

Chişinău municipality's refusal to allow anti-discrimination NGO to display poster with cartoons breached its freedom of expression

In today's **Chamber judgment**¹ in the case of the [National Youth Council of Moldova v. the Republic of Moldova](#) (application no. 15379/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the local authorities' refusal to allow the applicant NGO to display anti-discrimination illustrations on advertising panels, on the grounds that they depicted some social groups in an undignified and humiliating manner.

The Court noted that the applicant NGO's poster was part of an anti-discrimination campaign involving several other NGOs, one of the aims of which was to promote the first freephone discrimination helpline in Moldova.

The central issue in the present case was the applicant NGO's decision to illustrate its poster with cartoons. On that point, the Court reiterated that satire was a form of artistic expression and social commentary which naturally aimed to provoke and agitate, thereby contributing to public debate.

The cartoons on the poster had been accompanied by text encouraging the communities concerned to call a freephone helpline if they experienced discrimination. It was obvious for the Court that the intended goal had not been to insult, ridicule or stigmatise those vulnerable population groups or insidiously to promote hate speech and intolerance. Taken in their immediate, more general context, the poster and cartoons had clearly been a means of drawing the public's attention precisely to social stereotypes and to the discrimination experienced by vulnerable groups, while encouraging them to assert their rights.

The Court further observed that the domestic courts had not conducted an effective review as required by Article 10 of the Convention. In the Court's view, that failure was a key factor in establishing that there had not been relevant and sufficient reasons for the interference with the applicant NGO's right to freedom of expression. In addition, such interference could have a chilling effect on satirical forms of expression concerning social issues. Accordingly, the interference had not been necessary in a democratic society.

Principal facts

The applicant, the National Youth Council of Moldova (*Consiliul Național al Tineretului din Moldova A.O.*), is a Moldovan non-governmental organisation (NGO) based in Chişinău (the Republic of Moldova).

In February 2011 the Moldovan Parliament began examining an anti-discrimination bill, which gave rise to public debate. The main sources of controversy were the use of the expression "sexual

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

orientation” and the issue of homosexuality in the Republic of Moldova. The bill was withdrawn in March 2011.

Against this backdrop, the applicant NGO took part in the Non-Discrimination Coalition (“NDC”), which brought together several NGOs. The applicant NGO was notably responsible for a project to roll out a freephone discrimination helpline.

On 6 December 2011 the NDC applied to the Chişinău municipal authority for authorisation to display a poster on the city’s advertising panels, informing the public of the helpline in question. The poster featured cartoons of various individuals, including two men holding hands, a black man, an elderly woman, a pregnant woman, a person in a wheelchair and what was purportedly a Roma couple.

On 22 December 2011 Chişinău’s Deputy Mayor set up a working group to review representations of society in advertising displayed in the city. The working group decided to ask the communities depicted in the applicant NGO’s poster how they felt about the advertisement.

The Roma association, SINTI, said it disapproved of how Roma people were represented in the poster in question. The Chair of the Alliance of Organisations for People with Disabilities of Moldova told Chişinău’s Mayor that she was against the poster too.

On 5 January 2012 Chişinău’s Deputy Mayor informed the NDC that, taking into account the aforementioned opinions, the working group had decided that the applicant NGO’s poster could not be displayed on the city’s advertising panels, on the grounds that it was such as to divide society into categories and social groups and thus infringed the law. The Deputy Mayor recommended adhering to the basic principles of advertising, as laid out in section 7 of Law no. 1227-XIII of 27 June 1997 on advertising. In particular, these stated that advertising should be loyal, honest, authentic and decent, and should use means that did not cause spiritual, moral or psychological harm to its audience.

On 19 January 2012 the NDC asked the National Agency for the Protection of Competition (*Agenția Națională pentru Protecția Concurenței* – “ANPC”) to carry out an expert assessment of the poster at issue. In a letter of 22 February 2012 the ANPC informed the NDC that most of the experts on its Advertising Board had found that the advertising material under review did not breach advertising legislation. The Board did, however, encourage the NDC to take into account the opinions of the two NGOs consulted by the Chişinău municipal authority, mainly to ensure that the advertising image in question did not cause spiritual, moral or psychological harm to those who saw it.

In the meantime the applicant NGO had brought an action against the city of Chişinău on 4 February 2012, seeking to obtain authorisation to display the poster by court order.

In a judgment of 14 May 2012 the Chişinău Court of Appeal dismissed the applicant NGO’s action as ill-founded. The applicant NGO appealed against that judgment on points of law.

The Supreme Court of Justice dismissed the appeal in a final decision of 12 September 2012.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant NGO complained that there had been an unlawful, disproportionate interference with its freedom to use cartoons to represent prohibited grounds of discrimination for advertising purposes, and with its freedom to impart information on the roll-out of a freephone discrimination helpline.

The application was lodged with the European Court of Human Rights on 4 February 2013.

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

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),

Pauliine Koskelo (Finland),
Saadet Yüksel (Türkiye),
Diana Sârcu (the Republic of Moldova),
Davor Derenčinović (Croatia),
Gediminas Sagatys (Lithuania),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

Article 10

The Court had to examine whether, as the domestic courts had found, the disputed measure had been necessary to protect the “rights of others”. At the outset, it noted that what was at issue in the present case was the right of the Roma community and people with disabilities to respect for their dignity.

The Court observed that the poster in dispute featured cartoons depicting negative stereotypes about Roma and people with disabilities.

With regard to the context and nature of that poster, the Court noted that it had been prepared by the applicant NGO as part of an anti-discrimination campaign involving several other NGOs, one of the aims of which was to promote the first freephone discrimination helpline in Moldova. The applicant NGO had designed the poster so as to associate information on that helpline with cartoons of people in the groups it felt were most likely to experience discrimination. Both the poster and the cartoons it featured arose out of one of the main public debates taking place at the relevant time in the Republic of Moldova, and thus concerned a topic of major public interest. The poster was not a commercial advertisement, but rather a “social” advertisement within the meaning of the relevant domestic law.

The Court had previously accepted that when an NGO drew attention to matters of public interest, it was exercising a role similar to that of the press and might be characterised as a social “watchdog” warranting similar protection under the Convention as that afforded to the press.

The Court noted that the central issue in the present case was the applicant NGO’s decision to illustrate its poster with cartoons. On this point, the Court reiterated that satire was a form of artistic expression and social commentary which naturally aimed to provoke and agitate, thereby contributing to public debate.

The Court gave particular weight to the fact that the applicant NGO worked to defend rights and that the cartoons on its poster had been accompanied by text encouraging the communities concerned to call a freephone helpline if they experienced discrimination. It was obvious for the Court that the intended goal had not been to insult, ridicule or stigmatise those vulnerable population groups or insidiously to promote hate speech and intolerance. The Court considered that, taken as a whole and in their immediate, more general context, the poster and cartoons had clearly been a means of drawing the public’s attention precisely to social stereotypes and to the discrimination experienced by vulnerable groups, while encouraging them to assert their rights.

In the Court’s view, the applicant NGO could not be considered to have exercised its freedom of expression irresponsibly; nor could the poster be regarded as an incitement to hatred or intolerance. Furthermore, since the poster was related to a public-interest issue, it was entitled to enhanced protection under Article 10 of the Convention, reducing the discretion (“margin of appreciation”) afforded to the Moldovan authorities.

Next, the Court noted that the domestic courts’ reasoning in dismissing the applicant NGO’s action had primarily been based on the disapproval expressed by two NGOs consulted by the city of

Chişinău, namely the Roma association and the Alliance of Organisations for People with Disabilities of Moldova. By attaching importance solely to the opposition of those two NGOs, the domestic courts had decontextualised the cartoons, disregarding both the poster's anti-discrimination message and the general context of the period, characterised by public debate on the anti-discrimination law. Furthermore, the Supreme Court of Justice had explicitly stated that the provisions of the freedom of expression law had not applied to the present case. In the Court's view, such a lack of effective judicial review was problematic in itself and, in any event, had the effect of further reducing the respondent State's margin of appreciation.

Regarding the form and reach of the poster in question, the Court noted that it had been intended to be displayed in the streets of Chişinău and thus to be seen by several hundred thousand local residents. It therefore could have had a significant impact, had it been authorised. The Court was not convinced that putting up the disputed poster, which conveyed a clear and intelligible anti-discrimination message, could have had the opposite of the intended effect and encouraged or excused discrimination against the communities represented, or even incited hostility and resentment towards them. It concluded that the poster in question could not have been considered likely to have serious consequences for the members of the groups depicted.

Lastly, with regard to the nature and seriousness of the interference, the Court noted that the applicant NGO had not been able to display its posters on the city of Chişinău's advertising panels. However, it had still had other means of communication available to it and, in particular, had been able to use the internet to promote the freephone discrimination helpline. Accordingly, there had not been a blanket restriction on the dissemination of the applicant NGO's ideas, but rather a ban limited solely to the public display of the cartoons at issue.

That being so, the Court emphasised that the applicant NGO's poster had addressed a topic of eminent public interest, that it could not have been considered to be promoting hate speech or intolerance, that the applicant NGO's role had been similar to that of the press and that there had been little room for limitations, since the margin of appreciation afforded to the respondent State had been narrow. The poster, which had conveyed an unambiguous and intelligible anti-discrimination message, had been unlikely to have serious consequences for the two vulnerable population groups that the authorities had been seeking to protect. Moreover, the domestic courts had not conducted an effective review as required by Article 10 of the Convention. In the Court's view, that failure was a key factor in establishing that there had not been relevant and sufficient reasons for the interference with the applicant NGO's right to freedom of expression. In addition, such interference could have a chilling effect on satirical forms of expression concerning social issues. Accordingly, the interference had not been necessary in a democratic society.

It followed that there had been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court considered that the finding of a violation constituted in itself sufficient just satisfaction in respect of all non-pecuniary damage suffered by the applicant NGO.

The Court held that the Republic of Moldova was to pay the applicant NGO 2,500 euros in respect of costs and expenses.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpress@echr.coe.int | tel.: + 33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Denis Lambert (tel.: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

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