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

FIFTH SECTION

CASE OF SEKSIMP GROUP SRL v. THE REPUBLIC OF MOLDOVA

(Application no. 30085/13)

JUDGMENT
(Merits)

Art 6 § 1 (civil) • Fair hearing • Adversarial trial • Proceedings in the applicant company's absence before the first-instance court, in a private-law dispute over alleged failure to fulfil tenancy agreement terms, remedied by a fresh adversarial hearing before a court with full jurisdiction which re-examined case merits • Absence did not render proceedings as a whole unfair
Art 6 § 1 (civil) • Fair hearing • Lack of adequate reasoning • Higher courts' failure to reply to applicant company's specific, relevant and important arguments rendered proceedings unfair
Art 1 P1 • Positive obligations • Peaceful enjoyment of possessions • Enforcement of an order to pay compensation resulting in the sale of the applicant company's property, all without its knowledge • No assessment of the compensation's proportionality • State's failure to discharge its duty to set up a proper forum allowing the applicant company to assert its rights effectively

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 May 2025

FINAL

15/08/2025

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

In the case of Seksimp Group SRL v. the Republic of Moldova,

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

Mattias Guyomar, *President*,
María Elósegui,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 30085/13) 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 Moldovan company, Seksimp Group SRL ("the applicant"), on 1 April 2013;

the decision to give notice of the application to the Moldovan Government ("the Government");

the parties' observations;

Having deliberated in private on 23 April 2025,

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

INTRODUCTION

1. The case concerns a private dispute over the alleged failure to fulfil the contractual obligations of a tenancy agreement, following which the domestic courts ordered the applicant company to pay an allegedly disproportionate amount of compensation without providing sufficient reasoning. The applicant company relied on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant company was incorporated in Moldova in 2002 by S.B., a Slovenian national, who is its sole associate. It was represented by Mr A. Prisac and Mr V. Moisei, lawyers practising in Chișinău.

3. The Government were represented by their Agent, Ms D. Maimescu.

4. The facts of the case may be summarised as follows.

5. According to the applicant company, at the time of the events, its economic activity consisted essentially of renting out its pig barns and plots of land and its associate S.B. was mostly outside Moldova. On 18 June 2010 the applicant company rented out two pig barns and plots of land to the T. company, for an annual rent of 3,600 euros (EUR). On the same day the applicant company rented out three pig barns and plots of land to the L.

company, for an annual rent of EUR 5,400, under the same contractual terms as the agreement with the T. company. Both contracts included the official registered address of the applicant company and the banking details of S.B.'s personal bank account. According to the applicant company, on the same day it issued an invoice to each of the two companies, which contained the applicant company's banking details.

6. On 29 June 2010 the T. company registered the tenancy agreement in the public real estate register.

7. On 3 August 2010, the T. company attempted to transfer the amount of rent to the bank account indicated in the contract, but the payment was returned as the bank account did not belong to the applicant company.

8. On 5 August 2010 the T. company sent a letter to the applicant company's registered address requesting the formal transfer of the pig barns and plots of land and correct banking information. It stated that a failure to respond before 12 August 2010 would be regarded as tacit acceptance of the T. company taking over the pig barns and plots of land. The applicant company did not respond. According to the applicant company, the letter was never delivered to its registered address.

9. On the same day, 5 August 2010, the T. company signed two contracts with the L. company for the purchase of livestock and fodder, undertaking to pay penalties for the late fulfilment of the contract.

10. On 22 February 2011 the T. company initiated court proceedings against the applicant company seeking the termination of the tenancy agreement of 18 June 2010 owing to the applicant company's failure to transfer the pig barns and plots of land and to provide correct banking information.

11. On 22 March 2011 the T. company additionally claimed compensation for pecuniary damage in the amount of 1,219,000 Moldovan lei (MDL – equivalent to EUR 72,370 at the time), which arguably represented the penalty the T. company had paid the L. company under the contracts between them (see paragraph 9 above). The T. company submitted that the applicant company's failure to transfer the pig barns and plots of land and to provide correct banking information had prevented the fulfilment of the terms of the tenancy agreement, which in turn had prevented the T. company from fulfilling its obligations towards the L. company.

12. The Economic District Court sent the summons and the statement of claims by registered post to the applicant company's address indicated in the State Register of Legal Entities. However, both the summons and the statement of claim were returned to the court with a note from the post office stating that "nobody live[d] at the given address".

13. On 18 April 2011, in the applicant company's absence, the Economic District Court granted the T. company's claims in full, concluding that there had been a causal link between the failure of the applicant company to transfer the pig barns and plots of land and to provide banking information, and the

penalties incurred as a result of the T. company's failure to fulfil its obligations towards the L. company.

14. That judgment became final, as no appeal was lodged against it, and the T. company initiated enforcement proceedings.

15. In September 2011, in the course of the enforcement proceedings, in the applicant company's absence, its assets (22 ha of land and ten buildings with a total surface area of over 12,000 sq. m.) were sold at auction for a total amount of MDL 891,500 (equivalent to EUR 53,995).

16. On 21 September 2011 the Chișinău District Court confirmed the results of the auction.

17. When the new owners took ownership of the property in October 2011, the applicant company learned of the civil proceedings, the judgment of 18 April 2011 and the auction.

18. According to the applicant company, on 12 September 2011 all its assets were sold at an auction and on 7 October 2011 they were transferred to B.S. and B.N. Three days later, on 11 October 2011, B.S. and B.N. sold them to M.T. for MDL 2,000,000. The applicant company claims that the assets are currently owned by the D. company which has the same address of registration as the T. company.

19. On 28 October 2011 the applicant company appealed against the first-instance judgment, requesting that the time-limit for appeal be reinstated and that the judgment be quashed. The applicant company argued, among other things, that the case had been examined in its absence, since the summons had never reached S.B. who had not been living in Moldova; that there had been no causal link between the alleged failure to fulfil the terms of the tenancy agreement and the compensation claimed, which was speculative and disproportionate; that the factual transfer of the pig barns and plots of land had taken place and that the T. company had registered the tenancy agreement in the public real estate register. Concerning the banking information, the applicant company argued that S.B. was its sole associate and the contract included his personal bank account, which was known to all the parties. The applicant company also submitted that it became aware of the judgment and enforcement proceedings only on 21 October 2011, when S.B. was informed by the chief accountant about this.

20. On 3 April 2012 the Chișinău Court of Appeal reinstated the time-limit for an appeal for the applicant company, re-examined the merits of the case with its participation and upheld the judgment of the first-instance court. The appellate court did not provide any response to the applicant company's arguments concerning the disproportionate amount of compensation in respect of pecuniary damage ordered by the first-instance court. The relevant parts of the judgment read as follows:

> "... The Chișinău Court of Appeal finds that the first-instance judgment needs to be upheld and that the appeal [lodged by the applicant company] needs to be rejected as manifestly ill-founded.

The first-instance court correctly determined the legal nature of the relationship between the parties and correctly established the important facts necessary for resolving the case.

... In the proceedings [before the first-instance court] it was established beyond doubt that on 18 June 2010 the T. company and [the applicant company] had entered into a contract for the lease of pig barns and land for a five-year term. The rented property belonged to [the applicant company] and the contract had been registered in the public real estate register on 29 July 2010.

... [T]he first-instance court correctly determined that on 5 August 2010 the T. company and the L. company had signed a contract for the purchase of livestock (pigs) – a total quantity of 2,500 for the price of EUR 170,000. Additionally, the T. company and the L. company had signed a contract for the purchase of fodder – a total quantity of 750 tonnes for the price of MDL 3,375,000.

...[T]he first-instance court correctly determined that in accordance with the paragraph 5 of the contract [of 18 June 2010] the T. company had undertaken the obligation to pay the rent in advance.

... Additionally, the first-instance court determined that in accordance with the paragraph 1 of the contract of 18 June 2010 the transfer of the rented property had to be carried out by [signing] a receipt of transfer, which had not been respected by the parties.

As a result, the appellate court rejects as groundless the [applicant company's] argument that the drafting [and signing of] the receipt of transfer had been a simple formality and could not serve as a reason to terminate the contract of 18 June 2010, as that would be contrary to the law and to the contractual provisions.

Moreover, the appellate court holds that [the applicant company] did not submit any evidence to confirm that the rented property had been *de facto* transferred to the T. company, therefore the court finds that the [applicant company's] arguments on the *de facto* transfer of the property are purely declarative.

Moreover, the appellate court finds that the registration of the contract of 18 June 2010 in the public real estate register is just a legal phase, which does not confirm the *de facto* transfer of the property. The [applicant company's] argument that the registration of the contract confirmed the fulfilment of the obligation to transfer the property is therefore groundless.

... The appellate court holds that S.B., the founder of [the applicant company] intentionally provided incorrect banking details for [the applicant company] when signing the contract of 18 June 2010, because he knew that [the applicant company's] bank account had been blocked by the Tax Service for over two years for breaches of tax legislation and failure to submit tax returns.

The first-instance court correctly established that [the applicant company] had not transferred the rented property to [the T. company] and [the T. company] had been forced to refuse the acceptance and [could not] pay for the goods under the contracts [for the purchase of livestock and fodder] of 5 August 2010 and had had to pay the penalties provided by the above-mentioned contracts ... in the total amount of MDL 1,219,000 which had been paid by [the T. company] to [the L. company] thus causing pecuniary damage of MDL 1,219,000. Since it was established that [the T. company] had suffered pecuniary damage, the first-instance court correctly ordered for it to receive compensation."

21. Before the Supreme Court of Justice, the applicant company argued that the amount awarded by the lower courts to the claimant company in compensation for pecuniary damage (EUR 72,370) was disproportionate to the annual rent under the contract between them (EUR 3,600). It relied explicitly on Articles 610 and 612 of the Civil Code, which provided that the extent of compensatory damages had to be reasonably foreseeable, and which required consideration of the fault of the claimant in causing the damage. The applicant company emphasised that the T. company had undertaken to pay excessive penalties under two contracts with the L. company – the enforcement of which had allegedly depended on the contract between the T. company and the applicant company – which had been signed on the same day on which the T. company had allegedly notified the applicant company of its failure to fulfil the contract between them. The applicant company contended that the T. company had knowingly taken such a risk and should therefore bear the burden of paying the excessive penalties alone. Concerning the banking information, the applicant company submitted that the Civil Code allowed the T. company to make a valid payment to S.B., who was the sole associate of the applicant company.

22. On 11 October 2012 the Supreme Court of Justice declared the applicant company's appeal on points of law inadmissible, relying on the arguments of the appellate court. The relevant parts of the judgment read as follows:

> "...[B]oth the first-instance court and the appellate court correctly applied the material law. As it has already been established, the T. company could not fulfil its payment obligations because the bank account indicated by [the applicant company] in the contract of 18 June 2010 did not exist and [the applicant company] did not [subsequently] provide it, even though it was requested to do so on 5 August 2010, at the same time the T. company asked for the transfer of the [rented] property and [for the applicant company] to sign the receipt of transfer, both expressly required by the contract of 18 June 2010.
>
> ... [T]he failure to fulfil the obligation to transfer the [rented] property led to the termination of the contracts [for the sale of livestock and fodder] signed between the T. company and the L. company ... and [caused] the subsequent payment [to the L. company] of compensation for the pecuniary damage on account of the failure to fulfil those obligations. [The lower courts] therefore correctly granted the claim in respect of pecuniary damage."

23. After the communication of the present case to the Government, its Agent lodged a request with the Chișinău Court of Appeal to reopen domestic proceedings, seeking the acknowledgement of a violation of the applicant company's rights guaranteed by Article 6 § 1 of the Convention and by Article 1 of Protocol No. 1 to the Convention and an award in respect of non-pecuniary damage within the limits of the awards made by the Court under Article 41 of the Convention.

24. On 10 October 2023 the Chișinău Court of Appeal partially upheld the Agent's request for the reopening of the proceedings ("*revizuire*"). In

particular, it quashed its own decision of 3 April 2012 on the grounds of the existence of a fundamental flaw in the previous procedure and ordered a fresh examination of the applicant company's appeal (see paragraph 20 above). The court did not acknowledge a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention and rejected the request to award the applicant company compensation in respect of non-pecuniary damage, concluding that it lacked jurisdiction to rule on such matters. The examination of the applicant company's appeal is still pending.

25. The Government Agent subsequently sought an additional decision ("*încheiere suplimentară"*) in the same revision proceedings from the Chişinău Court of Appeal to explicitly rule on his request for an acknowledgment of the breach of the applicant company's right. After this request had been rejected by the appellate court, the Supreme Court of Justice sent the case back to the appellate court for a fresh examination of the request; the proceedings are still pending before the appellate court.

RELEVANT DOMESTIC LAW

26. The relevant provisions of the Civil Code, enacted on 22 June 2002, read at the time as follows:

Article 610. Extent of compensation

"...

3. Only the damage that represents the immediate (direct) effect of non-fulfilment is subject to reparation.

4. The compensation does not extend to the damage which, according to the debtor's experience, could not be reasonably foreseen in the case of an objective assessment.

..."

Article 612. Liability of the entitled person for the occurrence of damage

"1. If the person entitled to compensation contributed to the occurrence of the damage, the existence and extent of the compensation shall depend on the circumstances and, in particular, on the extent to which the damage is caused by one party or the other.

..."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

27. In their further submissions of 25 June 2024, the Government referred to the reopened and still pending domestic proceedings (see paragraph 23-25 above) and argued that in case of a favourable outcome the applicant company might lose its "victim" status or that its complaints were premature.

28. The Court notes that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party, in so far as the nature of the objection and the circumstances so allow, in its written or oral observations on the admissibility of the application. Any omission by the Government to raise such objections in their initial observations on the admissibility of the case may lead the Court to conclude that they are estopped from raising those objections at a later stage in the proceedings (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, 15 December 2016; *Naskov and Others v. North Macedonia*, nos. 31620/15 and 2 others, § 62, 12 December 2023; *Varyan v. Armenia*, no. 48998/14, § 72, 4 June 2024). The Court notes that in the present case the relevant new facts preceded the date of the Government's first observations of 24 March 2024 and that the proceedings in question were initiated by the Government Agent after the communication of the case. Therefore the Court finds that the Government are estopped from relying on those grounds, which were not raised in their initial submissions.

29. Moreover, regarding the applicant company's victim status, the Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V). The Court has accepted that applicants can still claim to be victims of the alleged violations even where they received some compensation or where other solutions to remedy their situations were applied but needed to be assessed by the Court in the light of the guarantees of Article 1 of Protocol No. 1 (see, for example, *Paplauskienė v. Lithuania*, no. 31102/06, §§ 27-31 and 52, 14 October 2014). In the present case, the national authorities have neither acknowledged a breach of the applicant company's rights, nor have they afforded any redress. The mere reopening of domestic proceedings after the communication of the case by the Court some ten years after the events referred to in the application, does not suffice to deprive the applicant company of its "victim" status.

30. Accordingly, the Government's objections must be dismissed.

31. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant company complained under Article 6 § 1 of the Convention that the case had been examined at first-instance in its absence and that the court decisions had been insufficiently reasoned. It relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

33. The Court notes the two distinct elements of this complaint: the examination of the case at first-instance in the applicant company's absence and the reasons provided by the domestic courts. The Court will now examine each in turn.

A. Proceedings *in absentia* before the first-instance court

1. *The parties' submissions*

34. The applicant company argued that the first-instance court had failed to take all the necessary steps to summon it properly, while the appellate court had failed to send the case back to the first-instance court for re-examination.

35. The Government argued that the applicant company had been properly summoned because the first-instance court had sent both the summons and the statement of claim to the applicant company's registered address and both had been returned unclaimed by the recipient from the post office. The Government also noted that the applicant company had had a fresh adversarial hearing before the Chișinău Court of Appeal, which had re-examined the merits of the case. They concluded that the complaint was manifestly ill-founded.

2. *The Court's assessment*

(a) General principles

36. The Court reiterates that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017). They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his or her opponent or opponents (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009).

37. The general principles concerning the summoning of parties to the proceedings have been summarised in *Bacaksız v. Turkey* (no. 24245/09, §§ 52-57, 10 December 2019). In cases where civil proceedings were conducted without the participation of the applicants, the Court verifies (i) whether the authorities had been diligent in informing the applicants of the proceedings, and whether the applicants could be considered to have waived their right to appear before the courts and to defend themselves; and (ii) whether domestic law provided the applicants with the appropriate means to secure a fresh adversarial hearing, once they had learnt of the default judgments against them. Even if the parties to proceedings demonstrate a

certain lack of diligence, the Court has held that the consequences attributed to their behaviour by the domestic courts must be commensurate to the gravity of their failings and take heed of the overarching principle of fair hearing. Lastly, a defect at first instance may be remedied on appeal, as long as the appeal body has full jurisdiction to quash the impugned decision and either to take the decision itself, or to remit the case for a new decision (ibid., §§ 56-57).

(b) Application of those principles to the circumstances of the case

38. Turning to the circumstances of the present case, the Court notes that it is undisputed that the applicant company never received the summons for the first-instance proceedings. While the summons appear to have been sent to its registered address, they were returned unclaimed (see paragraph 12 above). However, even assuming that the first-instance court had failed to properly notify the applicant company of the proceedings against it and/or that the applicant company had not been diligent in collecting post from its registered address, the Court notes that the applicant company was able to obtain a fresh adversarial hearing after it had learned of the first-instance judgment of 18 April 2011.

39. In particular, the Court observes that the applicant company was able to put forward its arguments concerning the disproportionate amount of compensation claimed and dispute the facts and the evidence in appellate proceedings, which could have resulted in the quashing of the first-instance judgment and the adoption of a new judgment on the merits.

40. Consequently, the Court finds that the applicant company was able to secure in practice a fresh adversarial hearing before a court with full jurisdiction such as the Chișinău Court of Appeal, which re-examined the merits of the case and thus its absence at first-instance was remedied.

41. Having regard to the foregoing, the Court concludes that the applicant company's absence before the first-instance court did not render the proceedings as a whole unfair. Accordingly, it finds that there has been no violation of Article 6 § 1 in this respect.

B. Reasoning of judicial decisions

1. The parties' submissions

42. The applicant company complained that the domestic courts had failed to provide sufficient reasons in their decisions. In particular, the applicant company complained that its arguments regarding the disproportionality of the compensation claimed compared to the amount of the annual rent and the fault of the claimant company in causing the damage, which it had raised before the Chișinău Court of Appeal and before the Supreme Court of Justice, had not been addressed. The applicant company

also argued that both courts had ignored the fact that an invoice containing its banking information had been issued on 18 June 2010. The applicant company explained that the contract with the T. company contained S.B.'s personal bank account and that their agreement had been that the rent was to be paid to that account rather than to the applicant company's bank account.

43. The Government disagreed and argued that the domestic courts had provided sufficient reasons for their decisions and had not been required to give reasons to every argument raised by the applicant company.

2. *The Court's assessment*

(a) General principles

44. Article 6 requires the domestic courts to adequately state the reasons on which their decisions are based (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 185, 6 November 2018).

45. Without requiring a detailed answer to every argument, this obligation presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (ibid., § 185, with a further reference).

46. The extent to which the duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of the circumstances of the case (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 37, 20 March 2009, with further references).

(b) Application of those principles to the circumstances of the case

47. The Court notes that in the present case the applicant company raised before the domestic courts the arguments that the amount of compensation in respect of pecuniary damage had been disproportionate to the annual rent; that the lower courts had failed to apply the provisions of the Civil Code, which determined the extent of compensatory damages and which required account to be taken of the claimant company's fault in causing the damage; and that the T. company, knowing about the applicant company's alleged failure to fulfil the contract, had entered into two contracts with the L. company, undertaking to pay excessive penalties (see paragraph 21 above). However, the domestic courts made no attempt to analyse the applicant company's arguments despite their being specific, relevant and important for the outcome of the case (see paragraphs 19 and 21 above).

48. The Court therefore considers that the arguments made by the applicant company required an express reply from the domestic courts. The principle of fairness enshrined in Article 6 of the Convention was disturbed when they ignored these important points made by the applicant company (see, for example, the more recent *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, § 82, 14 January 2021). In the light of this finding, the Court considers that there is no need to examine the other aspect of the applicant company's complaint under Article 6 of the Convention concerning the absence of adequate reasoning in respect of the invoice of 18 June 2010 (see paragraph 42 above).

49. The Court therefore concludes that there has been a violation of Article 6 § 1 of the Convention in relation to the lack of adequate reasoning in the domestic courts' decisions.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

50. The applicant company complained that it had been the victim of a corporate "raider attack" and that as a result it had 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. The parties' submissions

51. The applicant company submitted that the domestic courts had ordered it to pay a disproportionate amount in respect of pecuniary damage without a proper assessment of the claimant company's fault in causing the damage and of the proportionality of the amount ordered in respect of pecuniary damage to the circumstances of the case. It assessed that it had been subjected to a corporate "raider attack", aimed to deprive it of its possessions, organised by the T. and L. companies with the involvement of the courts and other law-enforcement bodies. As a result of this "attack", the ownership of the applicant company's pig barns and plots of land had been transferred to a third party acting unofficially in the T. company's interest.

52. The Government submitted that in the present case the State had provided a forum for the determination of a private-law dispute between the private parties concerning their contractual arrangements, in which the applicant company had been unsuccessful and which did not give rise to an interference by the State with its property rights under Article 1 of Protocol No. 1 to the Convention, since it was the function of the courts to determine disputes between parties. As for the alleged deprivation of the

applicant company's property rights over the pig barns and plots of land, the Government submitted that the dispute between the parties had concerned the compensation claimed in respect of pecuniary damage, even if the subsequent enforcement proceedings had resulted in the loss of property.

B. The Court's assessment

1. General principles

53. 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).

54. The Court reiterates that proceedings concerning civil-law disputes between private parties, as in the present case, do not engage by themselves the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 310, 18 July 2019; *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 250, 12 December 2013). 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 (see *Theo National Construct S.R.L. v. the Republic of Moldova*, no. 72783/11, § 69, 11 October 2022), even if the substantive result of a judgment given by a civil court results in the loss of certain "possessions". The State may be held responsible for losses caused by such determinations if court decisions are not given in accordance with domestic law or if they are flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 (see, for example, *Vulakh and Others v. Russia*, no. 33468/03, § 44, 10 January 2012). However, 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 (see, for example, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

55. The Court has repeatedly held that Article 1 of Protocol No. 1 also establishes some positive obligations (see *Kotov v. Russia* [GC], no. 54522/00, § 109 and 111, 3 April 2012). In certain circumstances Article 1 of Protocol No. 1 may require “measures which are necessary to protect the right of property ..., even in cases involving litigation between individuals or companies” (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, and *Antonopoulou v. Greece* (dec.), no. 46505/19, § 55, 19 January 2021). The Court has held, in particular, that States were under an obligation to afford judicial procedures that offered the necessary procedural guarantees and therefore enabled the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private persons. In ascertaining whether those requirements have been satisfied, the Court must take a comprehensive view of the applicable procedures (see *Gherardi Martiri v. San Marino*, no. 35511/20, §§ 103-106 15 December 2022, with further references).

2. *Application of those principles to the circumstances of the case*

56. The Court notes that in the present case the applicant company had been ordered by a court to pay a private company an amount of money and the enforcement of that order had resulted in the sale of the applicant company’s property, all without its knowledge. The situation in the present case thus falls to be examined under the first rule, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (the principle of peaceful enjoyment of property). As its case-law bears out, the Court’s task in the present case is therefore to assess whether the domestic courts’ decisions to order the applicant company to compensate the T. company for the allegedly incurred damages were given in accordance with the relevant provisions of the Civil Code (see paragraph 26 above) and whether they were arbitrary or manifestly unreasonable.

57. It observes in particular that the first-instance court ordered the applicant company to pay compensation in respect of pecuniary damage in an amount which exceeded twenty times the value of its contract with the T. company (see paragraphs 11 and 13 above). This compensation allegedly resulted from a chain of contractual obligations between the applicant company and the T. company and then between the T. company and a third party. However, the first instance court did not assess the proportionality of the amount in relation to the actual conduct and risk assumed by the applicant company, thereby not applying the relevant provisions of the Civil Code (see paragraph 26 above). The court held the applicant company fully liable for the T. company’s high-risk contracts concluded with a third party, which were subject to heavy penalties. However it failed to assess if the T. company had contributed to the occurrence of the damage by undertaking commercial risks under such penalties in the circumstances described above and whether the applicant company’s disputed failure to comply with its own contractual

obligations and lack of due diligence was proportionate to the damage allegedly suffered.

58. Furthermore, the applicant company only became aware of the judgment of the first instance court in October 2011 after it had already been enforced and the applicant company's property sold at auction. While the applicant company could have challenged the auction and the enforcement proceedings, it had no chance of stopping the auction and the enforcement as long as the judgment of the first instance court in the main proceedings remained in force. As regards the applicant company's appeal against this judgment, the Court has found that the ensuing proceedings before the Chișinău Court of Appeal and before the Supreme Court of Justice were not fair and in breach of Article 6 of the Convention (see paragraphs 47-49 above).

59. In such circumstances, the Court cannot but conclude that the State has failed until now to discharge its positive obligation under Article 1 of Protocol No. 1 to the Convention to set up a proper forum allowing the applicant to assert its rights effectively (see among others, *Theo National Construct SRL v. the Republic of Moldova*, cited above § 80; *Bilyavska v. Ukraine*, no. 84568/17, § 48, 27 March 2025).

60. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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."

62. The applicant company claimed 997,677,050 euros (EUR) in respect of pecuniary damage, consisting of the value of the property sold at auction in the enforcement proceedings (EUR 3,435,380) and lost profit (EUR 994,241,670). The applicant company did not submit any claim in respect of non-pecuniary damage or costs and expenses.

63. The Government submitted that the claim in respect of pecuniary damage was unsubstantiated and asked the Court to reject it.

64. 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 Government and the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 of the Convention in relation to the proceedings *in absentia* before the first-instance court;

3. *Holds* that there has been a violation of Article 6 of the Convention in relation to the lack of adequate reasoning in the domestic courts' decisions;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *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 Government and the applicant company to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 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 15 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President