



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

FOURTH SECTION

CASE OF HYDE PARK AND OTHERS v. MOLDOVA (no. 2)

(Application no. 45094/06)

JUDGMENT

STRASBOURG

31 March 2009

FINAL

30/06/2009

This judgment may be subject to editorial revision.

In the case of Hyde Park and Others v. Moldova (no. 2),

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 33482/06) 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 Hyde Park (a former non-governmental organisation) and five Moldovan nationals, Mr Gheorghe Lupuşoru, Mr Anatol Hristea-Stan, Ms Mariana Gălescu, Ms Alina Didilică and Mr Oleg Brega (“the applicants”) on 25 August 2006. On 2 June 2008 the non-governmental organisation Hyde Park ceased to exist. Its successor, the Hyde Park unincorporated association, expressed its intention to pursue the application before the Court.

2. The applicants were represented by Mr A. Postică, a lawyer practising in Chişinău, and a member of the non-governmental organisation Promo-Lex. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vladimir Grosu.

3. The applicants alleged, in particular, a breach of their right to freedom of assembly and to a fair trial.

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 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. At the time of the events giving rise to the application, Hyde Park (the first applicant) was registered with the Moldovan Ministry of Justice as a non-governmental organisation lobbying, *inter alia*, for freedom of expression and the right to peaceful assembly. In 2007 its members decided to discontinue the organisation's registration on grounds of alleged pressure and intimidation by the State. In particular, they complained of the refusal of the Ministry of Justice to register amendments to the organisation's articles of association, the repeated freezing of its bank account, the arbitrary arrest of its members, attempts to shut down its newspaper, among other things. Several of the organisation's leaders requested political asylum in western countries. It was decided to continue the organisation's activity under the same name but without registering it with the State authorities. It was also decided that the new unincorporated association would become the former organisation's successor. After removal of the organisation from the Government's list of non-governmental organisations on 2 June 2008, Hyde Park's activities continued as before on the basis of its new articles of association. The association continued editing its newspaper, its Internet page and continued staging protests and demonstrations.

6. The other applicants are members and supporters of Hyde Park: Gheorghe Lupușoru, Anatol Hristea-Stan, Mariana Gălescu, Alina Didilică and Oleg Brega who were born in 1969, 1953, 1982, 1978 and 1973 respectively and live in Chișinău, Chișinău, Chișinău, Cazangic and Pepeni respectively.

7. On 26 September 2005 Hyde Park applied to the Chișinău Municipal Council for authorisation to hold a peaceful rally in the Stefan cel Mare Park in Chișinău on 14 October 2005, in support of freedom of speech.

8. On 7 October 2005 the Chișinău Municipal Council rejected the application on the ground that on the same date a number of events were planned in the city centre, including in the Stefan cel Mare Park, as it was a day of public holiday. This decision was sent by mail to Hyde Park on 10 October and was received by it on 12 October 2005.

9. On 12 October 2005 the first applicant challenged the refusal in court and argued, *inter alia*, that it was unlawful and contrary to Article 11 of the Convention. It also asked that the case be examined urgently.

10. On 2 December 2005 the Chișinău Court of Appeal dismissed the applicants' action while finding that the Municipal Council had lawfully rejected its application. The court considered that since other events were scheduled to take place in the park on that day, such as exhibitions, sports events, concerts and other demonstrations, Hyde Park's rally might hinder

those events and endanger public order. Moreover, the application to the Municipal Council had been signed by the president of Hyde Park and there was no evidence in the case file that the council of Hyde Park had approved it.

11. Hyde Park appealed against this judgment and argued that the judgment breached its members' right to freedom of assembly as guaranteed by Article 11 of the Convention and was also contrary to the provisions of the Assemblies Act. There was no evidence that the rally would endanger public order.

12. On 3 May 2006 the Supreme Court of Justice dismissed the first applicants' appeal on points of law while reiterating that authorising Hyde Park's rally at the same time as the other cultural and sports demonstrations in the park ran the risk of resulting in violent clashes and thus endangered public order.

II. RELEVANT DOMESTIC LAW

13. 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 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

14. The applicants complained that the proceedings were not fair within the meaning of Article 6 § 1 because the courts failed to give relevant and sufficient reasons in their judgments. The relevant part of Article 6 § 1 reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

15. The applicants also complained that the refusal to authorise their protest violated their 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

16. The Court notes that after the lodging of the present application Hyde Park underwent transformation in that it ceased to exist as a registered non-governmental organisation and re-emerged as an unincorporated association (see paragraph 1 above). It has not been disputed that the new Hyde Park is entitled to pursue the application and the Court sees no reason to hold otherwise (see, *mutatis mutandis*, *David v. Moldova*, no. 41578/05, § 28, 27 November 2007). Moreover, the Court considers that Hyde Park's capacity to pursue the proceedings is not affected by the fact that it is unincorporated (see, *mutatis mutandis*, *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports 21, p. 138).

17. 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

18. The applicants submitted that the interference with their right to freedom of assembly was not prescribed by law because the reason relied upon by the Municipality was not compatible with section 12(6) of the Assemblies Act. Moreover, the interference did not pursue a legitimate aim and was not necessary in a democratic society.

19. The Government accepted that there has been an interference with the applicants' right 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.

20. It is common ground between the parties, and the Court agrees, that the decision to reject Hyde Park's application to hold a demonstration on 14 October 2005 amounted to "interference by [a] public authority" with the applicants' 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.

21. In so far as the lawfulness of the interference is concerned, the Court notes that under section 14 of the Assemblies Act the Chişinău Municipality was obliged to give reasons in writing for rejecting Hyde Park's application to hold an assembly, which it did in its decision of 7 October 2005 (see

paragraph 8 above). According to section 12 (6) of the Assemblies Act, an application could be rejected only if the Municipality was in possession of evidence that the provisions of sections 6 and 7 would be breached with serious consequences for society. The Municipality's decision appears not to have relied on any of the reasons provided for in sections 6 and 7 of the Assemblies Act. This in itself might be a sufficient basis for the conclusion that the impugned measures were not "prescribed by law". However, in the present case, the Court considers that the issue of practical compliance with the law is indissociable from the question as to whether the interference was "necessary in a democratic society". It will therefore examine this issue below (see *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 53, ECHR 2006-II).

22. The parties also 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 either (see *Christian Democratic People's Party v. Moldova*, cited above, § 54).

23. In so far as the proportionality of the interference is concerned, 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*, cited above).

24. 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).

25. 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).

26. Turning to the circumstances of the present case, the Court observes that the Municipality rejected Hyde Park’s application to hold a protest demonstration planned for 14 October 2005 on the grounds that other events were scheduled to take place in the Stefan cel Mare Park. The Court noted above that such a reason appears to be inconsistent with the requirements of the Assemblies Act which, in its sections 6 and 7, sets out the grounds on which an application to hold an assembly can be rejected by a Municipality. For the Court, the Municipality’s reasons cannot be considered relevant and sufficient within the meaning of Article 11 of the Convention. There was no suggestion that the park in which the assembly was to take place was too small to accommodate all the various events planned there. Moreover, there was never any suggestion that the organisers intended to disrupt public order or to seek a confrontation with the authorities or other groups meeting in the park on the day in question. Rather their intention was to hold a peaceful rally in support of freedom of speech. Therefore, the Court can only conclude that the Municipality’s refusal to authorise the demonstration did not respond to a pressing social need.

27. It is true that new reasons for rejecting Hyde Park’s application to hold an assembly were given by the courts during the subsequent judicial proceedings. However, sections 11 and 12 of the Assemblies Act give exclusive authority to the local authorities to authorise or not assemblies. The law does not provide, and the Government did not argue the contrary, that other State authorities such as the courts were entitled under the Assemblies Act to exercise this duty in their own name or on behalf of the local authorities. Moreover, the Court can but note that those reasons were adopted in decisions given by the courts long after the date planned for the demonstrations. For that reason the Court considers that the judicial proceedings following the Municipality’s decision rejecting Hyde Park’s application for holding an assembly and the reasons given by the courts for upholding that decision must be disregarded.

28. Bearing in mind the above circumstances, the Court concludes that the interference did not correspond to a pressing social need and thus that it

was not necessary in a democratic society. Accordingly, there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicants also alleged a violation of Article 6 § 1 of the Convention, arguing that the proceedings had been unfair because the domestic courts failed to give reasoned judgments. As this complaint does not raise a separate issue from that examined under Article 11 above, the Court does not consider it necessary to examine it separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants claimed 4,000 euros (EUR) for Hyde Park and EUR 500 for each individual applicant in respect of moral damage.

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

33. The Court awards EUR 3,000 to Hyde Park. The award in favour of Hyde Park should be paid to the applicants' representative, Mr A. Postică, to be held and managed on behalf of Hyde Park. In so far as the claims by the individual applicants are concerned, the Court does not consider these to be justified in the present case and therefore dismisses them.

B. Costs and expenses

34. The applicant also claimed EUR 1,300 for the costs and expenses incurred before the Court.

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

36. The Court awards EUR 1,000 for costs and expenses. This sum should be paid to the applicants' representative, Mr A. Postică.

C. Default interest

37. 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* admissible the application;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 6 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be paid to the applicants' representative, Mr A. Postică, to be held and managed on behalf of Hyde Park;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses to be paid to Hyde Park's representative, Mr A. Postică;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President