

The penalty imposed on the applicant for begging in public breached the Convention

In today's Chamber judgment¹ in the case of [Lăcătuș v. Switzerland](#) (application no. 14065/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned an order for the applicant to pay a fine of 500 Swiss francs (CHF) (approximately 464 euros (EUR)) for begging in public in Geneva, and her detention in a remand prison for five days for failure to pay the fine.

The Court observed that the applicant, who was illiterate and came from an extremely poor family, had no work and was not in receipt of social benefits. Begging constituted a means of survival for her. Being in a clearly vulnerable situation, the applicant had had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs by begging.

The Court considered that the penalty imposed on the applicant had not been proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers. The Court did not subscribe to the Federal Court's argument that less restrictive measures would not have achieved a comparable result.

In the Court's view, the penalty imposed had infringed the applicant's human dignity and impaired the very essence of the rights protected by Article 8 of the Convention, and the State had thus overstepped its margin of appreciation in the present case.

Principal facts

The applicant, Violeta-Sibianca Lăcătuș, is a Romanian national who was born in 1992 and lives in Bistrita-Nasaud (Romania). She belongs to the Roma community.

In 2011 Ms Lăcătuș, who was unable to find work, began asking for charity in Geneva. On 22 July 2011 she was ordered to pay an initial fine of CHF 100 (approximately EUR 93) under section 11A of the Geneva Criminal Law Act, which makes it an offence to beg in public places. A sum of CHF 16.75 (approximately EUR 15.50) was confiscated from her on that occasion after a body search by the police. Over the next two years Ms Lăcătuș was issued with summary penalty orders requiring her to pay eight further fines of the same amount, and was twice taken into police custody for three hours. Each of the fines could be replaced by a one-day custodial sentence in the event of non-payment.

Ms Lăcătuș appealed against the penalty orders. In a judgment of 14 January 2014 the Police Court of the Canton of Geneva found her guilty of begging. The court ordered her to pay a fine of CHF 500, to be replaced by a five-day custodial sentence in the event of non-payment, and upheld the confiscation of CHF 16.75. An appeal lodged by the applicant with the Criminal Appeals and Review Division of the

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.

Court of Justice of the Canton of Geneva was dismissed on 4 April 2014. Ms Lăcătuș appealed to the Federal Court against that decision, but her appeal was dismissed on 10 September 2014.

From 24 to 28 March 2015 Ms Lăcătuș was detained in Champ-Dollon Remand Prison for failure to pay the fine.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life, home and correspondence), the applicant alleged that the prohibition on begging in public places constituted unacceptable interference with her private life as it had deprived her of her means of subsistence. Under Article 10 (freedom of expression), she maintained that the prohibition on begging had prevented her from conveying her plight by asking for charity. Relying on Article 14 (prohibition of discrimination) read in conjunction with Article 8, the applicant alleged that she had been the victim of discrimination on account of her social and financial situation and her origins.

The application was lodged with the European Court of Human Rights on 17 March 2015.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
María **Elósegui** (Spain),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 8

The Court found that there had been interference with the exercise by the applicant of her rights under Article 8 of the Convention. The interference had had a legal basis in section 11A of the Geneva Criminal Law Act.

The Court observed that section 11A(1) of that Act stated that “begging [was] punishable by a fine”. Hence, that provision penalised in blanket fashion persons engaging in begging. The Court considered that an outright ban on a certain type of conduct was a radical measure which required strong justification and particularly rigorous scrutiny by the courts empowered to weigh up the various interests at stake.

In the present case the applicable legislation had precluded a genuine balancing of the interests at stake, and penalised begging in blanket fashion.

The Court observed that the applicant came from an extremely poor family, was illiterate, had no work and was not in receipt of social benefits. Begging constituted a means of survival for her. The Court considered that, being in a clearly vulnerable situation, the applicant had had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs by begging.

Regarding the nature and severity of the penalty, the Court observed that the applicant had been ordered to pay a fine of CHF 500, to be replaced by a five-day custodial sentence in the event of non-payment. As she had been incapable of paying this sum, the applicant had in fact served a custodial

sentence in prison. The Court observed that this was a severe sanction. A measure of this kind had to be justified by sound reasons in the public interest, which had not been present in this case.

As to whether less stringent measures could have achieved a comparable result, the Court noted that in its judgment of 9 May 2008 the Federal Court had found that less restrictive legislation would be ineffective, referring to the findings of law made in its previous judgments.

A comparative-law survey of legislation on begging showed that the majority of Council of Europe member States imposed more nuanced restrictions than the blanket ban under section 11A of the Geneva Criminal Law Act. Even though the State had some margin of appreciation in that regard, compliance with Article 8 required the domestic courts to examine thoroughly the particular situation in the case before them. Accordingly, the Court could not subscribe to the Federal Court's argument that less restrictive measures would not have achieved a comparable result.

The Court considered that the penalty imposed on the applicant had not been proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers. The applicant was an extremely vulnerable person who had been punished for her actions in a situation in which she had in all likelihood had no choice other than to beg in order to survive. In the Court's view, the penalty imposed had infringed the applicant's human dignity and impaired the very essence of the rights protected by Article 8, and the State had thus overstepped its margin of appreciation in the present case.

The Court concluded that the interference with the exercise of the applicant's Article 8 rights had not been "necessary in a democratic society" within the meaning of Article 8 § 2 and that there had been a violation of Article 8 of the Convention.

Article 10

Having found a violation of Article 8, the Court considered that the complaint under Article 10 did not raise a separate and essential issue and that it was therefore unnecessary to rule separately on that complaint.

Article 14 read in conjunction with Article 8

Having found a violation of Article 8, the Court considered that there was no need to rule separately on the complaint under Article 14 read in conjunction with Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 922 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Keller expressed a concurring opinion. Judges Lemmens and Ravarani each expressed a partly concurring, partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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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.