

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

THIRD SECTION

DECISION

Application no. 48814/06
INTERDNESTRCOM
against Moldova

The European Court of Human Rights (Third Section), sitting on 13 March 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 1 December 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a company from the breakaway Transdniestrian region of Moldova in the telecommunications field. It was represented before the Court by Mr V. Griţco, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

A. The circumstances of the case

2. On 12 June 2003 the Government of Moldova adopted decision No. 712, under which private businesses from the breakaway Transdniestrian region of Moldova could obtain temporary registration with the Moldovan Registration Chamber to facilitate their export operations by using Moldovan customs stamps.

3. On 8 July 2004 the Government of Moldova adopted decision No. 782-37, making it possible for the applicant company to obtain a licence in the telecommunications field after obtaining temporary registration. This decision was taken in private, however, it appeared later from the decision of the Constitutional Court of 2 September 2004 (see below) that the purpose of the decision was to unify the telecommunications systems of the two banks of the Dniester River and to re-establish telephone communications with the breakaway province.

4. On 13 July 2004 the applicant company obtained temporary registration under Moldovan law in accordance with Government decision no. 712 and was issued with a State registration number and a registration certificate by the State Registration Chamber.

5. On 15 July 2004 the applicant company obtained, in accordance with Government decision no. 782-37, two licences from the National Regulatory Agency for Telecommunications and Informatics ("ANRTI") to provide mobile and fixed telephony services, for which it paid one million United States dollars ("USD") to the Moldovan Ministry of Finance.

6. On 21 July 2004 the Supreme Security Council of the State decided against allowing the applicant company a presence in the Moldovan telecommunications market, and on 27 July 2004 the President of Moldova challenged Government decision no. 782-37 before the Constitutional Court. The grounds for challenging the decision were, *inter alia*, that the price paid by the applicant company had been considerably lower than that paid by other similar companies present on the market and that the rules of fair competition had thus been infringed.

7. On 30 July 2004 ANRTI decided to suspend the applicant company's licences.

8. On 31 July 2004 the Government suspended decision no. 712.

9. On 2 September 2004 Government decision no. 782-37 was declared unconstitutional by the Constitutional Court.

10. On 29 October 2004 ANRTI informed the applicant company that on 21 October 2004 its licences had been withdrawn in view of the fact that its registration as a legal entity under Moldovan law had been terminated and in accordance with the Constitutional Court decision of 2 September 2004. The letter made reference to the provisions of section 21 (1) (b) of the Licensing Act (see below).

11. It does not appear from the materials of the case that upon learning the above the applicant company challenged the State Registration Chamber's decision to terminate its registration or ANRTI's decision to withdraw its licences. Instead, the applicant company requested on several occasions that the Government refund the money paid for the licences. Since the Government refused to refund the money, on 1 December 2005 the applicant company initiated proceedings before the Economic Court claiming USD 1,000,000 and default interest from the Government.

12. During the proceedings the Economic Court requested information from the State Registration Chamber concerning the applicant company. The State Registration Chamber informed the court that no company named Interdniestrcom was registered in Moldova.

13. On 13 April 2006 the Economic Court struck the applicant company's application off the list of cases, on the ground that it did not have standing to initiate a civil action because it was not registered as a legal entity in Moldova or in any other country. The court ordered the Ministry of Finance to return to the applicant company the court fees paid by it. The court fees were paid by the Ministry of Finance to the applicant company's account.

14. The applicant company appealed and argued, *inter alia*, that it had followed the rules instituted by the Government when it had obtained a temporary registration and had paid the money for the licences. It also argued that its registration under Moldovan law had never been formally cancelled.

15. On 15 June 2006 the Supreme Court of Justice dismissed the applicant company's appeal and upheld the first-instance court's decision. It reached the same conclusion as the first-instance court, that the applicant company lacked capacity to plead before courts as it was legally non-existent.

16. On 3 August 2006 the applicant company wrote to the State Registration Chamber and inquired whether it was still registered as a legal entity in Moldova. In a letter dated 8 August 2006 the State Registration Chamber explained to the applicant that its registration had automatically became null when decision no. 712 was suspended on 31 July 2004.

17. On 10 November 2006 the applicant company wrote again to the Ministry of Finance and requested the refund of the money paid for the licences. In a letter dated 27 December 2006 the Minister of Finance informed the applicant company that its request had been examined and asked the applicant company to provide details of its bank account. The applicant company complied, but no payment followed.

B. Relevant domestic law and practice

18. According to sections 14 and 27-29 of Law No. 1265 of 5 October 2000 on the State registration of legal entities ("the Legal Entities (State Registration) Act 2000"), the termination of registration of a legal entity can be carried out only on the basis of a request by the legal entity in question or on the basis of a court decision.

19. According to section 21 (1) (b) of Law No. 451 of 30 July 2001 on licensing ("the Licensing Act 2001"), a licence can be withdrawn, *inter alia*, as a result of adoption of a decision terminating the state registration of the company. According to Section 21 (5) of the same act, if a licence is withdrawn for any reason the licence fee shall not be refunded by the State.

20. Article 267 (b) of the Code of Civil Procedure provides that a court shall strike out applications lodged by incapable persons. According to Article 60 of the Civil Code a legal entity acquires capacity *(dobândeşte capacitatea de folosinţă)* on registration by the State Registration Chamber, and loses capacity *(pierde capacitatea de folosinţă)* on removal from the registry of the State Registration Chamber.

COMPLAINTS

21. The applicant company complained under Article 6 § 1 of the Convention that it had not had access to court.

22. The applicant company also argued that its right to respect for its property guaranteed by Article 1 of Protocol No. 1 to the Convention had been violated because it has not been refunded the money paid for the licence.

THE LAW

A. The complaint under Article 6 § 1 of the Convention

23. The applicant company complained that the refusal of domestic courts to examine its case had constituted a breach of Article 6 § 1 of the Convention, the relevant part of which reads:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a hearing ...."

24. The Government disagreed with the applicant company and submitted, *inter alia*, that it was open to the applicant to challenge in the

administrative courts the decision of the State Registration Chamber concerning the termination of its registration; however, it did not to do so. In such circumstances the applicant company's application must be declared inadmissible for failure to exhaust domestic remedies.

25. The applicant company maintained that the termination of its registration by the State Registration Chamber had been unlawful because, according to the Legal Entities (State Registration) Act 2000 (see above) termination of registration could only take place at its own request or on the basis of a court order. Since those conditions had not been met, the termination of its registration was unlawful. The applicant company argued that it had legal capacity because the Economic Court had refunded the court fee paid by it and later the Ministry of Finance had requested information about its bank account in order to refund the one million dollars.

26. The Court recalls that Article 6 § 1 extends only to "contestations" (disputes) over (civil) "rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States. Confirmation of this is to be found in the fact that Article 6 § 1 does not require that there be a national court with competence to invalidate or override national law (see *James and Others v. the United Kingdom*, 21 February 1986, § 81, Series A no. 98 and *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 192, Series A no. 102).

27. The Court notes from the outset that the applicant company did not have the intention to continue its activity in the field of telecommunications and did not challenge the withdrawal of its licences as it was done by the applicant, for example, in *Megadat.com SRL v. Moldova* (no. 21151/04, ECHR 2008). Instead, the applicant company's intention was merely to recover the fee paid for the licences and its sole claim made before the domestic courts was to that effect.

28. In that context the Court notes that according to section 21 (5) of the law on licensing, the money paid for licences was non-refundable. The applicant company did not argue that the provision in question was not applicable to its case, was unclear or that it should be interpreted otherwise than it actually reads.

29. That being said, the Court considers that the applicant company had no legal basis under the domestic law in force at the material time to support its efforts to obtain a refund for the licences. Furthermore, the domestic courts have never recognised the existence of such a right for the applicant company. In such circumstances, the Court cannot but conclude that the dispute in question did not concern rights and obligations "which can be said, at least on arguable grounds, to be recognised under domestic law". It follows that in the present case Article 6 § 1 is not applicable and that the

applicant company's complaint must be rejected under Article 35 §§ 3 and 4 of the Convention.

B. The complaint under Article 1 of Protocol No. 1 to the Convention

30. The applicant company contended that its right to respect for its property as guaranteed by Article 1 of Protocol No. 1 to the Convention had been violated. Article 1 of Protocol No. 1 to the Convention read as follows:

> "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."

31. The Government submitted that the interference with the applicant company's right took place on 2 September 2004 when the Constitutional Court declared unconstitutional Government decision no. 782-37. Since the applicant company had no right to appeal against the Constitutional Court's decision and could not challenge domestic law, any subsequent judicial proceedings had no prospects of success. Therefore, the six-month term started running from 2 September 2004 and not from the date of the last judgment of the Supreme Court of Justice on 15 June 2006. Accordingly, the applicant did not comply with the six-month rule, according to Article 35 § 1 of the Convention.

32. The applicant company maintained that the decision of the Constitutional Court of 2 September 2004 could not be an impediment for it to claim the reimboursement of its investiment before the civil courts. The six-month term shall not be calculated from 2 September 2004 but starting with 15 June 2006, the date of the final domestic decision in the case pronounced by the Supreme Court of Justice.

33. The Court reiterates that under Article 35 § 1 of the Convention an application must be introduced within six months of exhaustion of the last "effective remedy" that could be pursued in the respondent state, or, where there are no such remedies, from the date of the act or measure complained of, or knowledge thereof (see *D.P. and J.C. v. the United Kingdom* (dec.), no. 38719/97, 26 June 2001).

34. The Court notes that the applicant company's licences were withdrawn by ANRTI in October 2004. As stated above, in accordance with section 21 (5) of the Law on licensing (see paragraph 19 above) the applicant company did not have any prospect of having the money it had paid for the licences refunded. The interference with its property rights thus

resulted directly from the text of section 21(5) on the date of the withdrawal of its licences (see, *mutatis mutandis, Ciubuc and Others v. Moldova*, (dec.), no. 32816/07, 10 January 2012) and the applicant did not have any available instruments under Moldovan law to challenge the Convention compatibility of that provision, since individuals and private entities do not have access to the Constitutional Court in Moldova (see *Tănase v. Moldova* [GC], no. 7/08, § 122, ECHR 2010 (extracts)).

35. In such circumstances the six-month time-limit started to run from the date on which the applicant company learned about the withdrawal of its licences, namely from 29 October 2004. The Court notes that the applicant company, which is represented, introduced the present application on 1 December 2006 and that there is nothing to suggest that it was hindered in any way by the authorities from introducing it earlier. Consequently, the complaint under Article 1 of Protocol No. 1 was lodged more than six months after the alleged breach took place, and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President