



## Activist's conviction for using sculptures of genitals to protest against corruption was "manifestly disproportionate"

In today's Chamber judgment<sup>1</sup> in the case of **Mătășaru v. the Republic of Moldova** (application no. 69714/16) 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 applicant's conviction for demonstrating in front of the Prosecutor General's Office with obscene sculptures. His sculptures likening public officials to genitals were intended to draw attention to corruption and political control over the Prosecutor's Office. The courts found that his actions had been "immoral" and offensive for the senior prosecutors and politicians he had targeted. He was given a two-year suspended prison sentence.

The Court found in particular that the interference with the applicant's freedom of expression had not been necessary in a democratic society. There had been no justification whatsoever for imposing a prison sentence, even if suspended. Such a sanction had gone beyond what might have been necessary to restore a balance between the various interests involved, namely the right to freedom of expression against the right to dignity. It could moreover have had a serious chilling effect on others and discourage them from exercising their freedom of expression.

### Principal facts

The applicant, Anatol Mătășaru, is a Moldovan national who was born in 1970 and lives in Chișinău.

Mr Mătășaru staged his demonstration in 2013, exposing a wooden two-metre erect penis and a large vulva with pictures attached of a politician and senior prosecutors. After one hour the police removed the sculptures and took him to the police station.

He was subsequently found guilty, in 2015, of hooliganism and given a two-year suspended prison sentence. The domestic courts found that the sculptures he had displayed in a public place were obscene and that likening public officials to genitals went beyond acceptable criticism. They also took into account his previous fines for similar acts which had had no deterrent effect.

He appealed, arguing that the sculptures were a form of artistic expression and that the sanction was excessively harsh. All his appeals were dismissed, ultimately by the Supreme Court of Justice in 2016.

### Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), Mr Mătășaru alleged that the courts finding him guilty of a criminal instead of an administrative offence had been harsh and intended to discourage him from further protests.

The application was lodged with the European Court of Human Rights on 19 November 2016.

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](http://www.coe.int/t/dghl/monitoring/execution).

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

Robert Spano (Iceland), *President*,  
Paul Lemmens (Belgium),  
Ledi Bianku (Albania),  
Julia Laffranque (Estonia),  
Valeriu Grițco (the Republic of Moldova),  
Stéphanie Mourou-Vikström (Monaco),  
Ivana Jelić (Montenegro),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

It was not in dispute that Mr Mătășaru's conviction had interfered with his right to freedom of expression. The Court was also prepared to accept that that interference had been intended to protect the reputation of others.

Imposing a criminal sanction had, however, been manifestly disproportionate to that intention. There had been no justification whatsoever for imposing a prison sentence, even if suspended. Indeed, such a sanction had not only had severe repercussions for the applicant but could also have had a serious dissuasive effect on others expressing themselves freely.

Moreover, the domestic courts had not carried out a proper balancing exercise of the different interests involved, that is to say between Mr Mătășaru's right to express ideas or information that could offend, shock or disturb and high-ranking public officials' right to dignity.

The courts had thus gone beyond what would have amounted to a "necessary" restriction on Mr Mătășaru's freedom of expression, in violation of Article 10.

### Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. It awarded 2,000 euros 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.