and active in some countries, even if in some cases they have not distanced themselves from the crimes committed by totalitarian communist regimes in the past.

7. The Assembly is convinced that the awareness of history is one of the preconditions for avoiding similar crimes in the future. Furthermore, moral assessment and condemnation of crimes committed play an important role in the education of young generations. The clear position of the international community on the past may be a reference for their future actions.

8. Moreover, the Assembly believes that those victims of crimes committed by totalitarian communist regimes who are still alive or their families, deserve sympathy, understanding and recognition for their sufferings.

9. Totalitarian communist regimes are still active in some countries of the world and crimes continue to be committed. National interest perceptions should not prevent countries from adequate criticism of current totalitarian communist regimes. The Assembly strongly condemns all those violations of human rights.

10. The debates and condemnations which have taken place so far at national level in some Council of Europe member states cannot give dispensation to the international community from taking a clear position on the crimes committed by the totalitarian communist regimes. It has a moral obligation to do so without any further delay.

11. The Council of Europe is well placed for such a debate at international level. All former European communist countries, with the exception of Belarus, are now members, and the protection of human rights and the rule of law are basic values for which it stands.

12. Therefore, the Assembly strongly condemns the massive human rights violations committed by the totalitarian communist regimes and expresses sympathy, understanding and recognition to the victims of these crimes.

13. Furthermore, it calls on all communist or post-communist parties in its member states which have not yet done so to reassess the history of communism and their own past, clearly distance themselves from the crimes committed by totalitarian communist regimes and condemn them without any ambiguity.

14. The Assembly believes that this clear position of the international community will pave the way to further reconciliation. Furthermore, it will hopefully encourage historians throughout the world to continue their research aimed at the determination and objective verification of what took place."

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

75. In respect of his complaint that he had been removed from the post of Deputy Speaker of the National Assembly owing to statements that he had made, the applicant 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 ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. The Government's request to apply Article 17 of the Convention

(a) The parties' submissions

76. For the Government, the complaint was incompatible *ratione materiae* with the provisions of the Convention by virtue of Article 17. This was because there was consensus in Europe that the communist regimes had been incompatible with the Convention's provisions and spirit, and characterised by massive breaches of human rights. PACE Resolution 1481 (2006) had urged post-communist political parties to distance themselves from those atrocities and condemn them without ambiguity. In any event, all totalitarian ideologies had to be treated on an equal footing, and their expression, in whatever form, could not enjoy protection. The persecution carried out by "the People's Court" had been clearly established and condemned by the legislature. There was consensus in Bulgaria that this extraordinary tribunal, established by the communist regime, had been responsible for grave breaches of human rights. The applicant's attempt to legitimise that persecution thus fell outside the protection of Article 10, especially when considering his public role, the manner in which he had expressed himself, and his failure to then distance himself from that position.

77. The applicant submitted that unlike the position with Nazism, there was no consensus on tribunals, such as "the People's Court", set up after the Second World War in various European countries to try war criminals, Nazis and their collaborators. He noted that "the People's Court" had been created by and had functioned under the Fatherland Front Government, before the

establishment of the communist regime in Bulgaria, that its work was still being assessed in differing ways, and that the debate about it continued. Moreover, no parallel could be drawn between the Bulgarian Socialist Party and far-right political parties. As evident from his statements, his position had been based on historical facts, and he had not defended the manner of operation of "the People's Court" or disparaged its victims, but had simply called for a more enlightened and balanced view towards a painful period in Bulgaria's history. By arguing that "the People's Court" had been justified in post-war Bulgaria, he had in effect defended the victims of the anti-Semitic repressions in the territories occupied by it during the Second World War, since that tribunal had also punished the perpetrators of that repression. Hence, Article 17 of the Convention did not apply to his case.

(b) The Court's assessment

78. Article 17 of the Convention applies directly only on exceptional basis and in extreme cases. In cases under Article 10, it can be resorted to to declare a complaint incompatible *ratione materiae* with the provisions of the Convention solely if it is immediately clear that the expression in issue sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends contrary to the Convention's values (see *Pastörs v. Germany*, no. 55225/14, § 37, 3 October 2019, with further references). This point is to be assessed in the light of the circumstances and the whole context (see *M'Bala M'Bala v. France* (dec.), no. 25239/13, § 37, ECHR 2015 (extracts)). Here, it can be added that it transpires from the Court's case-law in this domain that this context is first and foremost that of the country in which the statements at issue have been made.

79. In this case, it is not immediately clear that the acts and statements in issue, in particular the statement about "the People's Court", sought to deflect freedom of expression for ends contrary to the Convention's values (compare *Lilliendahl v. Iceland* (dec.), no. 29297/18, § 26, 12 May 2020; contrast *Belkacem v. Belgium* (dec.), no. 34367/14, §§ 33-34, 27 June 2017, and *Roj TV A/S v. Denmark* (dec.), no. 24683/14, §§ 46-48, 17 April 2018). Assessing this point requires a more in-depth analysis of the nature of those acts and statements and of the context in which they were made. It follows that the complaint under Article 10 cannot be found incompatible *ratione materiae* with the provisions of the Convention on the basis of Article 17, which provision will rather come into play when analysing whether the applicant's removal from his post was "necessary in democratic society" (see paragraphs 122 and 131 below, and compare *Lehideux and Isorni v. France*, 23 September 1998, § 38, *Reports of Judgments and Decisions* 1998-VII).

80. The Government's request cannot therefore be accepted.

2. Conclusion on the admissibility of the complaint

81. The complaint raises sufficiently complex issues of fact and law to require an examination on the merits. It is, moreover, not inadmissible on other grounds. It must therefore be declared admissible.

B. Merits

1. Existence of interference with the right to freedom of expression

(a) The parties' submissions

82. The Government submitted that the applicant's removal from the post of Deputy Speaker had not interfered with his right to freedom of expression. The removal had not been accompanied by any measures, such as fines or exclusion from parliamentary activities, affecting his rights as a member of parliament, in particular the possibility to express himself in that capacity. Nor had it prejudiced his political party, which had been able to nominate another Deputy Speaker in his stead. The Government also emphasised the need for the holders of such high-ranking posts to abide in all of their actions by high ethical standards, and argued that even appearances mattered in that regard, especially in the legislature.

83. The applicant submitted that his removal from his post had not only injured his dignity and reputation but had also caused him to lose the higher remuneration flowing from that post, and had thus amounted to a sanction.

(b) The Court's assessment

84. It is incontestable that the applicant was removed from the post of Deputy Speaker of Parliament in reaction to his statements and expressive conduct, even though doubts were voiced about whether he had written the offending part of his party's declaration about "the People's Court" (see paragraphs 7-8, 12-14, 18 and 33 above, and compare *Stojanović v. Croatia*, no. 23160/09, § 39, 19 September 2013; *Genov and Sarbinska v. Bulgaria*, no. 52358/15, § 63, 30 November 2021; and *Wojczuk v. Poland*, no. 52969/13, § 41, 9 December 2021). It is nonetheless open to question whether that removal amounted to interference, in the form of a formality, condition, restriction or penalty, with his right to freedom of expression.

85. The general principle is that the scope of such a measure – a refusal to appoint to a post or a removal from one – must be determined by putting it in the context of the facts of the case and of the relevant legislation (see *Glasenapp v. Germany*, 28 August 1986, § 50, Series A no. 104; *Kosiek v. Germany*, 28 August 1986, § 36, Series A no. 105; *Wille v. Liechtenstein* [GC], no. 28396/95, § 43, ECHR 1999-VII; and *Baka v. Hungary* [GC], no. 20261/12, § 140, 23 June 2016).

86. What is of particular importance in this case is that the applicant's post was a political rather than a professional one.

87. When it comes to professional posts – court presidents, judges, public prosecutors, judicial employees, civil servants, university professors, journalists at public broadcasters, employees in State or municipally owned companies, lawyers, notaries, medical doctors, nurses, servicemen, and so on – removals or suspensions from those posts and even refusals to appoint to them relating, overtly or covertly, to statements by the post-holders, or candidates, have consistently been seen as interferences with their right to freedom of expression, as in the following examples:

(a) announced intention not to reappoint a Supreme Court president (see *Wille*, cited above, §§ 44 and 49-51);

(b) termination of the mandate of a Supreme Court president (see *Baka*, cited above, §§ 145-52);

(c) dismissals of judges (see *Pitkevich v. Russia* (dec.), no. 47936/99, 8 February 2001, and *Kudeshkina v. Russia*, no. 29492/05, §§ 79-80, 26 February 2009);

(d) termination of the mandate of a Chief Public Prosecutor (see *Kövesi v. Romania*, no. 3594/19, §§ 183-90, 5 May 2020);

(e) removal of a Deputy General Prosecutor (see *Jhangiryan v. Armenia* (dec.), no. 8696/09, § 36, 5 February 2013);

(f) removal of the head of a local public prosecutor's office (see *Brisc v. Romania*, no. 26238/10, § 89, 11 December 2018);

(g) dismissals of public prosecutors (see *Altın v. Turkey* (dec.), no. 39822/98, 6 April 2000, and *Goryaynova v. Ukraine*, no. 41752/09, § 54, 8 October 2020);

(h) dismissal of an expert in a prosecutor's office (see *Peev v. Bulgaria*, no. 64209/01, § 60, 26 July 2007);

(i) dismissal of a press officer in a prosecutor's office (see *Guja v. Moldova* [GC], no. 14277/04, §§ 53 and 55, ECHR 2008);

(j) dismissals of civil servants (see *Haseldine v. the United Kingdom*, no. 18957/91, Commission decision of 13 May 1992, Decisions and Reports (DR) 73, p. 225; *Vogt v. Germany*, 26 September 1995, § 44, Series A no. 323; *Petersen v. Germany* (dec.), no. 39793/98, 22 November 2001; *Volkmer v. Germany* (dec.), no. 39799/98, 22 November 2001; *De Diego Nafría v. Spain*, no. 46833/99, § 30, 14 March 2002; *Kern v. Germany* (dec.), no. 26870/04, 29 May 2007; *Langner v. Germany*, no. 14464/11, § 39, 17 September 2015; *Karapetyan and Others v. Armenia*, no. 59001/08, § 36, 17 November 2016; and *Catalan v. Romania*, no. 13003/04, § 44, 9 January 2018);

(k) dismissal of a university professor (see *Rubins v. Latvia*, no. 79040/12, §§ 68-70, 13 January 2015);

(l) suspension of a university professor (see *Gollnisch v. France* (dec.), no. 48135/08, 7 June 2011);

(m) dismissals of journalists at public broadcasters (see *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000; *Nenkova-Lalova v. Bulgaria*,

no. 35745/05, §§ 52-53, 11 December 2012; and *Matúz v. Hungary*, no. 73571/10, §§ 25-27, 21 October 2014);

(n) dismissals of employees of State and municipal companies (see *Balenović v. Croatia* (dec.), no. 28369/07, 30 September 2010; *Bathellier v. France* (dec.), no. 49001/07, 12 October 2010; *Skwirut v. Poland* (dec.), no. 11002/07, §§ 39-40, 4 November 2014; and *Marunić v. Croatia*, no. 51706/11, § 45, 28 March 2017);

(o) disbarment of a lawyer (see *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 70, 25 June 2020);

(p) suspension of a notary (see *Ana Ioniță v. Romania*, no. 30655/09, § 41, 21 March 2017);

(q) dismissal of a medical doctor at a public hospital (see *Gawlik v. Liechtenstein*, no. 23922/19, § 48, 16 February 2021);

(r) dismissal of a nurse in a partly State-owned hospital (see *Heinisch v. Germany*, no. 28274/08, §§ 43-45, ECHR 2011 (extracts)); and

(s) suspension of an admiral (see *E.S. v. Germany*, no. 23576/94, Commission decision of 29 November 1995, unreported)).

88. The same rationale has been applied to milder measures affecting employment in the public sector:

(a) refusal to promote a civil servant (see *Otto v. Germany* (dec.), no. 27574/02, 24 November 2005);

(b) demotions of judges (see *Albayrak v. Turkey*, no. 38406/97, § 38, 31 January 2008; *Eminağaoğlu v. Turkey*, no. 76521/12, § 127, 9 March 2021; and *Miroslava Todorova v. Bulgaria*, no. 40072/13, §§ 157-64, 19 October 2021);

(c) reprimands or warnings given to judges (see *Leiningen-Westerburg v. Austria*, no. 26601/95, Commission decision of 20 January 1997, DR 88-A, p. 85, at p. 91; *Kayasu v. Turkey*, nos. 64119/00 and 76292/01, §§ 78-81, 13 November 2008; *Di Giovanni v. Italy*, no. 51160/06, § 74, 9 July 2013; *Guz v. Poland*, no. 965/12, § 73, 15 October 2020; and *Kozan v. Turkey*, no. 16695/19, § 52, 1 March 2022), a lawyer (see *Veraart v. the Netherlands*, no. 10807/04, § 49, 30 November 2006), a journalist (see *Wojtas-Kaleta v. Poland*, no. 20436/02, § 44, 16 July 2009), and an academic (see *Kula v. Turkey*, no. 20233/06, §§ 36-40, 19 June 2018); and

(d) even a decision no more than hypothetically capable of affecting the career prospects of a judge (see *Panioglu v. Romania*, no. 33794/14, § 98, 8 December 2020).

89. Implicit in all of those cases were, however, two propositions: that the posts in issue enjoyed some sort of stability or tenure, and that holding them was chiefly premised on having certain professional qualifications.

90. The reasoning relating to such posts cannot therefore automatically be transposed to political ones. The latter are as a rule inherently unstable, and holding them is often premised not only on possessing certain qualifications

but also on having and expressing views which match those of the political party vested with the right to fill such a post. Thus, it would be hard to characterise the dismissal of a government minister owing to statements judged unacceptable by the head of government as interference with that minister's right to freedom of expression that needs to be justified under Article 10 § 2. It would border on the absurd to see such interference, in this context, in the removal of the entire government following a parliamentary vote of no confidence, even if that vote has been prompted by statements by government ministers. Recently, doubt was also expressed about whether a removal from the position of court spokesperson could interfere with the right to freedom of expression, again on the basis that there was no right to hold that position (see *Żurek v. Poland*, no. 39650/18, § 208, 16 June 2022).

91. As noted in paragraph 85 above, the point must be determined with reference to the rules of national law governing the post at issue. In the present case, the applicant's post as Deputy Speaker of Parliament, although entailing 45% more in monthly pay (see paragraph 47 above), was plainly a political rather than a professional one.

92. Moreover, the applicant occupied that post as a representative of his parliamentary group rather than in his personal capacity (see paragraphs 5 and 46 above). He stood to lose it automatically if he was excluded from that group, and could be removed from it at the group's request without any need for the group to justify its decision (see paragraph 48 (c) above).

93. At the same time, unlike for instance a government minister, he did not serve in that post at the discretion of the Parliament, but enjoyed a measure of non-removability *vis-à-vis* the parliamentary majority. Under the Rules of the Bulgarian National Assembly, he could be voted out before the end of his term of office only if he had systematically abused his powers or had systematically failed to carry out his duties (see paragraph 48 (b) above). Indeed, the question whether these two conditions were fulfilled was at the core of the debate preceding the vote to remove the applicant and of the ensuing proceedings before the Bulgarian Constitutional Court (see paragraphs 19, 22, 25 and 28-33 above).

94. It is hence open to question whether the applicant's removal from his post amounted to interference with his right to freedom of expression. But there is no need to resolve that issue, since even if it is accepted that this was the case, the interference was justified for the following reasons.

2. Justification for the alleged interference

95. An interference with the right to freedom of expression is compatible with Article 10 of the Convention if it is "prescribed by law", pursues one or more of the legitimate aims set out in its second paragraph, and is "necessary in a democratic society" to attain that aim or those aims.

(a) "Prescribed by law"

(i) The parties' submissions

96. The Government submitted that the legal basis for the applicant's removal from his post had been clear and sufficiently foreseeable, and that the proper procedures had been followed. The removal had been neither arbitrary nor manifestly contrary to the legal provision on which it had been based. In particular, the majority of the Constitutional Court had explained why the applicant's actions could be seen as a systematic abuse of his powers.

97. The applicant submitted that his removal had been unlawful and arbitrary, since the acts in connection with which it had been carried out had plainly not been an "abuse of [his] powers" within the meaning of Rule 5 § 1 (2) of the 2017 Rules of the National Assembly.

(ii) The Court's assessment

98. It is not for the Court to say whether the acts in connection with which the applicant was removed from his post amounted to a "systematic abuse of ... powers" within the meaning of Rule 5 § 1 (2) of the 2017 Rules of the Bulgarian National Assembly (see paragraphs 18 and 48 (b) above). The point was put before the Bulgarian Constitutional Court, and the majority and minority there disagreed on it (see paragraphs 25 and 29-33 above). The Court does not hear appeals from the national courts, and the scope of its task when assessing whether an interference with the right to freedom of expression complied with domestic law, and was 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; *Nenkova-Lalova*, cited above, § 54; and *Genov and Sarbinska*, cited above, § 66, and, specifically in relation to the Bulgarian Constitutional Court, *United Macedonian Organisation Ilinden-PIRIN and Others v. Bulgaria*, no. 59489/00, § 52, 20 October 2005).

99. The majority of the Bulgarian Constitutional Court explained in sufficient detail why they were of the view that the applicant's acts – in particular his second and third statements – had engaged Rule 5 § 1 (2). They also gave reasons why they regarded those acts to have been of a "systematic" character within the meaning of that Rule (see paragraphs 29-30 above). It cannot be said that their ruling on the point was arbitrary or manifestly contrary to that provision. It should be borne in mind in this connection that this was apparently the first occasion on which this aspect of the Rule or its predecessors had been considered by the Bulgarian Constitutional Court (contrast, *mutatis mutandis*, *Lukanov v. Bulgaria*, 20 March 1997, § 44, *Reports* 1997-II; *Jorgic v. Germany*, no. 74613/01, § 109, ECHR 2007-III; and *Soros v. France*, no. 50425/06, § 58, 6 October 2011). The construction

which the majority of that court put on the word "systematic" (*системно*) in the Rule, though perhaps unorthodox, cannot be seen as straining the meaning of that term – a term of Bulgarian law falling to be construed in the light of its own context and purpose, and in its meaning in the Bulgarian language – to a degree rendering the majority's ruling manifestly erroneous or arbitrary (compare *Zhechev v. Bulgaria*, no. 57045/00, § 39, 21 June 2007). Indeed, the Court itself has, when construing terms in the Convention, sometimes opted for a meaning which is more specific or broader than the ordinary one (see *Van Droogenbroeck v. Belgium*, 24 June 1982, § 35 *in fine*, Series A no. 50; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 172-75, ECHR 2012; and *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 42, ECHR 2014). It has even departed from the literal meaning or the meaning dictated by common usage to take account of the context in which the term appears and give effect to the object and purpose of the provision in which the term is contained, as the Court conceives them to be (see *Klass and Others v. Germany*, 6 September 1978, § 64, Series A no. 28; *Van der Mussele v. Belgium*, 23 November 1983, § 33, Series A no. 70; *Pretto and Others v. Italy*, 8 December 1983, §§ 25-26, Series A no. 71; *Axen v. Germany*, 8 December 1983, §§ 30-31, Series A no. 72; *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 48-50, Series A no. 113; *Niemietz v. Germany*, 16 December 1992, §§ 30-31, Series A no. 251-B; *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, §§ 24-25, *Reports* 1998-I; *Witold Litwa v. Poland*, no. 26629/95, §§ 60-61, ECHR 2000-III; *Société Colas Est and Others v. France*, no. 37971/97, §§ 40-42, ECHR 2002-III; *Hajduová v. Slovakia*, no. 2660/03, § 54, 30 November 2010; and *Porchet v. Switzerland* (dec.), no. 36391/16, §§ 18-25, 8 October 2019).

100. There is no contention that Rule 5 § 1 (2) itself was too vague. In any event, rules intended to ensure the orderly functioning of a parliament inevitably comport an element of vagueness and are subject to interpretation in parliamentary practice (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 126, 17 May 2016).

101. The applicant's removal from his post was hence "prescribed by law".

(b) Legitimate aim(s)

(i) The parties' submissions

102. The Government submitted that the applicant's removal from his post had sought to protect morals, the reputations of the National Assembly and of the victims of the communist regime, and public order.

103. The applicant submitted that, as was evident from his arguments in relation to Article 17 of the Convention (see paragraph 77 above), his removal had not pursued a legitimate aim.

(ii) The Court's assessment

104. The protection of public order, in the wide sense ascribed by the Government to that notion, is not among the legitimate aims featuring in Article 10 § 2 of the Convention (see *Genov and Sarbinska*, cited above, § 70). But the Court can accept that the applicant's removal from his post sought to protect "morals" (see, *mutatis mutandis*, *Sinkova v. Ukraine*, no. 39496/11, § 103, 27 February 2018, and *Genov and Sarbinska*, cited above, § 68) and "the rights of others" (see, *mutatis mutandis*, *Pastörs*, cited above, § 41 *in fine*). There is in any event a natural link between protection of morals and protection of the rights of others (see *Müller and Others v. Switzerland*, 24 May 1988, § 30, Series A no. 133).

(c) "Necessary in a democratic society"

(i) The parties' submissions

105. The Government submitted that the applicant's removal from his post had been necessary and proportionate. His statements about "the People's Court", which had reflected his firm beliefs on the point, had grossly disrespected the survivors and the memory of the victims, and had gone against core democratic values, in breach of the heightened ethical duties and responsibilities flowing from his post. The statements had been cutting and uncalled for rather than linked with an ongoing debate. Both the National Assembly and the Constitutional Court had given solid reasons for the removal, decided under the Assembly's power to manage its internal affairs, and had demonstrated a commitment to counter any attempts to justify the persecution carried out by "the People's Court". The removal had been a milder measure than a criminal conviction, a fine, or a prohibition to hold public office. It had, moreover, not affected the applicant's political party. When reviewing the removal, the Constitutional Court had considered its seriousness. More generally, the procedure in which it had been decided and reviewed had been devoid of any arbitrariness.

106. The applicant submitted that his removal had been neither necessary nor proportionate, and that the majority of the Constitutional Court had not duly reviewed those points.

(ii) The Court's assessment

107. The gist of the complaint is that the applicant's removal from his post was impermissible in itself rather than that he had no procedural safeguards in relation to it. Indeed, he was aware of the reasons for the removal, and was heard before the proposal for the removal was voted on (see paragraphs 16, 18, 20 and 49 above). Although the removal could not be contested by him personally, it was challenged by sixty members of parliament before the Constitutional Court, and the applicant was invited to intervene in the proceedings, but did not do so (see paragraphs 25-26 above). The

Constitutional Court then examined whether the removal had been lawful and justified, *inter alia*, in the light of the arguments relating to the applicant's right to freedom of expression (see paragraphs 28-33 above).

108. The Court's analysis must hence focus on the substance of the necessity issue rather than on procedural points (see *Karácsony and Others*, cited above, §§ 153-54). In this case, the relevant factors are the nature of the applicant's statements; the context in which the alleged interference occurred; and the severity of the alleged interference.

(α) Nature of the statements in issue

109. The question is, more specifically, whether the statements in connection with which the applicant was removed from his post belonged to a type of expression entitled to heightened or reduced protection under Article 10 of the Convention.

– *First statement*

110. The first of those statements – the trenchant criticism of the treaty between Bulgaria and (as it then was) the former Yugoslav Republic of Macedonia – can hardly be seen as capable of justifying the measure taken against the applicant. An opposition member of parliament is entitled to use strong language when criticising the government and its policies. The terms "wheeling and dealing of the lowest order", "a stillborn" and "a fabrication" (see paragraphs 8 and 18 above) were acerbic, but by no means hate speech or anti-democratic speech.

111. But it cannot be said that this ground for the applicant's removal remained relevant, since when it reviewed the removal, the Bulgarian Constitutional Court did not even mention it (see paragraphs 28-30 above), thus apparently treating it as inappropriate. It follows that this statement cannot be taken into account when assessing the necessity of the measure against the applicant (see, *mutatis mutandis*, *United Macedonian Organisation Ilinden-PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, § 80, 18 October 2011, and *National Turkish Union Kungyun v. Bulgaria*, no. 4776/08, § 40, 8 June 2017).

– *Second statement*

112. In view of the context in which it was made, the second statement – the applicant's insistence that "the victims of fascism" in Bulgaria be commemorated alongside those of the victims of the communist regime, uttered at the precise moment when the Bulgarian Parliament was rising for a minute of silence to commemorate the victims of the communist regime and without the applicant having been given the floor – can be seen as disparaging the victims of the communist regime, and as going against the values

underpinning the Convention. It did not therefore deserve the heightened protection normally accorded to expression on issues of public interest.

113. The applicant made the statement on 1 February, which in Bulgaria has since 2011 been a day dedicated to the commemoration of all victims of the communist regime, the precise date having been chosen because "the People's Court" had handed down its first judgments on that day in 1945 (see footnote 2, and paragraph 62 above). The applicant spoke in his capacity as representative of the political party which is the successor of the party which ruled throughout the communist regime and which was most responsible for the creation and operation of "the People's Court" (see paragraphs 4, 12 and 58 above, and footnotes 1, 3 and 13). His statement was preceded by a speech in which he glorified the political violence in which that party had engaged in the past, ridiculed the member of parliament who had proposed the minute of silence and his assessment of "the People's Court", defended the proposition that that tribunal had been a measure fully justified by decisions of the Allies in the Second World War, and in effect categorised all people convicted by it as "Hitlerites", "war criminals" and "fascists" (see paragraph 12 above, and footnote 3). On this latter point, reference is to be made to the considerations relating to "the People's Court" in paragraph 117 below.

114. Moreover, the applicant spoke without having been given the floor and at the precise moment when Parliament was rising to commemorate the victims of the communist regime – including those of "the Revival Process" (see paragraphs 11-13 above, and footnote 4) – with a minute of silence. A certain parallel can thus be drawn with the conduct of the applicant in *Pastörs* (cited above, §§ 5 and 45), where a far-right politician had deliberately opted to give a speech commemorating the victims of a maritime disaster in which a Soviet submarine had sunk a ship evacuating German civilians just one day after the Holocaust Remembrance Day, to mark the contrast between German and Jewish victims in the Second World War.

– *Third statement*

115. The first question in relation to the third statement is whether it can be attributed to the applicant. Although some of the dissenting judges in the Bulgarian Constitutional Court had misgivings on this point and the applicant denied it in the present proceedings, there can be little doubt that, as tacitly accepted by the majority of that court, he was the author of the part of the declaration on behalf of his political party which justified "the People's Court" as "necessary and inevitable wartime justice" (see paragraphs 14, 16, 18 and 33 above, and compare *Wojczuk*, cited above, § 81). At the time the declaration was published, the applicant was a member of that party's bureau, and the position expressed in the declaration, from which the bureau then almost immediately distanced itself, matched, both in content and style, the views about "the People's Court" which the applicant had articulated both

shortly before that, on 1 February 2018, and shortly after that, in response to a question by a journalist on 15 February 2018 – when he said that it was a number of international documents rather than him that had characterised "the People's Court" as "necessary and inevitable wartime justice", and added that those documents had "even characterised [that tribunal] as mandatory" – and in the course of the debate preceding the vote for his removal on 21 February 2018 (see paragraphs 12, 17 and 20 above).

116. The second question with respect to that statement is how it can be characterised. It is not for the Court to make pronouncements on matters of purely historical fact (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 96, ECHR 2006-IV). For present purposes, however, the analysis must focus, as it did in the Bulgarian Constitutional Court (see paragraph 29 above), on the role of "the People's Court" in Bulgaria's history, and on the way in which that extraordinary tribunal has been perceived there since the fall of the communist regime.

117. "The People's Court" was established in the wake of the *coup d'état* in Bulgaria on 9 September 1944 and the country's occupation by the Soviet army. It was tasked with trying, within a short time, the alleged perpetrators of a number of retrospectively established and broadly defined offences (some akin to war crimes and crimes against peace and humanity, others less so, and carrying palpably political overtones), and could try, convict and sentence even people who had already died. It tried in total about 11,000 people and convicted and sentenced more than 9,000 of them, nearly 2,700 to death (see paragraphs 54-62 above, and footnotes 3 and 15).

118. After the fall of the communist regime in Bulgaria, a number of convictions handed down by "the People's Court" were set aside, some on the basis that the people concerned had been found guilty and penalised without concrete evidence and pursuant to phoney charges, simply on the basis of a preconceived idea of their collective guilt as members of a government deposed by force, and thus in effect punished for their political views and actions (see paragraph 67 above). Some people convicted by "the People's Court" were subsequently rehabilitated on the basis that they had been found guilty of nothing but exposing Soviet war crimes (see paragraph 73 above).

119. In 1994 the Plenary Meeting of Bulgaria's Supreme Court expressed the view that the decree establishing "the People's Court" had been contrary to basic tenets of criminal law and justice, such as the prohibition against retrospective criminalisation and the principle that criminal liability can only subsist while the person concerned is still alive (see paragraph 64 above).

120. For its part, the Bulgarian Constitutional Court, though finding it did not have jurisdiction to review directly the constitutionality of that decree, stated that "the People's Court" was an extraordinary tribunal whose judgments "could not be characterised as judicial decisions", and that they

"[had not met] the requirements of due process" (see paragraphs 65 and 68 above).

121. In 2000 the Bulgarian legislature enacted a memorial law which proclaimed that the establishment of the communist regime in the country had started on 9 September 1944 and had been characterised by the suppression of human rights and the democratic system, and condemned "the People's Court" as a tool for political reprisals (see paragraphs 69-72 above).

122. It can hence be accepted that "the People's Court", irrespective of whether some of the people tried and convicted by it might have been genuinely guilty of war crimes and crimes against peace and humanity (see paragraphs 60-61 above), was a tribunal contrary to the most basic requirements of a fair trial, and is perceived in Bulgaria as inextricably linked with the repressions carried out by the communist regime. It follows that any categorical and wholesale justification of that tribunal can be seen as running counter to the underlying values of the Convention. Indeed, the Court has consistently emphasised the prominent place held in a democratic society by the right to a fair trial (see, among many other authorities, *Delcourt v. Belgium*, 17 January 1970, § 25, Series A no. 11; *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37). It is with reference to this aspect of the case that Article 17 of the Convention has an important role to play, in guiding the assessment of the necessity of the interference with the applicant's right to make the statement (see, *mutatis mutandis*, *Pastörs*, cited above, § 46).

123. The statement – made on behalf of a political party whose predecessor had borne a significant responsibility for the establishment and operation of "the People's Court" (see paragraphs 14 and 58 above, and footnotes 3 and 13) – had no nuance; it amounted to a categorical and wholesale justification of that tribunal, without any recognition that it had been set up and had operated in breach of the basic fair-trial requirements and had handed down thousands of arbitrary convictions and sentences of political opponents (see paragraph 67 above), many of which had resulted in immediate executions. Nor was the statement made in the heat of the moment; it was in writing, and its wording was by all appearances quite deliberate (compare *Pastörs*, cited above, § 46).

124. It follows that the statement did not deserve the heightened protection normally accorded to expression on issues of public interest.

125. The fact that this was a statement made by a member of parliament does not in the circumstances detract from that conclusion. It is true that freedom of expression for members of parliament as a rule enjoys heightened protection (see *Karácsony and Others*, cited above, § 137, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 242-43, 22 December 2020). All the same, that freedom, since it carries with it "duties and responsibilities", is not absolute (see *Karácsony and Others*, § 139, and *Selahattin Demirtaş*, § 245, both cited above). In particular, statements by

parliamentarians which are at odds with the democratic values of the Convention system deserve little, if any, protection (see *Pastörs*, cited above, § 47; *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, § 90 *in fine*, 16 February 2021; and *Behar and Gutman v. Bulgaria*, no. 29335/13, § 101 *in fine*, 16 February 2021). Although these "duties and responsibilities" do not of course rule out any discussion of delicate or sensitive matters, it is nonetheless crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance, and to be particularly careful to defend democracy and its principles. Owing to a politician's status and position in society, he or she is more likely to influence voters, or even incite them, directly or indirectly, to adopt positions and conduct that may prove unlawful (see *Sanchez v. France* [GC], no. 45581/15, §§ 150-51 and 187, 15 May 2023).

(β) Context of the alleged interference

126. The historical experience of the Contracting State concerned is of considerable importance when assessing whether an interference with the right to freedom of expression was necessary (see *Vogt v. Germany*, 26 September 1995, §§ 51 and 59, Series A no. 323; *Rekvényi v. Hungary* [GC], no. 25390/94, §§ 41 and 47, ECHR 1999-III; *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 116, ECHR 2005-VI; *Ždanoka*, cited above, § 119-21; *Fáber v. Hungary*, no. 40721/08, § 58, 24 July 2012; and *Vona v. Hungary*, no. 35943/10, § 66, ECHR 2013).

127. After the Second World War Bulgaria, like other countries in central and eastern Europe, experienced several decades of totalitarian communist rule. As recorded in points 2 and 3 of PACE Resolution 1481 (2006), those communist regimes were, without exception, characterised by massive violations of human rights, with the vast number of victims in each State being its own nationals (see paragraph 74 above). The Court has, for its part, had special regard to the burden of that communist totalitarian legacy (see *Ždanoka*, cited above, §§ 119-20). It has also noted that the systematic terror applied to consolidate communist rule in those countries remains a serious scar in the mind and heart of Europe (see *Vajnai v. Hungary*, no. 33629/06, § 57, ECHR 2008), and recently observed that any attempt, even if only potential, to perpetuate the policies of those regimes would seriously affect the rule of law and the foundations of democracy (see *Ignatencu and the Romanian Communist Party v. Romania*, no. 78635/13, §§ 99-100 and 103, 5 May 2020, and compare with the circumstances in *Romanov v. Ukraine* [Committee], no. 63782/11, §§ 159 and 163, 6 July 2020). In the light of all this, it can be accepted that, given their recent history, States which have experienced communist repressions and atrocities have a special moral responsibility to distance themselves from them. The absence of a proper investigation of those atrocities and the comparatively poor public awareness

of them, noted in points 5 and 6 of the above-mentioned Resolution 1481 (2006), make this responsibility even more pressing in a sense.

128. As noted in paragraph 122 above, in Bulgaria "the People's Court" is justifiably seen as inextricably linked with the repressions carried out by the communist regime there.

129. Although "the People's Court" operated more than seventy years ago (see paragraphs 54, 59 and 62 above), it can hardly be said that statements about it in Bulgaria are of historical significance only. The repressive regime with whose establishment that tribunal is linked came to an end much later, a little more than thirty years ago (see paragraph 70 above). The passage of time did not therefore make it inappropriate for the Bulgarian authorities to react in some form to the applicant's statement (see, *mutatis mutandis*, *Ždanoka*, cited above, § 131).

130. It is against this backdrop that the necessity of removing the applicant from his post must be assessed. That is precisely what the Bulgarian Constitutional Court did when it reviewed the removal (see paragraph 29 above).

(γ) Severity of the alleged interference

131. When a Contracting State seeks to rely on the principle of "a democracy capable of defending itself" – reflected in Article 17 of the Convention – to justify interfering with rights protected under the Convention or its Protocols, it must carefully evaluate the scope and consequences of the measure at issue, to ensure that a proper balance is attained between the need to defend democratic society and the protection of those rights (see *Ždanoka*, cited above, § 100 *in fine*).

132. In the present case, the reaction to the applicant's statement justifying "the People's Court" consisted in his removal from a high-ranking political post which did not enjoy full tenure (see paragraph 93 above). Having as its aim to regulate access to the political process at the highest level, that measure was preventive rather than punitive in character (see, *mutatis mutandis*, *Ždanoka*, cited above, §§ 122 and 124). This is confirmed both by the reasons put forward for it and by the reasons given by the Constitutional Court to uphold it (see paragraphs 18 and 29-30 above).

133. Moreover, that removal had no long-term consequences for the applicant (contrast, *mutatis mutandis*, *Ždanoka*, cited above, § 121, and *Paksas v. Lithuania* [GC], no. 34932/04, § 98, ECHR 2011 (extracts)). Nor did it lead to any such consequences for his political party – which was able to, and despite its initial reluctance eventually did, nominate another Deputy Speaker in his place (see paragraphs 22-23 *in fine* and 35 above).

134. The effects of the measure were thus mostly symbolic. Although entailing a reduction in pay, it cannot be equated to the loss of a stable job and of one's livelihood (see *Vogt*, § 60; *Fuentes Bobo*, § 49; and *Heinisch*, § 91, all cited above), to a disciplinary sanction imposed on a member of

parliament (see *Szél and Others v. Hungary*, no. 44357/13, § 84, 16 September 2014), let alone to an order to pay damages (see *Rashkin v. Russia*, no. 69575/10, § 19, 7 July 2020; *Kılıçdaroğlu v. Turkey*, no. 16558/18, § 66, 27 October 2020; and *Marinoni v. Italy*, no. 27801/12, § 82, 18 November 2021), to a lifting of parliamentary immunity opening the way to a criminal prosecution (see *Selahattin Demirtaş*, cited above, §§ 246-47, and *Kerestecioğlu Demir v. Turkey*, no. 68136/16, § 67, 4 May 2021), or to serious punitive measures such as a criminal conviction (see *Lehideux and Isorni*, § 57, and *Wojczuk*, § 105, both cited above), a criminal fine (see *Soulas and Others v. France*, no. 15948/03, § 46, 10 July 2008; *Orban and Others v. France*, no. 20985/05, § 53, 15 January 2009; and *Šimunić v. Croatia* (dec.), no. 20373/17, § 47, 22 January 2019), a criminal fine convertible into imprisonment (see *Nix v. Germany* (dec.). no. 35285/16, § 55, 13 March 2018; *Williamson v. Germany* (dec.), no. 64496/17, § 27 *in fine*, 8 January 2019; and *Bonnet v. France* (dec.), no. 35364/19, §§ 56-58, 25 January 2022), a suspended custodial sentence (see *Savva Terentyev v. Russia*, no. 10692/09, § 83, 28 August 2018, and *Pastörs*, cited above, § 48), or an effective custodial sentence (see *Fatullayev v. Azerbaijan*, no. 40984/07, § 103, 22 April 2010, and *Rouillan v. France*, no. 28000/19, §§ 74-75, 23 June 2022). Nor was the applicant somehow prevented from disseminating his views, either at the time or subsequently (contrast *Monnat v. Switzerland*, no. 73604/01, § 70, ECHR 2006-X).

135. The nature of the measure taken against the applicant must weigh heavily in the assessment of whether the alleged interference with his right to freedom of expression was necessary and proportionate.

(δ) Conclusion

136. In the light of the factors analysed above – the nature of the statements in issue, the context in which the Bulgarian authorities reacted to them, and the nature of the measure which they took in response – the alleged interference with the applicant's right to freedom of expression can be seen as "necessary in a democratic society".

137. There has therefore been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning the alleged interference with the applicant's right to freedom of expression admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 27 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Serghides;
(b) dissenting opinion of Judge Zünd.

P.P.V.
M.B.

CONCURRING OPINION OF JUDGE SERGHIDES

1. The applicant complained that his removal from his post as Deputy Speaker of the Bulgarian Parliament (National Assembly) on account of public statements that he had made had violated Article 10 of the Convention.

2. I voted in favour of both points 1 and 2 of the operative provisions of the judgment and the only reason I have decided to write this concurring opinion is because I wish to elaborate on the requirement of Article 10 § 2 of the Convention, namely, that an interference with the right to freedom of expression has to be "prescribed by law", as applied to the facts of the present case.

3. Rule 5 § 1 (2) of the Assembly's Rules provides that Deputy Speakers may be removed from their post before the end of their term of office if, *inter alia*, one-third of the Assembly's members propose their removal owing to (a) a "systematic abuse of their powers", or (b) a "systematic failure to carry out the duties [falling] within the ambit of their competence" (see paragraph 48 (b) of the judgment). The Constitutional Court dismissed the request to declare the applicant's removal from his post unconstitutional by seven votes to five based on Rule 5 § 1 (2) above (see paragraphs 27-30 of the judgment).

4. My only concern lay in the question whether the majority in the Constitutional Court had interpreted and applied Rule 5 § 1 (2), and in particular the words "systematic abuse of their powers", so arbitrarily and unreasonably as to mean, in effect, "any abuse of [his] powers", without actually taking into account the adjective "systematic", which refers to and qualifies or characterises that "abuse". If that were the case, then such an interpretation of the law would amount to a broad limitation to the applicant's freedom of expression and would therefore contravene the principle of effectiveness – one of the most fundamental principles of the Convention – which requires that "limitations to rights must be construed restrictively, in a manner which gives practical and effective protection to human rights" (see, *inter alia*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 146, ECHR 2008, and *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway*, no. 45487/17, § 96, 10 June 2021). Consequently, a broad limitation to freedom of expression, if that were the case, would ultimately lead to the violation of the applicant's freedom of expression under Article 10. However, as I will explain below, that was not the case here, as the measure did not constitute a broad limitation to the applicant's freedom of expression.

5. My concern also stemmed from this comment in paragraph 99 of the judgment: "The construction which the majority of that court put on the word 'systematic' in the Rule, *though perhaps unorthodox*, cannot be seen as straining the meaning of that term ..." (emphasis added). I am aware of the rule of statutory interpretation that unless a contrary intention appears, the

same terms in a same statute are presumed to have the same meaning (see F. A. R. Bennion, *Bennion on Statutory Interpretation – A Code*, 5th edition (LexisNexis, 2008), section 355, at p. 1160). The adjective "systematic" is used in Rule 5 § 1 (2) twice, once regarding the abuse of powers we are discussing here, and the other time in the context of a "systematic failure to carry out the duties [falling] within the ambit of their competence", where it is obvious that the adjective rather or mainly has a repetitive or quantitative sense.

6. According to the *Oxford Dictionary of English* (3rd edition, Angus Stevenson (ed.), OUP, current online version 2015), "systematic" as an adjective, means "done or acting according to a fixed plan or system; methodical". In my view, following its literal meaning, the adjective "systematic" does not necessarily require repetitive conduct, so long as the existence of a fixed plan can be proved by the details of a single instance of conduct (which may have several aspects). Therefore, regarding the abuse of powers, I believe that the adjective "systematic" has a more substantial meaning than the same adjective as used when referring to the failure to carry out duties, where it is more quantitative in character.

7. The majority in the Constitutional Court, in explaining in their judgment that the applicant had committed an abuse of powers, provided two grounds: firstly, that the systematic nature of the applicant's conduct "did not have a simply quantitative dimension" – and it is to be remembered here that the judgment was based on two statements and not only one statement made by the applicant –, and, secondly, that the applicant's conduct had run counter to the value choice expressed in section 2(1)(3) of the 2000 Act Declaring the Communist Regime in Bulgaria Criminal, providing that the management and chief activists of that party had been responsible for "the unprecedented reprisals against ... all innocent [people] convicted by the so-called 'People's Court'" (see paragraphs 29-30 and 71 of the judgment).

8. My difficulty here is that, in respect of this second ground, the Constitutional Court indicated that the applicant's conduct had amounted to an abuse of his powers, but did not at the same time explain how this conduct had been "systematic", in the sense of being in accordance with a fixed plan. Nevertheless, the judgment of the Constitutional Court applying Rule 5 § 1 (2) to the applicant's case cannot be considered arbitrary or unreasonable, because in the circumstances it is apparent from his conduct, especially from the second of his statements, that he was indeed abusing his powers with a fixed plan and in a methodical manner (to refer again to the dictionary definition above). The Constitutional Court was no doubt aware of this aspect, even if it did not mention it expressly in that context. Thus while the present judgment regards the construction of "systematic" as "perhaps unorthodox", the application of the law was not at all arbitrary. That the applicant's conduct had a fixed plan and that he acted methodically in abusing his powers is clear from what is stated in paragraphs 112-114 of the present

judgment, referring to and analysing the applicant's second statement, which provides all the facts and elements necessary for establishing that he had acted in such a "systematic" manner. Those facts or elements are, *inter alia*¸ the following: (a) the applicant made the statement on 1 February, which in Bulgaria has, since 2011, been a day dedicated to the commemoration of all victims of the communist regime; (b) he spoke without having been given the floor and at the precise moment when Parliament was rising to commemorate the victims of the communist regime with a minute's silence; (c) he ridiculed the member of parliament who had proposed the minute's silence and his assessment of the "People's Court"; (d) his statement was preceded by a speech in which he glorified the political violence in which the Bulgarian Communist Party had engaged in the past.

9. All these facts or elements contained in the applicant's second statement, which suffice to establish or prove a fixed plan and method on the part of the applicant in abusing his powers, should be looked at and examined together – along with the content and the abusive character of that statement – as well as, of course, the content of the applicant's third statement and the circumstances in which it was made, which also show the existence of a fixed plan and an intention to abuse his powers. It is not the role of the Court to dispute the finding of the majority in the Constitutional Court that the third statement could indeed be attributed to the applicant.

10. Thus my original concern as to whether the measure, as interpreted by the Constitutional Court, might amount to a broad limitation of freedom of expression can be overcome by the manner in which that court ultimately applied the law in the circumstances of the case. In that light, I would hold, as does the judgment in paragraph 101, that the applicant's removal from his post was "prescribed by law".

DISSENTING OPINION OF JUDGE ZÜND

1. I respectfully disagree with the view that Article 10 has not been violated in the instant case.

2. According to Rule 5 § 1 (2) of the Bulgarian Parliament's Rules, Deputy Speakers may be removed from their post before the end of their term of office if, *inter alia*, one-third of the Assembly's members propose their removal owing to (a) a "systematic" abuse of powers", or (b) a "systematic failure to carry out the duties [falling] within the ambit of their competence" (see paragraph 48 (b) of the judgment).

3. The Assembly based its decision on the removal of the applicant from the post of Deputy Speaker on three incidents. Firstly, on the vigorous speech delivered in his personal capacity as a member of the Assembly on the proposed treaty with the then former Yugoslav Republic of Macedonia (see paragraphs 6-8 of the judgment); secondly, on the statement made on behalf of his group concerning the proposal of another group to hold a minute's silence to commemorate "the victims of the communist regime" (see paragraph 12 of the judgment), and his behaviour after the Speaker invited the members to observe the minute of silence (see paragraph 13 of the judgment); and thirdly, on the declaration issued by the Bulgarian Socialist Party on 13 February 2018, attributed to the applicant, according to which the "People's Court" had been required by the Allied Powers in the Second World War and had been a "necessary and inevitable wartime justice", a declaration immediately withdrawn by the Party as being merely a draft not approved by the Bureau and not reflecting the position of the Party (see paragraph 14 of the judgment).

4. From the outset, I would like to emphasise that this Court famously held in *Handyside v. the United Kingdom* (7 December 1976, § 49, Series A no. 24) that freedom of expression constitutes "one of the essential foundations of [a democratic] society" and "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population." To give effect to this understanding of freedom of expression in the context of political speech or debate on questions of public interest, the Court made clear in *Perinçek v. Switzerland* ([GC], no. 27510/08, §§ 204, 206 and 280, ECHR 2015 (extracts)) that no restrictions or penalties should be imposed on speech unless it could be regarded as a direct or indirect call to violence or as a justification of violence, hatred or intolerance. Thus, in a recent judgment (*Erkizia Almandoz v. Spain*, no. 5869/17, 22 June 2021) the Court found a violation of Article 10 because of the penalty imposed by the Spanish courts on the applicant, who had given a speech ending with the exclamation "Long live Argala!" at an event paying tribute to a senior member of the Basque terrorist organisation ETA which was regarded by the Spanish authorities as

a glorification of terrorist activities. As Judge Lemmens rightly clarified, the term "*justification* of violence, hatred or intolerance" (emphasis added) must be understood in the context of speech directed against particular population groups and cannot be understood as a separate category distinguishable from calls to violence or hate speech.

5. Against the background of this case-law, the first and third incidents held against the applicant fall outside the scope of legitimate and proportionate restrictions on his freedom of expression. He expressed in these two statements his view on the draft of a treaty and – assuming that he was the author of the declaration in question – on the role of the "People's Court" at the end of World War II. These are not instances of speech calling for violence or inciting hatred. They simply reflect the applicant's thoughts on these matters. The same is true of the speech given by the applicant when a minute's silence was proposed in Parliament and he was given the floor by the Speaker. On the other hand, what he may legitimately be criticised for is the fact that he took the floor again, without permission, when the minute's silence was already under way.

6. Bearing this in mind, there remains just one incident for which the applicant may be criticised. As already mentioned, a Deputy Speaker may be removed from his or her post in the event of systematic abuse of power or systematic failure to carry out his or her duties. A one-off misdemeanour cannot be equated to systematic failure without arbitrarily interpreting the law. To do so is incompatible not only with the ordinary meaning of the term, but also with the purpose of the law. A Deputy Speaker may be removed when he or she is to be considered unable or unwilling to fulfil the duties of that office. This cannot be based on a single incident. The majority themselves consider such an interpretation as "perhaps unorthodox" (see paragraph 99 of the judgment). In his concurring opinion Judge Serghides, while not hiding his concerns, tries to overcome them by explaining that the applicant's misconduct, even it was a single incident, may have resulted from a fixed plan and may therefore be considered systematic. I cannot but disagree. I reiterate that speech as such, if it is not related to calls to violence, hatred or intolerance, cannot justify restrictions. A single misdemeanour remains a single one, even if it is accompanied by speech of which the majority do not approve or which they may even find shocking.

7. These are the reasons why, in my humble view, the Bulgarian Parliament and the Constitutional Court were in violation of Article 10 in respectively removing and upholding the removal of the applicant as Deputy Speaker.