



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

SECOND SECTION

CASE OF NEGRU v. THE REPUBLIC OF MOLDOVA

(Application no. 7336/11)

JUDGMENT

Art 8 • Private life • Prosecutor's decision to include applicant on list of wanted persons and disclose information, along with her photograph, at a police station's premises • Absence of safeguards against arbitrary interference • No possibility of independent and meaningful scrutiny and review • Prosecutor with practically unfettered discretion • Decision not "in accordance with the law"

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 Negru v. the Republic of Moldova,

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

Arnfinn Bårdsen, *President*,

Egidijus Kūris,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Diana Sârcu, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 7336/11) 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, Ms Aliona Negru (“the applicant”), on 15 December 2010;

the decision to give notice of the application to the Moldovan Government (“the Government”);

the parties’ observations;

Having deliberated in private on 6 June 2023,

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

INTRODUCTION

1. The case concerns the inclusion of the applicant on the list of wanted persons in the absence of safeguards against abuse. The applicant complains of a violation of her rights under Articles 8 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1981. She was granted legal aid and was represented by Mr R. Zadoinov, a lawyer practising in Chişinău.

3. The Government were represented by their Agent at the time, Mr O. Rotari.

4. The facts of the case may be summarised as follows.

5. The applicant and her father, I.N., had a dispute concerning a house. While civil proceedings were ongoing, I.N. made several criminal complaints against the applicant.

6. In December 2007, at I.N.’s request, a criminal investigation was initiated in respect of the applicant on charges of document forgery (Article 361 of the Criminal Code). In the framework of that criminal case, on 19 July 2008 the applicant attended the police station when summoned and was arrested under Article 166 of the Code of Criminal Procedure but released several hours later. However, on 16 September 2008 the Rîşcani

police ordered a search for the applicant. A police report of 26 September 2008 concluded that the applicant's whereabouts were unknown, since she was not present at two addresses known to the police and neighbours said that she did not live there. According to the applicant, on 11 June 2010 the criminal case was discontinued owing to the absence of a criminal act.

7. The applicant left the Republic of Moldova for Italy shortly after her release from arrest in 2008.

8. On 18 September 2008, at I.N.'s request, another criminal investigation was initiated on charges of making criminal threats (Article 155 of the Criminal Code). More specifically, the prosecutor referred to I.N.'s allegation that on 2 August 2008 the applicant and an unknown person had attempted to run him over with a car and then threatened him with death and severe bodily injury. From 6 March to 26 August 2009 the proceedings were suspended in the absence of an identified perpetrator.

9. On 24 May 2010 the Rîșcani district prosecutor decided to bring charges against the applicant in her absence. The decision reiterated the description of events provided in the decision of 18 September 2008 to initiate the investigation. The applicant was not informed of the decision to bring charges.

10. On 25 May 2010 the Rîșcani district prosecutor declared the applicant a wanted person. After a reiteration of the facts provided in the initial decision to initiate the investigation, the decision read as follows:

“After committing the offence, the suspect Aliona Negru went into hiding from the criminal investigating authorities, and her whereabouts remain unknown. ... Because the suspect Aliona Negru has been absconding from the law-enforcement authorities, on 22 [*sic*] May 2010 charges were brought against her in her absence. ... On the basis of the above-mentioned and in accordance with Articles 52 and 288 of the Code of Criminal Procedure, I order the following:

1. that a search take place for the indicted person Aliona Negru, [personal identification data];
2. that this decision be sent to the Rîșcani police station in order to organise the search and the investigative measures needed;
3. once her whereabouts are established, that she be apprehended in accordance with Article 166 of the Code of Criminal Procedure and that the prosecutor be informed;
4. that the relevant persons be informed about this decision.”

11. According to the applicant, on 7 September 2010 her lawyer noticed, by chance, on the public noticeboard of the Rîșcani police station that the applicant had been indicted and was wanted by the police.

12. A subsequent request by the lawyer to have access to the criminal file and to have the investigation in respect of the applicant discontinued was rejected by the police. On 19 October 2010 the applicant's lawyer lodged a request with the investigating judge under Article 313 of the Code of Criminal Procedure, seeking to be provided with a copy of the criminal case file, and

to have the investigation discontinued and the order to search for the applicant cancelled.

13. On 3 December 2010 the Rîșcani district investigating judge dismissed the request made by the applicant's lawyer. The court noted that the prosecutor's decisions to initiate a criminal investigation and to bring charges against the applicant were not subject to judicial review. The discontinuation of the criminal investigation was within the remit of the prosecutor and not of the investigating judge. It would be in breach of the confidentiality of the criminal investigation to provide the applicant with copies of the criminal file. The court concluded that the applicant had failed to substantiate any violation of her rights under Article 8 of the Convention.

14. The parties did not inform the Court about any subsequent developments in the criminal case against the applicant.

RELEVANT LEGAL FRAMEWORK

15. At the time of the events the relevant parts of the Code of Criminal Procedure of the Republic of Moldova, enacted by Law no. 122 of 14 March 2003, read as follows:

Article 166. Grounds for arresting (*reținere*) a person suspected of having committed a criminal offence

"2. In other circumstances which raise a reasonable suspicion that a person has committed a criminal offence, the suspect may be arrested only if he or she tries to abscond ...

5. A person may be arrested under this Article for a maximum duration of seventy-two hours."

Article 238. Place of summoning

"1. A person shall be summoned at his or her home address. If the address is unknown, then the summons shall be sent to his or her place of work. ...

3. If there is a change of address, the summons shall be sent to the new address only if it has previously been notified to the criminal investigating authority or the court, or if the criminal investigating body or the court have determined that the address has changed on the basis of the information provided by the respective agent. ...

7. The summoning of persons who live abroad shall be carried out in accordance with the provisions of the treaties concerning judicial assistance."

Article 288. Searching for an indicted person

"1. When the whereabouts of the indicted person are unknown or when that person absconds after charges have been brought, the criminal investigating authority shall submit to the prosecutor a proposal to order a search for the indicted person.

2. The prosecutor, on the proposal of the criminal investigating authority or of his or her own motion, shall order, by a reasoned decision, a search for the indicted person.

The decision shall state all known information concerning the person being searched for.”

Article 313. Complaint against illegal actions and acts of the criminal investigating authority

“1. If a party does not agree with the result of the examination of his or her complaint by the prosecutor, he or she may complain to the investigating judge ...

2. The parties shall have the right to lodge an appeal with the investigating judge ... against a refusal ... to grant requests in the conditions provided for by law and to institute criminal proceedings; against decisions to discontinue the criminal investigation; and against any other actions which interfere with the person’s constitutional rights and freedoms. ...

6. The decision of the investigating judge shall be irrevocable.”

16. Law no. 216 of 29 May 2003 on the integrated automated information system for recording offences, criminal cases and offenders read as follows at the material time:

Section 4. System functions

“The system shall ... secure the single State record of ... wanted persons.”

Section 20. Categories of persons concerned by centralised records

“The system shall keep a centralised record of:

(1) persons who have committed criminal offences and:

(a) have been convicted on the territory of the Republic of Moldova or of other States;

(b) have been indicted; ...

(e) are wanted by the criminal investigating authorities of the Republic of Moldova or of other States ...”

Section 21. Primary records of offenders and of issued sentences

“(1) The Ministry of Internal Affairs, shall draw up rules on compiling primary records of offenders, of sentences imposed and of other categories of persons subject to centralised special recording; and with the advisory opinion of other participants in the system, the rules shall be approved by the Prosecutor General.

(2) The identification number of the person, his or her personal data, place of residence, information about his or her identification document, and information concerning any change of the first or last name or concerning the person’s death shall be entered in the system on the basis of data from the State Population Register.”

17. In accordance with section 8 of Law no. 162 of 13 July 2007 on the Border Guards Service, border guards are authorised to apprehend wanted persons, at the request of the competent authorities.

18. In accordance with Order no. 372 of the Ministry of Internal Affairs (in force since 19 November 2010), a criminal record certificate also has to

contain information on whether the person is or is not wanted on the territory of the Republic of Moldova.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicant complained that her inclusion on the list of wanted persons, in the absence of safeguards against abuse, was contrary to Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

20. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

A. The parties' submissions

21. The applicant complained that the inclusion of her name on a wanted persons list and the public display of this information, along with her picture, on the police station's noticeboard had, in the absence of any safeguards against abuse, been contrary to Article 8 of the Convention. In particular, she submitted that she had never been informed of any criminal proceedings pending against her or of any summons to the prosecutor's office. After her lawyer had seen the picture on the wanted persons noticeboard, she had been refused access to the criminal case file or to any other information about the charges brought against her. The applicant submitted that she had learned for the first time about the content of the accusation against her from the documents provided by the Government after notice of the application had been given. There was no domestic remedy available to set aside the prosecutor's decision to include her on the wanted persons list, as the investigating judge dealing with her request had clearly declined jurisdiction in this respect. The applicant submitted that the measure had remained in force since 2010 and that, as a consequence, she had risked being apprehended when crossing the border.

22. The Government argued that the interference with the applicant's rights had been in compliance with Article 8 of the Convention. In particular, it was provided for by Article 288 of the Code of Criminal Procedure, pursued the legitimate aim of ensuring public safety and preventing disorder, and was

necessary in a democratic society, given the gravity of the accusation and the fact that the applicant had absconded from the criminal investigation. The Government argued that the police report of 26 September 2008 (see paragraph 6 above) had confirmed the applicant's absconding.

B. The Court's assessment

1. Applicability of Article 8 of the Convention

23. Although this matter has not been in dispute between the parties, the Court finds it appropriate to reiterate that, in accordance with its case-law, the concept of private life includes aspects relating to a person's right to his or her image, and that the publication of a photograph, without the consent of its owner, even if this act is devoid of any specific aim, constitutes an interference under Article 8 of the Convention (see *Von Hannover v. Germany*, no. 59320/00, §§ 50-53, ECHR 2004-VI, *Sciacca v. Italy*, no. 50774/99, § 29, ECHR 2005-I, and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 121, 13 January 2009). Information such as a person's criminal record, when systematically collected and stored in a file held by agents of the State, falls within the scope of "private life" for the purposes of Article 8 § 1 of the Convention (see *Shimovolos v. Russia*, no. 30194/09, §§ 64-66, 21 June 2011, and *M.M. v. the United Kingdom*, no. 24029/07, § 188, 13 November 2012).

24. In the present case, the applicant's photograph was posted on the public premises of at least one police station, with the intention of making it easily accessible to the public and of identifying the applicant as being wanted in connection with a criminal case. Furthermore, the Court notes that under Moldovan law, a decision to include someone on the list of wanted persons involved the processing of personal data in the national integrated automated information system for recording offences, criminal cases and offenders, had an impact on the person's criminal record, and authorised border guards to arrest the person in question (see paragraphs 16-18 above).

25. Having regard to the foregoing, the Court finds that Article 8 of the Convention is applicable in the present case.

2. Whether there was an interference

26. The existence of an interference with the applicant's Article 8 rights has likewise not been contested by the Government. Nor did they inform the Court when the measure at issue had ceased to apply, and the Court can only infer that that measure has continued to be in force to the present day. For its part, the Court finds that both the inclusion of the applicant on the list of wanted persons and the disclosure of this information, by posting her photograph on the wanted board, interfered with her right to respect for her private life.

3. *Whether the interference was justified*

27. The Court reiterates that any interference can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one or more of the legitimate aims to which paragraph 2 of Article 8 refers, and is necessary in a democratic society in order to achieve any such aim (see *Kennedy v. the United Kingdom*, no. 26839/05, § 130, 18 May 2010, *Gaughran v. the United Kingdom*, no. 45245/15, § 71, 15 February 2020).

28. The Court reiterates that the phrase “in accordance with the law” implies that the legal basis must be “accessible” and “foreseeable”. A rule’s effects are “foreseeable” if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct. In addition, there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the Convention. It would be contrary to the rule of law for the legal discretion granted to the executive in areas affecting fundamental rights to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Vig v. Hungary*, no. 59648/13, § 51, 14 January 2021).

29. In the present case, it is undisputed that the prosecutor’s decision to declare the applicant wanted in principle had a statutory basis, namely Article 288 of the Code of Criminal Procedure. As regards the means of legal protection against arbitrary interference, the Court notes that this legal text provides for two grounds on which the prosecutor was authorised to take such a decision: either when the whereabouts of that person were unknown or when the person absconded after charges had been brought.

30. From the facts of the case, it appears that the applicant was declared wanted on 25 May 2010, one day after charges had been brought against her in her absence. While the applicant did not dispute that in 2008 she had left the Republic of Moldova for Italy, the Government failed to provide any evidence that the Moldovan authorities had genuinely tried to summon and to find the applicant from 2008 to 2010 prior to that decision. The police report of 2008 to which the Government referred had been drawn up two years earlier and in the framework of another set of proceedings than the one in which the applicant was declared wanted (see paragraphs 6 and 22 above). Moreover, after that report had been submitted by the police, the investigation was suspended in the absence of an identified perpetrator (see paragraph 8 above).

31. The Government did not inform the Court of any measures taken by the domestic criminal investigating authorities to identify whether the applicant had crossed the border during the relevant time or to summon her through her lawyer, who had been retained the entire time. In fact, the

material in the case file does not contain any evidence to suggest that the authorities made any reasonable attempts to inform the applicant of the criminal proceedings and of the necessity to appear before them within the framework of those proceedings (see also, in the context of detention pending extradition, *Vasiliciuc v. the Republic of Moldova*, no. 15944/11, §§ 39-40, 2 May 2017).

32. Therefore, even if the prosecutor was indeed authorised to declare the applicant wanted, the Court is not convinced that the procedures applied in reaching that decision were “in accordance with the law”.

33. Furthermore, as to the subsequent review of the impugned decision and of its implementation, the Court notes that the applicant was unable to obtain any further information about the decision and, subsequently, to obtain a review of it. The prosecutor refused to provide any information to the applicant’s lawyer, and the investigating judge declined to rule on the lawfulness of the measure taken, arguing that the applicant had failed to substantiate a violation of her rights under Article 8 of the Convention (see paragraphs 12 and 13 above).

34. In sum, in view of the lack of clarity of the procedures for the implementation of the existing rules and the flaws in their application (see paragraphs 30-31 above), when declaring the applicant a wanted person the prosecutor enjoyed a discretion practically amounting to unfettered power, not being accompanied by a measure of protection against arbitrary interference (see paragraph 33 above) as required by the rule of law. Accordingly, the prosecutor’s decision was not “in accordance with the law” for the purposes of Article 8 § 2 of the Convention.

35. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicant complained that she did not have at her disposal any effective remedy to challenge the interference with her right to respect for her private life, as required by Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

37. Having regard to its findings under Article 8 of the Convention, concerning notably the absence, in the domestic law concerning decisions to declare a person wanted, of safeguards against arbitrary interferences and of the possibility of independent and meaningful scrutiny and review (see paragraph 34 above), the Court considers that in the circumstances of the present case it is not necessary to examine separately the admissibility and merits of the applicant’s complaint under Article 13 of the Convention (see also *Vig*, cited above, § 71).

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.”

39. The applicant claimed 13,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,775 in respect of costs and expenses. Her representative submitted a legal services contract and a detailed description of the services provided.

40. The Government submitted that the applicant’s claims in respect of non-pecuniary damage were exaggerated and invited the Court to dismiss them. The Government argued that the applicant should not be granted any costs and expenses, because her representative had failed to submit any document signed by the applicant herself, and that in any event the claims were excessive.

41. In the light of the circumstances of the case, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

42. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *H.F. and Others. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full amount claimed in respect of costs and expenses, namely EUR 2,775, less the sum of EUR 850 received under the Court’s legal-aid scheme, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *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, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,925 (one thousand nine hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 applicant's claim for just satisfaction.

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

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President