



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

FOURTH SECTION

CASE OF ROSCA, SECAREANU AND OTHERS v. MOLDOVA

(Applications nos. 25230/02, 25203/02, 27642/02, 25234/02 and 25235/02)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 Rosca, Secareanu and Others v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Stanislav Pavlovschi,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in five applications (nos. 25230/02, 25203/02, 27642/02, 25234/02 and 25235/02) 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 Iurie Roşca, Ştefan Secăreanu, Petru Buburuz, Anatol Roşcovan and Anatol Eremia (“the applicants”) on 10 July, 28 May and 17 June 2002 and on 24 March 2003 and 16 April 2002 respectively.

2. The applicants were represented by Mr. V. Nagacevschi, Mr V. Gribincea and Mr V. Constantinov, lawyers practising in Chişinău and members of the non-governmental organisation “Lawyers for Human Rights”. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicants alleged, in particular, that their right to freedom of assembly had been violated as a result of sanctions imposed on them for organising and/or participating in unauthorised gatherings.

4. On 30 November 2004 the Court decided to join the applications and to give notice of them to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are members and/or sympathisers of the Christian Democratic People's Party ("the CDPP"), a parliamentary political party in the Republic of Moldova which was in opposition at the time of the events.

1. Background to the case

6. Towards the end of 2001 the Government of Moldova made public its intention to make the study of the Russian language compulsory in schools for children aged seven and over.

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

8. 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 the Square of the Great National Assembly, 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. Decisions of the Municipal Council

9. 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 the Square of the National Opera. It did not give any reasons for the change of location.

10. 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 the Square of the Great National Assembly 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 connection 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.

11. 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. *Gatherings held by the CDPP members of Parliament*

12. In the meantime, on 9 January 2002, the parliamentary group of the CDPP held a gathering in the Square of the Great National Assembly, 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. *Warning letter from the Ministry of Justice and the CDPP’s reply*

13. 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 the Great National Assembly Square on 9, 10, 11 and 13 January 2002, notwithstanding the authorisation issued by the Municipal Council, which gave permission only for a demonstration on 9 January 2002 in the Square of the National Opera. It called for an immediate halt to the actions, 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).

14. 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 on the part of the Communist Party in order to repress the opposition.

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

15. 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.

16. 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.

17. 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 claimed.

18. 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 public roads.

19. 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, section 13 (3) of the Protection of Children Act and section 56 (g) of the Education Act.

20. The CDPP's actions also disclosed a violation of sections 27 and 29 of the Parties and other Socio-Political Organisations Act, section 15 (1) and (2) of the Status of Members of Parliament Act and Article 32 of the Constitution. 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. Proceedings challenging the ban on the Party's activities, and lifting of the ban

21. 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.

22. 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 the inquiry made 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.

23. 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) (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.

24. 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.

25. 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. Proceedings by the Government seeking to have the gatherings held by the CDPP declared illegal and requesting an order to discontinue them

26. The Ministry of Justice did not reply to the Municipality'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 CDPP illegal and to order their cessation.

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

“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 Organisation and Conduct of Assemblies Act. In these circumstances, the leaders of the CDPP were required to comply with the provisions of the Assemblies Act...”

28. The CDPP appealed but on 15 March 2002 the Supreme Court of Justice dismissed the appeal and the judgment of 25 February 2002 became final.

8. *Administrative proceedings against the applicants*

29. On unspecified dates, the district police compiled administrative case files in connection with the applicants’ participation in unauthorised demonstrations. The cases were referred to the Buiucani District Court.

30. By its decisions of 21 February 2002, 21 February 2002, 24 January 2002, 29 January 2002 and 24 January 2002 respectively, the Buiucani District Court found the applicants guilty of having participated in unauthorised demonstrations in breach of Article 174/1 of the Code of Administrative Offences. In particular the court found Mr Roşca and Mr Secareanu guilty of having organised and of having actively participated in the CDPP demonstrations between 9 and 31 January 2002. It found Mr Buburuz guilty of having participated in a CDPP demonstration on 15 January 2002 and it found Mr Roşcovan and Mr Eremia guilty of having participated in demonstrations on 20 and 13 January 2004 respectively. The court imposed on the applicants administrative fines of MDL 450 (EUR 40), MDL 450 (EUR 40), MDL 90 (EUR 8), MDL 90 (EUR 8) and MDL 90 (EUR 8) respectively.

31. The applicants appealed against the above judgments, claiming *inter alia* a breach of their right to the freedom of expression provided by Article 10 of the Convention and of their right to the freedom of assembly under Article 11 of the Convention.

32. By its decisions of 30 April 2002, 30 April 2002, 13 February 2002, 28 February 2002 and 13 February 2002 respectively, the Chişinău Regional Court dismissed the appeals. No reasons were given.

II. RELEVANT DOMESTIC LAW

33. The relevant domestic law was set out in *Christian Democratic People’s Party v. Moldova*, no. 28793/02, §§ 34-41, ECHR 2006-....

THE LAW

34. The applicants complained that the administrative fines imposed on them constituted a breach of their right to freedom of expression as guaranteed by Article 10 of the Convention and their right to freedom of peaceful assembly as guaranteed by Article 11 of the Convention. The provisions invoked by the applicants provide as follows:

Article 10 of the Convention

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

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

Article 11 of the Convention

“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.”

I. ADMISSIBILITY OF THE COMPLAINTS

35. In their initial application, the applicants complained under Article 6 § 1 of the Convention that the administrative proceedings against them had been unfair. However, in their observations on the admissibility and merits, they asked the Court not to proceed with the examination of this complaint. The Court finds no reason to examine it.

36. The Court considers that the rest of the applicants' complaints raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares the remainder of the application admissible. In

accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the remainder of the application.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

37. The applicants argued that the fact that they were fined for organising and/or participating at the CDPP gatherings amounted to a breach of their right to freedom of assembly as guaranteed by Article 11 of the Convention. According to them, the present case was to be distinguished from *Ziliberg v. Moldova* ((dec.), no. 61821/00, 4 May 2004) because the CDPP gatherings were peaceful, they concerned a matter of major public interest and contributed to a public debate, and that the highest fines possible under the law had been applied to them.

38. The Government reiterated their submissions made in the case of *Christian Democratic People's Party* (cited above, § 57-61) and stressed the cases' similarities.

39. The Court notes that the applicants were fined for taking part in unauthorised demonstrations organised by the CDPP (see paragraph 30 above). The Court recalls that in the case of *Christian Democratic People's Party* the applicant party was sanctioned for organising the demonstrations in question. Thus, the accusation against the applicants who participated in those gatherings is indissociable from that against the CDPP in that case. It is for this reason that the Court will rely on its findings in *Christian Democratic People's Party* for the purposes of the present case.

40. In *Christian Democratic People's Party* the Court made the following findings in respect of the sanctions imposed on the CDPP:

“71. The Court notes that at the material time the CDPP was a minority parliamentary opposition party with approximately ten percent of the seats in Parliament, while the majority Communist Party had approximately seventy percent of the seats. The ban was imposed on the applicant party's activities as a result of gatherings which 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 school children, 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 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.... 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) ..., 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 everyone, 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 overthrow 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."

41. In such circumstances, and in view of the fact that the present applicants were members and/or supporters of the CDPP organising and/or participating at the latter's peaceful gatherings, the Court cannot but reach a conclusion similar to that in *Christian Democratic People's Party*, namely that the interference with their freedom of peaceful assembly was not proportionate to the aim pursued and that it did not meet a "pressing social need".

Accordingly, there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

42. The applicants also alleged a violation of Article 10 of the Convention. As their complaint relates to the same matters as those

considered under Article 11, the Court does not consider it necessary to examine it separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Pecuniary damage

44. The applicants claimed compensation for the fines they had to pay as a result of the administrative proceedings. Mr Iurie Rosca and Mr Stefan Secareanu claimed MDL 450 each (EUR 28 on 11 May 2005) while the rest of the applicants claimed MDL 90 each (EUR 6 on 11 May 2005) for pecuniary damage.

45. The Government submitted that there were no grounds for awarding the applicants any pecuniary damage.

46. The Court considers the applicants’ claim for pecuniary damage to be well founded and awards it in full.

B. Non-pecuniary damage

47. Mr Iurie Rosca and Mr Stefan Secareanu did not make any claim. Mr Petru Buburuz, Anatol Roscovan and Anatol Eremia claimed EUR 6,000, EUR 5,000 and EUR 7,000 respectively.

48. The Government disagreed and considered that no evidence of non-pecuniary damage had been submitted.

49. Having regard to its finding of a violation of Article 11 of the Convention, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 2,000 to each of the three applicants who claimed just satisfaction.

C. Costs and expenses

50. Mr Iurie Rosca and Mr Stefan Secareanu claimed EUR 1,620 each; Mr Anatol Roscovan and Mr Anatol Eremia claimed EUR 1,016 each and Mr Petru Buburuz claimed EUR 1,500.

In support of their claims, the applicants submitted a detailed time sheet indicating the time spent by their lawyers on the case and an itemised list of

other expenses linked to the examination of the case. They also submitted copies of contracts between them and their lawyers.

51. The Government did not agree with the amounts claimed, stating that the applicants had failed to prove the alleged representation expenses. According to them, the amounts claimed by the applicants were too high in the light of the average monthly wage in Moldova.

52. 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 are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

53. In the present case, regard being had to the complexity of the case, the Court does not consider the amount claimed reasonable as to quantum and awards the applicants EUR 2,000 in respect of costs and expenses.

D. Default interest

54. 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 UNANIMOUSLY

1. *Declares* the applications admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 10 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 28 (twenty-eight euros) to Mr Rosca, EUR 28 (twenty-eight euros) to Mr Secareanu and EUR 6 (six euros) to each of the rest of the applicants in respect of pecuniary damage, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage to each applicant except Mr Rosca and Mr Secareanu and EUR 2,000 (two thousand euros) in total in respect of costs and expenses, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable at the date of payment;

(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;

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

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President