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

SECOND SECTION

AFFAIRE POMUL SRL ET SUBERVIN SRL
vs. REPUBLIC OF MOLDOVA

(Applications Nos. 14323/13 and 47663/13)

STOP

Art 6 § 1 (civil) • Access to a court • Art 1 P1• Respect for property •
Non-execution of final judgments in favor of the applicant companies against a company whose majority shareholder is the State within a reasonable period of time, i.e. approximately fourteen years and six months
Art 13 (+ Art 6 § 1 + Art 1 P1) • Ineffectiveness of the appeal not having offered sufficient relief

STRASBOURG

October 24, 2023

This judgment will become final under the conditions defined in Article 44 § 2 of the Convention. It may undergo shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

En l'affaire Pomul SRL et Subervin SRL v. Republic of Moldova,

The European Court of Human Rights (second section), sitting in a chamber composed of:

Arnfinn Bårdsen, *president,*
Egidijus Kuris,
Pauliine Koskelo,
Saadet Yuksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu, *judges,*
et de Hasan Bakÿrcÿ, *greffier de section,*

From:

the applications (nos . 14323/13 and 47663/13) directed against the Republic of Moldova and of which two companies, “Pomul” SRL and “Subervin” SRL (“the applicant companies”), submitted to the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on January 21, 2013 and July 19, 2013 respectively,

the partial decision of 1 September 2015 to join the two present applications to applications nos . 16000/10 and others and to bring to the attention of the Moldovan government (“the Government”) the complaints based on Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention, and to declare the remainder inadmissible,

the observations of the parties,

After having deliberated in private on October 3, 2023,

Renders the following judgment, adopted on this date:

INTRODUCTION

1. The applications concern the liability of the State for the failure to enforce court decisions rendered in favor of the applicant companies against a company whose majority shareholder was the State. The applicant companies complain of a violation of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention.

ACTUALLY

2. The applicant in application no. 14323/13 (“the first applicant”) and the applicant in application no. 47663/13 (“the second applicant”) are two limited liability companies under Moldovan law having their registered office in ÿibirica, Cÿlÿraÿi. They were represented before the Court by Me A. Chiriac, lawyer.

3. The Government was represented by its former agents, MM. Mr. Gurin and O. Rotari, as well as by his former *interim agent,* Ms. R. Revencu.

4. Vinuri-Ialoveni SA is a joint stock company created in 1996 by the Ministry of Privatization and Public Property Management, following the reorganization of a public company. The production and trade of wine and spirit drinks constitute its main activity. Since its creation, the participation of the State in this
last company amounts to around 60% of its total shares.

5. In 2005, the applicant companies signed two contracts with Vinuri-Ialoveni SA relating to the sale of goods, but the latter failed to honor the agreed payments.

6. By two judgments delivered respectively on November 20, 2008 and December 8, 2008, the district economic court recognized the claims of the applicant companies against Vinuri-Ialoveni SA arising from the contracts concluded in 2005, for an amount of 335,302 .31 Moldovan lei (MDL) (approximately 16,919 euros (EUR)) for the first applicant and 692,089.04 MDL (approximately 34,922 EUR) for the second applicant.

7. In February 2009, as soon as the judgments were made enforceable, the applicant companies contacted a bailiff. This proceeded to the sequestration of real estate belonging to the debtor company, namely two buildings and land with an estimated value of 6,204,064 MDL (approximately 310,203 EUR).

8. On August 26, 2009, the bailiff relinquished the auction in favor of the Ministry of Economy and Trade, as a public authority authorized by article 7 § 4 of the law relating to the management and privatization of public property for the sale of assets belonging to the debtor company (see paragraph 15 below). Despite several reminders from the bailiffs, this sale ultimately did not take place.

9. On October 1 , 2010, the debtor company entered into insolvency proceedings. The bailiff suspended the execution proceedings. The two applicant companies became creditors in the proceedings for amounts equivalent to their claims.

10. In November 2011, the two applicants brought before the domestic courts two parallel actions against the Ministry of Finance based on Law no. 87 of 21 April 2011 (see paragraph 17 below) for compensation by the State for the damage caused by violation of the right to execution of a court decision within a reasonable time. The applicants claimed the amounts of the debts held against the debtor company, alleging the State's liability for the latter's debts.
They also requested compensation for material damage resulting from increases and penalties during the period of non-performance and amounts for moral compensation.

11. In the proceedings initiated by the first applicant, the court of first instance ruled in her favor and ordered the State to repay the debt, interest and penalties for non-execution of the final decision, as well as to compensate the moral damage caused. However, on November 1 , 2012, the Chiÿinÿu Court of Appeal annulled the judgment rendered in first instance and dismissed the action for lack of merit, in view of the measures taken by the bailiff in the execution procedure and taking into account the entry of the debtor company into insolvency proceedings.

12. Concerning the proceedings initiated by the second applicant on the merits of the same law, the court of first instance partially upheld the action on April 6, 2012, finding that the delay in execution could not be justified by the lack of funds from a public organization. He awarded 15,000 MDL (approximately 970 EUR) as moral compensation and dismissed the action for the remainder. On July 11, 2013, the Supreme Court of Justice confirmed this judgment.

13. To date, the insolvency proceedings of the debtor company are still pending.

THE RELEVANT INTERNAL LEGAL FRAMEWORK

14. The relevant provisions in this case of the Civil Code of June 6, 2002, as they were in force at the material time, read as follows:

Article 156

General provisions relating to the joint stock company

"(1) The joint stock company represents a commercial company whose share capital is divided into shares and whose obligations are guaranteed by the assets of the company. (...)

(3) Shareholders are not responsible for the obligations of the company, but bear the risk of losses within the limit of their participation in the share capital. »

15. The relevant provisions of Law No. 121 of May 4, 2007 relating to the management and privatization of public property, as they were in force at the time the enforcement procedure was initiated, read as follows:

Article 2

Main concepts

"For the purposes of this law, the main concepts are defined as follows:

(...)

commercial company with majority public capital – commercial company in which the State holds a participation in shares or shares which grants it, at the general meeting, more than 50% of all votes of shareholders (partners) or another proportion which ensures a simple majority of votes (...)"

Article 7

Functions of the authorized body of management and privatization of public property

"(4) In the field of privatization, the authorized body [the Public Property Agency] has the following powers: (...)

e) organization (...) and implementation of the process of commercialization of seized assets of state enterprises and commercial companies in which the share of the state is not less than 25%, not included in the list of non-privatizable assets; (...) »

In accordance with Article 12, the management of public property includes, among other things, commercial operations targeting assets "not used in the technological process" of commercial companies with majority public capital, such as rental, lease, free lease and sale, as well as the restructuring of these companies, the promotion of private investments or, where appropriate, their liquidation. Under Articles 17 and 18, unused assets of commercial companies with majority public capital may be rented or sold only with the prior agreement of the central and local public administration authorities. The income thus generated can be used primarily to pay companies' debts to the public budget. In accordance with Article 21, the activity of commercial companies with public or majority public capital is subject to the financial supervision of the Ministry of Finance.

16. Article 69 of Law No. 1134 of April 2, 1997 relating to companies by actions in force at the material time, read as follows:

"(6) The executive body of the company presents to the authorities of the founding central or local public administration reports on the economic and financial activity of the company, in which the state's share represents 50% plus one share , and, where applicable, the results of the independent audit of the annual financial reports. »

17. The provisions of Law No. 87 of April 21, 2011 on state compensation for damage caused by the violation of the right to a judgment of the case within a reasonable time or the right to execution of the decision of justice within a reasonable time are summarized in the case of *Balan v. Republic of Moldova* ((dec.), no. 44746/08, § 9, January 24, 2012), *Cristea v. Republic of Moldova* (no. 35098/12, § 21, February 12, 2019), and *Titan Total Group SRL v. Republic of Moldova* (no. 61458/08, § 43, July 6, 2021).

PLACE

I. ON THE JOINING OF THE REQUESTS

18. On September 1 , 2015, the Court decided to join the two present applications with the sixty-one other applications *(Ialtexgal Aurica SA v. Republic of Moldova and 60 other applications* (dec.), nos. 16000/10 and

others, September 1 , 2015). She considers that it is now necessary to separate them from this group of requests.

19. However, given the factual and legal similarities between the two present applications, the Court considers it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ON THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION, ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION AND ARTICLE 13 OF THE CONVENTION

20. The applicant companies complain about the non-enforcement of the judgments rendered in their favor. They rely on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, alone and in conjunction with Article 13 of the Convention, which are worded as follows:

Article 6 § 1

"Everyone has the right to have his or her case heard (...) by a court (...) which will decide (...) disputes over its rights and obligations of a civil nature (...)"

Article 13

"Any person whose rights and freedoms recognized in the (...) Convention have been violated has the right to the granting of an effective remedy before a national authority, even if the violation was committed by persons acting within the exercise of their official functions. »

Article 1 of Protocol No. 1

"Every natural or legal person has the right to have their property respected. No one may be deprived of their property except for reasons of public interest and under the conditions provided for by the law and the general principles of international law.

The foregoing provisions do not affect the right of States to enforce such laws as they deem necessary to regulate the use of property in accordance with the general interest or to ensure the payment of taxes or other contributions or almonds. »

A. On admissibility

21. The Government maintains that the applicant companies had access to a compensatory remedy for the duration of the alleged non-compliance and that they can no longer claim victim status under the articles invoked, because the domestic courts called upon to ruling on the State's liability in the disputed enforcement proceedings would have allocated adequate remedies to the circumstances of the two cases. He also asserts the status of private debtor of the company Vinuri-Ialoveni SA and the complexity of the insolvency procedure which is still ongoing. Asked to comment on the independence of the debtor company from

to public authorities, the Government limited itself to providing information regarding the legal form of the company and the proportion of State participation in its share capital (see paragraph 4 above). It further indicates that claims will be satisfied in the insolvency procedure according to the order of priority.

22. The applicant companies retort that they did not benefit from adequate relief because the domestic courts refused to hold the State liable for the debts of the company Vinuri-Ialoveni SA. They maintain that, despite the expiration of a new period of non-execution after the exercise of the compensatory remedy, they have still not benefited from the payment of their debts. They then contest the effectiveness of the internal appeal given the time limits for examining the actions for compensation initiated by the applicants.

23. The Court observes that the preliminary objections raised by the Government in the present case relate, on the one hand, to the question of the liability of the respondent State for the debts of the debtor company and, on the other hand, to the question of whether, having regard to the compensatory remedies exercised at domestic level, the applicants can still claim to be victims of the alleged violations. Therefore, the Court will turn its attention to examining these questions.

1. The liability of the State for the debts of the debtor company (compatibility ratione personae)

a) The Court's case law

24. The Court recalls that when an applicant complains of the impossibility of executing a court decision rendered in his favor, the extent of the State's obligations under Articles 6 of the Convention and 1 of the Protocol o 1 of n the Convention varies depending on whether the debtor is a State or not *(Mikhaïlenki and others v. Ukraine,* nos. 35091/02 and 9 others, § 43, ECHR 2004-XII, and *Anokhin v. Russia* (dec.), no. 25867 /02, May 31, 2007). When the judgment is rendered against the State itself, the latter must take the initiative to execute it in full and in due time (see among many others *Prodan v. Moldova,* no. 49806/99, § 75, ECHR 2004- III (extracts), and *Liseytseva and Maslov v. Russia,* nos. 39483/05 and 40527/10, § 183, 9 October 2014).

25. When the debtor is an individual or a private company, the situation is different, because the State is not, as a general rule, directly responsible for the debts of natural persons or companies. In such cases, the Court's task is to examine whether the measures taken by the authorities were adequate and sufficient. The State's responsibility is limited to the involvement of its authorities in execution procedures (see *Ciocodeicÿ v. Romania,* no. 27413/09, §§ 84-85, January 16, 2018).

26. The Court recalls that the liability of a State may be engaged with regard to debts contracted by a company, even if it has an independent legal personality, provided that it does not enjoy vis-à-vis the State of sufficient institutional and operational independence for the State to be exempt from its responsibility under the Convention (see Ališiÿ and others *v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former -Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 114, ECHR 2014, with the references cited therein). The key criteria for determining whether the State was actually responsible for such debts are the legal status of the company (public or private law), the nature of its activity (public function or ordinary commercial enterprise), the context of its operation (such as a monopoly or heavily regulated business), its institutional independence (the degree of state ownership), and its operational independence (the degree of state oversight and control) (ibidem, § *114 , in fine).* Other factors to consider are whether the state was directly responsible for the company's financial difficulties, whether it misappropriated the company's funds to the detriment of the company and its stakeholders, and whether it had undermined its independence or otherwise abused its legal personality *(Anokhin,* cited above, and *Khachatryan v. Armenia,* no. 31761/04, §§ 51-53, 1 December 2009). None of these factors is decisive in itself and their effect on institutional and operational independence should be analyzed jointly *(Liseytseva and Maslov,* cited above, § 187).

b) Application in the present case

27. The Court notes that the Government limited itself to providing information concerning the State's participation in the share capital of the company Vinuri-Ialoveni SA, without offering more detailed information about its governance model and its economic activity. The Court is therefore led to examine the question of the institutional and operational independence of the debtor company in light of the provisions of domestic law and the circumstances revealed in the domestic procedures initiated by the two applicant companies.

i. The legal status of the debtor company

28. Firstly, the Court observes that the debtor company was constituted as a joint stock company, which gave it a distinct legal personality, and therefore rights and obligations distinct from those of its shareholders. Constituted in the form of a joint stock company, the debtor company stands out from the public or municipal enterprise, which represents historical legal forms for legal entities constituted and managed through the state authorities about which the Court has already ruled (see *Cooperativa Agricola Slobozia-Hanesei v. Moldova,*

n o 39745/02, § 19, 3 avril 2007, *Clionov v. Moldova,* no. 13229/04, § 29, October 9, 2007).

29. Furthermore, the information provided by the parties also indicates that this company operated in an economic sector open to competition, without benefiting from a State monopoly or a privileged position on the market or carrying out activities associated with a public service or function (compare with *Cooperativa Agricola Slobozia-Hanesei,* cited above, § 17, April 3, 2007, *Dimitar Yordanov v. Bulgaria,* o 3401/09, § 60, September 6, 2018, or *Libert v. France,* n
n o 588/13, § 38, February 22, 2018).

30. The Court notes that in the compensatory remedies exercised by the applicant companies, the conclusions of the domestic courts diverge as to the status of the debtor company in domestic law. In one procedure, the Court of Appeal considered that Vinuri-Ialoveni SA was a subject of private law, while in the other procedure, the courts considered that it was a public debtor (see paragraphs 11-12 above).

31. In any event, the Court recalls that the legal classification of a legal person under domestic law is not decisive for the examination of the State's liability for debts contracted by a company.
Indeed, the specific circumstances of each case may lead to State liability being incurred regardless of this formal qualification in domestic law (see, among others, Tokel v. Turkey, o 23662/08, § 60, February *9 ,* 2021).
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32. The Court notes, however, that Law No. 121 of 4 May 2007 on the management and privatization of public property imposes specific regulations on commercial companies majority-owned by the State (see paragraph 15 above). Consequently, despite the distinct legal personality and its commercial activity according to common law, it is necessary to examine whether, in accordance with this legislation and in the light of the way in which it was applied in the present case, the debtor company had had institutional and operational independence sufficient to avoid the responsibility of the State in relation to its debts.

ii. Control exercised by the State over the assets of the debtor company

33. The Court immediately notes that the majority shareholder of the debtor company is the State, with a participation of approximately 60% of shares. The applicant companies assert that this element is sufficient to engage the direct liability of the State for the debts of the debtor company.
However, the Court recalls that it distinguishes between the exercise by the State of its shareholder rights, which remains responsible for the debts of the company to the extent of its investment in the company, and the control exercised by the State over society in its role as a public power which affects its institutional and operational independence (compare, on this point, with *Shipping Company of the Islamic Republic of Iran*

vs. Turkey, no. 40998/98, § 81, ECHR 2007-XIV, and *Khachatryan,* cited above, § 51).

34. The Court thus reveals that, according to domestic law, when the State holds a majority stake in the share capital of the company, it is empowered by Law No. 121 of May 4 , 2007 on the management and privatization of property public to exercise a certain degree of control over the management of the company's assets outside the company's statutory bodies. It notes, in particular, the specific provisions for the rental and sale of unused assets belonging to public companies or majority-owned by the State (see paragraph 15 above). These provisions provide that transactions involving these assets must be subject to the prior agreement of the State authorities and the income thus generated must be used as a priority to repay debts to the State budget.

35. The Court thus notes that the State has control of assets not used by the debtor company which may in principle prove to be significant, depending in particular on the structure of the company's assets and the impact of such an intervention on its solvency (see, *mutatis mutandis, Khachatryan,* cited above, § 51). However, in this case it does not have any evidence showing that the State would have acted in this way with the debtor company and would thus have exercised significant influence over the management of its assets.

iii. State control over the sale of goods seized by bailiffs

36. The Court then observes that under the terms of Law No. 121 of May 4, 2007 on the management and privatization of public property, seized property belonging to a company in which the State's participation amounts to 25% minimum, can be sold only by the Public Property Agency (see paragraph 15 above). In this case, the bailiffs invoked this provision before the domestic courts to justify the failure to implement the auction of the seized assets of the debtor company.

37. The Court notes that none of the parties disputed these facts. However, this situation certainly prevented the applicant companies from recovering the debts held against the debtor company, given that the value of the seized buildings would have covered these debts (see paragraph 7 above). Furthermore, although the bailiff withdrew in favor of the competent public authority, there is no evidence in this case to show that the latter had taken the necessary measures to carry out the sale and ensure payment of the debts of the debtor company. The manner in which the State found itself in a position to exclusively exercise this sale and the fact that it did not implement it constitutes evidence of a significant degree of control over the assets of the State. company, although this control is not exercised to the detriment of the statutory bodies of the company, but of the bailiff responsible for execution.

38. The Court notes that the Government has not provided any information as to the reasons which prevented the authorities from carrying out the sale of the seized property and allowing the recovery of debts in favor of the applicant companies using the means obtained. Consequently, the Court considers that the intervention of the Agency for Public Property as the sole competent authority to carry out the sale of the seized property of the debtor company and its omission in this respect proved decisive for the failure of the enforcement procedure in favor of the applicant companies.

39. The Court therefore concludes that the State must be held responsible for the non-performance of debts in favor of the applicant companies. Therefore, it rejects the Government's objection regarding incompatibility *ratione personae.*

2. The victim status of the applicant companies

40. The Court recalls that the principles according to which a person can always claim to be a victim for the failure to execute a court decision which is favorable to them, when there is a compensatory remedy at the domestic level, were recalled in its judgment in the *Cristea* case (cited above, §§ 25-31).

41. It is therefore incumbent on the Court to verify whether the authorities have implicitly or explicitly recognized the violation of a right protected by the Convention and to determine whether the compensation granted can be considered adequate and sufficient.

a) The first applicant company

42. The Court notes that when the first applicant brought her complaints based on the duration of the non-compliance before the domestic courts, her request was dismissed (see paragraph 11 above). This exemption from liability seems to have been based on the assessment of the steps which were carried out by the bailiff, in particular the sequestration of the debtor company's assets and its inability to pay, leading to the triggering of the bankruptcy procedure. insolvency. The courts avoided the question of the state's liability for the company's debts.

43. Therefore, the Court considers that the lack of recognition by the authorities of the violation of the first applicant's rights does not allow her victim status to be ruled out and renders the subsequent examination of the effectiveness of the domestic remedy unnecessary. .

b) The second applicant company

44. As for the second applicant, the Court notes that the domestic courts recognized the violation of the right to execution of a final decision within a reasonable time (see paragraph 12 above). This finding amounts to an explicit recognition of the alleged violations

by the second applicant. It is therefore appropriate to analyze the characteristics of the relief from which the second applicant benefited in this case.

45. The Court recalls that the fundamental criteria for assessing the effectiveness of a compensatory remedy have been set out in its consistent case-law in non-execution cases *(Bourdov v. Russia (no. 2),* o 33509/04, § 99, ECHR n 2009, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 195-207, ECHR 2006-V, and *Cristea,* cited above, § 28). In the *Cristea* affair (cited above, § 35), the Court noted, among other things, that despite an order from the State to pay compensation for the non-execution of a decision in his favor, the applicant was faced with a new period of non-execution, which led the Court to consider that the compensatory remedy was not effective.

46. The Court notes that a further period of non-compliance of approximately eleven years elapsed after the exhaustion of the domestic remedy by the second applicant and the initial finding of a violation. Given this persistent failure of the Moldovan authorities to implement the initial decision in favor of the second applicant, the Court considers that the compensatory remedy based on Law no. 87/2011 did not offer the applicant adequate relief for her losses. rights. Furthermore, arriving at this conclusion, the Court considers that an assessment of the effectiveness of the internal remedy is no longer justified in the present case.

47. Consequently, the Court finds that the applicant companies can still claim to be victims of the violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention . Therefore, the Court rejects the Government's objection concerning the loss of victim status for the applicant companies.

3. Conclusion on admissibility

48. Having rejected the Government's objections (see paragraphs 39 and 47 above) and further finding that the applications are not manifestly ill-founded or inadmissible for any other reason referred to in Article 35 of the Convention, the Court declares them admissible.

B. On the merits

49. The applicant companies maintain that they are victims of a failure to enforce debts held against a company with majority state capital for an unreasonable period.

50. The Government argues that the company Vinuri-Ialoveni SA is a private company and that the domestic courts called upon to rule on the State's liability in the disputed enforcement procedures would have allocated adequate compensation to the circumstances of the two cases.

1. Period of non-execution to be taken into consideration

51. The Court observes that the periods of non-compliance alleged by the applicants in the present case began on the dates when the judgments delivered at first instance became final. In the absence of more precise information, these dates correspond, at the latest, to the month of February 2009. The domestic courts called upon to rule on actions for compensation for an excessive delay in non-execution have retained the period of non-execution of approximately one year and ten months which had passed at the material time.

52. However, the Court recalls its approach in cases of non-execution in which the compensatory remedy proved ineffective, where it ruled that it was appropriate to take into account the overall period of non-execution which elapsed until the date of delivery of his judgment, and not only the period examined by the domestic courts. In this case, this period currently amounts to approximately fourteen years and six months.

2. Reasonableness of the duration of the enforcement proceedings

53. The Court notes that the periods of non-compliance suffered by the applicants in the present case are, with regard to the established case-law of the Court, incompatible with the requirements of Article 6 of the Convention and the Article 1 of Protocol No. 1 to the Convention (see, among numerous other precedents, *Prodan,* cited above, § 54, and *Cooperativa Agricola Slobozia-Hanesei,* cited above, § 26).

54. Furthermore, if a liquidation procedure can objectively justify certain limited delays in execution, the persistent non-execution of judgments in favor of the applicants for several years cannot in any case be justified (see, mutatis mutandis, *Liseytseva and Maslov,* cited above, § 222).

55. The Court considers that the circumstances which arise in the present case indicate that the State authorities did not consider themselves bound by an obligation to honor the debts owed to the applicant companies, but limited themselves to the pursuit of an insolvency procedure which gave little prospect of the applicant companies' debts being enforced within a reasonable time.

56. However, the Court refers to the conclusion it reached in paragraphs 37-39 above with regard to the State's responsibility for the enforcement of the debts held by the applicants. In exercising the powers assigned by Law No. 121 of May 4, 2007, the authorities had the possibility of selling the property seized by the bailiffs in order to obtain funds intended for the recovery of the applicants' debts. , but they failed to do so. Despite the seizure of sufficient assets to repay the applicant companies' debts (see paragraph 7 above), the authorities did not fulfill their role in the procedure and therefore took responsibility for

non-execution of final judgments on the account of the debtor company. They thus infringed the applicants' right to a court and prevented them from satisfying the claims they had, which constitutes a disproportionate interference in the enjoyment of their property.

57. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention due to the non-enforcement of the final judgments in favor of the applicants within a reasonable time.

58. For the same reasons which led it to consider that the remedy exercised by the applicants did not offer them sufficient relief (paragraphs 43 and 46 above), the Court considers that there was also a violation of Article 13 of the Convention combined with Article 6 § 1 of the Convention and with Article 1 of Protocol No. 1 to the Convention.

III. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Under Article 41 of the Convention:

> "If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party only imperfectly allows the consequences of this violation to be erased, the Court grants the party injured party, if applicable, just satisfaction. »

A. Too bad

60. The applicant companies claim as material damage the amount of debts they have against the debtor company, namely 16,919 euros (EUR) for the first applicant and EUR 34,922 for the second applicant. They also claim the amount of late payment interest for the period which elapsed from the date of entry into force of the court decisions until the date on which they presented their requests for just satisfaction, i.e. July 4 2016. These amounts, supported by expert reports showing a calculation based on the provisions of the Civil Code concerning late payment interest, represent EUR 19,945 for the first applicant and EUR 41,238 for the second applicant.

61. They then each request EUR 3,000 in respect of the damage moral that they feel they have suffered.

62. The Government contests all of these amounts as excessive. However, he does not propose another calculation method or amounts that he considers appropriate in this case.

63. The Court considers that the applicant companies certainly suffered damage resulting from the impossibility of obtaining payment of the debts held against the debtor company. Even if the latter is subject to ongoing insolvency proceedings and the applicants participate in them as

creditors, the Court notes that this procedure has continued for the last thirteen years without any payment being made to erase the debts held by the applicants. It therefore considers that the enforcement of these debts is not really possible in this procedure and decides that it is appropriate to award the applicants the amounts of the debts held against the debtor company. Furthermore, taking into account the impossibility of the applicant companies to use the money which was theirs, as well as the national legislation concerning the calculation of late payment interest, the Court considers that there is reason to compensate the delay in execution. It considers that the amounts claimed in this respect should be awarded to the applicants respectively. In these circumstances, the Court considers it reasonable to award as material damage the amount of debts together with interest claimed by the applicant companies, namely EUR 36,864 to the first applicant and EUR 76,160 to the second applicant (see, mutatis *mutandis , Arnaboldi v. Italy,* no. 43422/07, § 74, March 14, 2019, *Oferta Plus SRL v. Moldova* (just satisfaction), no. 14385/04, § 71, February 12, 2008).

64. As for the claims made in respect of non-pecuniary damage, the Court notes that taking into account the violations noted in these cases for the prolonged non-execution of favorable court decisions for a period of more than fourteen years (see paragraphs 57-58 above above), the applicants should be awarded the amount resulting from the overall period of non-execution which has elapsed to date, less the amount which was awarded on this basis to the second applicant in the domestic proceedings . The Court therefore awards as non-pecuniary damage EUR 1,600 to the first applicant, and EUR 600 to the second applicant, plus any amount that may be due on these sums as tax.

B. Fees and expenses

65. The applicant companies each claim EUR 186.20 in respect of costs and expenses which they incurred for the purposes of the proceedings before the Court. These amounts correspond to the fees of the expert who produced the reports relating to the interest applicable to the claims in this case. In this regard, they produce invoices attesting to payment of fees for the amounts claimed.

66. The Government has not commented on these amounts.

67. According to the Court's case-law, an applicant can only obtain reimbursement of his costs and expenses to the extent that their reality, their necessity and the reasonableness of their rate are established (see, among many others, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 189, 17 May 2016). In the present case, taking into account the documents in its possession and the aforementioned criteria, the Court considers it reasonable to award each of the applicant companies the sum of EUR 186.20 for

the costs and expenses incurred in the proceedings conducted before it, plus any amount that may be due on this sum as tax.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to separate the present requests from the group of requests n os 16000/10 and others;

2. *Decides* to join the two present requests;

3. *Declares* the requests admissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. *This*

   a) that the respondent State must pay to the applicant companies, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted in the currency of the respondent State at the rate applicable on the date of settlement:
      i. EUR 36,864 (thirty-six thousand eight hundred and sixty-four euros) to the first applicant company EUR 76,160 (seventy-six thousand one hundred and sixty euros) to the second applicant company, plus any amount that may be due on these sums as compensation. tax, for material damage;

      ii. 1,600 EUR (one thousand six hundred euros) to the first applicant company and 600 EUR (six hundred euros) to the second applicant company, plus any amount that may be due on these sums as tax, for non-pecuniary damage;
      iii. 186.20 EUR (one hundred and eighty-six euros twenty cents) to each of the applicant companies, for costs and expenses;
   b) that from the expiry of the said period until payment, these amounts will be subject to simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during this period, increased by three percentage points;

7. *Rejects* the surplus claims for just satisfaction.

Done in French, then communicated in writing on October 24, 2023, in application of article 77 §§ 2 and 3 of the regulation.

Hasan Bakÿrcÿ	Arnfinn Bårdsen
Clerk	President