



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

SECOND SECTION

**CASE OF NEGURA AND OTHERS v. THE REPUBLIC OF  
MOLDOVA**

*(Application no. 16602/06)*

JUDGMENT

STRASBOURG

5 March 2019

*This judgment is final but it may be subject to editorial revision.*



**In the case of Negura and Others v. the Republic of Moldova,**

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Ivana Jelić, *President*,

Valeriu Grițco,

Darian Pavli, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 5 February 2019,

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

## PROCEDURE

1. The case originated in an application (no. 16602/06) 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 87 Moldovan nationals (“the applicants”, see details in the appended Annex), on 15 April 2006.

2. The applicants were represented by Mr A. Postică and Mr I. Manole, lawyers practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Grosu.

3. On 12 January 2009 notice of the application was given to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. 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.

5. 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.

6. 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.

7. On 2 March 2005 the Leova city 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.

8. 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.

9. 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 city council on 2 March 2005 and explained that they had not been offered proper working conditions on the territory of U.

10. On the same date the applicants sent a preliminary request to the Mayoralty of Leova. In it, the applicants made a similar description to that in their complaint made mentioned in paragraph above. They asked for the annulment of decision no. 2.2 adopted by the city council of the Leova Mayoralty.

11. On 6 April 2005 the Leova city council discussed at its meeting the demands of the entrepreneurs and of L.'s administration, made in their request of 4 April 2005. According to the applicants, L.'s director was allowed to address the councillors and spoke about the applicants' demands. After discussing the issue, the city council adopted its decision no. 3.1 in which it took note of the applicants' demands and decided that L. was to work in accordance with the decision of the Leova city council no. 2.2 of 2 March 2005.

12. On 12 May 2005 the mayor of Leova 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 city council in its decision no. 3.1. of 6 April 2005, “namely that [L.] shall work in accordance with the decision of the Leova city council no. 2.2 of 2 March 2005”.

13. On 28 May 2005 the 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 annexed copies of the preliminary request addressed to the mayoralty, of their complaint made on 4 April 2005 to the Leova city council, and of the reply of the mayor’s office of 12 May 2005 (see the preceding paragraph).

14. 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. It also accepted in full the applicants’ request for compensation for their legal costs of 15,000 Moldovan lei, a sum which they had paid to the lawyer for representing them in this case. The Leova city council appealed.

15. By its final decision of 20 October 2005 the Cahul Court of Appeal quashed the lower court’s judgment and decided to strike out the court action lodged by the entrepreneurs. 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 city council of the Leova mayoralty. Therefore, Article 14 of the Law on administrative proceedings (see paragraph 17 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.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant provisions of the Code of Civil Procedure at the relevant time read as follows:

**“Article 267. Grounds for striking a case out.**

The court shall strike a case out if:

a) the plaintiff did not observe the procedure, provided for by law or by a contract between the parties, of preliminary solving of the case in an extrajudicial manner;

...”

**“Article 417. The Powers of the cassation court.**

(1) The cassation court, after judging the appeal in cassation, has the power:

...

f) to accept the appeal in cassation and to partially or totally annul the decision of the first-instance court, ordering the discontinuation of the proceedings or the striking of the case out if there are grounds provided for in Articles 265 and 267.”

17. 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. ...”

**“Article 17. Time-limits for lodging administrative court actions.**

(1) The request by which it is requested to annul an administrative act or the acknowledgment of a right shall be submitted within 30 days, if the law does not provide otherwise. This time-limit shall run from:

a) the date of receiving a reply to the preliminary request or the date of expiry of the time-limit provided by law for examining such a request;

...”

18. The relevant provisions of the Law on petitions (No. 190-XIII of 19 July 1994 with subsequent modifications) read as follows:

**Article 4**

“(1) A petition, within the meaning of the present law, shall be considered any request, complaint, proposal, communication, addressed to the competent authorities, including a preliminary request by which one contests an administrative act or the failure to respond to a request within the legally established time-limit.”

### Article 9

“(1) If the petition falls within the competence of another authority, the original petition shall be forwarded to that authority within five working days from the date of registering it, a fact that is brought to the petitioner’s knowledge.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicants complained about a breach of Article 6 § 1 of the Convention as a result of the domestic courts’ refusal to examine their court action. The relevant part of Article 6 reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

#### A. Admissibility

20. The Government argued that the applicants had failed to exhaust available domestic remedies. In particular, as established by the Cahul Court of Appeal, they had not followed the proper extra-judicial settlement procedure by not complaining to the authority which had adopted the impugned administrative decision. Moreover, the applicants missed the 30-day time-limit for complaining against the decision affecting their rights.

21. The applicants argued that they had followed the required procedure and had not missed any time-limit.

22. The Court considers that the issue of whether the applicants had followed the proper procedure is at the heart of their complaint concerning the right of access to a court within the meaning of Article 6 § 1 of the Convention. It therefore joins examination of the Government’s objection to the merits. It notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### B. Merits

##### 1. *The applicants’ submissions*

23. The applicants submitted that their right of access to a court had been breached as a result of the Cahul Court of Appeal’s decision to strike their court action out. They noted that they had complained about the same issue to both the Leova mayor and the city council on many occasions.

Regardless of how they had called the various complaints, they were in essence attempts to solve the issue in the extra-judicial settlement procedure. The applicants further argued that according to Article 4 the Law on petitions (see paragraph 18 above) a preliminary request was considered a petition. Under article 9 of the same Law, even when a petition was sent to the wrong authority, the latter had to forward it to the competent authority within five working days. Therefore, their preliminary request should have been forwarded to the city council and be examined by it.

24. They pointed to the fact that the Leova city council used stationery identical to that of the mayor's office. Notably, the decision complained of (2 March 2005) had been sent to the applicants on the mayor's stationery and sealed with the mayor's seal. This situation created a degree of confusion for the applicants as to where exactly they needed to complain against the impugned decision. Moreover, the Cahul Court of Appeal exceeded the limits of the appeal made by the Leova city council, which had never mentioned the applicants' alleged failure to follow the proper extra-judicial settlement procedure. They were accordingly deprived of the possibility of submitting arguments to the court on this issue.

## *2. The Government's submissions*

25. The Government argued that by failing to follow the proper extra-judicial settlement the applicants had not exhausted available domestic remedies. The Cahul Court of Appeal's decision was clearly reasoned and based on express provisions of the law. Moreover, after remedying the issue mentioned by the court, the applicants could lodge a new court action and ask for an extension of the 30-day time-limit for doing so.

26. They also noted that examining the court action after the expiry of the 30-day time-limit would have been contrary to the principle of legal certainty since the administrative act complained of had already become final. Since the applicants had been informed of the decision allegedly affecting their rights on 30 March 2005, but made a complaint to the wrong authority (the mayor) on 4 May 2005, that complaint was late, which amounted to a failure to exhaust domestic remedies. They finally annexed an example of case-law in which the Leova prosecutor's office made an appeal (*recurs*) against a decision of the Leova city council and which had been examined and rejected by the latter. The courts did not find, in that case, an issue concerning the observance of the extra-judicial settlement proceedings, which in the Government's opinion proved that the city council was the proper authority to examine preliminary complaints against any decision that it had taken.

### 3. *The Court's assessment*

27. The Court reiterates that the right of access to a court is an inherent aspect of the safeguards enshrined in Article 6. It secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Cudak v. Lithuania* [GC], no. 15869/02, § 54, ECHR 2010). Moreover, it includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see, for example, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016).

28. In the present case, the Court notes that on 4 April 2005 the applicants complained against a decision adopted by the Leova city council on 2 March 2005 (see paragraphs 7 and 9 above). On the same day they made a similar complaint, which they expressly called a preliminary request, to the mayoralty (see paragraph 10 above). Their action lodged with the Leova District Court noted among the annexes copies of both these complaints (see paragraph 13 above). The Cahul District Court considered that the preliminary request had been lodged with the wrong authority (the mayor and not the council), noting that the reply to the preliminary request had been received from the mayor's office (see paragraph 15 above). It therefore struck the case out.

29. The Court considers that both from the annex containing a copy of the applicants' complaints to the Leova city council and from the reply from the mayor's office (see paragraph 12 above) it should have been clear to the domestic courts that, in addition to lodging a preliminary request with the mayor's office, the applicants had made another complaint directly to the city council. It is true that only the complaint to the mayor was expressly called a preliminary request. However, neither the law on administrative proceedings nor any other legislation gives a definition of the preliminary request, nor set any formal requirements for that kind of a complaint. Moreover, as can be seen from the case-law submitted by the Government (see paragraph 26 above), the domestic courts do consider a complaint made with the competent authority as satisfying the requirement of extra-judicial settlement, even when it is not called a "preliminary request" (it was called an appeal in cassation (*recurs*) in the case referred to by the Government).

30. Since the applicants complained to the Leova city council about a decision taken by that authority, and then lodged a court action against that same authority, the Court finds it difficult to accept that the applicants had failed to follow the extra-judicial settlement procedure. Moreover, a copy of that complaint was annexed to the court action, as well as a copy of the mayor's letter of 12 May 2005 in which he mentioned that the city council had already replied to the applicants' complaints by way of a decision dated 6 April 2005 and had reproduced the relevant part of its content. It was thus clear from the documents annexed to the court action that the Leova city council had received and rejected the applicants' complaint against its

decision of 2 March 2005 (see paragraph 12 above). It follows that the Cahul District Court could not be said to have decided based on an incomplete file or in the absence of evidence that the applicants had made a complaint to the competent authority (the city council) which had been examined.

31. The Government argued that the applicants had missed the 30-day time-limit established by law for complaining to the city council against its decision of 2 March 2005 (see paragraphs 17 and 26 above). The Court notes that the applicants were informed of that decision on 29 March 2005 at the earliest (see paragraph 7 above) and complained to that authority on 4 April 2005 (see paragraph 9 above), that is within the 30-day time-limit established by law. More importantly, none of the domestic courts found that the applicants had missed any time-limit.

32. In the light of the above the Court finds that the Cahul Court of Appeal took a very formalistic stance towards the applicants' action by finding that their preliminary request had been addressed to the wrong authority, while ignoring their other request, made to the competent authority and annexed to their action. That court's decision resulted in the refusal to examine the applicants' case, even though they had complied with all the legal requirements for lodging their court action. Their right of access to a court has thus been restricted without any lawful basis.

33. There has accordingly been a violation of Article 6 § 1 of the Convention.

34. The Government's objection is therefore to be rejected.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

35. The applicants complained of a violation of their rights guaranteed under Article 1 of Protocol No. 1 to the Convention. The Court cannot speculate on the outcome of the proceedings had the applicants' action been examined in full compliance with the requirements of Article 6 of the Convention. For these reasons, this part of the application should be dismissed as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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. Non-pecuniary damage**

37. The applicants each claimed 100 euros (EUR) for non-pecuniary damage.

38. The Government argued that the low amount of compensation sought proved the lack of any prejudice to the applicants. They considered that, in any event, the finding of a violation would constitute sufficient just satisfaction.

39. The Court considers that the applicants must have been caused a certain amount of stress and frustration as a result of the breach of their right to a fair trial. It considers it reasonable to accept the applicants' claim in full.

#### **B. Costs and expenses**

40. The applicants claimed 15,000 Moldovan lei (MDL), consisting of the legal fees paid to their lawyer at the domestic level.

41. The Government argued that the applicants had not submitted any evidence that that sum had indeed been paid to the lawyer.

42. Regard being had to the documents in its possession, notably the Leova District Court's acceptance of the claim that exactly the same sum had been paid to the lawyer in the domestic proceedings, a finding not contested before the higher domestic courts, the Court accepts in full this claim.

#### **C. Default interest**

43. 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 complaint under Article 6 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
    - (i) EUR 100 (one hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) MDL 15,000 (fifteen thousand Moldovan lei) jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
  - (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;

Done in English, and notified in writing on 5 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Deputy Registrar

Ivana Jelić  
President

## ANNEX

## List of applicants

No.	Surname, name	Date of birth
1.	Negură Mihaela	07.03.1981
2.	Deleanu Valentina	18.04.1959
3.	Gușanu Alexandru	07.07.1968
4.	Gumeniță Mariana	30.04.1975
5.	Panea Valentina	24.03.1957
6.	Roman Alexandra	13.10.1958
7.	Canali Maria	30.07.1963
8.	Siauraitiene Natalia	19.02.1954
9.	Gușanu Mariana	20.03.1969
10.	Colciu Galina	25.12.1963
11.	Trofim Mihail	13.04.1960
12.	Trofim Efimia	26.12.1963
13.	Pencov Irina	22.06.1952
14.	Pencov Petru	15.10.1949
15.	Moscaliuc Georgeta	08.06.1966
16.	Prohorencu Vasilina	24.09.1964
17.	Ceban Tatiana	06.09.1980
18.	Braga Agafia	04.03.1951
19.	Mladin Valentina	07.11.1953
20.	Stănilă Ruslan	11.10.1975
21.	Brînza Raisa	10.11.1946
22.	Huțuleac Lidia	24.04.1953
23.	Pencov Svetlana	16.03.1980
24.	Balușca Larisa	30.01.1970
25.	Cibotari Lucheria	20.01.1959
26.	Toron Alevtina	01.09.1959
27.	Malai Zinaida	08.05.1967
28.	Căruntu Ion	22.10.1951
29.	Cibotari Rodica	28.01.1982
30.	Glinjeanu Constantin	02.09.1967
31.	Lozan Elena	14.05.1950
32.	Colinic Aliona	26.04.1975
33.	Bragarencu Andrei	20.03.1982
34.	Codița Ana	07.02.1964
35.	Canali Serghei	17.10.1962
36.	Miștea Elena	14.07.1960

37.	Mițelea Fiodor	15.09.1956
38.	Buga Ecaterina	22.04.1960
39.	Rotaru Ion	30.11.1955
40.	Vlas Eugenia	12.01.1966
41.	Pencova Natalia	12.10.1982
42.	Pencov Ana	24.08.1956
43.	Plamadeala Ecaterina	04.02.1967
44.	Butuc Svetlana	17.03.1973
45.	Cernat Roman	13.06.1984
46.	Dermenji Ludmila	02.03.1973
47.	Lozan Victoria	17.02.1953
48.	Michidan Rodica	19.05.1978
49.	Ciobanu Raisa	02.03.1965
50.	Eșanu Natalia	10.10.1968
51.	Racoviță Maria	14.03.1955
52.	Davnîi Iulia	08.07.1971
53.	Davnîi Valeriu	25.03.1968
54.	Oistric Elena	03.05.1972
55.	Ciobanu Daniel	02.05.1984
56.	Rezmerița Valentina	03.03.1956
57.	Cernat Feodosia	13.11.1962
58.	Zmeu Valentina	01.01.1957
59.	Zaraf Ina	28.07.1969
60.	Popovici Eudochia	18.11.1959
61.	Cara Lidia	15.08.1958
62.	Pastelea Eudochia	13.07.1977
63.	Paiu Lilia	01.09.1979
64.	Moraru Aculina	03.02.1963
65.	Para Svetlana	06.02.1974
66.	Pastela Ala	05.04.1980
67.	Musteață Eugenia	19.08.1962
68.	Ciubaciuc Eugenia	05.08.1952
69.	Novac Tatiana	27.02.1961
70.	Tutunaru Sergiu	02.10.1982
71.	Bătrîncea Vera	24.01.1963
72.	Gaiduc Galina	22.05.1966
73.	Adăscăliței Lidia	01.04.1966
74.	Șesterniov Nadejda	30.04.1975
75.	Basiul Varvara	24.10.1948
76.	Grecea Valentina	09.12.1957
77.	Cazan Tamara	20.10.1957
78.	Cazan Veaceslav	29.03.1957

79.	Belevac Elizaveta	05.10.1958
80.	Lozan Lilia	21.05.1982
81.	Pisaroglo Nicolae	04.04.1979
82.	Popa Claudia	06.03.1949
83.	Moisa Ioana	25.10.1949
84.	Topală Larisa	12.06.1951
85.	Topală Larisa	17.12.1973
86.	Doagă Tatiana	03.01.1978
87.	Neneceas Ion	12.06.1951