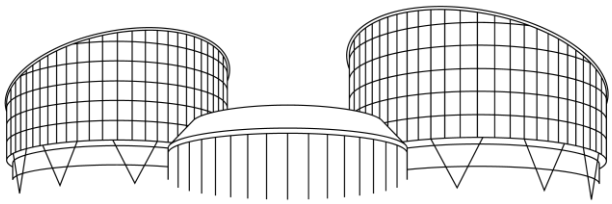

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF MEGADAT.COM SRL v. MOLDOVA**

*(Application no. 21151/04)*

JUDGMENT
(Just satisfaction – striking out)

STRASBOURG

17 May 2011

**FINAL**

*17/08/2011*

*This judgment has become final under Article 44 § 2 of the Convention.*

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

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

Josep Casadevall, *President*,
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 12 April 2011,

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. In a judgment delivered on 8 April 2008 ("the principal judgment"), the Court held that the applicant company's right guaranteed by Article 1 of Protocol No. 1 had been breached as a result of the invalidation of its licences (see *Megadat.com SRL v. Moldova*, no. 21151/04, § 79, ECHR 2008).

3. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant company to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

4. The applicant company and the Government each filed observations.

## THE LAW

5. The applicant company claimed 12,512,075 euros (EUR) in respect of pecuniary damage. The claim was based on a business plan drawn up in 2003 for Megadat.com SRL and Megadat.com International SRL (not an applicant in this case) concerning the implementation of new technologies such as digital television and high-speed Internet and a 7-14% annual growth of the market. In support of its claims, the applicant company

submitted a report prepared by Estimator-VM, a rating agency from Moldova. The period covered in the report was from April 2004 to July 2008. The applicant company also claimed EUR 100,000 in respect of non-pecuniary damage and argued that the company and its managers had been under severe pressure and had been subjected to endless searches and checks by all the inspection and law-enforcement bodies of the State. The applicant company's manager, Mr E. Musuc, had been prosecuted for peacefully protesting against the unlawful closure of the company and had been the victim of an unlawful arrest (see *Musuc v. Moldova*, no. 42440/06, 6 November 2007). The applicant company also claimed EUR 36,000 for costs and expenses, EUR 12,000 of which was for its representation before the Court and the rest for the amount paid to the rating agency Estimator-VM.

6. The Government contested the amounts claimed by the applicant company and argued, in the first place, that Megadat.com International SRL was not an applicant in the case and that any information concerning its business perspectives was irrelevant. Moreover, the Government submitted that the implementation of any new technologies of the kind mentioned in the business plan submitted by the applicant company would have required new licences. It is not known how long it would have taken to obtain such licences and whether the applicant company would have obtained them at all. According to the Government, the business plan had been based on the assumption that there would be no competition in the market. Moreover, the Government submitted that after the withdrawal of its licences in October 2003 the applicant company could have reapplied and obtained new licences after six months. Accordingly, any lost profit should only be calculated for a period of six months, plus the fifteen days necessary to complete the formalities. The fact that the applicant company had not mitigated its losses by reapplying for new licences after six months could not be held against the Government. In any event, the calculation could not go beyond April 2007, the date on which the applicant company's licences were due to expire.

7. On 19 August 2010, after failing to reach a friendly-settlement agreement with the applicant company, the Government informed the Court that they proposed issuing a unilateral declaration with a view to resolving the issue of just satisfaction. The Government undertook to pay the applicant company EUR 120,000 to cover any damage as well as EUR 10,000 for costs and expenses. This sum would be payable within three months from the date of notification of the judgment adopted by the Court under Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points. They further requested the

Court to strike out the application in accordance with Article 37 of the Convention.

8. By letter of 7 October 2010, the applicant company's representative expressed the view that the sum mentioned in the Government's declaration was unacceptably low and requested the Court to reject the Government's proposal on that basis. The applicant company insisted on the claims made in its observations (see paragraph 5 above).

9. The Court notes that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under sub-paragraphs (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court to strike a case out of its list in particular where the circumstances lead to the following conclusion:

> "[If] for any other reason established by the Court, it is no longer justified to continue the examination of the application."

Article 37 § 1 *in fine* includes the following proviso:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

10. The Court also notes that under certain circumstances it may strike out an application, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. Moreover, there is nothing to prevent a respondent State from filing a unilateral declaration relating, as in the instant case, to the reserved Article 41 procedure. To this end, the Court will examine the declaration carefully in the light of the general principles applicable in respect of Article 41 of the Convention (see, for example, *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

11. In examining the present case the Court obtained from the parties information concerning the net post-tax profit of the applicant company during the last three years of its activity. According to the information provided by the parties, it appears that in 2001 the applicant company suffered a loss of EUR 317,922. In 2002 the applicant company's net profit was EUR 145,680 and in 2003 it was EUR 202,706.

12. On the basis of the above figures and of the submissions made by the applicant company, the Court notes that the bulk of its claimed pecuniary losses do not derive from an activity that came into existence prior to the withdrawal of the licences, but from plans that never went further than anticipation. In particular, it does not appear that the applicant company undertook any steps in order to implement the 2003 business plan. The Court agrees with the Government's submission that the applicant company would have needed new licences for the implementation of its business plan and that there was a great degree of conjecture involved in any attempt to

predict how long it would have taken to obtain such licences and whether it would have been able to obtain them at all. In such circumstances, and leaving aside the fact that the applicant company's claims refer also to a business entity which is not an applicant in the present case, the Court is not convinced that the applicant company's anticipated income could be considered a legally protected interest of sufficient certainty to be compensatable.

13. The Court also examined the applicant company's claims in respect of non-pecuniary damage and costs and expenses and considers them to be excessive in the light of its case-law (see *Oferta Plus S.R.L. v. Moldova* (just satisfaction), no. 14385/04, 12 February 2008, and *Dacia S.R.L. v. Moldova* (just satisfaction), no. 3052/04, 24 February 2009).

14. Having regard to the above considerations and to the amount of compensation proposed by the Government, which appears to be equitable in the present case, the Court considers that it is no longer justified to continue the examination of the case (Article 37 § 1 (c)) (see *Racu v. Moldova* (just satisfaction – striking out), no. 13136/07, 20 April 2010).

15. In the light of all the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the case (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

2. *Decides* to strike the case out of its list of cases.

Done in English, and notified in writing on 17 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Marialena Tsirli | Josep Casadevall |
| Deputy Registrar | President |