

THIRD SECTION

CASE OF PARTIDUL COMUNISTILOR (NEPECERISTI) AND UNGUREANU v. ROMANIA

(Application no. **46626/99**)

JUDGMENT

STRASBOURG

3 February 2005

In the case of Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania,

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

Mr B. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mrs A. GYULUMYAN,

Ms R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 September 2003 and 13 January 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. **46626/99**) against Romania lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the

Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a political group, Partidul Comunistilor (Nepeceristi) (Party of communists who have not been members of the Romanian Communist Party – “the PCN”), and a Romanian national, Mr Gheorghe Ungureanu, on 14 April 1997.

2. The Romanian Government (“the Government”) were represented by their Agent, Mrs R. Rizoiu, of the Ministry of Foreign Affairs.

3. The applicants complained that the refusal of their application to register the PCN as a political party, in a judgment delivered by the Bucharest Court of Appeal on 28 August 1996, had infringed their right to freedom of association within the meaning of Article 11 of the Convention. Having regard to the grounds on which the courts had refused registration, they further submitted that they had been discriminated against on the basis of their political opinions, in breach of Article 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second 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.

6. By a decision of 16 December 2003, the Chamber declared the application admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The refusal of the application to register the PCN

9. The first applicant is a political group which was refused registration as a political party in a judgment delivered by the Bucharest Court of Appeal on 28 August 1996. The second applicant is its chairman.

10. On 23 March 1996 the PCN was founded at a national conference chaired by the second applicant, at which its constitution and political programme were adopted. The relevant parts of the constitution read as follows:

“The PCN shall respect national sovereignty, the territorial integrity of the State, its legal order and the principles of democracy. None of its members shall defame the country and the nation, promote war and national, racial, class or religious hatred, encourage discrimination, territorial separatism or public violence, or engage in obscene and immoral activities.

The PCN is a free association of citizens who support political pluralism, uphold the principles of a democratic law-based State and strive to *defend* their own interests without *denying* those of others.

Aims

Article 1: The PCN shall express, represent and defend the political interests of the workers, without any distinction based on ethnic origin, sex, age, profession, belief or opinions. 'Workers' means all those who earn their living by working, regardless of activity ...

With a view to ensuring a constant increase in workers' living standards, the PCN shall act within the law, using any means lawfully available to all political parties, to gain political power in order to establish a humane and democratic society. ...

Article 20: The PCN is not the successor of the former Romanian Communist Party, with which it has no connection; it represents the continuation of the resistance against the Communist Party prior to 1989. Being founded by and composed of persons who were not members of the former Communist Party, the PCN emphasises that none of the qualities with which the

former Communist Party was credited, or the criticisms that party aroused, should be attributed to it.”

11. In its political programme, adopted on 23 March 1996, the PCN stated that its aims were to defend workers' interests and to adhere to the essence of communist doctrine, based on the following fundamental principles: non-exploitation of certain persons by others or by the State; social justice based on labour and proper qualitative competition; and genuine democracy capable of securing the rights of the majority through free elections in which all political tendencies should be allowed to take part. It deplored what it called the antisocial and anti-working-class direction in which Romanian society had moved since the overthrow of the previous regime in 1989, and the country's transformation into a “colony of the European and global neo-colonialist empires”. The programme also contained the following political ideas:

“The thesis underlying all policy and all doctrine is that *the main advantage in politics is number*. Those who are greatest in number are always right, irrespective of the way they think or act, and this is constantly being borne out, as, for example, on 22 December 1989 when the anti-working-class, antisocial and antinational counter-revolution emerged victorious in several European countries.

The starting-point of all workers' action has been the desire to *change what is evil*; in practice, only what is good has changed, and almost completely. What do we mean by good? ... During its years of socio-economic practice in the territory of former Dacia^[1], socialism achieved goals for the masses – despite the errors, excesses, failings and abuses on the part of the former Communist Party bourgeoisie – which workers cannot abandon or forget: the highest material and spiritual living standards in history; the highest level of culture and civilisation in history ...; the broadest and most extensive democratic legal framework ...

The PCN is a workers' revolutionary political group that acts in an organised, conscious manner within the constitutional framework to eradicate the effects of the counter-revolution and to resume building the most humane and democratic society ever known – socialism. Regardless of its position in relation to the other political forces, [that is, whether it is] involved in the exercise of power and the administration of the State, the PCN will strive to attain such goals as may ensure the protection of the interests of the masses.”

12. On 4 April 1996 the second applicant, as the PCN's representative, applied to the Bucharest County Court to enter it in the special register for political parties.

13. By a decision of 19 April 1996, the court refused the application as being ill-founded. The relevant passages of the reasoning of the decision read as follows:

“In support of the application to register the party, a number of documents have been filed: a list of the party leaders, a list of its founder members, the constitution governing its organisation and functioning, its political programme, the lease for its headquarters, evidence of its financial resources and its constitutive instrument, namely the minutes of the national conference held on 23 March 1996.

It appears from an examination of the documents in the file that the party's constitution, in the chapter setting out its aims, ... states that it strives to gain political power in order to establish a humane and democratic society.

It therefore follows from its constitution and political programme that the party pursues the aim of establishing a humane State based on communist doctrine, which would imply that the constitutional and legal order in place since 1989 is inhumane and not founded on genuine democracy.

The party is therefore in breach of Article 2 §§ 3 and 4 of Legislative Decree no. 8/1989, which provides that 'the aims of political parties must be based on respect for sovereignty, and that the means employed to achieve them must be in accordance with Romania's constitutional and legal order'.”

14. On 6 July 1994 the applicant appealed against that decision to the Bucharest Court of Appeal. In a judgment delivered on 28 August 1996, the Court of Appeal dismissed the appeal on the ground that the assessment made in the decision had been correct. It finalised the text of the judgment on 21 October 1996 and sent it to the Bucharest County Court to be archived. The second applicant states that he learned of the reasons for the judgment on 13 November 1996. The relevant paragraph of the reasoning reads as follows:

“As to the final ground of appeal, concerning the merits of the case, the first-instance court was correct in considering the

[PCN's] constitution to be in breach of Legislative Decree no. 8/1989 with regard to the country's constitutional and legal order. Accordingly, the Court dismisses the complaint as being ill-founded.”

15. On 28 May 1997 the Procurator-General of Romania informed the second applicant that he could see no reason to lodge an application (*recurs în anulare*) to have the judgment of 28 August 1996 quashed.

16. The second applicant lodged an application to set aside (*contestație în anulare*), which the Bucharest County Court dismissed as being out of time on 5 December 1997.

B. The second applicant's subsequent publications

17. After 1997 the second applicant continued to express his political opinions in the newspaper *Pentru socialism* (“For Socialism”), of which he was the editor. On 13 August 1998 he published an article entitled “The communist manifesto”, which proclaimed his attachment to communist doctrine and criticised both the direction taken by the Communist Party leaders before 1989 and the policy pursued by successive governments since then. A large number of articles which the second applicant published in the newspaper in 1998 and 1999 contained slogans such as “Workers of all countries, unite!”, “The struggle continues!” and “Long live socialism!”. In one article he stated that, once in power, he would “accept only those who accept[ed him]”.

18. In 2000 the second applicant published a book, *The anti-socialist, anti-working-class and antinational counter-revolution*, in which he replied to about a hundred questions from a journalist. In December 2003 he sent the Court a copy of the book. In it he set out his political vision, outlining his commitment to communist doctrine and the working classes and describing Marx as the greatest political philosopher of all humanity; he also criticised both the authorities' gradual betrayal, in his view, of communist ideals prior to 1989 – while praising former President Ceausescu – and the policy pursued by those in power after that date. He stated that, unlike the pre-1989 communist regime, he was in favour of free, multi-party elections in which all the political forces could take part, except extremists and fascists, and voiced his support for a form of political competition based on respect for others and their political views. Among other things, he referred to the difficulties encountered since 1989 in finding sufficient members to register the PCN and to the fact that the party was not well known in Romania, particularly among those for whom it was primarily intended, the peasants and workers.

19. Arguing that socialism had in the past been the subject of frequent “attacks” designed to destroy it, examples being the events in 1968 in Prague, 1978 in Poland and 1985 and 1993 in Russia, the second applicant stated in conclusion to his reply to a question from the journalist:

“As long as there are still capitalist, imperialist and religious brutes in the world, whose main aim is to enslave others, the conditions for further internal and external activities against socialism will continue to exist, ... [socialism] being a fundamental idea and belief of the people; remember the endless succession of attacks against the forces of good in fairy tales ... These attacks will not cease until the hideous and parasitic farmyard fowls, who commit crimes in all places and at all times, have been destroyed.”

20. He stated in the book that the political system would in time become structured according to social class, that the PCN sought to represent the interests of the peasants and workers, and that a democratic parliament should reflect the country's social structure, with the two classes in question holding the vast majority of seats according to their share of the population.

21. Arguing that capitalism encouraged theft, the second applicant stated in the book that the masses, who despised wealth, would move away from the post-1989 political parties and, over about fifty years, towards the PCN.

22. With regard to property, he stated that it was for the people to decide whether privatisation was beneficial and that “the rich” could enjoy possessions they had obtained by lawful means. As to the restitution of property that had passed into State ownership during the communist regime, the second

applicant considered that property confiscated for political reasons should be returned, although entire buildings and factories should not, because the nationalisation measures carried out after 1947-48 had been acts of social justice.

II. RELEVANT DOMESTIC LAW

23. At the material time the relevant provisions of Legislative Decree no. 8/1989 on the registration and operation of political parties, which was published in the Official Gazette on 31 December 1989 and repealed by the Political Parties Act (Law no. 27 of 26 April 1996), read as follows:

Article 1

“Political parties may be freely founded in Romania, with the exception of fascist parties or those that spread ideas contrary to the constitutional and legal order. No other objection, whether based on race, religion, nationality, level of culture, sex or political views, may hinder the formation and operation of political parties ...”

Article 2

“... ”

3. The aims of political parties and public-interest organisations shall be based on respect for the nation's sovereignty, independence and territorial integrity and for democracy, in order to ensure the exercise of citizens' rights and freedoms and to uphold the dignity of the Romanian nation.

4. The means employed to achieve the aims of political parties and public-interest organisations shall be in accordance with Romania's constitutional and legal order.”

Article 5

“Political parties shall be registered with the Bucharest County Court, which shall give a decision within five days as to whether they have been lawfully constituted. An appeal against the decision of the Bucharest County Court shall lie to the Supreme Court of Justice ...”

24. Article 37 § 2 of the Constitution provides:

“Any political parties or organisations which, through their aims or activities, campaign against political pluralism, the principles of the rule of law, or the sovereignty, integrity or independence of Romania, shall be unconstitutional ...”

25. Section 3 of the National Security Act (Law no. 51/1991) provides:

“The following shall constitute a threat to the national security of Romania: ... (h) the act of provoking, organising, carrying out or supporting, by whatever means, any totalitarian or extremist action inspired by communism, fascism, ... racism, anti-Semitism, revisionism or separatism that might jeopardise in any manner the unity and territorial integrity of Romania; and the act of encouraging activities that might undermine the rule of law.”

Section 13 provides that, in cases referred to in section 3 above, the public prosecutor may allow certain measures to be taken, such as phone-tapping, in order to obtain further information about the acts in question.

By section 19, the formation and organisation of intelligence networks capable of undermining national security is an offence punishable by two to seven years' imprisonment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

26. The applicants complained that the domestic courts' refusal of their application to register the PCN as a political party had infringed their right to freedom of association, 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.”

...

B. Whether the interference was justified

...

3. “*Necessary in a democratic society*”

...

(b) The Court's assessment

44. 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.

45. The Court considers that there can be no democracy without pluralism. It is for that reason that freedom of expression as enshrined in Article 10 is applicable, subject to paragraph 2, not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, among other authorities, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, p. 26, § 37). The fact that their activities form part of a collective exercise of the freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, pp. 20-21, §§ 42-43).

46. The Court has previously held that a political party may campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic, and secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (see *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II, and [*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98,] § 98 [, ECHR 2003-II]).

47. Moreover, for the purpose of determining whether an interference is necessary in a democratic society, the adjective “necessary”, within the meaning of Article 11 § 2, implies the existence of a “pressing

social need”.

48. The Court reiterates that its examination of whether the refusal to register a political party met a “pressing social need” must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy was sufficiently imminent; (ii) whether the leaders' acts and speeches taken into consideration in the case under review were imputable to the political party concerned; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a “democratic society”. Its overall examination of the above points must also take account of the historical context in which the refusal to register the party concerned took place (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 104).

49. The Court's task is not to take the place of the competent national authorities but rather to review under Article 11 the decisions they delivered pursuant to their power of appreciation. This does not mean that the Court's supervision is limited to ascertaining whether a 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 in order to 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*, *Ahmed and Others v. the United Kingdom*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2377-78, § 55, and *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports* 1996-II, pp. 500-01, § 40).

50. In the instant case the Court must assess whether the interference in issue, namely the refusal by the Bucharest Court of Appeal to register the PCN as a political party in a judgment of 28 August 1996, met a “pressing social need” and was “proportionate to the legitimate aims pursued”.

51. The Court notes at the outset that the national courts based their refusal of the applicants' application solely on an assessment of whether the PCN's constitution and political programme complied with the provisions of Legislative Decree no. 8/1989; the PCN had not been politically active before applying for registration. It observes in this connection that neither the Bucharest County Court nor the Bucharest Court of Appeal based their respective decisions of 19 April 1996 and 28 August 1996 on any other document produced by the PCN or on any particular position taken by the second applicant or any other leader of the PCN. Like the national authorities, the Court will therefore take the PCN's political programme and constitution as a basis for assessing whether the interference in question was necessary (see, among other authorities, *Refah Partisi (the Welfare Party) and Others*, cited above, § 116, and *United Communist Party of Turkey and Others*, cited above, p. 25, § 51).

52. In this connection, the Court cannot accede to the Government's request to extend the scope of its examination to the policy statements made by the second applicant, several years after the interference in issue, in the press articles published in 1998 and 1999 and the book *The anti-socialist, anti-working-class and antinational counter-revolution* published in 2000. It observes that it adopted a similar approach in a case in which political speeches made before the dissolution of the applicant party had not been taken into account by the domestic courts (see *Dicle for the Democracy Party (DEP) v. Turkey*, no. 25141/94, § 50, 10 December 2002). It cannot take the place of the domestic courts in assessing facts outside the scope of the case, the more so in the instant case as the facts referred to by the Government occurred after the interference in issue.

In any event, the Court cannot find any statements in the second applicant's subsequent publications, despite the critical and sometimes hostile language used, that might reasonably be construed as a call for the use of violence for political ends or as a policy in breach of the rules of democracy. In this connection, the Court observes that, even in these unofficial documents aimed at potential supporters of the PCN, the second

applicant stated that he was in favour of free, multi-party elections and a political system based on respect for others and their political opinions (see paragraph 18 above).

53. The Court observes that in refusing the application to register the PCN, the Bucharest Court of Appeal endorsed, without elaborating on, the reasoning of the Bucharest County Court to the effect that the PCN was seeking to gain political power in order to establish a humane State founded on communist doctrine, which in the court's view implied that the applicants regarded the constitutional and legal order that had been in place since 1989 as inhumane and not based on genuine democracy.

Accordingly, the domestic courts held that the PCN had infringed Article 2 §§ 3 and 4 of Legislative Decree no. 8/1989. It appears from a combined reading of their decisions that the reproach made against the applicants was that the PCN's aims did not uphold national sovereignty and, in particular, that the means proposed for achieving them were incompatible with the constitutional and legal order in place in Romania. Accordingly, the Court's assessment of the necessity of the interference in issue will relate mainly to the reasons given by the domestic courts for refusing the applicants' application (see, *mutatis mutandis*, *United Communist Party of Turkey and Others*, cited above, p. 25, § 52).

54. Examining the PCN's constitution and political programme, the Court observes that these documents lay emphasis on upholding the country's national sovereignty, territorial integrity and legal and constitutional order, and on the principles of democracy, including political pluralism, universal suffrage and freedom to take part in politics. It further notes that they do not contain any passages that may be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles – an essential factor to be taken into consideration – or for the “dictatorship of the proletariat” (see *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, § 45, 12 November 2003, and, conversely, *Communist Party of Germany v. Federal Republic of Germany*, no. 250/57, Commission decision of 20 July 1957, Yearbook I, p. 222).

55. The Court notes that the PCN's political programme and constitution in fact contained passages criticising both the abuses committed before 1989 by the former Communist Party, from which it distanced itself – not least through its own name – and the policy pursued since 1989.

The Court considers one of the principal characteristics of democracy to be the possibility it offers of addressing through dialogue, without recourse to violence, issues raised by different strands of political opinion, even when they are irksome or disturbing. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group that complies with fundamental democratic principles (see paragraph 46 above) solely because it has criticised the country's constitutional and legal order and sought a public debate in the political arena (see, *mutatis mutandis*, *United Communist Party of Turkey and Others*, cited above, p. 27, § 57). In the instant case the domestic courts did not show any way in which the PCN's programme and constitution were contrary to the country's constitutional and legal order and, in particular, to the fundamental principles of democracy.

In this connection, the Court cannot accept the Government's argument that Romania cannot allow the emergence of a new communist party to form the subject of a democratic debate.

56. Admittedly, the political experience of the Contracting States has shown that in the past political parties with aims contrary to the fundamental principles of democracy have not revealed such aims in their official publications until after taking power. A party's political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the party's leaders and the positions they defend (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 101).

57. In the present case the PCN's programme could hardly have been belied by any practical action it took, since its application for registration was refused and it consequently did not even have time to take any action. It was thus penalised for conduct relating solely to the exercise of freedom of expression.

58. The Court is also prepared to take into account the historical background to cases before it, in this instance Romania's experience of totalitarian communism prior to 1989. However, it observes that that

context cannot by itself justify the need for the interference, especially as communist parties adhering to Marxist ideology exist in a number of countries that are signatories to the Convention.

The Court accordingly observes that the criteria defining a “pressing social need” (see paragraph 48 above) have not been satisfied in the instant case, as the courts failed to establish that the applicants' political programme was incompatible with a “democratic society”, let alone that there was evidence of a sufficiently imminent risk to democracy.

59. Nor is there any need to bring Article 17 into play as nothing in the constitution and programme of the PCN warrants the conclusion that it relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it (see *United Communist Party of Turkey and Others*, cited above, p. 27, § 60).

60. Accordingly, a measure as drastic as the refusal of the applicants' application to register the PCN as a political party, before its activities had even started, is disproportionate to the aim pursued and consequently unnecessary in a democratic society.

61. There has therefore been a violation of Article 11 of the Convention.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

...

Done in French, and notified in writing on 3 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Boštjan ZUPANČIČ

Registrar President

1. Name of a territory in ancient times corresponding roughly to present-day Romania.

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