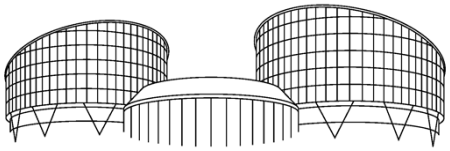

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CHITIC v. ROMANIA

(Application no. 6512/13)

JUDGMENT

STRASBOURG

14 January 2020

This judgment is final but it may be subject to editorial revision.

In the case of Chitic v. Romania,

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

Faris Vehabović, *President,*
Iulia Antoanella Motoc,
Carlo Ranzoni, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 17 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 6512/13) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Mircea Victor Daniel Chitic ("the applicant"), on 16 January 2013.

2. The applicant was granted leave to present his own case in the written proceedings before the Court (Rule 36 § 2 *in fine* of the Rules of Court). The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Romanian Ministry of Foreign Affairs.

3. Relying on Articles 9, 10 and 11 of the Convention, the applicant alleged that the penalty imposed on him for "chanting slogans against the current political regime" had breached his right to manifest his beliefs and right to freedom of expression, assembly and association.

4. On 10 November 2015 the Government were given notice of part of the above-mentioned complaint and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1977 and lives in Bucharest. He works as a lawyer in Bucharest.

A. Background to the case

7. According to the applicant, shortly after midnight on 15 January 2012 he was walking by the National Theatre in University Square in Bucharest on the way to meet his wife. Large-scale anti-government demonstrations

were taking place in the area. Feeling safe because of the presence of gendarmes in the area, he started filming the events unfolding on the square with his mobile telephone because he considered it appropriate and of public interest.

8. According to the applicant, when he moved closer to a group of gendarmes they started pushing him and ordered him to "clear the area". When he asked them to stop pushing him, they became verbally and physically aggressive. They then arrested him without giving any reason and took him to a police station.

9. Later that night at the police station, the applicant was taken before a gendarme who drafted a report and fined him 200 Romanian Lei (RON – 46 euros (EUR)) for "disturbing the public peace and order at [University Square] by chanting slogans against the current political regime", a minor offence under Article 3 § 25 and Article 4 (b) of Law no. 61/1991 (see paragraph 20 below).

10. The police report noted that the applicant had stated that he had not taken part in the demonstration or chanted slogans.

11. Footage of the large-scale demonstrations which took place in Bucharest and other Romanian cities in January 2012 was broadcast on national television. Articles were also published in national newspapers and on national news agency websites describing the scope and nature of the demonstrations.

B. The applicant's challenge against the fine imposed on him

12. On 24 January 2012 the applicant lodged a challenge against the police report and the fine imposed on him with the Bucharest District Court ("the District Court"). The factual circumstances he presented were the same as those outlined in his application to the Court (see paragraphs 7 and 8 above). He argued that he had not committed the acts proscribed by Article 3 § 25 of Law no. 61/1991. Moreover, any chanting of "slogans against the current political regime", as long as it did not breach the legitimate rights and interests of others, was the fundamental right of every citizen, provided for and guaranteed by the constitutional provisions protecting individual freedom and freedom of conscience and expression. It was clear that he had had the right to publicly express such an opinion, given that the chants had not damaged anyone's honour, reputation, private life or image or amounted to defamation of the country or nation or instigation of war or aggression. It was therefore clear that the exercise of a legitimate constitutional right should not have been punished in the same way as a minor offence.

13. By a final judgment of 27 June 2012 (available to the parties on 27 September 2012) the District Court allowed the applicant's challenge in part and replaced the fine imposed on him with a warning. It held that even

though the applicant denied committing the act in question, he had failed to prove it either with the video he had recorded or the other documents adduced to the case file. The video recorded by the applicant did not rebut the presumption of veracity of the information recorded in the police report, as he could have committed the act in question before or after he had recorded the video. Moreover, his mobile telephone was not an approved technical device.

14. As regards the argument that imposing a penalty for exercising a legitimate constitutional right was unconstitutional, the court held that since the applicant had failed to raise an unconstitutionality objection concerning Article 3 § 25 of Law no. 61/1991, it was unable to examine the point raised by him. In addition, the court emphasised that the applicant had not been punished for expressing his views about the current political regime, but for disturbing the public peace and order. In order to prevent a possible abuse of rights, legal rights had to be exercised in good faith and with regard to the rights of other citizens.

15. Lastly, the court considered that a warning was sufficient in the applicant's case to correct his behaviour and achieve the preventive, educational and punitive purpose of a penalty of that kind, because there was no indication in the police report that his actions had had any serious consequences.

C. Criminal proceedings

16. On 25 January 2012 the applicant sought to have criminal proceedings instituted against the gendarmes concerned for several offences including abusive behaviour, abuse of authority and office by restricting certain rights, and abuse of office against private interests. He relied, amongst other things, on the same arguments as those used in the proceedings contesting the fine imposed on him (see paragraph 12 above). He also argued that the gendarmes had been violent towards him.

17. On 18 February 2013 a military prosecutor attached to the High Court of Cassation and Justice's Prosecutor's Office ("the prosecutor's office") discontinued the criminal proceedings against the gendarmes on the grounds that the elements of an offence were not made out or did not exist. This decision was upheld by a superior military prosecutor on 15 March 2013.

18. By a final judgment of 1 October 2013 the Court of Cassation allowed an appeal by the applicant against the decisions of 18 February and 15 March 2013, quashed them in part and referred the case back to the prosecutor's office in order for the investigation to be continued and to establish whether the applicant had been unlawfully arrested and held at the police station on the night of 15 January 2012.

19. On 29 January 2014 a military prosecutor attached to the prosecutor's office discontinued the criminal proceedings against the gendarmes for unlawfully arresting the applicant on the grounds that the elements of an offence were not made out. A challenge by the applicant against this decision was dismissed as ill-founded on 7 March 2014 by a superior military prosecutor. There is no evidence in the file that the applicant appealed against these decisions to the domestic courts.

II. RELEVANT DOMESTIC LAW

20. Article 3 § 25 and Article 4 (b) of Law no. 61/1991 on the punishment of acts breaching social norms and the public order and peace provide that unlawfully disturbing the peace by making noise with a device or object or by shouting is a minor offence if the acts are not committed in circumstances amounting to a crime. The penalty is a fine between RON 200 and 1,000.

21. Article 7 §§ 2 and 3 of Government Ordinance no. 2/2001 concerning minor offences provides that if the acts in question do not have serious consequences, the fine may be replaced by a warning, even if the legislation on minor offences does not provide for such a penalty.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

22. The applicant complained that the penalty imposed on him had breached his right to manifest his beliefs and right to freedom of expression, assembly and association guaranteed by Articles 9, 10 and 11 of the Convention.

23. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the matter essentially at issue in the present case is the penalty imposed on the applicant for disturbing the public peace and order at University Square in Bucharest by chanting slogans against the political regime, an issue primarily concerning the control of his freedom of expression and assembly and not matters liable to offend his personal convictions or beliefs within the sphere of morals or religion. Given the factual circumstances of the case and the specific reasons for the penalty imposed on the applicant, the Court considers that there is no need to examine separately the complaint under Article 9 (see, for example and *mutatis mutandis*, *Incal v. Turkey* [GC], no. 22678/93, § 60, ECHR 1998-IV). Accordingly, the

Court is of the view that the applicant's complaint falls to be examined only from the angle of Articles 10 and 11 of the Convention.

The relevant provisions read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

A. Admissibility

1. Applicability of Articles 10 and 11 of the Convention

(a) The parties' submissions

24. The Government argued that the applicant's complaint should only be examined from the angle of Article 11 of the Convention, which was *lex specialis* in relation to Article 10. They indicated, however, that their submissions concerning Article 11 also applied to Article 10.

25. They submitted further that Article 11 was not applicable in the present case. The applicant had denied his involvement in the two-day demonstration which had taken place in Bucharest. Moreover, his arrest and transfer to the police station by gendarmes was not the object of the present application. Furthermore, the domestic court had concluded that the applicant's punishment had been for disturbing the public order and peace of the nearby residents, not for taking part in the demonstration or because of his chants or opinions.

26. The applicant argued that Articles 10 and 11 were applicable to his case, given the reasons provided in the police report for the penalty imposed on him. He contested the Government's assertion that he had not been punished for his participation in the demonstration and for publicly expressing his opinions. Moreover, there was no evidence to suggest that he had been violent or had made noise capable of disturbing the public peace.

(b) The Court's assessment

27. The Court notes that the exact circumstances which led to the applicant being eventually warned for his actions remain to some extent unclear and were disputed by the parties. In making his complaints under Articles 10 and 11 of the Convention, the applicant denied that he had had any intention of taking part in or had actually joined the public demonstrations of 15 January 2012 either at University Square or elsewhere. He claimed both before the domestic court and in his application to the Court that he had been punished simply because he had stopped and filmed the events unfolding on the square with his mobile telephone as he had considered the events in question a matter of public interest (see paragraphs 7-10 and 12 above). The domestic authorities never expressly held that the applicant had intended to take part in the demonstration or that he had spontaneously joined it. However, they did establish that the applicant had chanted slogans directed at politicians and had recorded a video of the events unfolding on the square (see paragraphs 9 and 13 above).

28. The Court reiterates that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. It is not however bound by the findings of the domestic courts, although in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts. It has previously applied this reasoning in the context of Articles 10 and 11 of the Convention (see *Nemtsov v. Russia*, no. 1774/11, § 64, 31 July 2014, with further references).

29. Having regard to the parties' submissions and the findings of the domestic court, the Court takes the view that there are no cogent elements in the present case prompting it to doubt the credibility of the facts established by the authorities. It is therefore prepared to accept that on the night of the events in question the applicant was at University Square in Bucharest at around midnight. Even though he neither took part nor intended to take part in or join the demonstration, he filmed the unfolding events with his mobile telephone and chanted slogans directed at politicians.

30. The Court considers therefore that the applicant has not made out a prima facie case of interference with his freedom of assembly (see, *mutatis mutandis*, *Kasparov and Others v. Russia*, no. 21613/07, § 72,

3 October 2013) and therefore agrees with the Government that Article 11 is not applicable in the instant case. It follows that this part of the application is incompatible *ratione materiae* and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

31. The Court is satisfied, however – especially since it involved only the applicant and seems to have lasted a short time – that the event which led to him being warned was predominantly an expression of his opinions (see, *mutatis mutandis*, *Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08, § 29, 12 June 2012). Moreover, the Court cannot accept the Government's argument that the applicant was punished merely for disturbing the public peace (see paragraph 25 above). In this connection, it notes that he chanted slogans directed at politicians in power at the time in public, and when a noisy demonstration was taking place in the area. It is not therefore unreasonable to assume that any possible noise made by the applicant would have been almost completely drowned out by the noise caused by the demonstration. Consequently, the Court takes the view that the penalty imposed on him cannot be dissociated from the political opinions expressed by him through his chants.

32. In the light of the above, the Court is of the opinion that the applicant has made out a case of interference with his freedom of expression and that the Government's objection concerning the applicability of Article 10 of the Convention to the applicant's case must be dismissed.

2. No significant disadvantage

(a) The parties' submissions

33. The Government argued that the applicant had not suffered a significant disadvantage. They reiterated some of the arguments concerning the applicability of Article 10 (see paragraphs 24-25 above). In addition, they pointed to the fact that the court had replaced the fine with a warning (see paragraph 15 above), a penalty which had had no impact on the applicant's possessions. The judgment in question had not been made public and only the parties involved in the case had been given notice of it. There was no evidence that the applicant's clients had known about the penalty, that the penalty had affected his ability to practise law or that it had been dissuasive enough to discourage him from expressing his opinions publicly.

34. They further submitted that since the Court had already examined on several occasions matters similar to those raised in the instant case, no serious issues had been raised concerning the application and interpretation of the Convention. The case had been duly examined by a court during a public hearing, and the applicant had had the opportunity to submit oral arguments and adduce evidence. The court had provided adequate reasons for its judgment and had not overstepped any boundaries in interpreting the relevant evidence or domestic legislation.

35. The applicant contested the Government's submissions that he had not suffered a significant disadvantage. In his view, their attempt to interpret the notion of "significant disadvantage" from a purely pecuniary point of view was a dangerous approach for the Convention protection mechanism, especially in circumstances such as those in his case, where the complaint concerned fundamental rights which did not necessarily have a pecuniary component.

(b) The Court's assessment

36. The Court reiterates the fundamental principles deriving from its case-law on the admissibility criterion set forth in Article 35 § 3 (b) of the Convention (see, amongst other authorities, *Savelyev v. Russia* (dec.), no. 42982/08, §§ 25-27, 21 May 2019).

37. In the instant case, there is no evidence to suggest that the penalty imposed on the applicant has in any way affected his professional or private life. Moreover, the financial implications of the proceedings seem to have been inexistent for him, given that his penalty was a warning and in any event was not shown to present any particular hardship.

38. However, the issue at stake in this case was clearly of personal importance to the applicant. He pursued the domestic proceedings concerning the penalty imposed on him to their conclusion and attempted to use several avenues of redress for the determination of his claims. As to what was objectively at stake, the Court observes that the penalty was imposed in the context of events that received widespread media coverage at the time (see paragraph 11 above) and that the case concerns recurrent questions in Romanian society about the appropriateness of the authorities' reaction and of the measures taken by them in circumstances where expression of political opinions by private individuals is in dispute (see, *mutatis mutandis*, *Eon v. France*, no. 26118/10, § 34, 14 March 2013).

39. As to whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits, the Court reiterates that the application raises an issue that is not insignificant, either at national level or in Convention terms (see *Eon*, cited above, § 35, with further references).

40. Under these circumstances the applicant cannot, in the Court's view, be deemed not to have suffered a significant disadvantage.

41. It follows that the Government's objection must be dismissed. Noting that the applicant's complaint under Article 10 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

B. Merits

1. The parties' submissions

42. The applicant argued that there was no evidence that could justify the authorities' view that by his behaviour he had failed to observe the acceptable social norms or had acted in the way indicated by them.

43. The Government argued that the authorities had not interfered with the applicant's right to freedom of expression. He had only been punished for overstepping the boundaries of the legislation protecting the peace of nearby residents. It was clear that the events in question had taken place in public at a time when people were normally asleep. The authorities had had an obligation to act in order to preserve the peace of those residents. It was general knowledge that everyone had a duty to avoid making any noise at night which could prevent others from sleeping. The video recorded by the applicant showed that there had been loud noises disturbing the public peace in the area where the applicant had come into contact with the gendarmes.

44. The Government further submitted that, even assuming that there had been an interference with the applicant's rights, it had been prescribed by law, had pursued a legitimate aim and had been necessary in a democratic society.

45. According to the Court's case-law, the authorities' decision to punish those who disturbed the public peace had not been contrary to the scope and object of Article 10, given the obvious disorder which characterised such events. In the Government's view, the authorities had not overstepped their margin of appreciation and had preserved a fair balance between the competing interests at stake. The penalty imposed on the applicant had been the least severe possible, and he had had the opportunity to duly present his case before a court, which had dismissed his claim that he had not made any noise.

2. The Court's assessment

46. Notwithstanding the Government's argument to the contrary, the Court notes that it has already established that the penalty imposed on the applicant amounted to an interference with his right to freedom of expression (see paragraphs 31-32 above). Such interference will lead to the finding of a violation of Article 10 of the Convention unless it was prescribed by law, pursued a legitimate aim and was necessary in a democratic society to achieve that aim.

47. In this connection, the Court observes that, under Article 3 § 25 and Article 4 (b) of Law no. 61/1991 (see paragraph 20 above) and Article 7 §§ 2 and 3 of Government Ordinance no. 2/2001 (see paragraph 21 above), the authorities could impose a warning on all those who unlawfully disturbed the public order and peace by making noise with a device or

object or by shouting. It is therefore satisfied that the exercise of this authority in the circumstances met the requirements of lawfulness and concludes that the interference was "prescribed by law". Moreover, the interference pursued the legitimate aims of preventing disorder and of protecting the rights and freedoms of others.

48. It remains for the Court to determine whether the interference was "necessary" in a democratic society to achieve the legitimate aim pursued. In that connection, it refers to the fundamental principles deriving from its case-law on the subject (see, amongst other authorities, *Tatár and Fáber*, cited above, §§ 33-35, and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Hertzegovina* [GC], no. 17224/11, § 75, 27 June 2017).

49. The Court notes, as already indicated above (see paragraph 31), that the applicant was punished for publicly chanting slogans directed at politicians in a central location in Bucharest while a demonstration was taking place nearby, and that his actions amounted to a form of political expression.

50. The Court notes that there is no evidence that the applicant's chants were offensive, targeted a person's private life, honour or reputation or amounted to incitement to violence or to a merely gratuitous attack against specific individuals. The Court therefore finds it reasonable to assume that his intention in chanting the slogans was to support the public criticism of the political leaders running the country at the time.

51. The Court reiterates that there is little scope under Article 10 § 2 for restrictions on freedom of expression in the area of political speech or debate – where freedom of expression is of the utmost importance – or in matters of public interest. The limits of acceptable criticism are wider for a politician than a private individual. Unlike the latter, the former inevitably and knowingly lay himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance (see, *Eon*, cited above, § 59).

52. The Court further notes that there is no evidence, and the Government have not argued, that in ignoring the gendarmes' initial instructions to leave the area, the applicant's conduct was violent, aggressive or could be seen as a reprehensible act. Likewise, it does not seem that the measure taken against him was the result of his failure to leave the area or comply with any possible lawful duty to notify the authorities in advance of his actions. Indeed, the Court notes that, according to the police report, the penalty imposed on him did not relate to the punishment of any of the above-mentioned possible specific failures in his conduct (see paragraph 9 above).

53. The Court also notes that, in spite of the fact that the legal basis for the penalty lay exclusively in him disturbing the public order and peace, the Government have not submitted any evidence to suggest that nearby residents had complained about or had been troubled by the applicant's

conduct either during or after the event in question. In any event, the Court notes that it has already concluded that given the applicant's close proximity to a noisy large-scale demonstration, any possible noise made by him would have been almost completely drowned out by the noise caused by the demonstration (see paragraph 31 above).

54. In these circumstances, given the applicant's conduct, his close proximity to a noisy demonstration and the absence of any obvious risk of disturbance, the Court is not convinced that the reasons given by the national authorities to justify the interference complained of are relevant and sufficient.

55. The Court would add that the imposition of a sanction, administrative or otherwise, however lenient, on the author of an expression which qualifies as political can have an undesirable chilling effect on public speech (see, *mutatis mutandis*, *Tatár and Fáber*, cited above, § 41).

56. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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. Damage

58. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage for the abuse committed against him and the alleged impact it had had on his professional activity.

59. The Government argued that the applicant's claim was excessive and that the mere finding of a violation would constitute sufficient just satisfaction.

60. The Court accepts that the applicant suffered some non-pecuniary damage as a result of the infringement of his rights under Article 10 of the Convention, which cannot be made good by the mere finding of a violation. Making an assessment on an equitable basis and taking into account, in particular, the fact that the applicant was merely warned as a result of his actions and no other penalty was imposed on him, it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

61. The applicant also claimed EUR 4,000 for the costs and expenses he would have incurred before the Court had he been forced to travel to Strasbourg and not been allowed to represent himself.

62. The Government argued that since the applicant had never incurred the costs and expenses claimed, no award should be made by the Court in this regard.

63. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the fact that the applicant was granted leave to present his own case (see paragraph 2 above) and was never asked to travel to Strasbourg for the proceedings at hand, the Court rejects the applicant's claim for costs and expenses.

C. Default interest

64. The Court considers it appropriate that the default interest rate 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 applicant's complaint under Article 10 of the Convention concerning the breach of his right to freedom of expression admissible and the complaint under Article 11 inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant within three months, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Faris Vehabović
Deputy Registrar	President