



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

SECOND SECTION

CASE OF MĂTĂSARU v. THE REPUBLIC OF MOLDOVA

(Applications nos. 69714/16 and 71685/16)

JUDGMENT

STRASBOURG

15 January 2019

FINAL

15/04/2019

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

In the case of Mătăsar v. the Republic of Moldova,

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

Robert Spano, *President*,
Paul Lemmens,
Ledi Bianku,
Julia Laffranque,
Valeriu Grițco,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 4 December 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 69714/16 and 71685/16) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Anatol Mătăsar (“the applicant”), on 18 and 19 November 2016.

2. The applicant was represented by Mr V. Gribincea and Mr D. Russu lawyers practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr O. Rotari.

3. The applicant alleged, in particular, a breach of his right to freedom of expression guaranteed by Article 10 of the Convention.

4. On 2 May 2017 the complaints concerning Articles 10 and 11 of the Convention were communicated to the Government and the remainder of application no. 69714/16 was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1970 and lives in Chișinău.

6. The applicant has been involved in numerous protests against alleged acts of corruption and abuse committed by police officers, prosecutors and judges. He was himself the victim of police abuse, ill-treatment and prosecutorial inaction (see *Mătăsar and Savițchi v. Moldova*,

no. 38281/08, 2 November 2010). Each year during the professional holiday of the prosecutors or the police he stages protests involving live animals, toilets, caricatures and masks.

7. On 29 January 2013, the professional holiday of prosecutors in Moldova, the applicant conducted a one person demonstration in front of the Prosecutor General's Office. According to him, the aim of the protest was to draw public attention to the corruption and the control exercised by politicians over the Prosecutor General's Office. At 10 a.m. he started his protest by installing two large wooden sculptures on the stairs of the Prosecutor General's Office. The first sculpture represented an erect penis with a picture of the face of a high-ranking politician attached to its head. The sculpture had a white collar and a tie and measured two metres. The second sculpture represented a large vulva with pictures of several high-ranking prosecutors between the labia. The applicant also inflated balloons in the form of male genitals and attached them to the nearby trees.

8. The demonstration was observed from the beginning by several police officers and numerous journalists approached to interview the applicant. At 11 a.m. a police van approached, the sculptures were removed by police officers and the applicant was taken to a police station.

9. Later the applicant was charged with the criminal offence of hooliganism. The criminal investigation was conducted by a department of the Prosecutor General's Office whose head's picture had been attached to the sculpture of the vulva.

10. On 2 March 2015 the Râșcani District Court found the applicant guilty as charged and sentenced him to two years' imprisonment. The sentence was suspended for a period of three years. In deciding on the sanction to be applied, the court took into consideration the fact that the applicant had previously been sanctioned with fines for similar deeds and that those sanctions had proved to be inefficient. The court considered that the applicant's deeds had been immoral because he had exposed obscene sculptures in a public place where they could be seen by anyone, including by children. The court based its findings on the statements of several prosecution witnesses who had stated that they had disliked the sculptures exposed by the applicant and had considered them to be indecent and obscene. The court also stated that assimilating public officials with genitals went beyond the acceptable limits of criticism in a democratic society and was therefore not an act protected under Article 10 of the Convention. Moreover, the accusations meant to be made by the applicant by means of his protest against the officials concerned lacked a factual basis and had been contrary to the principle of presumption of innocence.

11. The applicant appealed against the above decision arguing, *inter alia*, that it ran contrary to his rights guaranteed by Articles 10 and 11 of the Convention.

12. On 2 November 2015 the Chişinău Court of Appeal dismissed the applicant's appeal.

13. The applicant lodged an appeal on points of law with the Supreme Court of Justice in which he reiterated his position that his conviction had been contrary to the provisions of the Convention and stated that the sculptures had represented a form of artistic expression which was to be protected under Article 10 of the Convention. He reiterated that his protest had been against the corruption within the Prosecutor General's Office and among high-ranking politicians, a phenomenon which was universally known and did not need to be proved. He also argued that the sculptures exposed by him could not be considered obscene. In any event, at the time of his protest, children were normally at schools and kindergartens. The fact that some of the prosecution witnesses disliked what they saw was not sufficient to hold him responsible for a criminal offence. The applicant admitted that the form of the protest chosen by him had been striking, however he considered this manner of protesting as the only way possible to make himself heard in a society which was oversaturated with subjects of discussion. The applicant finally submitted that the sanction applied to him had been disproportionately harsh and that it had had a chilling effect on him. He pointed to the fact that the first-instance court had admitted to having pursued the goal of discouraging his future involvement in protests. By the application of a suspended sentence, he had in fact been forced to abstain from organising further protests for a period of three years or risk being imprisoned.

14. On 20 April 2016 the Supreme Court of Justice dismissed the applicant's appeal on points of law and upheld the judgments of the lower courts. The decision was notified to the applicant on 19 May 2016.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the Criminal Code, as in force at the material time, read as follows:

Article 287. Hooliganism

(1) Hooliganism, meaning deliberate actions grossly violating public order, involving violence or threats of violence or resistance to authorities' representatives or to other persons who suppress such actions as well as actions that by their content are distinguished by an excessive cynicism or impudence, shall be punished by a fine in the amount of 200 [4,000 MDL] to 700 [14,000 MDL] conventional units or by community service for 180 to 240 hours or by imprisonment for up to 3 years.

16. The relevant provisions of the Code of Minor Offences, as in force at the material time, read as follows:

Article 354. Petty hooliganism

Petty hooliganism, that is, accosting an individual in an offensive manner in a public place or other similar actions that violate moral norms or that disturb public order or the tranquility of an individual shall be punished with a fine of 10 [200 MDL] to 50 conventional units [1000 MDL] or with unpaid community work for 20 to 60 hours.

THE LAW**I. JOINDER OF APPLICATIONS**

17. The Court notes that the subject matter of the applications (nos. 69714/16 and 71685/16) is similar. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained that his conviction in criminal proceedings for the protest of 29 January 2013 amounted to a breach of his right to freedom of expression guaranteed by Article 10 of the Convention and his right to peaceful assembly guaranteed by Article 11 of the Convention. The Court considers that the applicant's complaint should be examined from the standpoint of Article 10 of the Convention alone, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

19. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The arguments of the parties

20. The applicant maintained that his criminal conviction for the protest of 29 January 2013 had amounted to an interference with his right to freedom of expression. He argued that the interference had not been prescribed by law because Article 287 of the Criminal Code had not been applicable to his situation and that it had not been necessary in a democratic society.

21. His protest had concerned a matter of high public interest, namely corruption and abuse within the Prosecutor General's Office and political control over it. The protest had not been directed against any person in particular and the picture on one of the sculptures had been intended to represent the political elite and on the other the Prosecutor General's Office. Nevertheless, no judge who had examined the case had taken into consideration the scope of the applicant's protest.

22. There were no schools and kindergartens in the vicinity of the Prosecutor General's Office. In any event the protest had taken place at a time when children were at schools or kindergartens.

23. The applicant argued that it had been open to the authorities to charge him with a less serious offence, namely with the offence of minor hooliganism provided for by Article 354 of the Code of Administrative Offences. According to the judicial practice of the domestic courts only serious offences involving violence were qualified as hooliganism under Article 287 of the Criminal Code. The rest were treated under Article 354 of the Code of Administrative Offences. The authorities had chosen to charge him with a criminal offence in order to silence him and discourage him from continuing his protests. When applying the provisions of Article 287 of the Criminal Code, the judges had chosen the harshest punishment possible, imprisonment.

24. The Government submitted that the interference with the applicant's right to freedom of expression had been necessary because the sculptures exposed by him had been morally offensive to others. According to the Government, the sculptures had been placed close to a busy road where public transportation circulated and unwarned members of the public could see them. Moreover, there were schools and kindergartens in the vicinity and children could also be exposed to the applicant's obscene sculptures.

25. The Government further submitted that the authorities had not banned the applicant's demonstration. The applicant had been allowed to hold his protest for approximately one hour, until it had become clear that due to its obscene nature it violated public order.

26. Besides the fact that the applicant had violated the norms of morally acceptable behaviour, he had also brought baseless accusations against public officials by having assimilated them to genitalia. For all the above

reasons, it had been necessary for the authorities to put an end to the applicant's demonstration and to impose a sanction on him.

27. As to the severity of the sanction, the Government argued that the sanction imposed on the applicant had not been too harsh. According to them, such a sanction had been necessary because the applicant had previously been convicted of similar offences and punished with a fine, a sanction which had not had the desired effect on the applicant's behaviour.

2. *The Court's assessment*

28. The Court reiterates that freedom of expression, as secured in paragraph 1 of Article 10 of the Convention, constitutes one of the essential foundations of a democratic society, indeed one of the basic conditions for its progress and for the self-fulfilment of the individual. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any section of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

29. The Court has also held that opinions, apart from being capable of being expressed through the media of artistic work, can also be expressed through conduct. For example, it has considered that the public display of several items of dirty clothing for a short time near Parliament, which had been meant to represent the "dirty laundry of the nation", amounted to a form of political expression (see *Tatár and Fáber v. Hungary*, no. 26005/08 and 26160/08, § 36, 12 June 2012). Likewise, it has found that pouring paint on statues of Atatürk was an expressive act performed as a protest against the political regime at the time (see *Murat Vural v. Turkey*, no. 9540/07, §§ 54-56, 21 October 2014). Detaching a ribbon from a wreath laid by the President of Ukraine at a monument to a famous Ukrainian poet on Independence Day has also been regarded by the Court as a form of political expression (see *Shvydka v. Ukraine*, no. 17888/12, §§ 37-38, 30 October 2014).

30. In *Maria Alekhina and Others v. Russia* (no. 38004/12, 17 July 2018) the Court examined the actions of the Pussy Riot punk band (who attempted to perform a song from the altar of Moscow's Christ the Saviour Cathedral against Vladimir Putin and in response to the ongoing political process). It considered their actions, described by them as a "performance", to constitute a mix of conduct and verbal expression which amounted to a form of artistic and political expression and that it was to be protected as such.

31. In the present case, the domestic courts convicted the applicant in criminal proceedings for his protest in front of the Prosecutor General's Office on 29 January 2013. The conviction interfered with the applicant's right to freedom of expression and the parties agree on that. Such

interference will constitute a breach of Article 10 of the Convention unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 and was “necessary in a democratic society” for the achievement of those aims.

32. As regards the issue whether the interference in question was prescribed by law, the applicant agreed that there was legal basis under Article 287 of the Criminal Code but argued that that provision was not applicable to the particular circumstances of his case. He expressed the view that his case fell to be examined under the provisions of Article 354 of the Code of Administrative Offences. The Court takes note of the domestic courts’ finding that the sculptures exposed in public by the applicant were obscene and their classification of that act as hooliganism within the meaning of the Moldovan law. However, the domestic courts failed to explain in a satisfactory manner why they opted for the criminal sanction provided for by Article 287 of the Criminal Code and not for that provided for by Article 354 of the Code of Administrative Offences. Be that as it may, in view of its findings below, the Court considers it unnecessary to decide whether the interference with the applicant’s right to freedom of expression was prescribed by law. Furthermore, the Court is prepared to accept that the interference in question pursued the legitimate aim of protecting the reputation of others.

33. The test of whether the interference complained of was “necessary in a democratic society” requires it to determine whether it corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued, and whether the reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression, as protected by Article 10 of the Convention (for an analysis of the relevant principles in more detail, see *Gündüz v. Turkey*, no. 35071/97, § 38, ECHR 2003-XI; *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), including the further references cited therein; *Aydın Tatlav v. Turkey*, no. 50692/99, §§ 22-27, 2 May 2006; and *Giniewski v. France*, no. 64016/00, §§ 43-54, ECHR 2006-I).

34. The Court notes that the applicant was found guilty of hooliganism on account of the fact that during his protest in front of the Prosecutor General’s Office he had exposed in public sculptures of an obscene nature and because he had attached to them pictures of a politician and several senior prosecutors, thus offending them and infringing their right to dignity.

35. The Court notes in the first place that the domestic courts found Article 10 of the Convention to be inapplicable to the applicant’s conduct

(see paragraph 10 above), a finding the Court cannot agree with. It also notes that they did not conduct a proper balancing exercise of the different interests involved and imposed a very heavy sanction on the applicant in the form of a suspended prison sentence. In the Court's view, the circumstances of the instant case present no justification whatsoever for the imposition of a prison sentence. Such a sanction, by its very nature, not only had negative repercussions on the applicant but it could also have a serious chilling effect on other persons and discourage them from exercising their freedom of expression. The fact that the sentence was suspended does not alter that conclusion (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 116, ECHR 2004-XI).

36. In the light of the above, the Court concludes that although the national authorities' interference with the applicant's right to freedom of expression may have been justified by the concern to restore the balance between the various competing interests at stake, the criminal sanction imposed on him by the national courts was manifestly disproportionate in its nature and severity to the legitimate aim pursued by the domestic authorities. Thus, the domestic courts went beyond what would have amounted to a "necessary" restriction on the applicant's freedom of expression.

37. Accordingly, there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

39. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government disagreed with the amount of damages claimed by the applicant and argued that it was excessive.

41. Having regard to the circumstances of the case, the Court considers that the finding of a violation of Article 10 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see *Vereinigung Bildender Künstler v. Austria*, no. 68354/01, § 44, 25 January 2007).

B. Costs and expenses

42. The applicant also claimed EUR 6,420 for the costs and expenses incurred before the Court.

43. The Government argued that the amount was excessive and asked the Court to dismiss the claim.

44. The Court reiterates that in order for costs and expenses to be made under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

45. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the applicant EUR 2,000 for costs and expenses.

C. Default interest

46. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President