FOURTH SECTION

CASE OF CHRISTIAN DEMOCRATIC PEOPLE'S PARTY v. MOLDOVA

(Application no. 28793/02)

JUDGMENT

STRASBOURG

14 February 2006

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,

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

Sir Nicolas Bratza, *President*,
Mr J. Casadevall,
Mr M. Pellonpää,
Mr R. Maruste,
Mr S. Pavlovschi,
Mr J. Borrego Borrego,
Mr J. Šikuta, *judges*,
and Mr M. 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"), on 8 July 2002.

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

3. The applicant alleged, in particular, that its right to freedom of assembly was violated as a result of 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 Court declared the application admissible.

7. The applicant 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, the Christian Democratic People's Party (hereinafter "CDPP"), is a Parliamentary political party from the Republic of Moldova, in opposition at the time of the events.

1. Background to the case

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

10. The above initiative generated vehement criticism from the opposition and heated public debate.

11. On 26 December 2001, the Parliamentary faction of the CDPP informed the Chişinău Municipal Council about its intention to hold a meeting with its voters on 9 January 2002, in the Square of the Great National Assembly, in front of the seat of the Government. It declared that the meeting with the voters would concern the introduction of the compulsory study of Russian in schools and it relied on Article 22 of the Law on the Status of Deputies (see paragraph 35 below), which, according to the CDPP, did not impose on the Members of Parliament any obligation to obtain prior authorisation for meetings with their voters.

2. 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 Articles 4, 8, 12 and 13 of the Assemblies Law ("Assemblies Law": see paragraph 36 below) and authorised the Parliamentary faction of the CDPP to hold it in the Square of the National Opera. 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 Law on the Status of Deputies and those of the Assemblies Law and that it did not know which to apply. It stated *inter alia* that there were many renowned lawyers who supported the idea that the CDPP Deputies had the right to hold meetings with their voters in the Square of the Great National Assembly in accordance with the provisions of Sections 22 and 23 of the Law on the Status of Deputies without needing any authorisation. It cited in that respect the opinion of an Ombudsman who considered that since Article 23 of the Law on the Status of Deputies proclaimed the deputies' right to demand cessation of a breach of law on the spot, the CDPP deputies were entitled to demand the cessation of the alleged violations related to the introduction of compulsory study of Russian in front of the Government building because it was also the seat of the Ministry of Education. Accordingly, the Municipal Council requested the Ministry of Justice to ask the 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*:

> "while the provisions of the domestic legislation are contradictory in respect of the demonstrations organised by the CDPP and the opinions of the specialists in law are contradictory, while bearing in mind the great social impact of a possible decision regarding the matter and the consequences it might entail, the Municipal Council has formally addressed the Ministry of Justice with a request to ask the Parliament for an official and urgent interpretation of the pertinent legislation.... The Municipal Council's decision of 3 January 2002 is suspended until the official interpretation by the Parliament."

3. Gatherings held by the CDPP deputies

15. In the meantime, on 9 January 2002, the Parliamentary faction of the CDPP held a gathering in the Square of the Great National Assembly, in front of the headquarters of the Government. It also held gatherings on 11, 13, 15, 16 and 17 January 2002. The CDPP informed the Municipal Council in advance about every gathering; it did not seek an authorisation in accordance with the Assemblies Law however.

4. Warning letter issued by the Ministry of Justice and the CDPP's reply to it

16. On 14 January 2002, the Ministry of Justice issued an official warning to the CDPP in accordance with Article 27 of the Law on Parties and other Socio-Political Organisations (see paragraph 37 below). It stated *inter alia* that the CDPP had breached the provisions of Article 6 of the Assemblies Law by organising demonstrations in the Great National Assembly Square on 9, 10, 11 and 13 January 2002 in breach of the Municipal Council's authorisation to organise a demonstration only 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 in the sense of the Law on the Status of Deputies, but demonstrations falling under the Assemblies Law. 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 put a temporary ban *(suspendarea activităţii)* on the Party's activities in accordance with Article 29 of the Law on Parties and other Socio-Political Organisations (see paragraph 37 below).

17. On 17 January 2002 the President of the CDPP wrote to the Ministry of Justice a letter in which he stated that the gatherings were not organised by the CDPP but by members of its Parliamentary faction, and that therefore it was not the responsibility of the Party that should have been called into question but that of the Deputies. He also relied on Article 22 of the Law on the Status of Deputies, stating that it was a special law, applicable to meetings between Deputies and voters, while the Assemblies Law was a general law. He finally submitted that the threatened ban on the Party's activitis 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 by which it imposed a one month ban on the CDPP's activites, in accordance with Article 29 of the Law on Parties and other Socio-Political Organisations.

19. The measure was imposed for the CDPP's organisation 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 it was not the Party's responsibility. It stated *inter alia* that the gatherings organised by the CDPP on the above dates were in fact demonstrations, marches and manifestations and were therefore within the field of the Assemblies Law and not within that of the Law on the Status of Deputies as the CDPP claimed.

21. According to the decision, the CDPP had breached the provisions of Articles 5, 6, 7, 8, 9 and 11 of the Assemblies Law by not obtaining a prior authorisation to conduct demonstrations from the Municipal Council and by blocking the public roads.

22. The participation of minors in the CDPP demonstrations was in breach of Article 15 of the International Convention on the Rights of the Child (see paragraph 38 below),

Article 13 (3) of the Law on the Protection of Children (see paragraph 39 below), and Article 56 (g) of the Law on Education (see paragraph 40 below).

23. The CDPP's actions also disclosed a violation of Articles 27 and 29 of the Law on Parties and other Socio-Political Organisations (see paragraph 37 below); of Aricles 15 (1) and (2) of the Law on the Status of Deputies (see paragraph 35 below) and of Article 32 of the Constitution (see paragraph 34 below). The use of such slogans as "I would rather be dead than a communist" *(mai bine mort decât comunist)* could be interpreted as a call to public violence and as an encroachment on the legal and constitutional order.

6. Proceedings against the ban of 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 were meetings with the voters within the scope of the Law on the Status of Deputies and not assemblies falling within the scope of the Assemblies Law.

25. On 8 February 2002 the Ministry of Justice issued a decision by which it lifted 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 approaching local elections, the CDPP was authorised to restart its activity. The decision of 8 February 2002 did not annul, however, 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 was legal. It dismissed the CDPP's argument that the Party could not be held liable for the actions of its members, namely its Parliamentary faction. It found that the gatherings organised by the CDPP were in fact demonstrations, meetings and marches which fell under the provisions of the Assemblies Law and not meetings with voters. Even assuming that the gatherings were intended as meetings with voters, they had gradually transformed into demonstrations, and accordingly, the CDPP needed an 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 Law on the Protection of Children and the Law on Education.

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 by 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 was not disproportionate. It also stated that in any event the decision of the Ministry of Justice did not have any negative effects on the CDPP since it was not enforced, the CDPP's accounts were not frozen and the Party could continue its activity unhindered.

7. Proceedings by the Government to declare the gatherings held by the CDPP illegal and to order their halt

29. The Ministry of Justice did not reply to the request of 23 January 2002 for the interpretatoin of the law addressed to it by the Municipality and did not address any request to the Parliament. However, on 21 February 2002 the Government lodged an application with the Supreme Court of Justice asking it, *inter alia*, to declare illegal the demonstrations organised by CDPP 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*, that:

> "Even if one could accept that the CDPP had the initial intention to hold meetings with its voters, those meetings were later transformed into demonstrations, marches, processions and picketing which fall under the provisions of the Law on the Organisation and Conduct of Assemblies. In these conditions, the leaders of the CDPP had to comply with the provisions of the Assemblies Law..."

31. The applicants appealed.

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

8. 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 the Square of the Great National Assembly, in a pedestrian area, in front of the Government building. The number of participants appeared to be several hundred and included people of different ages varying from school children 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 the traffic was not disturbed as a result of the gatherings held on those dates and no signs of violence can be seen. "The Hymn of the Loafer" (*Imnul Golanilor)* (a song that originated from the 1990 Bucharest student mass demonstrations) was often played. The chorus of the song had the following wording:

> "Better be a slacker than a traitor *(Mai bine haimana, decât trădător)*
>
> Better be a hooligan than a dictator *(Mai bine huligan, decât dictator)*
>
> Better be a loafer than an activist *(Mai bine golan, decât activist)*
>
> Better be dead than a communist (*Mai bine mort, decât comunist).*"

II. RELEVANT NON-CONVENTION MATERIAL

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

> (3) The contestation and defamation of the State and of the people, incitement to war of aggression, to hatred on ethnic, racial or religious grounds, incitement to discrimination, to territorial separatism, to public violence, as well as other encroachments on the constitutional order are forbidden and are punishable under the law.

35. The relevant provisions of the Law on the Status of Deputies of 7 April 1994 provide:

Article 15

"(1) A deputy is obliged strictly to observe the Constitution, the laws and the rules of moral and ethics.

(2) A deputy has the duty to be dependable, to contribute by his own example to the consolidation of the State discipline, to the fulfilment of civil obligations, to the enforcement of human rights and to the observance of the law.

(3) Cases of breach of the rules of ethics by deputies should be examined by the Parliamentary Commission on law, appointments and immunity."

Article 22 (3)

"Local authorities should provide the deputy with all necessary assistance for the organisation of his work with voters. They should put at his disposal accommodation for meetings with them."

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

"Local authorities are obliged to provide the deputy with the necessary assistance for the organisation of his work with voters. For this purpose, they [the local authorities] should ensure access to buildings or other public places, provide equipment and any necessary information and should inform voters in good time about the place and the time of the meeting with the deputy."

On 26 July 2002 a new Article was introduced, Article 22/1:

"Deputies have the right to organise demonstrations, manifestations, meetings, processions and other peaceful gatherings in accordance with the Law on the Conduct and Organisation of Assemblies."

Article 23

"(1) A deputy, in his quality as the representative of the supreme legislative power, has the right to demand on the spot the cessation of a breach of law..."

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

Article 5

"Assemblies may be conducted only after having been declared by the organisers to the local councils."

Article 6

"(1) Assemblies must be conducted peacefully, without any sort of weapon, while guaranteeing 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 public order and the physical integrity and life of persons or their property."

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

"(2) The involvement of students in unauthorised assemblies by their educators or by other persons from their schools shall be forbidden."

Article 7

"Assemblies shall be interrupted in the following circumstances:

a) denial and defamation of the State and of the people;

b) incitement to war of aggression, to hatred on ethnic, racial or religious grounds;

c) incitement to discrimination, to territorial separatism, to public violence;

d) encroachment on the constitutional order."

Article 8

"(1) Assemblies can be conducted in squares, streets, parks and in other public places from cities, towns and villages, as well as in public buildings.

(2) It is forbidden to conduct an assembly in the buildings of the public authorities, of the local administration, of the prosecutor's office, of the courts or of companies with armed security.

(3) It is forbidden to conduct assemblies:

a) at a distance closer than fifty metres from the building of the Parliament, the residence of the President of Moldova, the seat of the Government, the Constitutional Court and the Supreme Court of Justice;

b) at a distance closer than 25 metres from the buildings of the central administration authority, of the local public administration, courts, prosecutor's offices, police, prisons and social rehabilitation institutions, military objects, railway stations, airports, hospitals, companies which use dangerous equipment and machines or diplomatic institutions.

(4) Free access to the premises of the institutions enumerated at paragraph (3) must be guaranteed.

(5) The local public administration authorities may, if the organisers agree, establish places or buildings for permanent assemblies."

Article 9

"The time of the assembly is to be established by the organiser and the local council of the city, town or village."

Article 11

"(1) Not later than 15 days prior to the date of the assembly, the organiser shall deposit with the Municipal Council a declaration, a specimen of which is set out in the annex which forms an integral part of this Law.

(2) The prior declaration must indicate:

(a) the designation 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 place 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 declaration with the agreement of the organiser of the assembly."

Article 12

"(2) When the prior declaration is considered at an ordinary or extraordinary meeting of the Municipal Council, the discussion shall deal with the form, timetable, place and other conditions for the conduct of the assembly and the decision taken shall be adjusted to the specific situation."

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

Article 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 in writing its leaders, demanding the elimination of the irregularities within a preset time limit."

Article 29

"The Ministry of Justice shall impose a temporary ban on the activities of a party or socio-political organisation in the event that it breaches the provisions of the Constitution or those of the present law, or does not comply with the demands of 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 in case it breaches the provisions of the Constitution.'

In this case, the Ministry of Justice will inform in writing the party's leadership about the legal irregularities which have taken place and will set a time limit for their elimination.

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

During the temporary ban, it is forbidden for the party to use mass media to create propaganda and agitation, to carry out bank operations or other operations in respect of its assets, as well as to participate in elections.

After elimination of all the legal irregularities, the party shall inform the Ministry of Justice, which within a five-day time limit will lift the temporary ban.

The activity of the party or of other socio-political organisation can be suspended for a period up to six months. If the legal irregularities are not eliminated the activity can be suspended for a period of one year."

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

Article 15

"1. States Parties recognize 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 Law on the Protection of Children of 15 December 1994 provide:

Article 13

"(1) Children have the right to associate in non-governmental organisations in accordance with the law.

(2) The State must provide children's non-governmental organisations with financial support, put at their disposal buildings and give them fiscal incentives.

(3) The involvement of children in politics and their association in political parties is forbidden."

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

Article 56

"It is the duty of educators:

...

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 a prior declaration deposited with the Municipal Council or not authorised by it, and in breach of the conditions (manner, place, time) concerning the conduct of a meeting as 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 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 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 360."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

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

"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 limited themselves to submitting that it did not apply because the gatherings organised by the CDPP were not peaceful and not authorised in accordance with the law.

44. The applicant 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 5 March 2002 and of 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 the temporary ban on the applicant Party's activities amounted to an interference with the CDPP's rights guaranteed by Article 11 of the Convention. That view is shared by the Court.

2. Whether the interference was justified

48. Such 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.

(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 Article 29 of the Law on Parties and other Socio-Political Organisations (see paragraph 37 above).

50. It followed from that provision, *inter alia*, that the Ministry of Justice was entitled to impose a ban on the CDPP's activities if it 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 held unauthorised demonstrations on 9, 10, 11 and 13 January 2002. It asked for explanations and ordered the end of acts which were "incompatible with the Constitution and with the legislation of Moldova".

52. It was only in its decision of 18 January 2002 imposing a temporary ban on the CDPP's activities (see paragraph 18 above) that the Ministry of Justice invoked for the first time such new grounds as the involvement of children in street action, calls to public violence and encroachments on 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 the continued holding of meetings could entail. This in itself might be a sufficient basis for the conclusion that the impugned measures were not "prescribed by law". However, the Court does not consider it necessary finally 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 argued that the interference did not pursue any legitimate aim. The Court also, for the reasons set out below, does not consider it necessary to decide this point.

(c) "Necessary in a democratic society"

(i) Arguments before the Court

(α) The applicants

55. The applicant argued that the CDPP gatherings had the purpose of furthering its political agenda in respect of the Government's initiative to make compulsory the study of Russian language in schools. According to the applicant, it did not have any access to the public media and no debates were held in the 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 on the Square of the Great National Assembly.

56. The gatherings were entirely peaceful and no incitement to public violence was made. The participants did not carry arms and they 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 Articles 5 and 6 of the Assemblies Law, Articles 13 and 15 of the Law on the Protection of Children and Article 56 of the Law on Education.

58. The gatherings organised by the CDPP could not be considered as meetings with voters since minors attended and, according to Moldovan legislation, minors cannot vote and cannot therefore be considered as voters. Moreover, the involvement of minors in political activities is illegal under Moldovan Law.

59. The measure was applied to the applicant also for its failure to observe the deadline to respond to the Ministry of Justice's official warning of 14 January 2002.

60. By a decision of the Municipal Council, the applicant was authorised to organise a gathering on 9 January 2002 in the Square of the National Opera, which is a public place, located at a distance of several hundred metres from the Square of the Great National Assembly and from the seats of the Government, Presidency and Parliament. The applicant Party did not comply with the decision of the Municipal Council, but has not, however, ever challenged it in court.

61. The applicant Party never complied with the measure applied and it continued its activity and its prohibited gatherings. Accordingly, the Government had not abused its margin of appreciation but had instead 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*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, §§ 44).

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 v. Turkey*, 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, Series A no. 44, p. 25, § 63 and *Chassagnou and Others v. France* [GC], nos. 25088/95 and 28443/95, ECHR 1999-III, p. 65, § 112).

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 which 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*, judgment of 23 April 1992, Series A no. 236, § 46).

66. In *Informationsverein Lentia and Others v. Austria* (judgment of 24 November 1993, Series A no. 276) the Court described the State as the ultimate guarantor of the principle of pluralism (see the judgment of 24 November 1993, Series A no. 276, p. 16, § 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 the *Lingens v. Austria* judgment of 8 July 1986, Series A no. 103, p. 26, § 42).

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 the *Castells* judgment 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*, judgment of 25 May 1998, *Reports* 1998-III, § 50). 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 impliedly 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*, the *Observer and Guardian v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, § 59).

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 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*, the *Jersild v. Denmark* judgment of 23 September 1994, Series A no. 298, p. 26, § 31).

(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 percent of the seats in Parliament, while the majority Communist Party had approximately seventy percent of 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 and to protest against Government's plans to make the study of Russian compulsory for school children, at that time a topic 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 an authorisation for its gatherings in accordance with the Assemblies Law, that children were present at its gatherings and that some statements made at the gatherings amounted to calls to public violence.

73. Insofar as the first ground is concerned, it is noted by the Court that there was a dispute as to the applicability of the provisions of the Assemblies Law 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). In such circumstances it would appear questionable whether non-compliance with that 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. Insofar as 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 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 either be considered as relevant and sufficient.

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 encroachment on the principles of pluralism and democracy, it cannot reasonably be said that the measure applied to it was proportionate to the aim pursued and that it met a "pressing social need".

77. The temporary nature of the ban is not of a decisive importance in considering the proportionality of the measure, since even a temporary ban could reasonably have a "chilling effect" on the Party's freedom to exercise its freedom of expression and to pursue its political goals, the more so, since it was adopted 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 the initiation of the inquiry of the Secretary General made 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 its complaint relates to the same matters as those considered under Article 11, the Court does not consider it necessary to examine them 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 did not make any claim in respect of pecuniary or non-pecuniary damage.

B. Costs and expenses

82. The applicant claimed EUR 8,235 for the lawyers' fees, of which EUR 3,960 was claimed for Mr Vitalie Nagacevschi and EUR 4,275 for Mr Vladislav Gribincea. The applicant 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 invoked such cases as the *United Communist Party of Turkey and Others v. Turkey*, cited above, in which the applicant party was awarded FRF 120,000 for costs and expenses for two lawyers; the *Socialist Party and Others v. Turkey*, 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-..., in which the applicant was awarded EUR 10,000 for costs and expenses; and the case of *Freedom and Democracy Party* (*ÖZDEP*) *v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII, in which the applicant was awarded FRF 40,000 for costs and expenses.

The applicant 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 between EUR 120 and EUR 200.

83. The Government did not agree with the amount claimed, stating that the applicant had failed to prove the alleged representation expenses. According to them, the amount claimed by the applicant was too high in the light of the average monthly wage in Moldova. The Government agreed that there were law-firms that billed 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 was not entitled to any costs and expenses because the case was not complex and the CDPP did not suffer any real damage but only introduced the application in order to obtain "free publicity".

84. The Court recalls 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, the above criteria, the complexity and the importance of the case, the Court awards the applicant 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 6 votes to 1 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 6 votes to 1:
   (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, 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 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* unanimously the remainder of the applicant'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 Nicolas Bratza
Registrar 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 Mr Pavlovschi;
(b) dissenting opinion of Mr Borrego Borrego.

N.B.
M.O’B

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI

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 *Christian Democratic People's Party (CDPP) v. Moldova* 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 (20 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 turned, 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 European future of the Republic of Moldova. 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 standards.[1]

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), 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 Popular Christian Democratic 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 co-operation and all the democratic reforms they are able to carry out..."[2]

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 that "...The Court has noted with satisfaction the readiness of the Moldovan authorities to lift the ban following the initiation of the inquiry of the Secretary General made 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.

B. Reasons for disagreement 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.[3]

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 Law on Parties and other Socio-Political Organisations provides that, during a temporary ban, restrictions may be imposed on only four forms of activity: using mass media, creating propaganda and agitation, 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 Law on Parties and other Socio-Political Organisations, 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 in the event that it breaches the provisions of the Constitution or those of the present Law, or does not comply with the demands of 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 in the event that it breaches the provisions of the Constitution.
>
> In that event, the Ministry of Justice shall inform the party's leadership in writing about the legal irregularities which have taken place and shall set a time-limit for their elimination.
>
> 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 create propaganda and agitation, to carry out bank transactions or other operations in respect of its assets, and to participate in elections.
>
> After elimination of all the legal irregularities, the party shall inform the Ministry of Justice, which within a period of five days shall lift the temporary ban.

> The activities of the party or other socio-political organisation may be suspended for a period of up to six months. If the legal irregularities are not eliminated, the 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 provisions "...During the temporary ban, it shall be forbidden for the party to use the mass media to create propaganda and agitation, 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 Law – 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 in the event that it breaches the provisions of the Constitution or those of the present Law, or does not comply with the demands of a warning.
>
> In that event, the Ministry of Justice shall inform the party's leadership in writing about the legal irregularities which have taken place and shall set a time-limit for their elimination.
>
> 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 create propaganda and agitation, to carry out bank transactions or other operations in respect of its assets, and to participate in elections.
>
> After elimination of all the legal irregularities, the party shall inform the Ministry of Justice, which within a period of five days shall lift the temporary ban.
>
> The activities of the party or other socio-political organisation may be suspended for a period of up to six months. If the legal irregularities are not eliminated, the 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 Law, or does not comply with the demands of a warning..." was deleted, the rest of the section remaining untouched. [4]

Accordingly, during the alleged "ban", that is in January and February 2002, the following provisions were in force:

> "...During the temporary ban, it shall be forbidden for the party to use the mass media to create propaganda and agitation, to carry out bank transactions or other 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 create propaganda and agitation, 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 create propaganda and agitation, 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 with not an "actual ban", but rather with a "decision to ban", which remained unenforced and, after 20 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 "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 or has not been a violation.

I entirely agree with the statement of the majority in paragraph 48 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 finding 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 20 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 which a given action may entail.[5]

Here it is worth mentioning that the Law on Parties and other Socio-Political Organisations 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 Law on Parties and other Socio-Political Organisations 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 activities.[6]

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

Moreover, section 20 of the Law on the organisation and conduct of assemblies provides that administrative or criminal sanctions may be imposed on the organisers of or participants in an assembly who breach the provisions of the Law. The Law 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 Law on banks and other financial institutions nor the Law on Property provides for any possibility of freezing a political party's assets in the event of a temporary suspension of its activities. Nor do the Law on the Press or the Law on Audiovisual Media 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 Law on Parties and

other Socio-Political Organisations (namely "...During the temporary ban, it shall be forbidden for the party to use the mass media to create propaganda and agitation, 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.

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, as well as Article 1 of Protocol No.1. After some time, they decided to withdraw their complaints under Article 6 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* 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..."[7]

In the case of *Debono v. Malta* 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.[8]

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 Law on Non- Governmental Associations (*Cu privire la asociaţiile obşteşti*)[9]. Under this Law, all Moldovan NGOs are not-for-profit organisations and I very much doubt that a not-for-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 Committee, the LADOM and others, positions itself as an organisation rendering legal services free of charge.[10]

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 "not-for-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 "not-for-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.

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 Law. 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 not?

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 "did not have any negative effects on the CDPP since it was not enforced, the CDPP's accounts were not frozen and the party could continue its activity unhindered", as the Supreme Court 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.

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

2. See Parliamentary Assembly Doc. 10671, report on "Functioning of democratic institutions in Moldova", 16 September 2005, §§ 3-4.

1. See: paragraphs 71-78 of the judgment.

1. See Legea LRM718/1991 privind partidele şi alte organizaţii social-politice, http://www.justice.md/lex/document_rom.php?id=28087

1. See The Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 31, § 49.

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

1. See *Nikolova v. Bulgaria* [GC], no.31195/96, § 79, ECHR 1999-II

2. See *Debono v. Malta*, no. 34539/02, §54, 7 February 2006.

3. See Закон ZPM837/1996 Об обшественных объединениях, Ст.1 http://www.justice.md/lex/document_rus.php?id=26466

4. 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

CHRISTIAN DEMOCRATIC PEOPLE'S PARTY v. MOLDOVA JUDGMENT

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PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI

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