

## Fine for Blagoev statue Santa Claus protest was a violation

In today's **Chamber** judgment<sup>1</sup> in the case of [Handzhiyski v. Bulgaria](#) (application no. 10783/14) the European Court of Human Rights held, by 6 votes to 1, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights

The case concerned the applicant's placing of a Santa Claus hat and a sack on the statue of Dimitar Blagoev in the main square of Blagoevgrad on Christmas Day as a form of political protest. He was convicted and fined for minor hooliganism.

The Court found in particular that the applicant had engaged in protest and even satire, and had not damaged the statue. Although people may have been insulted, that fact had not been enough to justify the interference with his freedom of expression.

### Principal facts

The applicant, Kaloyan Tomov Handzhiyski, is a Bulgarian national who was born in 1971 and lives in Blagoevgrad (Bulgaria). He is a local politician.

On 14 June 2013 demonstrations broke out around Bulgaria against the then new Government. The applicant was at that time chairman of the local branch of the Democrats for a Strong Bulgaria (*Демократи за силна България*), a political party which did not hold seats in Parliament and which supported the anti-government protests.

In the early hours of 25 December 2013, the statue of Dimitar Blagoev – after whom the town of Blagoevgrad was named and whose statue was somewhat controversial – in the central square of Blagoevgrad was painted red and white so as to resemble Santa Claus. The words "Father Frost" (*Дядо Мраз*) were sprayed underneath.

Later that Christmas Day the applicant went to the statue, which had a group of people around it by that time, and put a Santa Claus hat on his head and a red sack at his feet. The word "resignation" was attached to the sack. The applicant was arrested about four hours later and charged with minor hooliganism before being released.

He was tried on 30 December 2013. In his defence he invoked his constitutional right to protest. He was found guilty and fined 100 Bulgarian leva (about 51 euros). The court noted the limits on freedom of expression, finding that the applicant had crossed the line from a political joke to hooliganism. That judgment was upheld on appeal. The applicant paid the fine on 20 January 2014.

### Complaints, procedure and composition of the Court

Relying on Article 10, the applicant complained that the interference with his right to freedom of expression had not been necessary in a democratic society.

The application was lodged with the European Court of Human Rights on 28 January 2014.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

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

Tim Eicke (the United Kingdom), *President*,  
Yonko Grozev (Bulgaria),  
Faris Vehabović (Bosnia and Herzegovina),  
Iulia Antoanella Motoc (Romania),  
Armen Harutyunyan (Armenia),  
Gabriele Kucsko-Stadlmayer (Austria),  
Ana Maria Guerra Martins (Portugal),

and also Andrea Tamietti, *Section Registrar*.

## Decision of the Court

The Court considered that the applicant's actions, in context, can be seen as "expression" within the meaning of the Convention. The applicant's conviction and fine amounted thus to an interference with that freedom of expression. Broadly, the interference was designed to protect the rights of others – passers-by who might have been insulted. The Court however noted that there had been no risk to public safety in the applicant's actions.

The Court stated that the applicant's actions could be seen as both satirical and political protest. While holding that measures, including proportionate sanctions, designed to dissuade acts which could destroy monuments or damage their physical appearance could be seen as "necessary in a democratic society", the Court noted that the applicant had not acted violently nor damaged the statue. Nor was there evidence indicating that he had been responsible for painting the statue. The assessment of whether it could be "necessary in a democratic society" to impose sanctions in relation to acts such as his – which, though capable of profaning a monument, did not damage it – was more nuanced. It turned on, among other things, the precise nature of the act, the intention behind it, and the message sought to be conveyed by it, as well as on the social significance of the monument, the values or ideas which it symbolised, and the degree of veneration that it enjoyed in the respective community.

The Court accepted that some people may have been hurt by the applicant's actions at the statue. However, it reiterated that freedom of expression was applicable not only to "information" or "ideas" that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed the State or any sector of the population.

The Court thus found, based on the criteria set out by it, that the interference with the applicant's right to freedom of expression had not been necessary, leading to a violation of Article 10 of the Convention.

### [Just satisfaction \(Article 41\)](#)

The Court held that Bulgaria was to pay the applicant 54.66 euros (EUR) in respect of pecuniary damage, EUR 2,000 in respect of non-pecuniary damage and EUR 2,762.76 in respect of costs and expenses.

## Separate opinion

Judge Vehabović expressed a dissenting opinion, which is annexed to the judgment.

*The judgment is available only in English.*

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