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Case Summary posted by the Task Force on Access to Justice

MOLDOVA: The Moldsilva case, Curtea de Apel Chisinau, Case nr. 3 – 2039/2008	
1. Key issue	<i>Public access to environmental information - An NGO with the aim of protection of a certain area cannot be refused environmental information because of the organisation's denial to justify its interest in the information, or on the ground that the volume of information is too large, or without the information-holding authority proving that the refusal is necessary in a democratic society for the protection of rights and legitimate interests of other persons.</i>
2. Country/Region	<i>Republic of Moldova</i>
3. Court/body	<i>Court of Appeal Chisinau (Curtea de Apel Chisinau)</i>
4. Date of judgment /decision	<i>2008-06-23</i>
5. Internal reference	<i>Curtea de Apel Chisinau; dosarul nr. 3 – 2039/2008</i>
6. Articles of the Aarhus Convention	<i>Art. 2.2-5; 3; 4; 9.1</i>
7. Key words	<i>Environmental information, disclosure of information, grounds for refusal, access to justice</i>
8. Case summary	<p>A non-governmental organization, Eco-TIRAS International Environmental Association of River Keepers (Eco-TIRAS), submitted a request to the State Forestry Agency 'Moldsilva' (a government agency) for the disclosure of a number of contracts for the rent of lands administered by the State Forestry Fund. Moldsilva refused this request on the grounds of the large volume of the requested information, and also asked the NGO to justify its interest in that information. The request for information was repeated, as was the refusal. The second time Moldsilva referred to the newly passed Governmental Regulation No. 187 that stipulated that the Agency had an obligation to keep confidential from third parties such information, and that if it failed to do so, the Agency would risk having to pay for any damages caused. None of the two letters of refusal provided the NGO with information on access to a review procedure.</p> <p>Eco-TIRAS then brought an action in the Court of Appeal Chisinau challenging this decision and claiming that Moldsilva was obligated to provide the copies of all contracts as requested. The administrative action relied on the relevant provisions of Moldovan legislation, namely articles 21 and 25 of the Law on Access to Information and articles 5, 14, 16, 24 and 25, paragraph 1 (b), of the Law on Administrative Courts, and also referred to the definition of 'environmental information' contained in article 2.3 of the Aarhus Convention.</p>

The Court of Appeal granted Eco-TIRAS standing, as the NGO was registered with the aim to contribute to the improvement of the environmental situation, sustainable use and protection of natural resources in Nistru (Dniestr) river basin. The court also found that Moldsilva's refusal was in breach of the Law on Access to Information, which stipulates that a person requesting access to information is under no obligation to justify his or her interest in doing so. Furthermore, in accordance with that law, access to information cannot be limited in cases where the information is of public interest and refers to the protection of environment. Even if the law allows for certain grounds for exceptions, Moldsilva had ultimately failed to prove that its refusal met those criteria and was necessary in a democratic society for the protection of the rights and legitimate interests of the person, and that the damage to those interests would be larger than the public interest in that kind of information. The court thus decided in favour of Eco-TIRAS, and mandated that the State Forestry Agency should provide the requested information.

Note: Despite the judgment, Moldsilva did not disclose the requested contracts. Eco-TIRAS filed a communication (ACCC/C/2008/30) to the Aarhus Convention Compliance Committee, which found the Republic of Moldova in non-compliance with the Articles 3.2, 4.1-2, 4.7 and 9.1 of the Convention. The Committee also found that the adoption of the Government Regulation No. 187, setting out a broad rule with regard to the confidentiality of contracts and the refusal for access to information because of its large volume, constituted a failure to comply with Article 3.1 and 4.4 (ECE/MP.PP/C.1/2009/6/Add.3, para. 38). The decision was endorsed by the 4th session of the Meeting of the Parties in Chisinau from 29 June to 1 July 2011 (ECE/MP.PP/2011/2/Add.1; Decision IV/9d).

For more information:

<http://www.unece.org/env/pp/compliance/Compliancecommittee/30TableMoldova.html>;

<http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/the-republic-of-moldova-iv9d.html>

9. Link
address

http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/REPUBLIC_OF_MOLDOVA/RMoldova_EcoTirasvMoldsilva_2008.pdf (in Moldovan)
A translation in English is enclosed below.

Case #3 – 2039/2008

COURT JUDGMENT

In the name of Law

23.06.2008

Civil Chamber of Chisinau Court of Appeal

Composed of

Chairman of hearings

Buruian M.

Secretary

Tudoreanu Z.

Examining in public hearings the statement of action filed by the International Environmental Association of River Keepers “ECO-TIRAS”, mun. Chisinau against Forest Agency “Moldsilva” regarding the failure to satisfy within the legal timeframes the request on provision of information related to presentation of copies of the contracts for rent of lands from forest fund, having deliberated, decides on

FINDINGS

On 27.03.2008 the claimant, “ECO-TIRAS” International Environmental Association of River Keepers, filed an action to the Court and requested to lay “Moldsilva” Agency under an obligation to provide the copies of all contracts for rent of forests from the Forest Fund signed between the “Moldsilva” Forest Agency and other natural and/or legal persons, valid for 01.01.2008.

While stating the reasons for the action, the claimant indicated that on 9th of January and 14th of March 2008 he addressed the defendant with the requests where he asked to provide the copies of the contracts for rent of forests from the Forest Fund signed between “Moldsilva” Forest Agency and other natural and/or legal persons, valid for 01.01.2008. However, by the sent responses the information provider has unreasonably refused the requests.

The claimant considers that his right to information has been violated.

During court hearings the claimant’s representative Mr. Boico V. and a lawyer, Mr. Zamfir P. have sustained the action in integrity and have additionally explained that the claimant as a public organization has the competence to control over the respect for the nature protection legislation and that the requested information is not a part of state secret or commercial secret.

Though summoned to court, the defendant’s representative did not appear at the case hearings and requested to adjourn the case examination. However, taking into consideration that the case has been unfoundedly adjourned on request of the defendant

twice, the Court decided to examine the action in absence of the defendant's representative.

In the statement of defense "Moldsilva" Agency asked for dismissal of action as unfounded, indicating that the contracts for rent of forest fund with other parties concerned were signed in accordance with legislation and that under those contracts the Agency took an obligation to keep confidential from third parties the information concerning the signed contracts, that is why provision of requested information puts the Agency under risk to pay for the caused damages due to failure to respect the contracts' terms.

Having heard the parties in the case, having examined the case materials, the Court finds the action founded and according to art.25 para. 1 subpara. b) of the Law on Administrative Court declares the case admissible on the ground of the following:

In accordance with the art.3 of the Law on Administrative Court the object of action in administrative court is failure to settle the request regarding the right recognized by law within the legal timeframes.

It has been found that "Eco-TIRAS" International Environmental Association of River Keepers has been registered on 14.01.2000 with the aim to contribute to improvement of environmental situation, sustainable use and protection of natural resources Nistru (Dniestr) river basin.

In accordance with art.26 paras. b) and e) of the Law on Public Organizations #837 from 17.05.1996, art.23 of the Forestry Code the claimant has a right to ask the necessary information from the "Moldsilva" Agency, including the information on the state of forest fund and hunting, on the measures of their conservation and use.

The claimant's requests from 9th of January and 14th of March 2008 in the defendant's address regarding the provision of the copies of the contracts for rent of forests from the Forest Fund signed between "Moldsilva" Forest Agency and other natural and/or legal persons, valid for 01.01.2008, are grounded on the art.1, 5, 7, 8, 10, 11, 23 of the Law on Access to Information and the content of those requests complies with provisions of the art.12 of the named Law.

According to art. 5, 6, 12, 13 of the Law on Access to Information "Moldsilva" Forest Agency had an obligation to examine and to satisfy the request as stipulated by Law. Those legal provisions were not respected by the information provider due to the fact that the above mentioned requests were refused on the basis of failure of information seeker to mention the purpose of requesting the information and to specify the request for the areas in question.

The reasons for refusal of requests violates the provisions of the art.10 para.3 of the Law on Access to Information that stipulates that a person requesting access to information is under no obligation to justify his/her interest for the requested information.

Also, the defendant's arguments related to impossibility to provide information due to the restriction of the right of accessibility to signed contracts with commercial secret cannot be regarded as relevant.

That is why, according the art. 12 para.6 subpara. d) of the Forestry Code “Moldsilva” Forest Agency is obliged to contribute to public informing on the development of forest fund and hunting ensuring free access to information.

According to art.3, 4 of the Law on Water Protection Zones and Riversides and Water Basins on the territory of protection zones of rivers’ waters and water basins the economic activity is strictly restricted and the special regime of economic activity is established that is why the claimant has a right to obtain respective information in order to be able to verify the compliance with legislation by the contracting parties.

In accordance with art. 8 para.8 of the Law on Access to Information, access to personal information to which the defendant refers cannot be limited in cases when the information is of public interest and refers to the protection of environment.

“Moldsilva” Agency failed to prove, as it stipulates the art.7 para. 4 of the Law on Access to Information, that such a restriction is regulated by the law and is necessary in a democratic society for the protection of rights and legitimate interests of the person, and that the damage to those interests would be larger than the public interest for that kind of information.

Moreover, according to paragraph 18 of the Regulation on Forest Fund Rent for the Purposes of the Hunting Management and/or Recreation, approved by the Decision of the Government #187 from 20.02.2008, contract for rent is subject to the state registration.

Hence, there are no reasons to dismiss the action.

In accordance with the art.94, 96 of the Civil Procedure Code “Moldsilva” Agency as a lost party of the case is to pay the amount of 1300 lei to the claimaint’s account, those expenses incurred as the legal aid provided by the lawyer according to the invoice # 232875 from 20.05.2008.

On the ground of art.25 para.1 subpara.b) of the Law on Administrative Court, art.277, 278 of the Civil Procedure Code, the Court delivers the following judgment

JUDGMENT:

To declare the admissibility of the action filed by the International Environmental Association of River Keepers “ECO-TIRAS”, mun. Chisinau.

To hold that Forest Agency “Moldsilva” is to provide to information seeker - the International Environmental Association of River Keepers “ECO-TIRAS” – the copies of all contracts for rent of lands from forest fund signed between “Moldsilva” Agency and natural persons, legal persons, valid for 01.01.2008.

To hold that “Moldsilva” Agency is to pay the amount of 1300 /one thousand three hundreds/ lei to the account of the International Environmental Association of River Keepers “ECO-TIRAS”, mun. Chisinau in respect of expenses for the legal aid.

The decision could be appealed at the Supreme Court of Justice within 20 days.

Judge

/Signature/