



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

FOURTH SECTION

CASE OF DACIA S.R.L. v. MOLDOVA

(Application no. 3052/04)

JUDGMENT

STRASBOURG

18 March 2008

FINAL

18/06/2008

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 Dacia S.R.L. v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Stanislav Pavlovski,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 3052/04) 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 the “Dacia” hotel (“the applicant company”), a company registered in Chişinău, on 6 January 2004.

2. The applicant company was represented by Mr V. Nagacevski, from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicant company alleged, in particular, that the annulment of the privatisation of its hotel had violated its rights as guaranteed by Article 1 of Protocol No. 1 to the Convention. It also complained about the unfairness of the proceedings, contrary to Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 11 April 2006 a Chamber of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

1. The privatisation of the hotel

6. In 1997 the Government of Moldova submitted to Parliament a bill “On the Privatisation Programme for 1997-1998”. Parliament adopted the Act in 1997. The annex to the Act listed the State property to be privatised, which included the four-star “Dacia” hotel. The Act established that the Department for the Privatisation of State Property (“the Department”) would organise the privatisation of the property listed in the annex.

7. The Department created an Auction Commission. In December 1998 the Auction Commission published an advertisement for privatisation of the hotel and set a reserve price of 20 million Moldovan lei (MDL) (2,006,782 United States Dollars (USD)). In order to be allowed to participate in the auction, each participant was required to deposit MDL 1 million in the Department’s account.

8. The applicant company’s predecessor, “Selikat-Mix” (“S.”), participated in the auction and on 23 January 1999 was announced as the winner, having offered MDL 20,150,000. In order to be able to pay that amount, S. concluded a contract with an Austrian company, “Kungan Overseas Corp.”, for a loan of USD 2.2 million. According to the terms of the contract, S. was to repay the loan within one year and to pay 15% interest during that time. Failure to repay the loan would result in a penalty of 0.2% of the outstanding debt for each day of delay (subject to any eventual prolongation of the period of repayment), while a failure to pay the interest would result in a penalty of 0.1% of the outstanding debt for each day of delay.

9. At S.’s request, on 29 January 1999 the Auction Commission decided to extend the period for the payment of the auction price until 17 February 1999.

10. On 8 February 1999 S. obtained a certificate from the National Bank of Moldova confirming the credit agreement with “Kungan Overseas Corp.”. It transferred MDL 20,150,000 to the State budget within the new deadline established by the Auction Commission. On 18 February 1999 it concluded a contract with the Department for the purchase of the hotel.

11. In June 1999 S. was re-registered as “Dacia S.R.L.” (the applicant company). On 13 September 1999 the applicant company purchased from the Chişinău municipality the 0.21 hectares of land on which the hotel was situated, for MDL 50,840 (EUR 4,395).

12. According to the applicant company, in the years following the purchase of the hotel large sums of money were spent on its renovation and the purchase of new furnishings and equipment.

13. In 2000 the Prosecutor General's Office initiated a criminal investigation into the alleged unlawfulness of the hotel's privatisation. It established that no criminal act had been committed and closed the investigation on 30 August 2000.

14. On 31 January 2003 "Kungan Overseas Corp." assigned its credit rights in respect of the loan to the applicant company to the Belgian company "Vikol NV" (V.). On 18 February 2003 the applicant company pledged the hotel and the land as a guarantee for the loan from V. In view of the applicant company's failure to repay the loan, V. claimed in court the right to become the hotel's owner.

15. On 23 June 2003 the Regional Economic Court in Chişinău accepted that claim and ordered the transfer of the hotel to V. The State Chancellery requested the annulment of that order. On 25 July 2003 the Chişinău Regional Economic Court annulled the order of 23 June 2003 in light of the judgments of the Economic Court of 6 June 2003 and the Supreme Court of Justice of 24 July 2003 (in the annulment proceedings described below).

2. Proceedings for the annulment of the privatisation

16. On 11 January 2003 the Prosecutor General's Office initiated court proceedings in the interest of the State (namely, the State Chancellery, a subdivision of the Government which was the former administrator of the hotel) against S. and the Department, seeking the annulment of the hotel's privatisation and repayment to the applicant company of the price paid.

17. On an unspecified date the Prosecutor General requested the court to designate the applicant company as respondent in the case, since the respondent it had previously designated in its claim (S.) had ceased to exist. On 31 March 2003 the Economic Court of Moldova accepted that request and ordered that the applicant company be summoned to its next hearing.

18. The Prosecutor General did not pay any court fees to initiate those proceedings, by virtue of an exemption provided for by law for court actions initiated by him in the interests of the State. In respect of the limitation period, he referred to Article 86 of the Civil Code (see paragraph 40 below).

19. On 6 June 2003 the Economic Court of Moldova accepted the Prosecutor General's request and annulled the Auction Commission's decision of 23 January 1999 and the contract of 18 February 1999 for the sale of the hotel. The applicant company was ordered to return the hotel to the State Chancellery and the Ministry of Finance was ordered to repay to the applicant company MDL 20,150,000 (EUR 1,219,055 at the time).

20. The reasons given by the Economic Court of Moldova for finding that the privatisation had been unlawful were: (a) the State Chancellery, as the former administrator of the hotel, had not given its agreement to the

sale; (b) S. (the applicant company's predecessor) had failed to pay the entire amount within seven days of winning the auction, as required by the auction regulation; and (c) the price paid was some MDL 5 million (EUR 511,996) lower than the hotel's real value. The court found that the Auction Commission's decision to extend the period during which S. could pay for the hotel had been taken *ultra vires*. However, the court did not annul the decision to extend the time-limit or the decision setting the reserve price at MDL 20 million, nor did any other authority. The court also noted that S. had been the only participant in the privatisation auction, but did not indicate whether this was contrary to any law.

The court ordered the Department to return to the applicant company the price paid for the hotel in 1999 (MDL 20,150,000).

21. The court finally ordered that each of the parties pay half of the court fees, that is, MDL 302,340 (EUR 18,291), finding that both the authorities and the applicant company had acted in bad faith because of the above-mentioned failure to follow the auction procedure correctly. In particular, the applicant company was accused of contributing to reducing the hotel's privatisation price.

22. The applicant company appealed to the Supreme Court of Justice, arguing that it had been a good faith buyer and had complied with all the requirements set by the State authorities during the privatisation, and that the court action brought against it by the Prosecutor General's Office was out of time since it had been lodged some four years after the relevant events.

23. On 8 July 2003 the Supreme Court of Justice noted that the applicant company had paid MDL 50,000 (EUR 3,114) in court fees out of the MDL 453,100 (EUR 28,227) required. The court requested payment of the full amount of fees. The applicant company asked for permission to pay in instalments over a three-month period, but was granted sixteen days. It submitted documents confirming its inability to pay and relied on the fact that all of its assets had been seized by the authorities. On 24 July 2003 the court refused to examine the appeal because of the failure to pay the entire amount of the court fees. That decision was final.

3. Proceedings regarding the plot of land on which the hotel is situated

24. The Prosecutor General initiated new proceedings "in the interests of the State" requesting the annulment of the contract concluded between the applicant company and the municipality for the purchase of the land on which the hotel was situated.

25. On 27 October 2003 the Appellate Chamber of the Economic Court of Moldova accepted that claim and annulled the contract for the purchase of the land because the land could not be separated from the hotel itself.

26. On 19 February 2004 the Supreme Court of Justice upheld that judgment.

4. Enforcement proceedings

27. On 25 July 2003 the Commission on Transferring the Assets of “Dacia” S.R.L. to the State began its activity in order to enforce the judgment of 6 June 2003. By 7 August 2003 the hotel was transferred to its new owner, the State Chancellery (see paragraph 19 above).

28. On 29 July 2003 the applicant company sent the warrant for the enforcement of the judgment of 6 June 2003 to the Decisions Enforcement Department. It continued to write to various authorities about the non-enforcement of the judgment.

29. The Department of Privatisation and Administration of State Property requested an interpretation of the text of the judgment of 6 June 2003. The applicant company also requested an interpretation and a re-evaluation of the amount it had been awarded by that judgment, in order to take account of the effects of inflation on the value of the award.

30. On 8 October 2003 the Appellate Chamber of the Economic Court gave an explanatory decision in which it identified the Ministry of Finance as responsible for repaying the applicant company the price of the hotel. It also rejected the applicant company’s claim for re-evaluation of the award since the hotel had been bought in Moldovan lei and not in any foreign currency and the law did not provide for compensation for the effects of inflation in cases such as that under consideration. The court informed the applicant company of its right to lodge a separate claim for any investments made for the repair and furnishing of the hotel.

31. On 13 November 2003 the Supreme Court of Justice upheld that judgment. However, it annulled, as exceeding the powers of interpretation of judgments, the lower court’s explanation that part of the judgment of 6 June 2003 could be enforced even if the applicant company had not been repaid any of the hotel’s price. The hotel remained in the possession of the State.

32. On 3 December 2003, in view of the apparent lack of resources in the State budget which was preventing enforcement of the judgment in its favour, the applicant company requested that the Decisions Enforcement Department enforce the judgment by selling the “Dacia” hotel and the underlying land.

33. On 4 February 2004 the warrant for the enforcement of the interpretative judgment of 8 October 2003 was sent to the Ministry of Finance.

34. The judgment of 6 June 2003 was fully enforced in instalments in the period between 13 April and 27 October 2004.

5. Proceedings for the recovery of damages caused to the applicant company

35. The applicant company initiated court proceedings against the Government (including the Ministry of Privatisation and the Ministry of Finance) claiming compensation for damage caused to it as a good faith buyer of the hotel. The damages sought MDL 16,157,774 (equivalent to EUR 979,259) included the value of repairs and new equipment, the penalties for the delay in repaying the loan to V., sums of money taken from the hotel when it was transferred to the State and interest for the use of MDL 20,150,000 over four years, as well as compensation for the effects of inflation on that amount. The above amount included a deduction of amounts corresponding to the applicant company's profits from the hotel during the relevant period. It submitted that the State had committed the errors referred to in the judgment of 6 June 2003 and that the State should therefore bear the consequences of those mistakes.

36. On 10 March 2005 the Appellate Chamber of the Economic Court of Moldova rejected these claims. The court found that the applicant company could not claim to have been a good faith buyer, since it had failed to pay for the hotel within seven days as prescribed by the auction regulations. The court also found that the judgment of 6 June 2003 had established the applicant company's complicity in "contributing to reducing the hotel's price" (without giving any details), thus excluding the applicant company's good faith as a basis for claiming compensation, and that this also applied in respect of the claim for interest on its money in the State's possession.

37. The court rejected the argument that the State had obtained unjust enrichment since there was a legal basis for the increase in its assets – the contract with the applicant company for the purchase of the hotel. The argument that the State had offered for sale an object affected by hidden legal impediments was also rejected as unfounded, despite the authorities' failure to observe certain rules during the privatisation of the hotel (such as obtaining the State Chancellery's agreement). Since the applicant company had known from the hotel's by-laws that the Chancellery was its founder and since the latter had not given its approval for the privatisation, the applicant company could not claim that it had not known of the legal impediment at issue.

38. The applicant company appealed but was unable to pay the court fees MDL 242,349 (approximately EUR 14,600). It requested a court fee waiver until after the judgment, in view of the fact that it had transferred to its creditor all the money received from the Ministry of Finance after the judgment of 6 June 2003 and that it had no alternative sources of income, as confirmed by relevant bank statements.

39. On 4 May 2005 the Supreme Court of Justice dismissed the applicant company's request for a court fee waiver. It informed the applicant company that the appeal could not be examined on account of the failure to pay the court fees. The new time-limit for paying the court fees was 25 May 2005; the applicant company did not meet this deadline.

II. RELEVANT DOMESTIC LAW

40. The relevant provisions of the Civil Code, in force at the relevant time, provide:

“Article 74

The general limitation period for protection through a court action of the rights of a [natural] person is three years; it is one year for lawsuits between State organisations, collective farms and any other social organisations.

Article 78

The competent court ... shall apply the limitation period whether or not the parties request such application.

Article 83

Expiry of the limitation period prior to the initiation of the court proceedings constitutes a ground for rejecting the claim.

If the competent court ... finds that the action was not commenced within the limitation period for well-founded reasons, the right in question shall be protected.

Article 86

The limitation period does not apply:

...

(2) to claims by State organisations regarding the restitution of State property found in the unlawful possession of ... other organisations ... and of citizens;”.

THE LAW

41. The applicant company complained about the unfairness of the proceedings and the limitation of its access to a court, contrary to Article 6 § 1 of the Convention, which, in so far as relevant, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal”

42. The applicant company also complained that its rights as guaranteed under Article 1 of Protocol No. 1 to the Convention had been violated as a result of the annulment of the privatisation of its hotel.

Article 1 of Protocol No. 1 to the Convention provides:

“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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY

43. The Court notes that, in its initial application, the applicant company referred to the belated enforcement of the judgment of 6 June 2003. However, in its observations on admissibility and merits it asked the Court not to proceed with the examination of this aspect of the complaint under Article 6 of the Convention. The Court finds no reason to examine it.

44. The Government submitted that, following the full enforcement of the judgment of 6 June 2003, the applicant company could no longer claim to be a victim of a violation of its Convention rights.

45. The applicant company disagreed and claimed that it had incurred substantial expenses in renovating and furnishing the hotel and that it had received no compensation for these expenses and other losses.

46. The Court notes that, following the enforcement of the judgment of 6 June 2003, the applicant company obtained the initial price paid for the hotel in Moldovan lei, but was not compensated for any of the additional expenses which it had incurred in the meantime. Indeed, the applicant company’s main complaint was not about a failure to enforce the judgment of 6 June 2003 within a reasonable time, but rather about losing its hotel and receiving insufficient compensation (see paragraphs 43 and 45 above).

47. In these circumstances, the Court considers that the applicant company has not lost its status as a victim of a violation of its Convention rights.

48. The Government also submitted that, in lodging its claims in 2005, the applicant company did not refer to the effects of inflation on the amount it had paid for the hotel. It therefore did not raise this specific complaint before the domestic courts and had, accordingly, failed to exhaust available

domestic remedies in respect of this part of its claims. The applicant company disagreed.

49. The Court considers that this issue is more appropriately addressed under Article 41 of the Convention. In any event, it would observe that a domestic court examined this part of the applicant company's claims in 2003 (see paragraph 30 above) and rejected it. That finding was upheld by the final judgment of the Supreme Court of Justice. It follows that the applicant company properly exhausted the domestic remedies at its disposal and this objection by the Government must be rejected.

50. The Court considers that the applicant company's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of the complaints.

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

A. Arguments of the parties

51. The applicant company complained about a violation of its right to property as a result of the annulment of the privatisation of its hotel without compelling reasons. It considered that it had been subjected to expropriation without proper compensation. The domestic courts had invoked purely formal reasons for the annulment of the privatisation and did not have any basis for declaring that the applicant company had acted in bad faith when it had fully complied with all the conditions established by the authorities.

52. The Government essentially argued that the non-enforcement of the judgment of 6 June 2003 was not an interference with the applicant company's right.

B. The Court's assessment

1. Whether the applicant had a possession

53. It was undisputed between the parties that the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, based on the purchase contract (see paragraph 10 above). The Court subscribes to this view.

2. *Whether there was interference*

54. According to the Court's case-law, "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, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, § 61; *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 37; and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

55. The Court recalls that in determining whether there has been a deprivation of possessions within the second "rule", it is necessary not only to consider whether there has been a formal taking or expropriation of property but to look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are "practical and effective", it has to be ascertained whether the situation amounted to a *de facto* expropriation (see the *Sporrong and Lönnroth*, cited above, § 63, and *Brumărescu v. Romania* [GC], no. 28342/95, § 76, ECHR 1999-VII).

56. The Court observes that as a result of the various court judgments in the present case the applicant lost ownership of its hotel and the underlying land, as well as various related investments, and received in return only the initial price paid for the hotel. In those circumstances, there has been an interference with the applicant's property rights, which must be considered deprivation of possessions to which, accordingly, the second rule of Article 1 of Protocol No. 1 to the Convention applies.

3. *Whether the interference was justified*

57. It remains to be ascertained whether or not the interference found by the Court violated Article 1 of Protocol No. 1. The Court recalls that "a taking of property within [the] second rule can only be justified if it is shown, *inter alia*, to be "in the public interest" and "subject to the conditions provided for by law". Moreover, any interference with the right of property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of

the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The Court further recalls that the requisite balance will not be struck where the person concerned bears an individual and excessive burden" (see the *Sporrong and Lönnroth*, cited above, §§ 69-74, and *Brumărescu*, cited above, § 78).

58. The Court refers to its finding below that the provisions of domestic law allowing the State to lodge a lawsuit against the applicant company despite the expiry of the general limitation period were contrary to Article 6 of the Convention, since they allowed the courts to proceed with the case even though any private entity's claim would have been left without examination in identical circumstances (see paragraph 76 below).

59. Although, in such circumstances, an issue arises as to whether the expropriation of the applicant's property had been carried out "subject to the conditions provided for by law" within the meaning of Article 1 of Protocol No. 1 to the Convention, the Court does not consider it necessary to decide on it in view of its findings below.

60. The Court recalls that three reasons were relied upon by the domestic courts when ordering the annulment of the privatisation of the applicant company's hotel: the reduction in the hotel's reserve price, the failure to obtain the agreement of the hotel's administrator and the failure to pay the hotel's price within seven days of winning the auction (see paragraph 20 above). It was also found that the Auction Commission's decision to extend the period during which S. could pay for the hotel had been taken *ultra vires* and that the applicant had acted in bad faith.

61. The Court is unable to see any element of bad faith in the applicant's conduct during the privatisation. In respect of the first ground for annulling the privatisation, the Court notes that the authorities set the hotel's reserve price at MDL 20 million and the applicant paid an additional MDL 150,000. Although the courts referred to another decision evaluating the hotel at MDL 25 million, the Government did not submit to the Court a copy of any such decision. Moreover, while diminishing the price of State property to be sold amounted to an accusation of a serious crime, the prosecution service had already found that no unlawful acts had been committed during the hotel's privatisation (see paragraph 13 above). It follows that the applicant company was not shown to have played any part in the alleged reduction in the reserve price, which was within the exclusive power of the authorities. There is no evidence that the applicant company knew about the "real price", nor does the price paid by it appear so unreasonably small in the circumstances as to raise legitimate doubts of unjust enrichment. Finally, the Court notes, in this respect, that the authorities never attempted to claim the difference between the privatisation price and the alleged real price in order to redress any alleged damage to the public interest, but rather sought the annulment of the privatisation as a whole.

62. As to the second ground for annulling the privatisation, it is true that the State Chancellery had not given its formal agreement thereto. However, the State Chancellery was part of the Government which had offered the hotel for sale, a sale provided for in a law published in the Official Gazette. As the hotel's administrator, it should also have realised that someone else was running the hotel since 1999. Nonetheless, it did not complain to a court until 2003.

63. As to the last ground for annulling the privatisation, it is to be noted that, despite considering that the Auction Commission had acted *ultra vires* in extending the time-limit for the applicant's payment of the auction price (see paragraph 9 above), none of the courts annulled that decision. Even assuming that the Auction Commission did in fact act beyond its authority, the Court needs to consider whether the doctrine of *ultra vires*, which "provides an important safeguard against abuse of power by local or statutory authorities acting beyond the competence given to them under domestic law" (see *Stretch v. the United Kingdom*, no. 44277/98, § 38, 24 June 2003), was applied in a manner proportionate to the circumstances of the case.

64. The Court notes that the hotel remained in State possession pending full payment, which excluded any abusive action in respect of that property. Moreover, the applicant company had deposited MDL 1 million in the Department's account (see paragraph 7 above), which sum could be used as compensation had the full price not been paid within the extended time-limit set by the Commission. In addition, had the Auction Commission annulled the results of the auction instead of extending the time-limit for the applicant company's full payment of the price, an even longer delay would have occurred before the next auction could be held and the State would have incurred additional expenses in organising it. The Court also notes that the domestic courts did not identify any harm or risk of harm caused by the applicant company's delay in paying the price of the hotel. At the same time, it cannot be disputed that the applicant company needed time to obtain the necessary financial resources, as illustrated by the Government's own difficulties in fully paying the same amount, which it did only 16 months after this was ordered by a court (see paragraph 34 above).

65. The Court finally observes that the hotel was proposed for sale by the State authorities, which set out the rules, determined the reserve price and carried out the auction proceedings. The applicant company was in a position of inequality, having to accept all the conditions established by the State, which it did. However, four years after the privatisation, the authorities considered the sale incorrect and the price undervalued, and initiated proceedings for the annulment of the transaction. It appears from the facts of the case that the authorities had an unfettered discretion to reconsider and annul transactions which they had initiated and concluded years earlier. The authorities did not therefore "act in good time, in an

appropriate manner and with utmost consistency” (see, in this connection, *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I). These factors must also weigh heavily in the balance when considering whether the domestic courts’ decisions struck a fair balance in the applicant’s case.

66. In these circumstances, considering in particular that the irregularities in the privatisation of the hotel were formal in character or unsubstantiated and were not attributable to the applicant company, and even assuming that the taking of its property could be shown to serve some public interest, the Court finds that a fair balance was upset and that the applicant bore and continues to bear an individual and excessive burden. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

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

1. Submissions by the parties

67. The applicant company submitted that its right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, had been violated. It referred, firstly, to the insufficient reasons given by the courts, which were in contradiction with the legal and factual circumstances of the case.

68. The applicant company also claimed that the principle of “equality of arms” had been breached by two separate aspects of the proceedings. First, when lodging the claim against the applicant company, the Prosecutor General did not have to pay any court fees, unlike the applicant company in its appeal in cassation and its request for compensation. Second, the Prosecutor General lodged the request after the expiry of the general limitation period established in the old Civil Code (see paragraph 40 above). This was possible under Article 86 of the Code, which gave an unwarranted advantage to the State and contravened the principle of legal certainty. The new Civil Code of Moldova did not contain any similar provision.

69. Finally, the applicant company complained about a violation of its right of access to court, in view of the refusal by the Supreme Court of Justice to examine its appeal on account of the failure to pay court fees.

70. The Government considered that the requirements of Article 6 of the Convention had been complied with in the present case. The case had been examined by independent and impartial courts, which had given fully reasoned judgments in accordance with the law. The Government considered that the proceedings had not been time-barred, as was clear from the formulation of Article 86 of the Civil Code, relied on by the Prosecutor General when lodging his request.

71. The Government submitted that the right of access to court was not absolute and that Article 6 of the Convention did not prohibit the

establishing of restrictions, including court fees. The courts had given the applicant company time to comply with the obligation to pay the court fees, but had had to refuse to consider the appeal when the applicant company failed to pay.

2. The Court's assessment

72. The Court recalls that the principle of equality of arms “requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent” (see *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, § 53).

73. In the present case, the Court notes that State entities, including the State Chancellery, were allowed by law to lodge claims for restitution of State property without limit in time, since the limitation period did not apply (see paragraph 40 above).

74. The Court observes that the authorities were fully aware of all the circumstances of the privatisation of the applicant company's hotel, having moreover verified its lawfulness in a criminal investigation (see paragraph 13 above). The Prosecutor General lodged the claim in the State Chancellery's interest in January 2003, almost four years after the privatisation. This claim would have been time-barred had the general limitation period applied (see paragraph 40 above).

75. The Court considers that the observance of admissibility requirements for carrying out procedural acts is an important aspect of the right to a fair trial. The role played by limitation periods is of major importance when interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Roșca v. Moldova*, no. 6267/02, § 24, 22 March 2005).

76. The Court does not call into question the power of the legislator to establish different limitation periods for different types of lawsuits. However, no reasons were given in the present case for exempting State organisations, when claiming restitution of State property, from the obligation to observe established limitation periods which would bar the examination of such claims brought by any private person or company. This has the potential of unsettling numerous legal relations relying on the established situation and gives a discriminatory advantage to the State without any compelling reason. Therefore, the Court finds that Article 86 (2) of the old Civil Code (see paragraph 40 above) exempting State entities from the general limitation period was itself contrary to Article 6 of the Convention (see, *mutatis mutandis*, *Platakou v. Greece*, no. 38460/97, § 48, ECHR 2001-I).

77. In the event, the domestic courts allowed the Prosecutor General, acting on behalf of the State Chancellery, to file his action against the applicant company notwithstanding the expiry of the general limitation period. The domestic courts examined the lawsuit, which resulted in the applicant company's loss of its hotel. Moreover, the Court considers that the altering of a legal situation which has become final due to the application of a limitation period, or which – as in the present case – should have become final had the limitation period applied without discrimination in favour of the State, is incompatible with the principle of legal certainty (see, *mutatis mutandis*, *Popov v. Moldova* (no. 2), no. 19960/04, § 53, 6 December 2005).

78. There has, therefore, been a violation of Article 6 § 1 of the Convention in the present case.

79. The Court considers that, in view of its findings above, it is not necessary to examine separately the other complaint raised under Article 6 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant company claimed EUR 2,263,951 in respect of pecuniary damage, EUR 50,000 in respect of non-pecuniary damage and EUR 3,255 for costs and expenses.

82. The Government submitted that the domestic law did not provide for compensation claimed by the applicant company, which, moreover, had acted in bad faith.

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* by five votes to two that there has been a violation of Article 6 of the Convention on account of the breach of the principles of equality of arms and legal certainty;
4. *Holds* unanimously that it is not necessary to examine the applicant's other complaint under Article 6 of the Convention;
5. *Holds* unanimously that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (a) reserves the said question;
 - (b) invites the Moldovan Government and the applicant to submit, within the forthcoming three 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 power to fix the same if need be.

Done in English, and notified in writing on 18 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rules 74 § 2 of the Rules of Court, the following partly dissenting opinion of Judge Bratza, joined by Judge Pavlovski, is annexed to this judgment.

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE BRATZA,
JOINED BY JUDGE PAVLOVSKI

1. At the heart of this case is the applicant company's complaint that, having in 1999 purchased the "Dacia" hotel in a public auction for a sum in excess of the reserve price set by the Auction Commission and having paid in full the purchase price within the extended period set by the Commission and thereafter invested substantial sums in renovating and refurbishing the property, it was, some 4 years later, deprived of its title to the hotel when the sale contract was annulled by the Economic Court of Moldova. Not only was the company required to return the hotel to the State Chancellery, its former administrator, but it recovered only the original purchase price, a sum which was in the event only fully repaid some 16 months after the contract had been annulled.

2. For the reasons stated in the judgment, I consider that the applicant company's rights under Article 1 of Protocol No. 1 have been violated. Even assuming that the annulment and consequent deprivation of the applicant's property may be said to have served the public interest, the applicant company was required to bear an individual and excessive burden, such that a fair balance was not preserved.

3. An important part of the Court's reasoning in reaching this conclusion relates to the fact that it was the State authorities which in 1999 prepared the hotel for sale, which set the rules for the auction, which determined the reserve price and which carried out the auction proceedings (paragraph 65). However, it was not until 2003 that the same State authorities, acting through the Prosecutor General's Office, sought to annul the sale contract on the grounds that the formal requirements for the sale had not been satisfied, that the purchase price was less than the hotel's real value and that the price had not been paid within 7 days of the date of the auction. Although the authorities must have been aware of each of these alleged grounds for annulling the contract from the outset, or at latest by 30 August 2000 when the criminal investigation into the alleged unlawfulness of the privatisation of the hotel was closed, no explanation has been offered as to why 4 years were allowed to elapse before the annulment proceedings were commenced. As in the *Beyeler* case (*Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I), this failure on the part of the authorities to act "in good time, in an appropriate manner and with utmost consistency" was, in my view, a factor of central importance in assessing the reasonableness and proportionality of the interference with the applicant company's property rights.

4. Having concluded that the applicant's rights under the Protocol were violated, the majority of the Court have gone on to find an additional violation of Article 6 § 1 on the grounds that it was contrary to the principle of equality of arms that the State authorities should have been permitted by

Article 86 of the Civil Code to lodge claims beyond the 3-year limitation period applicable to private individuals. It is said that no reasons have been given for exempting certain litigants, such as State authorities, from the obligation to observe established limitation periods and that this exemption gave a discriminatory advantage to the State (paragraph 76). It is further said (paragraph 77), drawing on the Court's *Popov* judgment (*Popov v. Moldova* (No. 2), no. 19860/04, § 53, 6 December 2005), that the altering of a legal situation which should have become final had the limitation period applied without such discrimination was incompatible with the principle of legal certainty.

5. I regret that I am unable to support this conclusion of the majority. The applicant company has not made any claim of discriminatory treatment under Article 14 of the Convention. While it has certainly alleged a breach of the principle of equality of arms, I have considerable doubt as to the applicability of that principle to the present case in which the company complains not that it was denied an opportunity in the proceedings to present its case under conditions that did not place it at a substantial disadvantage vis-à-vis the State authorities, but that domestic law permitted the State authorities to bring the proceedings in the first place. I am similarly unpersuaded that the fact that the 3-year limitation period did not apply to bar the proceedings was necessarily incompatible with Article 6 on the grounds that it violated the principle of legal certainty, a principle which has been developed (as in the *Popov* case) in the context of the quashing of a final court judgment.

6. In the end, however, I would prefer to leave these questions undecided since I consider that the applicant's complaint under Article 6 of the Convention is effectively absorbed in the Court's finding of a violation of Article 1 of the Protocol. As stated above, the essential problem raised by the case is not the fact that domestic law permitted the State authorities to bring the annulment proceedings more than 3 years after the contract was concluded but the fact that those authorities unreasonably delayed before commencing those proceedings. The Court having already taken this factor into account in finding a violation of the Protocol, it was in my view unnecessary to go on to examine separately the issues raised under Article 6 of the Convention.