



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

FOURTH SECTION

**CASE OF CHRISTIAN DEMOCRATIC PEOPLE'S PARTY
v. MOLDOVA**

(Application no. 28793/02)

JUDGMENT

STRASBOURG

14 February 2006

FINAL

14/05/2006

In the case of Christian Democratic People's Party v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Matti Pellonpää,

Rait Maruste,

Stanislav Pavlovski,

Javier Borrego Borrego,

Ján Šikuta, *judges*,

and Michael O'Boyle, *Section Registrar*,

Having deliberated in private on 24 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 28793/02) 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 the Christian Democratic People's Party ("the applicant party") on 8 July 2002.

2. The applicant party was represented by Mr V. Nagacevschi and Mr V. Gribincea, lawyers practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Pârlog.

3. The applicant party alleged, in particular, that its right to freedom of assembly had been violated as a result of the sanctions imposed on it for organising unauthorised gatherings.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 22 March 2005, the Chamber declared the application admissible.

7. The applicant party and the Government each filed observations on the merits (Rule 59 § 1), the Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant party, the Christian Democratic People's Party ("the CDPP"), is a parliamentary political party in the Republic of Moldova which was in opposition at the time of the events.

1. The background to the case

9. Towards the end of 2001, the Moldovan government made public its intention to make the study of the Russian language compulsory in schools for children aged seven and over.

10. This initiative prompted vehement criticism from the opposition and generated a heated public debate.

11. On 26 December 2001 the parliamentary group of the CDPP informed Chişinău Municipal Council of its intention to hold a meeting with its supporters on 9 January 2002, in Great National Assembly Square, in front of the government buildings. It stated that the meeting would relate to the introduction of the compulsory study of Russian in schools. It relied on section 22 of the Status of Members of Parliament Act (see paragraph 35 below) which, according to the CDPP, did not require members of parliament to obtain prior authorisation for meetings with their supporters.

2. The decisions of the Municipal Council

12. By a decision of 3 January 2002, the Municipal Council classified the gathering to be held on 9 January 2002 as a "demonstration" within the meaning of sections 4, 8, 12 and 13 of the Assemblies Act (see paragraph 36 below) and authorised the parliamentary group of the CDPP to hold it in National Opera Square. It did not give any reasons for the change of location.

13. Later, on 23 January 2002, the Municipal Council addressed a letter to the Ministry of Justice, informing it that there was a discrepancy between the provisions of the Status of Members of Parliament Act and those of the Assemblies Act and that it did not know which to apply. It stated, *inter alia*, that a number of reputable lawyers supported the idea that the CDPP members of parliament had the right to hold meetings with their supporters in Great National Assembly Square without obtaining prior authorisation, in accordance with the provisions of sections 22 and 23 of the Status of Members of Parliament Act. It cited in that respect the opinion of an ombudsman who considered that, since section 23 of the Status of Members of Parliament Act proclaimed the right of MPs to raise demands on the spot for action to remedy a breach of the law, the CDPP members of parliament

were entitled to raise their demands for the cessation of the alleged breaches concerning the introduction of compulsory Russian lessons in front of the government building, as it also housed the Ministry of Education. Accordingly, the Municipal Council requested the Ministry of Justice to ask Parliament for an official interpretation of the legislation in question.

14. On 26 January 2002 the Municipal Council issued a decision which stated, *inter alia*:

“Having regard to the fact that the provisions of the domestic legislation are contradictory in respect of the demonstrations organised by the CDPP and that the opinions of legal experts are contradictory, and bearing in mind the considerable social impact of a possible decision regarding the matter and the consequences it might entail, the Municipal Council has formally requested the Ministry of Justice to ask Parliament for an official and urgent interpretation of the relevant legislation. ... The Municipal Council's decision of 3 January 2002 is hereby suspended until Parliament has given its official interpretation.”

3. *The gatherings held by the CDPP members of parliament*

15. In the meantime, on 9 January 2002, the parliamentary group of the CDPP held a gathering in Great National Assembly Square, in front of government headquarters. It also held gatherings on 11, 13, 15, 16 and 17 January 2002. The CDPP informed the Municipal Council in advance of each gathering; however, it did not seek authorisation in accordance with the Assemblies Act.

4. *The warning letter from the Ministry of Justice and the CDPP's reply*

16. On 14 January 2002 the Ministry of Justice issued an official warning to the CDPP in accordance with section 27 of the Parties and other Socio-Political Organisations Act (see paragraph 37 below). It stated, *inter alia*, that the CDPP had breached the provisions of section 6 of the Assemblies Act by organising demonstrations in Great National Assembly Square on 9, 10, 11 and 13 January 2002, notwithstanding the authorisation issued by the Municipal Council, which only gave permission for a demonstration on 9 January 2002 in National Opera Square. It called for an immediate halt to the gatherings, which it considered to be illegal and unconstitutional and which it claimed were not meetings with voters within the meaning of the Status of Members of Parliament Act, but demonstrations falling under the Assemblies Act. It asked the CDPP for a written explanation within three days and warned that, if it failed to comply with the warning, the Ministry would impose a temporary ban (*suspendarea activităţii*) on the party's activities in accordance with section 29 of the Parties and other Socio-Political Organisations Act (see paragraph 37 below).

17. On 17 January 2002 the President of the CDPP wrote a letter to the

Ministry of Justice in which he stated that the gatherings had not been organised by the CDPP but by members of its parliamentary group, and that it was therefore the members concerned who were liable, and not the party. He also relied on section 22 of the Status of Members of Parliament Act, arguing that it was a very specific Act, applicable to meetings between members of parliament and voters, while the Assemblies Act was general in nature. He finally submitted that the threatened ban on the party's activities would amount to a political measure taken by the Communist Party in order to repress the opposition.

5. The temporary ban imposed on the CDPP's activities

18. On 18 January 2002 the Ministry of Justice issued a decision imposing a one-month ban on the CDPP's activities, in accordance with section 29 of the Parties and other Socio-Political Organisations Act.

19. The measure was imposed on the basis of the organisation by the CDPP of unauthorised demonstrations on 9, 10, 11, 13, 15, 16 and 17 January 2002.

20. The Ministry of Justice dismissed the CDPP leader's argument that the party could not be held liable. It stated, *inter alia*, that the gatherings organised by the CDPP on the above dates had in fact been demonstrations and marches and therefore fell within the scope of the Assemblies Act rather than the Status of Members of Parliament Act as the CDPP had claimed.

21. According to the decision, the CDPP had breached the provisions of sections 5, 6, 7, 8, 9 and 11 of the Assemblies Act by not obtaining prior authorisation from the Municipal Council to stage demonstrations and by blocking the public highway.

22. The participation of minors in the CDPP demonstrations had been in breach of Article 15 of the International Convention on the Rights of the Child (see paragraph 38 below), section 13(3) of the Protection of Children Act (see paragraph 39 below) and section 56(g) of the Education Act (see paragraph 40 below).

23. The CDPP's actions also disclosed a violation of sections 27 and 29 of the Parties and other Socio-Political Organisations Act (see paragraph 37 below), section 15(1) and (2) of the Status of Members of Parliament Act (see paragraph 35 below) and Article 32 of the Constitution (see paragraph 34 below). The use of such slogans as "I'd rather be dead than a communist" (*Mai bine mort decât comunist*) could be interpreted as a call to public violence and an act undermining the legal and constitutional order.

6. The proceedings challenging the ban on the party's activities, and the lifting of the ban

24. On 24 January 2002 the CDPP challenged the decision of the Ministry of Justice arguing, *inter alia*, that the gatherings had been meetings

with voters within the meaning of the Status of Members of Parliament Act, and not assemblies falling within the scope of the Assemblies Act.

25. On 8 February 2002 the Ministry of Justice issued a decision lifting the temporary ban imposed on the CDPP's activities. It stressed that the CDPP had breached all the laws mentioned in the decision of 18 January 2002 and that the temporary ban had been necessary and justified. However, following an inquiry by the Secretary General of the Council of Europe under Article 52 of the Convention, and having regard to the forthcoming local elections, the CDPP was authorised to resume its activities. The decision of 8 February 2002 did not, however, set aside the decision of 18 January 2002.

26. On 7 March 2002 the Court of Appeal found in favour of the Ministry of Justice and ruled that the decision of 18 January 2002 had been lawful. It dismissed the CDPP's argument that the party could not be held liable for the actions of its members, namely its parliamentary group. It found that the gatherings organised by the CDPP had in fact been demonstrations, meetings and marches which fell under the provisions of the Assemblies Act, and not meetings with voters. Even assuming that the gatherings had been intended as meetings with voters, they had gradually taken on the nature of demonstrations and, accordingly, the CDPP needed authorisation in order to organise them. It also stated that, as a result of the demonstrations, the public transport company had suffered losses of 12,133 Moldovan lei (MDL) (the equivalent of 1,050 euros (EUR) at the time). The participation of minors in the demonstrations had been in breach of the International Convention on the Rights of the Child, the Protection of Children Act and the Education Act.

27. The CDPP lodged an appeal against this decision with the Supreme Court of Justice, relying, *inter alia*, on Articles 10 and 11 of the Convention.

28. On 17 May 2002 a panel of the Supreme Court of Justice delivered its judgment, in which it dismissed the appeal lodged by the CDPP. It endorsed the arguments of the Court of Appeal and found, *inter alia*, that since the demonstrations organised by the CDPP had been illegal, the sanction imposed on it had not been disproportionate. It also stated that in any event the decision of the Ministry of Justice had not had any negative effects on the CDPP since it had not been enforced, the CDPP's accounts had not been frozen and the party could continue its activities unhindered.

7. *The proceedings by the government seeking to have the gatherings held by the CDPP declared illegal and requesting an order to discontinue them*

29. The Ministry of Justice did not reply to the Municipal Council's request of 23 January 2002 for interpretation of the law and did not address any request to Parliament. However, on 21 February 2002 the government

lodged an application with the Supreme Court of Justice asking it, *inter alia*, to declare the demonstrations organised by the CDPP illegal and to order their cessation.

30. On 25 February 2002 the Supreme Court of Justice ruled in favour of the government and declared the gatherings illegal. It stated, *inter alia*:

“Even if one could accept that the CDPP had the initial intention of holding meetings with its supporters, those meetings later took on the character of demonstrations, marches, processions and picketing, which fall under the provisions of the Assemblies Act. In these circumstances, the leaders of the CDPP were required to comply with the provisions of the Assemblies Act ...”

31. The CDPP appealed.

32. On 15 March 2002 the Supreme Court of Justice dismissed the appeal and the judgment of 25 February 2002 became final.

8. *The video submitted by the Government*

33. In the course of the present proceedings before the Court, the Government submitted a video with images of gatherings held by the CDPP deputies on 15, 16, 17 and 18 January 2002. The gatherings were held in Great National Assembly Square, in a pedestrian area, in front of the government buildings. The participants appeared to number several hundred and included people of different ages varying from schoolchildren to pensioners. According to the time displayed on the images, the gatherings commenced at around 1 p.m. and lasted for about two hours. Different personalities made speeches critical of the ruling Communist Party, the government and its policy. It appears from the video that traffic was not disrupted as a result of the gatherings held on those dates, and no signs of violence can be seen. “The Layabout's Anthem” (*Imnul Golanilor* – a song that originated in the 1990 Bucharest student demonstrations) was played frequently. The chorus of the song had the following wording:

“I'd rather be a slacker than a traitor (*Mai bine haimana, decât trădător*)

I'd rather be a hooligan than a dictator (*Mai bine huligan, decât dictator*)

I'd rather be a layabout than an activist (*Mai bine golan, decât activist*)

I'd rather be dead than a communist (*Mai bine mort, decât comunist*).”

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

34. Article 32 of the Constitution of the Republic of Moldova reads as follows:

“3. Denial and defamation of the State and of the people, incitement to war of aggression, incitement to hatred on ethnic, racial or religious grounds, incitement to discrimination, territorial separatism or public violence, as well as other acts

undermining the constitutional order shall be forbidden and shall be punishable under the law.”

35. The relevant provisions of the Status of Members of Parliament Act of 7 April 1994 provide:

Section 15

“(1) Members of parliament shall be obliged strictly to observe the Constitution, the laws and the rules of morality and ethics.

(2) Members of parliament shall have a duty to be dependable and to contribute by their own example to the consolidation of State discipline, the fulfilment of civil obligations, the protection of human rights and the observance of the law.

(3) Alleged breaches of the rules of ethics by members of parliament shall be examined by the Parliamentary Commission on Legal Affairs, Appointments and Immunity.”

Section 22(3)

“Local authorities shall provide members of parliament with all necessary assistance for the organisation of their work with voters. They shall place premises at their disposal for meetings with voters.”

On 26 July 2002 section 22(3) was amended as follows:

“Local authorities shall provide members of parliament with the necessary assistance for the organisation of their work with voters. For this purpose, they [the local authorities] shall ensure access to buildings or other public places, provide equipment and any necessary information and inform voters in good time about the place and the time of meetings with members of parliament.”

On 26 July 2002 a new section 22(1) was introduced:

“Members of parliament shall have the right to organise demonstrations, meetings, processions and other peaceful gatherings in accordance with the Assemblies Act.”

Section 23

“(1) Members of parliament, in their capacity as representatives of the supreme legislative power, shall have the right to raise demands on the spot for action to remedy a breach of the law ...”

36. The relevant provisions of the Assemblies Act of 21 June 1995 read as follows:

Section 5

“Assemblies may be conducted only after the organisers have notified the local council.”

Section 6

“(1) Assemblies shall be conducted peacefully, without any sort of weapons, and shall ensure the protection of participants and the environment, without impeding the normal use of public highways, road traffic and the operation of economic undertakings and without degenerating into acts of violence capable of endangering the public order and the physical integrity and life of persons or their property.”

On 26 July 2002 the following provision was added to the section:

“(2) Teachers or other school staff members shall not involve students in unauthorised assemblies.”

Section 7

“Assemblies shall be suspended in the following circumstances:

- (a) denial and defamation of the State and of the people;
- (b) incitement to war of aggression and incitement to hatred on ethnic, racial or religious grounds;
- (c) incitement to discrimination, territorial separatism or public violence;
- (d) acts that undermine the constitutional order.”

Section 8

“(1) Assemblies may be conducted in squares, streets, parks and other public places in cities, towns and villages, and also in public buildings.

(2) It shall be forbidden to conduct an assembly in the buildings of the public authorities, the local authorities, prosecutors' offices, the courts or companies with armed security.

(3) It shall be forbidden to conduct assemblies:

(a) within fifty metres of the parliament building, the residence of the President of Moldova, the seat of the government, the Constitutional Court and the Supreme Court of Justice;

(b) within twenty-five metres of the buildings of the central administrative authority, the local public authorities, courts, prosecutors' offices, police stations, prisons and social rehabilitation institutions, military installations, railway stations, airports, hospitals, companies which use dangerous equipment and machines, and diplomatic institutions.

(4) Free access to the premises of the institutions listed in subsection (3) shall be guaranteed.

(5) The local public authorities may, if the organisers agree, establish places or

buildings for permanent assemblies.”

Section 9

“The date and time of the assembly shall be agreed by the organiser and the local council of the city, town or village.”

Section 11

“(1) Not later than fifteen days prior to the date of the assembly, the organiser shall submit a notification to the Municipal Council, a specimen of which is set out in the annex which forms an integral part of this Act.

(2) The prior notification shall indicate:

- (a) the name of the organiser of the assembly and the aim of the assembly;
- (b) the date, starting time and finishing time of the assembly;
- (c) the location of the assembly and the access and return routes;
- (d) the manner in which the assembly is to take place;
- (e) the approximate number of participants;
- (f) the persons who are to ensure and answer for the sound conduct of the assembly;
- (g) the services the organiser of the assembly asks the Municipal Council to provide.

(3) If the situation so requires, the Municipal Council may alter certain aspects of the prior notification with the agreement of the organiser of the assembly.”

Section 12

“(2) When the prior notification is considered at an ordinary or extraordinary meeting of the Municipal Council, the discussion shall deal with the form, timetable, location and other conditions for the conduct of the assembly and the decision taken shall take account of the specific situation.”

37. The relevant parts of the Parties and other Socio-Political Organisations Act of 17 September 1991 provide:

Section 27

“... In the event that breaches of the statute or of the law are discovered in the activities of a party or a socio-political organisation, the Ministry of Justice shall warn its leaders in writing, requesting that the breaches be remedied within a fixed time-limit.”

Section 29

“The Ministry of Justice shall impose a temporary ban on the activities of a party or socio-political organisation which breaches the provisions of the Constitution or those of the present Act, or does not comply with a warning.”

On 21 November 2003, this paragraph was amended as follows:

“The Ministry of Justice shall impose a temporary ban on the activities of a party or socio-political organisation which breaches the provisions of the Constitution.

In this case, the Ministry of Justice shall inform the party's leadership in writing of the breaches of the law which have taken place and will set a time-limit for action to remedy them.

During electoral campaigns the activities of parties and other socio-political organisations may be suspended only by the Supreme Court of Justice.

During the temporary ban, it shall be forbidden for the party to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other operations in respect of its assets and to participate in elections.

Once all the breaches of the law have been remedied, the party shall inform the Ministry of Justice, which shall lift the temporary ban within five days.

The activities of the party or other socio-political organisation may be suspended for a period up to six months. If the breaches of the law are not remedied its activities may be suspended for a period of one year.”

38. The relevant provisions of the International Convention on the Rights of the Child of 20 November 1989 read as follows:

Article 15

“1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

39. The relevant parts of the Protection of Children Act of 15 December 1994 provide:

Section 13

“(1) Children shall have the right to membership of non-governmental organisations in accordance with the law.

(2) The State must provide children's non-governmental organisations with financial support, place premises at their disposal and provide them with fiscal

incentives.

(3) The involvement of children in politics and their membership of political parties shall be forbidden.”

40. The relevant parts of the Education Act of 21 July 1995 state:

Section 56

“It shall be the duty of teachers:

...

(g) not to involve children in street actions (meetings, demonstrations, picketing, etc.).”

41. The relevant part of the Code of Administrative Offences of 29 March 1985 reads as follows:

Article 174 (1)

“2. The organisation and holding of an assembly without prior notification to the Municipal Council or without authorisation from the Council, or in breach of the conditions (manner, place, time) concerning the conduct of meetings indicated in the authorisation shall be punishable by a fine to be imposed on the organisers (leaders) of the assembly in an amount equal to between ten and twenty-five times the minimum monthly wage. ...

...

4. Active participation in an assembly referred to in paragraph 2 of the present Article shall be punishable by a fine in an amount between MDL 180 and MDL 450.”

On 26 July 2002 the following provision was added to the Code:

“7. The involvement of children in unauthorised assemblies shall be punishable by a fine of between MDL 180 and MDL 360.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

42. The applicant party complained that the temporary ban in issue had violated its right to freedom of peaceful assembly and association as guaranteed by Article 11 of the Convention, which provides:

“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. Applicability of Article 11

43. As a preliminary point, the Government raised the question of the applicability of Article 11 to the present case. In their observations they confined themselves to submitting that it did not apply because the gatherings organised by the CDPP had not been peaceful and had not been authorised in accordance with the law.

44. The applicant party disagreed and pointed out that in the video of the gatherings submitted by the Government there were no signs of violence.

45. The Court first notes that the Government have failed to substantiate their allegations of violence. The domestic courts examined twice the issue of the legality of the CDPP's gatherings (see the proceedings which ended with the final judgments of the Supreme Court of Justice of 15 March 2002 and 17 May 2002) and never found them to have been violent. Lastly, it appears from the video submitted by the Government that the gatherings were peaceful.

46. It follows that the Government's objection must be dismissed.

B. Compliance with Article 11

1. Whether there was interference

47. The parties agreed that the imposition of a temporary ban on the applicant party's activities amounted to interference with the CDPP's rights guaranteed by Article 11. That view is shared by the Court.

2. Whether the interference was justified

48. Such interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 and was “necessary in a democratic society” for the achievement of those aims.

(a) “Prescribed by law”

49. The Court notes that the Ministry of Justice imposed a temporary ban on the CDPP's activities on the basis of section 29 of the Parties and other Socio-Political Organisations Act (see paragraph 37 above).

50. It follows from that provision, *inter alia*, that the Ministry of Justice was entitled to impose a ban on the CDPP's activities if the party failed to comply with the official warning of 14 January 2002.

51. The warning letter of 14 January 2002 stated that the CDPP had failed to observe the terms of the authorisation issued by the Municipal Council on 3 January 2002 (see paragraph 12 above) and had held unauthorised demonstrations on 9, 10, 11 and 13 January 2002. It requested explanations and ordered the cessation of acts which were "incompatible with the Constitution and with the legislation of Moldova".

52. Only in its decision of 18 January 2002 imposing a temporary ban on the CDPP's activities (see paragraph 18 above) did the Ministry of Justice rely on new grounds such as the involvement of children in street action, calls to public violence and acts undermining the constitutional order (see paragraphs 22-23 above).

53. The applicant party was not, therefore, informed in the warning letter of all the acts imputed to it, which reduced its ability to foresee all the consequences which might ensue if it continued to hold meetings. This in itself might be sufficient basis for the conclusion that the impugned measures were not "prescribed by law". However, the Court does not consider it necessary to decide this issue having regard to its conclusions set out below.

(b) Legitimate aim

54. The Government did not make any particular submissions in this respect and the applicant party argued that the interference did not pursue any legitimate aim. The Court, for the reasons set out below, does not consider it necessary to decide this point either.

(c) "Necessary in a democratic society"

(i) The parties' submissions

(α) The applicant party

55. The applicant party argued that the CDPP gatherings had the purpose of furthering its political agenda in respect of the government's initiative to make the study of Russian compulsory in schools. According to the applicant party, it did not have any access to the mass media and no debates were held in Parliament due to the absolute majority of the Communist Party. In such circumstances the only way open to it to express its views and to criticise the government's policy was to organise gatherings in Great National Assembly Square.

56. The gatherings had been entirely peaceful, no incitement to public violence had been made, and the participants had not carried weapons. They

had simply called for early political elections, European democratic values and a democratic dialogue.

(β) The Government

57. The Government maintained that the CDPP had breached the provisions of sections 5 and 6 of the Assemblies Act, sections 13 and 15 of the Protection of Children Act and section 56 of the Education Act.

58. The gatherings organised by the CDPP could not be considered to be meetings with voters since minors had attended them and, according to Moldovan legislation, minors could not vote and therefore could not be considered as voters. Moreover, the involvement of minors in political activities was prohibited under Moldovan law.

59. The measure had been imposed on the applicant party also for its failure to observe the deadline for responding to the Ministry of Justice's official warning of 14 January 2002.

60. By a decision of the Municipal Council, the applicant party had been authorised to organise a gathering on 9 January 2002 in National Opera Square, which was a public place, located at a distance of several hundred metres from Great National Assembly Square and from the seats of the government, presidency and Parliament. The applicant party had not complied with the decision of the Municipal Council, but had not at any point challenged it in court.

61. The applicant party had at no time complied with the measure imposed and had continued its activities and its prohibited gatherings. Accordingly, the Government had not abused its margin of appreciation but had imposed on the party a legitimate sanction which was proportionate to the legitimate aim pursued.

(ii) The Court's assessment

(α) General principles

62. The Court reiterates that, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, §§ 42-43, *Reports of Judgments and Decisions* 1998-I).

63. Not only is political democracy a fundamental feature of the European public order, but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the

Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of Articles 8, 9 and 10 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that must claim to spring from a “democratic society” (see, for instance, *United Communist Party of Turkey and Others*, cited above, §§ 43-45).

64. Referring to the hallmarks of a “democratic society”, the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that, although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 112, ECHR 1999-III).

65. It follows that the limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system, the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

66. In *Informationsverein Lentia and Others v. Austria* (24 November 1993, Series A no. 276), the Court described the State as the ultimate guarantor of the principle of pluralism (§ 38). In the political sphere, that responsibility means that the State is under the obligation, among others, to hold, in accordance with Article 3 of Protocol No. 1, free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. Such expression is inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country's population. By relaying this range of opinion, not only within political institutions but also – with the help of the media – at all levels of social life, political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103).

67. While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an

opposition member of parliament call for the closest scrutiny on the part of the Court (see *Castells*, cited above, § 42).

68. In view of the essential role played by political parties in the proper functioning of democracy, the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision (see *Socialist Party and Others v. Turkey*, 25 May 1998, § 50, *Reports* 1998-III). It therefore follows that the Court must scrutinise very carefully the necessity for imposing a ban on a parliamentary political party's activities, even a ban of fairly short duration.

69. Freedom of association and political debate is not absolute, however, and it must be accepted that where an association, through its activities or the intentions it has expressly or by implication declared in its programme, jeopardises the State's institutions or the rights and freedoms of others, Article 11 does not deprive the State of the power to protect those institutions and persons. It is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10 (see, *mutatis mutandis*, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216).

70. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they have delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, *mutatis mutandis*, *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

(β) Application of the above principles to the present case

71. The Court notes that at the material time the CDPP was a minority parliamentary opposition party with approximately ten per cent of the seats in Parliament, while the majority Communist Party had approximately seventy per cent of the seats. The ban was imposed on the applicant party's activities as a result of gatherings it had organised in order to express its disagreement with and protest against the government's plans to make the

study of Russian compulsory for schoolchildren, at that time the subject of a heated debate within Moldovan society. Given the public interest in free expression in these circumstances and the fact that the applicant party was an opposition parliamentary political party, the Court considers that the State's margin of appreciation was correspondingly narrowed and that only very compelling reasons would have justified the interference with the CDPP's right to freedom of expression and assembly (see paragraph 68 above).

72. The Ministry of Justice, and later the domestic courts, in justifying the temporary ban on the CDPP's activities, relied on three main grounds: that the CDPP had not obtained authorisation for its gatherings in accordance with the Assemblies Act; that children had been present at its gatherings; and that some statements made at the gatherings amounted to calls to public violence.

73. As far as the first ground is concerned, the Court notes that there was a dispute as to the applicability of the provisions of the Assemblies Act to the CDPP's gatherings. The Municipal Council, which was the only authority empowered to issue authorisations under that law, considered the legislation unclear and refused to apply it to the CDPP until Parliament had given its official interpretation (see paragraph 13 above). Hence, it would appear questionable whether non-compliance with the legislation in those circumstances would justify such a serious measure as a temporary ban. However, even assuming that the legislation was clear, the Court is not convinced that the failure to comply with that legislation, which otherwise was punishable with an administrative fine of MDL 180-450 (EUR 16-40) (see paragraph 41 above), could be considered as a relevant and sufficient reason for imposing a temporary ban on the activities of an opposition party.

74. Where the presence of children is concerned, the Court notes that it has not been established by the domestic courts that they were there as a result of any action or policy on the part of the applicant party. Since the gatherings were held in a public place anyone, including children, could attend. Moreover, in the Court's view, it was rather a matter of personal choice for the parents to decide whether to allow their children to attend those gatherings and it would appear to be contrary to the parents' and children's freedom of assembly to prevent them from attending such events which, it must be recalled, were to protest against government policy on schooling. Accordingly, the Court is not satisfied that this reason was relevant and sufficient.

75. As to the third ground for the ban, the Court is not persuaded that the singing of a fairly mild student song could reasonably be interpreted as a call to public violence. Neither the Ministry of Justice nor the domestic courts have attempted to explain how the impugned line from the chorus of the song amounted to a call for violence. Consequently, this reason cannot be considered as relevant and sufficient either.

76. The Court reiterates that only very serious breaches such as those which endanger political pluralism or fundamental democratic principles could justify a ban on the activities of a political party. Since the CDPP's gatherings were entirely peaceful, there were no calls to violent overthrowing of the government or any other acts undermining the principles of pluralism and democracy, it cannot reasonably be said that the measure applied was proportionate to the aim pursued and that it met a "pressing social need".

77. The temporary nature of the ban is not of decisive importance in considering the proportionality of the measure, since even a temporary ban could reasonably be said to have a "chilling effect" on the party's right to exercise its freedom of expression and to pursue its political goals, the more so since it was imposed on the eve of the local elections.

78. The Court has noted with satisfaction the readiness of the Moldovan authorities to lift the ban following instigation of the inquiry by the Secretary General under Article 52 of the Convention (see paragraph 25 above). Even so, the Court finds that the temporary ban on the CDPP's activities was not based on relevant and sufficient reasons and was not necessary in a democratic society. Accordingly, there has been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

79. The applicant party also alleged a violation of Article 10 of the Convention. As this complaint relates to the same matters as those considered under Article 11, the Court does not consider it necessary to examine it separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant party did not make any claim in respect of pecuniary or non-pecuniary damage.

B. Costs and expenses

82. The applicant party claimed EUR 8,235 for lawyers' fees, of which EUR 3,960 was claimed in respect of Mr Nagacevschi and EUR 4,275 in respect of Mr Gribincea. The applicant party submitted a detailed time-sheet and a contract according to which the lawyers' hourly rates were EUR 80 and EUR 60 respectively.

In support of its claims, the applicant party relied on such cases as *United Communist Party of Turkey and Others*, cited above, in which the applicant party was awarded 120,000 French francs (FRF) for costs and expenses for two lawyers; *Socialist Party and Others*, cited above, in which the applicant party was offered FRF 57,187 in legal aid paid by the Council of Europe for two lawyers; *Maestri v. Italy* [GC], no. 39748/98, ECHR 2004-I, in which the applicant was awarded EUR 10,000 for costs and expenses; and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII, in which the applicant party was awarded FRF 40,000 for costs and expenses.

The applicant party argued that the hourly rates claimed by its lawyers were not excessive and submitted that there were law firms in Chişinău that charged hourly rates of between EUR 120 and EUR 200.

83. The Government did not agree with the amount claimed, stating that the applicant party had failed to prove the alleged representation expenses. According to them, the amount claimed by the applicant party was too high in the light of the average monthly wage in Moldova. The Government agreed that there were law firms that charged EUR 120 per hour to enterprises; however, in their opinion such rates should not apply to a political party because it might find itself unable to pay such amounts. According to the Government, the applicant party was not entitled to any costs and expenses because the case was not a complex one and the CDP had not suffered any real damage, having lodged the application solely in order to obtain "free publicity".

84. The Court reiterates that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

85. In the present case, regard being had to the itemised list submitted by the applicant party, the above criteria, the complexity and the importance of the case, the Court awards it EUR 4,000.

C. Default interest

86. The Court considers it appropriate that the default interest 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

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* by six votes to one that there has been a violation of Article 11 of the Convention;
3. *Holds* unanimously that it is unnecessary to determine whether there has been a violation of Article 10 of the Convention;
4. *Holds* by six votes to one:
 - (a) that the respondent State is to pay the applicant party, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
5. *Dismisses* unanimously the remainder of the applicant party's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly concurring and partly dissenting opinion of Judge Pavlovschi;
- (b) dissenting opinion of Judge Borrego Borrego.

N.B.
M.O'B.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE PAVLOVSKI

In the present case, after much hesitation, I decided to vote along with the majority in favour of finding a violation of Article 11, although my line of reasoning radically differs from that of the majority.

A. Some remarks of a general nature

The present case is unique in many different respects.

Although the Court has quite a rich body of case-law concerning the prohibition and forced dissolution of political parties, this is the first time we have dealt not with a prohibition or dissolution but rather with a decision on the temporary suspension of a political party's activities – what is more, only four forms of activity and not all of them. A more relevant factor is that the decision on temporary suspension was never enforced and, moreover, some time (twenty days) later it was lifted by the national authorities.

In the case before us we are dealing with a situation where differences between the political opposition and the ruling forces which may at first sight have seemed absolutely irreconcilable, and which resulted in a deep political crisis, have been transformed, thanks to the mediation of the Council of Europe, into a strategic partnership built on the principles of European democracy, mutual respect and common understanding of the future of the Republic of Moldova in Europe. We are dealing with a situation where, thanks to the Secretary General, the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, as well as the good will of both the Moldovan opposition and the ruling political force, a permanent “round table” has been set up. All the main political parties of Moldova have obtained the possibility to discuss openly questions of general importance for the country.

In order to enable the parties involved in the conflict to find democratic solutions to the problems facing them, the Office of the Special Representative of the Secretary General of the Council of Europe was set up in Moldova and is working productively.

Lastly, we are dealing with a situation where the leader of the CDPP – the main opposition party of Moldova – was elected as a Vice-President of the Moldovan parliament and where members of parliament belonging to former political rivals – the Christian Democratic People's Party and the Communist Party of Moldova – voted together for the same candidate to the presidency, put forward by the latter party.

My understanding is the following: both former rivals have manifested their political maturity, their willingness and their readiness to find a consensus in the general interests of society and for the benefit of the Moldovan people.

In my opinion, all these new developments are of great significance for the rule of law and democracy not only for Moldova, but for the whole of Europe too. They are overwhelmingly important as a positive precedent for fruitful cooperation between political parties which, despite their different political ideals and views, despite their fears and suspicions, have manifested their capacity to overcome contradictions, to find points of convergence and to work jointly in the interests of European integration and on the basis of the principles of democracy. The Christian Democratic People's Party and the Communist Party of Moldova are now jointly conducting very serious legislative efforts aimed at bringing Moldovan legislation into line with European legal standards¹.

In the report of 16 September 2005 addressed to the Parliamentary Assembly of the Council of Europe on “Functioning of democratic institutions in Moldova” (Doc. 10671, §§ 3-4), we read:

“The ruling Communist Party has taken a resolutely pro-European stance since 2002 and now seems determined to speed up the process of European integration. Since the parliamentary elections in March 2005, the President has also had the support of part of the opposition, including the ... Christian Democratic [People's] Party, on condition that he undertakes rapid legislative reforms ... The newly elected Moldovan parliament has taken the exceptional initiative of adopting unanimously, at its first plenary sitting, a Declaration on Political Partnership to Achieve the Objectives of European Integration. The political maturity and responsibility of Moldovan politicians in the eyes of their people and their country will also be measured by the yardstick of this spirit of cooperation and all the democratic reforms they are able to carry out ...”

Taking into consideration the above-mentioned exceptional events and developments, it would have been pertinent for them to have been reflected in the Court's judgment. The question of striking the application out could perhaps also have been considered.

I welcome the insertion in the judgment (paragraph 78) of the statement “[t]he Court has noted with satisfaction the readiness of the Moldovan authorities to lift the ban following instigation of the inquiry by the Secretary General under Article 52 of the Convention ...”, but this, in my view, is not sufficient.

I greatly regret that the majority missed a very good opportunity to take into consideration all the recent events and developments outlined above, and did not even mention them in the judgment. I do not find this approach very correct, because, in my opinion, the events described in the judgment, seen in isolation, create a distorted picture of what was and still is going on in Moldova.

1. See “*Comunicat cu ocazia desfasurarii Consiliului National Largit al Partidului Popular Crestin Democrat*”, <http://www.ppcd.md/ro/press/42.htm>

B. Reasons for disagreeing with the decision of the majority

The entire judgment is based on the argument that there was interference in the present case in the form of a temporary ban on the CDPP's activities (see paragraphs 71-78 of the judgment).

From the very outset it is necessary to mention that, under Moldovan legislation, a “blanket” or total, absolute temporary ban on a political party's activities is not allowed. The Parties and other Socio-Political Organisations Act provides that, during a temporary ban, restrictions may be imposed on only four forms of activity: using the mass media, disseminating propaganda and publicity, carrying out bank transactions or other operations in respect of its assets, and participating in elections.

Other forms of both everyday and political activities (such as, for instance, activity in Parliament or local councils, the organising of party meetings at both local and central levels, conferences, seminars, the use of offices, premises, computers and other forms of office activity) may not be restricted, even during a temporary ban.

In my view, the conclusion that there was a ban in the case under consideration was reached, at least partly, because of the superficial – if not wrong and misleading – presentation of Moldovan national legislation.

Paragraph 37 of the judgment, describing “the relevant parts” of the Parties and other Socio-Political Organisations Act, contains the following passage:

“...

Section 29

'The Ministry of Justice shall impose a temporary ban on the activities of a party or socio-political organisation which breaches the provisions of the Constitution or those of the present Act, or does not comply with a warning.'

On 21 November 2003 this paragraph was amended as follows:

'The Ministry of Justice shall impose a temporary ban on the activities of a party or socio-political organisation which breaches the provisions of the Constitution.

In this case, the Ministry of Justice shall inform the party's leadership in writing of the breaches of the law which have taken place and will set a time-limit for action to remedy them.

During electoral campaigns the activities of parties and other socio-political organisations may be suspended only by the Supreme Court of Justice.

During the temporary ban, it shall be forbidden for the party to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other operations in respect of its assets and to participate in elections.

Once all the breaches of the law have been remedied, the party shall inform the Ministry of Justice, which shall lift the temporary ban within five days.

The activities of the party or other socio-political organisation may be suspended for a period up to six months. If the breaches of the law are not remedied its activities may be suspended for a period of one year.' ”

Owing to the not very clear presentation of section 29, this passage of the judgment creates the impression that the provision “[d]uring the temporary ban, it shall be forbidden for the party to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other operations in respect of its assets and to participate in elections” did not exist at the time when the activity of the CDPP was allegedly “banned”.

But this is simply not true.

I am afraid that the Moldovan legislation, as I have said, has not been very well presented on this point.

At the material time, section 29 of the above-mentioned Act – that is, before the amendment of 21 November 2003 – existed in the following version:

“The Ministry of Justice shall impose a temporary ban on the activities of a party or socio-political organisation which breaches the provisions of the Constitution or those of the present Act, or does not comply with a warning. In this case, the Ministry of Justice shall inform the party's leadership in writing of the breaches of the law which have taken place and will set a time-limit for action to remedy them.

During electoral campaigns the activities of parties and other socio-political organisations may be suspended only by the Supreme Court of Justice.

During the temporary ban, it shall be forbidden for the party to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other operations in respect of its assets and to participate in elections.

Once all the breaches of the law have been remedied, the party shall inform the Ministry of Justice, which shall lift the temporary ban within five days.

The activities of the party or other socio-political organisation may be suspended for a period up to six months. If the breaches of the law are not remedied its activities may be suspended for a period of one year.”

As a result of the amendment of 21 November 2003, the ending of the first paragraph “... or those of the present Act, or does not comply with a warning ...” was deleted, the rest of the section remaining untouched¹.

Accordingly, during the alleged “ban”, that is in January and February 2002, the following provision was in force:

“During the temporary ban, it shall be forbidden for the party to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other

1. See Law no. 718, *Privind partidele și alte organizații social-politice*, http://www.justice.md/lex/document_rom.php?id=B68D3A82:A381C43A

operations in respect of its assets and to participate in elections.”

In my opinion, to rule that there had been a ban on the CDPP's activities, the majority should have satisfied themselves that, as a result of the decision of the Minister of Justice, this political party had been deprived of the possibility either to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other operations in respect of its assets, or to participate in elections.

Since the CDPP ignored the decision issued by the Minister, and the Minister in turn, manifesting his good will, decided not to enforce his decision, we can say that there were no negative consequences for the CDPP.

The CDPP's representatives failed to produce any evidence to prove that, as a result of the decision of the Minister of Justice, their clients were deprived of the possibility to use the mass media or to disseminate propaganda and publicity, or that they did have bank accounts or other assets but lost the possibility to carry out transactions with those assets, or that they were deprived of the possibility to participate in elections.

There is no evidence in the case file to indicate that any of the above negative consequences occurred.

All these arguments show that there was no *de facto* ban on the CDPP's activities. In the present case, in practical terms, we are dealing not with an “actual ban”, but rather with a “decision to ban”, which remained unenforced and, after twenty days, was lifted by the same public official.

I consider that in such circumstances it is right and justified to speak of an abandoned attempt to suspend the CDPP's activities.

In my humble opinion, in the present case we should have discussed an interference of an unclear legal nature – the abandoned attempt to suspend the CDPP's activities by way of an unenforced decision and not a “ban” which, as I have already mentioned, never took effect.

The problem of the “necessity” of the “interference”, in the form in which it has been presented in the judgment, creates a further difficulty for me.

This issue, necessity of interference, cannot be analysed *in abstracto* and is closely linked to the problems of the lawfulness of the interference, the existence of pressing social needs and the legality of the aims of the interference. The nature of the interference and its proportionality to the legitimate aims pursued are crucially important for the determination of whether there has been a violation or not.

I entirely agree with the statement of the majority in paragraph 48 of the judgment that an interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 and was “necessary in a democratic society” for the achievement of those aims.

Unfortunately the majority, contrary to the above statement, decided not

to examine the problem of the lawfulness of the interference and the nature of the aims pursued. In my opinion, it is simply impossible to assess the “necessary in a democratic society” criterion without having previously assessed the legal nature of the measures taken and of the aims pursued by the Government. In order to be “necessary”, the interference should be proportionate to a “pressing social need”. The “pressing social need” in turn determines the nature of the aims pursued. So, all the above-mentioned elements must be examined jointly, starting, of course, with the determination of the lawfulness of the interference.

C. Reasons for voting in favour of a finding of a violation in the present case

In my view, the issuing of a decision on the suspension of a political party which had never been enforced, had not had any negative consequences, had been simply ignored by the party, and after twenty days had been lifted by the same public official who had previously issued it would not attain a degree of seriousness calling for international protection unless it had been issued contrary to the law.

And here I see a real problem. I doubt very much that the issuing of the decision at stake was in accordance with the law.

According to the Court's case-law, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences a given action may entail (See *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30).

Here it is worth mentioning that the Parties and other Socio-Political Organisations Act does not provide for corporate liability; in other words, it does not provide for a party's liability for any action taken by its members. The lack of legal regulations governing a party's liability for the actions of some of its members makes the application of restrictions provided by the law unforeseeable in practical terms.

This reason in itself could render the decision in question baseless from a legal point of view, which would allow us to find that the interference was not “prescribed by law”. And here I should mention that this argument was, essentially, one of those on which the applicant party relied, declaring that all the gatherings and demonstrations in issue had been organised by the CDPP's members of parliament and not by the CDPP itself.

I agree with the applicant party's representatives on this point. Indeed, there is nothing in the file to suggest that the CDPP as a political formation had any connection with the gatherings which took place on the main square of the Moldovan capital.

All the arguments set out in the judgment would have been valid had the

State authorities applied restrictions to particular private persons. In that case, I would have agreed that the interference was prescribed by law and had a legitimate aim but was perhaps not necessary in a democratic society, but this was not so.

The present case involves a *legal entity* rather than a *private person*. The Parties and other Socio-Political Organisations Act did not contain, and still does not contain, any direct legal provision regulating with sufficient clarity the liability of political parties (legal entities) for acts committed by their members (private persons).

At its 41st plenary session on 10 and 11 December 1999 the Venice Commission adopted guidelines on the prohibition and dissolution of political parties and analogous measures.

According to the guidelines, a political party as a whole cannot be held responsible for the individual behaviour of its members not authorised by the party within the framework of political/public and party activities¹.

This is exactly the case as far as the legislation of Moldova is concerned.

Moreover, section 20 of the Assemblies Act provides that administrative or criminal sanctions may be imposed on the organisers of or participants in an assembly who breach the provisions of the Act. The Act does not provide for any liability of a political party for breaches of the law committed in the course of a gathering convened by it.

Neither the Banks and other Financial Institutions Act nor the Property Act provides for any possibility of freezing a political party's assets in the event of a temporary suspension of its activities. Nor do the Press Act or the Audiovisual Media Act provide any legal ground for limitations on the use of such media by a political party during the party's temporary suspension.

In view of all these manifest gaps in the law, the application of a “temporary suspension” entailing the restrictions referred to in section 29 of the Parties and other Socio-Political Organisations Act (namely “[d]uring the temporary ban, it shall be forbidden for the party to use the mass media, to disseminate propaganda and publicity, to carry out bank transactions or other operations in respect of its assets and to participate in elections”) is unlawful both in terms of the Convention and in terms of Moldovan national legislation.

To sum up, in my view in the present case the interference was not prescribed by law. As a result, there has been a violation of Article 11 of the Convention and, consequently, there was no need to examine the issue of the proportionality of this interference.

1. See the Guidelines on prohibition and dissolution of political parties and analogous measures, [http://www.venice.coe.int/docs/2000/CDL-INF\(2000\)001-e.asp](http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp)

D. Excessive nature of the lawyers' fees

There is one more aspect of the present case with which I am not able to agree: the amount awarded in respect of lawyers' fees – 4,000 euros (EUR). I find this amount excessive, corresponding neither to the work done nor to the Court's case-law.

I would have readily accepted this amount in respect of the costs and expenses had the lawyers contributed to the finding of the truth in the present case, but this was not so. I have already mentioned that no evidence was produced to show that a ban was actually applied to the CDPP. This, in practical terms, put the Court in a position where, in the absence of evidence, it had to take for granted the factual application of the ban.

Moreover, in their initial complaint the applicant party's representatives relied on Articles 6, 10 and 11 of the Convention, as well as Article 1 of Protocol No. 1. After some time, they decided to withdraw their complaints under Article 6 of the Convention and Article 1 of Protocol No. 1. In turn, the Court decided not to examine their complaint under Article 10. From these four complaints the Court found a violation of only one provision of the Convention, namely Article 11.

It has been a long-standing practice of the Court to reduce awards for costs and expenses according to the number of violations found.

In the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, § 79, ECHR 1999-II) the Court stated:

“The Court recalls that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among other authorities, the *Campbell and Fell v. the United Kingdom* judgment of 28 June 1984, Series A no. 80, pp. 55-56, § 143).

The Court notes that part of the lawyer's fees claimed concerned the applicant's defence against the criminal charges in the domestic proceedings and her complaint of their alleged unfairness which was declared inadmissible by the Commission. These fees do not constitute expenses necessarily incurred in seeking redress for the violations of the Convention found in the present case (see the *Mats Jacobsson v. Sweden* judgment of 28 June 1990, Series A no. 180-A, p. 16, § 46). The number of hours claimed to have been spent by the lawyer on the case also appears excessive. ...”

In *Debono v. Malta* (no. 34539/02, § 54, 7 February 2006) the Court also stated that the applicant's complaints other than the one concerning the violation of the “reasonable time” principle had been declared inadmissible. It therefore considered it appropriate to reimburse only in part the costs and expenses claimed by the applicant.

I consider that a similar approach should have been taken in the present case.

Moreover, the applicant party's lawyers in the present case are

representatives of the Lawyers for Human Rights organisation. I have particular respect for this organisation, which is very active in the field of human rights protection and has submitted quite a considerable number of applications to the Court raising issues that are both serious from the human rights protection point of view and very interesting from the legal point of view. However, there is a problem here: this organisation is a non-governmental organisation (NGO), acting on the basis of the Non-Governmental Associations Act (*Cu privire la asociațiile obștești*)¹. Under this Act, all Moldovan NGOs are non-profit organisations and I very much doubt that a non-profit NGO should apply rates which exceed those applicable to lawyers working for the Moldovan Bar Association. I am afraid that applying to NGOs rates which, in theory, could apply to professional for-profit organisations could distort the very nature of civil society ideals.

It is also worth mentioning that the Lawyers for Human Rights NGO, along with the Helsinki Committees, the LADOM and others, positions itself as an organisation rendering legal services free of charge².

I am afraid that I find it very difficult to accept that the rates of EUR 60 and EUR 80 per hour claimed by the applicant party's representatives could be viewed as the rendering of legal services free of charge or as a kind of “non-profit” activity.

Accordingly, if we take into consideration the fact that only one of the four complaints was declared admissible and only one violation was found, as well as the non-profit status of the Lawyers for Human Rights NGO, the amount awarded in respect of costs and expenses should have been reduced by half and should have been at the level of about EUR 2,000 in order to fully compensate the applicant party's representatives for expenses that were actually incurred and not hypothetical or speculative expenses and, moreover, to secure them a very comfortable standard of living for at least a couple of months.

This is where I respectfully disagree with the majority.

1. See Law no. 837, *Cu privire la asociațiile obștești*, http://www.justice.md/lex/document_rom.php?id=7640AE7B:3577A0B0

2. See the Internet newspaper *Press obozrenie*, “Не молчи”: в Молдове пройдет информационная кампания по правам человека, “... в рамках кампании гражданам будут раздаваться информационные материалы о правах человека, а также листовки с адресами и контактной информацией организаций, которые предоставляют бесплатные юридические услуги. Среди них числятся пять юридических учреждений при Государственном университете Молдовы, Центр по защите прав человека и неправительственные организации ‘Юристы за права человека’, ‘Институт уголовных реформ’, Комитет Хельсинки в Молдове, ‘LADOM’ и ‘Promo-lex’...””, <http://press.try.md/view.php?id=67252&iddb=Society>

DISSENTING OPINION OF JUDGE BORREGO BORREGO

(Translation)

I regret that I am unable to agree with the reasoning of the majority of the Chamber.

In the present case we may distinguish, very briefly, between two aspects: an action and a reaction.

As regards the action, peaceful demonstrations took place during a period of eight days in front of the National Assembly building (see paragraphs 19 and 33 of the judgment), without complying with the formal requirements laid down in the Assemblies Act. Responsibility for these demonstrations must be attributed to the applicant political party (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 115, ECHR 2003-II).

As regards the reaction of the Moldovan authorities, a one-month ban was imposed on the party concerned. Regard being had to the Convention, to the circumstances of the case and to the fact that local elections were about to take place, this temporary ban on a political party must be viewed as a measure that was not necessary in a democratic society.

However, despite all this, I consider that there was no violation of the Convention in the present case. Why?

In my opinion, because there were two very important facts in this case to which the Court did not give proper consideration.

Firstly, in response to the letter sent by the Secretary General of the Council of Europe to the Moldovan authorities under Article 52 of the Convention, the Minister of Justice lifted the temporary ban on the party's activities (see paragraph 25 of the judgment).

As I understand it, the Convention forms a whole: Article 11 is part of it, as are Section II and Article 52. The purpose of the Convention, as a whole, is to protect human rights. The right guaranteed by Article 11 was respected as a result of the application of the measures provided for in Article 52, long before the Court's judgment was delivered.

Secondly, the temporary ban on the applicant party “had not had any negative effects on the CDPP since it had not been enforced, the CDPP's accounts had not been frozen and the party could continue its activities unhindered”, as the Supreme Court of Justice held (see paragraph 28).

In short, I consider that, in so far as the temporary ban was lifted and was never enforced, there was no breach of the Convention in the present case.