



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MASAEV v. MOLDOVA

(Application no. 6303/05)

JUDGMENT

STRASBOURG

12 May 2009

FINAL

12/08/2009

This judgment may be subject to editorial revision.

In the case of Masaev v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 6303/05) 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 Talgat Masaev (“the applicant”), on 9 September 2004.

2. The applicant was represented by Mrs N. Mardari, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the Moldovan authorities had infringed his right to freedom of religion and his right to a fair trial in the determination of a criminal charge against him.

4. On 21 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Rezeni. He is a Muslim.

6. On 30 January 2004, the applicant, together with a group of other Muslims, was praying on private premises, namely in a house rented by a non-governmental organisation whose leader was the applicant. They were

dispersed by the police and the applicant was subsequently charged with the offence (*contravenție administrativă*) of practising a religion which was not recognised by the State.

7. On 17 February 2004 the Centru District Court found the applicant guilty on the basis of Article 200 (3) of the Code of Administrative Offences and fined him 360 Moldovan lei (MDL). The applicant appealed against this decision and argued, *inter alia*, that it was contrary to his right to freedom of religion.

8. On 9 March 2004 the Chișinău Court of Appeal dismissed the applicant's appeal without giving any reasons and without inviting the applicant to attend the hearing.

II. RELEVANT DOMESTIC LAW

9. Article 31 of the Moldovan Constitution, concerning freedom of conscience, provides:

“1. Freedom of conscience is guaranteed. It must be manifested in a spirit of tolerance and mutual respect.

2. Freedom of worship is guaranteed. Religious denominations shall organise themselves according to their own articles of association, in compliance with the law.

3. Any manifestation of discord is forbidden in relations between religious denominations.

4. Religious denominations shall be autonomous and separated from the State, and shall enjoy the latter's support, including facilities granted for the purpose of providing religious assistance in the army, hospitals, prisons, mental institutions and orphanages.”

10. The relevant provisions of the Religious Denominations Act, as published in the Official Gazette no. 3/70 of 1992, read as follows:

Section 14 – Recognition of religious denominations

“In order to be able to organise and operate, denominations must be recognised by means of a government decision.

Where a denomination fails to comply with the conditions laid down by the first paragraph of section 9 of the present Act, recognition may be withdrawn under the same procedure.”

This section was amended in 2002. According to the amendments, in order to be recognised a denomination had to submit to the Government a declaration and a series of documents. After submitting the declaration and the documents, the denomination would be registered within thirty days.

11. Article 200 (3) of the Code of Administrative Offences reads as follows:

“The practising ... of unlawful [religious] beliefs or rituals is punishable by a fine in the amount of MDL 180-360.”

On 31 May 2009 this Code will be replaced by a new Code of Administrative Offences which contains a similar provision in its Article 54.

THE LAW

12. The applicant complained under Article 9 of the Convention that his right to freedom of religion had been breached as a result of his being fined for practising Muslim rituals. Article 9 of the Convention provides:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

13. The applicant complained under Article 6 §§ 1 and 3 of the Convention that he had not been summoned to appear at the hearing of his appeal before the Chişinău Court of Appeal. The relevant parts of Article 6 read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;”

14. The applicant complained under Article 13 of the Convention that he had not had an effective remedy in respect of the alleged breach of Article 9. Article 13 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.”

I. ADMISSIBILITY OF THE CASE

15. The Court considers that the present application raises questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider its merits.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

16. The applicant submitted that the offence of which he had been accused qualified as “criminal” for the purposes of Article 6 of the Convention. He argued that he had not been summoned to appear before the Chişinău Court of Appeal for the hearing of his appeal on 9 March 2004. He stated that according to the stamps on the envelope he had received from the Chişinău Court of Appeal, the summons was mailed on 5 March 2004 and reached him on 16 March.

17. In their initial observations on the admissibility and merits of the case, the Government disputed the applicant’s submission that the offence of which he had been accused qualified as “criminal” for the purposes of Article 6 of the Convention. However, in their subsequent and final observations on the merits of the case, the Government declared that in view of the Court’s recent case-law, they were ready to concede that there had been a breach of the applicant’s rights guaranteed by Article 6 § 1 of the Convention.

18. The Court refers to its case-law in *Ziliberberg v. Moldova* (no. 61821/00, §§ 7-36, 1 February 2005), *Guţu v. Moldova* (no. 20289/02, §§ 51-54, 7 June 2007) and *Russu v. Moldova* (no. 7413/05, §§ 22-28, 13 November 2008) where, in similar factual circumstances, it found breaches of Article 6 § 1 of the Convention. In the light of the above case-law and in view of the Government’s clear acknowledgement of a breach of the right to a fair trial, the Court concludes that there has been a violation of Article 6 § 1 of the Convention. It is therefore not necessary to address separately the applicant’s complaint under Article 6 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

19. The applicant submitted that there had been an interference with his right to freedom of religion and that the interference was not prescribed by law. In particular, according to the applicant, Article 200 § 3 of the Code of Administrative Offences did not indicate with sufficient clarity the scope of

the discretion granted to the executive to regulate the manifestation of religious beliefs. Moreover, the interference had not pursued a legitimate aim and had not been necessary in a democratic society.

20. The Government admitted that there had been an interference with the applicant's right to freedom of religion. However, the interference had been prescribed by law, namely by section 14 of the Denominations Act and Article 200 § 3 of the Code of Administrative Offences, and had pursued a legitimate aim. According to the Government there was a legitimate interest in requiring religious denominations to register with the State before exercising their activities. The State was entitled to verify whether a movement or association carried out, ostensibly in pursuit of religious aims, activities which were harmful to the population. It was similarly in the State's interest to apply sanctions for derogation from that requirement, in this case against persons who had decided to manifest their religious beliefs without prior registration of the Muslim religion with the State organs. Accordingly, the interference had pursued the legitimate aim of protecting public order and morals. The sanction imposed on the applicant had been necessary for the purpose of education and deterrence and the amount of the fine had not been significant and had thus been proportionate to the aim pursued.

21. The Court reiterates that, as enshrined in Article 9 of the Convention, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A).

22. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". According to Article 9 of the Convention, freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private".

23. The fundamental nature of the rights guaranteed in Article 9 § 1 of the Convention is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11 of the Convention, which cover all the rights mentioned in the first paragraphs of those Articles, that of Article 9 of the Convention refers only to "freedom to manifest one's religion or belief". In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33). At the same time, it emphasises the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs.

24. According to its settled case-law, the Court leaves to States party to the Convention a certain margin of appreciation in deciding whether and to what extent an interference is necessary, but that goes hand in hand with European supervision of both the relevant legislation and the decisions applying it. The Court's task is to ascertain whether the measures taken at national level are justified in principle and proportionate.

In order to determine the scope of the margin of appreciation in the present case the Court must take into account what is at stake, namely the need to maintain true religious pluralism, which is inherent in the concept of a democratic society (see *Kokkinakis*, cited above, § 31). Similarly, due weight must be given to that need when determining, as paragraph 2 of Article 9 requires, whether the interference corresponds to a "pressing social need" and is "proportionate to the legitimate aim pursued" (see, *mutatis mutandis*, among many other authorities, *Wingrove v. the United Kingdom*, 25 November 1996, § 53, *Reports of Judgments and Decisions* 1996-V). In exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole (see *Kokkinakis*, cited above, § 47).

25. Turning to the circumstances of the present case, the Court notes that it is undisputed that the fine imposed on the applicant for praying on private premises constituted an interference with his right to freedom of religion. The Court is prepared to accept that the interference was prescribed by law (Article 200 § 3 of the Code of Administrative Offences) and that it pursued the aim of maintaining public order. It remains to be determined whether the interference was necessary in a democratic society.

26. The Court notes that any person manifesting a religion which is not recognised in accordance with the Religious Denominations Act is automatically liable to being punished under the provisions of Article 200 § 3 of the Code of Administrative Offences. The Government contended that since it was not disproportionate for a State to impose compulsory State registration for religious denominations it must also not be disproportionate for the State to impose sanctions against those who manifest religious beliefs which are not formally constituted and registered as religious denominations. The Court does not contest the State's power to put in place a requirement for the registration of religious denominations in a manner compatible with Articles 9 and 11 of the Convention. However, it does not follow, as the Government appear to argue, that it is compatible with the Convention to sanction the individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs. To admit the contrary would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe. The Court cannot agree with such an approach and considers that the limitation on the right to freedom of religion provided by Article 200 § 3

of the Code of Administrative Offences constituted an interference which did not correspond to a pressing social need and was therefore not necessary in a democratic society. Accordingly, there has been a violation of Article 9 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 9 OF THE CONVENTION

27. The applicant also alleged a violation of Article 13 taken in conjunction with Article 9 of the Convention. In view of the findings above in respect of the applicant's complaint concerning Article 9, the Court does not consider it necessary to examine this complaint separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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. Pecuniary damage

29. The applicant claimed EUR 26 for pecuniary damage, representing the fine paid by him as result of the judgment of 17 February 2004.

30. The Government submitted that since the applicant was sanctioned in accordance with the law, he should not be entitled to recover the fine he had paid.

31. The Court accepts that the applicant suffered pecuniary damage as a result of the breach of Article 9 found above. The Court considers that the applicant is entitled to recover the amount paid as a fine and therefore awards him the entire amount claimed.

B. Non-pecuniary damage

32. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government disputed the amount claimed and argued that since there had not been a breach of Article 9, no award for damage was justified. Alternatively they pointed to previous case-law on Article 9 in which the Court considered that the finding of a violation constituted sufficient just satisfaction. They also referred to case-law in which the Court awarded EUR 1,000 for a breach of Article 6 § 1 of the Convention.

34. The Court awards the applicant EUR 1,500 for non-pecuniary damage.

C. Costs and expenses

35. The applicant also claimed EUR 1,150 for the costs and expenses incurred before the Court.

36. The Government argued that the amount claimed was excessive.

37. The Court awards EUR 1,000 for costs and expenses.

D. Default interest

38. The Court considers it appropriate that the default interest 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 6 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 9 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 13 taken in conjunction with Article 9 of the Convention;
6. *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 26 (twenty-six euros) in respect of pecuniary damage plus any tax that may be chargeable on this amount;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable on this amount;
 - (iii) EUR 1,000 (one thousand euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant on this amount;

(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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President