



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

THIRD SECTION

**CASE OF PROMO LEX AND OTHERS
v. THE REPUBLIC OF MOLDOVA**

(Application no. 42757/09)

JUDGMENT

STRASBOURG

24 February 2015

FINAL

24/05/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Promo Lex and Others v. the Republic of Moldova,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 3 February 2015,

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

PROCEDURE

1. The case originated in an application (no. 42757/09) 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 Promo Lex and CREDO (two non-governmental organisations from the Republic of Moldova) and by Mr Igor Grosu, a Moldovan national (together “the applicants”), on 3 August 2009. The third applicant was born in 1972 and lives in Chisinau.

2. The applicants were represented by Mr A. Postica, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol.

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

4. On 26 May 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 29 January 2009 the police arrested a person who was protesting peacefully in front of the Prosecutor General’s Office.

6. As a reaction to that event, the applicant organisations decided to hold a demonstration in front of the Prosecutor General’s Office, followed by a

march to the Ministry of Internal Affairs and a demonstration in front of the latter.

7. On 2 February 2009 the first and the second applicants lodged a notification with the municipal authorities in which they stated their intention to conduct the above event, which they described as a spontaneous reaction to the events of 29 January 2009. They relied on Section 12(1) of the Assemblies Act (see paragraph 11 below).

8. On 3 February 2009 the first and the second applicants organised a protest demonstration in front of the Prosecutor General's Office. From the video submitted by the parties, it appears that approximately twenty individuals took part in the demonstration. The third applicant was among the participants. Several minutes after the beginning of the demonstration the protesters were attacked by six men wearing masks who started to physically assault them and to spray tear gas and paint over them. As a result of the attack the third applicant sustained numerous injuries to his head and limbs and needed medical treatment. The protesters defended themselves and managed to chase away the attackers. They also managed to immobilise two of the attackers. One of the attackers admitted to having been paid 1,000 Moldovan lei (approximately 60 euros (EUR)) by an unknown person for his participation in the attack.

9. The gathering was observed from the very beginning by four uniformed police officers who were in a patrol car parked close to the place of the event. Also, the event was filmed by approximately six people in plain clothes, who – according to the applicants – were police officers. The Government denied that those filming the event were police officers. When the clash between the protesters and the attackers began, no police officer intervened. The protesters called the police and requested assistance but to no avail. A police patrol appeared only one hour and a half later and took the two immobilised attackers into custody.

10. The organisers of the demonstration lodged a criminal complaint with the Prosecutor General's Office and complained *inter alia* about the failure of the police to intervene promptly. A criminal investigation was initiated and all six attackers identified. Only two of them were eventually given suspended sentences of four years for violation of the freedom of assembly of others and hooliganism. No action was taken in respect of the applicant's complaint about the inaction of the police.

II. RELEVANT DOMESTIC LAW

11. According to Section 10 of the Assemblies Act of 2008, the organisers of a demonstration must notify the local authorities five days in advance about the planned demonstration. However, under Article 12 (1) and (5), no such obligation exists for spontaneous demonstrations or for demonstrations with fewer than fifty participants.

12. According to Article 67 of the Code of Administrative Offences, the failure by organisers of a demonstration to notify the local authorities in accordance with the provisions of the Assemblies Act is punishable with a fine of up to 800 Moldovan Lei (the equivalent of approximately EUR 50 at the time of the events).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

13. The applicants complained that the State had not discharged its positive obligation to protect their right to freedom of assembly. They relied on Article 11 of the Convention, which reads:

“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. Admissibility

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

15. The applicants argued that they were not obliged to give notification to the local authorities five days in advance as provided by Article 10 of the Assemblies Act because their intention was to hold an impromptu demonstration – to protest against the events of 29 January 2009 – in which fewer than fifty persons participated. They did inform the local authorities, however, one day in advance. The authorities were therefore aware of the demonstration and, moreover, the buildings of the Prosecutor General's

Office and the Ministry of Internal Affairs were under constant police supervision.

16. Neither the uniformed police officers who were observing the demonstration from a car parked near the Prosecutor General's Office nor the plain-clothes officers who were filming the event intervened in order to protect the peaceful demonstrators and put an end to the clash.

17. The headquarters of a police anti-riot regiment was located only some six hundred metres away from the place of the incident. No other demonstrations were planned on that day and the delay of one and a half hours before the police arrived after being informed about the violent clash could therefore only have been deliberate.

18. In this context the applicants drew the Court's attention to the fact that on other occasions, such as during the protest of 29 January 2009, it had taken the same regiment between two and fifteen minutes to put an end to totally peaceful and lawful demonstrations.

19. The Government submitted that the inaction of the police for one and a half hours was explained by the fact that the applicants had failed to notify the local authorities five days in advance of the planned demonstration, as required by Section 10 of the Assemblies Act. Had they notified the authorities of their intention to hold a demonstration in due time, the authorities would have been in a position to take appropriate protection measures. The Government denied that the plain-clothes individuals filming the demonstration were police officers and argued that the applicants had put forward no evidence to prove that they were members of the police force.

20. The Government further argued that the authorities had prosecuted and convicted two of the attackers and concluded that by doing that, they had fully discharged their positive obligations under Article 11 of the Convention.

2. *The Court's assessment*

21. The Court reiterates at the outset that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society (see, among other authorities, *Kasparov and Others v. Russia*, no. 21613/07, § 86, 3 October 2013).

22. A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the

sphere of relations between individuals, if need be (see, *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139).

23. Where individuals act in a way that undermines Article 11 rights, national authorities may be required to intervene in relationships between such private individuals to secure their protection. This may include the need for active police measures to secure such Article 11 rights and furthermore entails the obligation to investigate violent incidents affecting the exercise of those rights (see *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 43, ECHR 2005-X (extracts)).

24. Turning to the facts of the present case, the Court notes that the participants at the demonstration of 3 February 2009 were attacked by a group of six men wearing masks. Unlike in *Plattform "Ärzte für das Leben"* (cited above) where eggs and clumps of grass were thrown at the applicants, the applicants in the present case were punched and kicked and sprayed with tear gas. Some of the participants in the demonstration, including the third applicant, suffered injuries as a result of the clash with the attackers and needed medical treatment. The incident took place in front of the Prosecutor General's Office, a building guarded by the police. A police patrol in a car parked not far from the place of the event was observing the incident but did not intervene. Some of the participants in the demonstration called the police immediately after the beginning of the attack, but it took the police one and a half hours to arrive.

25. The Government explained the slow reaction of the police by alluding to the fact that the applicants had failed to notify the local authorities five days in advance, thus not giving them a chance to prepare and be ready to intervene. According to the Government, the applicants had acted in breach of Section 10 of the Assemblies Act by giving notice of the demonstration only one day in advance. The Court is not persuaded by this argument and notes that – according to Section 12 of the Assemblies Act – the applicants were not under a legal obligation to give notification of the demonstration because there were fewer than fifty participants. Indeed, had it been otherwise, the applicants would have been held responsible under Article 67 of the Code of Administrative Offences, which was not the case.

26. The Court points out that it has examined numerous cases concerning Article 11 which arose from events that took place at approximately the same time as those in the present case. It refers in particular to the group of cases brought by the non-governmental organisation Hyde Park and its members, in which it took the police a very short time to arrive after the beginning of peaceful demonstrations – without being called by anyone – and to arrest the participants (see *Hyde Park and Others v. Moldova* (no. 4), no. 18491/07, 7 April 2009; *Hyde Park and Others v. Moldova* (nos. 5 and 6), nos. 6991/08 and 15084/08, 14 September 2010; and *Brega and Others v. Moldova*, no. 61485/08, 24 January 2012). For reasons unknown to the Court, their reaction was

much slower in the present case, despite the violence involved and despite being called.

27. The Government submitted that there were no police officers filming the demonstration. They did not say who the individuals filming the demonstration were and it does not appear that the authorities made any attempt to find this out in the investigation which followed the incident. The Court further notes that, even though all six attackers were identified by the police, only two of them ended up being convicted. The Government did not inform the Court as to the reasons why the other four attackers were not prosecuted. Lastly, the Court notes with concern that, in spite of the admission of one of the attackers to having been paid for the attack, there is no evidence to show that the authorities attempted to find out who had sponsored it.

28. In conclusion, the Court considers that the Moldovan authorities failed to take appropriate police measures in order to protect the applicants from violent attack and to effectively investigate the circumstances of the incident. Therefore, the Court considers that the State has failed to comply with their positive obligations under Article 11 of the Convention and that there has been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. The applicants further complained under Article 13 that they did not have an effective remedy to complain about the failure of the authorities to protect their right to freedom of assembly. Article 13 of the Convention 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.”

A. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The applicants submitted that they had no remedy under domestic law to complain about the failure of the police to protect their right to peaceful assembly.

32. The Government contested that argument but did not indicate any remedies available under domestic law to complain about the failure of the police to protect the right to peaceful assembly.

33. The Court notes that the Government did not indicate any legal provisions under Moldovan law which would have given the applicants the possibility of effectively complaining and obtaining compensation for the failure of the police to protect them during the demonstration of 3 February 2009. In such circumstances, the Court considers that it has not been shown that effective remedies existed in respect of the applicants' complaints under Article 11. There has therefore been a breach of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The first and the second applicants did not make any claims. The third applicant claimed EUR 1,000 in respect of non-pecuniary damage.

36. The Government argued that the third applicant was not entitled to any compensation. Alternatively, the Government submitted that the amount claimed was excessively high.

37. The Court considers it appropriate to award the third applicant, Mr Igor Grosu, compensation in respect of non-pecuniary damage. Deciding on an equitable basis, the Court awards the amount claimed in full.

B. Costs and expenses

38. The applicants did not make any claims for costs and expenses.

C. Default interest

39. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 11;
4. *Holds*
 - (a) that the respondent State is to pay the third applicant, Mr Igor Grosu, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President