CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF HYDE PARK AND OTHERS v. MOLDOVA (no. 4)

(Application no. 18491/07)

JUDGMENT

STRASBOURG

7 April 2009

FINAL

07/07/2009

This judgment may be subject to editorial revision.

In the case of Hyde Park and Others v. Moldova (no. 4),

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 17 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 18491/07) 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 and eight Moldovan nationals, Mr Oleg Brega, Mr Anatolie Juraveli, Mr Roman Cotelea, Mr Mariana Galescu, Mr Radu Vasilascu, Mr Vitalie Dragan, Mr Angela Lungu and Mr Anatol Hristea-Stan ("the applicants") on 21 February 2007. 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 and Mr P. Postică, lawyers practising in Chişinău, and members of the non-governmental organisation Promo-Lex. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants complained about numerous alleged violations of their rights guaranteed by Articles 3, 5, 6, 8, 11 and 13 of the Convention.

4. On 8 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: Oleg Brega, Anatolie Juraveli, Roman Cotelea, Mariana Galescu, Radu Vasilascu, Vitalie Dragan, Angela Lungu and Anatol Hristea-Stan. They were born in 1973, 1988, 1987, 1982, 1983, 1967, 1988 and 1953 respectively and live in Pepeni, Durlesti and Chişinău.

7. On 30 June 2006 the first applicant applied to the Chişinău Municipal Council for authorisation to hold a peaceful demonstration at the junction of Banulescu-Bodoni and Stefan cel Mare streets, not far from the Government building, between 1 and 31 August 2006, to protest against the refusal of the Ministry of Culture to install a monument dedicated to the poet Liviu Rebreanu, donated by the Government of Romania.

8. On 18 July 2006 the Chişinău Municipal Council authorised the holding of a demonstration in writing, but only on 1 August 2006. It stated that it considered that one day of protest was sufficient in order to bring Hyde Park's concerns to the Government's attention.

9. On 25 July 2006 Hyde Park challenged the Municipal Council's decision in court.

10. On 29 August 2006 the Chişinău Court of Appeal found that the Municipality's refusal had been unlawful, quashed its decision of 18 July 2006 and ordered the Municipal Council to authorise the first applicant to hold a demonstration in front of the Government building between 29 and

31 August 2006. The court ordered that its judgment should come into force immediately.

11. On 30 August 2006 the applicants requested authorisation from the Municipality on the basis of the judgment of 29 August 2006. However, the Municipality refused to comply with the judgment on the ground that it was not final.

12. On the same day at 5 p.m. the applicants started their demonstration at the place indicated in the judgment of the Court of Appeal. At 5.15 p.m. the applicants were approached by a group of police officers who asked whether they had authorisation. The applicants showed them the judgment of the Court of Appeal. From a video which was made by the police and which is part of the domestic case file a police officer can be seen attempting to convince Mr Brega to stop the demonstration. The latter refuses and argues that Hyde Park has a court judgment authorising the demonstration. At the same time Mr Brega speaks through a megaphone declaring that Moldova is a totalitarian State where there is no freedom of speech and that it will have to answer for all its illegal behaviour before the Strasbourg Court. He accuses the police and the State authorities of illegal behaviour. Suddenly, a person wearing a Special Forces uniform attacks one of the Hyde Park members from behind and violently throws him to the ground. The other participants observe the attack and are immediately surrounded by a group of police officers and taken to a police van. Nobody appears to resist and a female voice, apparently one of the participants, calls on somebody not to resist arrest. According to the applicants, two of the participants (Mr Juraveli and Mr D.) were thrown to the ground by Special Forces officers.

13. At the police station, the police officers took the applicants' belongings including their mobile telephones. The minutes of arrest indicated, *inter alia*, that the applicants' belongings had been taken for storage. The applicants were locked in different cells in groups of three or four persons. The two female applicants were put in a separate cell. According to the applicants, they were not allowed to make any telephone calls or to consult a lawyer. The cells were small, humid and dirty. They smelled of urine and faeces. They did not have windows, the electric light was always on and there were only two wooden benches inside. The applicants were held in detention for approximately forty hours during which time they were not provided with any food. They were only provided with water and occasionally taken to a toilet. Only after the intervention of several human rights NGOs and after sixteen hours of detention, were their relatives allowed to bring them food. The Government disputed the applicants' description of the conditions of detention.

14. On 1 September 2006 at approximately 10 a.m. the applicants were taken to court where their mobile telephones and cameras were returned to them and where they learned about the charges against them for the first

time, namely holding an unauthorised demonstration (Article 174 § 1 of the Code of Administrative Offences (the "CAO")), resisting arrest (Article 174 § 5 of the CAO) and insulting police officers (Article 174 § 6 of the CAO). After receiving their belongings, the applicants alleged that all the video and audio files concerning the demonstration had been deleted from their telephones by the police.

15. During the proceedings Mr Brega and Ms Galescu requested the court to order an expert evaluation of their mobile telephone records in order to determine whether the police had deleted files from them; however, their request was rejected and the proceedings were adjourned. The applicants were released at noon.

16. On 3 October 2006 the Buiucani District Court continued the administrative proceedings against the applicants and found all of them (except for the first applicant) guilty of holding and participating in an unauthorised demonstration contrary to Article 174 § 1 of the CAO. The court found that after obtaining a favourable judgment from the Court of Appeal, they should have applied to the Municipal Council for authorisation. The court fined each applicant except for Mr O. Brega (the president of Hyde Park at the time) 200 Moldovan lei (MDL). Mr O. Brega was fined MDL 500. All the applicants were acquitted of the charges concerning the insulting of police officers and resisting arrest after the court viewed a video of the arrest made by the police officers and found that there was no justification for bringing these accusations.

17. All the applicants appealed against this decision in so far as it concerned their participation in an unlawful assembly and argued, *inter alia*, that Hyde Park had applied to the Municipal Council for authorisation on 30 August 2006; however, their request had been dismissed on the ground that the judgment of the Court of Appeal of 29 August 2006 was not yet in force. They also repeated their request to have an expert evaluate their mobile telephone records.

18. On 26 October 2006 the Chişinău Court of Appeal upheld the applicants' appeal while finding that the applicants' demonstration was lawful by virtue of the judgment of the Court of Appeal of 29 August 2006 (see paragraph 10 above). The applicants were acquitted of the charges relating to their participation in an unlawful assembly.

19. In the meantime, on 18 September 2006 the applicants lodged a criminal complaint against the police officers who had arrested them. They complained that they had been abused, illegally detained, that their right to privacy of correspondence had been violated, that their right to freedom of assembly had been violated and that they had suffered inhuman and degrading treatment in addition to the refusal to execute the court decisions.

20. Between September 2006 and September 2007 the criminal proceedings initiated at the applicants' request were dismissed and re-opened four times. On each occasion, the Prosecutor's Office dismissed the

complaint and later the courts, or the hierarchically superior prosecutor, quashed the prosecutor's decision and ordered a re-examination. The reasons for dismissal were the testimonies of police officers and police witnesses who confirmed the allegations that the applicants had insulted the police and resisted arrest. As to the allegation concerning the tampering with the applicants' mobile telephones and deleting files from them, the Prosecutor's Office accepted the testimony of a police officer who confirmed that two mobile telephones had been seized during the applicants' detention but denied the allegations that somebody had tampered with them. As to the video of the event filmed by the police representatives (see paragraph 12 above), the Prosecutor's Office argued that it had been lost and that, therefore, it could not be examined. On 27 September 2007 the Rascani District Court quashed the last decision dismissing the applicants' complaints and ordered a re-examination. After that date, the applicants did not hear any more from the Prosecutor's Office about the status of their complaint. On 10 January 2008 the applicants wrote to the Prosecutor General's Office to enquire as to the stage reached in their proceedings, but they did not receive a reply. A copy of that letter with a stamp of the Prosecutor General's Office on it was annexed to the applicants' observations. According to them, it was only from the Government's observations that they learned that their complaint had been dismissed again on 12 November 2007. The Government disputed the applicants' submissions concerning the letter of 10 January 2008 which the applicants stated they had sent to the Prosecutor General's Office. They did not dispute, however, the authenticity of the Prosecutor General's stamp on the copy of that letter.

21. On 1 November 2006 the Supreme Court of Justice examined the appeal on points of law lodged by the Municipal Council against the judgment of the Court of Appeal of 29 August 2006. It quashed that judgment and dismissed the applicants' action, finding that the Municipal Council's decision of 18 July 2006 was lawful. The Supreme Court also ruled that the ruling of the Court of Appeal concerning the immediate enforcement of its judgment had been unlawful.

II. RELEVANT DOMESTIC LAW

22. 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 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 the refusal in the administrative courts."

23. The relevant provisions of the Criminal Code read as follows:

"Article 166. Illegal deprivation of liberty

(1) Illegal deprivation of liberty, if it is not a kidnapping, shall be punishable with community work of 120-240 hours or imprisonment of up to 2 years.

(2) The same offence committed

b) against two or more persons;

d) by two or more persons;

shall be punishable with imprisonment of 3 to 8 years.

Article 184. Violation of the right to freedom of assembly

(1) Violation of the right to freedom of assembly by way of illegal hindering of a demonstration, rally or action of protest or hindering of persons from taking part in them...:

a) committed by an official;

b) committed by two or more persons ;

c) accompanied by acts of violence which are not dangerous to life or health,

shall be punishable with a fine of four to eight thousand Moldovan lei or with community work of 180-240 hours, or with imprisonment of up to two years."

24. The relevant provisions of the Code of Administrative Offences, in force at the material time, read:

"Article 174 § 1

2. The organisation and holding of an assembly without prior notification to the Municipal Council or without authorisation from the Council, or in breach of the conditions (manner, place, time) concerning the conduct of meetings indicated in the authorisation shall be punishable by a fine to be imposed on the organisers (leaders) of the assembly in an amount equal to between MDL 500 and 1,000. ...

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 200 and 300.

Article 174 § 5

Resisting a police officer [...] in the exercise of his or her duties of ensuring public order and the fight against crime shall be punishable by a fine up to MDL 300 or detention of up to thirty days.

Article 174 § 6

Insulting police officers ... in the exercise of their duties ... shall be punishable by a fine of up to MDL 200 or imprisonment of up to fifteen days.

Article 249

Persons who ... breached the rules concerning the organisation and holding of assemblies ... resisted a police officer or behaved offensively towards him... may be detained until the case is examined by a court... ...”

25. The relevant provisions of Law No. 1226 on Pre-Trial Detention read as follows:

“Section 12. The main requirements in places of pre-trial detention

(3) The detainees shall be subjected to body searches.... They shall not be allowed to have money, precious objects and objects forbidden in places of detention. Money shall be transferred into their personal accounts, while precious objects and other objects shall be stored.”

26. More detailed rules concerning detainees’ belongings and their storage by the authorities in charge of detention facilities are contained in the Government’s Decision no. 583, of 26 May 2006:

“Section 29. The manner of removal of forbidden objects and substances from detainees

373. Money, precious objects and forbidden objects must be taken away from detainees...

375. During detention the goods mentioned in paragraph 373 above shall be transmitted to the accounting department of the detention facility for storage...

376. The forbidden objects and substances shall be taken away from detainees when they are discovered.

377. The right to take away forbidden objects is vested in the representatives of the administration, guardians and other employees of the penitentiary system.

378. The taking away of goods shall be carried out by at least two representatives of the administration, in the presence of the detainee whose goods are taken away.

379. Minutes of the removal of possessions shall be drawn up and copied three times by the participants. One copy for the detainee whose goods have been removed, another for the accounting department and the third copy for the detainee’s personal file.

380. The minutes shall contain the following information:

The name of the detention facility;

Date, time and place of the removal of goods;

Reason for the removal of goods;

First name, last name, position and grade of the persons who participated in the removal;

First name and last name of the detainee whose goods are removed;

An exhaustive list of the goods removed indicating denominations, quantity, brand, series, number, registration number...

Signatures of all the participants, including that of the detainee...

381. The minutes shall also contain details relating to the price of the object/s, their material, and any distinguishing features.

382. If the detainee is not in agreement with the minutes, he has the right to write his objections in the minutes.

383. Money and other valuables shall be transmitted urgently (not later than one day) to the accounting department. The removed goods shall be registered in a special register for valuables.

384. Any money removed shall be transferred to the detainee's bank account..."

According to Annex No. 7 to this Government Decision, it is forbidden for detained persons to have mobile telephones.

THE LAW

27. The applicants (except for the first applicant) complained under Article 3 of the Convention that the conditions of detention at the Buiucani Police Station were inhuman and degrading. Article 3 reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

28. The applicants (except for the first applicant) alleged that their right to liberty provided for by Article 5 § 1 of the Convention had been breached since they had been detained for approximately forty hours without any legal grounds. They also complained under Article 5 §§ 2 and 3 that they had not been informed promptly about the reasons for their arrest and about the charges against them and that they were not brought promptly before a judge. The relevant parts of Article 5 read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

29. The applicants further submitted that the proceedings which culminated in the judgment of the Supreme Court of Justice of 1 November 2006 had been unfair because the Supreme Court of Justice failed to give reasons for its judgment. 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. ..."

30. The applicants (except for the first applicant) complained under Article 8 that the police had deleted audio and video files from their mobile telephones and cameras. Article 8 of the Convention reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

31. 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."

32. The applicants (except for the first applicant) complained under Article 13 of the Convention that they had not had an effective remedy in respect of the alleged breach of Article 8. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

I. ADMISSIBILITY OF THE CASE

A. Preliminary note

33. The Court notes that after the lodging of the present application Hyde Park ceased to exist as a registered non-governmental organisation and continued to exist 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 its being 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).

B. Victim status

34. The Government submitted that since only Hyde Park had applied to the Municipality for an authorisation to hold a demonstration, the other applicants cannot claim to be victims within the meaning of Article 34 of the Convention and that their application was therefore abusive.

35. The applicants submitted that under section 11 of the Assemblies Act only the organiser of a demonstration can apply for authorisation but not the participants. Moreover, all of the individual applicants had participated in the protest and had been arrested by the police.

36. The Court notes that all the applicants participated in the assembly and were arrested and detained by the police. Their victim status for the purposes of Article 34 of the Convention is therefore not open to doubt. The Government's objection is dismissed.

C. The complaint under Article 3 of the Convention

37. The Government disputed the allegations concerning the conditions of detention and argued that in any event the duration of detention had been

too short to attain the threshold of severity required by Article 3 of the Convention. Moreover, the applicants did not exhaust domestic remedies.

38. The applicants argued that they had been detained in inhuman and degrading conditions of detention at the Buiucani Police Station for approximately forty hours (see paragraph 13 above).

39. The Court has already had occasion to note the findings of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (the "CPT") concerning the conditions of detention in the Chişinău Police Inspectorates (see, for instance, *Malai v. Moldova*, no. 7101/06, § 15, 13 November 2008) and has found violations of Article 3 of the Convention on numerous occasions in respect of detention conditions in Moldova. In this case, however, given the short time spent by the applicants in detention, and the Court's case-law on this matter, the Court is unable to hold that the applicants' suffering attained the threshold of severity required by Article 3. Unlike in *Fedotov v. Russia* (no. 5140/02, 25 October 2005), the applicants had access to toilet facilities and water and after a certain period of time they were allowed to receive food from their relatives. Accordingly, the Court concludes that the applicants' complaint under Article 3 of the Convention is manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

D. The complaints under Article 8 and Article 13 of the Convention

40. The applicants complained that during their detention at the Buiucani Police Station their mobile telephones were taken away from them and that the police officers searched through their telephones' memory and deleted audio and video files of sounds and images of the demonstration. According to them, the police deleted materials which would have been inconsistent with the latter's version of the events. This fact constituted an interference with their right to private life and correspondence which was not prescribed by law and was not necessary in a democratic society.

41. The Government argued that the applicants had failed to exhaust domestic remedies in respect of this complaint. Alternatively, they did not dispute the fact that the applicants' mobile telephones had been confiscated during their detention. However, they disputed the allegations concerning the searching of the applicants' telephones' memories and the deletion of files from them. According to the Government, there had been no interference with the applicants' rights guaranteed by Article 8 of the Convention and the complaint was, therefore, manifestly ill-founded.

42. Since this complaint is in any event inadmissible as being manifestly ill-founded, the Court does not consider it necessary to reach any conclusion on the issue whether or not domestic remedies have been exhausted by the applicants. The Court notes that the applicants have not furnished any evidence that supports their allegation that the police tampered with their

mobile telephones and deleted files from them which pertain to matters falling within the ambit of Article 8. It notes in this connection that according to the applicants, the material allegedly deleted concerned audio and video data relating to the demonstration. It has not been suggested that private messages or other kinds of personal data were viewed and/or deleted. This complaint is thus unsubstantiated and must be dismissed as manifestly ill-founded and therefore inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

43. In view of the above finding, the Court considers that the applicants have no arguable claim under Article 13 of the Convention taken together with Article 8. Accordingly, this complaint is also manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

E. The remaining complaints

44. The Court considers that the applicants' remaining complaints under Articles 5, 6 and 11 raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaints.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

45. 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.

46. The Government accepted that there had been an interference with the applicants' right guaranteed by Article 11 of the Convention. However, that interference was prescribed by law, namely the Assemblies Act, pursued a legitimate aim and was necessary in a democratic society.

47. It is common ground between the parties, and the Court agrees, that the decision to reject Hyde Park's application to hold a demonstration between 1 and 31 August 2006 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.

48. 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 18 July 2006 (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 been based 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 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).

49. 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).

50. 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).

51. 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).

52. 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, *mutatis mutandis*, *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

53. Turning to the circumstances of the present case, the Court observes that the Municipality rejected the application to hold the protest demonstration planned for 1-31 August 2006 on the ground that, in its opinion, one day of protest was sufficient. 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. It observes that there was never any suggestion that the organisers intended to disrupt public order or to seek a confrontation with the authorities. Therefore, the Court can only conclude that the Municipality's refusal to authorise the demonstration did not respond to a pressing social need.

54. 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.

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

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

56. The applicants also alleged a violation of Article 6 § 1 of the Convention, arguing that the proceedings that culminated in the judgment of the Supreme Court of Justice of 1 November 2006 were unfair because the Supreme Court failed to give a reasoned judgment. 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. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

57. The applicants agreed that their detention fell under paragraph (c) of Article 5 § 1 of the Convention. However, they argued that the detention was unlawful and arbitrary.

58. The Government argued that the actions of the police officers were lawful under domestic law and pointed to Article 249 of the CAO, which provided for the possibility of detaining a person for holding an unauthorised demonstration, offending police officers and resisting arrest. They insisted that there had been no breach of Article 5 § 1 of the Convention.

59. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV, and *Fedotov v. Russia*, cited above, § 74).

60. The Court agrees with the parties that the applicants' detention fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing them before the competent legal authority on suspicion of having committed several offences.

61. There is no dispute as to the fact that the police, when arresting the applicants and taking them to the police station, followed the procedure provided for by Article 249 of the CAO (see paragraph 24 above).

62. The Court notes that the applicants were charged, *inter alia*, with resisting arrest and insulting police officers. However, the domestic courts, having viewed the video of the applicants' arrest found those charges unsubstantiated and dismissed them (see paragraphs 16 and 18 above). In such circumstances, and given the absence of any "reasonable suspicion" within the meaning of Article 5 § 1(c), the Court considers that the applicants' detention on false charges that they had resisted arrest and insulted police officers cannot be considered "lawful" under Article 5 § 1 of the Convention.

63. As to the last ground of the applicants' detention, that is their organising and holding an unauthorised demonstration, the Court notes that they had a valid court judgment authorising the assembly. Moreover, that judgment came into force immediately. The fact that the Municipality refused to comply with it did not dispense the police from the obligation to take it into consideration. These findings are consistent with the findings of

the Court of Appeal which later finally dismissed the charges against the applicants under Articles 174 § 1 (see paragraph 18 above). In such circumstances, and bearing in mind the findings in paragraph 54 above, the Court finds that the applicants' detention on this ground too cannot be considered "lawful" under Article 5 § 1 of the Convention.

64. There has therefore been a breach of that provision.

V. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 2 AND 3 OF THE CONVENTION

65. The applicants also complained that they had not been informed promptly about the reasons for their arrest and about the charges against them and that they had not been brought promptly before a judge.

66. The Court considers that it does not have to examine these complaints separately, having found that the detention as a whole was contrary to Article 5 § 1 of the Convention (see, *Stepuleac v. Moldova*, no. 8207/06, § 83, 6 November 2007).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The first applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage. Mr Brega and Ms Galescu claimed EUR 3,000 each and the rest of the applicants claimed EUR 2,500 each.

69. The Government disagreed with these amounts and argued that they were excessive and unsubstantiated.

70. The Court awards EUR 4,000 to Hyde Park, payable to its representatives, Mr A. Postică or Mr P. Postică, to be held and managed on behalf of Hyde Park. It also awards EUR 3,000 to Mr Brega, EUR 3,000 to Ms Galescu and EUR 2,500 to each of the remaining applicants.

B. Costs and expenses

71. The applicants also claimed EUR 3,600 for costs and expenses incurred before the Court.

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

73. The Court awards EUR 3,000 for costs and expenses. This sum should be paid to the applicants' representatives, Mr A. Postică or Mr P. Postică, to be held and managed on behalf of Hyde Park.

C. Default interest

74. 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. *Declares* unanimously the complaints under Articles 3 of the Convention inadmissible;

2. *Declares* by a majority the complaints under Articles 8 and 13 of the Convention inadmissible;

3. *Declares* unanimously the remainder of the application admissible;

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

5. *Holds* unanimously that there is no need to examine separately the complaint under Article 6 of the Convention;

6. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention;

7. *Holds* unanimously that there is no need to examine the complaints under Article 5 §§ 2 and 3 of the Convention;

8. *Holds* unanimously
   (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:
   - to Hyde Park- EUR 4,000 (four thousand euros) for non-pecuniary damage and EUR 3,000 (three thousand euros) for costs and expenses. These sums are to be paid to the applicants' representatives,

Mr A. Postică or Mr P. Postică, to be held and managed on behalf of Hyde Park;
- to Mr Brega – EUR 3,000 (three thousand euros) for non-pecuniary damage;
- to Mr Juraveli – EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
- to Mr Cotelea – EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
- to Ms Galescu – EUR 3,000 (three thousand euros) for non-pecuniary damage;
- to Mr Vasilascu – EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
- to Mr Dragan – EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
- to Ms Lungu – EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
- to Mr Hristea-Stan – EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
(b) that the above amounts shall 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
(c) 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;

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

Done in English, and notified in writing on 7 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President