



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

FOURTH SECTION

CASE OF MEGADAT.COM SRL v. MOLDOVA

(Application no. 21151/04)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

In the case of Megadat.com SRL v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Davíd Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 21151/04) 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 Megadat.com SRL (“the applicant company”), a company incorporated in the Republic of Moldova, on 8 June 2004.

2. The applicant was represented by Ms J. Hanganu, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by Mr V. Grosu, their Agent.

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 and that it had been discriminated against contrary to Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

4. On 5 December 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. Stanislav Pavlovschi, the judge elected in respect of Moldova, withdrew from sitting in the case (Rule 28 of the Rules of Court) before it had been notified to the Government. On 8 February 2007 the Government, pursuant to Rule 29 § 1 (a), informed the Court that they were content to appoint in his stead another elected judge and left the choice of appointee to the President of the Chamber. On 18 September 2007 the President appointed Ján Šikuta to sit in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant company, Megadat.com SRL, is a company incorporated in the Republic of Moldova.

A. Background to the case

7. At the time of the events the applicant company was the largest Internet service provider in Moldova. According to the applicant company, it held approximately 70% of the market of Internet services. While agreeing that the applicant company was the largest Internet service provider in the country, the Government disputed the ratio of its market share without, however, presenting any alternative figures.

8. The applicant company had two licences issued by the National Regulatory Agency for Telecommunications and Informatics (“ANRTI”) for providing Internet and fixed telephony services. The licences were valid until 18 April 2007 and 16 May 2007 respectively and the address 55 Armenească Street was indicated in them as the applicant company’s official address.

9. The applicant company had three offices in Chişinău. On 11 November 2002 its headquarters was moved from its Armenească Street office to its Ştefan cel Mare Street office. The change of address of the headquarters was registered with the State Registration Chamber and the Tax Authorities were informed. However, the applicant company failed to request ANRTI to modify the address of its headquarters in the text of its licences.

10. On 20 May 2003 the applicant company requested a third licence from ANRTI indicating in its request the new address of its headquarters. ANRTI issued the new licence citing the old address in it, without giving any reasons for not citing the new address.

B. The invalidation of the applicant company’s licences

11. On 17 September 2003 ANRTI held a meeting. According to the minutes of the meeting, it found that ninety-one companies in the field of telecommunications, including the applicant company, had failed to pay an annual licence fee and/or to present information about changes of address within the prescribed time-limits. ANRTI decided to invite those companies to eliminate the irregularities within ten days and to warn them that their licences might be suspended in case of non-compliance.

12. On unspecified dates the ninety-one companies, including the applicant company, were sent letters asking them to comply within ten days of the date of receipt of the letter. They were also warned that their licences might be suspended in case of non-compliance in accordance with section 3.4 of the ANRTI Regulations. The applicant company was sent such a letter on 24 September 2003.

13. Following ANRTI's letters, only thirty-two companies, including the applicant company, complied with the request.

14. On 29 and 30 September 2003 the applicant company lodged documents with ANRTI indicating its new address, together with a request to modify its licences accordingly, and paid the licence fee.

15. On Friday 3 October 2003 ANRTI informed the applicant company that it had some questions concerning the documents submitted by the applicant company. In particular, it had a question concerning the lease of the applicant company's new headquarters and about the name of the applicant company. ANRTI informed the applicant company that the processing of its request concerning the amendment of its licences would be suspended until it had submitted the requested information.

16. On Monday 6 October 2003 ANRTI held a meeting at which it adopted a decision concerning the applicant company. In particular, it reiterated the content of section 15 of the Law on Licensing and of section 3.5.7 of the ANRTI Regulations, according to which licences which had not been modified within ten days pursuant to section 3.5.2 of the ANRTI Regulations should be declared invalid. ANRTI found that those provisions were applicable to the applicant company's case, and that its licences were therefore not valid.

17. On the same date, ANRTI wrote to the Prosecutor General's Office, the Tax Authorities, the Centre for Fighting Economic Crime and Corruption ("the CFECC") and the Ministry of the Interior stating that the applicant company had modified its address on 11 November 2002 but had failed to request ANRTI to make the corresponding change in its licences. In such conditions, the applicant company had traded for eleven months with an invalid licence. ANRTI requested the authorities to verify whether the applicant company should be sanctioned in accordance with the law.

18. On 9 October 2003 ANRTI amended the Regulations concerning the issuance of licences in order to provide that an entity whose licence was withdrawn could reapply for a new licence only after six months.

19. On 21 October 2003 ANRTI held a meeting at which it found that fifty-nine of the ninety-one companies which it had warned, in accordance with its decision of 17 September 2003, had failed to comply with the warning. It decided to suspend their licences for three months and to warn them that in case of non-compliance during the period of suspension, their licences would be withdrawn. It appears from the documents submitted by

the parties that the applicant company was the only one to have its licence invalidated.

C. The court proceedings between Megadat.com SRL and ANRTI

20. On 24 October 2003 the applicant company brought an action against ANRTI arguing, *inter alia*, that the measure applied to it was illegal and disproportionate because the applicant company had always had three different offices in Chişinău of which ANRTI had always been aware. The change of address had only occurred because the applicant company's headquarters had been transferred from one of those offices to another. The Tax Authorities had been informed promptly about that change and thus the change of address had not led to a failure to pay taxes or to a drop in the quality of services provided by the applicant company. Moreover, ANRTI's decision of 6 October 2003 had been adopted in breach of procedure, because the applicant company had not been invited to the meeting and ANRTI had disregarded its own instructions given to the applicant company on 3 October 2003.

21. On 25 November 2003 the Court of Appeal ordered a stay of the execution of ANRTI's decision of 6 October 2003. It also set 16 December 2003 as the date of the first hearing in the case. Later, at the request of ANRTI, that date was changed to 2 December 2003.

22. On 1 December 2003 the representative of the applicant company lodged a request for adjournment of the hearing of 2 December on the ground that he was involved in a pre-arranged hearing at another court on the same date and at the same time.

23. On 2 December 2003 the Court of Appeal held a hearing in the absence of the representative of the applicant company and dismissed the latter's action. The court considered, *inter alia*, that since the applicant company had failed to inform ANRTI about the change of address of its headquarters, the provisions of section 3.5.7 of the ANRTI Regulations were applicable.

24. The applicant company appealed against the decision arguing, *inter alia*, that it had not been given a chance to participate in the hearing before the first-instance court. It submitted that, according to the Code of Civil Procedure, the court had the right to strike the case out of the list of cases if it considered that the applicant had failed to appear without a plausible justification, but not to examine the case in its absence. It also submitted that, by declaring the licences invalid, ANRTI had breached its own decision of 17 September 2003. It was ANRTI's usual practice to request information concerning changes of address and to sanction companies which did not comply by suspending their licences. The applicant company drew attention to two other decisions of that kind dated 12 June 2003 and 17 July 2003. In this case, however, the applicant company had fully

complied with ANRTI's decision of 17 September 2003 by submitting information about the new address within the prescribed time-limit. Notwithstanding, ANRTI had asked for supplementary information on Friday 3 October 2003 and, without waiting for it to be provided by the applicant company, had decided to declare the licences invalid on Monday 6 October 2003.

The applicant company also argued that ANRTI's decision of 6 October 2003 had been adopted in serious breach of procedure because the applicant company had not been informed at least three days in advance about the meeting of 6 October 2003 and had not been invited to attend.

Lastly, the applicant company argued that ANRTI's decision to declare its licences invalid was discriminatory since the other ninety companies listed in ANRTI's decision of 17 September 2003 had not been subjected to such a severe measure.

25. On 3 March 2004 the Supreme Court of Justice dismissed the applicant company's appeal and found, *inter alia*, that it had been summoned to the hearing of 2 December 2003 and that its request for adjournment could not create an obligation on the part of the Court of Appeal to adjourn the hearing. Moreover, the decision of 6 October 2003 was legal since the applicant company admitted to having changed its address, and according to section 3.5.7 of the ANRTI Regulations a failure to request a modification of an address in a licence led to its invalidity. The Supreme Court did not refer to the applicant company's submissions about its discriminatory treatment, ANRTI's usual practice of requesting information about changes of address and ANRTI's breaching of its own decision of 17 September 2003.

26. One of the members of the panel of the Supreme Court, Judge D. Visterniceanu, disagreed with the opinion of the majority and wrote a dissenting opinion. He submitted, *inter alia*, that the first-instance court had failed to address all the submissions made by the applicant company and had illegally examined the case in its absence. Moreover, only one provision of the ANRTI Regulations had been applied, whereas it was necessary to examine the case in a broader light and to apply all the relevant legislation. Finally, ANRTI's decision of 6 October 2003 contravened its decision of 17 September 2003. Judge Visterniceanu considered that the Supreme Court should have quashed the judgment of the first-instance court and remitted the case for a fresh re-examination.

D. The applicant company's attempts to save its business and the repercussions of the invalidation of its licences

27. In the meantime, the applicant company transferred all of its contracts with clients to a company which was part of the same group, Megadat.com International, which had valid licences. However, the State-

owned monopoly in telecommunications, Moldtelecom, refused to sign contracts with the latter company and made it impossible for it to continue operating.

28. On 16 March 2004 ANRTI and Moldtelecom informed the applicant company's clients that on 17 March their Internet connection would be cut off and offered them Internet services from Moldtelecom without any connection charge.

29. On 17 March 2004 Moldtelecom carried out the disconnection of the applicant company and of Megadat.com International from the Internet and all of their equipment on the Moldtelecom premises was disconnected from the power supply.

30. In July 2004 the licences of Megadat.com International were withdrawn by ANRTI.

31. As a result of the above, the applicant company and Megadat.com International were forced to close down the business and sell all of their assets. One week later, the applicant company's chairman, Mr Eduard Mușuc, was arrested for peacefully demonstrating against his company's closure.

32. Following ANRTI's letter of 6 October 2003 (see paragraph 17 above), the Tax Authorities imposed a fine on the applicant company for having operated for eleven months without a valid licence and the CFECC initiated an investigation as a result of which all the accounting documents of the applicant company were seized.

E. International reactions

33. On 18 March 2004 the embassies of France, Germany, Hungary, Poland, Romania, the United Kingdom and the United States of America, as well as the Council of Europe, the International Monetary Fund and World Bank missions in Moldova, issued a joint declaration expressing concern over the events surrounding the closure of the applicant company. The declaration stated, *inter alia*, the following:

“Alleged contraventions of registration procedures do not appear to justify a decision to put a stop to the functioning of a commercial company. ... We urge Moldtelecom and the relevant authorities to reconsider this question. This seems all the more important in view of the commitment of the public authorities of Moldova to European norms and values.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. Section 3.4 of the ANRTI Regulations provides that in the event of non-compliance by a licence beneficiary with the conditions set out in the licence, the licence can be suspended for a period of three months. When ANRTI finds such non-compliance, it warns the licence beneficiary and

gives it a deadline for remedying the problem. If the problem is not remedied within that period, ANRTI may suspend the licence for a period of three months.

35. On 12 June 2003 ANRTI warned several companies about their failure to pay licence fees and/or to inform it about their changes of address. The companies were given ten days to remedy the breaches. Since some of them did not comply, on 17 July 2003, ANRTI decided to suspend their licences for three months.

36. The relevant provisions of the ANRTI Regulations concerning modification of licences at the time of the events were similar to the provisions of section 15 of the Law on Licensing and read as follows:

“3.5.1 A licence should be modified when the name of the beneficiary company or other information contained in the licence has changed;

3.5.2 When reasons for modifying a licence become apparent, the beneficiary shall apply to ANRTI for its modification within ten days ...

3.5.7 A licence which has not been modified within the prescribed time-limit is not valid.”

37. On 9 October 2003 the following provision was added to the Regulations:

“3.8.6 Former beneficiaries, whose licences were withdrawn ... can reapply for new licences only after a period of six months counted from the day of withdrawal.”

38. On 24 September 2004 section 3.5.7 of the Regulations was amended as follows:

“3.5.7 In the event that a licence was not modified within the prescribed time-limit, the Commission has the right to apply administrative sanctions or to withdraw the licence partially or totally.”

THE LAW

39. The applicant company argued that the invalidation of its licences had violated its right guaranteed under Article 1 of Protocol No. 1, which 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

40. The applicant company further submitted that it had been the victim of discrimination on account of the authorities' decision to invalidate its licences, since they had treated differently the ninety other companies which were in a similar situation. It relied on Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

I. ADMISSIBILITY OF THE COMPLAINTS

41. In its initial application, the applicant company also submitted a complaint under Article 6 of the Convention. However, in its observations on admissibility and merits it asked the Court not to proceed with the examination of this complaint. The Court finds no reason to examine it.

42. At the same time, the Court considers that the rest of the applicant company's complaints raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no grounds for declaring them inadmissible have been established. The Court therefore declares this part of the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

A. The parties' submissions

43. The applicant company argued that the licences for running its business constituted a possession for the purposes of Article 1 of Protocol No. 1 and that ANRTI's decision of 6 October 2003 amounted to an interference with its right to property.

44. According to the applicant company, the measure applied to it had not been lawful because ANRTI had breached its own decision of 17 September 2003. In particular, on 17 September 2003 ANRTI had decided to institute a ten-day time-limit for the ninety-one companies concerned in order to allow them, *inter alia*, to present information about the change of their addresses. However, even though the applicant company had complied with the time-limit and presented all the necessary information, ANRTI had decided to disregard its own decision and to invalidate the applicant company's licences.

45. Referring to the general interest served by the interference, the applicant company submitted that it agreed that in general terms the State was justified in its intention to secure to its inhabitants rapid and efficient telecommunications services at a reasonable cost. Therefore, the applicant company agreed that it could be said that the interference served a general interest.

46. In the applicant company's opinion, the measure had not been proportionate to the allegedly protected general interest. According to it, the invalidation of the licences had had extremely serious consequences which had finally resulted in the closure of its business. Moreover, the applicant company had started to be persecuted by the CFECC and the Tax Authorities. Due to the concerted efforts of the State authorities and Moldtelecom, all the companies from the Megadat.com group had been prevented from taking over the business and all of the clients were abusively taken from it by Moldtelecom. As a result of that, the goodwill and the value of the applicant company had suffered serious repercussions.

47. The applicant company accepted that it had breached the ANRTI Regulations in so far as its obligation to inform ANRTI within ten days of its change of address was concerned. However, that had been a very minor breach which had not had any adverse consequences. In particular, the address had only been changed from one of its offices to another and the Registration Chamber and the Tax Authorities had been informed immediately. Accordingly, such a minor technical breach could not justify a sanction of such severity.

48. The fact that the sanction was disproportionate was also proved by the subsequent amendment of section 3.5.7 of the ANRTI Regulations (see paragraph 38 above) which took place one year after the invalidation of the applicant company's licences.

49. Moreover, the authorities had done everything they could in order to prevent the applicant company from obtaining new licences. In particular, they had modified the ANRTI Regulations so that it would not be able to apply for new licences for a period of six months (see paragraph 37 above).

50. In reply to the Government's submission that it was open to the applicant company to apply for a new licence (see paragraph 58 below), the applicant company sent the Court minutes of the ANRTI meetings, according to which company S.'s licence to run an Internet café had been invalidated on 8 December 2003 and its application for a new licence had been rejected by ANRTI on 26 December 2003 on the basis of section 3.8.6 of the Regulations. It was only on 8 June 2004 that company S.'s application for a new licence had been upheld.

51. In the light of the above, the applicant company expressed the view that the conduct of the authorities showed that they had not been motivated by any genuine policy considerations.

52. In its submissions concerning the alleged violation of Article 14 of the Convention, the applicant company also pointed to the fact that none of the ninety-one companies which had been warned by ANRTI were treated in the same way.

53. The applicant company disputed the Government's submission that its situation was different from that of the ninety other companies (see paragraph 59 below) and argued that while ANRTI did not specify in the minutes of its meetings the precise irregularities committed by each company in the list of ninety-one companies, it was clear that at least two of those companies had their licences suspended on 21 October 2003 on account of their failure to present information about the change of their addresses. The applicant company sent the Court a copy of a document originating from ANRTI which supported the above submission and the authenticity of which had not been contested by the Government.

54. Referring to the Government's submissions concerning companies A., N. and S. (see paragraph 60 below), the applicant company disagreed, and, relying on official documents from ANRTI, argued that while being part of the group of ninety-one companies, contrary to its own situation company A. had not complied with ANRTI's warning. Nevertheless, its licence had been invalidated on the basis of section 3.5.7 of the ANRTI Regulations only on 13 August 2004.

As to company N., the applicant company submitted that its licence had been suspended along with those of fifty-nine other companies on 21 October 2003 (see paragraph 19 above) for failure to comply with ANRTI's warning. The three-month suspension had been lifted on 25 May 2004.

Referring to company S., the applicant company argued that it had not been in a similar situation to it either. In the first place, it had not been on the list of ninety-one companies warned by ANRTI. Secondly, the Government had not submitted any information to show whether it had been warned in the same manner as Megadat.com SRL and whether it had been given a ten-day time-limit with which it had complied. Moreover, company S. had been running an Internet café, which was not comparable to the business run by the applicant company.

55. The Government did not dispute the fact that the licences constituted a possession within the meaning of Article 1 of Protocol No. 1. Nor did they expressly disagree with the applicant company concerning the existence of an interference with its right to property. However, they expressed the view that nobody had withdrawn the applicant company's licences; rather the licences had become invalid by the effect of the law a long time before 6 October 2003. According to them, the licences would have become invalid without ANRTI's involvement, at the moment when the ten-day time-limit provided for by section 3.5.2 of the Regulations had expired, that is, some ten or eleven months before the decision of 6 October 2003.

At the same time, the Government argued that ANRTI had drawn the applicant company's attention to this irregularity and asked it to remedy it by letters of 11 July 2003 and 22 August 2003. They did not submit, however, copies of those letters.

56. The Government argued that the measure had been in accordance with section 3.5.7 of the ANRTI Regulations, which stated in very clear terms that failure to apply for modification of the address in a licence within ten days of the date of such modification gave rise to the invalidation of the licence.

57. They further argued that the company had been providing Internet services to a large number of users and that its clients had to enjoy a good-quality service. The lack of provision of adequate and timely information to clients gave reason to suspect the existence of illegal acts. Section 3.5.7 of the ANRTI Regulations was designed in the general interest to contribute to the reduction and elimination of violations of the law by companies operating in the field of Internet services. The measure applied by ANRTI was in the general interest because ANRTI had to know where to contact the applicant company if a client lodged a complaint against it.

58. The Government argued that it was open to the applicant company to apply for a new licence. According to them, the new section 3.8.6 of the ANRTI Regulations only referred to situations where a licence had been withdrawn but not invalidated. They submitted the example of company S., which, according to them, being in exactly the same situation as the applicant company, had obtained a new licence within one month.

59. According to the Government, the situation of the applicant company had been different from that of the other ninety companies which had been warned by ANRTI. They stated that the other companies had been warned on account of other irregularities, namely failure to present to ANRTI annual reports and failure to pay regulatory taxes.

60. In support of their submission that the applicant company had not been discriminated against, the Government relied on the example of companies A., N. and S., which, according to them, were in a similar situation, and whose licences had also been invalidated by ANRTI.

61. The Government invoked for the first time before the Court new reasons to explain why the applicant company's licence had been invalidated. In particular, they argued that one of the reasons for the invalidation was the fact that the applicant company had failed to inform ANRTI in due time why it had changed its name by adding the letters I.M. in front of it.

B. The Court's assessment

1. Whether the applicant company had "possessions" for the purpose of Article 1 of Protocol No. 1

62. It is undisputed between the parties that the applicant company's licences constituted a possession for the purposes of Article 1 of Protocol No. 1.

63. The Court notes that, according to its case-law, the termination of a licence to run a business amounts to an interference with the right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 (see *Tre Traktörer AB v. Sweden*, 7 July 1989, § 53, Series A no. 159, and *Bimer S.A. v. Moldova*, no. 15084/03, § 49, 10 July 2007). The Court must therefore determine whether the measure applied to the applicant company by ANRTI amounted to an interference with its property rights.

2. Whether there has been an interference with the applicant company's possessions and determination of the relevant rule under Article 1 of Protocol No. 1

64. The Government did not expressly argue that there was no interference with the applicant company's possessions; however, they submitted that ANRTI's decision was a mere finding of a fact which had come into existence long before and emphasised the distinction between withdrawal and invalidation of licences (see paragraph 55 above). In so far as these submissions are to be interpreted as meaning that ANRTI's decision of 6 October 2003 did not interfere with the possessions of the applicant company for the purposes of Article 1 of Protocol No. 1, the Court is unable to accept this view. The Court notes in the first place that before 6 October 2003 the applicant company had been operating unhindered. Moreover, it is clear from the parties' submissions that ANRTI was well aware long before 6 October 2003 of the applicant company's failure to request a modification of the address in the text of its licences. ANRTI was informed by the applicant company about the change of address in May 2003 (see paragraph 10 above) and the latter even requested a new licence with the new address in it. For unknown reasons, ANRTI did not consider it necessary to invalidate the applicant company's existing licences at that time and even issued it with a new one. Moreover, the Government implicitly admitted that ANRTI was well aware of the situation by submitting that in July 2003 it had drawn the applicant company's attention to the irregularity and urged it to remedy it (see paragraph 55 above). In such circumstances, the Court cannot but note that ANRTI's decision of 6 October 2003 had the immediate and intended effect of preventing the applicant company from continuing to operate its business and of terminating its existing licences. The fact that the domestic authorities

decided to attribute retroactive effect to ANRTI's decision of 6 October 2003 does not change that. Accordingly, the Court considers that ANRTI's decision of 6 October 2003 had an effect identical to a termination of valid licences and thus constituted an interference with the applicant company's right to the peaceful enjoyment of its possessions for the purposes of Article 1 of Protocol No. 1.

65. Although the applicant company could not carry on its business, it retained economic rights in the form of its premises and its property assets. In these circumstances, as in the *Bimer S.A.* case, the termination of the licences is to be seen not as a deprivation of possessions for the purposes of the second sentence of Article 1 of Protocol No. 1 but as a measure of control of use of property which falls to be examined under the second paragraph of that Article.

66. In order to comply with the requirements of the second paragraph, it must be shown that the measure constituting the control of use of property was lawful, that it was "in accordance with the general interest", and that there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (*ibid.*, § 52).

3. Lawfulness and aim of the interference

67. In so far as the lawfulness of the measure is concerned, the Court notes that this issue is disputed between the parties. While apparently agreeing that section 3.5.7 of the ANRTI Regulations was accessible and foreseeable, the applicant company argued that the measure had been contrary to ANRTI's decision of 17 September 2003, by which it had been given a ten-day time-limit to remedy the situation. In the Court's view, this is a factor which is relevant to the assessment of the proportionality of the measure. Therefore, it will leave the question of lawfulness open and focus on the proportionality of the measure.

As regards the legitimate aim served by the interference, in the light of the findings below, the Court has doubts as to whether the measures taken against the applicant company by the Moldovan authorities pursued any public interest aim. However, for the purposes of the present case, the Court will leave this question open too and will proceed to examine the question of proportionality.

4. Proportionality of the interference

68. The Court will consider at the outset the nature and the seriousness of the breach committed by the applicant company. Without underestimating the importance of State control in the field of Internet communications, the Court cannot but note that the Government were only able to cite theoretical and abstract negative consequences of the applicant company's failure to comply with the procedural requirement. They could

not indicate any concrete detriment caused by the applicant company's omission to have its address modified in the text of its licences. Indeed, it is common ground that ANRTI was well aware of the applicant company's change of address and it had no difficulty in contacting Megadat.com SRL on 24 September 2003 (see paragraph 12 above). Moreover, it is similarly undisputed that the applicant company kept its old address and any attempt to contact it at that address would have certainly been successful. Immediately after changing its address, the applicant company informed the State Registration Chamber and the Tax Authorities (see paragraph 9 above). Accordingly, the applicant company could not be suspected of any intention to evade taxation in connection with its failure to notify its change of address to ANRTI. Nor had it been shown that any of the applicant company's clients had problems in contacting the company due to the change of address. It is also important to note that the applicant company did in fact inform ANRTI about its change of address in May 2003 and even requested a third licence using its new address. For reasons which ANRTI did not spell out at the time, the new licence was issued with the old address on it.

69. Against this background, the Court notes that the measure applied to the applicant company was of such severity that the company, which used to be the largest Internet service provider in Moldova, had to wind up its business and sell all of its assets within months. Not only did the measure have consequences for the future, but it was also applied retroactively, thus prompting sanctions and investigations by various State authorities, such as the Tax Authorities and the CFECC (see paragraph 32 above).

70. The Court must also have regard to the conduct of ANRTI in its dealings with the applicant company. It notes in this connection that the applicant company had operated at all times, notwithstanding the technical flaw in its licences, with the acquiescence of ANRTI. It points out that ANRTI had been apprised of the change of address in May 2003, at the time of the applicant company's application for a third licence. Without giving reasons, ANRTI failed to take note of the change of address and issued the applicant company with a new licence indicating the old address in it. Had ANRTI considered that the defect in the licence was a matter of public concern, it could have intervened at that stage. However, it failed to do so.

71. The Court further notes that in ANRTI's letter of 17 September 2003 the applicant company was clearly led to believe that it could continue to operate provided it complied with the instructions contained therein within ten days. In these circumstances it can only be concluded that the applicant company, by submitting an application for the amendment of its licences within the time-limit, could reasonably expect that it would not incur any prejudice. Despite the encouragement given by it to the applicant company, ANRTI invalidated the applicant company's licences on 6 October 2003 (see, *mutatis mutandis*, *Pine Valley Developments Ltd and Others v.*

Ireland, 29 November 1991, § 51, Series A no. 222, and *Stretch v. the United Kingdom*, no. 44277/98, § 34, 24 June 2003).

72. The Court notes in this connection that where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I). It cannot be said that the conduct of ANRTI complied with these principles.

73. The Court has also given due consideration to the procedural safeguards available to the applicant company to defend its interests. It notes in the first place that the applicant company was not given an opportunity to appear and explain its position before ANRTI. Procedural safeguards also appear to have failed at the stage of the court proceedings. While the case was not one which required special expediency under the domestic law, the Court of Appeal appears to have acted with particular diligence in that respect. After setting the date of the first hearing, the Court of Appeal acceded to ANRTI's request to speed up the proceedings and advanced the hearing by two weeks (see paragraph 21 above). Not only did the Court of Appeal decide the case in the applicant company's absence, but it failed to provide reasons for dismissing the latter's request for adjournment. The Court notes in this connection that the matter to be examined by the Court of Appeal affected the applicant company's economic survival (see paragraph 69 above).

74. Moreover, the domestic courts did not give due consideration to some of the major arguments raised by the applicant company in its defence, such as the lack of procedural safeguards before ANRTI and the alleged discriminatory treatment. The examination carried out by the courts appears to have been very formalistic and limited to ascertaining whether the applicant company had failed to inform ANRTI about the change of its address. No balancing exercise appears to have been carried out between the general issue at stake and the sanction applied to the applicant company.

75. The Court further notes the applicant company's allegation that it was the only one from the list of ninety-one companies to which such a severe measure was applied. The Government disputed this allegation and made two conflicting submissions. Firstly, they argued that the other ninety companies concerned had committed other, less serious irregularities, such as, *inter alia*, failure to present to ANRTI annual reports (see paragraph 59 above). Secondly, they argued that at least three other companies were in a similar position and were treated in a similar manner to the applicant company.

76. Having examined both submissions made by the Government, the Court cannot accept them. As regards the first one, it finds it inconsistent with the minutes of ANRTI's meeting of 17 September 2003, in which it was clearly stated that the companies concerned had failed to pay an annual licence fee and/or to present information about changes of address within

the prescribed time-limits (see paragraph 11 above). The minutes do not contain reference to irregularities such as failure to present annual reports. Moreover, this submission was made for the first time by the Government in the proceedings before the Court, and must therefore be treated with caution, especially in the absence of any form of substantiation (see, *mutatis mutandis*, *Sarban v. Moldova*, no. 3456/05, § 82, 4 October 2005). No such submissions appear to have been made by ANRTI during the domestic proceedings despite the applicant company's clear and explicit contention about alleged discriminatory treatment (see paragraph 24 above). Regrettably, the Supreme Court of Justice disregarded the applicant company's complaints about discrimination, apparently treating them as irrelevant.

77. As regards the Government's second submission, the Court has examined the parties' statements (see paragraphs 54 and 60 above) and the evidence adduced by them, and finds that the Government have failed to show that there were other companies in an analogous situation which were treated in the same manner as the applicant company.

78. The Court also notes that the above findings do not appear to be inconsistent with the previous practice of ANRTI as it appears from the minutes of its meetings of 12 June and 17 July 2003, when several companies had their licences suspended for failure to comply with section 3.5.2 of its Regulations (see paragraph 35 above). The Government did not contest the existence of such a practice.

79. The arbitrariness of the proceedings, the discriminatory treatment of the applicant company and the disproportionately harsh measure applied to it lead the Court to conclude that it has not been shown that the authorities followed any genuine and consistent policy considerations when invalidating the applicant company's licences. Notwithstanding the margin of appreciation afforded to the State, a fair balance was not preserved in the present case and the applicant company was required to bear an individual and excessive burden, in violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

80. The applicant company also complained that by invalidating its licences the authorities had subjected it to discrimination in comparison to other companies in an analogous situation. As this complaint relates to the same matters as those considered under Article 1 of Protocol No. 1, the Court does not consider it necessary to examine it separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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.”

82. The applicant company submitted that since its documents were seized by the CFECC, it was unable to present any observations concerning the pecuniary damage sustained. Accordingly, it asked the Court to reserve the question of just satisfaction.

83. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and the further procedure fixed with due regard to the possibility of agreement being reached between the Moldovan Government and the applicant company.

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;
3. *Holds* that it is not necessary to examine separately the applicant company's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (b) reserves the said question;
 - (c) invites the Government and the applicant company to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;
 - (d) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President