



Fine for protest against mining of precious metals in UNESCO world heritage site: violation of the Convention

In today's Chamber judgment¹ in the case of [Bumbeș v. Romania](#) (application no. 18079/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) interpreted in the light of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the fining of Mr Bumbeș for taking part in a protest against proposed gold- and silver-mining activity in the Roșia Montană area. He along with three others had handcuffed themselves to one of the entrance barriers of the main Government building and displayed signs.

The Court found in particular that the domestic courts had not focussed on the issue of public speech on a matter of public interest and had not duly considered the extent of the "disruption of ordinary life" caused by the protest, instead looking primarily at the lack of prior notification of the protest. The resulting fine had had a chilling effect on such speech, and overall had not been "necessary in a democratic society".

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Mihail Liviu Bumbeș, is a Romanian national who was born in 1981 and lives in Curtea de Argeș (Romania).

Mr Bumbeș is a known activist and a founding member and president of the Spiritual Militia Civic Movement Association (*Asociația Mișcarea Civică Miliția Spirituală*).

Mr Bumbeș took part in the *Salvați Roșia Montană* campaign, which was a protest movement against proposed gold and silver mining, which would have involved the uses of cyanide, in Roșia Montană, an area in north-western Romania which has since been named a UNESCO world heritage site.

On 28 August 2013 Mr Bumbeș and three other protesters handcuffed themselves to one of the entrance barriers of the main Government building, where they held up signs. The protest was filmed by an acquaintance. The protesters refused to leave when asked to do so by a gendarme.

Eventually the police cut the rails to which they were attached and placed the protestors, including Mr Bumbeș, in police cars.

During interviews in the recording, the protestors made it clear that they intended to raise awareness and to actually do something concrete around the mining issue, given that earlier petitions had been ignored.

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.

Mr Bumbuş was fined 500 Romanian lei (about 113 euros) at the police station for breaching certain norms of social coexistence and the public order and peace (Law no. 61/1991). According to the police he acknowledged his actions orally but refused to sign the police report.

In September 2013 Mr Bumbuş challenged the fine in court. He stated that even if it had been necessary to issue a sanction, the actions had been miscategorised by the police and should have fallen under Law no. 60/1991 on the organisation and conduct of public gatherings, as expressing opinion freely could not be an antisocial act. He argued, citing the Court's case-law, that spontaneous protest was protected by the right to freedom of assembly, and pointed out that his protest had been peaceful.

The Bucharest District Court dismissed the challenge. It held that the police report was lawful, Mr Bumbuş's actions had been correctly categorised, and the sanction had been in accordance with Article 11 (freedom of assembly and association) of the European Convention.

Mr Bumbuş appealed, arguing, among other things, that the District Court had not examined the video-recording of the protest or his arguments about freedom of expression. The Bucharest County Court upheld the first-instance judgment, adding that accepting Mr Bumbuş's arguments regarding categorisation of the offence would mean that many instances of breach of the peace would go unpunished. It held that protest had to be conducted in accordance with the law, meaning that three-days' notice should have been given in this case.

That judgment was final.

Parliament later voted down the bill to allow mining in Roşia Montană following widespread protests.

Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression) and 11 (freedom of assembly and association) the applicant complained of the sanction imposed on him by the courts.

The application was lodged with the European Court of Human Rights on 25 March 2015.

The Open Society Justice Initiative and Greenpeace Romania were given leave to intervene as third parties.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

The Court reiterated that freedom of expression constituted one of the essential foundations of a democratic society, which included not only the ideas expressed, but also how they are expressed. Article 11, however, only protected the right to peaceful protest. It stated that freedom of expression and freedom of peaceful assembly were closely linked in this case.

The parties disagreed as to whether the fine had constituted an interference with the applicant's right to freedom of expression. The Court held that there had been an interference, given that the fine had not just concerned his conduct, but his attempt to spread a message.

The applicant contested the legal qualification of the incident, stating that it should have come under Law no. 60/1991 rather than Article 3 § 2 of Law no. 61/1991. The resulting fine had thus been unlawful. The Court reiterated that its power to review compliance with domestic law was limited and so it would just examine whether the effects of the domestic courts' interpretation had been compatible with the Convention, furthermore ruling that the two laws in question were complementary and could be read in conjunction with each other.

The Court observed that by virtue of these two Laws, any public gathering without prior notification could be declared unlawful. That clearly included the applicant's protest. The Court was also satisfied that the legitimate aim of preventing public disorder had informed the relevant fine in this case.

It determined that the actions of the applicant and his fellow protestors had been to draw the attention of the public and officials to the Roşia Montană mining project, which had been of general interest. There was little scope under Article 10 § 2 of the Convention for restrictions on political speech on questions of public interest. The applicant had been given little time to express his views, and the courts had dealt with the matter as a prior-notification question principally, and had not examined the actual disruption the applicant had caused and thus had not balanced the right to freedom of expression with the need to maintain public order. Effectively, the enforcement of rules governing public assemblies had become an end in itself in this case.

Lastly, the Court stated that the fine imposed had had a chilling effect on public speech.

Given the above, the Court ruled that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society", leading to a violation of Article 10 interpreted in the light of Article 11.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 113 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 1,872 in respect of costs and expenses.

The judgment is available only in English.

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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.