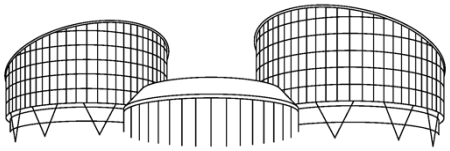

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF OJOG AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Application no. 1988/06)

JUDGMENT
(Just satisfaction)

STRASBOURG

18 February 2020

This judgment is final but it may be subject to editorial revision.

In the case of Ojog and Others v. the Republic of Moldova,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Arnfinn Bårdsen, *President,*
Valeriu Griţco,
Peeter Roosma, *judges,*

and Hasan Bakırcı, Deputy Section Registrar,

Having deliberated in private on 28 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 1988/06) 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 five Moldovan nationals ("the applicants", see details in the attached Annex) on 13 January 2006. On 14 July 2016 the applicants' representative informed the Court about the death of Mrs Valeria Roibu on 10 December 2015 and the wish of her successor – who is also one of the original applicants, Mr Dragoș Roibu, – to continue with the application.

2. In a judgment delivered on 13 December 2011 ("the principal judgment"), the Court held that there had been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention (*Ojog and Others v. the Republic of Moldova*, no. 1988/06, §§ 2 and 14, 13 December 2011) as a result of the quashing, on 20 July 2005, of the final judgments in favour of the applicants.

3. The applicants asked the Court to reserve the question under Article 41 of the Convention. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court accepted that request and reserved the question of just satisfaction. It invited the Government and the applicants to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 18 and point 3 of the operative provisions).

4. The applicants and the Government each filed observations.

BACKGROUND OF THE CASE

5. By a final judgment of 6 February 2003 the Supreme Court of Justice ordered the liquidaton of "Gemenii" S.A., a private joint-stock company.

6. Subsequently the applicants asked for the transmission into their private property of their share in the property of "Gemenii" S.A. On 23 June 2003 of the Centru District Court ruled in favour of the applicants as follows:

> "The court ...
>
> Decides:
>
> ...
>
> 3. To delimitate the real estate belonging to S.A. 'Gemenii' situated on Ștefan cel Mare Boulevard 136 in Chișinău and to give into common private property of shareholders:
>
> [the applicants and two more persons shall receive] their share of 41.85% of the entire real estate, namely: building 'A' (A1, A2) with the underground and related improvements with a total surface of 1,787 sq.m. (1,661sq.m. + 126 sq.m.); a part of building 'B', namely: items B1 and B11 with a total surface of 1,096 sq.m. (159 sq.m.+ 937 sq.m.) and building 'V' with the total surface of 3,641.9 sq.m. ...
>
> ...
>
> 7. That the shareholders mentioned in points 3 and 4 above [the applicants] shall privately own the land on which the buildings on Ștefan cel Mare Boulevard 136 attributed to them after the division of SA 'Gemenii' are situated. The plots of land between buildings A, B and V and other land belonging to SA 'Gemenii' shall be the common property of all the shareholders of SA 'Gemenii' and shall be reserved for common use".

7. That judgment was upheld on 30 October 2003 by the Chișinău Court of Appeal and on 3 March 2004 by the final judgment of the Supreme Court of Justice.

8. In the meantime, on 18 August 2003 one of the applicants bought from two other co-owners, who did not eventually lodge an application with the Court, their shares in the property awarded in the judgment of 23 June 2003. Thus, after 18 August 2003 the five applicants owned the entire property originally awarded to seven persons in the above-mentioned judgment.

9. It is clear from the documents in the file that, as of 1 August 2003 the buildings formerly belonging to "Gemenii" S.A. had the total surface of 9,165.9 sq. m. Of these, 6,524.9 sq.m. were awarded to the applicants in the judgment of 23 June 2003 (see paragraph 6 above) as upheld by the higher courts. On 18 November 2003 the applicants sold to a third party (M.S.) the entire building "V" (measuring 3,641.9 sq.m.) and 27.87% (498 sq.m.) of their part of building "A" (items A1 and A2 measuring 1,787 sq.m.) for a total of MDL 2,110,302 (the equivalent of approximately EUR 133,054 at the time), representing approximately 63.45% of their property in "Gemenii" S.A. at that moment.

10. The applicants obtained a down payment from M.S. for the buildings sold (MDL 194,000, approximately EUR 12,231), the rest being payable in instalments until 1 January 2005. However, those instalments were never paid and the applicants apparently did not request that money.

11. Following a request for annulment of the judgments adopted earlier (see paragraphs 5-7 above), on 20 July 2005 the Supreme Court of Justice quashed the judgments adopted earlier and sent the case for a re-trial. On

23 July 2005 all acts concerning the property awarded to the applicants by the judgment of 23 June 2003 were prohibited (*sechestru*) based on the judgment of 20 July 2005.

12. At the end of the re-trial proceedings, by a judgment of 4 July 2006, the Economic Court of Appeal rejected the applicants' claims as unfounded. That judgment was upheld by the Supreme Court of Justice on 14 December 2006. On 25 January 2007 the Supreme Court of Justice adopted a supplementary judgment, in which it annulled all legal acts concerning the property awarded to the applicants by the judgment of 23 June 2003, including the sale on 18 November 2003 to M.S.

13. In conformity with a decision of the National Securities' Commission of 18 July 2007, the applicants and two other persons were re-registered as owners of the relevant part of the shares (199,422 shares of the total of 578,075 shares of "Gemenii" S.A.). On 5 February 2010 "Gemenii" S.A. issued additional shares. The applicants did not participate in this increase of capital and thus their shares currently represent 2.07% of all the shares in the company. According to the estimations made by private consulting companies, submitted by the Government, the value of a share in "Gemenii" S.A. varied between approximately MDL 16 in 2012-14 and MDL 39 in 2016-18. The applicants submitted evidence of a single transaction with shares of "Gemenii" S.A. in 2015, when each share was sold for MDL 17. On that occasion 47.87% of shares in the company were sold for a total of MDL 95,312,812 (the equivalent of EUR 5,015,500).

14. On 31 July 2007 the Territorial Cadastre Service deleted all mentions of the applicants' property right over the relevant buildings and registered those buildings as belonging to "Gemenii" S.A.

RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant provisions of the Code of Civil Procedure, as they read before the adoption of the principal judgment, read as follows:

Article 447. Persons who have the right to request the revision

"The following shall have the right to request the reopening of a case:

a) the parties to the proceedings and other participants;

b) persons who were not involved in the proceedings, but whose rights were breached by the judgment or decision adopted;

c) the Prosecutor General, in the case provided for in Article 449(j)."

Article 449. Grounds for revision

"A revision request shall be granted when:

...

j) Where the European Court of Human Rights has started a procedure of friendly settlement in a case where the Government of the Republic of Moldova is a Party, and the Government consider that by a final decision of a court a fundamental right guaranteed by the Constitution of the Republic of Moldova or by the European Convention for the Protection of Human Rights and Fundamental Principles has been breached."

16. The relevant provisions of the Code of Civil Procedure, currently in force, read as follows:

Article 447. Persons who have the right to request the revision

"The following shall have the right to request the reopening of a case:

a) the parties to the proceedings and other participants;

b) persons who were not involved in the proceedings, but whose rights were breached by the judgment or decision adopted;

c) the Government Agent, in the case provided for in Article 449(g) and (h)."

Article 449. Grounds for revision

"A revision may be requested:

h) Where the European Court has found in a judgment or the Government has acknowledged in a declaration that there has been a breach of human rights and fundamental freedoms which can be remedied, at least in part, by the annulment of a judgment adopted by a national court."

17. The relevant provision of the Civil Code as it read at the material time reads as follows:

Article 619. Default interest

"1) Default interest is payable for the delayed execution of pecuniary obligations. Default interest shall be 5% above the interest rate provided for in Article 585 [the National Bank of Moldova's refinancing interest rate] unless the law or 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 contract provides otherwise. Proof that less damage has been incurred shall be inadmissible.

..."

18. Under Article 19 of the Regulation of the valuation of real estate for taxation purposes, adopted by Government decision no. 65-66 of 29 April 2005, real estate with a commercial destination is an isolated building or part of a building not used for habitation, but mainly for economic activity, as well as the land underneath.

THE LAW

I. PRELIMINARY ISSUE

19. Following the death on 15 December 2015 of one of the applicants, Mrs Valeria Roibu, her son, Mr Dragoș Roibu, informed the Court of his wish to pursue the application in his mother's stead (see paragraph 1 above).

20. The Government made no comment in this regard.

21. At the outset, the Court reiterates the need to distinguish cases in which an applicant has died in the course of proceedings from cases where an application has been lodged with the Court by an applicant's heirs after the death of the victim (see *Ergezen v. Turkey*, no. 73359/10, § 28, 8 April 2014; *Fairfield v. the United Kingdom* (dec.), no. 24790/04, ECHR 2005-VI; and *Biç and Others v. Turkey*, no. 55955/00, § 20, 2 February 2006).

22. In cases such as the present one, where the applicant died after lodging an application, the Court has consistently accepted that the next of kin, close family member or heir may, in principle, pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], cited above, § 97; *Fartushin v. Russia*, no. 38887/09, § 33, 8 October 2015; and *Vaščenkovs v. Latvia*, no. 30795/12, § 27, 15 December 2016). The Court reiterates that it is not only material interests which the successor of a deceased applicant may pursue by his or her wish to maintain the application. Human rights cases before the Court generally also have a moral dimension, and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII). Thus, in cases where the direct victim has died after the lodging of an application, the decisive factor is not whether the rights at issue are transferable to heirs willing to pursue an application, but whether the persons wishing to pursue the proceedings can claim a legitimate interest in seeking that the Court decide the case on the basis of the applicant's desire to use his individual and personal right to lodge a case before the Court (see *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014).

23. Turning to the present case, the Court observes that the person seeking to pursue the proceedings before it is the applicant's son, and thus a close family member. The document produced by the son, namely a certificate issued by the notary public and attesting that the applicant is the heir of Mrs Valeria Roibu, is sufficient in this regard.

24. In view of the above, and having regard to the circumstances of the present case, the Court is satisfied that Mr Dragoș Roibu has a legitimate interest in pursuing the application. At his request, it will therefore continue to deal with the case in respect of the claims originally made by his mother.

For practical reasons, Mrs Valeria Roibu will continue to be called one of "the applicant(s)", although Mr Dragoș Roibu is now to be regarded as such.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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 parties' submissions

(a) The applicants

26. The applicants sought restitution of their part of three buildings that had been awarded to them in the final court judgment that had subsequently been annulled. They submitted a report by KPMG Romania S.R.L. of 14 September 2012, which estimated the value of the buildings and support structures belonging to the "Gemenii" S.A. at 90,395,856 Moldovan lei (MDL, the equivalent of 5,808,755.8 euros (EUR) at the time) and the value of the land underneath these buildings at MDL 58,457,364 (EUR 3,756,417.2). According to the report, the monetary value corresponding to the applicants' share of 41.85% in the property of "Gemenii" S.A., including the buildings and the land underneath, represented MDL 62,295,024 (EUR 4,003,024). The KPMG report relied on a report made by "Centru de Evaluări Imobiliare S.R.L." ("the CEI"). It also noted that three real estate agencies active in the area had estimated the real market value of the same buildings as high as EUR 28,600,000. Moreover, in February 2019 one of the buildings belonging to "Gemenii" S.A. was pledged to a bank for EUR 9.5 million. Thus, that building alone was worth more than what they claimed for all the buildings taken from them. The applicants' final claim for compensation for the value of the buildings lost was for EUR 5,095,491, after deducing the value of the shares which were returned to them following the annulment of the judgment in their favour (in their opinion, those shares were worth EUR 204,509).

27. They also claimed compensation for lost profits. They noted that after 13 October 2004 several of their bank accounts had been frozen and they had been unable to receive any payment for renting their part of the buildings, despite signing two contracts in 2004 for the rental of the relevant property for long periods of time. The applicants relied on the findings of two separate expert reports. The first one, the KPMG report mentioned above, estimated their net lost profit at MDL 139,588,380.5

(EUR 9 million). The report noted, *inter alia*, that it had taken into account the actual profits during the period 2006-2012 made by the "Gemenii" S.A., the company which had obtained the parts of the buildings in question after they had been taken away from the applicants. Those profits had been relatively stable throughout that period.

28. The other report, drawn up on 29 February 2012 by the "Revcont Audit" S.R.L., a local audit company, estimated the applicants' lost profit at MDL 123,764,235 (EUR 7,954,204). In addition, the report noted that under Moldovan law (see paragraph 17 above) the applicants could claim default interest of MDL 38,482,806 (EUR 2,473,251) for the delay in being paid. A further report was made on 30 April 2012 by the CEI (see paragraph 26 above). It estimated the value of the entire real estate belonging to "Gemenii" S.A. at EUR 10,713,870.

29. Relying on the above-mentioned reports, the applicants claimed a total of MDL 162,247,041 (EUR 10,427,455) in lost profit. They later updated their claim to EUR 15,473,570, referring to the period of time that had passed since the date of the principal judgment and of their claims for just satisfaction. They added that after the annulment of the judgment in their favour and the return to them of 41.85% of shares in "Gemenii" S.A. they had received no benefits from those shares.

30. The applicants noted that they had not claimed all the default interest to which they were entitled under the law (see paragraph 17 above).

31. In reply to the Government's submissions, the applicants argued that the rule of exhaustion of domestic remedies did not apply to situations in which the Court had found a breach and reserved the issue under Article 41, as long established by *De Wilde, Ooms and Versyp v. Belgium* (Article 50) (10 March 1972, § 16, Series A no. 14). In respect of the criticism raised by the Government regarding the methods used by the Moldovan expert, on which the KPMG report was based (see paragraph 36 below), the applicants replied that the Moldovan expert was licenced to carry out the type of assessment which was produced and that the methodology used was generally accepted in European countries.

32. The applicants finally submitted that the sale to M.S. (see paragraph 9 above) concerned only a small part of their property awarded to them in the judgment of 23 June 2003. They added that in October 2004 armed men stormed the "Gemenii" S.A. building and took effective control over the company.

(b) The Government

33. The Government submitted that the applicants' property had not in fact been expropriated since they remained the owners of 41.85% of shares in "Gemenii" S.A. Moreover, the applicants had not asked the domestic courts to reopen the proceedings in question on the basis of the judgment taken by the European Court, as had happened in similar cases (such as

Ipteh SA and Others v. Moldova (just satisfaction and striking out), no. 35367/08, 29 June 2010). Accordingly, they could be considered to be no longer interested in pursuing the case.

34. The Government further submitted that by not asking for the quashing of the judgments which had annulled the final court judgments in their favour, the applicants had failed to exhaust available domestic remedies. Since Moldovan law afforded the applicants the opportunity to restore their breached Convention rights, it could not be said that Article 41 of the Convention was their sole possibility for obtaining compensation. While they acknowledged that they were estopped, at this stage of the proceedings, from raising an objection of non-exhaustion of domestic remedies, the Government asked the Court to consider the case in the light of its subsidiary role.

35. As for the applicants' claims, they noted that the Supreme Court of Justice was best placed to examine not only an application to quash the judgments which had annulled the earlier judgments in their favour, but also to determine the amount of any damage caused. The Government further argued that they had had no procedural means to secure the return of the part of the buildings in question since the applicants themselves were the only ones able to ask the Supreme Court of Justice to reopen the proceedings.

36. In respect of the value of the relevant part of the buildings, the Government were not able to submit their own assessment, which would have been drawn up by the National Centre of Judicial Expertise ("the NCJE"), of the damage caused to the applicants (referring to *Prepeliţă v. Moldova*, no. 2914/02, § 23, 23 September 2008, in which the Court found that the applicant's doubts concerning the NCJE's independence from the Government were "not without basis"). They noted that the reports relied on by the applicants had given two different estimations for the entire buildings' value (EUR 28,600,000 and EUR 14,300,000). They argued that if the parts of the buildings in question were returned to the applicants, they could not claim their market value. They added that the applicants had not been deprived of their property as they had continued to own all the buildings, together with the other shareholders of the "Gemenii" S.A., the company which they had sought to liquidate. In any event, the value of the relevant part of the buildings should not be calculated at its present market value, but at 2003 prices, when they had obtained the property. Accordingly, the Government could not accept the valuations for the buildings. Moreover, the report by the Moldovan expert organisation relied on by the applicants had been affected by serious errors in the method of calculation, making them unreliable. It was not signed by a qualified appraiser but by the director of that organisation, in breach of the law. While this report mentioned three methods of calculation, only one (attesting to the highest level of lost profits) was taken as a basis for the

calculations. That single method was also flawed since it overestimated the rent rates and gross revenue and used too optimistic growth rates for the period under consideration. The expert conceded that the applicants freely used their property up until July 2005, yet calculated profits lost also for the period of 13 October 2004 – July 2005, without explaining the discrepancy in the dates. The report by KPMG was largely based on the report mentioned above and was thus also unreliable.

37. Moreover, the applicants had not referred to any lost profits in their reply to the Government's observations concerning just satisfaction. Accordingly, only their claims as concerned the value of the buildings should be examined. In any event, the calculations carried out by the experts were unacceptable because, although understandable in financial terms, they ignored the specificity of the *restitutio in integrum* nature of the claims. The only method provided for under domestic law was to apply default interest, as had been accepted by the Court in several previous cases. Moreover, by avoiding putting their claims and calculations to the Supreme Court of Justice, the applicants had burdened the Court with the task of establishing the true extent of any damages.

2. The Court's assessment

(a) Preliminary considerations

38. The Court recalls that under Article 41 of the Convention an applicant is not required to exhaust domestic remedies after successfully bringing a case before the Court (*De Wilde, Ooms and Versyp*, cited above, § 16). In that respect, the present case differs from those in which, before the Court adopted a decision on the just satisfaction claims, the applicants had sought and obtained a reopening of proceedings, within the framework of which they could claim compensation domestically (see, for instance, *Mătăsaru and Saviţchi v. Moldova*, no. 38281/08, §§ 75-76, 2 November 2010; *Bisir and Tulus v. Moldova*, no. 42973/05, §§ 36-37, 17 May 2011; and *Daniel-P S.A. v. Moldova* (dec.), no. 32846/07, §§ 21-25, 20 March 2012).

39. As for the Government's argument that under the old reading of the relevant law the authorities had no procedural means to initiate the reopening of the proceedings in the absence of a request by the applicants, the Court notes that under Article 449(j) of the Code of Civil Procedure, as it read at the time of the adoption of the principal judgment, the Prosecutor General had the power to initiate the reopening of a final judgment when friendly settlement proceedings had been begun by the Court (see paragraph 15 above). At the same time, the Court specifically asked the parties to inform it of any settlement reached following the adoption of the principal judgment, thus initiating a friendly settlement procedure in respect of compensation (see paragraph 3 above). It is also apparent from the

case-law of the Supreme Court of Justice that it has considered the Court's judgment on the merits of a case as an important element in reopening domestic proceedings based on an application by the Prosecutor General (see *Moldovahidromaş v. Moldova*, no. 30475/03, §§ 38-40, 27 February 2007). As for the alleged impossibility of enforcing the Court's judgment owing to a lack of procedural powers to reopen the proceedings in which the applicants' rights had been breached, it is to be noted that under current legislation (see paragraph 16 above) it is possible for the Government Agent to ask for proceedings to be reopened based on a judgment of this Court. Since the application will only be fully determined by the present judgment, it would appear to be possible for the Government Agent to rely on it in asking the Supreme Court of Justice to annul the judgment which breached the applicants' Convention rights so as to ensure *restitutio in integrum* in respect of the property effectively belonging to the applicants on the date of the quashing of 20 July 2005.

40. It is also open to the Government not to initiate any of the proceedings referred to above and to compensate the applicants directly for the damage caused. The Court therefore cannot accept the Government's argument that after the adoption of the principal judgment the applicants should have started a new set of court proceedings to ask for the annulment of the judgment which had breached their rights and to claim compensation.

(b) The damage caused to the applicants, and the reparation for it

41. The Court reiterates that a judgment in which it finds a breach imposes a legal obligation on the respondent State 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). Consequently, reparation should aim at putting the applicants in the position they would have been in had the violation not occurred, namely if the final court judgment in their favour had not been annulled (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, 6 March 2007; and *Dacia S.R.L. v. Moldova* (just satisfaction), no. 3052/04, § 39, 24 February 2009).

42. The Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. In appropriate cases, this may include compensation in respect of loss of earnings (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV and *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 81, ECHR 2014). A

precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants may be prevented by the inherently uncertain character of the damage flowing from the violation (see *Kurić and Others*, cited above, § 82). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved, the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary losses, which it is necessary to award each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see, *mutatis mutandis*, *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 119-20, ECHR 2001-V; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 218-22, ECHR 2012 and *Kurić and Others*, cited above, § 82).

43. It is clear from the case file that on 18 November 2003 the applicants sold a part of their property to M.S. (see paragraph 9 above), namely the entire building V (measuring 3,641.9 sq. m.) and 498 sq. m. in building A. This sale had happened before 20 July 2005, when the judgment in their favour was quashed and before the present application was lodged. Accordingly, on the date of the quashing of the final judgment in their favour, as well as of the annulment of subsequent legal acts based on that judgment, such as the two contracts of 18 November 2003, the applicants owned 2,385 sq. m. of the property originally awarded to them (specifically items B1 and B11 within building B, measuring 1,096 sq. m. and items A1 and A2 in building A, measuring 1,787 sq. m. (see paragraph 6 above), of which 1,289 sq. m. still belonged to them after the sale of 498 sq. m. to M.S.). In addition, they owned the sums of money received from M.S. under the sale contracts mentioned above. This is the situation in which the applicants would have found themselves had the breach of their rights under Article 6 and Article 1 of Protocol No. 1 to the Convention not occurred and it must be the aim of *restitutio in integrum* in the present case (see paragraph 41 above). Moreover, the applicants claimed that as a result of the quashing of the judgment in their favour they had suffered loss of profits during the subsequent years. The Court will examine each of these two claims in turn.

(i) Restitutio in integrum

44. The Court notes the Government's submission that in principle the most appropriate form of compensation would be the return to the applicants of the relevant part of the building which they lost after the quashing of the judgment of 23 June 2003. The applicants were initially also in favour of this solution. In their latest submissions they noted that in the meantime there had been several transactions with the shares in "Gemenii"

S.A. between private parties and that since February 2019 one building was been pledged to a bank, making it extremely difficult to reclaim it should "Gemenii" S.A. not repay the debt of EUR 9.5 million (see paragraph 26 above).

45. The Court observes that the property which was still owned by the applicants on 20 July 2005, when the final judgment in their favour was quashed (but after the sale to M.S. of a part of their property) is clearly identifiable (see paragraphs 6 and 9 above). In principle, this is the property that should be returned to the applicants, provided that it is free of debts or other limitations of the property right, such as it being pledged (see paragraph 26 above).

46. If the return of the property mentioned in the preceding paragraph is impossible for any reason, the Government is to pay to the applicants the market value thereof, as determined from the parties' submissions (see, for instance, *Dacia S.R.L. v. Moldova*, cited above, § 55).

47. The applicants submitted two expert reports in order to establish the value of their share in the relevant buildings and their lost profits. The Court notes that the calculations in both these reports were based on the assumption that, on the date of the quashing of the judgment of 23 June 2003, the applicants owned 41.85% of the property formerly belonging to the "Gemenii" S.A. as decided in that judgment. However, it already determined that at the time of the quashing of the final judgment in their favour, the applicants only owned 2,385 sq. m. of the 6524.9 sq. m. originally awarded to them (see paragraph 9 above). That represented approximately 36.55% of the property originally awarded. The Court will adjust its calculations accordingly.

48. Moreover, the expert calculations included separately the value of the land underneath the buildings, without specifying which part of that land was occupied by the buildings (the land underneath the building being part of what constitutes real estate with a commercial destination, see paragraph 18 above). It would appear from one report in the file that approximately 75% of the land was occupied by the buildings, but no separate valuation was made in that respect. In respect of the land unoccupied by the three main buildings and support structures mentioned in the reports, the experts did not specify whether they had taken into account that such land was not in the exclusive ownership of the applicants since it had expressly been reserved for the common use by all the shareholders of the "Gemenii" S.A. (see paragraph 6 above). In short, the materials in the file do not allow the Court to reach a conclusion as to the value of the land unoccupied by the buildings as separate from the value of the buildings concerned.

49. It is noted that the respondent Government did not submit their own valuation of the property claimed by the applicants as part of *restitutio in integrum*, nor of any damage caused to them due to the quashing of the final judgment in their favour. The Court will thus take as a starting point the

expert reports submitted by the applicants, while adjusting the resulting sums in the light of the conclusions in the preceding paragraphs.

50. In view of the documents in the file and of the parties' submissions concerning the value of the relevant buildings, the Court finds that, should a return of the property mentioned in paragraph 45 above be impossible, the respondent Government is to pay to the applicants jointly EUR 2,120,000.

51. Given the fact that the shares which the applicants obtained after the quashing of the final judgment are worth approximately EUR 204,509 (see paragraph 26 above, unrebutted in this respect by the Government), it is obvious that their value is much smaller than the value of the buildings which the applicants lost. Therefore, the Government's argument that the applicants were never truly expropriated (see paragraph 33 above) cannot be accepted.

52. In either case, whether this part of the property is returned to them or a monetary equivalent is paid, the applicants will have to transfer to the Government 36.55% of their shares in the "Gemenii" S.A. which was returned to them as part of the enforcement of the judgment of 25 January 2007.

53. As for the money received from M.S. under the contracts of 18 November 2003, which the applicants would normally have to return, and thus incur a loss, the Court notes their submission that they only received approximately EUR 12,230 as down payment and that no money has been received thereafter (see paragraph 10 above). Moreover, no claim was made under Article 41 of the Convention related to the use of that sum. Accordingly, the Court will make no award in this respect.

(ii) Compensation for the loss of earnings

54. The applicants also claimed compensation for the period of time during which they had not obtained profits from renting out their parts of the buildings awarded in the judgment of 23 June 2003. That period started on 13 October 2004, when Buiucani District Court ordered the freezing of the applicant's bank accounts pending the decision of the Supreme Court of Justice in respect of the annulment request.

55. The Court also notes that the respondent Government did not submit their own assessment of the damage caused to the applicants due to the quashing of the final judgment in their favour. It will thus take as a starting point the expert reports submitted by the applicants, again while taking into account that, at the date of the breach of their rights, they owned 36.55% of what had originally been awarded to them in that judgment (see paragraph 43 above). At the same time, the Court notes the Government's criticism of the method of calculation used by the Moldovan expert organisation, on whose report the KPMG's own report relied (see paragraph 36 above).

56. The Court observes that the two reports referred to in the preceding paragraph calculated lost profits also for the period of 13 October 2004 until the end of July 2005. However, it is noted that the property in question was frozen for the first time on 23 July 2005 (see paragraph 11 above). Despite alleging that their property was effectively taken over in October 2004, the applicant submitted no evidence to support that claim. This means that both reports included calculations for an additional period of approximately nine months. Given the fact that the reports relied on by the applicants included calculations for a person (M.S.), who was not an applicant in the principal judgment and whose part in the property affected by the annulment of the judgment of 23 June 2003 was not analysed separately, and that they included a period of time which should not have been included, the Court is unable to fully rely on these reports. Moreover, it is not the role of the Court to recalculate all the sums submitted in order to ascertain the necessary data (see, for instance, *Žáková v. the Czech Republic* (just satisfaction), no. 2000/09, § 45, 6 April 2017).

57. The Court notes that while the applicants responded in a general manner to the Government's criticisms of the method of calculation used by the Moldovan expert (see paragraph 36 above), they did not give any explanation to counter the specific arguments advanced by the Government in that respect (see paragraph 31 above).

58. Having regard to the materials in the file and deciding on an equitable basis, the Court awards the applicants jointly EUR 1,500,000 for the loss of earnings.

(iii) Conclusion concerning the pecuniary damage caused to the applicants

59. The Court concludes that, as a result of the breach of the applicants' rights established in the principal judgment, they were deprived of their property, namely 2,385 sq. m. (items B1 and B11 within building B, measuring 1,096 sq. m. and parts of items A1 and A2 in building A, measuring 1,289 sq. m. (see paragraph 43 above). The value of this property, if not returned to the applicants, was estimated based on the materials submitted by the parties at EUR 2,120,000. In addition, the applicants were caused damage from their inability of renting out the property mentioned above, amounting to EUR 1,500,000.

B. Non-pecuniary damage

60. The applicants claimed a total of EUR 20,000 for the non-pecuniary damage caused to them as a result of their many attempts to have the proceedings reopened and the harassment to which they had been subjected in the process.

61. The Government submitted, as they did in respect of the lost profit, that the applicants' failure to address that issue in their final observations

meant that they had shown a lack of interest in claiming such compensation. In any event, the amount claimed was exaggerated.

62. The Court considers that the applicants must have suffered a certain amount of stress and frustration as a result of the quashing of the final judgments in their favour. Deciding on an equitable basis, it awards them jointly EUR 5,000 in respect of non-pecuniary damage.

C. Costs and expenses

63. The applicants claimed EUR 3,500 for legal costs, relying on a contract with an hourly fee of EUR 90 and 41 hours of work on the case. The fee was within the limits recommended by the Moldovan Bar Association for international litigation, as noted in *Flux v. Moldova (no. 2)* (no. 31001/03, § 57, 3 July 2007). They also claimed a total of EUR 20,014.15 for the cost of the two reports.

64. The Government submitted that the cost of the reports should not be reimbursed since, in their view, they had been unacceptable and should have been submitted to the domestic courts rather than the Court. Moreover, the fees paid to their lawyers were exaggerated, considering that a fee of EUR 75 per hour, as accepted by the Court in *Boicenco v. Moldova* (no. 41088/05, 11 July 2006), was more reasonable.

65. Regard being had to the circumstances of the case and the documents submitted by the applicants, the Court considers it reasonable to award EUR 2,000 to the applicants for legal costs and EUR 8,000 for the experts' fees.

D. Default interest

66. The Court considers it appropriate that the default interest rate 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. *Dismisses* the Government's objection concerning the failure to exhaust available domestic remedies;

2. *Holds*

(a) that the respondent State is to return to the applicants jointly, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the parts of the buildings which still were the applicant's property immediately before the judgment of 20 July 2005 was adopted, together with the underlying land, all free from any limitation of the property right,

plus any tax that may be chargeable, against simultaneous transfer by the applicants to the Government of 36.55% of shares in the "Gemenii" S.A. returned to the applicants after the quashing of the final judgment in their favour;

(b) that, failing restitution of the property as set out under (a) above, the respondent State is to pay the applicants jointly, within the same period of three months as that referred to under (a) above, EUR 2,120,000 (two million one hundred and twenty thousand euros), to be converted into Moldovan lei at the rate applicable at the date of settlement, plus any tax that may be chargeable, against simultaneous transfer by the applicants to the Government of 36.55% of shares in the "Gemenii" S.A. returned to the applicants after the quashing of the final judgment in their favour;

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

(i) EUR 1,500,000 (one million five hundred thousand euros) in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(d) that from the expiry of the three-month period mentioned under (a-c) 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;

3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Arnfinn Bårdsen
President

ANNEX

Application no. and date of introduction	Information concerning the applicants	Decisions adopted in the main proceedings	Decision adopted following the extraordinary appeal
1988/06 (lodged on 13 January 2006)	OJOG Ludmila (born on 14 December 1959) ROIBU Valeria (born on 3 August 1942 and died on 10 December 2015) ROIBU Mihail (born on 4 March 1942) ROIBU Dragos (born on 31 August 1968) OJOG Igor (born on 6 June 1981) All applicants are Moldovan citizens and reside in Chişinău.	Judgment of 23 June 2003 of the Centru District Court, ordering the liquidation of the "Gemenii" S.A. company and awarding the applicants 41.85% of the property belonging to that company (upheld by the Chișinău Court of Appeal on 30 October 2003 and the Supreme Court of Justice on 3 March 2004 in a final judgment).	After several unsuccessful attempts to reopen the proceedings, the Supreme Court of Justice admitted on 20 July 2005 the revision request initiated by third parties, quashing all the judgments adopted earlier (including the judgments of 23 June 2003 and of 3 March 2004) and ordering a rehearing of the case. In the reopened proceedings, the applicants' claims were rejected by the Economic Court of Appeal on 14 July 2006. This judgment was upheld by the final decision of the Supreme Court of 25 January 2007.