



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

FOURTH SECTION

CASE OF OFERTA PLUS S.R.L. v. MOLDOVA

(Application no. 14385/04)

JUDGMENT
(Just satisfaction)

STRASBOURG

12 February 2008

FINAL

07/07/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Oferta Plus S.R.L. v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Lech Garlicki,

Ján Šikuta, *judges*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 14385/04) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Oferta Plus S.R.L., a company incorporated under Moldovan law (“the applicant”), on 13 April 2004.

2. In a judgment delivered on 19 December 2006 (“the principal judgment”), the Court held that there had been a violation of the applicant company’s rights provided for by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention as a result of the non-enforcement of a final judgment followed by the abusive quashing of it and that there had been a violation of Article 34 of the Convention as a result of malicious criminal proceedings instituted against the applicant company’s chief executive officer in order to dissuade him from pursuing the present application and as a result of the impossibility for the applicant’s representative’s conferring with the chief executive officer of the applicant company without being separated by a glass partition (see *Oferta Plus S.R.L. v. Moldova*, no. 14385/04, 19 December 2006).

3. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue.

4. The applicant and the Government each filed observations.

THE FACTS

5. The applicant, Oferta Plus S.R.L., is a company incorporated under the law of Republic of Moldova.

1. Background to the case

6. The background to this case lies in a series of complex contractual arrangements made in 1997 concerning importation of electricity from Ukraine to Moldova and involving, in addition to the applicant company, a Moldovan State-owned power distribution company called Moldtranselectro, a Ukrainian State-owned power distribution company and a Ukrainian private company. The agreement to which Oferta Plus was a party provided, *inter alia*, that it would pay the Ukrainian private company for the electricity energy supplied to Moldtranselectro in United States Dollars (USD) and would later be paid back by Moldtranselectro in Moldovan Lei (MDL) at the official exchange rate of the day of payment.

7. On unspecified dates between 1997 and 1998 the applicant company paid USD 33,000,000 for the electricity supplied to Moldtranselectro from Ukraine.

8. On an unspecified date Moldtranselectro paid the applicant company MDL 189,869,277.

9. On 3 March 1998 the Government of Moldova adopted Decision No. 243 by which the Ministry of Finance was authorised to issue Treasury nominative bonds in favour of private companies for the payment of debts arising from the importation of electricity supplied to state institutions.

10. On 25 March 1998 Moldtranselectro wrote a letter to the Ministry of Finance asking it to issue a Treasury nominative bond ("Treasury bond") with a value of MDL 20,000,000 in favour of Oferta Plus.

11. On 27 March 1998 the Ministry of Finance issued a Treasury bond valued at MDL 20,000,000 (USD 4,240,702 at the time) in favour of the applicant company, payable by 10 July 1998. The Treasury bond provided that the applicant company had to present it to the Ministry of Finance at least ten banking days before the date of payment. It also provided that Moldtranselectro had to present, by that date, to the Ministry of Finance, documents proving the supply of electricity to state institutions.

12. The applicant company presented the Treasury bond to the Ministry of Finance ten banking days before the date of payment. However, the latter refused to pay, on the ground that Moldtranselectro had failed to submit evidence concerning the payment by Oferta Plus for the imported electricity.

2. The court proceedings between Oferta Plus and the Ministry of Finance and the subsequent enforcement proceedings

13. In October 1998 the applicant company initiated civil proceedings against both the Ministry of Finance and Moldtranselectro. The Ministry of Finance defended the action on the grounds set out in paragraph 12 above while Moldtranselectro declined all responsibility.

14. On 27 October 1999 the Chisinau Economic Court found in favour of the applicant company and confirmed its right to be paid MDL 20,000,000 by the Ministry of Finance, in accordance with the Treasury bond. It based its judgment on the finding that Oferta Plus had paid for energy supplied to Moldtranselectro from Ukraine in accordance with the agreement between them and that that energy had been consumed by state institutions. The court considered that the fact alone that Moldtranselectro had failed to comply with its obligation provided for in the Treasury bond was not enough to absolve the Ministry of Finance from its obligation to pay. The court also decided to absolve Moldtranselectro of any responsibility.

15. Since the Ministry of Finance's appeal was dismissed on 25 November 1999 for failure to pay court fees, a warrant for the enforcement of the judgment of 27 October 1999 was issued to the applicant company in November 1999.

16. On 14 February 2000 the applicant company officially requested a bailiff to start the enforcement procedure under the warrant.

17. On 27 April 2000 the Ministry of Finance requested an extension of the time-limit for lodging an appeal against the judgment of 27 October 1999 and its request was granted. The appeal was examined on the merits and dismissed by a judgment of the Appeal Chamber of the Economic Court of the Republic of Moldova on 4 October 2000. The Ministry of Finance lodged an appeal on points of law reiterating that Moldtranselectro had not complied with its obligation provided for in the Treasury bond.

18. On 7 February 2001 the Supreme Court of Justice dismissed the appeal and upheld the judgments of 27 October 1999 and 4 October 2000. It found it undisputed that Oferta Plus had paid for electricity supplied from Ukraine to Moldtranselectro and consumed, *inter alia*, by state institutions. The failure of Moldtranselectro, which was a State company, to fulfil its obligations *vis à vis* the Ministry of Finance by presenting it with the documents required by the latter, could not affect the rights of the applicant company, which had paid for electricity supplied from Ukraine. It noted that the Treasury bond did not contain any provision making the payment dependent on the fulfilment of Moldtranselectro's obligations towards the Ministry of Finance. The court also noted that the applicant company had on many occasions asked the Ministry of Finance for payment, but that the Ministry had refused and asked for the documents which should have been presented by Moldtranselectro. The court considered the Ministry of

Finance's request to be unlawful and argued that, according to the law, it was Moldtranselectro that should have presented the documents.

19. In March 2001, following a request by the Ministry of Finance, the Prosecutor General's Office introduced a request for annulment of the final judgment of the Supreme Court of Justice. On 7 May 2001 the Plenary Supreme Court of Justice dismissed it and upheld the judgments favourable to the applicant company. It found, *inter alia*, that both during the proceedings before the lower courts and before the Plenary Supreme Court, it was established that electricity had been supplied to state institutions in a volume exceeding MDL 20,000,000. The fact that Moldtranselectro had failed to comply with its obligations towards the Ministry of Finance could not have had any influence on the right of the applicant company to be paid.

20. On 19 June 2003 the applicant sold a part of the Ministry's debt, amounting to MDL 291,801, to a third company.

21. Since the judgment of 27 October 1999 had still not been enforced, on 26 December 2003, at the applicant company's request, the Ministry of Finance agreed to conclude an agreement, according to which the Ministry would pay MDL 2,000,000 each month from January to October 2004 in exchange for the applicant's promise not to initiate further claims for damages.

22. Between January and March 2004 the Ministry paid MDL 4,000,000 to the applicant company.

23. On an unspecified date the Ministry paid MDL 291,801 to a third company (see paragraph 20 above).

24. The Ministry of Finance then stopped making the payments, and on 14 April 2004 the applicant company informed the Government Agent that it had introduced an application with the Court complaining about the failure to enforce the judgment.

25. On 26 April 2004 the Government Agent informed the Ministry of Finance about the applicant company's application with the Court and requested it to "take all the necessary steps in order to avoid a finding of a violation against the State by the Court and the impairment of the country's image".

26. On 11 May 2004 the Ministry of Finance paid MDL 1,000,000 to the applicant company. After that date all the payments were stopped. There were no further payments after that date.

3. The revision of the final judgment of 7 February 2001

27. On 7 June 2004 the Ministry of Finance wrote to the Prosecutor General's Office informing it, *inter alia*, that it considered the judgment in favour of the applicant company to be unlawful, but that it had complied with it partially, so that Oferta Plus would not complain to the Court. The Government Agent had informed it that Oferta Plus had already complained

to the Court. The Ministry asked the Prosecutor General's Office for its advice.

28. On 8 June 2004 the Prosecutor General's Office wrote to the Ministry as follows:

“...during the proceedings [between the applicant company, Moldtranselectro and the Ministry of Finance] the applicant company and Moldtranselectro presented invoices for MDL 15,608,692, of which by 24 April 1998 only MDL 6,226,504 had been paid.

No other evidence as to the extent to which Oferta Plus had fulfilled its obligations under the agreement [of 1997] has been presented. Despite this the courts ruled in its favour.

In that respect the Prosecutor General's Office has ordered an audit to verify the supply of electricity and the payments between Oferta Plus, Moldtranselectro and state institutions. A final decision will be adopted by the Prosecutor General's Office after the results of the audit become available to it and the Ministry of Finance will be informed accordingly.”

An attempt to carry out this audit was made in August 2004 by a representative of the Ministry of Finance at the request of the Prosecutor General's Office. However, it was unsuccessful because, in accordance with book-keeping legislation, the applicant company had destroyed the accounting documents after three years.

29. The Ministry of Finance did not wait for a final reply from the Prosecutor General's Office and on 15 June 2004 lodged with the Plenary Supreme Court of Justice a request for revision of the judgments in favour of the applicant company. The request referred to Article 449 of the Code of Civil Procedure but did not specify any reasons for revision.

30. On 12 July 2004 the applicant company submitted to the Supreme Court its observations on the revision request in which it argued, *inter alia*, that the Ministry had not indicated any reasons for revision, that the revision request was time-barred and if the request were to be upheld this would amount to a breach of the principle of legal certainty.

31. On the same date the Plenary Supreme Court of Justice upheld the revision request, following a hearing at which the Ministry of Finance was represented by the deputy Prosecutor General. It quashed the judgments in favour of the applicant company and ordered the reopening of the proceedings. It relied on the Prosecutor General Office's letter of 8 June 2004 (see paragraph 28 above), which had been submitted by the Ministry during the hearing. The Plenary considered the letter to be a new and essential fact or circumstance which was unknown and could not have been known earlier, in accordance with the provisions of Article 449 (c) of the Code of Civil Procedure. In particular it considered new and essential the submission of the Prosecutor General's Office that “by 24 April 1998 only

MDL 6,226,504 had been paid”. The Supreme Court of Justice did not address in its judgment the objections raised by the applicant company.

4. *The reopened proceedings*

32. On 3 November 2004 the Economic Court of Appeal held a hearing in the re-opened proceedings. Unlike the first round of proceedings, Moldtranselectro sided this time with the Ministry of Finance and argued that Oferta Plus’s action should be dismissed because it (Moldtranselectro) had already covered the entire debt for the electricity supplied, including MDL 20,000,000 provided in the Treasury bond, by paying Oferta Plus MDL 189,869,272 on an unspecified date.

The court upheld the applicant company’s action and ordered the Ministry of Finance to pay it MDL 20,000,000 in accordance with the Treasury bond. It based its judgment on the fact that the supply of the electricity and the cost of the supplied energy were not disputed by the parties. Referring to the electricity supplied to state institutions, it found that by 1 March 1998 they had consumed MDL 27,551,000 worth of electricity imported from Ukraine with the participation of Oferta Plus.

In the court’s view, the Treasury bond constituted an incontestable obligation on the Ministry of Finance towards Oferta Plus, which could not depend on the fulfilment of third party obligations.

Referring to the submissions of Moldtranselectro concerning the payment of MDL 189,869,272 to the applicant company, the court argued that that amount represented USD 33,133,404 at the date of supply of the electricity, but not at the date of payment of the MDL 189,869,272. The court held that at the date of payment of the above amount by Moldtranselectro, USD 33,133,404 was worth MDL 210,692,688.

Referring to the amounts indicated by the Prosecutor General’s Office in its letter dated 8 June 2004, which served as a basis for the revision of the final judgment of 27 October 1999 (see paragraph 28 above), the court found that those figures were related to a completely different matter and were irrelevant to the case before it.

The Ministry of Finance appealed against this judgment to the Supreme Court of Justice.

33. On 10 February 2005 the Supreme Court of Justice upheld the Ministry’s Appeal and dismissed the applicant company’s action against it. While not contesting the findings of the first-instance court (see the preceding paragraph) and while confirming that electricity was supplied to Moldtranselectro and consumed, *inter alia*, by state institutions, it made its own calculations directly in USD without converting the amounts to MDL, and came to the conclusion that the entire debt owed by the State to the applicant company had been covered by the payment of MDL 189,869,272 by Moldtranselectro to the former. The Supreme Court also ordered the applicant company to pay the court fees of MDL 600,000.

34. On 17 March 2005 the Ministry of Finance lodged with the Economic Court of Appeal a request for the return of the MDL 5,291,801 which had been paid in accordance with the judgment of 7 February 2001. The applicant company argued, *inter alia*, that the request had been lodged out of time and that in any event the amount of MDL 291,801 had never been paid to it, but had instead been paid to a third person (see paragraphs 20 and 23 above).

35. By a final judgment of 29 September 2005 the Supreme Court of Justice upheld the request of the Ministry of Finance. It dismissed the applicant company's submission concerning the time-limit and ignored its submission concerning the MDL 291,801 which had been paid to a third person.

5. Facts related to the applicant company's complaints under Article 34 of the Convention

36. On 19 October 2004, the Prosecutor General's Office, having examined the letter of the Ministry of Finance of 7 June 2004 (see paragraph 28 above) initiated criminal proceedings against the applicant company and against the head of Moldtranselectro on charges of large-scale embezzlement of State property. The Prosecutor General's Office referred to the results of the audit which it had attempted to carry out in August 2004 (see paragraph 28 above) and stated, *inter alia*, that according to the results of that audit, Oferta Plus had not paid for electricity supplied to state institutions.

37. On 15 April 2005 the Chief Executive Officer of the applicant company ("C.T.") was questioned by the Prosecutor General's Office.

38. On 20 April 2005 the offices of the applicant company were searched and some documents were seized.

39. On 25 October 2005 the criminal proceedings were discontinued. The prosecutor in charge of the criminal case stated in his decision of discontinuation, *inter alia*, the following:

"According to the evidence obtained during the audit, between 1997 and 2000 Moldtranselectro's debt to Oferta Plus reached MDL 202,644,866...

The materials gathered [during the investigation] and the audit prove the existence of the debt of Moldtranselectro to Oferta Plus for the electricity supplied. The transfers [of MDL 5,000,000 by the Ministry of Finance] to Oferta Plus's accounts were carried out in accordance with court judgments...

Taking into consideration the evidence gathered, [the prosecution concludes] that the acts of Oferta Plus's management do not disclose any signs of the offence [of large-scale embezzlement] or of other offences."

40. On 8 December 2005 all the bank accounts of the applicant company were frozen by a bailiff to ensure the restitution of MDL 5,291,801. The company had to make all of its employees redundant, except for C.T.

41. On 15 February 2006 the Court communicated the present case to the Moldovan Government.

42. On 26 April 2006 the Deputy Prosecutor General quashed the decision of 25 October 2005. He submitted, *inter alia*, that on 1 January 2001 Moldtranselectro's debt to the applicant company for the electricity supplied had been MDL 38,454,671. He argued that while Oferta Plus had paid the Ukrainian partner more than MDL 20,000,000 for the electricity supplied to Moldtranselectro, it appeared that the energy for which it had paid was not supplied exclusively to state institutions. He also noted that Oferta Plus had transferred a part of the debt to third companies in exchange for money and goods. He requested, in particular, that an international fact-finding mission be sent to Ukraine and that the books of the applicant company be seized.

43. On 11 May 2006 C.T. was declared a suspect in the criminal proceedings. In a decision of the same date, it was reiterated that on 1 January 2001 Moldtranselectro's debt to Oferta Plus for the electricity supplied had been MDL 38,454,671. However, the electricity for which Moldtranselectro owed this amount had not been supplied to state institutions.

44. On 9 August 2006 a prosecutor issued a decision by which C.T. was officially indicted for misappropriation of MDL 5,000,000 and attempted misappropriation of MDL 15,000,000. The charges against him were based on the fact that the energy supplied to Moldtranselectro, for which the applicant company had paid the Ukrainian private company, had not been consumed by state institutions. The prosecution argued that a Treasury bond could be issued by the Ministry of Finance only for energy supplied to state institutions. Contrary to that provision, Moldtranselectro had asked the Ministry of Finance on 25 March 1998 to issue a Treasury bond in favour of Oferta Plus and such a bond had been issued by the Ministry of Finance on 27 March 1998.

After that, Oferta Plus, in the person of V.L., its former chief executive, making use of the favourable environment created for his company by the illegal actions of Moldtranselectro, and seeking to obtain MDL 20,000,000, had initiated civil proceedings against the Ministry of Finance, and in the absence of any proof that electricity had been supplied to state institutions, illegally obtained judgments in its favour.

However V.L. could not complete his criminal intention of misappropriating MDL 20,000,000 due to circumstances which were independent of his will (he was killed).

The criminal intention to misappropriate MDL 20,000,000 was continued by C.T., the present Chief Executive Officer of Oferta Plus.

Despite the fact that on 23 May 2002 Moldtranselectro owed Oferta Plus only MDL 3,948.49, C.T. had pursued his criminal intention by pressing the Ministry of Finance repeatedly to comply with the judgment of 27 October

1999. As a result, on 26 December 2003 the Ministry of Finance had concluded an agreement with him and later transferred MDL 5,000,000 to Oferta Plus.

Later C.T. transferred the money to the account of a third company, which also belonged to him, from where it had been transferred to his wife's personal account and later withdrawn in cash.

Referring to the reopened proceedings which followed the judgment of the Plenary Supreme Court of 12 July 2004, the prosecutor noted that, despite being well aware that Oferta Plus had not paid for energy supplied to state institutions, C.T. had managed to obtain a judgment in favour of Oferta Plus before the first-instance court. C.T. had presented evidence which, while showing the payment for electricity, did not prove that the electricity had been supplied to state institutions.

45. Also on 9 August 2006, according to the applicant company, C.T. was told by the investigating officer, Eugen Bîcu, that no criminal charges against him would have been instituted had he contented himself with MDL 5,000,000.

46. On the same date C.T. was arrested and a request for him to be remanded in custody for thirty days was addressed to the Buiucani District Court.

47. A detention warrant for a period of thirty days was issued by the investigating judge of the Buiucani District Court on the same day. The judge argued, *inter alia*, that C.T. had attempted to influence a witness. He relied on a transcript of a telephone conversation of 12 May 2006, which, however, was never disclosed to the defence, despite the latter's requests.

48. C.T. appealed against the detention warrant and argued, *inter alia*, that the criminal proceedings against him had been a form of pressure to persuade Oferta Plus to abandon its application before the Court. He complained that he and his lawyers had not been allowed to see the transcript of the telephone conversation which was the main reason for his detention and insisted that he had not made any attempt to influence any witnesses.

He also argued that he had become the CEO of Oferta Plus only in late 2003 and thus had not even been involved in the transaction between the applicant company and Moldtranselectro and that in any event the electricity had been supplied to Moldtranselectro, which was a State company and held a monopoly on distribution of electricity at that time. The applicant company could not know the final consumers of the electricity.

49. On 15 August 2006 C.T.'s appeal was dismissed. The Court of Appeal did not give any assessment of the argument concerning C.T.'s lack of access to the transcript of the telephone conversation.

50. In the meantime, on 14 August 2006, the applicant company's lawyer in the present case applied to the Centre for Fighting Economic Crimes and Corruption ("CFECC") to visit C.T. He pointed out that he was

Oferta Plus's lawyer in the proceedings before the Court and submitted that he needed to see C.T. in order to prepare together with him the observations due on 22 August 2006. He asked that the meeting between them take place without a glass partition separating them, since he knew that there was such a partition in the CFECC lawyer-client meeting room. He submitted that both he and C.T. had reason to believe that conversations through the glass partition in the CFECC meeting room were intercepted and that they were convinced that the criminal proceedings against C.T. had been instituted in order to discourage Oferta Plus from pursuing its application before the Court. He argued that their separation by the glass partition, especially in such conditions, would not allow them to speak freely and would seriously hinder his ability to represent the applicant company before the Court. The lawyer further argued that C.T. was not a violent person and that there was no risk that he would attack his lawyer. In any event he, the lawyer, would bear responsibility for any attack. He also declared that he would allow the CFECC representatives to search him, except for the documents he would be carrying, in order to ensure that he had no forbidden objects on his person.

51. After repeated requests by telephone, on 18 August 2006 the lawyer was finally allowed to see C.T. in the CFECC lawyer-client meeting room, separated by the glass partition. In these circumstances, C.T. refused to discuss any matters relating to pecuniary damage and asked his lawyer to do likewise because the conversation would have related to the whereabouts of the company's accounting documents.

During the conversation with C.T., the lawyer informed him that the charges against him were not consistent with the findings of the civil courts in the civil proceedings between Oferta Plus, the Ministry of Finance and Moldtranselectro. The next working day, on 21 August 2006, the criminal investigator E. Bîcu went to the archives of the Appeal Economic Court and took the case file in the civil proceedings. The case file was returned to the archives on 4 September 2006.

52. On 18 August 2006, in the afternoon, the applicant's lawyer telephoned the Government Agent's Office and asked for assistance in seeing C.T. without a glass partition. His request was not successful.

53. On 21 August 2006 the lawyer telephoned the investigating officer, and asked him for another meeting with C.T. He repeated his request to see C.T. without the glass partition, but this request was again rejected. He was told that the conditions for meetings between lawyers and clients in the CFECC detention centre were not contrary to the law. A meeting between the lawyer and C.T. took place the next day.

54. On the same day the CFECC made public a press release according to which it had discovered, in the context of the criminal investigation against C.T., an illegal scheme for misappropriation of budgetary funds. A

similar item, with images of C.T., was broadcast on the evening news bulletin of Moldovan national television.

55. On 29 August 2006, the applicant's lawyer wrote to the Buiucani District Court that he was the representative of Oferta Plus in the proceedings before the Court. He submitted that, since his client believed that the criminal proceedings against C.T. and his subsequent detention served the purpose of discouraging the pursuit of the *Oferta Plus v. Moldova* application before the Court, on 22 August 2006 a formal complaint under Article 34 of the Convention had been lodged with the Court. He noted that the main piece of evidence relied upon by the courts in placing C.T. in detention was a transcript of a telephone conversation which allegedly proved his attempt to influence a witness. Since C.T.'s defence had not been presented with a copy of it during the remand proceedings, he formally requested a copy of that transcript for the purpose of presenting it to the Court in support of the Article 34 complaint.

56. On 5 September 2006 Mr Gribincea's request was rejected by the Buiucani District Court on the ground that he was not C.T.'s lawyer in the criminal proceedings against him. The court also noted that in any event the materials of the criminal case file were not usually disclosed to the defence unless the criminal investigator decided otherwise.

57. On 7 September 2006 the investigation was completed in the criminal proceedings and the case was sent for examination on its merits to the Centru District Court. On the same date, C.T. told the applicant company's lawyer that he had been told that he would be convicted before the Court adopted a judgment in the present case.

58. In a letter of 29 November 2006, the applicant company's representative informed the Court that C.T. was released from detention on 14 November 2006.

6. Facts related to the period after the pronouncement of the principal judgment

59. On 4 January 2007 the applicant company lodged a revision request with the Supreme Court of Justice asking it, *inter alia*, to quash the judgment of 12 July 2004 on the ground that it had been found to be in breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in the principal judgment of 19 December 2006.

60. The Ministry of Finance disagreed with the revision request and submitted arguments similar to those submitted by Moldranselectro during the re-opened proceedings (see paragraph 32 above). In particular it argued that the entire amount was paid to Oferta Plus by Moldtranselectro before 2001. In response, the applicant submitted arguments similar to those relied on by the Economic Court of Appeal in its judgment of 3 November 2004 to rebut Moldtranselectro's contentions (see paragraph 32 above).

61. In a judgment of 29 October 2007 the Plenary Supreme Court of Justice, under the presidency of the President of the Supreme Court, Judge I.M., stated that it was upholding the applicant company's revision request and quashing its judgment of 12 July 2004 and all the judgments which followed the abusive reopening of the proceedings. The ground relied upon by the Supreme Court was that the revision proceedings were contrary to Article 6 of the Convention as found by the Court in the principal judgment. Thus, the judgment of the Chisinau Economic Court of 27 October 1999 (see paragraph 14 above) became the final authority in the case.

At the same time the Supreme Court ordered that the judgment of 27 October 1999 was never to be enforced on the ground that the applicant was paid the entire debt before 2001 and that it was of bad faith. The Supreme Court did not elaborate on its finding that the applicant was of bad faith; however, it entirely espoused the contention of the Ministry of Finance that the applicant company had been paid the entire debt (see the preceding paragraph). Finally, the Supreme Court considered that a simple quashing of its judgment of 12 July 2004 not followed by the enforcement of the judgment of 27 October 1999 might not be sufficient in terms of just satisfaction and decided *proprio motu* to award the applicant compensation for non-pecuniary damage in the amount of MDL 16,000 (969 euros (EUR)).

62. Five judges of the Supreme Court of Justice, M.P., S.M., V.D., T.R. and I.O., disagreed with the opinion of the majority and wrote a dissenting opinion in which they stated, *inter alia*, that it was illegal under Moldovan law and contrary to the Convention not to enforce a final judgment. Moreover, the dissenting judges expressed the opinion that the order of non-enforcement made by the majority was contrary to the principle of legal certainty guaranteed by Article 6 § 1 of the Convention as it upset the judgment of 27 October 1999 which was *res judicata* and which, moreover, was partly executed. According to them the majority's decision also generated a breach of Article 1 of Protocol No. 1 to the Convention. Finally they considered the compensation for non-pecuniary damage awarded to the applicant company by the majority to be too small.

63. Judge N.C. wrote a dissenting opinion in which she expressed the view that the majority was wrong in upholding the revision request lodged by the applicant company. In reaching this conclusion, Judge N.C. relied on the same reasons as the majority in support of its order of non-enforcement of the judgment of 27 October 1999 (see paragraph 61 above).

64. The criminal proceedings against the chief executive officer of the applicant company continued after the adoption of the principal judgment. On 28 June 2007 C.T. was acquitted by the Centru District Court. The acquittal was upheld on 12 October 2007 by the Chisinau Court of Appeal. The Court has not been informed by the parties whether C.T.'s acquittal has

become final or whether it has been challenged by an appeal on points of law.

THE LAW

65. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

66. In its observations of 15 March 2007 the applicant company claimed EUR 2,386,857.99 for pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment of 27 October 1999 followed by the abusive quashing of it on 12 July 2004. The amount consisted of the main amount owed to the company by the Government by virtue of the judgment of 27 October 1999 less the amount already paid to it in January-May 2004 (see paragraphs 23 and 26 above) and the part of the debt sold by it to a third company (see paragraph 20 above) converted into euros. It also included interest calculated in accordance with the Civil Code, and took account of inflation. The applicant also requested to be awarded EUR 470.46 for every day from 15 March 2007 until the adoption by the Court of the present judgment. The total amount of the applicant’s claim calculated on the date of adoption of the present judgment was EUR 2,534,111.97.

67. The Government disputed the amount claimed by the applicant company and argued that it had not suffered any pecuniary damage. In support of their position, and in spite of the findings of the Court in its principal judgment at paragraphs 134-44, the Government insisted that the chief executive officer of the applicant company had committed an offence and that the charges against him (see paragraph 64 above) were still a matter for examination by the domestic courts. They expressed the view that if the applicant company’s chief executive officer was found guilty in the criminal proceedings in the Moldovan courts, that would automatically exclude any pecuniary liability of the Government in the Strasbourg proceedings and asked the Court not to decide on the matter until the criminal proceedings had been finally decided domestically.

68. In any event, the Government contested the method of calculation employed by the applicant company and argued that no compensation for inflation should be awarded. They submitted that in this particular case, in

view of the very large amount of money, the interest should not be calculated in accordance with the provisions of the Civil Code but rather on the basis of a yearly interest rate of three percentage points and argued that the total pecuniary damage could not exceed the amount of EUR 1,027,087.

69. The Court notes that the revision procedure provided for by Article 449 of the Moldovan Code of Civil Procedure is not an effective remedy within the meaning of the Convention and therefore the applicant company was not under a duty to use it. However, the applicant company chose to do so, thus giving the Supreme Court of Justice a chance to finally resolve the case at the domestic level. The Plenary Supreme Court examined the revision request and on 29 October 2007 adopted a judgment. Having examined that judgment, the Court cannot but express serious concern that despite its abundant case-law concerning the principle of legal certainty and respect for *res judicata* in applications against Moldova and other countries, and regardless of its findings in the principal judgment, the Supreme Court of Justice adopted a solution which disrespects once again the finality of the judgment of 27 October 1999 in a manner incompatible with the Convention. Indeed, it appears that the order of non-enforcement of the judgment of 27 October 1999 (see paragraph 61 above), has the effect of setting at naught an entire judicial process which had ended in a judicial decision that was “irreversible” and thus *res judicata* and which had, moreover, been partly executed. The Court finds this situation particularly regrettable given that the judgment was adopted by the Plenary Supreme Court of Justice.

70. Having examined the parties’ submissions and the evidence submitted by them, the Court accepts that the applicant company suffered pecuniary damage as a result of the breach of its rights guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. It reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I).

71. The Court considers that in the present case the applicant company has the right to recover the money to which it is entitled by virtue of the judgment of 27 October 1999, less all the amounts to which reference is made in paragraphs 20, 22 and 26 above (MDL 5,291,801). It is also entitled compensation for the inability to make use of it until now. Taking into account the provisions of Article 619 of the Civil Code governing the calculation of default interest for non-consumer related debts (see *Mizernaia v. Moldova*, no. 31790/03, §§ 14 and 28, 25 September 2007) and the circumstances of the case under consideration, the Court, making its own calculations, awards the applicant company a total amount of EUR 2,500,000.

B. Non-pecuniary damage

72. The applicant company claimed EUR 100,000 for non-pecuniary damage. It argued that the failure to enforce the judgment of 27 October 1999 and the subsequent abusive quashing of it had seriously disrupted the management of the company by rendering any decision making impossible and placing the company in a state of total uncertainty. This was seriously aggravated by the subsequent abusive freezing of the bank accounts of the company and the blocking of its entire activity, as a result of which all the company's staff had to be laid off. Later, after the communication of the case, the company's chief executive officer was imprisoned on the basis of abusive criminal charges in order to force him to abandon the present application. The criminal proceedings against the CEO were a serious blow to the company's reputation. According to the applicant, the pressure on it continues to date and the Government have refused to discontinue the criminal proceedings against its CEO despite the Court's finding that they are abusive and in breach of Article 34 of the Convention. The companies' accounts remain frozen and its CEO is still under an order forbidding him from leaving the town.

The applicant cited *Sovtransavto Holding v. Ukraine* ((just satisfaction), no. 48553/99, 2 October 2003), in which the Court awarded EUR 75,000 in respect of non-pecuniary damage and argued that in the present case the violations were more serious, in view of the violation of Article 34.

73. The Government disagreed and argued that the applicant company had failed to adduce evidence in support of its claims under this head. They also argued that since the applicant was a company, it could not have experienced suffering and mental anguish, and cited the case of *Immobiliare Saffi v. Italy* ([GC], no. 22774/93, ECHR 1999-V) and asked the Court to dismiss the applicant company's claims.

74. The Court recalls that it has previously made awards in respect of non-pecuniary damage in cases where companies or other moral entities were applicants (see for example *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, ECHR 2001-XII; *Sovtransavto Holding v. Ukraine*, cited above; *Ukrainian Media Group v. Ukraine*, no. 72713/01, 29 March 2005; and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV).

75. The Court further notes that the Plenary Supreme Court of Justice awarded the applicant company the equivalent of EUR 969 for non-pecuniary damage, an amount, which, in the Court's view, is insufficient to compensate violations of such gravity as the ones found in the principal judgment. Moreover, the Court is of the opinion that not only did the Supreme Court fail to award adequate compensation, but it further aggravated the applicant company's situation by interfering once again with the finality of the judgment of 27 October 1999 (see paragraph 69 above).

76. The fact that the final judgment of 27 October 1999 was not enforced for more than three years and was subsequently quashed following abusive revision proceedings must have caused Oferta Plus S.R.L. considerable inconvenience, if only in the conduct of the company's everyday affairs. Moreover, having regard to the Court's reasons for its finding of a breach of Article 34 (see in particular paragraphs 143 and 156 of the principal judgment), the Court considers that an award of compensation for moral damage is justified in this case. Such an award must also reflect the aggravation of the applicant company's situation as a result of the Plenary Supreme Court's judgment of 29 October 2007. Making its assessment on an equitable basis, the Court awards the applicant company EUR 25,000.

C. Costs and expenses

77. The applicant's representative claimed EUR 104 for postal expenses and EUR 10,000 for representation costs.

78. Insofar as the postal expenses are concerned, he sent the Court copies of DHL receipts. He argued that the use of rapid post was justified in this case in view of the violations of Article 34.

79. As to the representation fees, the lawyer sent the Court copies of three bank receipts proving the payment of EUR 9,723 to him. The first two bank receipts proved the payment of EUR 2,850 and EUR 1,900 by the applicant company and the last one of EUR 4,973 by the former accountant of the company. The lawyer explained that the accounts of the company were frozen at the latter date and that is why he was paid by other means.

80. The representative submitted a copy of a contract between him and the applicant company, according to which the applicant had to pay EUR 10,000 for representation fees. He also submitted a detailed time-sheet according to which he had spent 124.5 hours on the case at a rate of EUR 100 per hour.

81. He argued that the number of hours spent by him on the case was not excessive and was justified by its complexity and abundance of detail.

82. As to the hourly fee of EUR 100, the applicant's lawyer argued that it was within the limits of the fees recommended by the Moldovan Bar Association which were EUR 40-150.

83. Moreover, he argued that an hourly fee of EUR 100 was reasonable in view of his experience and of the cases previously won by him before the Court and pointed to the case of *Boicenco v. Moldova*, in which the Court found reasonable the amount of EUR 75 per hour.

84. The Government argued that Mr Gribincea was not a lawyer in the sense of the Law on Advocacy since he did not possess a licence issued by the Ministry of Justice. They therefore argued that the contract between the

applicant company and Mr Gribincea, in which the latter was called “the lawyer”, should be considered null and void and no fees should be awarded.

85. The Government disagreed with the amount claimed for representation calling it excessive and unreal in the light of the economic situation of the country and of the average monthly salary. They disputed the number of hours spent by the applicant’s lawyer and the hourly fees charged by him. They also challenged the postal expenses claimed by the applicant.

86. The Court recalls that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

87. In the present case, regard being had to the itemised list submitted, the receipts proving payment of the claimed amounts to the representative, the complexity of the case and the input of the lawyer, the Court awards the applicant company the entire amount claimed.

D. Default interest

88. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds

- (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
 - (i) EUR 2,500,000 (two million five hundred thousand euros) in respect of pecuniary damage;
 - (ii) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 10,104 (ten thousand one hundred and four euros) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President