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La Corte EDU sulla libertà di espressione delle ONG e l'utilizzo del simbolo Falun
(CEDU, sez. II, sent. 29 giugno 2021, ric. n. 29458/15)

La Corte EDU ha deciso il ricorso presentato da due organizzazioni non governative registrate in Moldova, e da due cittadini contro la Repubblica di Moldova, riconoscendo la violazione degli articoli 9 e 11 della Convenzione.

Nella specie i ricorrenti sono seguaci di una pratica spirituale, il cui simbolo internazionale è il *Falun* rappresentato da una svastica gialla grande e quattro piccole in senso antiorario e quattro piccoli simboli su sfondo rosso e arancione. In virtù di simile circostanza, veniva avviato un procedimento affinché fosse vietato l'utilizzo di tale simbolo con conseguente scioglimento delle organizzazioni stesse. Già in tale sede, i ricorrenti si erano opposti precisando che il loro simbolo era stato registrato in oltre ottanta paesi in tutto il mondo e respingevano le accuse relative alla propagazione dell'odio e dei disordini, rivendicando il diritto loro riconosciuto dagli articoli 9 e 11 della Convenzione EDU. La Corte Suprema di Giustizia, accogliendo il ricorso, vietava l'utilizzo del simbolo e ordinava lo scioglimento delle ONG. Per conseguenza, il simbolo stesso veniva incluso nel registro dei simboli di natura estremista. Rispetto a tale pronunciamento veniva chiesto l'annullamento delle impugnate sentenze. La stessa Corte Suprema aveva rilevato una violazione dei diritti garantiti dagli articoli 9 e 11 della Convenzione, stabilendo che l'ingerenza nei «diritti garantiti dagli articoli 9 e 11 della Convenzione non era necessario in una società democratica perché non corrispondeva a una pressante esigenza sociale. Essa rilevava inoltre che i tribunali, i quali avessero precedentemente esaminato il caso, non avevano effettuato un test di proporzionalità e non avevano esaminato la necessità dell'interferenza. All'esito dei predetti procedimenti, le organizzazioni ricorrenti chiedevano l'esecuzione delle sentenze ed il risarcimento del danno morale subito, ma senza alcun successo.

Di qui il ricorso innanzi alla Corte EDU che, in prima battuta, ha respinto l'eccezione di inammissibilità sollevata dal Governo e fondata sulla presunta perdita dello status di vittima dei ricorrenti. In proposito, i giudici di Strasburgo hanno ribadito che una decisione o un provvedimento favorevole a un richiedente non è in linea di principio sufficiente per privarlo dello status di vittima, a meno che le autorità nazionali non abbiano riconosciuto, espressamente o sostanzialmente, e quindi *riparato* la violazione della Convenzione. Nel caso di specie, la Corte Suprema di Giustizia pur riconoscendo la violazione dei diritti garantiti dagli articoli 9 e 11 della Convenzione non aveva assegnato alcun compenso ai ricorrenti e, per di più, non era stata emessa alcuna ordinanza di rimozione del simbolo dal registro degli emblemi di natura estremista.

Quanto al merito, e con riguardo alla violazione della libertà di espressione, di riunione e di associazione, la Corte EDU ha ripreso e condiviso l'iter decisionale della Corte Suprema di Giustizia

e, constatata la violazione delle suddette disposizioni convenzionali, ha riconosciuto ai ricorrenti il diritto al risarcimento del danno morale.

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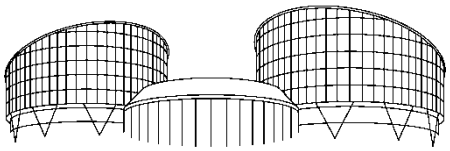

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF XXX v. THE REPUBLIC OF MOLDOVA

(Application no. 29458/15)

JUDGMENT

STRASBOURG

29 June 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Xxx and Others v. the Republic of Moldova,

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

Jon Fridrik Kjølbro, *President,*

Carlo Ranzoni,

Aleš Pejchal,

Valeriu Griţco,

Pauliine Koskelo,

Marko Bošnjak,

Saadet Yüksel, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 29458/15) 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 two non-governmental organisations registered in Moldova, Xxx and Xxx, and by two Moldovan and Romanian nationals, Xxx and Xxx ("the applicants"), on 18 May 2015;

the decision to give notice to the Moldovan Government ("the Government") of the complaints concerning Articles 9 and 11 of the Convention;

the absence of any wish of the Romanian Government to intervene in the proceedings, in accordance with Article 36 § 1 of the Convention and Rule 44 § 1(b) of the Rules of Court;

the parties' observations;

Having deliberated in private on 8 June 2021,

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

INTRODUCTION

1. The case concerns the banning of the applicant organisations' symbol, which resembles a reversed swastika, followed by their dissolution, allegedly at the request of the Chinese Government. It raises issues under Articles 9 and 11 of the Convention.

THE FACTS

2. The first two applicants are two non-governmental organisations registered in the Republic of Moldova. The third and fourth applicants, who are the president and founder of the first two applicants, were born in xxx and xxx respectively and live in xxx. All applicants were represented by Mr V. Gribincea, a lawyer practising in Chișinău.
3. The Government were represented by their Agent, Mr O. Rotari.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
5. The applicant organisations practise Falun Gong, a spiritual practice forbidden in China, the declared aim of which is to achieve spirituality through moral rectitude, exercises and meditation. The international symbol of the organisations and the symbol registered with the Ministry of Justice of the Republic of Moldova is the *Falun*, which is represented by one large and four small counter-clockwise yellow swastikas and four small yin-yang symbols on red and orange backgrounds.
6. On two different dates, a third non-governmental organisation initiated court proceedings against the Ministry of Justice and the applicant organisations, seeking the ban of their symbol and their dissolution on the ground that they had a swastika as a symbol and that they propagated hatred and social unrest. The applicants opposed this, arguing that their symbol was not a Nazi swastika and that it had been registered in over eighty countries around the world. They also denied the accusations concerning the propagation of hatred and unrest and relied on Articles 9 and 11 of the Convention.
7. In two judgments of 11 February 2015 and 7 December 2016, the Supreme Court of Justice finally upheld the actions against the Ministry of Justice and the applicant organisations, banned their symbol and ordered their dissolution. As a result, the applicant organisations' symbol was included in the Register of Materials of an Extremist Nature by order of the Minister of Justice.
8. After the communication of the present case to the Government, the Government Agent introduced two revision requests, seeking the quashing of the court judgments of 11 February 2015 and 7 December 2016. The Agent also sought the acknowledgement of a violation of Articles 9 and 11 of the Convention and the award of non-pecuniary damage.
9. On 2 October and 27 November 2019, the Supreme Court of Justice upheld the Agent's revision requests, quashed the impugned judgments and ordered the re-examination of the merits of the cases. It also found a breach of the applicants' rights guaranteed by Articles 9 and 11 of the Convention but rejected the Agent's request to award them non-pecuniary damage. In so doing, the Supreme Court found that the interference with the applicants' rights guaranteed by Articles 9 and 11 of the Convention was not necessary in a democratic society because it did not correspond to a pressing social need. It also found that the courts which had previously examined the case had failed

to make a proportionality test and had not examined the necessity of the interference. Subsequently, during the re-examination of the merits of the cases, the actions concerning the ban of the applicants' symbol and their dissolution were finally dismissed.

10. After the conclusion of the above proceedings, the applicant organisations sought the enforcement of the above judgments. In particular, they requested the Minister of Justice to exclude their symbol from the Register of Materials of an Extremist Nature. However, the Minister of Justice refused to issue such an order and the court decisions have not been executed in that respect to date.

RELEVANT LEGAL FRAMEWORK

11. The Government Decision No. 979 of 7 September 2007 introduced the Register of Materials of an Extremist Nature. According to sections 8 and 15 of the Decision, the entry and the exclusion of materials into and from the register shall be done by an order of the Minister of Justice which shall be published in the Official Gazette.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 11 OF THE CONVENTION

12. The applicants complained that the ban of their symbol and the dissolution of the applicant organisations amounted to a breach of their rights guaranteed by Articles 9 and 11 of the Convention, which read as follows:

Article 9 (freedom of thought, conscience and religion)

"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."

Article 11 (freedom of assembly and association)

"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

13. The Government submitted that since the Supreme Court of Justice acknowledged a breach of the applicants' rights under Articles 9 and 11 of the Convention, the matter had been resolved because they had lost their victim status. They asked the Court to strike the case out of its list of cases.

14. The applicants disagreed and argued that they had not lost their victim status. They submitted *inter alia* that the acknowledgement of the violation was not complete because the decisions of the Supreme Court of Justice had not yet been enforced and the organisations' symbol continued to be in the Register of Materials of an Extremist Nature. They also argued that they had not been offered any compensation for the breaches of their rights. Finally, the applicants argued that, in view of the Falun Gong's worldwide persecution, respect for human rights required the examination of the case.

15. The Court interprets the Government's argument as relating to an objection to admissibility based on loss of victim status. It reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

16. In the instant case it is true that the Supreme Court of Justice quashed the judgments of 11 February 2015 and 7 December 2016 and held that there had been a violation of the applicants' rights guaranteed by Articles 9 and 11 of the Convention. However, the Supreme Court did not award any compensation to the applicants in its judgments of 2 October and 27 November 2019. Moreover, the Government failed to fully comply with the Supreme Court's judgments to date. More than twenty months after the adoption of those judgments, the Minister of Justice has not yet issued an order removing the applicant organisations' symbol from the Register of Materials of an Extremist Nature in a manner provided for by section 15 of the Government's Decision No. 979 (see paragraph 11 above). The Government's objection must therefore be rejected.

17. The Court further notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established. They must therefore be declared admissible.

B. Merits

18. The applicants argued that their rights guaranteed by Articles 9 and 11 of the Convention had been breached as a result of the banning of their symbol and of the dissolution of the applicant organisations.

19. The Government reiterated their position that the applicants had lost their victim status as a result of the adoption of Supreme Court's judgments of 2 October and 27 November 2019 and of the acknowledgement therein of the violation of their rights guaranteed by Articles 9 and 11 of the Convention.

20. The Government agree that the applicants suffered a breach of their rights under Articles 9 and 11 of the Convention. Their acknowledgement is based on the finding of violations by the Supreme Court (see paragraph 9 above). In view of its own case-law (see, in particular, *Vajnai v. Hungary*, no. 33629/06, ECHR 2008; *Association Rhino and Others v. Switzerland*, no. 48848/07, 11 October 2011 and *Adana TAYAD v. Turkey*, no. 59835/10, 21 July 2020) the Court sees no reason to depart from the conclusion of the Supreme Court of Justice and it does not consider it necessary to re-examine the merits of these complaints.

21. Given the fact that the Supreme Court did not award any compensation to the applicants and the Government failed to fully comply with the Supreme Court's judgments to date (see paragraph

16 above), the Court finds that there has been a violation of Articles 9 and 11 of the Convention, which arises from the banning of the applicant organisations' symbol and their dissolution.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicants claimed 25,000 euros (EUR) jointly in respect of non-pecuniary damage.

24. The Government contested the amount of non-pecuniary damage claimed by the applicants, alleging that it was excessive.

25. The Court considers that, in view of the violations found above, the applicants are entitled to compensation of non-pecuniary damage and awards them jointly EUR 4,500.

B. Costs and expenses

26. The applicants also claimed EUR 7,695 in respect of the costs and expenses incurred before the Court.

27. The Government considered this amount excessive.

28. Regard being had to the documents in its possession, the Court considers it reasonable to award the applicants EUR 1,500 for costs and expenses.

C. Default interest

29. 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 application admissible;

2. *Holds* that there has been a violation of Articles 9 and 11 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicants jointly, 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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

4. *Dismisses*, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar
Jon Fridrik Kjølbro President