



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

THIRD SECTION

CASE OF BERCUT S.R.L. v. MOLDOVA

(Application no. 32247/07)

JUDGMENT

STRASBOURG

6 December 2011

FINAL

06/03/2012

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

In the case of Bercut S.R.L. v. Moldova,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 15 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 32247/07) 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 a company registered in Moldova, Bercut SRL (“the applicant company”), on 8 June 2007.

2. The applicant was represented by Mr A. Chiriac, a lawyer practising in Moldova. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the closure of the company constituted a breach of its rights under Article 1 of Protocol No. 1 to the Convention.

4. On 20 October 2010 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company was founded in 1992 and since 1995 has, *inter alia*, run a driving school, being in possession of the necessary licence issued by the State for that purpose. On 30 June 2005 the applicant company’s licence was renewed with a term of validity of five years. At that

time the driving school employed approximately sixty people and had approximately 2,400 students.

6. On 7 August 2006 the State Registration Chamber conducted an unannounced check on the driving school and discovered that two of its instructors had been replaced and that the State Registration Chamber had not been informed of this within the ten-day time-limit provided for by the law.

7. On 10 August 2006 the State Registration Chamber issued decision no. 2985, by which the applicant company's licence was withdrawn in view of the irregularity.

8. On 12 August 2006 the applicant company initiated court proceedings against the State Registration Chamber, seeking the revocation of its order of 10 August 2006. The applicant company submitted, *inter alia*, that the check carried out by the defendant on 7 August 2006 had been unlawful and that it had announced to the State Registration Chamber the changes to its personnel by letters of 19 August 2005 and 7 February 2006. In that respect the applicant company submitted a copy of its internal register of incoming and outgoing correspondence containing notes of two letters sent to the State Registration Chamber.

9. On 27 November 2006 the Chişinău Court of Appeal dismissed the applicant company's action, finding that its system of registering correspondence was not sufficient proof. The applicant company appealed against the judgment.

10. On 21 February 2007 the Supreme Court of Justice dismissed the applicant's appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. The relevant provisions of Law no. 451 on Licensing ("the Licensing Act") read as follows:

Section 19. Checks on licence holders

(2) Unannounced checks can be conducted only on the basis of a written request in respect of a breach of licence conditions by a licence holder.

Section 21. Withdrawal of licences

(1) (f) [A licence may be withdrawn] if a licence holder fails to notify the appropriate authority in due time of a change in the data contained in the annexes to an application for a licence.

12. The relevant provisions of the Civil Code read as follows:

Article 619. Default interest

“(1) Default interest is payable for delayed execution of pecuniary obligations. Default interest shall be 5% above the interest rate provided for in Article 585 [NBM refinancing interest rate] unless the law or the contract provides otherwise. Evidence that a lower level of damage has been incurred shall be admissible.

(2) In non-consumer-related situations default interest shall be 9% above the interest rate provided for in Article 585 unless the law or the contract provides otherwise. Evidence that a lower level of damage has been incurred shall be inadmissible.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION**

13. The applicant company complained that the withdrawal of its licence to operate a driving school had had the effect of infringing its right to peaceful enjoyment of its possessions as secured by Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law....”

A. Admissibility

14. The Court notes that the complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The Government declared that the withdrawal of the applicant company's licence constituted an interference with its right to property which was disproportionate and not necessary in a democratic society. They admitted therefore that there had been a breach of Article 1 of Protocol No. 1 to the Convention.

16. The Court refers to its case-law in *Megadat.com SRL v. Moldova*, no. 21151/04, §§ 68-79, 8 April 2008, where, in similar circumstances, it found a breach of Article 1 of Protocol No. 1 to the Convention. In the light of the above case-law and in view of the Government's clear acknowledgement of a breach, the Court concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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. Pecuniary damage

18. The applicant claimed 76,992 euros (EUR) in respect of pecuniary damage. The applicant company took as a basis for calculation its net post-tax profit for the year 2005 (137,117 Moldovan lei, the equivalent of EUR 8,850) for which it calculated default interest in accordance with Article 619 of the Civil Code for the period between 1 January 2007 and 30 April 2011. The applicant company submitted an expert report in support of its position.

19. The Government contested the amount claimed by the applicant company and argued, in the first place, that the applicant company's licence was withdrawn on 21 February 2007, when the Supreme Court made a final ruling in the case. Therefore any calculation should start from that date and not from 1 January 2007. Secondly, the Government argued that after the withdrawal of its licences in February 2007 the applicant company could have re-applied and obtained new licences after six months. Accordingly, any lost profit should only be calculated for a period of six months, plus the fifteen days necessary to complete the formalities. The fact that the applicant company had not reduced its losses by re-applying after six months for new licences could not be held against the Government. Alternatively, the calculation could not go beyond 30 June 2010, the date on which the applicant company's licences would have expired.

20. The Court accepts that the applicant company suffered pecuniary damage as a result of the breach of Article 1 of Protocol No. 1 found above. Taking into account the circumstances of the case under consideration and making its own assessment, the Court awards the applicant company a total amount of EUR 9,000 in compensation for pecuniary damage.

B. Non-pecuniary damage

21. The applicant claimed EUR 10,000 in compensation for non-pecuniary damage.

22. The Government contested the amount claimed and asked the Court to dismiss it.

23. The Court considers that the applicant company must have been caused considerable inconvenience, if only in the conduct of the company's everyday affairs. Deciding on an equitable basis, it awards the applicant company EUR 4,000.

C. Costs and expenses

24. The applicant company did not make any claims for costs and expenses.

D. Default interest

25. 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 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage and EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Moldovan lei at the rate applicable on 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President