The Influence of the Judgment of the European Court of Human Rights in the Case of Tsonyo Tsonev v. Bulgaria

The Application of the ne bis in idem Principle in Bulgaria in Cases of Administrative and Criminal Proceedings for the Same Illegal Act

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ABSTRACT

This case annotation on the judgment of the European Court of Human Rights of 14 January 2010 in Tsonyo Tsonev v. Bulgaria (№ 2 - application № 2376/03) reveals that the case entails several significant and sensitive issues of fundamental importance, greatly exceeding the dimensions of the specific legal dispute:
- The enforcement of the final judgments of the European Court of Human Rights (ECtHR) against Bulgaria;
- The application of the ne bis in idem rule;
- The interplay between criminal and administrative penal liability of the same person for the same act;
- The role of the interpretative activity of the General Assembly of the Criminal Chambers (GACC) of the Supreme Court of Cassation (SCC) of the Republic of Bulgaria.
This article discusses these items and introduces the reader to the mechanisms in Bulgaria for following up ECtHR judgments, as well as a new approach to the application of the ne bis in idem principle in cases of duplicative administrative and criminal proceedings.

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I. Facts of the Case

The applicant, *Tsonyo Tsonev*, was born in 1977 and lived in the town of Gabrovo, Republic of Bulgaria. On the evening of 11 November 1999, he and his friend, Mr D.M., after consuming alcoholic beverages, went to Mr G.I.'s apartment with the intention of collecting Mr D.M.'s ex-girlfriend's belongings that were left in Mr G.I.'s home. A fight ensued, in which the victim G.I. lost two teeth. Neighbours alerted the police about the quarrel, and the applicant and Mr D.M. were arrested.

On 12 November 1999, a police officer prepared a report on the events of the previous night. Based on the information contained in the report, the mayor of the town of Gabrovo recognized that the applicant, Mr Tsonev, had violated Art. 2, para. 1 of Ordinance № 3 for the preservation of public order on the territory of the municipality of Gabrovo, and issued an administrative penal decree (dated 19 November 1999), which imposed a fine of BGN 50 (an amount equal to USD 26.28 at the then applicable exchange rate[1]). The penal decree was motivated by considerations that the applicant's actions in breaking down the door of Mr G.I.'s apartment and the assault constituted a breach of public order and a clear manifestation of disrespect for society, for which reason the applicant had to face an administrative sanction.

Following the entry into force of the administrative penal decree issued against Tsonev, the prosecution service brought charges against him and the defendant Mr. D.M. as his accomplice for causing average bodily injury to Mr G.I. in the form of the loss of two teeth as a result of the fight on 11 November 1999 – a crime under Art. 129, para. 1 of the Criminal Code of the Republic of Bulgaria, as well as for using force to enter the victim's home – a crime under Art. 170, para. 2 of the Criminal Code.

Based on the indictment filed against the applicant, court proceedings were initiated before the Gabrovo District Court. By judgment of 14 November 2001, the court found the defendant Tsonev guilty of causing average bodily harm to Mr G.I. and sentenced him to eighteen months imprisonment; he was acquitted of the offences of acting in complicity with the defendant Mr D.M. and using force to enter the victim's home (the offence under Art. 170, para. 2 of the Criminal Code). The applicant appealed this sentence before the Gabrovo Regional Court, which upheld the first-instance judgment by decision of 9 April 2002. Upon appeal by the defendant Tsonev, a cassation proceeding was instituted and conducted before the SCC, which also upheld the decision of the district court by decision of 22 October 2002.

Tsonev lodged an application before the ECtHR alleging a violation of his right to a fair trial due to the SCC's refusal to appoint *ex officio* counsel and a violation of the *ne bis in idem* rule, as criminal proceedings had been instituted and conducted against him after he had already been sanctioned for the same act as a result of an administrative proceeding. The Strasbourg Court upheld both objections and concluded violations of Art. 6(1) and (3) lit. c) ECHR, and of Art. 4 of Protocol № 7 to the ECHR.

With regard to the violation of Art. 4 of Protocol № 7 to the ECHR, the ECtHR held in particular that, by its nature, the act, for which an administrative sanction (the fine of BGN 50 by the mayor of Gabrovo on the basis of Ordinance № 3 for the preservation of public order in the Gabrovo municipality) had been imposed upon the applicant, falls within the scope of the term "criminal proceedings" within the meaning of Art. 4 of Protocol № 7 (§ 50 of the ECtHR judgment). The applicant had been "convicted" in an administrative proceeding, which could be compared to a "criminal proceeding" in the autonomous sense of the term under the Convention, according to the criteria set out in the judgments of the Court in *Sergey Zolotukhin v. Russia, Lauko v. Slovakia, Kadubec v. Slovakia, Öztürk v. Germany,* and *Lutz v. Germany*. Accordingly, the criminal proceedings against the applicant were initiated and conducted for acts factually identical to those for which he had already been sanctioned by a valid decision of the administrative sanctioning body (the mayor of the

municipality of Gabrovo), which constituted a violation of the *ne bis in idem* rule, enshrined in Art. 4(1) of Protocol № 7 to the ECHR.

II. Mechanisms for the Effective Application of the ECHR in Bulgaria

At the time the decision convicting Tsonyo Tsonev was issued, Bulgaria had mechanisms in place for the actual and effective application of the Convention's provisions.

1. The position of the ECHR in the Bulgarian legal order

Art. 5, para. 4 of the Constitution places the Republic of Bulgaria among the states that recognize the primacy of international legal norms over national ones and thus contributes to reinforcing the role of international law. Accordingly, international treaties ratified in accordance with the Constitution and promulgated and entered into force on the territory of the Republic of Bulgaria, form an integral part of national law and prevail over conflicting provisions of the domestic legislation. This means that not all sources of international obligations into which Bulgaria has entered are integrated into the national legislation. Only if international treaties have been ratified and entered into force can they become part of domestic law without the need to adopt a special act for their implementation. By an interpretative decision in 1992,[2] the Bulgarian Constitutional Court introduced the need for promulgation as another requirement limiting the scope of international agreements that could be integrated into the domestic legal order without an act of transposition.[3]

The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was signed by Bulgaria on 7 May 1992 and ratified by a statute adopted by the National Assembly on 31 July 1992.[4] It has been in force since 7 September 1992 and was promulgated in the State Gazette, issue 80 of 2 October 1992. Consequently, the Convention forms part of Bulgarian national law, as its provisions prevail over conflicting domestic legislation. With the ratification of the Convention by the national parliament, the mandatory jurisdiction of the European Court of Human Rights in Strasbourg was expressly recognized. Protocol № 7 to the ECHR was signed by Bulgaria (without reservations) on 3 November 1993 and ratified by a statute adopted by the National Assembly on 12 October 2000.[5] It has been in force since 1 February 2001 and was promulgated in the State Gazette, issue 76 of 30 September 2011. Pursuant to Art. 5, para. 4 of the Constitution, the Protocol also forms part of domestic law and prevails over conflicting domestic provisions.

The constitutionally determined relationship between international and domestic law shows unequivocally the importance the Bulgarian Constitutional Court gives to international commitments, especially in the field of human rights protection. This further proves the pan-European and civilizational significance of the Convention for the national legal order. The interpretation of constitutional norms in the field of human rights should be in line with the highest human rights standards of the ECHR. In turn, the approach taken by the Constitutional Court strongly encourages and stimulates national courts to take into account the original meaning of the provisions of the Convention and to comply with ECtHR decisions. In addition to the direct repercussions of ECtHR decisions in the field of public international law, the ECtHR's interpretative acts are directly applicable, have immediate effect, and are mandatory, as the Convention is an integral part of Bulgarian domestic law. The direct applicability of the provisions of the Convention is indisputable, and especially since the 1990s, the Constitutional Court has had ample reason to uphold this understanding in a number of its judgments.[6]

2. The enforcement of ECtHR decisions in Bulgaria

The binding nature of the decisions of the ECtHR with regard to the convicted State also requires unconditional implementation of its final decisions. It is common ground that the ECtHR does not rule on the substance of the domestic law dispute in the context of which the infringement was committed. If a violation is found, the convicted State is obliged to remedy the defective legal relationship under national law by:

- Terminating the wrongful conduct;
- Restoring the situation that existed before the violation;
- Compensating for all consequences of the violation; and
- Providing compensation and guarantees against repetition of the violation.

It is well known that the ECHR's principle of subsidiarity confers on the State the responsibility to ensure the effective exercise of the rights and freedoms enshrined in the Convention, giving the State sovereign competence to decide how to implement the guarantees of the Convention in its own legal system.

The principle contained in Art. 46 ECHR obliges Member States to take all necessary measures to comply with and enforce the ECtHR's final judgments against them. This obligation is by no means limited only to the payment of the awarded compensation and costs to the individual applicant. In the event of a violation of the Convention, the State also has an obligation "to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment."[7]

With regard to the obligation of the Republic of Bulgaria to take general measures to implement the final decisions of the ECtHR against Bulgaria, the Committee of Ministers held on 30 November 2010 at its 1100th meeting that, in the case of *Tsonyo Tsonev v. Bulgaria*, the Bulgarian authorities were invited to "submit an action plan / report on the implementation of this decision."[8] Despite the reminder, effective measures to implement the decision in Tsonev were not taken until more than five years after its date of issuance.

III. Bulgaria's Inaction in Implementing the Tsonev Judgment

The reasons for the continuous inaction in the enforcement of the conviction decision are multifaceted.

Above all, they are rooted in the nature of the extremely sensitive issue raised in the case – the duplication of administrative and criminal proceedings and the cumulation of administrative and criminal sanctions. Although Bulgaria (like other Contracting Parties) attaches great importance to administrative sanctions, which are characterised by their efficiency and speed, there is a traditional understanding in Bulgaria that heavier criminal liability has absolute primacy over administrative liability. Therefore, there is an understandable tendency to limit the scope of the prohibition under Art. 4 of Protocol № 7 to double prosecution, trial, and punishment in respect only of criminal proceedings and criminal offenses in accordance with the relevant national legislation.

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Also important is the fact that when the established violation concerns a procedural rule that clearly contravenes the Convention, the proper synchronization with the requirements of the Convention is usually a primarily legislative task. In these cases, the judiciary often has limited leeway to apply the mandatory principles laid down by the ECtHR. The imperative nature of the procedural rules calls for their strict implementation due to the risk of distorting the proceedings from a procedural perspective. Therefore, the obligation to repeal or amend the rule in accordance with the Convention, or to fill gaps in the relevant procedural provisions, is assigned to the legislature for fear of another conviction by the ECtHR.

However, the ECtHR has skilfully identified another ground which contributed to the violation of the *ne bis in idem* rule, in particular with regard to the applicant, Mr Tsonev. In § 55 of its judgment, the Court noted:

> "…It is obvious that the courts could not terminate the criminal proceedings against him [the applicant] due to the existence of a previous sanction in the administrative proceedings, as, according to a binding interpretative decision of the former Supreme Court and the consistent jurisprudence of the Supreme Court of Cassation, the prohibition on repeating proceedings does not apply with regard to administrative proceedings."

With this remark, the Court practically discreetly suggested to the Bulgarian judiciary a way to eliminate the violation even without legislative intervention. A means for this is the interpretative activity of the SCC, which is outlined in the following section.

IV. The Interpretative Activity of the Bulgarian Supreme Court of Cassation

The interpretative activity of the Supreme Court of Cassation is a unique and specific feature of the Bulgarian legal order, intended for radically overcoming the contradictions and incorrect application of the laws by the courts. In addition to their direct judicial function, the supreme courts (Supreme Court of Cassation and Supreme Administrative Court) are entrusted with the exclusive power to exercise supreme judicial supervision over the "accurate and uniform application of the law" by all courts (Art. 124 of the Constitution). The accurate and uniform application of legal norms guarantees the principle of legal certainty of the citizens, which is an element of the criteria for rule of law. The essential aspect of the interpretative activity of the SCC is detailed in the Judiciary Act (Chapter Four, Section X, Art. 124 - Art. 131a). Interpretative decisions are binding for all bodies of the judiciary and the executive, for the bodies of local government, and for all bodies that issue administrative acts (Art. 130, para. 2 of the Judiciary Act). Characteristic of this activity is that the respective competent General Assemblies of the departments of the SCC do not carry out judicial activity in considering and resolving a specific legal dispute, but interpret legal norms in the event of contradictory or incorrect jurisprudence. The function of the supreme courts under Art. 124 of the Constitution to ensure the uniform application of the laws by all courts through their obligatory interpretative activity is not legislative. The relevant interpretation does not create, replace, or change the interpreted legal norm. The interpretative decision of the SCC contains legal conclusions and conclusions regarding the exact meaning of the respective legal norm. The interpretation overcomes contradictions and errors in the administration of justice, aiming to achieve uniform and accurate application of the law by all courts in the country and in general. It contributes to an effective harmonized legal system.

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V. Bulgaria's Past Approach to the Duplication of Administrative and Criminal Proceedings

The Bulgarian penal procedure system does not permit one and the same act to be the subject of two separate criminal proceedings or of two administrative proceedings toward the same individual. The provisions of Art. 17 of the Administrative Violations and Penalties Act state that it is forbidden for a person to be penalized for an administrative offence for which the same individual has already been punished by a penal decree which has entered into force or by a judgment of the court. Similarly, according to Art. 24, para. 1, (6) of the Penal Procedure Code, a criminal proceeding must not be instituted, and the already instituted criminal proceeding shall be discontinued, if toward the same person for the same criminal act there is either a pendent criminal proceeding, a verdict of the court that has entered into force, a decree of the prosecutor, or a discontinuance ruling of the court for termination of the case. Until 2017, neither the Administrative Violations and Penalties Act nor the Penal Procedure Code addressed the scenario in which a finally concluded administrative proceeding is conducted before the initiation or the termination of the penal proceeding toward the same person for the same criminal act. There was no regulated legal procedure for the protection of the perpetrator in the case of a penal procedure instituted in violation of the *ne bis in idem* principle toward a person who has already been the subject of an administrative proceeding for the same act.

The former Supreme Court – in a binding interpretative decision –, and later the Supreme Court of Cassation, have solved this legal loophole by construing that the Bulgarian law is not barring the opening of criminal proceedings in respect of persons who have already been punished in administrative proceedings.[9] Hence, the Bulgarian courts consistently accepted that a finally completed administrative proceeding is not a legal obstacle for a subsequent trial for the same act if it refers to the attributes of a crime, as provided in the Criminal Code.

VI. The New Approach of the Bulgarian Supreme Court of Cassation

On 22 December 2015, the General Assembly of the Criminal Chambers of the Supreme Court of Cassation pronounced Interpretative Decision № 3/2015, which radically redefined the prevailing conception that, according to Bulgarian law, the prohibition on repetition of proceedings does not apply to administrative proceedings.

The argumentation of the opposite thesis developed in this Interpretative Decision is based on the unambiguous ECtHR case-law related to the problem discussed above: When there is a conclusion that the alleged administrative violation possesses the characteristics of a criminal matter, the administrative procedure shall be equated with "criminal proceedings" within the meaning of Art. 4(1) of Protocol № 7. In these cases, the administrative procedure conducted against the perpetrator has a *ne bis in idem* effect; therefore, the second penal procedure instituted toward him/her for the same act is inadmissible.

The content of the decision reveals an approach tending to apply in practice the provisions of Art. 5, para. 4 of the Bulgarian Constitution, and clearly illustrates what exactly it means to incorporate the regulations of an international treaty into the national law system. The matrix of the Interpretative Decision is an example of the simultaneous manifestation of the subsidiarity and the direct applicability of the provisions of the Convention to national law.

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On the basis of the concept that Protocol № 7 is an integral part of the national law of the Republic of Bulgaria, the decision of the GACC comprises an extensive review of the relevant ECtHR case-law on the application of the *ne bis in idem* rule. Conclusions are drawn on the important aspects related to the core and meaning of the *ne bis in idem* principle; the intensity of the protection of the right granted by Protocol № 7; the main determinants of the applicability of the principle to procedures with a "criminal" nature according to the ECtHR and the *Engel's* test; the requirements for establishing the identical nature of the subject of the two penal proceedings; the final character of the legal act delivered first in time; and the assessment of the notions "the same act" and "finally acquitted/convicted" – the elements *idem* and *bis*.

The core principles for the interpretation of the Convention's provisions, including Art. 4 of Protocol № 7, as established by the ECtHR, are entangled in the interpretation of the related national procedural provisions. As a result of this complex approach, the GACC has extracted a procedural mechanism to prevent and overcome violations of the *ne bis in idem* principle in cases of the accumulation of procedures and sanctions with a criminal character related to the same person for one and the same act.

Of particular importance for judicial activity are the clarifications of the GACC as to what is related to the notion "criminal charge." The *ne bis in idem* principle manifests its effect solely in the penal procedure. The classification of the duplicate procedures as "criminal" is, therefore, of high importance for the application of the principle. It was precisely the misunderstanding (or disregard) of the principle of autonomy in the interpretation and application of the provisions of the ECHR that was the primary reason for the numerous violations of the prohibition on "be[ing] tried or punished again" in Bulgaria up until 2015.

It is known that the legal notions "criminal accusation," "criminal procedure," "criminal sanction," etc. used by the Convention do not refer to the strict meaning of the terms under the national law. They have their own independent signification. According to the principle of autonomy, these terms must be perceived only in the light of the established principles in the case-law of the ECtHR and according to the interpretation given by the Court, regardless of the meaning incorporated in them by the national law, which may be different. In this sense, the ECtHR consistently maintains that the terms "criminal proceedings," "criminal sanction," and "penal procedure" in the text of the provisions of the Convention and the Protocols to the Convention shall be perceived in correspondence with the meaning of the notions "criminal charge," "criminal offence," and "punishment" as stipulated in Art. 6 and Art. 7 ECHR. The Court repeatedly points out in its judgments that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the principle of *ne bis in idem* under Art. 4(1) of Protocol № 7.

An approach that defines the legal notions according to the sole will of the contracting countries would lead to results that are not compatible with the essence and goals of the Convention. The possibility that national legislation could classify procedures as administrative, disciplinary, fiscal, or "mixed," instead of penal, as well as the potential for the prosecution of perpetrators by the applicable specific national order in each country, would subjugate the effect of the fundamental requirements to each country's own will.[10] Against this background, the ECtHR always performs an independent verification of the characteristics of the procedures (regardless of the contracting countries involved) to reveal their nature in the sense of Art. 6(1) ECHR. It applies the so-called "*Engel* criteria":

- The legal characterisation of the offence according to the national law;
- The character and essence of the violation; and
- The degree of severity of the stipulated punishment.

In fact, it is not a novelty for Bulgarian jurisprudence to use the notions defined in the Convention and the case-law of the ECtHR, as well as to apply the *Engel* criteria to determine the character of procedures. Apart

from the case of *Tsonyo Tsonev*, the ECtHR has dealt with the matter of the criminal nature of other finalised procedures conducted by Bulgarian national authorities in numerous other Bulgarian cases.[11]

Since the adoption of Interpretative Decision № 3/15 of the GACC, the *Engel* criteria have become an established algorithm for verification in the Bulgarian case-law. They have been consistently examined in cases of dispute, in order to determine the criminal nature of the accusation according to the spirit of the Convention in each specific case.

In legal reality, the examination made in Interpretative Decision № 3/15 of the GACC applies in cases of the duplication of a criminal and an administrative penal liability – cases in which the *ne bis in idem* principle may be of consequence. The Interpretative Decision of the GACC contains instructions that the *ne bis in idem* consequences of the second criminal prosecution of a person for the same act for which there is already a concluded administrative penal proceeding may be overcome by revoking any judicial acts already carried out as part of the second, uncompleted penal proceeding and by terminating the second proceeding in accordance with Art. 4(1) of Protocol № 7 and the order of Art. 24, para. 1, item 6 of the Penal Procedure Code. In the presence of the provided legal grounds, the finalised administrative procedure with a penal character in the sense of the Convention could be re-established (reopened), the enacted acts be repealed and the administrative procedure be discontinued (terminated). After the elimination of any procedural obstacle to conducting the criminal procedure, it could be re-established (as an admissible exception according to Art. 4(2) of Protocol № 7) and successfully finalised.

After the pronouncement of Interpretative Decision № 3/15, this sequence of procedural steps, although complic-
ated and prolonged, was the only option for compensating for the harmful effects of violations of the *ne bis in idem* principle that was in line with the actual Penal Procedure Code and feasible without any legislative intervention. The GACC had, therefore, prescribed a possible mechanism for overcoming violations of Art. 4(1) of Protocol № 7. It simultaneously fulfilled the requirements of the ECHR and complied with the established limitations of the actual procedural norms in Bulgarian national law.

VII. Legislative Amendments in 2017

In 2017, the Bulgarian Parliament adopted amendments to the Penal Procedure Code and the Administrative Violations and Penalties Act.[12] It established a scheme to overcome and prevent violations of the *ne bis in idem* principle in the event of duplications of penal and administrative charges against the same person for the same illegal act. The amendments introduce new competences for the prosecutor and the court, and provide a new legal basis for suspension and discontinuation of the penal procedure and for the reopening of the administrative proceedings. In short, the penal proceeding shall be suspended in the event that there is a finally concluded penal administrative proceeding for the same act. In these cases, the prosecutor may submit within one month a proposal for the reopening of the administrative proceedings. If the prosecutor does not submit a proposal for the renewal of the proceedings within the stated term, or if the proposal is rejected, the penal proceeding shall be discontinued. If the court establishes during the trial that the violation is not a crime, the question of whether the act constitutes an administrative violation is examined. In these cases, the court shall dismiss the criminal charges against the defendant and impose an administrative sanction on him if the illegal behaviour is to be penalised administratively as stipulated in the special part of the Penal Code, or if it represents an administrative offence under a law or decree.

The described amendments successfully resolve the *ne bis in idem* conflict by taking into account the priority of criminal over administrative liability, and also by removing barriers to the possible direct imposition of an

administrative punishment on the perpetrator in cases where it is established that the act is not a crime but an administrative offence.

VIII. Conclusion

Despite the prolonged period of uncertainty, inactivity, and disputes, the judgment of the ECtHR in the case *Tsonyo Tsonev* (№ 2) has provoked complex legislative amendments which, without a doubt, favourably contribute to the guarantees of legal security, predictability of judicial decisions, and equality before the law. The result was achieved by the interpretative function of the Supreme Court of Cassation, fulfilling its mission to develop an effective mechanism to overcome the existing legislative loopholes and imperfections as regards the juxtaposition of criminal and administrative penal proceedings. The final outcome illustrates that the execution of ECtHR judgments is a common obligation of the State represented by all its authorities, demanding cooperation and coordination between these authorities. The inaction of any authority in the implementation of the obligations undertaken by the State under Art. 46 ECHR neither presupposes nor exonerates the passivity of the others.

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1. For comparison: according to CMD (Council of Ministers Decree) № 132 / 25.06.1999, the minimum wage in the Republic of Bulgaria amounted to BGN 67, or approximately USD 35.↩
2. Constitutional Court of the Republic of Bulgaria, Interpretative Decision № 7 of 2 July 1992 in constitutional case № 6 of 1992, published in the State Gazette No. 56 of 10 July 1992.↩
3. International treaties not published in the State Gazette, even if they have been ratified and have entered into force, are not part of domestic law unless they were adopted and ratified before the current Constitution of 1991 and promulgation/publication in the State Gazette was not mandatory pursuant to the then applicable ratification procedure.↩
4. State Gazette, issue 66 of 1992.↩
5. State Gazette, issue 87 of 2000.↩
6. For example, Decision № 7 of 4 June 1996; Decision № 19 of 21 November 1997 in constitutional case № 13/97; Decision № 29 of 11 November 1998 in constitutional case № 28 from 1998, etc. Since 2000, the Constitutional Court has traditionally and consistently taken into account the interpretation of the ECtHR.↩
7. ECtHR (GC), 22 June 2004, *Broniowski v. Poland* (application no. 31443/96), para. 192. See also ECtHR (GC), 13 July 2000, *Scozzari et Giunta v. Italie* (applications nos. 39221/98 and 41963/98), para. 249; ECtHR (GC), 29 March 2006, *Scordino v. Italy* (application no. 36813/97), para. 233.↩
8. <https://wcd.coe.int/ViewDoc.jsp?id=1723105&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=ED B021&BackColorLogged=F5D383> accessed 18 January 2021.↩
9. тълк. реш. № 85 от 1 ноември 1966 г. по н. д. № 79/1960 г., ОСНК на ВС; реш. № 348 от 29 май 1998 г. по н. д. № 180/1998 г., ВКС, II н. о.; и реш. № 564 от 9 декември 2008 г. по н. д. № 626/2008 г., ВКС, I н. о. – cited in the ECtHR's judgment in *Tsonev* at para. 24.↩
10. ECtHR, 9 October 2003, *Ezeh and Connors v. the UK* (applications nos. 39665/98 and 40086/98); ECtHR (GC), 10 February 2009, *Sergey Zolotukhin v. Russia* (application no. 14939/03); ECtHR, 14 January 2014, *Muslija v. Bosnia and Herzegovina* (application no. 32042/11); ECtHR, 13 December 2005, *Nilsson v. Sweden* (application no. 73661/01); ECtHR, 20 May 2014, *Nykänen v. Finland* (application no. 11828/11); ECtHR, 20 May 2014, *Häkkä v. Finland* (application no. 758/11).↩
11. For example: ECtHR, 21 December 2006, *Borisova v. Bulgaria* (application no. 56891/00); ECtHR, 23 April 2009, *Kamburov v. Bulgaria* (application no. 31001/02); ECtHR (GC), 17 January 2012, *Stanev v. Bulgaria* (application no. 36760/06). Guided by the reasoning of the ECtHR, the Constitutional Court applied the *Engel's* test in its decision № 3 of 4 May 2011 in constitutional case № 19/2010, concluding that the dangerous act to society classified as "petty" (minor) hooliganism represents a "criminal charge" in the sense of the Convention.↩
12. State Gazette, issue 63 of 2017; the amendments entered into force on 5 November 2017.↩

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