CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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
(Just satisfaction)

STRASBOURG

24 February 2009

FINAL

14/09/2009

This judgment 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,
Ljiljana Mijović,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 3 February 2009,

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 a Moldovan registered company, Dacia S.R.L. ("the applicant"), on 6 January 2004. The applicant company was represented by Mr V. Nagacevschi, from "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

2. In a judgment delivered on 18 March 2008 ("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 annulment of the privatisation of the applicant company's hotel, in breach of the principles of equality of arms and legal certainty.

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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Dacia S.R.L., is a company incorporated under the laws of the Republic of Moldova.

1. The events prior to the adoption of the principal judgment

6. In 1997 the Moldovan Parliament enacted legislation for the privatisation of certain items of State property, including the "Dacia" hotel. On 29 January 1999 the applicant company was declared the successful bidder in the auction held for the sale of the hotel. It paid 20,150,000 Moldovan lei (MDL) (2,305,043 United States dollars at the time). 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 (4,395 euros (EUR) at the time).

7. 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.

8. On 11 January 2003 the Prosecutor General's Office initiated court proceedings, seeking the annulment of the hotel's privatisation and repayment to the applicant company of the price paid. On 6 June 2003 the Economic Court of Moldova accepted the Prosecutor General's request and annulled the privatisation of the hotel. The court ordered the return of MDL 20,150,000 to the applicant company and the return of the hotel to the State.

9. The applicant company's appeal was left without examination by the Supreme Court of Justice on 8 July 2003 because of a failure to pay court fees in full.

10. In separate proceedings, which ended with a judgment of the Supreme Court of Justice on 19 February 2004, the sale of the land underlying the hotel was also annulled.

11. The judgment of 6 June 2003 was fully enforced in instalments in the period between 13 April and 27 October 2004. The sum of MDL 20,150,000 was the equivalent of approximately EUR 1,342,590 in October 2004.

12. The applicant company initiated court proceedings against the Government, claiming compensation for damage caused to it as a bona fide buyer of the hotel. It paid MDL 484,733 in court fees. On 10 March 2005 the Appellate Chamber of the Economic Court of Moldova rejected these claims. On 4 May 2005 the Supreme Court of Justice dismissed the applicant company's request for a court fee waiver owing to its inability to pay. It informed the applicant company that the appeal could not be

examined on account of the failure to pay the court fees in full. The new time-limit for paying the court fees was 25 May 2005; the applicant company did not meet this deadline.

2. Events after the adoption of the principal judgment

13. The applicant company hired an expert to make a valuation of the current market price of the hotel and underlying land. The expert explained that he was able to make the valuation only if he had access to the hotel itself and all its documents, including documents from the State-controlled real-estate register. Since the hotel is currently owned by the State, on 9 April 2008 the applicant company sought the assistance of the Government Agent's office in ensuring the expert's access to the hotel and the relevant documents. In a letter dated 23 April 2008 the Government Agent informed the applicant company that it should contact the hotel's administration and the real-estate registry.

14. On 29 April 2008 the applicant company asked the hotel's administration to allow the expert access to the hotel. In another letter on the same day, the applicant company asked the real-estate registry to allow its expert access to the relevant documents. In a letter dated 5 May 2008 the hotel's administration informed the applicant company that permission from the Government was necessary in order to ensure access to the hotel. In a letter dated 15 May 2008 the real-estate registry informed the applicant company that it was not authorised to grant access to the requested documents, since it "did not offer such a service".

15. On 8 May 2008 the Supreme Court of Justice made an attachment order, prohibiting the disposal of the hotel. On the same day, the applicant company asked the Government to allow its expert access to the hotel. It received no answer. On 11 May 2008 the applicant company informed the Government Agent about the situation and asked for his assistance in obtaining access to the hotel and the relevant documents. It also noted that the refusal to grant such access might be considered as a violation of its rights guaranteed by Article 34 of the Convention. The applicant company did not receive a reply to this letter.

16. On 29 April 2008 the applicant company lodged with the Supreme Court of Justice a request for the annulment of the judgment of 6 June 2003 and subsequent related judgments against it, referring to the principal judgment as a ground for its request. The applicant company also sought the attachment of the hotel's building, land and bank accounts pending examination of its request.

17. At the first hearing of 12 June 2008 the parties were informed of a postponement of the hearing until 3 July 2008 in view of a request by the Government's Agent. The applicant company asked for a copy of the request, which was refused. It then asked for access to the case-file and

found no request from the Government's Agent, who had not been a party to any of the domestic proceedings in 2003 and 2005.

18. Before the hearing of 3 July 2008, one of the judges on the bench of the Supreme Court of Justice examining the case was replaced by another judge. During that hearing the Government (plaintiff in the original domestic proceedings and current owner of the "Dacia" hotel) submitted its response to the applicant company's request of 29 April 2008. They considered, in particular, that awarding the applicant company compensation in the amount of EUR 962,660.70 would constitute sufficient just satisfaction within the meaning of Article 41 of the Convention.

19. Before the next hearing on 17 July 2008 two judges on the bench of the Supreme Court of Justice examining the case were replaced by other judges. The examination of the case started anew. On 21 July 2008 the applicant company's lawyer examined the case file in order to determine the reasons for the three replacements of judges in the case. He found no such explanation.

20. On 24 July 2008 the Supreme Court of Justice annulled the judgments of 6 June and 27 October 2003 and of 19 February 2004 against the applicant company (see the facts of the principal judgment for more details), and ordered a full re-hearing by the Appeals Chamber of the Economic Court. The proceedings are still pending before that court.

21. On 5 November 2008 the Court asked the parties to submit additional observations by 26 November 2008, limited to the issue of the value of the Dacia hotel, and directed the Government to allow the applicant company access to the hotel and its documents. The applicant company's expert was then given access to the hotel and its documents.

The valuation submitted by the applicant company on 26 November 2008 was prepared by an expert with 30 years' experience in intellectual property and business valuation and comprised 65 pages and a number of annexes. The final value of the hotel (MDL 98,700,000, approximately EUR 7,612,000) was calculated by using three separate methods of valuation.

On 26 November 2008 the Government asked for an extension until 2 December 2008 of the time-limit for submitting their valuation. However, they did not submit any observations by that date. They sent a "preliminary report" on 5 December 2008 on the value of the Dacia hotel. According to that "preliminary report", made on 1 December 2008, the hotel was worth MDL 29,124,000 (EUR 2,219,191). The "preliminary report" included five pages, three of which were copies of licences held by the valuer, one page listed the "conditions and disclaimers" concerning the limits of the valuer's liability and another described the name and address of the Dacia hotel and the amount at which it had been valued. No calculations were included. At the date adoption of its judgment, the Court had not received the final report of the valuer hired by the Government.

II. RELEVANT DOMESTIC LAW

22. Article 619 of the Civil Code reads:

> "(1) Default interest is payable for delayed execution of pecuniary obligations. Default interest shall be 5% above the interest rate provided for in Article 585 [National Bank of Moldova refinancing interest rate] unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be admissible.
>
> (2) In non consumer-related situations default interest shall be 9% above the interest rate provided for in Article 585 unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be inadmissible."

THE LAW

23. 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

1. The applicant company's submissions

24. In its observations of 30 June and 26 November 2008 the applicant company asked for the restitution of the hotel and the underlying land as part of *restitutio in integrum*. If restitution was impossible for any reason, the applicant company asked for compensation based on the hotel's market value. According to the valuation made on 21 November 2008 by an expert hired by the applicant company, the Dacia hotel was worth MDL 98,700,000 (EUR 7,612,000).

25. The applicant company also submitted a copy of a press release published by the Public Property Agency in the Official Gazette of 23 May 2008, announcing that the State had offered for auction shares in the "Jolly Alon" hotel. The value of that hotel, based on the price of the shares offered for sale, was MDL 150,974,025 (EUR 11,309,932). It was a four-star hotel just like the Dacia hotel and was situated some 500 metres away from the latter. In the applicant company's opinion, the value of the Jolly Alon hotel was therefore comparable to the value of the Dacia hotel, taking into account that the latter was somewhat smaller in size.

26. In its observations of 30 June 2008 the applicant company claimed, in addition to the return of the hotel, EUR 1,065,539.52 (later increased, see

claim (c) below) for pecuniary damage suffered as a result of the abusive annulment of the privatisation. The amount claimed consisted, on the date of submission, of the following:

(a) The court fees paid in 2003 and 2005 in defending the case against the annulment of the privatisation (a total of EUR 35,096.61, plus default interest, see paragraph 22 above, of EUR 58,469.16). In its observations of 29 July 2008 the applicant company submitted copies of documents confirming the payment of these court fees. It also submitted a copy of the Supreme Court of Justice's decision dated 10 May 2004, not enforced to date, ordering the return of MDL 50,000 paid in court fees.

(b) The money found in the hotel cashier's desk on the day when the State took over the hotel (a total of EUR 12,460.82), plus default interest (EUR 16,335.67).

(c) Default interest for the delay in transferring to the applicant company MDL 20,150,000 as ordered in the judgment of 6 June 2003, taking into account that the sum eventually transferred to the applicant company was reduced by MDL 350,000.60 on account of court fees which it had been ordered to pay (interest amounting to EUR 278,724.94). Since in their observations of 1 July 2008 the Government considered that interest for this delay in payment amounted to EUR 347,821, the applicant company also relied on this amount in its latest observations.

(d) Lost profit for the entire period during which the applicant company could not operate its hotel (EUR 693,010). In support of this claim, the applicant company relied on its tax returns for 1999-2003, during which it generated net profits of a total of MDL 9,564,250, or an average monthly net profit of MDL 180,457 (EUR 11,755 at the date of filing the applicant company's observations). The applicant company emphasised that it had not based its estimation on the last two years of its activity, during each of which it had more than doubled its net revenue, but relied on the overall performance during its entire period of operation. It also noted that it had excluded from its calculations the additional revenue which had been re-invested in the refurbishing and modernisation of the hotel. In response to the Government's submission that the calculation of lost profits was speculative since it was subject to unpredictable circumstances (see paragraph 31 below), the applicant company stated that there was a very reliable manner of determining the loss of profit, by examining the actual profits obtained by the State from operating the hotel since August 2003. The hotel apparently operated normally since 2003, was not the object of any bankruptcy proceedings and nothing indicated that it generated losses rather than profits. Since the applicant company's experts were not allowed to examine the hotel's documents, the Government alone, as owner of the hotel, could submit evidence helping the Court to determine the loss of profit more precisely. Since the Government had failed to do so, their

argument that the manner of calculating the applicant company's lost profits had been speculative should not be allowed.

27. As it would incur an additional loss from the time it submitted its claims for just satisfaction, until the restitution of the hotel and payment of compensation for its losses, if awarded by the Court, the applicant company also claimed compensation of EUR 551.38 per day in interest on the sums claimed (including MDL 149.6 (EUR 9.58) per day in respect of the claims under (c) above), until receipt of such sums, and MDL 180,457.55 per month on account of lost profit until such time as the hotel was returned. The applicant company accepted that it had to return to the State MDL 20,150,000 which it had received in 2004.

2. The Government's submissions

28. The Government considered that the applicant company made partly different claims in the body of their submission from those made in the conclusions to that text, and asked the Court to take into consideration only the latter claims.

29. The Government submitted that the applicant company's claim for just satisfaction was exaggerated and mostly unsubstantiated. In the first place, they considered that the applicant company could not claim the return of the hotel since nothing had been said about that in the principal judgment. The claim in respect of the land underlying the hotel should be rejected for the same reason. In any event, the Dacia hotel was worth not more than MDL 29,124,000 (EUR 2,219,191) (see paragraph 21 above).

30. Moreover, the applicant company had not claimed before the domestic courts in 2005 that the value of its investment in the land underlying the hotel should also be taken into account. Therefore, it could claim only the price paid for that land (MDL 50,840 or EUR 3,279).

31. The applicant company's claim for compensation for its lost profits was speculative since various unpredictable factors could have affected the level of profits throughout the period under consideration (2003 to date), for example, the quality of the hotel's management, the general economic situation in the country and the varying number of clients staying in the hotel. As part of the business risks involved, the hotel could even have generated losses instead of profits.

32. The Government considered that, despite the applicant company's withdrawal of its complaint regarding the delay in the enforcement of the judgment of 6 June 2003 awarding it the return of the initial price paid for the hotel, and despite the Court's acceptance of that withdrawal (see the principal judgment, § 43), it was this part which created an obligation of compensation for pecuniary damage. The Government considered that the principles developed in the Court's case-law concerning delayed enforcement of final court judgments should be applied to the present case. They conceded that the delay in enforcing the judgment of 6 June 2003, as

well as the inability to use the money invested in hotel repairs and equipment had caused the applicant company damage in the amount of EUR 590,825.

33. The Government also conceded that damages were owed to the applicant company for its inability to use the money taken from its cashier's desk on the date when the hotel was taken over by the State. However, the applicant company's calculations had been incorrect and the total amount actually due was EUR 24,976.

34. The Government considered that the applicant company had failed to substantiate its claims in respect of the court fees paid in 2003 and 2005 and damages due. They considered that no evidence of payment of the first court fee (MDL 484,733) had been submitted to the Court and that, in any event, court fees were not discriminatory or unreasonable. In addition, the other court fee (MDL 50,000), which was in fact paid, could be returned to the applicant company at its request through a court decision, which the applicant company had never requested.

35. Since the applicant company had asked, in its request to the Supreme Court of Justice dated 29 April 2008, to be allowed to pay back to the State in instalments the initial price of the hotel (MDL 20,150,000), it had implicitly recognised the State's right to obtain the return of that sum. Accordingly, default interest was also due to the State for the use of this sum since 2004.

36. The Government asked the Court not to accept the applicant company's claims for compensation in respect of pecuniary damage exceeding a total of EUR 897,805.

3. The Court's assessment

(a) Applicable principles

37. The Court 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 *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI, and *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72, 28 November 2002).

38. It is to be emphasised from the outset that this is not a case of nationalisation or otherwise lawful deprivation of property where the only issue before the Court is whether the applicant received appropriate compensation. Rather, as was found in the principal judgment, the case refers to deprivation of property which lacked a valid reason and was in breach of the principle of legal certainty. In other words, the deprivation of property itself could not be justified in terms of the Convention.

39. Consequently, the reparation should aim at putting the applicant company in the position in which it would have found itself had the violation not occurred, namely had the court action against it been left without examination owing to the expiry of the limitation period and had the applicant company not lost its hotel (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 36, Series A no. 330-B; *Carbonara and Ventura v. Italy* (just satisfaction), no. 24638/94, §§ 37-40, 11 December 2003; *Scordino v. Italy (no. 3)* (just satisfaction), no. 43662/98, §§ 32-37, ECHR 2007-...; and *Melnic v. Moldova*, no. 6923/03, § 51, 14 November 2006).

40. The Court considers that the most appropriate form of *restitutio in integrum* in the present case is for the hotel and underlying land to be returned to the applicant company, and for compensation to be paid for any additional losses sustained. However, in case the return of the hotel and land should prove impossible, it is in principle for the Court to determine the monetary value of the hotel to be paid by the respondent Government to the applicant company in lieu of the hotel if need be (see *Papamichalopoulos*, cited above, §§ 38-40, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 22-24, ECHR 2001-I).

Account should be taken, however, of the sums paid back to the applicant company, which would be unjustly enriched were the Court to ignore these (compare *Scordino v. Italy (no. 3)* (just satisfaction), cited above, § 38).

(b) The value of the hotel

41. The Court notes that according to the expert report submitted by the applicant company the Dacia hotel is worth EUR 7,612,000. It also notes that the Government contested that figure and submitted that the hotel was worth EUR 2,219,191.

42. The Court notes the Government's delay in submitting the "preliminary report" on the value of the Dacia hotel (see paragraph 21 above). However, it decides, exceptionally, to admit that report to the file. The Court notes, however, that the "preliminary report" does not include any calculations or other explanations as to the manner in which the valuer determined the amount mentioned in that document. There is nothing in the document which would allow the Court to take that valuation into account in determining whether the applicant company's claim is reasonable. Moreover, the Government did not submit at any stage the final report on the value of the Dacia hotel.

43. The Court notes that the applicant company submitted a valuation of the hotel made by an expert valuer, who used three different methods for valuing the hotel and found the average value to be the equivalent of EUR 7,612,000. Moreover, the value of the Dacia hotel as claimed by the

applicant company appears to be consistent with the value of the Jolly Alon hotel situated nearby, considering the difference in size.

44. The Court therefore has no reason to doubt the reasonableness of the claim made by the applicant company in this respect, also because of the absence of any alternative expert report submitted within the time-limit by the Government. Therefore, in the event that the hotel cannot be returned to the applicant company, the Government should pay the applicant company EUR 7,612,000, representing the current market value of the hotel.

45. The Court's decision in respect of damages awarded is not altered by the fact that proceedings are currently pending at the domestic level (see paragraphs 16-20 above). It is to be noted that, despite the clear terms of the Court's principal judgment and the reasons given by it for its finding of a violation of Article 6 and Article 1 of Protocol No. 1 to the Convention, the Supreme Court of Justice, without giving any reasons in this respect, decided to send the case back for a full re-hearing, rather than annulling the impugned judgments and itself making orders consequential on the annulment, as happened in a number of previous cases (see, for instance, *Enachi v. Moldova* (dec.), no. 19274/03, 21 November 2006; *Cumatrenco v. Moldova* (dec.), no. 28209/03, 20 March 2007; *Guranda v. Moldova* (dec.), no. 28412/03, 20 March 2007; and *Volghin v. Moldova* (dec.), no. 67517/01, 27 March 2007).

For these reasons, the Court is of the opinion that it should proceed with the case notwithstanding the fact that the proceedings are still pending at the domestic level.

(c) The applicant company's lost profits

46. The Court considers that the applicant company lost profits which it could have made but for the violation of its rights and the loss of its hotel. It notes that the four-star hotel is situated in the heart of the capital city, next to several important Government buildings, the central park, and several embassies, and has a business centre and a restaurant. Its profitability, as proved by fiscal documents, increased steadily after 2001 (when it appears that considerable sums were invested in its repair and refurbishment). Despite the increasing profitability of the hotel, the applicant company relied on its average net profits and not on the latest (best) results for 2002 and 2003. While the Government pointed to the speculative manner in which the applicant company calculated its lost profits, it did not submit any alternative manner of calculation, considering that the hotel could even have made losses instead of profits.

47. The Court is aware of the difficulties in calculating lost profits in circumstances where such profits could fluctuate owing to a variety of unpredictable factors. However, it agrees with the applicant company that in the present case it was rather simple to determine the hotel's profits in a precise manner during the reference period, since it continued to operate

without much change, except for the replacement of the owner and the administration in 2003. The failure to submit information regarding the actual profits made or losses incurred since 2003 is fully attributable to the respondent Government, which alone had access to it, and prevents the Court from verifying the applicant company's estimations. While the applicant company was eventually given access to the hotel's documents, the observations requested from the parties at that stage were expressly limited to the issue of the value of the hotel (see paragraph 21 above). The Court also considers that the applicant company's calculations are not excessive, considering what it could have claimed based on the latest financial results of the hotel before its transfer to the State. In such circumstances, and considering the absence of any assistance from the Government in its task of calculating the lost profits owed to the applicant company, the latter's claims in this respect are accepted in full.

48. Taking into account the six-month delay between the date when the claim for just satisfaction was made and the date of the present judgment and in view of the express request, backed by calculations, to award damages also for the period after it made its claims, the Court awards the applicant company EUR 763,540 in respect of lost profits.

(d) Court fees and money taken from the cashier's desk

49. The Court notes that the applicant company submitted evidence that it had paid court fees in the amount claimed (a total of EUR 35,096.61). It also submitted evidence of its unsuccessful attempts to recover the smaller of the amounts of court fees included in the above sum (MDL 50,000, see paragraph 26 above). Since these fees were paid in proceedings initiated against the applicant company and in which the latter defended its Convention rights, this amount should be returned in full. The domestic law (see paragraph 22 above) provides for default interest in the case of delayed payments and establishes the manner of calculating such interest. While objecting to returning the court fees or interest to the applicant company, the Government did not challenge the calculations in this respect, which appear to comply properly with the domestic law provisions. The Court therefore awards the applicant company EUR 98,565 in respect of court fees and default interest.

50. The Court observes that the parties agreed on the method to be used to calculate default interest for the sums taken from the hotel's cashier's desk in August 2003, but also that their calculations did not coincide. Deciding on the basis of the materials available to it, the Court awards the applicant company EUR 28,520 in respect of the sums taken from the hotel's cashier's desk and default interest.

51. Taking into account the approximately six-month period that has elapsed between the applicant company's submission of its claims and the date of the present judgment, the total amount to be awarded in respect of

court fees and the money taken from the cashier's desk, including default interest, is therefore EUR 127,085.

(e) Default interest (the sum of MDL 20,150,000)

52. The Court first notes that the applicant company received the sum it had originally invested in the hotel (MDL 20,150,000) in instalments paid in 2004. Both parties submitted claims in relation to the use of this sum. The applicant company claimed default interest for the delay in transferring to it the above sum, while the Government claimed default interest for the period during which the applicant company had used that sum (2004 to date).

53. The Court recalls that in the principal judgment (§ 43) it accepted the applicant company's withdrawal of a complaint regarding the delayed enforcement of the judgment of 6 June 2003 (awarding the return of MDL 20,150,000 to it). Moreover, the Court refers to its above decision accepting the applicant company's claim for loss of profits. It considers that the applicant company cannot claim, at the same time, the loss of profits due to its inability to operate the hotel and default interest for a delay in obtaining the price of that hotel. It therefore rejects this claim.

54. The Court does not consider that the Government are entitled to default interest in respect of the applicant company's use of the same MDL 20,150,000 since 2004. The Government did not object to the applicant company's submission that a part of that money had been withheld on account of additional court fees. More importantly, following the loss of its hotel through the actions of the State authorities, the applicant company could no longer fulfil its obligations towards its main creditor (Vikol NV, see the facts of the principal judgment). As a result, it had to transfer to the creditor all the sums received from the State. It follows that the applicant company could not profit from the use of the money received from the State.

(f) Conclusion

55. The Court holds that the respondent Government must return to the applicant company the "Dacia" hotel with all its furnishings and equipment and the underlying land, or pay EUR 7,612,000 representing its current market value. It finds in addition that the applicant company is entitled to a total amount of EUR 890,625 in respect of pecuniary damage.

56. At the same time, the Court considers that the applicant company must return to the Government EUR 1,264,924 (the equivalent of MDL 20,150,000 on 27 October 2004 when it obtained the last part of that sum). This amount should therefore be deducted from the overall amount due to the applicant company if the Government are unable to transfer the hotel back to the applicant company and instead pay compensation. If the hotel is returned, the applicant company is to pay the difference between EUR 1,264,924 which it owes to the Government and EUR 890,625 which

represents the pecuniary damage caused to the applicant company, the difference amounting to EUR 374,299.

57. The Court must proceed on the assumption that the Government will comply with its judgment in good faith. For that reason it cannot accept the applicant company's claim that it should be awarded daily and monthly damages to be paid by the Government for the period between the adoption of the present judgment and its full enforcement. Instead, the Court will apply its standard approach (see paragraph 67 below).

B. Non-pecuniary damage

58. The applicant company also claimed EUR 50,000 in respect of non-pecuniary damage. It relied on the Court's case-law in what it considered to be similar cases. It referred to its management having lost their jobs and the company itself being unable to continue operating. The shock sustained by the management team had been aggravated by the fact that they had invested all their talent and efforts in making the hotel a profitable business, only to see that business taken away from them.

59. The Government considered that the applicant company had not submitted any evidence of non-pecuniary damage caused to it. Any loss of the applicant company's reputation was attributable to its conduct in bad faith when the hotel had been privatised.

60. The Court reiterates that "in the light of its own case-law ..., the Court cannot ... exclude the possibility that a commercial company may be awarded pecuniary compensation for non-pecuniary damage." Moreover, "non-pecuniary damage suffered by such companies may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team" (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV, and *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, § 79, 2 October 2003).

61. In the present case, the Court notes that the applicant company's sole activity consisted exclusively in running the hotel with which it shared its name. Following the loss of the hotel, the company effectively ceased to function and its management lost their jobs, and with it their hopes of a prosperous business. Furthermore, as the Court has found in the principal judgment, the applicant company could not be reproached for acting illegally or in bad faith. However, the domestic courts declared that the applicant company had acted in bad faith, which was the ground for rejecting all of its compensation claims and which, without doubt, worsened

the emotional loss and the loss of business reputation suffered by its management.

62. Ruling on an equitable basis the Court awards the applicant company EUR 25,000 in respect of the non-pecuniary damage sustained (see *Sovtransavto Holding*, cited above, § 82, and *Oferta Plus S.R.L. v. Moldova* (just satisfaction), no. 14385/04, § 76, 12 February 2008).

C. Costs and expenses

63. The applicant company claimed a total of EUR 5,670 for legal expenses, EUR 337 for the cost of valuing the hotel and EUR 165 for translation costs. It submitted evidence that it had already paid the lawyer EUR 3,330 of the above-mentioned amounts and that the lawyer had already paid the relevant taxes, and that the remainder was due to be paid when possible. The applicant company submitted a detailed time-sheet according to which its lawyer had spent a total of 82 hours working on the case at an hourly rate of EUR 60. That included two rounds of additional observations requested by the Court regarding the just satisfaction issue. It argued that the number of hours spent on the case was not excessive and was justified by its complexity. As to the hourly fee of EUR 60, the applicant company argued that it was within the limits of the rates recommended by the Moldovan Bar Association, which were EUR 40 to 150, and that the Court had accepted even higher rates in previous Moldovan cases such as *Boicenco v. Moldova* (no. 41088/05, § 176, 11 July 2006). It also pointed to the high cost of living in Chişinău, and referred to the fact that, despite official figures confirming poverty among the Moldovan population, there were many wealthy persons and companies in Chişinău who could afford to pay and did pay high hourly rates. Finally, the applicant company submitted evidence that it had fully paid for the translation, which had been necessary for best presentation of submissions, the Government Agent's office also having benefited from professional translation of their observations for the same reason.

64. The Government contested the need to pay for translation services since an applicant's representative before the Court should speak one of the official languages of the Court. They disagreed with the amount claimed for representation, considering it excessive and unproven, since no contract with the lawyer had been submitted. They also referred to the non-mandatory nature of the Moldovan Bar Association's recommendation and to the fact that the fee paid exceeded fourteen times the average monthly salary in Moldova in 2006. The Government challenged the number of hours worked on the case, such as time spent in discussions between the applicant company's director and the lawyer regarding the actions to be taken in the proceedings before the Court or the drafting of various letters and other technical, non-intellectual work. They pointed to the not-for-profit

nature of the organisation Lawyers for Human Rights in which the applicant company's representative worked.

65. The Court reiterates 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).

66. In the present case, regard being had to the itemised list submitted and the evidence of full payment of part of the costs claimed, and in view of the complexity of the case and the input of the lawyer, the Court awards the applicant company EUR 6,000 for costs and expenses (see *Sovtransavto Holding*, cited above, § 86, and *Oferta Plus S.R.L.*, cited above, § 87).

D. Default interest

67. 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 return to 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 Dacia hotel and its equipment, together with the underlying land, plus any tax that may be chargeable, against simultaneous payment by the applicant company to the Government of the sum of EUR 374,299 (three hundred and seventy four thousand two hundred and ninety nine euros), to be converted into the national currency of the respondent State at the rate applicable at the date of such payment;

(b) that, failing restitution of the hotel as set out under (a) above, the respondent State is to pay the applicant company, within the same period of three months as that referred to under (a) above, EUR 7,237,700 (seven million two hundred and thirty seven thousand seven hundred euros) for pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that the respondent State is to pay the applicant company, within the same three-month period as that referred to under (a) above, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage;
(ii) EUR 6,000 (six thousand euros) in respect of costs and expenses;
(iii) any tax that may be chargeable on the above amounts;

(d) that from the expiry of the three-month period mentioned under (a) above and 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 company's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President