



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

20 January 2009

FOURTH SECTION

Application no. 16602/06
by Mihaela NEGURA and Others
against Moldova
lodged on 15 April 2006

STATEMENT OF FACTS

THE FACTS

The applicants, Ms Mihaela Negură and 86 others (see appendix), are Moldovan nationals who all live in Leova. They are represented before the Court by Mr A. Postică and Mr I. Manole, lawyers practising in Chişinău.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants are entrepreneurs who obtained from the local authorities in Leova licences (*patenta*) to offer services such as selling various types of goods at the local marketplace. All the applicants offered their services on the territory of a private marketplace (L.) situated in the centre of Leova and which had received its licence in 1996. The local authorities authorised the offering of services on the territory of L. from Monday to Saturday. Another marketplace, owned by the State (U.), was open on Sundays, but was situated far from the centre and was inconvenient to many sellers and the population.

The applicants and L.'s owners asked the local authorities for a change in work schedule, allowing them to work on Sundays and to have their free day on Monday, as was the case of many similar marketplaces in other towns. However, the local authorities rejected on a number of occasions such a change, invoking various sanitary, public order and other reasons. According to the applicants, the real reason for the refusal was the protection of U.'s interests, since Sunday was the most lucrative day of the week. Accordingly, many private entrepreneurs felt obliged to offer their services also at the State-owned marketplace, thus having to incur additional

costs and suffering from the rudimentary conditions of work on the territory of U.

On 31 January 2005 the general meeting of entrepreneurs (which included the applicants) decided to ask the local authorities to allow them to work on Sundays and to rest on Mondays. They submitted their request to L.'s owners, who on 8 February 2005 complained to the mayor of Leova, referring to the decision of 31 January 2005 and requesting an authorisation of a change in the work schedule of the marketplace.

On 2 March 2005 the Leova municipal council adopted its decision no. 2.2, rejecting "the requests of citizens of Leova who work on the territory of [L.] and have business licences". The reasons were that work on Sunday would cause traffic problems and would disturb the nearby population, including a school and a hospital. The decision was printed a stationery with the heading of the mayor's office. The stamp on the decision was applied by the Leova mayor's office and bears the date 29 March 2005.

On 4 April 2005 the general meeting of entrepreneurs (including the applicants) expressed its disagreement with the decision of 2 March 2005. On the same day the 191 entrepreneurs working on the territory of L., including the applicants, declared a strike and decided to submit an official request for a change in their work schedule.

Accordingly, on 4 April 2005 the entrepreneurs submitted their request to the "Leova regional council". They asked, *inter alia*, for the annulment of the decision 2.2 adopted by the municipal council on 2 March 2005 and explained that they had not been offered proper working conditions on the territory of U.

On 6 April 2005 the Leova municipal council discussed at its meeting the demands of the entrepreneurs and of L.'s director. According to the applicants, L.'s director was allowed to address the councillors and spoke about the applicants' demands. After discussing the issue, the municipal council adopted its decision no. 3.1 in which it rejected the demands made by the entrepreneurs in their letter of 4 April 2005. No reasons were given.

On 12 May 2005 the mayor of Leova also replied to the complaint of 4 April 2005. The mayor informed the entrepreneurs that an answer to their demands had already been given by the Leova municipal council in its decision of 6 April 2005.

On an unspecified date 191 entrepreneurs, including the applicants, lodged administrative court proceedings, asking for the annulment of the decision of 2 March 2005. They argued that their rights had been affected by that decision and that its aim was the protection of U.'s interests. They also mentioned that they had submitted their complaint to the Leova mayor's office, but to no avail. They annexed copies of the complaint submitted by L.'s director on 8 February 2005, as well as copies of their own complaints.

On 5 July 2005 the Leova District Court found in favour of the entrepreneurs. The court established that L.'s activity on Sundays did not cause any kind of sanitary, traffic or other problems and that the decision of 2 March 2005 was contrary to anti-monopoly legislation.

The Leova municipal council appealed.

By its final decision of 20 October 2005 the Cahul Court of Appeal quashed the lower court's judgment and decided to leave the court action

lodged by the entrepreneurs without examination. It explained that the entrepreneurs had submitted their preliminary complaint to the mayor, while the decision which they sought to annul had been adopted by the municipal council. Therefore, Article 14 of the Law on administrative proceedings (see below) had not been observed since the complaint had to be submitted first to the authority which had adopted the impugned decision. The court added that the applicants no longer had the right to complain against the decision of 2 March 2005.

B. Relevant domestic law

The relevant provisions of the Law on Administrative Proceedings (No. 793-XIV of 10 February 2000 with subsequent modifications) read as follows:

“Article 14. Preliminary request.

(1) A person who considers that his/her rights recognised by law have been violated by an administrative act may request, within 30 days of the date of knowledge of the act, its total or partial revocation by the authority which adopted the act, save in a case where the law provides otherwise.

(2) If the authority which adopted the act has a hierarchically superior authority, the preliminary complaint may be addressed, at the applicant’s choice, either to the authority which adopted the act or to the hierarchically superior authority, unless the law provides otherwise. ...”

COMPLAINTS

1. The applicants complain under Article 1 of Protocol No. 1 to the Convention that the authorities and courts effectively protected the interests of a State-owned company, to the detriment of fair competition.

2. They also complain, in essence, of a violation of their right of access to court within the meaning of Article 6 of the Convention.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicants rights guaranteed under Article 6 of the Convention? In particular, did the decision of the Cahul Court of Appeal to leave the applicants’ court action without examination because of an allegedly wrong choice of the addressee of their preliminary complaint, disproportionately limit the applicants’ right of access to court within the meaning of Article 6?