



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

FOURTH SECTION

**CASES OF TUDOR-AUTO S.R.L. AND TRIPLU-TUDOR S.R.L.
v. MOLDOVA**

(Applications nos. 36344/03, 30346/05 and 36341/03)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the cases of Tudor-Auto S.R.L. and Triplu-Tudor S.R.L. v. Moldova,
The European Court of Human Rights (Fourth Section), sitting as a
Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in three applications (nos. 36344/03, 36341/03 and 30346/05) 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 Triplu-Tudor S.R.L. and Tudor-Auto S.R.L., two companies incorporated in Moldova (“the applicant companies”), on 10 October 2003 and 5 July 2007.

2. The applicants were represented by Mr Vitalie Nagacevschi, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr Vitalie Pârlog.

3. The applicant companies initially complained about non-enforcement for several years of two final judgments in their favour and about the lack of effective remedies for their enforcement. The second applicant company also complained that the final judgment in its favour had been subsequently quashed following a misuse of revision proceedings.

4. On 9 December 2004 and on 2 October 2007 the President of the Fourth Section decided to communicate applications nos. 36344/03, 36341/03 and 30346/05, respectively, to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

5. On 9 December 2004 the President of the Fourth Section decided that applications nos. 36344/03 and 36341/03, be joined. On 2 October 2008 application no. 30346/05 was also joined to the first two applications.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, Triplu-Tudor S.R.L. and Tudor-Auto S.R.L., are two companies incorporated under Moldovan law.

1. Background to the cases

7. On 18 November 1993 the State Service for the Supervision of Insurance by the Ministry of Finance of the Republic of Moldova (“the Service”) (*Serviciul de Stat pentru supravegherea asigurărilor pe lângă Ministerul Finanțelor al Republicii Moldova*) registered the insurance company Tudor and Co. S.R.L., founded by three private parties T.N., V.N. and L.R. (“the founders”). On an unspecified date the founders lodged with the Service a request to register two other insurance companies, which on 3 November 1995 were registered as Triplu-Tudor S.R.L. and Triplu-Tudor-Auto S.R.L. They also sought the registration of changes in the companies’ founders, namely the replacement of T.N. and V.N. with other founders, and in one of the company’s names from Triplu-Tudor-Auto S.R.L. into Tudor-Auto S.R.L. On 25 and 27 December 1995 and on 11 January 1996 the Service granted their requests.

8. On 10 June 1997 the Government adopted Decision no. 533 “on certain regulatory measures of insurance activity” (see paragraph 31 below), according to which insurance companies had to fulfil certain formalities and to obtain new registration certificates before 1 August 1997.

9. On 31 July 1997 Triplu-Tudor S.R.L. and Tudor-Auto S.R.L. submitted to the Service the required documents together with the evidence of increase in their statutory capital up to 300,000 Moldovan lei (MDL), (65,197 euros (EUR) at the time), as provided for by section 1 of decision no. 533, and requested to register the changes in the constitutional documents and to be issued with new registration certificates for insurance activity (“the certificates”). Since the Service refused to comply with their requests, on an unspecified date each of the applicant companies brought actions against the Service, seeking to order it to register the requested changes and to issue new registration certificates.

10. On 15 January 1998, during the proceedings before the first-instance court, the Service only registered the changes in the companies’ statutory capital.

11. On 31 March 1998 the Chișinău Economic Court ruled in favour of the applicant companies and ordered the Service to issue them with new registration certificates. On 15 April 1998 the applicant companies were issued with enforcement warrants which stated “for immediate enforcement”. The Service appealed.

12. On 24 June 1998 the Appellate Chamber of the Chişinău Economic Court rejected the appeals of the Service in both cases. No further appeals were lodged and the judgments became final and enforceable.

2. The subsequent enforcement proceedings

13. The Service took a number of steps designed to either annul the final judgments or to prevent their enforcement. On 21 July 1998 and 1 June 1999 the Service annulled its decisions of 25 and 27 December 1995 and of 11 January 1996.

14. On 1 December 1998 the Service requested a stay of the enforcement proceedings, which was dismissed by the Chişinău Economic Court on 12 February 1999.

15. On an unspecified date it asked for a revision of the judgments of 31 March 1998. On 15 July 1999 the Chişinău Economic Court dismissed the request as unfounded.

16. On 8 February 2000 the Service lodged a new request for a revision of the judgments of 31 March 1998. By a final decision of 6 September 2000 the Supreme Court of Justice dismissed the request.

17. In a separate set of proceedings, on 28 September 1999 the Rîşcani District Court fined the Director of the Service for failure to comply with the judgments in favour of the applicant companies. Following an appeal lodged by the Director, on 4 July 2000 the Supreme Court of Justice quashed the judgment of 28 September 1999 and discontinued the proceedings against him as statute-barred. Nevertheless, in a separate decision of the same date the Supreme Court of Justice specifically addressed the Ministry of Finance about the need to enforce the final judgments in order to avoid subsequent damage to State interests.

18. On 24 January 2001 the Service issued each of the applicant companies with certificates, but the Minister of Finance did not sign them so that they had no legal force. In February 2001 the applicant companies requested a bailiff to fully enforce the judgments and to obtain the signature of the Minister of Finance on the certificates.

19. On 18 May and 4 June 2001 the State Registration Chamber requested the applicant companies to submit certain documents in order to re-register the companies, as provided for by a new law on State registration of enterprises. Since the requests specifically stated that the applicant companies should have submitted the originals of their registration certificates, the latter failed to comply with the requests.

20. The judgments of 31 March 1998 have not been enforced to date.

3. The revision of the final judgment of 31 March 1998 in respect of Tudor-Auto S.R.L.

21. On 19 April 2000 T.P. (it appears from the case file that the founder T.N., see paragraph 7 above, had changed his name) lodged a request to join the proceedings which ended with the final judgment of 31 March 1998 as a third party. He claimed that he was the owner of a 50% share in the applicant company and that the changes to the applicant company's statutory documents, introduced on 11 January 1996, had been adopted without his knowledge.

22. By a final decision of 20 September 2000 the Appellate Chamber of the Economic Court dismissed T.P.'s request as unsubstantiated.

23. On 6 October 2003 T.P. lodged with the Economic Court of Appeal a request for a revision of the judgment of 31 March 1998, relying mainly on the same grounds as in his request of 19 April 2000. On 8 December 2004 the Economic Court of Appeal dismissed the request as unsubstantiated and statute-barred, since it had been lodged more than three months after the date on which T.P. had found out about "new relevant circumstances". T.P. lodged an appeal on points of law.

24. On 31 March 2005 the Supreme Court of Justice upheld his appeal on points of law and quashed the judgment of 31 March 1998. It ordered a full re-examination of the case. The Supreme Court did not deal with the issue of the three-month time-limit for lodging the revision request.

25. The outcome of the reopened proceedings is unknown.

II. RELEVANT DOMESTIC LAW

26. The relevant domestic law concerning non-enforcement of a final judgment is set out in *Prodan v. Moldova*, no. 49806/99, § 31, ECHR 2004-III (extracts).

27. The relevant domestic law concerning the revision of a final judgment is set out in *Popov v. Moldova (no. 2)*, no. 19960/04, §§ 26-29, 6 December 2005.

28. The relevant provisions of the Law no. 1508-XII of 15 June 1993 "on insurance", in force between 15 June 1993 and 21 December 2006, read as follows:

"Section 48. Funds and reserves of the insurer

(1) The guarantee of the financial stability of the insurer consists in disposing of a statutory capital tantamount to the volume of its insurance obligations. The minimum statutory capital of the insurer shall constitute 300,000 lei, in monetary deposits.

Section 49. The guarantee of the insurer's solvency

(...)

(2) The solvability reserve for life and pension insurances shall be composed of the statutory capital, the reserve fund and the long-term premiums' reserve and shall constitute not less than 8% of the insured amounts.

(3) The solvability reserve for other types of insurance shall be composed of the statutory capital, the reserve fund, the reserve fund for other types of insurance, and shall constitute not less than 1% of the insured amounts (...)"

"Section 54. The scope and the main duties of the State Service for the Supervision of Insurance:

(1) The State Service for the Supervision of Insurance (...) has the duty to supervise insurance activity, to guarantee the protection of rights of the insured and insurers (...)

(2) The main duties of the Service (...) are:

a) to examine the constitutional documents of insurance companies submitted for registration (...);

b) to hold a record of the insurers;

c) to issue licences for insurance activities (...);"

29. Amendments to Law no. 1508-XII of 15 June 1993 "on insurance" of 25 March 2003, read as follows:

"[Section 48] the text "300,000 lei" is replaced by the text "2 million lei""

30. The relevant provisions of Law no. 407 of 21 December 2006 "on insurance", read as follows:

"Section 22. Statutory capital of the insurer (re-insurer)

(1) The minimum statutory capital of the insurer (re-insurer) shall be 15 million lei (...).

(...)

(2) At the moment of registration, the statutory capital of the insurer (re-insurer) should be entirely deposited by its founders.

(3) Contributions to the minimum statutory capital shall be entirely deposited in money both at the moment of creation [of the company] as well during increase [of the statutory capital].

(4) The means obtained by the potential shareholders of the insurer (re-insurer) from loans, bank credits, mortgage or other investments, including investments of other participants of the insurance market (...) cannot serve as a source of formation or increase of the insurer's statutory capital."

“Section 57.

(1) Insurers, who hold of licences (..) at the moment of entering into force of the present law, are authorised to continue their activity for the next twelve months, during which period they shall comply with the provisions of the present law, except for the cases provided in paragraphs (4)-(7).

(2) Licences for insurance activity which had been issued prior to the entering into force of the present law and which are valid for a period longer than the one provided for in paragraph (1), shall be valid until the expiry of the period for which they had been issued.

(4) Insurers who hold of licences at the moment of entering into force of the present law, shall:

(...)

(b) have of a minimum statutory capital in the amount of:

4 million lei – after one year from the moment of entering into force of the present law;

6 million lei – after two years from the moment of entering into force of the present law;

9 million lei – after three years from the moment of entering into force of the present law;

12 million lei – after four years from the moment of entering into force of the present law;

15 million lei – after five years from the moment of entering into force of the present law.”

31. The relevant provisions of Government Decision no. 533 of 10 June 1997 “on certain regulatory measures of the insurance activity”, in force between 10 June 1997 and 8 November 2005, read as follows:

“1. Insurance organisations, (...) shall increase their statutory capital up to 300,000 lei before 1 August 1997.

2. The Service (...) shall issue new registration certificates to the organisations which comply with the requirements provided for by paragraph 1 of the present Decision.

3. In order to be issued with new certificates, the insurance organisations shall:

- pay the Service a fee in the amount of one minimum salary (...);

- submit the original of the documents which confirm the address, the existence of the [required] statutory capital, the real value of its actives accumulated from its own resources, the certificate issued by the fiscal authorities concerning payments to the Social Fund and the certificate of State registration of the organisation.

4. The old-type registration certificates of the insurance organisations shall become void as of 1 August 1997.”

THE LAW

32. The applicant companies complained that the non-enforcement of the final judgments of 31 March 1998 had infringed their rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. On 5 July 2007 Tudor-Auto S.R.L. also complained under Article 6 § 1 of the Convention that the judgment of 31 March 1998 had been abusively quashed on 31 March 2005.

Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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.”

33. The applicant companies also complained about the lack of effective remedies in respect of their complaints concerning non-enforcement of the final judgments, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. ADMISSIBILITY OF THE COMPLAINTS

34. The Court considers that the applicant companies’ complaints under Article 6 § 1 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 13 raise questions of fact and 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 these complaints.

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

A. Concerning the non-enforcement of the judgment of 31 March 1998 in respect of Triplu-Tudor S.R.L.

35. The applicant company complained of a breach of its rights guaranteed under Article 6 of the Convention as a result of the failure to enforce the final judgment in its favour.

36. The Government argued that the failure to enforce the judgment of 31 March 1998 was due to the applicant company's conduct, namely that it had not complied with the provisions of Government decision no. 533 (see paragraphs 8 and 31 above) and that it had not submitted to the State Registration Chamber certain documents in order to re-register the company.

37. The issues raised by the applicant company are identical to those found to give rise to breach of Article 6 in *Prodan* (cited above, § 56) and *Sîrbu and Others v. Moldova* (nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, § 27, 15 June 2004).

38. The Court cannot agree with the arguments put forward by the Government, since the applicant company complied with Government Decision no. 533 and the Service registered the changes in the applicant company's statutory documents (see paragraphs 9 and 10 above). It further notes that on 24 January 2001 the Service partially complied with the judgment of 31 March 1998. However, the applicant company could not provide the State Registration Chamber with the original of the registration certificate, since it had no legal force without the signature of the Minister of Finance (see paragraph 18 above). It is also to be noted that the Government referred to events which had occurred more than two and a half years after the date when the judgment in favour of the applicant company had become final and by that time it should have already been enforced (see, *Prodan*, cited above, § 55).

39. Accordingly, the Court finds, for the reasons detailed in the above judgments, that the failure to enforce the final judgment of 31 March 1998 constitutes a breach of Article 6 § 1 of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention in respect of Tudor-Auto S.R.L.

1. Concerning the non-enforcement of the judgment of 31 March 1998

40. The applicant company complained that the failure to enforce the final judgment in its favour between 31 March 1998 and 31 March 2005 had

constituted a breach of its rights guaranteed under Article 6 of the Convention.

41. The Government put forward the same arguments to justify the failure to enforce the final judgment in favour of Triplu-Tudor S.R.L. (see paragraph 36 above).

42. The Court does not see any reasons to depart from its findings in respect of Triplu-Tudor S.R.L. (see paragraphs 37 - 39 above). However, it considers that the non-enforcement of the judgment is closely connected with the subsequent revision proceedings. Therefore, the relevance of the non-enforcement will be taken into account in the overall assessment of the proceedings which culminated in the quashing of the judgment of 31 March 1998 (see *Istrate v. Moldova*, no. 53773/00, § 43, 13 June 2006).

2. Concerning the quashing of the judgment of 31 March 1998 in respect of Tudor-Auto S.R.L.

43. The applicant company complained that the quashing of the judgment of 31 March 1998 had been in breach of Article 6 § 1 of the Convention.

44. The Government argued that revision was an efficient way of challenging a judgment where new facts were discovered after the judgment had become final. They gave the example of the International Court of Justice, which could revise its judgments if new facts or circumstances of decisive importance were discovered after adoption of a judgment. The revision request had to be made within six months of the date on which the new facts or circumstances were discovered, but not later than ten years from the date of adoption of the judgment.

45. A similar situation could be found in the Rules of the European Court of Human Rights. If new facts concerning a case which had been concluded were discovered, and those facts could have had a decisive effect on the outcome of the case, and were unknown or could not reasonably have been known, a party could request the Court, within a period of six months after that party had acquired knowledge of the fact, to revise that judgment.

46. The Government also relied on a recommendation of the Committee of Ministers according to which the Governments of the member States were advised to guarantee a procedure for revision and reopening of cases.

47. On 31 March 2005 the Supreme Court of Justice quashed the judgment of 31 March 1998 following a request for revision lodged by T.P. on 6 October 2003. The Supreme Court did not deal with the issue of the three-month time-limit for lodging the revision request, although on 8 December 2004 the Economic Court of Appeal dismissed the request as statute-barred (see paragraph 23 above).

48. The issues raised by the parties are similar to those examined by the Court in *Popov (no.2)* (cited above, §§ 52 and 53) and *Oferta Plus S.R.L. v. Moldova* (no. 14385/04, § 106, 19 December 2006), in which it has

already found a violation of Article 6 § 1 of the Convention. Since the Government did not adduce any relevant arguments which would persuade it that the situation is different in the instant case, the Court does not see any reasons to depart from its findings in the above mentioned cases.

3. Conclusion concerning the fairness of the proceedings in respect of Tudor-Auto S.R.L.

49. The Court reiterates that during the period starting on 15 April 1998 and ending 31 March 2005 the Moldovan authorities did not take adequate measures with a view to the enforcement of the final judgment of 31 March 1998.

50. Later, by granting T.P.'s revision request lodged out of time, the Supreme Court of Justice infringed the principle of legal certainty and the applicant company's "right to a court" and right to a fair hearing under Article 6 § 1 of the Convention (see *Popov (no. 2)*, cited above, §§ 52 and 53).

51. The non-enforcement, together with the subsequent misuse of the revision proceedings which led to the quashing of the judgment, meant that the applicant company was deprived of most of the benefits of an enforceable judgment for a period of almost ten years.

52. Having regard to all these circumstances and making an overall assessment of the proceedings, the Court concludes that they failed to meet the requirement of a fair trial contained in Article 6 § 1 of the Convention.

53. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION IN RESPECT OF THE APPLICANT COMPANIES

54. The Court reiterates that a judgment debt may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and the cases cited therein). Furthermore, referring to Tudor-Auto S.R.L., quashing such a judgment after it had become final and enforceable constitutes an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII).

55. The Court notes that Triplu-Tudor S.R.L. and Tudor-Auto S.R.L. each had an enforceable claim deriving from the judgment of 31 March 1998, which remained unenforced to date and until 31 March 2005 respectively. It follows that the inability of the applicant companies to obtain the enforcement of those judgments and to be issued with registration certificates, so as to run their insurance business, constituted an interference

with their right to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. In the case of Tudor-Auto S.R.L., the situation was also perpetuated by the quashing of that judgment on 31 March 2005. Having regard to its findings concerning Article 6 (see paragraphs 39 and 53 above) the Court considers that the Moldovan authorities failed to strike a fair balance between the applicant companies' interests and the other interests involved.

56. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

57. The applicant companies complained about a lack of effective remedies in respect of their complaints concerning non-enforcement of the final judgment in their favour.

58. The Government argued that the applicant companies could have initiated civil actions against the bailiff under Article 20 of the Constitution and under Article 426 of the former Code of Civil Procedure ("the former CCP").

59. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It states that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports of Judgments and Decisions* 1996-V). The remedy required by Article 13 must be "effective", both in practice and in law. However, such a remedy is required only for complaints that can be regarded as "arguable" under the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 137, ECHR 2001-XII).

60. The Court notes that it has already examined the arguments put forward by the respondent Government in respect of Article 426 of the former CCP. It has found that "even assuming that the applicant could have brought an action against the bailiff and obtained a decision confirming that the non-execution had been unlawful in domestic law, such an action would not have achieved anything new, the only outcome being the issue of another warrant enabling the bailiff to proceed with the execution of the judgment" (see *Popov v. Moldova (no. 1)*, no. 74153/01, § 32, 18 January

2005). The Court does not see any reason to depart from that conclusion in the present cases.

61. For the same reasons, the Court considers that Article 20 of the Constitution, which provides for a general right of access to justice, did not offer the applicants an effective remedy. While the Decision of the Plenary Supreme Court of Justice of 19 June 2000 “Concerning the application in judicial practice by the courts of certain provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms” may have allowed the applicant to rely on the Convention directly before the domestic courts, such reliance would have resulted in nothing more than “another warrant enabling the bailiff to proceed with the execution of the judgment” (see *Lupacescu and Others v. Moldova*, nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03, 31976/03, 13681/03, and 32759/03, § 17, 21 March 2006).

62. Accordingly, there has been a violation of Article 13 on account of the lack of a remedy under domestic law in respect of the non-enforcement of final court judgments.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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.”

64. The applicant companies Tudor-Auto S.R.L. and Triplu-Tudor S.R.L. claimed MDL 119,840,000 (EUR 7,531,186) and MDL 291,039,000 (EUR 18,289,961), respectively, in respect of pecuniary damage, suffered as a result of the failure to enforce the final judgments in their favour and the impossibility of operating as insurance companies without registration certificates. They relied on two financial reports which had been drafted on 7 December 1998 by the Central Scientific Researches Laboratory in the field of judicial expertises by the Ministry of Justice (“the Laboratory”) at the request of the Chişinău Economic Court in separate sets of judicial proceedings. The amounts had been calculated by multiplying the number of years during which they could not have operated as insurers by their lost revenue between 2 April 1997 and 16 April 1998, as calculated by the Laboratory.

65. The method of calculation of lost revenue in respect of both companies consisted in determining the average increase in each of the companies’ actives, by taking into consideration the average 132.2% increase in other insurance companies’ actives. It then took into consideration the losses which could have occurred during a year. The resulting value was then multiplied, in two versions, with the higher value

of inflation for 1997, which varied between 1.7% and 3.7%, and the inflation for March 1998, which constituted 5.3%.

Thus, in respect of Tudor-Auto S.R.L., the value of its actives, worth MDL 700,000, would have increased up to MDL 925,400. The overall losses would have diminished the annual increase of its actives up to MDL 462,700. In the first version, MDL 462,700 was multiplied to a factor of 3.7 (coefficient of inflation), which resulted in MDL 17,120,000 (EUR 1,968,077). In the second version, MDL 462,700 was multiplied to a factor of 5.3 (coefficient of inflation), which resulted in MDL 24,523,000 (EUR 2,819,110).

In respect of Triplu-Tudor S.R.L., the value of its actives, worth MDL 1,700,000, would have increased up to MDL 2,247,400. The overall losses would have diminished the annual increase of its actives up to MDL 1,123,700. In the first version, MDL 1,123,700 was multiplied to a factor of 3.7 (coefficient of inflation), which resulted in MDL 41,577,000 (EUR 4,779,600). In the second version, MDL 1,123,700 was multiplied to a factor of 5.3 (coefficient of inflation), which resulted in MDL 59,556,000 (EUR 6,846,426).

66. The applicant companies, nevertheless, considered that the lower amounts, representing the first versions, should be taken into consideration by the Court and multiplied by the number of years of non-enforcement.

67. In respect of non-pecuniary damage, the applicant companies stated that, in the event of awarding compensation for pecuniary damage, they would not claim compensation under this head. Nevertheless, Tudor-Auto S.R.L. requested EUR 25,000 in respect of non-pecuniary damage suffered as a result of the unlawful quashing of the judgment of 31 March 1998 (see paragraph 48 above).

68. The applicant companies' lawyer also claimed EUR 75 for translation of documents and other expenses and EUR 2,000 for representation costs incurred before the Court.

69. The Government argued that the amounts claimed by the applicant companies in respect of pecuniary damage were exorbitant. They challenged in the first place the reliability of the reports, arguing that they had been drafted during proceedings not related to the present cases. They further criticised the decision to take into consideration the higher rate of inflation instead of the lower one. Relying on a letter from the Ministry of Finance they also pointed to the fact that there had been a mistake in multiplying the amounts of the annual increases of the companies' actives by 3.7 and 5.3, representing coefficients of inflation, whereas, in order to calculate the percentage increase it should have been multiplied by 0.037 and 0.053 respectively. It therefore led to an artificial increase of values.

70. Secondly, the Government submitted comparative data concerning the dynamics of the insurance market in Moldova. It reflected the fact that the overall income of the insurance market increased in 1997 by 51.1%,

whereas in 1998 it decreased by 9% and then increased again by 20.5% in 2000. They went on to present further statistics according to which the insurance market had been extremely unsteady, in that some companies could have had losses while other big insurance companies could have had benefits on income from 50.6% up to 235.3%. They therefore argued that the reports presented by the applicant companies were speculative.

71. Finally, the Government informed the Court that, in order to determine the amount of the alleged damage suffered by the applicant companies, they had ordered an economic and accounting evaluation to be carried out by the National Centre for Expert Analysis under the control of the Ministry of Justice (“National Centre”). In that connection two experts from the National Centre had been requested to determine the applicant companies’ lost profit for 1997.

72. In a report dated 21 September 2005 the experts determined that the lost profit for 1997 in respect of Tudor-Auto S.R.L. amounted to MDL 10,854 (EUR 1,247) and in respect of Triplu-Tudor S.R.L. it amounted to MDL 168,902 (EUR 19,416).

73. As to the claim concerning non-pecuniary damage, the Government considered the amount to be excessive and submitted that EUR 1,000 would be sufficient to compensate Tudor-Auto S.R.L. under this head.

74. The Government also disagreed with the amount claimed for representation, calling it excessive and unrealistic in the light of the economic situation of the country and of the average monthly salary.

75. In view of the circumstances of the case, the Court considers that the issue of the application of Article 41 of the Convention is not ready for decision. Consequently, it decides to reserve it and to fix the subsequent procedure in the light of the possibility of an agreement between the respondent State and the applicant companies (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applications admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure to enforce the final judgment in favour of Triplu-Tudor S.R.L.;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure to enforce the final judgment in favour of Tudor-Auto S.R.L. and its subsequent quashing;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the failure to enforce the final judgments in favour of each of the applicant companies;
5. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the applicant companies' complaints regarding the failure to enforce the judgments in their favour;
6. *Holds*
 - (a) that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (b) reserves the said question;
 - (c) invites the Moldovan Government and the applicant companies 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;
 - (d) 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 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President