



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

SECOND SECTION

CASE OF THEO NATIONAL CONSTRUCT S.R.L. v. THE REPUBLIC OF MOLDOVA

(Application no. 72783/11)

JUDGMENT *(Merits)*

Art 1 P1 • Peaceful enjoyment of possessions • Exclusion of applicant company from list of partners of different company leading to a loss of its 50 % shareholding therein and participation in multi-million contract • Domestic courts' decisions contrary to domestic law, arbitrary and manifestly unreasonable • Failure to address applicant company's serious allegations of case file tampering and objection concerning time-barred action against it • State's failure to discharge its duty to set up a proper forum allowing applicant company to assert rights effectively and have them enforced

STRASBOURG

11 October 2022

FINAL

11/01/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Theo National Construct S.R.L. v. the Republic of Moldova,

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

Jon Fridrik Kjølbro, *President*,
Carlo Ranzoni, *ad hoc Judge*,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Gilberto Felici,
Saadet Yüksel, *Judges*,
and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application 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 a company incorporated in Romania, Theo National Construct S.R.L. (“the applicant”), on 19 November 2011;

the decision to give notice to the Moldovan Government (“the Government”) of the complaint concerning Article 1 of Protocol No. 1 to the Convention;

the decision to inform the Romanian Government of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1(b) and their omission to communicate any wish to avail themselves of this right;

the parties’ observations;

the withdrawal from the case of Ms Diana Sârcu (Rule 28 of the Rules of Court), the judge elected in respect of the Republic of Moldova, and the appointment by the President of Mr Carlo Ranzoni to sit as *ad hoc* judge (Rule 29 § 2);

Having deliberated in private on 13 September 2022,

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

INTRODUCTION

1. The case concerns a “raider attack” against the applicant company, that is the alleged illegal seizure of its goods with the assistance of presumed corrupt courts and law-enforcement agencies.

THE FACTS

2. The applicant is a company incorporated in Romania. It was represented by Mr V. Gribincea, a lawyer practising in Chişinău.

3. The Government were represented by their Agent, Mr O. Rotari.

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

I. BACKGROUND TO THE CASE

5. In 2007, the applicant company specialised in road construction, agreed with a Moldovan businessman and leader of a political party, Mr. Ș., to enter the Moldovan market of road construction.

6. According to an agreement of 4 April 2007, the applicant company was to become a partner in company Q. with a participation of fifty percent of the statutory capital. The applicant company was to contribute with twenty-three pieces of road construction equipment worth over one million euros (EUR) to company Q.'s statutory capital. The remaining capital was to be controlled by company S., controlled by Mr Ș. with a participation of 49,77 %, and another company with a participation of 0.23%.

7. On 5 April 2007 the general assembly of company Q. decided to admit the applicant company as a partner with a participation of fifty percent. Throughout the course of the events giving rise to the present case, company Q. changed its name twice. However, for purposes of clarity in the present judgment, the Court will always refer to it as company Q.

8. On an unspecified date company Q. asked the Moldovan Chamber of Commerce (MCC) to assess the value of the twenty-three pieces of equipment to be brought to Moldova by the applicant company.

9. On 25 April 2007 the MCC presented a valuation report according to which the twenty-three pieces of road construction equipment in question were worth EUR 1,031,965. As the equipment was still in Romania at the time, the valuation was done on the basis of its documentation and pictures, by taking its wear and tear into consideration.

10. On 3 May 2007 the State Registration Chamber registered the amendments to company Q.'s charter according to which the applicant company formally became a partner with a participation of fifty percent. The value of company Q.'s statutory capital increased from 236,621 Moldovan lei (MDL) (approximately 14,000 euros (EUR)) to MDL 17,540,179 (approximately EUR 1 million) and its chief executive officer remained the same.

11. On 8 May 2007 the applicant company imported to Moldova the twenty-three pieces of road construction equipment. At the request of the Moldovan Customs, the MCC physically examined the equipment and issued another report confirming its findings from the valuation report dated 25 April 2007.

II. THE APPLICANT COMPANY'S ACTIVITY IN MOLDOVA

12. On 16 October 2007 company Q. signed a contract with the State Road Administration of Moldova concerning renovation works to a national road. The value of the contract was MDL 393 million (the equivalent of some EUR 24.5 million).

13. For the purpose of the execution of the works, company Q. contracted several bank loans of over EUR 1.5 million for which it pledged the road construction equipment brought by the applicant. The applicant company's chief executive officer also pledged his house in Chişinău, estimated at over EUR 400,000.

14. Company Q. started executing the road renovation works in accordance with the contract and they were supposed to be finished by the end of 2012. Less than fifty percent of the works were completed by 2010 and the delays in the completion of different segments were determined in general by the delayed payments by the State for the executed works.

15. In early 2010 the applicant company learned that the chief executive officer of company Q. had offered several interest-free loans of some MDL 4.5 million (approximately EUR 255,000) to company S. (see paragraph 6 above), one of the partners of company Q., without consulting it and in breach of company Q.'s charter. Relations deteriorated between the applicant company and the partner controlled by Mr. Ş. after that incident. The chief executive officer of company Q. was changed at the applicant company's request and proceedings were initiated by company Q. for the recovery of the interest-free loans. The applicant company also became embroiled in another set of unrelated legal proceedings with its partner, company S. Irrespective of that, by the beginning of 2011 company Q. did not have financial difficulties and the work was going according to the plan.

III. JUDICIAL PROCEEDINGS BROUGHT BY COMPANY S. BEFORE THE CHIŞINĂU COURT OF APPEAL

16. On 17 April 2010 company S. wrote to the MCC asking it to revoke its valuation report dated 25 April 2007 on the grounds that the valuation had been carried out without a physical inspection of the road construction equipment.

17. On 26 April 2010 the MCC replied that the national and international rules allowed for the valuation to be carried out on the basis of documents and pictures. In any event, the MCC expert had inspected the equipment upon its arrival in Moldova on 8 May 2007 and confirmed the findings of its report dated 25 April 2007 (see paragraph 11 above).

18. On 25 May 2010 company S. initiated administrative proceedings against the MCC before the Chişinău Court of Appeal seeking the annulment of the valuation report dated 25 April 2007. It reiterated the arguments from

its letter of 17 April 2010 (see paragraph 16 above) and did not nominate the applicant company as a defendant.

19. The Court of Appeal accepted the case for examination and attributed to it case-number 3-2535/10, a number valid for the year 2010 (see paragraph 42 below).

20. In its submissions to the court the MCC argued in the first place that it was a non-governmental organisation and that, therefore, its acts not being administrative acts, they could not be challenged in the administrative courts. There were no rules stipulating that an expert valuation could not be carried out on the basis of documents and pictures. In any event, the MCC expert had physically examined the equipment upon its arrival in Moldova and confirmed his earlier findings. The valuation had taken place in the presence of a representative of company Q. who had not had objections either during the valuation or afterwards. The report issued by the MCC experts was not compulsory for anyone but only had an advisory character and could be disregarded by the partners of company Q. if they so wanted.

21. On 23 June 2010, during the first hearing in the case, company S. requested that the State Registration Chamber be involved in the proceedings as an interested party. It argued that the annulment of the MCC valuation report might have an impact on the State Registration Chamber's decision of 3 May 2007 to register the changes to company Q.'s charter. The court accepted that request and postponed the hearing until 13 September 2010. It is not clear what happened on the latter date as the domestic case file, as provided by the parties, does not contain anything in that respect.

22. On 1 December 2010 the MCC requested that company Q. and the applicant company be involved in the proceedings as interested parties. The court accepted the request and postponed the examination of the case until 22 December 2010 at 10.15 a.m.

23. On 21 December 2010 the plaintiff's representative requested the court to postpone the examination of the case until another date on the grounds that he had to attend the funeral of a close relative in Florești in the morning of 22 December 2010. According to page 42 of the domestic case file, the court accepted that request and decided to hold the next hearing on 20 January 2011 at 11 a.m. The MCC's representative signed a special form provided by the Court of Appeal confirming that he had been summoned for 20 January 2011.

24. In spite of the decision of 21 December 2010 to postpone the hearing of 22 December 2010, the domestic case file contains, on page 96, a copy of minutes of a hearing dated 22 December 2010. According to the minutes in question, the representatives of the plaintiff, the MCC and the State Registration Chamber were present at the hearing. The applicant company's representative did not participate. Although the hearing allegedly took place on 22 December 2010, for unknown reasons its minutes bear case file

number 3-333/11, a number which could not have been attributed to the case until the beginning of 2011.

25. According to the minutes in question, the plaintiff had allegedly supplemented its original action with several new claims: (a) to annul the MCC's valuation report of 8 May 2007 (see paragraph 11 above); (b) to annul the decision of the State Registration Chamber of 3 May 2007 (see paragraph 10 above) and to reinstate all the parties in their initial position; and finally (c) to enforce the judgment immediately. A copy of that supplement is contained in an undated document on page 45 of the domestic case file but the decision by the judge to accept it is dated 1 December 2010 and is found on page 91. The minutes recorded that the court postponed the examination of the case until 20 January 2011.

26. It is the applicant company's position that the minutes in question are false and that they had been fabricated and added to the case file at a later date. The Government did not comment on this allegation.

27. On 20 January 2011 a new hearing took place in the case, which was the first and last hearing at which the representative of the applicant company participated. Before the hearing the applicant company's representative had allegedly consulted the case file and, according to him, it did not contain any supplement to the plaintiff's initial claim (see paragraph 25 above) to the effect that it sought the applicant company's exclusion from the list of partners of company Q. The Government did not comment on this allegation.

28. Page 100 of the domestic case file contains the minutes of the hearing of 20 January 2011, according to which the representatives of the applicant company and company Q. were present at the hearing and they were given time until the next hearing to present their written submissions in reply to the plaintiff's claims. It was noted in the minutes that the next hearing was to take place on 2 February 2011 at 11 a.m.

29. Pages 92-93 of the domestic case file contain two summons forms addressed to several participants in the proceedings, including the applicant company. They are both dated 20 January 2011. In one of them one of the parties to the proceedings is summoned for 2 March 2011. In another one, company Q. and the applicant company are summoned for 2 February 2011, but the handwritten date appears to have been corrected from '02.03.11' to '02.02.11'. On page 94 of the domestic case file there is a form of confirmation according to which the representatives of the applicant company and company Q. confirm having been informed about the next hearing of 2 February 2011, but this form too bears signs of tampering as the handwritten date also appears to have been corrected from '02.03.11' to '02.02.11'.

30. It is the applicant company's position that these minutes were falsified in the latter respect and that in fact the next hearing was scheduled for 2 March 2011. The Government did not comment on this allegation.

31. Page 101 of the domestic case file contains the minutes of the hearing of 2 February 2011, according to which the representatives of the applicant company and company Q. did not attend the hearing in spite of having been summoned. The court decided to finish the examination of the merits of the case.

32. On 2 February 2011 the Chişinău Court of Appeal adopted its judgment in the case. It found in favour of company S. and ordered the annulment of the MCC's valuation reports of 25 April 2007 and 8 May 2007 after ruling that the MCC had not been allowed to evaluate the equipment without its physical inspection. As a consequence of the annulment of the valuation report, the court also ordered the annulment of the State Registration Chamber's decision of 3 May 2007 by which the changes to company Q.'s charter had been registered and ordered the reinstatement of the parties in their initial position prior to 3 May 2007, that is the exclusion of the applicant company from the list of partners of company Q. The court ruled that the transactions concluded by company Q. after 3 May 2007 should not be affected by that reinstatement. The court also ordered the immediate enforcement of the judgment without indicating the reasons for the urgency.

33. At the moment of the determination of the case by the Chişinău Court of Appeal, company Q. did not have financial problems and was continuing the execution of the contract of 16 October 2007 with the State Road Administration of Moldova.

IV. THE IMMEDIATE ENFORCEMENT OF THE JUDGMENT OF THE CHIŞINĂU COURT OF APPEAL

34. On 2 February 2011 the representative of company S. received a copy of the judgment of the Chişinău Court of Appeal of the same day and the next day it applied to the State Registration Chamber for its execution. Initially the Head of the State Registration Chamber distributed the case to officer (*registrator*) C.L. However, on 4 February 2011, another officer, A.B., issued a decision concerning the changing of the charter of company Q. and excluding the applicant company from its list of partners. It appeared later that A.B. was the wife of the deputy president of the political party headed by Mr Ş. (see paragraph 5 above).

35. After the enforcement of the judgment of the Chişinău Court of Appeal, the statutory capital of company Q. became MDL 236,662 (the equivalent of EUR 14,377).

36. On 17 February 2011 the applicant company requested the State Registration Chamber to cancel its decision of 4 February 2011 concerning its exclusion from company Q.'s list of partners. Since the State Registration Chamber refused to comply with this request, on 28 February 2011 the applicant company introduced an administrative action against it with the Chişinău Court of Appeal. The applicant company submitted that the

reduction of company Q.'s statutory capital had been carried out in breach of the procedure provided for by Section 36 of the Law on limited liability companies. However, that action was dismissed by both the Chişinău Court of Appeal and the Supreme Court of Justice.

V. THE PROCEEDINGS BEFORE THE SUPREME COURT OF JUSTICE

37. The applicant company obtained access to the case file and a copy of the judgment of the Chişinău Court of Appeal (see paragraph 32 above) on 28 February 2011. On 3 March 2011 it lodged an appeal on points of law with the Supreme Court of Justice.

38. The applicant company submitted that it had been involved in the proceedings between company S. and the MCC at a late stage and that it had been summoned for the first time for the hearing of 20 January 2011. Its representative had had an opportunity to examine the case file before that hearing and there had been no supplement to the plaintiff's initial claim to the effect that the plaintiff sought the applicant company's exclusion from the list of partners of company Q. The applicant company's representative also argued that on 20 January 2011 the plaintiff's representative had made a verbal request concerning the modification of its claims, but that he had been told by the judge to prepare a written claim in accordance with the provisions of the Code of Civil Procedure and submit it at the next hearing. At the end of the hearing, the examination was postponed until 2 March 2011. In spite of that, the next hearing was held on 2 February 2011 and the date in the summons forms had been corrected by hand from '03' to '02'.

39. The applicant company further submitted that in spite of numerous requests, the Chişinău Court of Appeal had refused to provide it with a copy of the judgment and to give it access to the case file for a very long time. At the same time, the plaintiff had been given a copy of the judgment on 2 February 2011, that is, on the day of its adoption (see paragraph 34 *in limine* above).

40. After having gained access to the case file, the applicant's representative discovered that some of the documents in it had been manipulated. Thus, the minutes of the hearing of 22 December 2010 stated that the initial claim had been supplemented by the plaintiff on that date (see paragraph 25 above). He also discovered on page 91 of the case file a decision by the judge dated 1 December 2010 to accept that supplement although the minutes of the hearing of 1 December 2010 did not contain anything in that respect (see paragraph 22 above).

41. The applicant company further submitted that the hearing of 22 December 2010 had been postponed at the request of the plaintiff's representative, who had to participate in a funeral in the city of Floreşti. In spite of that and without any explanation, the case file contained minutes of the hearing of 22 December 2010 according to which that same representative

was present at the hearing and actively participated in it. Moreover, those minutes bear a case number which could not have been attributed before January 2011.

42. In so far as the merits of the case were concerned, the applicant company submitted, *inter alia*, that the case should not have been examined by an administrative court and that, in any event, the action lodged by company S. should have been dismissed as time-barred. The applicant company alleged that it had been a victim of a “raider attack”.

43. On 20 May 2011 the Supreme Court of Justice dismissed the applicant company’s appeal on points of law and upheld the judgment of the Chişinău Court of Appeal of 2 February 2011. It did not provide answers to any of the applicant company’s arguments, including the one concerning the procedural shortcomings before the Chişinău Court of Appeal and the one concerning the applicability of the statute of limitations to the action lodged by company S.

VI. EVENTS THAT TOOK PLACE AFTER THE PROCEEDINGS

44. After 4 February 2011 the management of company Q. was changed. The new management withdrew the court actions concerning the recovery of MDL 4.5 million (see paragraph 15 above).

45. The road construction equipment brought to Moldova by the applicant company continued to be used by company Q. after the courts ordered the reinstatement of the parties in their initial position, and the applicant’s attempts to recover it proved to be ineffective due to the contracts of pledge concluded between company Q. and the bank which had provided credit (see paragraph 13 above).

46. Since company Q. stopped the payments under the credit agreements, in 2011 the bank which had provided credit to it initiated proceedings with a view to taking possession of the road construction equipment pledged. The first two instances ruled against the bank and decided that since the parties were to be reinstated in their initial position in accordance with the judgment of 2 February 2011 (see paragraph 32 above), the road equipment could not be seized by the bank but was to be returned to the applicant company. However, on 3 April 2013, the Supreme Court of Justice reversed those judgments and ordered the transfer of the equipment into the bank’s property. Moreover, the bank took possession of the Chişinău house pledged by the applicant company’s chief executive officer (*ibidem*) and in 2014 bankruptcy proceedings were initiated in respect of company Q.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

47. Under Section 2 of the Law on administrative acts, as in force at the material time, an administrative act is a unilateral manifestation of will with

of a normative or individual character of the public authority with a view of applying the law in force. Under Section 17 of the same law the time-limit for challenging administrative acts is thirty days from the moment when the administrative act was communicated. Under Article 267 of the Civil Code the general limitation period for initiating civil proceedings is three years.

48. According to rules guiding the registration of files by the Moldovan courts, at the beginning of each year each pending case receives a new case-number. Thus, if a case is pending before a court more than one year, it will have a new case-number each year.

49. The case files in the Moldovan courts consist of documents sewn together in the order of their attachment. After each hearing all new documents introduced by the parties are sewn on top of the rest of the case file and all the pages of the case file are numbered by hand.

50. According to Section 36 of the Law on limited liability companies, as in force at the material time, within fifteen days from the date when the General Assembly of the company decides to reduce its statutory capital, the company must inform all its creditors and publish a note about the reduction of the statutory capital in the Official Gazette and on the web page of the State Registration Chamber. Within three months from the date of the publication of the note, the creditors of the company have the right to request supplementary guarantees or advance execution of the obligations and/or compensation of losses. The reduction of the statutory capital shall be registered by the State Registration Chamber after the expiry of the above three-month period calculated from the date of the publication of the note or after the creditors' demands concerning supplementary guarantees or advance execution of the obligations and/or compensation of losses are satisfied.

51. Under Section 47 of the Law on limited liability companies, a partner can be excluded from the company only if the individual did not make his contribution to the statutory capital or if, whilst acting as the manager of the company, the person committed acts detrimental to the company. The exclusion of a partner shall be made by a judicial decision. In case of exclusion the excluded partner does not have a right to a proportional quota of the company's property (*patrimoniul*), but only to the value indicated in the books of the company of the individual's part of the statutory capital.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

52. The applicant company complained that it had been a victim of a "raider attack" and that as a result of the manner in which it had been excluded from the list of partners of company Q. it had in fact been deprived of its

possessions contrary to Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, reads 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.
...”

A. Admissibility

1. The parties' submissions

53. The Government submitted in the first place that the applicant company's founder and sole associate had died in September 2015 and that the applicant's representative had failed to inform the Court about this important and decisive circumstance. Therefore, the Government asked the Court to declare the present case inadmissible on grounds of abuse of the right of individual application in accordance with Article 35 § 3 (a). Alternatively, the Government submitted that since no heir of the late associate expressed intention to pursue the application before the Court, the case shall be struck out of the list of cases in accordance with Article 37 § 1 (c). In any event, the applicant's representative had not presented a new power of attorney signed by the heirs of the late associate proving their intention to prolong his powers.

54. The Government submitted further that the applicant company had failed to exhaust domestic remedies available to it. In particular, after having lost in the proceedings initiated by company S., the applicant company could have, but had not, initiated a new set of proceedings in accordance with Section 47 of the Law on limited liability companies against its former partners in company Q. and claimed compensation for the losses suffered.

55. As to the applicant company's allegation that company S.'s action was time-barred, the Government argued that the applicant had failed to raise that objection before the Chişinău Court of Appeal. Moreover, while raising that objection in its appeal on points of law before the Supreme Court of Justice, it had asked for the Court of Appeal's judgment to be quashed but not for the action lodged by company S. to be rejected as time-barred.

56. The applicant's representative stressed that the applicant in the present case was a company and not the individual associate who had died in September 2015. The company continued to exist under Romanian law after the death of the former associate, and his wife became the sole associate and Chief Executive Officer. It is true that the company is currently under the procedure of liquidation, however, it will not be liquidated before the Court finally determines the present case. The applicant's representative submitted documents issued by the Romanian authorities in support of the above statement, a copy of the decision concerning the appointment of the company's liquidator and a new power of attorney signed by the company's liquidator.

57. Referring to the Government's non-exhaustion objection, namely to their suggestion that the applicant should have brought proceedings against other partners of company Q. in accordance with Section 47 of the Law on limited liability companies, the applicant company submitted that under Moldovan law the partners could not be held liable for the dealings of the company. Such proceedings could not have led to the recovery by the applicant of its participation in company Q. Moreover, Section 47 of the Law on limited liability companies only applies to the situation when a partner is excluded for failure to make his contribution to the statutory capital or if, whilst acting as the manager of the company, the person committed acts detrimental to the company. In any event, the objection rather referred to the claims under Article 41 of the Convention, in respect of which there was no obligation of exhaustion of domestic remedies.

58. As to the Government's objection concerning the failure to invoke the issue of the statute of limitations, the applicant argued that it had not been given a chance to do so in the proceedings before the Court of Appeal. It had only participated in the hearing of 20 January 2011 and had been invited to formulate its written submissions before the next hearing scheduled for 2 March 2011. However, for unknown reasons, the next hearing was held on 2 February 2011 and the documents in the case file had been manipulated. Therefore, the applicant had not had the opportunity to raise that objection before the Court of Appeal. In any event, it had raised it before the Supreme Court of Justice and that court had found that it could not deal with that issue.

2. The Court's assessment

59. The Court notes that the applicant in the present case is a legal person and that the death of its former sole associate did not lead to the dissolution of the company. Therefore, the representative's failure to inform the Court about it cannot be considered an abuse of the right of individual petition. Moreover, the documents submitted by the applicant confirm that the applicant company, in the person of its duly appointed liquidator, wishes to pursue the proceedings before the Court. Therefore, this objection must be dismissed.

60. The Court further reiterates that under Article 35 § 1 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). The burden of proof is on the Government to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of

success. Once this burden of proof has been satisfied, it falls to the applicant to show that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (*Manic v. Lithuania*, no. 46600/11, § 80, 13 January 2015).

61. In the present case, the applicant complained about the loss of its participation in company Q. as a result of allegedly arbitrary judicial proceedings and unlawful actions of the State Registration Chamber. The only available remedies against the judgment of the Chişinău Court of Appeal and the actions of the State Registration Chamber were an appeal on points of law lodged before the Supreme Court of Justice and an administrative action before the Court of Appeal, respectively, remedies which the applicant company made use of. It is true that the action suggested by the Government was in theory capable of helping the applicant recover some of the losses suffered, within a limit equal to the statutory capital of the limited liability company Q., that is EUR 14,377 (see paragraph 35 above); however, that theoretical possibility is irrelevant for the purposes of deciding on the admissibility of the present complaint and could only be taken into consideration when deciding the issues under Article 41 of the Convention (see *Gladysheva v. Russia*, no. 7097/10, § 62, 6 December 2011).

62. As to the Government's submission that the applicant company had failed to raise the objection concerning the statute of limitations, the Court notes that it clearly did so in its appeal on points of law before the Supreme Court of Justice and, as will be shown in paragraphs 73 to 75 below, it was hindered to do so in the proceedings before the Chişinău Court of Appeal.

63. The Court finds, therefore, that the application cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed. It also notes that this application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

64. The applicant submitted that the proceedings before the Chişinău Court of Appeal presented clear signs of arbitrariness. In the first place, the court failed to apply the thirty-day limitation period when examining the case in accordance with the Law on Administrative Courts. Even the general limitation period of three years had expired at the moment when the plaintiff allegedly lodged its supplementary claim to exclude the applicant from the list of partners in December 2010. Moreover, the applicant company was not aware of the plaintiff's supplementary claim to exclude it from the list of

partners, and it did not have a chance to comment on it. The materials of the case file before the Chişinău Court of Appeal presented clear signs of tampering. Thus, the dates in the summons had been hand corrected from 2 March to 2 February 2011 and the minutes of the hearing of 22 December 2010 bore a case number which was attributed to the case only in January 2011. The Supreme Court of Justice did not react in any way to all the above issues raised by the applicant in its appeal on points of law.

65. The Government did not make any comments in respect of the merits of the case.

2. *The Court's assessment*

66. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

67. The “possession” at issue in the present case was the applicant’s shareholding in company Q. with a share of fifty percent and its implicit participation in the contract of 16 October 2007 between company Q. and the State Road Administration of Moldova with a value of EUR 24.5 million. By the judgment of the Chişinău Court of Appeal of 2 February 2011, the applicant lost the above possession in favour of the other partners in company Q.

68. This being so, the Court notes that the present complaint is distinguishable from other cases that have come before it in that it does not concern the taking of property by the State or any form of State-imposed control of use. This was a dispute between private parties and the role of the State was limited to providing, through its judicial system, a mechanism for the determination of the applicants’ civil rights and obligations.

69. The Court reiterates in this respect that proceedings concerning civil-law disputes between private parties do not engage by themselves the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (*Ruiz Mateos v. the United Kingdom*, no. 13021/87, Commission decision of 8 September 1988, Decisions and Reports (DR) 57 p. 268; *Tormala v. Finland* (dec.), no. 41258/98, 16 March 2004; *Eskelinen v. Finland* (dec.), no. 7274/02, 3 February 2004; *Kranz v. Poland* (dec.), no. 6214/02,

10 September 2002; and *Skowronski v. Poland* (dec.), no. 52595/99, 28 June 2001). The mere fact that the State, through its judicial system, provides a “forum” for the determination of a private-law dispute does not give rise to an interference by the State with property rights under Article 1 of Protocol No. 1 (*Kuchař and Štis v. the Czech Republic* (dec.), no. 37527/97, 21 October 1998), even if the substantive result of a judgment given by a civil court results in the loss of certain “possessions”. It is, however, part of the States’ duties under Article 1 of Protocol No. 1 at least to set up a minimum legislative framework including a proper forum allowing those who claim that their right had been infringed to assert their rights effectively and have them enforced. By failing to do so a State would seriously fall short of its obligation to protect the rule of law and prevent arbitrariness (*Kotov v. Russia* [GC], no. 54522/00, § 117, 3 April 2012).

70. The Court’s jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts. Rather, its role is to ensure that the decisions of those courts are not arbitrary or otherwise manifestly unreasonable (*Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I). The State may be held responsible for losses caused by such determinations only if the court decisions are not in accordance with domestic law or if they are flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 or a person has been arbitrarily and unjustly deprived of property in favour of another (*Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005-IX; *Breierova and Others v. the Czech Republic* (dec.), no. 57321/00, 8 October 2002; and *Vulakh and Others v. Russia*, no. 33468/03, § 44, 10 January 2012).

71. The situation in the instant case thus falls to be examined from the standpoint of the first rule, set in the first sentence of the first paragraph of Article 1 of Protocol No. 1, that of the principle of the peaceful enjoyment of property.

72. The Court notes in the first place that under Section 47 of the Law on limited liability companies, a partner in a company may be excluded only in two cases: (a) if he did not make his contribution to the statutory capital or (b) if acting as the manager of the company he committed acts detrimental to the company. Neither of the two situations was invoked by the plaintiff in the proceedings and/or found to be applicable by the Chişinău Court of Appeal in its judgment of 2 February 2011. It therefore would appear that the applicant company’s exclusion was an extra-legal measure which was not provided for by the law in force at the material time.

73. The Court further notes that the plaintiff’s claim concerning the exclusion of the applicant company from the list of partners of company Q. was never brought to the applicant company’s attention. In any event, the domestic case file contains no evidence that the applicant company was ever served with a copy of that claim. While the minutes of the hearing of

22 December 2010 indicate that that claim was made for the first time on that date and that the applicant company was requested to submit its written comments on it by the next hearing, the authenticity and the trustworthiness of those minutes are a matter of serious concern. Not only do those minutes bear a case file number which was not yet available on 22 December 2010 (see paragraph 48 above), but the hearing in question appears to have been adjourned by a decision adopted by the same judge one day earlier (see paragraph 23 above). The Government did not provide an explanation on how the minutes of 22 December 2010 could bear a case file number from the future or how the hearing could have been held despite being adjourned.

74. The Court notes that there are also other inconsistencies in the domestic case file which reinforce its reservations about the authenticity of the minutes of 22 December 2010. In particular, it notes that in spite of the mention in the minutes of 22 December 2010 that the plaintiff had introduced a new claim on that date, the domestic case file contains on page 91 a decision by the judge in charge of the case dated 1 December 2010 to accept that new claim (see paragraph 25 above).

75. The Court notes next that the minutes of the hearing of 20 January 2011 also present signs of tampering when examined in conjunction with other documents present in the domestic case file. Thus, the applicant company claims that on 20 January 2011 the court adjourned the examination of the case until 2 March 2011. That statement is not consistent with the minutes of the hearing on 20 January 2010 which mention that the next hearing was to take place on 2 February 2011. Nevertheless, one of the summons forms and a confirmation form on pages 92 and 94 of the domestic case file appear to indicate ‘02.03.11’, a date which was manually corrected to ‘02.02.11’. No explanation for that correction is found in the case file and none was provided by the Government. Moreover, another summons form on page 93 of the domestic case file was not corrected and indicates, as the applicant claims, ‘02.03.11’ as the date of the next hearing (see paragraph 29 above). Mistakes, including clerical mistakes, cannot be excluded in the work of the courts and they may be corrected. However, when they are not corrected in a legal and transparent manner, a suspicion of tampering arises.

76. In view of the above, the Court finds that the plaintiff’s claim concerning the applicant’s exclusion from the list of partners of company Q. was lodged on an undetermined date not earlier than December 2010 and that the applicant company, which was involved in the proceedings only on 1 December 2010, was never served with a copy of that claim during the proceedings before the Chişinău Court of Appeal. Moreover, in view of several indications of tampering with the summons and confirmation forms and the fact that the Government did not dispute the applicant’s allegation about that tampering and did not explain the presence of the manual corrections, the Court is ready to accept that the applicant company was never informed about the hearing of 2 February 2011 before the Chişinău Court of

Appeal and thus that it was never given a chance to present its defence in those proceedings. Also, the Court cannot but observe other disturbing facts such as the different dates of delivery of the judgment of 2 February 2011 (see paragraphs 34 and 37 above), the extreme speediness of the execution of that judgment and the involvement of a person close to Mr Ș. in the process (see paragraph 34 above).

77. The Court notes further that the applicant company raised all the above issues in its appeal on points of law; however, the Supreme Court of Justice did not respond in any way to the very serious allegations of abuse committed at the stage of the proceedings before the Chișinău Court of Appeal and did not even mention them in its judgment of 20 May 2011.

78. The applicant also raised in its appeal on points of law the problem concerning the statute of limitations and argued that the plaintiff's claim concerning its exclusion from the list of partners was time-barred. Indeed, according to Article 267 of the Civil Code (see paragraph 47 above), it seems that the claim should have been time-barred on 3 May 2010, that is three years after the State Registration Chamber registered the amendments to company Q.'s charter (see paragraph 10 above). Nevertheless, as determined in paragraph 73 above, the claim in question was introduced by the plaintiff not earlier than December 2010, that is, after the alleged expiry of the limitation period.

79. The Supreme Court not only did not give any reasons for not dismissing the plaintiff's claim as time-barred, but it did not even mention in its judgment the applicant company's objection concerning the statute of limitations. The Court recalls that the upholding of an action after the expiry of the time-limit to lodge it, and in the absence of any compelling reasons, is incompatible with the principle of legal certainty (see, among other authorities, *Ipteh SA and Others v. Moldova*, no. 35367/08, § 38, 24 November 2009) and considers that the failure of the Supreme Court of Justice had a serious impact on the proceedings.

80. Having regard to the foregoing, the Court concludes that the Government did not prove that the court decisions which led to the applicant company's loss of its possessions were in accordance with domestic law. Moreover, bearing in mind the findings made above, the Court concludes that the proceedings in which those decisions were adopted were conducted in an arbitrary and manifestly unreasonable manner. Therefore, the Court considers that the State failed in the present case to discharge its duties under Article 1 of Protocol No. 1 to set up a proper forum allowing the applicant company to assert its rights effectively and have them enforced.

81. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

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“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.”

83. The applicant company claimed 3,027,923 euros (EUR) plus a daily interest of EUR 544 calculated between the date of the submission of its claims and the date of adoption of the Court’s judgment, for pecuniary damage. It also claimed EUR 35,000 and EUR 11,307 for non-pecuniary damage and costs and expenses respectively.

84. The Government submitted, *inter alia*, that the applicant’s claim was unsubstantiated and asked the Court to reject it.

85. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and a further procedure fixed, with due regard to the possibility of an agreement being reached between the Moldovan Government and the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision and accordingly
 - (a) reserves the said question;
 - (b) invites the Moldovan Government and the applicants to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 11 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Jon Fridrik Kjølbro
President