



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

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FOURTH SECTION

CASE OF BAROUL PARTNER-A v. MOLDOVA

(Application no. 39815/07)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Baroul Partner-A 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 39815/07) 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 national entity, Baroul Partner-A (“the applicant company”), a company incorporated in Moldova, on 30 August 2007.

2. The applicant company was represented by Mr V. Nagacevschi and Mr V. Constantinov, lawyers practising in Chişinău, and members of the Lawyers for Human Rights Organisation. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

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

4. On 21 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Baroul Partner-A, is a company incorporated in Moldova.

6. In 2000, in accordance with the Law on the Privatisation Programme for the years 1997-2000, the Government put up for sale their portion of the shares (199,875 shares, representing 65.86%) in the Soroca Gravel and Granite Quarry Co. ("the quarry").

7. The applicant company participated in the auction and, having offered the highest price, purchased the stock in February 2000 at a price of 12.5 Moldovan lei (MDL) per share. The total price of the purchased stock was MDL 2,498,437.5.

8. In 2003 the Court of Accounts carried out a check on the privatisation activity of the Government and in a decision of 3 January 2004 found that in 1996 the quarry had received from a third State-owned company twenty-seven railway carriages without any title and that those carriages had remained in the quarry's possession throughout its subsequent existence without ever being included in the accounting documents.

9. On an unspecified date in 2004 the Department of Privatisation initiated proceedings for unjust enrichment against the quarry, claiming compensation for the railway carriages. The proceedings ended with a final judgment of the Supreme Court of Justice of 11 November 2004, by which the quarry was ordered to pay the State MDL 972,000, representing the cost of the carriages as established by an expert report. The judgment was enforced in 2005.

10. On 29 July 2006 the Centre for the Fight against Economic Crime and Corruption ("CFECC") initiated criminal proceedings in respect of the privatisation of the quarry. The activity of the quarry was blocked as a result of the seizure of the accounting documents, the refusal to extend licences for extraction of granite and gravel, and other measures taken against the quarry by the State authorities. It appears that the criminal investigation is still pending before the CFECC and that the case has never been brought before the courts.

11. On 15 December 2006 the Prosecutor General's Office initiated, on behalf of the Government, court proceedings against the Department of Privatisation and the applicant company, seeking the annulment of the contract of sale of the State-owned stock. It argued that since at the date of the sale of the shares the quarry had not included the twenty-seven carriages in its accounting documents (see paragraphs 8 and 9 above), the price of each share had been fixed at only MDL 12.5, whereas it should have been MDL 13.88. The Prosecutor General's Office did not make reference to the

proceedings which ended with the judgment of the Supreme Court of Justice of 11 November 2004. In its pleadings before the court, the Prosecutor's Office argued that its action was not time-barred since the time-limit did not apply to its court actions.

12. In its observations and pleadings, the Department of Privatisation disagreed with the Prosecutor General's action and argued that the applicant company had participated in an auction organised by the Government and had won it by offering the highest price for the shares. The auction was organised in accordance with the relevant regulations. The question of the carriages which had not been included in the quarry's accounting documents in 1996 had been resolved by the Department of Privatisation by way of civil proceedings which ended with the judgment of the Supreme Court of Justice of 11 November 2004 in favour of the Department of Privatisation. That judgment was enforced in 2005.

13. In its observations and pleadings, the applicant company argued that the Prosecutor General's action was time-barred. It was contrary to the principle of legal certainty and equality of arms to allow the Prosecutor General to challenge administrative acts in the courts without the latter being subject to any time limitations. In any event, the provision of the old Civil Code exempting the Prosecutor General from complying with the general three-year time-limit only referred to claims against kolkhozs (collective farms), non-governmental organisations, cooperatives and citizens. The applicant company did not fall within any of those categories. Finally, the dispute over the carriages had already been resolved by a final judgment of the Supreme Court of 11 November 2004.

14. On 12 April 2007 the Economic Court upheld the Prosecutor General's action and found the arguments adduced by him to be well-founded. Referring to the applicant company's objection concerning the Statute of Limitations, the court found that the three-year time-limit was applicable to the Prosecutor General's court action. At the same time, according to the court, the time-limit was to be calculated from the date when the Prosecutor General's Office found out or must have found out about the problem with the carriages. In the court's opinion, that date was 3 January 2004, the date of the Court of Accounts' decision (see paragraph 8 above). Accordingly, the action was lodged within the three-year limit. As to the applicant's objection concerning the existence of a final judgment concerning the same dispute, the court found that objection ill-founded because the first set of proceedings had concerned the issue of compensation while the second concerned the issue of the annulment of the privatisation. The Economic Court ordered the annulment of the contract of sale of shares, the return of 199,975 shares to the State and the return to the applicant company of the price paid for them, MDL 2,498,437.5.

15. The applicant company appealed against this judgment and argued, *inter alia*, that the Economic Court had on its own initiative come up with a

solution for the Prosecutor General's problem with the time-limit. Furthermore, the applicant disagreed with this solution and argued that the time-limit should be calculated from the date when the shares were bought. It submitted that there were no impediments preventing the Prosecutor General from finding out about the problem of the carriages before the Court of Accounts had issued its decision in January 2004 and relied in this connection on the official commentary to the Civil Code. The applicant company also submitted that there had been no impediments to the Court of Accounts conducting its investigation earlier, and argued that accepting the Economic Court's line of thinking amounted to accepting that the Prosecutor's Office could challenge transactions concluded very many years ago by arguing that it had just found out about their illegality. The applicant company further submitted that the dispute was identical to that which ended with the judgment of the Supreme Court of 11 November 2004 and that the judge of the Economic Court who had examined the case had been influenced by the Government.

16. On 12 July 2007 the Supreme Court of Justice dismissed the applicant company's appeal and upheld the reasoning given by the lower-instance court. The judgment became final and an enforcement warrant was issued, under which the applicant company was obliged to transmit to the Government 199,875 shares in the quarry.

17. During the enforcement proceedings, the Government realised that in spite of the favourable outcome of the proceedings for them, they had not gained control over the quarry. Notably, they learned that in 2002 the quarry had issued 349,738 new shares as a result of the applicant company's adding new extraction equipment worth MDL 3,147,642 to its assets. The new shares were registered by the National Commission of Movable Assets on 20 May 2002. As a result, the ratio of the shares in the quarry's stock obtained by the Government after the proceedings had ended with the judgment of 12 July 2007 represented 30.59% and the applicant company maintained control over the quarry.

18. On 21 August 2007 the Prosecutor General's Office, on behalf of the Government, applied to the Economic Court for a supplementary judgment. It argued that the meaning of the judgment of the Supreme Court of Justice of 12 July 2007 had been to put the parties in the position they had been prior to February 2000, when the State held 65.86%. However, that was not possible because of the issue of new shares in 2002. Accordingly, the court was requested to annul the decision of the quarry's shareholder's meeting concerning the issue of 349,738 shares and the decision of the National Commission of Movable Values on 30 May 2002 concerning the registration of the new shares.

19. In its submissions to the Economic Court the applicant company argued that the Prosecutor General's Office, acting on behalf of the Government, had not requested the annulment of the issue of 349,738 shares

in its initial court action. According to Article 250 of the Code of Civil Procedure, a supplementary judgment could be issued only if the court had omitted to rule in respect of a claim made by one of the parties to the proceedings. Since the Prosecutor's Office only sought the annulment of the sale of 199,875 shares, his new request could not be treated in a supplementary judgment. In any event, the issue of the new shares took place in 2002 and, therefore, the Prosecutor Office's action was time-barred. The approach taken by the court in respect of the time-limit in the main proceedings was inapplicable to the new request of the Prosecutor General's Office because the Court of Accounts did not refer to the problem of the issue of new shares in its judgment of 3 January 2004. Accordingly, the Prosecutor could not claim to have found out about that only in January 2004.

20. On 6 September 2007 the Economic Court upheld the Prosecutor General's action. Referring to the applicant company's objection that no claim about the annulment of the issue of new shares had been made during the proceedings which had ended on 12 July 2007 and that the new request could not be examined in a supplementary judgment, the court found that the claim was implicit in the Prosecutor General's Office's action, seeking that the State be reinstated in its right of ownership of 65.86% of the quarry's shares. According to the court, it was impossible to make such a reinstatement without annulling the shares issued in 2002. Since the court failed to rule on that problem, it was necessary to treat it in a supplementary judgment. The court ordered the annulment of the new shares arguing that otherwise the Government would own only 30.59% of the quarry's stock, a situation contrary to the judgment of 12 July 2007, where it was ordered that the Government be reinstated in its right of ownership of 65.86% of the shares. The court did not refer to the applicant company's objection based on the time-limit.

21. The applicant company appealed against the judgment and argued, *inter alia*, that in its initial action the Prosecutor General's Office had requested the annulment of the sale of the shares in 2000 but not the reinstatement of the State in its right of ownership of 65.86% of the quarry's shares. In support of this submission the applicant company cited parts of the Prosecutor General's application before the first-instance court. It argued that the Economic Court had misrepresented the prosecutor's claims. The applicant company also submitted that the first-instance court had failed to address its Statute of Limitations objection.

22. On 18 October 2007 the Supreme Court of Justice dismissed the applicant company's appeal. It found that since the sale of the shares of 2000 had been declared void, the parties had to be reinstated in their initial position, namely the position before the act of sale when the State owned 65.86% of the shares. Therefore, it was correct for the Economic Court to adopt a supplementary judgment clarifying the situation.

23. On 24 December 2007 the applicant company applied to the Economic Court and requested it to explain how the judgment of 6 September 2007 was to be enforced in terms of restitution of its contribution as a result of which the quarry had issued new shares in 2002 (see paragraph 17 above).

24. On 3 March 2008 the Economic Court issued a new judgment explaining that the applicant company was to be paid by the Government MDL 3,147,642, the value of the shares issued in 2002. The Government appealed against this judgment.

25. On 3 April 2008 the Supreme Court of Justice upheld the Government's appeal, quashed the judgment of 3 March 2008 and ordered a re-examination.

26. On 7 July 2008 the Economic Court re-examined the applicant company's request. It did not order that the value of the shares issued in 2002 be returned to the applicant but that the latter be returned the extracting equipment which had been added to the quarry's assets in 2002 (see paragraph 17 above). The applicant company appealed and argued that the solution given by the Economic Court was contrary to domestic legislation. However, the appeal was dismissed by the Supreme Court of Justice on 4 September 2008.

27. Since the mining equipment had been used and was useless to the applicant company, it has not been recovered by it from the quarry.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. 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 79

The limitation period starts running from the day on which the right of action arises. The right of action arises on the day when a person comes to know or should have come to know that his right has been breached...

Article 83

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

If the competent court ... finds that the action has 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 restitution of State property found in the unlawful possession of ... other organisations ... and of citizens;”.

29. The relevant provisions of the new Civil Code, in force after 12 June 2003, read as follows:

Article 6. The action in time of the civil law

“(1) The civil law does not have a retroactive character. It cannot modify or suppress the conditions in which a prior legal situation was constituted or the conditions in which such a legal situation was extinguished. The new law cannot alter or abolish the already created effects of a legal situation which has been extinguished or is in the process of execution.”

30. In a judgment of 20 April 2005 (case nr. 2ra-563/05) the Supreme Court of Justice dismissed the plaintiff's contentions based on the provisions of the new Civil Code on the ground that the facts of the case related to a period before the entry into force of the new Civil Code and that, therefore, the provisions of the old Civil Code were applicable.

THE LAW

31. The applicant company complained about the unfairness of the proceedings, 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”

32. 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 outcome of the proceedings. 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 OF THE COMPLAINTS

33. The Court considers that the applicant company's complaints 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 the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider its merits.

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

34. The applicant company pointed out that according to Article 79 of the Civil Code in force at the material time, a right of action comes into existence on the day when a person comes to know or should have come to know that his or her right had been breached. In the present case the person whose rights were alleged to have been breached was the Government, which was the plaintiff in the proceedings. It was difficult to understand how the Government, which were parties to the sale of the shares in 2000, did not know about any problems linked to the sale until January 2004. It was similarly difficult to understand that the State could not have found out about any problems of legality within three years of the sale. Accepting the position of the Government would result in a distortion of the principle of legal certainty as the State would be entitled to challenge legal acts concluded one hundred years ago on the ground that its Court of Accounts had just discovered an irregularity in their respect.

Referring to the Government's submission concerning absolute nullity, the applicant company submitted that the sale of the shares in 2000 was concluded under the old Civil Code and that the domestic courts themselves did not rely on the provisions of the new Civil Code relating to absolute nullity. The applicant company pointed to Article 6 of the new Civil Code which provided that its provisions did not apply to legal acts concluded before its entry into force.

35. The Government submitted that the applicant company's complaint was manifestly ill-founded because the case had been examined by domestic

courts which were independent, impartial and established by law. The limitation period had not been exceeded by the Prosecutor General's Office because it only found out about the unlawfulness of the sale of the shares in January 2004 when the Court of Accounts made its judgment public. Alternatively, the Government argued that according to Article 217 of the new Civil Code, the absolute nullity of an act can be invoked by any person without limitation in time. Therefore, there was no time-limit for the Prosecutor General's Office to challenge the sale of the shares in 2000, an act which fell under the provisions of Article 217 of the new Civil Code.

36. The Court refers to its previous case-law in which it was said 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 *Dacia S.R.L. v. Moldova*, no. 3052/04, § 75, 18 March 2008).

37. The Court reiterates that it is not its task to take the place of the domestic courts in interpreting domestic legislation. It is primarily for the national authorities, notably the courts, to resolve problems of such interpretation. This applies in particular to the interpretation by courts of rules of a procedural nature such as the prescribed time for instituting court actions. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention in general and with the principle of legal certainty, guaranteed by its Article 6, in particular (see, *mutatis mutandis*, *Platakou v. Greece*, no. 38460/97, § 37, ECHR 2001-I).

38. In the present case the domestic courts found that the Prosecutor General, in lodging its action on behalf of the Government, had been bound to observe the three-year limitation period as provided by Article 74 of the Civil Code (see paragraph 28 above). In such circumstances, the Court considers that the Government's contention that there had been no limitation in time for the Prosecutor General's action is inconsistent with the findings of the domestic courts and cannot therefore be accepted.

39. It is further noted that, in the present case, the limitation period started running from the day on which the Government came to know or should have come to know that their right had been breached. This was the position expressed by the domestic courts (see paragraph 14 above) which appears to have been based on Article 79 of the Civil Code (see paragraph 28 above). The decisions of the domestic courts cited 3 January 2004 as the date from which the limitation period started running. This was the date on which the Court of Accounts issued a decision concerning the twenty-seven train carriages (see paragraph 8 above). The applicant company argued that there had been nothing to prevent the Government from finding out before 3 January 2004 that the twenty-seven carriages did not appear in the

quarry's accounting documents. However, the domestic courts rejected this submission without giving any reasons.

40. The Court is not convinced that the Government, which was the owner of the majority of the stock in the quarry before 2000, were unaware of the problem of the carriages before and after the sale of the shares to the applicant company. Indeed, it is inconceivable that the Government could not have had access to all the accounting documents of the quarry before and after 2000. Even assuming that the Court of Accounts was the only authority in the State competent to examine the quarry's accounting documents and make the findings about the railway carriages, which was not shown to be the case, the Government have not argued that there was anything to prevent that court from making its findings within three years of the date of the sale of the quarry's shares.

41. In such circumstances, the Court comes to the conclusion that the interpretation given by the domestic courts to the rules concerning the prescribed time-limit for instituting court actions had an effect which was incompatible with the principle of legal certainty as guaranteed by Article 6 of the Convention. Indeed, the interpretation given by the domestic courts had the effect of allowing the Government, represented by the Prosecutor General's Office, to bring their action against the applicant company notwithstanding the expiry of the general limitation period. The domestic courts examined the action, which resulted in the applicant company's loss of its property, thus altering a legal situation which had become final due to the application of a limitation period and upsetting the principle of legal certainty (see *Dacia*, cited above, § 77).

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

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

43. The applicant company complained that the judgments by which the Prosecutor General's actions were upheld had had the effect of infringing its right to peaceful enjoyment of its possessions as secured by Article 1 of Protocol No. 1 to the Convention. The applicant argued that the interference was not provided by law since the guarantees provided by Article 6 of the Convention had been breached and that the interference was not necessary in a democratic society. The Government disputed the applicant's contention and argued that the applicant company received back the price paid for the shares bought in 2000 and that the applicant company was allowed to keep the profits earned between 2000 and 2007. In the Government's opinion, it was the State's right to property that had been breached as a result of the unlawful sale of the shares in 2000 and the applicant company had profited from the unlawful use of twenty-seven carriages by the quarry.

44. The Court considers that the applicant company had a “possession” for the purposes of Article 1 of Protocol No. 1 to the Convention as it had had a valid title to 549,613 shares in the quarry until the domestic courts annulled it as a result of upholding the Prosecutor General's action. The annulment of its title constituted an interference with its right to property which must be considered a deprivation of possessions to which, accordingly, the second rule of Article 1 of Protocol No. 1 to the Convention applies.

45. The applicant's objections relate in the first place to the lawfulness of the interference with its right to property. The Court considers that a failure to observe the legal requirements concerning the time-limit for introducing an action may lead to a finding that the interference with an applicant's rights was not “in accordance with the law”. However, in the present case it finds that the issue of practical compliance with the law is closely related to whether the interference was “necessary in a democratic society” and will therefore examine this issue below. Similarly, the Court considers it unnecessary, for the purposes of the present case, to determine the question of the legitimate aim pursued by the interference. It will leave these issues open and will focus on the question of proportionality.

46. The Court reiterates that where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I). The Court will examine whether the domestic courts complied with these principles.

47. It has to be noted from the outset that it was the State authorities which prepared the quarry for privatisation in 2000, which set the rules for the auction, which determined the price and which carried out the auction proceedings. Having participated in the auction organised by the Government, the applicant company offered the best price and was allowed to purchase the stock put up for sale by the Government. Some four years later, the Government considered that due to the failure to reflect the train carriages in the price of the quarry's shares, the price paid by the applicant company had been too low. It appears clearly from the facts of the case that it was the Government which had failed to reflect the train carriages in the quarry's accounting documents back in 1996 and later put up the quarry for privatisation without making mention of the carriages in its accounting documents. Unjust enrichment proceedings were instituted against the applicant company and an additional amount of MDL 972,000 was indicated for the quarry's shares. It was thus not shown that the applicant company was responsible in any way for the alleged reduction in the price of shares during the privatisation process.

48. Two years later and six years after the privatisation the Government reconsidered their decision to privatise the quarry and decided to regain control over it by annulling the transaction of 2000. The reason for

annulment was again the omission of the twenty-seven carriages from the price of the shares, the same reason which was used in the unjust enrichment proceedings. This time the responsibility for the alleged reduction of the price was attributed to the applicant company, without any evidence being presented or reasons given therefor. Although the authorities must have been aware of the alleged grounds for annulling the contract from the outset, no explanation has been offered as to why six years were allowed to elapse before the annulment proceedings were commenced.

49. Despite the outcome of the previous unjust enrichment proceedings, and the apparent settlement of the problem of the reduced price paid by the applicant in 2000, the Government were again successful and the sale of the shares was declared null and void by the courts. However, the Government realised soon afterwards that the outcome of the proceedings was not sufficient to secure their control over the quarry because, in the meantime, the quarry had issued new shares and thus the stock regained by the Government no longer represented a controlling share in the quarry. In order to overcome the situation, the Government supplemented its initial claim before the courts with a request to annul the shares issued by the quarry in 2002. The Government's supplementary claim was accepted by the courts in its entirety despite the applicant company's contention that, *inter alia*, the problem of the annulment of the shares issued in 2002 was to be treated as a new court action. The courts also dismissed the applicant's claim for reimbursement of the price of the annulled shares and ordered the applicant company to accept instead used mining equipment which could serve no purpose for it and which therefore had been abandoned by the applicant company on the quarry's premises.

50. In view of the above, the Court is unable to see any element of bad faith in the applicant's conduct during the privatisation and during the ensuing events. It notes that the alleged difference in price was recovered by the Government in 2004 and it has received no explanation why, two years later, the Government, which claimed to be acting in good faith, decided to expropriate the applicant's property. On the contrary, the Court sees sufficient grounds to believe that it was the Government which acted in bad faith and pursued the aim of expropriating the applicant company's property in a manner which is difficult to reconcile with the principle of respect for the rule of law in a democratic society. Moreover, the Court is struck by the domestic authorities' conduct in the present case and considers that it was far from complying with the principles set out in *Beyeler*.

51. The Court further reiterates that it found in paragraph 41 above that the upholding of the Prosecutor General's action after the expiry of the general time-limit and in the absence of any compelling reasons, was incompatible with the principle of legal certainty and thus gave rise to a breach of Article 6 of the Convention. For the Court, the reasons underpinning the finding of a breach would, of themselves, ground a

separate breach of Article 1 of Protocol No. 1 to the Convention. In such circumstances the Court considers that the upholding of the Prosecutor General's action constituted an unjustified interference with the applicant company's right to property, because a fair balance was not preserved and the applicant was required to bear and continues to bear an individual and excessive burden (see, *mutatis mutandis*, *Brumărescu v. Romania* [GC], no. 28342/95, §§ 75-80, ECHR 1999-VII). As in *Dacia*, the domestic courts did not provide any justification whatsoever for such interference.

52. It follows, in view of the above findings, that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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. The parties' submissions

54. The applicant company claimed in respect of pecuniary damage 4,952,382.49 euros (EUR) plus EUR 43.24 per day until the final enforcement of the judgment.

55. The applicant company submitted two expert reports dated January 2007, made by two independent valuers, concerning the price of the movable and immovable property of the quarry. According to them the value of the immovable property was MDL 10,875,528 and that of the movable property MDL 26,864,645. The applicant company submitted that the 549,613 shares, which it had lost as a result of the proceedings initiated by the Prosecutor General's Office, represented 84.14% of the quarry's stock, or, expressed in the value of the quarry's movable and immovable property, MDL 31,754,354.38. Since the State authorities had reimbursed the applicant company the initial amount paid for the shares sold in 2000, the remaining amount was MDL 29,255,917.88. As of the date when the applicant company submitted its observations on just satisfaction, the equivalent in euros of the above amount was EUR 2,177,670.76.

56. The applicant company further submitted that having declared the sale of the shares in 2000 null and void the domestic courts had failed to order the restitution to the applicant of 84.14% of the price of the carriages which the quarry had paid the State as a result of the judgment of the Supreme Court of Justice of 11 November 2004 (see paragraph 9 above). Accordingly, the applicant company claimed MDL 817,840.8 plus interest

calculated in accordance with the rules provided in Article 619 of the Civil Code. According to the applicant company's calculations, the interest as of 11 December 2008 (the date on which the applicant company's just satisfaction claims were filed) was MDL 274,679.17. Converted into euros the main amount plus the interest constituted EUR 81,321.97. The applicant also claimed EUR 43.24 per day until such time as the Court's judgment in the present case was enforced.

57. The applicant company also made a claim in respect of lost profit for the period of validity of the quarry's licence to extract gravel and granite, until 14 September 2012. For that purpose, the applicant company took as a reference year the last year of the quarry's activity when it was still a shareholder, namely 2006. During that year, according to the company's tax returns, its net profit after the payment of taxes was MDL 8,600,252. Since the company's stock was divided into 653,225 shares, the profit corresponding to each share was MDL 13.16. Accordingly, the 2006 profit corresponding to the shares which the applicant company lost after the proceedings corresponded to MDL 7,232,907.08. The applicant pointed out that under Moldovan legislation no tax is payable on dividends paid to shareholders. The applicant further divided the above amount into the number of days in 2006 and obtained MDL 19,816.18 as its daily net profit in 2006. Subsequently, the applicant multiplied the above figure by the number of days remaining until the expiry of the quarry's licence and obtained MDL 36,184,344.68, representing its alleged lost profit until 14 September 2012. Expressed in euros, on the date of submission of the applicant's observations, the above amount constituted EUR 2,693,389.76.

58. The applicant company further submitted that the above figures were not speculative because they were based on real revenue received by the quarry in the past. According to the applicant, the Moldovan Government declared that the global financial crisis would not affect Moldova and that their priority was the construction and improvement of roads. Since the quarry was the only company in Moldova extracting the best quality materials for road construction, it was unlikely that its workload would diminish in the near future.

59. The applicant company submitted that it did not want the restitution of the quarry's shares which it had lost because after the State's taking control of the quarry, the new administration had brought the quarry to the edge of insolvency. According to the applicant company, the quarry had accumulated enormous debts towards the State budget, it started reducing its personnel, salaries were cut, many employees had been made redundant and many advantageous contracts terminated. According to the applicant, in view of the above it was no longer interested in regaining control of the quarry.

60. The Government submitted that the following factors were to be taken into consideration when calculating the pecuniary damage:

- the applicant company had returned to it the price of the shares purchased in 2000, namely MDL 2,498,437.5;
- during its activity with the applicant company as a shareholder, the quarry obtained a profit which was not claimed by the State after the annulment of the sale of the shares;
- during 2006-2007 the quarry used public goods, namely twenty-seven carriages, without any legal grounds;
- it was the State which saw its property right infringed by the illegitimate actions of the applicant company.

61. As to the lost profit claimed by the applicant, the Government submitted that it was speculative and must be rejected. The Government submitted that in considering the problem of lost profit due attention to the global financial crisis and to the fact that the construction sector in Moldova had been very seriously affected by it.

62. Referring to the problem of the carriages, the Government submitted that the applicant company failed to lodge an appeal against the court judgment concerning the carriages. Therefore, the claim in this respect must be dismissed for failure to exhaust domestic remedies. The Government did not specify which court judgment they referred to.

63. Alternatively, the Government presented an expert report prepared by the National Institute for Judicial Expertise (part of the Ministry of Justice) according to which the quarry had breached the law by not including the carriages in its accounting documents. The report also contested the findings in the expert report concerning the quarry's movable property presented by the applicant company in respect of an excavator bought by the quarry in 2006. According to the expert report presented by the applicant, the excavator's price was MDL 5,574,343 whereas the experts of the Ministry of Justice claimed that the excavator's price must have been MDL 2,149,025. It appears that the price in the report presented by the applicant company represented the current value of the excavator as assessed by the expert minus "wear and tear", while that in the Government's report was based on the deduction of the "wear and tear" from the price of the excavator as indicated in the quarry's accounting documents.

64. According to the report presented by the Government the profit which the applicant company could have hoped to obtain until the expiry of the quarry's licence in 2012 was not MDL 36,184,344.68 as claimed by the applicant company but MDL 10,221,308.9.

65. According to the Government, the above demonstrated the unreliability of the reports presented by the applicant company. The Government also contested the amount of EUR 43.24 claimed by the applicant for each day until the enforcement of the present judgment. They argued that that claim did not have any basis either in domestic law or the Court's case-law.

66. The applicant company also claimed EUR 50,000 in respect of non-pecuniary damage. It stated that it had lost its property, the quarry having been brought to a state of near insolvency. This situation was a source of serious anxiety for the applicant company's management team.

67. The Government disagreed with the amount claimed by the applicant and argued that it was excessive. They asked the court to dismiss the applicant's claim for just satisfaction in respect of non-pecuniary damage.

68. Finally the applicant company claimed EUR 8,940 for costs and expenses incurred in the proceedings before the domestic courts and before the Court.

69. In so far as the costs incurred before the domestic courts are concerned the applicant argued that its lawyers had spent seventy-seven hours on the case at a rate of EUR 75 per hour. The total amount was EUR 5,625. The applicant company presented detailed time sheets prepared by its lawyers. It also presented bank receipts confirming payment of the above amount to the lawyers by a third company, which, according to the applicant, had special relations with it.

70. As to the costs incurred before the Court the applicant company argued that its lawyers had spent thirty-eight hours on the case at a rate of EUR 85 per hour. The total amount claimed was EUR 3,230. The applicant company presented detailed time sheets prepared by the lawyers.

71. The remaining EUR 85 were claimed by the applicant company for costs incurred in the translation of its observations from Romanian into French.

72. The Government contested the amount and argued that it was excessive. They expressed doubts about the number of hours spent by the applicant company's lawyers and about the fact that the amount of EUR 5,625 had been paid to one of them by a third company.

B. The Court's conclusion

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* 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 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President