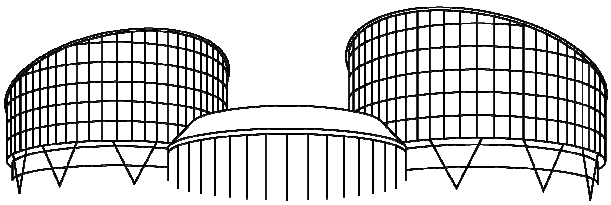

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CHRISTIAN DEMOCRATIC PEOPLE'S PARTY v. MOLDOVA (No. 2)

(Application no. 25196/04)

JUDGMENT

STRASBOURG

2 February 2010

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 Christian Democratic People's Party v. Moldova (no. 2),

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 25196/04) 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 26 May 2004.

2. The applicant was represented by Mr V Nagacevschi, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicant party alleged, in particular, that its right to freedom of assembly had been violated.

4. On 4 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The Christian Democratic People's Party ("the CDPP") is a political party in the Republic of Moldova which was represented in Parliament and was in opposition at the time of the events.

6. On 3 December 2003 the applicant party applied to the Chişinău Municipal Council for an authorisation to hold a protest demonstration in the Square of the Great National Assembly, in front of the Government's building, on 25 January 2004. According to the application, the organisers intended to express views on the functioning of the democratic institutions in Moldova, the respect for human rights and the Moldo-Russian conflict in Transdniestria.

7. On 20 January 2004 the Chişinău Municipal Council rejected the applicant party's request on the ground that "it had convincing evidence of the fact that during the meeting, there will be calls to a war of agression, ethnic hatred and public violence".

8. The applicant party challenged the refusal in court and argued, *inter alia*, that the reasons relied upon by the Municipal Council were entirely baseless.

9. On 23 January 2004 the Chişinău Court of Appeal dismissed the applicant party's action. The court found that the Municipal Council's refusal to authorise the CDPP's demonstration was justified because the leaflets disseminated by it contained such slogans as "Down with Voronin's totalitarian regime" and "Down with Putin's occupation regime". According to the Court of Appeal, these slogans constituted a call to a violent overthrow of the constitutional regime and to hatred towards the Russian people. In this context, the court recalled that during a previous demonstration organised by the applicant party to protest against the presence of the Russian military in Transdniestria, the protesters burned a picture of the President of the Russian Federation and a Russian flag.

10. The applicant party appealed against the above decision arguing, *inter alia*, that the impugned slogans could not have reasonably been interpreted as a call to a violent overthrow of the Government or as a call to ethnic hatred and that the refusal to authorise the meeting constituted a breach of its rights guaranteed by Articles 10 and 11 of the Convention.

11. On 21 April 2004 the Supreme Court of Justice dismissed the applicant party's appeal and confirmed the judgment of the Court of Appeal.

II. RELEVANT DOMESTIC LAW

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

"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.

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 or 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 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 which 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

(1) The prior notification shall be examined by the local government of the town or village at the latest 5 days before the date of the assembly.

(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.

(...)

(6) The local authorities can reject an application to hold an assembly only if after having consulted the police, it has obtained convincing evidence that the provisions of sections 6 and 7 will be breached with serious consequences for society.

Section 14

(1) A decision rejecting the application for holding an assembly shall be reasoned and presented in writing. It shall contain reasons for refusing to issue the authorisation...

Section 15

(1) The organiser of the assembly can challenge in the administrative courts the refusal of the local government."

THE LAW

13. The applicant party complained that the refusal to authorise its protest violated its right to freedom of peaceful assembly 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."

I. ADMISSIBILITY OF THE CASE

14. The Court considers that the present application raises questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares 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 its merits.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

A. The arguments of the parties

15. The applicant party submitted that the interference with its right to freedom of assembly did not pursue a legitimate aim and was not necessary in a democratic society.

16. The Government accepted that there has been an interference with the applicant's rights as guaranteed by Article 11 of the Convention. However, that interference was prescribed by law, namely by the Assemblies Act, pursued a legitimate aim and was necessary in a democratic society.

17. In so far as the legitimate aim was concerned, the Government argued that the interference was warranted as it pursued national security and public order interests. In the Government's opinion, the holding of the demonstration in front of the Government could have led to tension between the majority electorate of the Communist Party and the minority electorate of the applicant party and degenerate into acts of violence. Moreover, the calls of the applicant party concerning the "Russian occupation of Moldova" amounted to an instigation to a war of aggression and hatred against Russians. As to the proportionality of the interference with the legitimate aim pursued, the Government argued that the interest of the majority

electorate who had voted for the Communist Party prevailed over that of the minority electorate who had voted for the applicant party. In addition, in limiting the applicant's freedom of assembly, the authorities took into account the interest of Moldova in maintaining good bilateral relations with the Russian Federation.

B. The Court's assessment

18. It is common ground between the parties, and the Court agrees, that the decision to reject the applicant party's application to hold a demonstration on 25 January 2004 amounted to "interference by [a] public authority" with the applicant's right to freedom of assembly under the first paragraph of Article 11. Such interference will entail a violation of Article 11 unless it is "prescribed by law", has an aim or aims that are legitimate under paragraph 2 of the Article and is "necessary in a democratic society" to achieve such aim or aims.

19. The parties do not dispute that the interference was lawful within the meaning of Article 11 of the Convention. At the same time they disagreed as to whether the interference served a legitimate aim. The Court, for the reasons set out below, does not consider it necessary to decide this point and will focus on the proportionality of the interference.

20. The Court recalls that it has stated many times in its judgments that not only is 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 may claim to spring from a "democratic society" (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II, and *Christian Democratic People's Party v. Moldova*, no. 28793/02, ECHR 2006-II).

21. 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).

22. When carrying out its scrutiny under Article 11 the Court's 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, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports of Judgments and Decisions* 1998-I).

23. The right to freedom of peaceful assembly is secured to everyone who has the intention of organising a peaceful demonstration. The possibility of violent counter-demonstrations or the possibility of extremists with violent intentions joining the demonstration cannot as such take away that right (see *Plattform "Ärzte für das Leben" v. Austria*, judgment of 21 June 1988, § 32, Series A no. 139). The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities.

24. 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' freedoms guaranteed by Article 11. 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). 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 v. Spain*, 23 April 1992, § 42, Series A no. 236).

25. The Court has often reiterated that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see *Artico v. Italy*, judgment of 13 May 1980, § 33, Series A no. 37). It follows from that finding that a genuine and effective respect for freedom of association and assembly cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general. There may thus be positive obligations to secure the

effective enjoyment of the right to freedom of association and assembly (see *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V) even in the sphere of relations between individuals (see *Plattform "Ärzte für das Leben"*, cited above, § 32). Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of a political party, even when it shocks or gives offence to persons opposed to the ideas or claims that it is seeking to promote. Their members must be able to hold meetings without having to fear that they will be subjected to physical violence by their opponents. Such a fear would be liable to deter other associations or political parties from openly expressing their opinions on highly controversial issues affecting the community.

26. Turning to the circumstances of the present case, 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 interference concerned a demonstration in which the applicant party intended to protest against alleged anti-democratic abuses committed by the Government and against the Russian military presence in the break-away Transdniestrian region of Moldova. Given the public interest in free expression in respect of such topics 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 narrow and that only very compelling reasons would have justified the interference with the CDPP's right to freedom of expression and assembly.

27. The Court notes that the Chişinău Municipal Council and the domestic courts considered that the slogans "Down with Voronin's totalitarian regime" and "Down with Putin's occupation regime" ammounted to calls to a violent overthrow of the constitutional regime and to hatred towards the Russian people and an instigation to a war of agression against Russia. The Court notes that such slogans should be understood as an expression of dissatisfaction and protest and is not convinced that they could reasonably be considered as a call to violence even if accompanied by the burning of flags and pictures of Russian leaders. The Court recalls that even such forms of protest as active physical obstruction of hunting were held to be an expression of an opinion (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, *Reports* 1998-VII; *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 28, ECHR 1999-VIII). In the present case also the Court finds that the applicant party's slogans, even if accompanied by the burning of flags and pictures, was a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova. The Court recalls in this context that the freedom of expression refers not only to "information" or "ideas" that are favourably

received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). Accordingly, the Court is not convinced that the above reasons relied upon by the domestic authorities to refuse the applicant party authorisation to demonstrate could be considered relevant and sufficient within the meaning of Article 11 of the Convention.

28. In their decisions, the domestic authorities also relied on the risk of clashes between the demonstrators and the supporters of the governing party. The Court considers that even if there was a theoretical risk of violent clashes between the protesters and supporters of the Communist Party, it was the task of the police to stand between the two groups and to ensure public order (see paragraph 25 above). Therefore, this reason for refusing authorisation could not be considered relevant and sufficient within the meaning of Article 11 of the Convention too.

29. In reaching the above conclusions the Court recalls that the applicant party had a record of numerous protest demonstrations held in 2002 which were peaceful and at which no violent clashes had occurred (see, *Christian Democratic People's Party v. Moldova*, cited above; *Roşca and Others v. Moldova*, nos. 25230/02, 25203/02, 27642/02, 25234/02 and 25235/02, 27 March 2008). In such circumstances the Court considers that there was nothing to suggest in the applicant party's actions that it intended to disrupt public order or to seek a confrontation with the authorities or with supporters of the governing party (see *Hyde Park and Others v. Moldova*, no. 33482/06, § 30, 31 March 2009).

30. Accordingly, Court concludes that the interference did not correspond to a pressing social need and was not necessary in a democratic society. There has been a violation of Article 11 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 3,000 euros (EUR) in respect of moral damage.

33. The Government disagreed and argued that the amount was excessive and unsubstantiated.

34. The Court awards the applicant party the entire amount claimed.

B. Costs and expenses

35. The applicants also claimed EUR 1,098.05 for the costs and expenses incurred before the domestic courts and the Court.

36. The Government contested the amount and argued that it was excessive.

37. The Court awards EUR 1,000 for costs and expenses.

C. Default interest

38. 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 application admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable on this amount;
   (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant on this amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President