

<div data-bbox="273 80 698 165" data-label="Page-Header"><p>Pages 288 - 527 INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES</p></div> <div data-bbox="357 204 596 259" data-label="Text"><p>ICSID Case No ARB/16/8 between</p></div> <div data-bbox="320 300 664 444" data-label="Text"><p>ZBIGNIEW PIOTR GROT AND OTHERS Claimants - v - REPUBLIC OF MOLDOVA Respondent</p></div> <div data-bbox="249 483 649 600" data-label="Text"><p>The Arbitral Tribunal The Hon L Yves Fortier CC, OQ, QC - Arbitrator Professor Dr Rolf Knieper - Arbitrator Professor Philippe Sands - President</p></div> <div data-bbox="338 636 555 723" data-label="Text"><p>HEARING VIENNA, AUSTRIA Tuesday, 12 December 2017</p></div>	<div data-bbox="995 80 1203 104" data-label="Page-Header"><p>LIST OF PARTICIPANTS</p></div> <div data-bbox="851 114 1043 136" data-label="Text"><p>On behalf of Claimants:</p></div> <div data-bbox="851 144 1049 242" data-label="Text"><p>TODD ALLEN WELLS THEODORE GLEASON COREN HINKLE ANDREW ASTUNO LUCIA CRACIUNEANU GIEDRE STASIUNAITE</p></div> <div data-bbox="851 253 1117 383" data-label="Text"><p>GLEASON WELLS The Colorado Building 1615 California Street, Suite 616 Denver, CO 80202 United States of America todd.wells@gleasonwells.com ted.gleason@gleasonwells.com coren.hinkle@gleasonwells.com</p></div> <div data-bbox="851 393 1092 414" data-label="Text"><p>Also present from the parties:</p></div> <div data-bbox="851 423 1144 444" data-label="Text"><p>ZBIGNIEW PIOTR GROT, Claimant</p></div> <div data-bbox="851 455 964 476" data-label="Text"><p>WITNESSES:</p></div> <div data-bbox="851 485 1061 521" data-label="Text"><p>ZBIGNIEW PIOTR GROT VALERIU BERIL</p></div> <div data-bbox="851 532 943 553" data-label="Text"><p>EXPERTS:</p></div> <div data-bbox="851 561 1197 644" data-label="Text"><p>ROGER GLADEI, Gladei & Assoc DAN NICOARA, Gladei & Assoc MIHAIL RURAC, Agricultural expert ANDREI GUMOVSCI, Agricultural expert LARS WIECHEN, Deloitte</p></div>
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<p style="text-align: center;">I N D E X</p> <p>ROGER GLADEI 304</p> <p>Examination by Claimants 306</p> <p>Presentation by Mr Gladei 310</p> <p>VIOREL RUSU 322</p> <p>Examination by Respondent 323</p> <p>ROGER GLADEI and VIOREL RUSU 334</p> <p>Questions by the Arbitral Tribunal 335</p> <p>Questions by Respondent 424</p> <p>Questions by the Arbitral Tribunal 453</p> <p>Questions by Claimants 457</p> <p>MIHAIL RURAC and ANDREI GUMOVSKI 479</p> <p>Questions by Claimants 479</p> <p>Questions by Respondent 487</p>	<p style="text-align: right;">292</p> <p>1 I think yesterday we did mention by the end of the 294 2 day. 09:36</p> <p>3 MR KOPECKY: By the end of the day</p> <p>4 yesterday and then we changed it to today morning.</p> <p>5 MR ASTUNO: I was a bit optimistic. I had</p> <p>6 dinner with the expert last night.</p> <p>7 MR KOPECKY: Indeed, but we need to</p> <p>8 prepare and the expert needs to prepare. If he is</p> <p>9 confronted with it at witness testimonies, it is</p> <p>10 going to be in difficulty for him to answer it and</p> <p>11 to consider it.</p> <p>12 MR ASTUNO: I will explain to him that he</p> <p>13 can finish as quickly as possible.</p> <p>14 THE PRESIDENT: If we could have it by</p> <p>15 lunchtime today, that would be very helpful because</p> <p>16 it then does allow the parties to prepare with</p> <p>17 maximum and reasonable amount of preparation.</p> <p>18 The third issue is the Spanish translation</p> <p>19 of the single ICSID case.</p> <p>20 MR GLEASON: I have had a chance to look</p> <p>21 at that very long decision in Spanish. We conferred</p> <p>22 this morning concerning this point and Respondent</p> <p>23 was gracious to allow me the chance to make a</p> <p>24 comment on that case just for a minute or two, if</p> <p>25 I may?</p>
<p style="text-align: right;">293</p> <p>1 (9.34 am Tuesday, 12 December 2017)</p> <p>2 THE PRESIDENT: Good morning, everybody.</p> <p>3 I hope you had a very satisfactory evening in</p> <p>4 Vienna.</p> <p>5 We have a full schedule ahead of us, with</p> <p>6 legal experts this morning. We have a full morning</p> <p>7 for that so we have no pressures of time, and then</p> <p>8 in the afternoon the agricultural experts.</p> <p>9 There are just three housekeeping matters</p> <p>10 that we have. You may have other issues you want to</p> <p>11 raise, and do feel free to do so.</p> <p>12 Firstly, on the errata sheet introduced by</p> <p>13 the Respondent yesterday, Claimant has now had an</p> <p>14 opportunity to receive those. Are there any issues</p> <p>15 arising from the errata sheet that we need to be</p> <p>16 aware of?</p> <p>17 MR ASTUNO: No, Claimants' would restate</p> <p>18 that its own expert's supplemental report will be</p> <p>19 provided to opposing counsel by the end of the day.</p> <p>20 THE PRESIDENT: Has Respondent not</p> <p>21 received the supplemental?</p> <p>22 MR KOPECKY: We heard this morning. The</p> <p>23 end of the day would be a bit difficult.</p> <p>24 MR ASTUNO: Our expert is working on it as</p> <p>25 we speak. I can push for lunch, if that is okay.</p>	<p style="text-align: right;">295</p> <p>1 THE PRESIDENT: Is now the best moment? 09:37</p> <p>2 We are open to you making it now, if you want to, or</p> <p>3 we can just proceed.</p> <p>4 MR GLEASON: It will be brief, if that is</p> <p>5 okay.</p> <p>6 MR KOPECKY: That is okay. We won't</p> <p>7 comment on it. We will reserve it for closing</p> <p>8 MR GLEASON: I would like to make a brief</p> <p>9 comment on it. It is the case of Cervin v</p> <p>10 Costa Rica which was cited in Respondent's Rejoinder</p> <p>11 at paragraph 243. The use of the case is to extend</p> <p>12 the application of the Generation Ukraine case</p> <p>13 beyond expropriation claims.</p> <p>14 Claimants believe that it is a</p> <p>15 distinguishable case from the case in front of the</p> <p>16 Tribunal. The case involved a regulatory regime for</p> <p>17 liquid petroleum gas sales and tariff adjustments</p> <p>18 related thereto. It is not clear whether the acts</p> <p>19 of the Costa Rican Government were contrary to local</p> <p>20 law or not. The Claimants in that case were aware</p> <p>21 of the imperfect regulatory regime at the time that</p> <p>22 they made their investment, and in the face of the</p> <p>23 unclear regulatory changes they could have in good</p> <p>24 faith sought clarification from the local courts,</p> <p>25 but they did not and, based on those grounds, they</p>

<p>1 did not have the grounds for an international 2 complaint based on a controversial interpretation of 3 local regulatory regime which had not yet been 4 interpreted by local courts.</p> <p>5 The Tribunal in that case found it to be a 6 debate about a purely local issue of law which was 7 outside the scope of the Tribunal's mandate, and 8 this case does not present the same uncertainty. 9 Local courts have in fact ruled on the local issues 10 in a manner sufficient for this Tribunal to proceed 11 accordingly.</p> <p>12 THE PRESIDENT: Thank you. And I have 13 heard that Respondent is reserving its position and 14 may address the matter in due course.</p> <p>15 MR KOPECKY: Yes.</p> <p>16 THE PRESIDENT: Thank you for that 17 clarification. I am very grateful to both sides for 18 their flexibility in addressing that issue.</p> <p>19 Any other housekeeping issues that need to 20 be addressed?</p> <p>21 MR KOPECKY: I have two more.</p> <p>22 MR GLEASON: We are probably going to want 23 to talk about the same one concerning the exhibits 24 referenced in Mr Astuno's opening.</p> <p>25 MR KOPECKY: We have conferred and</p>	<p>1 the record in this hearing, but would like them to 2 be on record and not just in the public domain.</p> <p>3 MR ASTUNO: They have already been 4 uploaded.</p> <p>5 THE PRESIDENT: Can I seek by way of 6 clarification, are you saying you are comfortable 7 with them being put on the record because they are 8 responsive to Michael Peer's report, or are you 9 saying you are happy with them being put on the 10 record because they are in the public domain?</p> <p>11 MR KOPECKY: I have not seen those 12 documents. I understand that they are in the public 13 domain. I cannot verify it having not seen them, 14 but if both those statements are true, no objection 15 to them being on the record. If we receive those 16 documents and we see that they are not true, or one 17 is not true, we would not want them on the record, 18 but I trust Claimants' explanation that they are 19 both in the public domain and responsive</p> <p>20 THE PRESIDENT: And it is because of both 21 elements that you are not objecting to them being 22 put on the record. I want to be clear about this 23 because I want to avoid a situation that we get 24 subject to a whole lot of documents that are in the 25 public domain. That is not the position you are</p>
<p>1 I promise that none of my requests will be an 2 exclusion request. We have noticed Claimants' 3 reference exhibits C-143, C-144 and C-145 in their 4 opening yesterday.</p> <p>5 MR GLEASON: As well as C-142.</p> <p>6 MR KOPECKY: Indeed, but we already know 7 what that is. We would like Claimants to offer some 8 guidance on where to find those exhibits on the 9 record.</p> <p>10 MR ASTUNO: I referenced C-143, slide 14 11 of my opening remarks yesterday. C-144 was in slide 12 20. C-145 was in slide 15. All of these documents 13 and authorities, including C-142, are open in the 14 public domain, and they are documents and 15 authorities that directly respond to Michael Peer's 16 report, specifically paragraph 5.2.2 in the overall 17 conclusions of his report, generally speaking.</p> <p>18 THE PRESIDENT: Thank you. That is what 19 you want to say on that matter.</p> <p>20 MR ASTUNO: I am happy to provide more 21 specific information.</p> <p>22 THE PRESIDENT: No. Let's hear from 23 Respondent on this.</p> <p>24 MR KOPECKY: We wished him to be on the 25 record and we would not object to them being put on</p>	<p>1 adopting.</p> <p>2 MR KOPECKY: I cannot speak to documents 3 I have not seen, but I trust Claimants' statements.</p> <p>4 THE PRESIDENT: I understand, but the 5 essential point is not so much that they are in the 6 public domain but they are in the public domain and 7 responsive to REX-3.</p> <p>8 MR KOPECKY: Correct.</p> <p>9 THE PRESIDENT: And you have understood 10 that is the basis on which there is no objection</p> <p>11 MR ASTUNO: Yes.</p> <p>12 THE PRESIDENT: Let me confer with my 13 colleagues. 14 (The Tribunal conferred)</p> <p>15 MR GLEASON: Can we make clear that they 16 have been uploaded.</p> <p>17 MR KOPECKY: Just tell us where.</p> <p>18 MR WELLS: The files just referred to have 19 been uploaded to the hearing files folder on the Box 20 system, and I have a thumb drive. I will pass that 21 over in a moment.</p> <p>22 MS PERNT: They were not on record before 23 then.</p> <p>24 THE PRESIDENT: The Tribunal is 25 comfortable with these being admitted into the</p>

<p>1 record on the basis that they are available in the 2 public domain and are responsive to REX-3 3 MR KOPECKY: On that basis, yes. 4 THE PRESIDENT: Any other housekeeping 5 matters? 6 MR KOPECKY: Yes, Mr President. This also 7 relates to a document. It is document C-94, and 8 maybe by way of background, yesterday during opening 9 you asked me – 10 THE PRESIDENT: What is C-94, can you 11 remind us? I don't think we need it on the screen. 12 MR KOPECKY: C-94 is the testimony of the 13 mayor of Varvareuca of 15 April 2011, and it 14 directly concerns the exhibit that was subject to 15 much discussion yesterday, namely C-95. I failed to 16 provide you an explanation on that because we had 17 not interviewed those 500 villagers. However, this 18 document, C-94, which is handwritten, provides some 19 background in that indeed the villagers approached 20 the Mayor, being unsatisfied with not being paid and 21 the fields not being worked, and they were 22 interested in signing new leases. The Mayor 23 conferred with the Council President on the issue 24 and he said that first the other leases would have 25 to be terminated, so that provides some background</p> <p>300 09:42</p>	<p>1 principle here. If we have a document on the record 2 which has only been partly translated, presumably if 3 Respondent is saying they want to translate other 4 bits, it does not matter which other bits. 5 MR GLEASON: Would it be appropriate for 6 them to do that with their Rejoinder. I am just a 7 little confused at what parts are not translated 8 THE PRESIDENT: I think we do not need to 9 get into the detail. There is here an underlying 10 issue of principle which is that, under the 11 Procedural Orders, we have agreed you do not have to 12 translate the whole document, but I think in the 13 interests of the sound administration of justice, in 14 the course of the procedure if another bit of the 15 document becomes relevant, and speaking only for 16 myself under the control of my two colleagues, 17 I can't see how there can be an objection to putting 18 in a translation of an additional bit on the 19 understanding, of course, that the other side is 20 entitled to say it is not accurately translated or 21 whatever. 22 MR FORTIER: I agree with my President, 23 but the best proof would have been to bring these 24 witnesses, these villagers, alive to testify before 25 us.</p> <p>302 09:45</p>
<p>1 MR FORTIER: This is evidence. 2 THE PRESIDENT: What is the housekeeping 3 matter? 4 MR KOPECKY: The housekeeping matter is 5 that we were not aware of some facts because the 6 translation is not complete. There are several – 7 THE PRESIDENT: I have the text in front 8 of me. Are you saying it is not fully translated? 9 MR KOPECKY: It is not fully translated 10 because on page 1 it says witness statement 11 Nina Ivanos and – 12 THE PRESIDENT: Let's deal with this as an 13 issue of principle. As an issue of principle it is 14 only partially translated and you are saying there 15 are other parts of it that are not translated that 16 you would like in the record. 17 MR KOPECKY: And our request is, if we 18 may, to submit a full translation of this exhibit 19 which would shed a light on the relevance of exhibit 20 C-95. 21 THE PRESIDENT: And the Claimant's 22 response to that? 23 MR GLEASON: Can you be specific about 24 which parts you say are not – 25 THE PRESIDENT: There is an issue of</p> <p>301 09:44</p>	<p>1 MR KOPECKY: Indeed, but it was difficult 2 to gather those 500 villagers. 3 MR FORTIER: You said that yesterday. 4 I don't want to get into a long discussion but this 5 is a case of, from my perspective, after the 6 evidence yesterday, a case of empty chairs. Why 7 could you not go to your clients and say we would 8 like to have this witness, we would like to have 9 that witness? I am sure you considered it. 10 MR KOPECKY: We indeed did, but we did 11 what we could and we have the evidence that we have. 12 MR FORTIER: Yes. 13 THE PRESIDENT: You would like to put in 14 additional parts of the translation. Claimant will 15 then have an opportunity to review that translation, 16 and indeed if there are other parts of it that you 17 consequently consider need to be translated so we 18 end up with a full document, I think the Tribunal is 19 saying we are open to that procedure 20 MR KOPECKY: That is fair. 21 THE PRESIDENT: Probably the sooner that 22 is done for both of you the better, so if you can 23 have someone on your teams getting on with that 24 translation so that the Claimants, in a timely 25 fashion, can check the translation before it is</p> <p>303 09:46</p>

<p>1 presumably relied upon in the closing, which might</p> <p>2 be one moment where that would come up, given that</p> <p>3 we have no more fact witnesses.</p> <p>4 MR KOPECKY: It is handwritten, hard to</p> <p>5 read, but we will try to send it to everyone today</p> <p>6 THE PRESIDENT: Thank you very much. Any</p> <p>7 other housekeeping issues? No? Then let us have</p> <p>8 Mr Gladei.</p> <p>9 ROGER GLADEI</p> <p>10 THE PRESIDENT: Good morning, Mr Gladei.</p> <p>11 Thank you for joining us. My name is</p> <p>12 Philippe Sands. I am Chair of this Tribunal. I sit</p> <p>13 with Mr Yves Fortier and Professor Rolf Knieper.</p> <p>14 Frauke Nitschke is our secretary. You have been</p> <p>15 present so you have seen who is who. You are aware</p> <p>16 of the format.</p> <p>17 The first thing I am going to ask you to</p> <p>18 do is to read out the expert's declaration which</p> <p>19 should be in front of you. I understand you are</p> <p>20 going to be mostly speaking in English, but you may</p> <p>21 occasionally take to Romanian. Is that correct?</p> <p>22 MR GLADEI: Yes. Thank you. Good</p> <p>23 morning. Yes, with your permission I will speak in</p> <p>24 English because I prepared the reports in English,</p> <p>25 but if some questions will be unclear, with your</p>	<p>1 When we have concluded with our questions,</p> <p>2 the parties will then have an opportunity to</p> <p>3 question you. The Respondent will begin by putting</p> <p>4 its questions to you in the light of what has</p> <p>5 transpired. Claimant will then put its questions to</p> <p>6 the counterpart. There will also be in the meantime</p> <p>7 an opportunity for re-direct in relation to the</p> <p>8 cross-examination to which you have been subject.</p> <p>9 Is that reasonably clear for you?</p> <p>10 MR GLADEI: Yes, thank you.</p> <p>11 THE PRESIDENT: I think it is now over to</p> <p>12 you to begin. You have your 15 minutes and it is</p> <p>13 for the Claimants to determine how they wish to use</p> <p>14 those 15 minutes.</p> <p>15 Examination by Claimants</p> <p>16 MR HINKLE: Mr Gladei, did you author your</p> <p>17 expert report, Claimants' exhibit 1?</p> <p>18 MR GLADEI: Yes.</p> <p>19 MR HINKLE: As well as the expert report</p> <p>20 Claimants exhibit 4 in front of you?</p> <p>21 MR GLADEI: Yes.</p> <p>22 MR HINKLE: If you scroll down to the</p> <p>23 bottom of the first one, is that your signature?</p> <p>24 MR GLADEI: Yes.</p> <p>25 MR HINKLE: And scroll down to the bottom</p>
<p>1 permission I will ask for the translation and for</p> <p>2 some terms. I may want to provide the Romanian</p> <p>3 equivalent as well because they might not</p> <p>4 necessarily have a fully corresponding English</p> <p>5 equivalent.</p> <p>6 THE PRESIDENT: Thank you for that. If</p> <p>7 you could read the declaration</p> <p>8 MR GLADEI: I solemnly declare upon my</p> <p>9 honour and conscience that my statement will be in</p> <p>10 accordance with my sincere belief</p> <p>11 THE PRESIDENT: Thank you very much. Just</p> <p>12 to explain to you the procedure we are going to</p> <p>13 follow this morning and the Tribunal in consultation</p> <p>14 with both parties, you will first be subject to an</p> <p>15 examination. You will have a chance to make a</p> <p>16 statement or have a question in relation to various</p> <p>17 matters and then to make a presentation, I don't</p> <p>18 quite know how you are going to proceed, but for up</p> <p>19 to 15 minutes. We will then have your counterpart</p> <p>20 expert come and go through the same process, and the</p> <p>21 Tribunal is then going to invite both of you to sit</p> <p>22 together and we will find it particularly helpful to</p> <p>23 hear from you in a conversation with your colleague,</p> <p>24 and the Tribunal will then have, I suspect, a number</p> <p>25 of questions for both of you.</p>	<p>1 of the second one, that is your signature as well,</p> <p>2 correct?</p> <p>3 MR GLADEI: It is.</p> <p>4 MR HINKLE: Do you adopt all the</p> <p>5 conclusions contained in those reports?</p> <p>6 MR GLADEI: Yes.</p> <p>7 MR HINKLE: Are there any quick citation</p> <p>8 corrections you would like to make?</p> <p>9 MR GLADEI: Yes. I think in the Second</p> <p>10 Report there are some typos. On section 8.4 there</p> <p>11 is a reference to a legal provision. It should be a</p> <p>12 reference to a similar legal provision of the same</p> <p>13 law. It is Article 32(2) instead of Article 20(5).</p> <p>14 MR HINKLE: That is in the first sentence?</p> <p>15 MR GLADEI: Yes. The correct legal</p> <p>16 provision is, to my knowledge, as far as I recall in</p> <p>17 the First Report in paragraph 28. It is</p> <p>18 Article 32(2) of the same Law on the Local Public</p> <p>19 Administration.</p> <p>20 MR HINKLE: But that doesn't change your</p> <p>21 conclusion, does it?</p> <p>22 MR GLADEI: Not at all.</p> <p>23 MR HINKLE: Are there any other citation</p> <p>24 corrections you need to make?</p> <p>25 MR GLADEI: Yes. In paragraph 19.4 of the</p>

<p>1 Second Report, "the registrar shall issue a decision 2 on deletion of registration", and not of "refusal". 3 MR HINKLE: So that is point (ii)? 4 MR GLADEI: Yes. 5 MR HINKLE: Any others you need to make? 6 MR GLADEI: Yes. In paragraph 40 of the 7 Second Report, the reference in 40.3, if I am not 8 wrong, the reference should not be to paragraph 42, 9 but to paragraph 41. 10 MR HINKLE: In the last parentheses in the 11 last sentence that should read paragraph 41? 12 MR GLADEI: Yes. 13 MR HINKLE: I understand that you have a 14 presentation here today? 15 MR GLADEI: I have. 16 MR HINKLE: Before we start with that, 17 I want to ask you a few quick questions. There was 18 some discussion yesterday about Claimants' 19 exhibit 42. This is the writ of summons for the 20 Administrative Court from the Chancellery, correct? 21 MR GLADEI: Yes. It is a translation of 22 something. It is a document addressed by the 23 Territorial Office Soroca to the Court of Floresti. 24 MR HINKLE: Does this document have any 25 legal binding effect?</p>	<p>1 MR FORTIER: It is a commencement of a 2 lawsuit? 3 MR GLADEI: Right. 4 MR HINKLE: Then the 2013/2014 decisions, 5 they didn't become final and bidding until the 6 Supreme Court reviewed them in 2015, correct? 7 MR GLADEI: Well, in Moldova a first court 8 judgment is not final unless expressly provided by 9 the law. In this case the first court judgment was 10 not either final or irrevocable upon issuance 11 because it was properly appealed, and then, after 12 appeal, the judgment issued in appeal in the same 13 2014, if I am not wrong, was further subject to 14 appeal on points of law. We call it "recurs". 15 "Cassation" is the other translation. 16 Then, in January 2015, as far as I recall, 17 the final and irrevocable judgment was issued by the 18 Supreme Court of Justice, and from the moment of 19 issuance of that judgment, it has become final and 20 irrevocable. 21 MR HINKLE: Please feel free to begin your 22 presentation. 23 MR GLADEI: Thank you. 24 Presentation by Mr Gladei 25 MR GLADEI: Good morning, once again,</p>
<p>1 MR GLADEI: In which sense? 2 MR HINKLE: On any of the parties? Is it 3 a final decision of any regard? 4 MR GLADEI: No, not at all. It is just as 5 it is written, a written summons, an order of the 6 Administrative Court. It is a submission to court. 7 It is neither a court judgment nor a decision of 8 that authority. 9 MR HINKLE: Did this end up being the 10 basis for the 2014 Floresti court decision that 11 invalidated the dispositions? 12 MR GLADEI: Let me see. Yes, it is a 13 submission to the court whereby the 14 State Chancellery is seeking for the total 15 cancellation of the Disposition 1-A. Yes, probably 16 this one was the grounds for the court judgment, 17 either the first one or the second one. Primarily 18 the first one and then the second. As far as 19 I recall it was the first judgment, then it was 20 cancelled and then there was the second one in 21 July 2014, so probably this is the document which 22 served as the grounds for commencement of that 23 proceeding, but that is the lawsuit. That is not 24 the judgment, it is not substituting the judgment. 25 It triggered the proceeding.</p>	<p>1 Mr President, dear Members of the Tribunal. I will 2 use my time to try to address those issues which 3 were debated yesterday, and I had a chance to revise 4 my presentation so I will go through some of the 5 following matters, specifically the principles of 6 the Moldovan law which applies, the lease recording 7 phases, the manner of correction -- 8 MR KOPECKY: I hate to interject, but is 9 this on the record? We don't have this. 10 THE PRESIDENT: This is an illustrative 11 slide show that summarises what you are going to say 12 now, and it does not contain new material. Is that 13 correct? 14 MR GLADEI: It contains some reflection 15 about Mr Rusu's last report. 16 MR FORTIER: It is CH-6? 17 THE PRESIDENT: It is the one we were 18 given this morning. 19 MR KOPECKY: We were not given it this 20 morning. 21 THE PRESIDENT: I hadn't seen it either. 22 I was given it half an hour ago and I haven't had a 23 chance to have a look at it. 24 MR KOPECKY: So it contains some 25 reflections?</p>

<p>1 MR GLADEI: It contains some opinions of 2 mine, some comments of mine, but it is essentially a 3 summary of the First and Second Report of mine. 4 MR KOPECKY: I think we reserve on that. 5 THE PRESIDENT: Very good. Please 6 continue. 7 MR GLADEI: Correction of entries, effects 8 of deregistration, so-called, we refer to the 9 dispositions, to the requirements to send the 10 dispositions for control, and the role and authority 11 of the mayor. 12 The applicable principles, to sum them up, 13 are in front of you. Inviolability, freedom of 14 business activity, protection of fair competition, 15 the fact that the exercise of rights and freedoms 16 may not be subdued to other restrictions unless for 17 those provided by the law. 18 Security, protection, fair and equal 19 conditions of activity. The fact that investments 20 cannot be expropriated or otherwise exposed to 21 measures of similar effect. 22 Proportionality, a very important new 23 principle, in relations between state and business, 24 I will address it later on. The fact that 25 authorities shall not take excessive actions to meet</p>	<p>1 to do with registration. It is a separate phase. 2 It cannot be confused with the registration. 3 Refusal in registration can happen only in 4 certain circumstances, and certain conditions are 5 met. First, it can happen only before registration. 6 In any case not thereafter. In Chapter III it is 7 called Registration of the Lease Agreements. This 8 is where section 20 is located. 9 Refusal can happen only if -- the law is 10 very specific on that -- there are a number of 11 circumstances when the refusal can happen. It is 12 specifically referred in section 20 of Regulation 13 72; no other grounds. 14 Refusal can happen at the proposal of the 15 registrar. We haven't seen the proposal here. The 16 mayor cannot by himself/herself order dispose the 17 refusal in registration. Section 10 of the same 18 regulation says that the authorised person has the 19 right to propose to the mayor to refuse, otherwise 20 it cannot be done. Then the documents submitted 21 shall be returned. 22 There are other allegations like ex post, 23 retroactive, post-factum, or other similar refusals 24 are first against the principles which I referred to 25 before. Against the rules of the interpretation of</p>
<p>1 the needs of society. 2 Legality and the other principles of 3 activity of the public servants. 4 As regards the lease recording phases, 5 because I think that it was somehow mixed up in the 6 submissions, the law is pretty clear, and 7 specifically Article 20(1) of the Law on Registries 8 says that registration of the object refers to the 9 initial registration, the operation of amendments, 10 and the deletion of the objects from the register. 11 The term for each of those actions are determined by 12 the rules of keeping the register for each object of 13 the respective register. 14 In our case these are the Regulation 15 No 72/2004, and specifically these are the 16 provisions of the law against the provisions of the 17 regulations, so when it comes to registration, 18 Article 20(2) and (3) is the sedio materiae, and 19 then it is complemented by Chapter III, namely 20 sections 12-22, including section 20 on refusal of 21 the regulations. 22 Then amendment is a separate chapter. 23 Then deletion is dealt with in Article 20(5) 24 specifically and Chapter IV of the regulations. 25 So, as you can see, deletion has nothing</p>	<p>1 the law which I provided are, the solutions should 2 be in the exact sense of the norm. Against the 3 powers of the public servants, including the mayor, 4 where the freedom of appreciation is absent, the 5 mayor has no freedom of appreciation. It is 6 permitted everything which is stipulated in the law. 7 It is not like considering in the law everything 8 which is not prohibited is allowed. It is 9 vice versa. 10 THE PRESIDENT: Or an old general 11 international law in the famous Lotus case. 12 MR GLADEI: Maybe. This is captured 13 specifically in the book co-authored by 14 Professor Viorel Rusu on page 26 and that is fair. 15 The principle of legality will also be 16 breached in case of such interpretation, because the 17 acts of the administrative authorities shall not 18 contravene or exceed the limits of the law, and we 19 refer to the law applicable, and shall not harm the 20 rights, liberties and lawful interests of the 21 private persons. It seems that this has happened 22 Deletion of entries only have some 23 specific conditions. Only upon occurrence of 24 certain events, as provided by Article 20(5) of the 25 Law on Registries. Those events are either</p>

<p>1 explicitly referred in Regulation 72, like 2 expiration of the lease, termination of the lease by 3 the parties, termination of court judgment, or there 4 can be other events because the law allows for any 5 other relevant event, like I refer to the nullity of 6 the lease agreement, nullity of the title, 7 expropriation, confiscation, anything which is 8 relevant, but it should be an event. 9 Erroneous registration of a lease, as 10 referred in the Respondent's Counter-Memorial, 11 paragraph 87, is not an event in the sense of this 12 article. 13 Second, it should be based on the 14 documents filed by the applicant, namely sections 15 26-28 referred to above refers to those documents. 16 Conveyance Act, addendum to the lease 17 agreement, or a court environment. The fact that, 18 as mentioned in the disposition to the City Hall or 19 the mayor's office, decided to verify more 20 attentively the content of the lease agreement. 21 This is not a ground for deletion of the entity. 22 Third, it should be a decision of the 23 registrar and not of the mayor. Specifically 24 Article 20(5) of the law is saying that it should be 25 made based on the registrar's decision. The</p>	<p>1 MR GLADEI: What is also a groundless 2 interpretation is the mayor who appoints the 3 registrar and exercises internal control, has the 4 power to order his subordinate to effect 5 corrections. That is incorrect. That is wrong. 6 Corrections of mistakes can happen at any stage, 7 including at the stage of initial registrars. How 8 come the initial registration should result in 9 registration and not correct? Unless something is 10 registered, there is nothing to correct. 11 The effects of the so-called 12 deregistration -- I use the same wording which was 13 used -- indeed, the simplest and the only fact of 14 de-registration is opposability. No registration 15 means no opposability, but, as the commentary to the 16 Civil Code is fairly mentioned, and to your 17 knowledge in Moldova commentaries are an important 18 piece of information for the law application, 19 including for the judges, because traditionally 20 commentaries have an important weight in properly 21 addressing the legal provisions and properly 22 applying them, and this commentary is saying that 23 the practical efficiency -- and I agree with this -- 24 of the juridical act is materially annihilated if 25 the registration condition is not performed. And,</p>
<p>1 registrar is not just a clerk. The registrar is a 2 person who is empowered to keep the Registry. 3 Then, as regards the correction of the 4 entries, it should be based on the reasoned -- this 5 is legal wording -- "reasoned request of the data 6 supplier", here data supplier meaning the lessee, 7 Article 19(7). Corrections should be aiming to 8 rectify the erroneous or inexact data specifically 9 for that. 10 What is a groundless interpretation is 11 those passages which are presented in the slide. 12 Correction can logically and technically take the 13 shape of a deletion. That is wrong in my 14 understanding. 15 MR KOPECKY: Mr President, I hate to 16 interject again, but I see that this is, for a large 17 part, a response to the second Rusu Report and 18 I would like it to be on record that we receive this 19 now and we won't be able to respond to this in full, 20 whereas they have had ample time to prepare what is 21 effectively a rebuttal to Rusu's Second Report. 22 THE PRESIDENT: Duly noted, but we will 23 proceed and no doubt you will have questions in due 24 course. 25 MR KOPECKY: Indeed.</p>	<p>1 as an example, in the commentary which resembles our 2 case, when the lessee in a lease agreement is unable 3 to oppose its rights over the immovable property 4 against the subsequent lessee who mass earlier 5 registered the lease agreement, so probably -- 6 THE PRESIDENT: I want to point out, we 7 are going to set aside the time spent for 8 corrections and make sure that Respondent's expert 9 has the same amount of time. We won't deduct 10 corrections from the 15 minutes, and that leaves you 11 five minutes to complete your statement 12 MR GLADEI: So de-registration, second, 13 opens the way for the subsequent lessee, namely in 14 this case Bio-Alianta, to have its lease registered, 15 and thus opposable, and then to use it against the 16 previously registered lessee. 17 Dispositions, and I will refer now to both 18 Disposition 1-A and 2, they have no valid legal 19 ground as elaborated in my reports. They are not 20 based on the supplier request. They invoke unproven 21 facts, namely that the great majority of agreements 22 were not signed. I heard yesterday that vice versa 23 the great majority were signed. 24 They arrogate court powers because they 25 make a statement which only the court can make.</p>

<p>1 They rule both to refuse and to delete which is 2 confusing and unlawful. They fail to refer to any 3 specific problem. They just mention generally, even 4 if it refers to hundreds of lease agreements, which 5 means that it is not well-grounded in a proper sense 6 of the word, and it fails to contain the means to 7 contest. It is said that it can be contested 8 without indicating where and when 9 Further, Disposition 1-A was requested to 10 be repealed by the Soroca State Chancellery, it was 11 contested by the Soroca State Chancellery, only 12 found unlawful by that court judgment final and 13 irrevocable from the moment of issuance of the 14 Supreme Court of Justice judgment. 15 We noticed also some very strange things 16 like there are two sets of dispositions in both 17 cases, and we have pointed here specifically to the 18 difference between the initial dispositions and the 19 dispositions which were then obtained and are 20 attached to my First Report, which is very strange. 21 I do not go on commenting but it is at least 22 strange. 23 The same refer to the second disposition. 24 It can be seen very easily that it has a different 25 formatting and even in one case it is on two pages,</p>	<p>1 ratified by Moldova. It shall send for mandatory 2 control the documents. 3 The mayor is not a bailiff, as it was 4 induced. The mayor is not a mediator to mediate 5 conflicts and decide between the parties on the 6 site. The mayor is not obliged to take corrective 7 measures (I cite from the counter memorial) in order 8 to deregister the deficient lease agreements. 9 Finally, the mayor's conduct is not, as it 10 was called, a minor aberrant action or omission of a 11 low level official; not at all. Thank you. 12 THE PRESIDENT: Thank you very much, 13 Mr Gladei. I think that brings to an end your 14 opening. I think the best thing now is for you to 15 return to your seat over there so that Mr Rusu can 16 sit on his own, serenely, and we will now go through 17 the same process with Mr Rusu. 18 MR KOPECKY: Just to confirm, 19 Mr President, we will get the same deduction for 20 correction time? 21 THE PRESIDENT: Absolutely. We will 22 proceed on the basis that correction time is not to 23 be deducted. 24 VIOREL RUSU 25 (with the assistance of the interpreters)</p>
<p>1 in the other case the same disposition. Presumably 2 the same disposition is just on one page. I cannot 3 explain this, but this is casting reasonable doubt 4 again on how this disposition was issued, and 5 whether it is lawful or not. 6 Whether they should have been sent for 7 control. Yes. I refer here to the applicable legal 8 provisions which I referred to in the report, and 9 then I notice that Professor Rusu is trying to argue 10 that they were not be sent to the mandatory control 11 because it was instituted in 2007 based on the Law 12 on Decentralisation. No. The registries were 13 created in 2004 under the then applicable rules, 14 which means that the rules instituted by the Law on 15 Administrative Decentralisation starting from 16 1 January 2007 do not apply retroactively, do not 17 apply to the legal situations emerged under the 18 previous Law of Lease in Agriculture of 2003. 19 The last one is about the role and 20 authority of the mayor. There was some debate 21 yesterday. To cite the applicable legal provision, 22 the mayor is the head of the local public 23 administration. He is the representative authority 24 of the population. He is obliged to comply with all 25 of the laws, including the international treaties</p>	<p>1 THE PRESIDENT: Good morning, Mr Rusu. 2 Can you hear me? 3 MR RUSU: Yes, I can hear you very well. 4 THE PRESIDENT: Thank you for coming to 5 Vienna and appearing as an expert in these 6 proceedings. My name is Philippe Sands, I am 7 chairing this Tribunal. I sit with Mr Fortier and 8 Professor Knieper, and Ms Nitschke is the secretary 9 to the Tribunal. I will ask that you now read out 10 the expert's declaration, if you could? 11 MR RUSU: I solemnly declare upon my 12 honour and conscience that my statement will be in 13 accordance with my sincere belief 14 THE PRESIDENT: Thank you very much. 15 I think I am going to hand you over now to 16 Mr Kopecky, who may invite you to make any 17 corrections and then make your statement or answer 18 questions. 19 Examination by Respondent 20 MR KOPECKY: Thank you very much. Welcome 21 to Vienna, Professor Rusu. Have you your two 22 reports in front of you? 23 MR RUSU: Yes, I do. 24 MR KOPECKY: Can you confirm that those 25 are written by you and signed by you?</p>

<p>1 MR RUSU: Yes, I confirm. They are in 2 front of me. I have two reports here in the 3 Romanian language: May 12, 2017, and the Second 4 Report was written in November 9, 2017. 5 MR KOPECKY: Thank you, Professor. 6 I notice there are some translation discrepancies 7 with your Second Report. Would you kindly clarify 8 those? 9 MR RUSU: Yes, indeed, you are right. The 10 lawyers of the Respondent told me on the phone that 11 there were questions about the translation into 12 English, and I accepted when it comes to point 56 -- 13 THE PRESIDENT: First or Second report? 14 MR RUSU: Second Report, in the 15 Second Report, it is about transfers to the local 16 budgets, because in the Romanian language this is 17 not specified. 18 Now for point 73 in the Second Report, 19 I accepted the deletion in the English language, the 20 administrative units with a special status, because 21 that referred to Gagauzia and it is not relevant for 22 our case. 23 THE PRESIDENT: I am reading it and I am 24 not sure what line it is you are referring to and 25 what words could have been -- it may be nothing</p>	<p>324 10:16</p>	<p>1 persons or groups of persons in accordance with the 2 Law on Retirement, which is quite clear in the sense 3 of our legislation, and I gave this example. The 4 trade unions represent a group or a community. 5 MR FORTIER: So do we delete that? The 6 "(eg trade unions)"? 7 MR RUSU: No. It was introduced in the 8 English version for the sake of clarity. 9 PROFESSOR KNIEPER: Does that mean it is 10 not in the Romanian version? It is only in the 11 English version? 12 MR RUSU: Yes, only in the English 13 version. 14 THE PRESIDENT: So it is not a 15 translation. It is in effect an addition? 16 MR RUSU: It is more concrete for the 17 English version for the sake of clarity. Because we 18 wanted to be more specific we didn't add legal 19 analysis, nothing of the kind. 20 THE PRESIDENT: Thank you, Professor. 21 MR KOPECKY: Professor Rusu, in your First 22 Report, paragraph 12, you write that the 23 registration of agricultural lease agreements serves 24 a declaratory purpose. Could you please clarify 25 that?</p>	<p>326 10:20</p>
<p>1 turns on this but since you have mentioned it let's 2 make sure we have understood correctly what it is 3 you are saying. I have got in front of me the 4 English text at page 19, paragraph 73. I think that 5 is the one you referred to? There is three lines 6 down under Article 61(1), is that where it goes? 7 MR KOPECKY: I think the issue in the 8 translation is actually shorter than in his original 9 report, that is paragraph 73, and he is explaining 10 why. If you look at the translation, 11 paragraph 73 -- 12 MR RUSU: If you allow me just a remark 13 for Article 61, for the brackets, the parenthesis, 14 and the suspension points. The suspension dots. 15 I will try to explain. Activity of 16 authority of local public administration of first 17 and second level and on this point there is one 18 omission. 19 THE PRESIDENT: Understood. 20 MR RUSU: Under point 84, that is about 21 the law about complaints and petitions -- 22 THE PRESIDENT: Of report 1 or 2? 23 MR RUSU: We are talking about the 24 Second Report. I added between brackets the trade 25 unions as a relevant example when they represent</p>	<p>325 10:18</p>	<p>1 MR RUSU: What refers to the registration 2 of the lease agreements, I was trying to explain the 3 purpose, why this is important, and I want to draw 4 your attention upon that. In the legislation we 5 have the public domain and the private domain, and 6 they are intertwined. 7 I underscore the fact that the 8 registration has a declarative purpose in the sense 9 that it pursues an advertising purpose and it does 10 not affect the obligations and the rights of the 11 parties to the contract. In other words, the 12 contract terms stay valid, and they cannot be 13 affected because this is a totally different domain. 14 That is the private domain. 15 The validity and other things discussed 16 there is at the discretion of the parties and in 17 accordance with the applicable procedures. 18 MR KOPECKY: Thank you. You also mention 19 the term "opposability". Could you explain the 20 meaning of this term? 21 MR RUSU: Yes, indeed. In the analysis of 22 the questions asked I have to say that the 23 legislation does not contain the term 24 "opposability". We have the term "inopposability" 25 in paragraph 5 in the law concerning Lease in</p>	<p>327 10:22</p>

<p>1 Agriculture, but this opposability was necessary to 2 be introduced for the sake of the declarative aspect 3 of the document, but the legislation under 4 Article 10(5) uses only inopposability related to 5 the third parties. Third parties can be public 6 authorities as well.</p> <p>7 MR KOPECKY: With respect to third 8 parties, could you please tell us whether 9 unregistered leases are opposable or not opposable 10 against third parties acting in bad faith?</p> <p>11 MR RUSU: I would like to draw your 12 attention upon the fact that what relates to 13 opposability, this is about the good faith of the 14 parties. One cannot invoke that opposability that 15 if one of the parties is ill-faithed, this is a key 16 moment that is making the difference, the 17 distinction between those aspects. In other words, 18 we have to have in mind the good faith of the 19 parties, which is examined in another part of the 20 document.</p> <p>21 MR KOPECKY: Is that a principle of civil 22 or administrative law?</p> <p>23 MR RUSU: Well, let me tell you that in 24 the law concerning Lease in Agriculture there are 25 norms of public law and norms of private law.</p>	<p>328 10:25</p> <p>1 MR KOPECKY: To answer the question that 2 has been asked yesterday, can the registrar, or this 3 authorised person, render services on drafting and 4 filling leases and signing them with the lessors?</p> <p>5 MR RUSU: Certainly not. That regulation 6 and other legal provisions, general provisions 7 concerning the Lease in Agriculture, the registrar 8 should only fulfil those responsibilities given to 9 him or her based on the law. In other words, we 10 cannot apply selectively the responsibilities, 11 applying only the responsibilities in the 12 legislation and omit other responsibilities. Such 13 responsibilities are not provided for in the 14 legislative document mentioned</p> <p>15 MR KOPECKY: Moving on to Dispositions 1-A 16 and 2, can you explain why you write in your First 17 Expert Report that those dispositions were based on 18 a reasonable interpretation of the law?</p> <p>19 MR FORTIER: Where is that?</p> <p>20 MR KOPECKY: 3.2 of his First Expert 21 Report.</p> <p>22 MR RUSU: This regards –</p> <p>23 THE PRESIDENT: There isn't a 3.2. 24 There's a 4.2.</p> <p>25 MR KOPECKY: Chapter 3.2. Were</p> <p>330 10:29</p>
<p>329 10:27</p> <p>1 Inopposability here was used only as a sanction to 2 discipline the parties and make them register the 3 lease agreements with the City Hall. As concerns 4 the good faith of the parties, this is a matter of 5 civil law, civil legislation and other aspects</p> <p>6 MR KOPECKY: Thank you. Could you please 7 describe the function of the registrar that has been 8 mentioned? Well, first describe the function of the 9 registrar, please?</p> <p>10 MR RUSU: The functions of the registrars 11 are provided for in the law concerning the Lease in 12 Agriculture and in the regulation concerning the 13 registration of the Lease in Agriculture. This is 14 about a government decision, which is a document 15 subordinated through the law. In other words, it 16 substitutes the provisions of the law concerning the 17 Lease in Agriculture, which is the special law that 18 analyses and sets out the relations between the 19 parties.</p> <p>20 In that particular decision we find the 21 rights and, if necessary, other things such as 22 point 9, the rights, the duties, the obligations, 23 the responsibilities. It is not called a registrar 24 but it is called an empowered person, if I remember 25 the regulation correctly.</p>	<p>331 10:32</p> <p>1 Dispositions 1-A and 2 based on a reasonable 2 interpretation of the law?</p> <p>3 THE PRESIDENT: That is 4.2. Are we on 4 the Second Report or the First Report?</p> <p>5 MR RUSU: Honoured Tribunal, can I be more 6 concrete? If you look at the summary of the 7 conclusions, you envisaged the second question, 8 right?</p> <p>9 MR KOPECKY: I do apologise, Prof Rusu. 10 The Tribunal is of course correct. We are talking 11 about 4.2 of your First Report and 3.2 of your 12 Second Report, but the question is the same.</p> <p>13 MR RUSU: Let me say that in the course of 14 my report I just formulated a reasonable 15 interpretation of the law, and I will submit to the 16 Tribunal my reasons, or the reasoning interpretation 17 of the law, what I meant by that.</p> <p>18 I started out from the function and 19 activity of an administrative body, which is the 20 mayor's office and I stress that it is conducted by 21 the mayor. The responsible person of this executive 22 body is the mayor. Obviously I could not analyse 23 only the functions of the empowered person or 24 entity, as you said, in order not to cause any 25 confusion and, as the attorney of Respondent said, I</p>

<p>1 analysed both the functions of the registrar and the 2 functions of the mayor, because we could not examine 3 only one side of the functions of the registrars 4 without doing the same with the functions and role 5 of the mayor for the respective activity. 6 Let me stress the fact that this control, 7 or this audit, is permanent, and here we can say it 8 is either prior to, or can be simultaneous with a 9 registration or opposed a registration because the 10 mayor or the registrar cannot be there all the time. 11 That is why I exceeded the existing 12 functions of these authorities and the facts or the 13 deeds that were performed by them. I examined as an 14 expert these functions that derive from the fact 15 that the mayor sometimes, you know, he is not an 16 expert in justice, he is not a justice person. The 17 level of competence of these authorities is not that 18 high. On the other hand, the registrar has only 19 technical knowledge, technical expertise, related to 20 cadaster, for instance. Therefore, I concluded that 21 that was a reasonable interpretation of the law 22 hence the formulation. 23 MR KOPECKY: Could the mayor deny 24 registration of all leases by issuing a single 25 disposition?</p>	<p>1 MR KOPECKY: Thank you. 2 MR RUSU: They cannot intervene. 3 MR KOPECKY: My final question -- I am 4 sure you are not hearing it for the last time 5 today -- is this. Could the mayor refuse 6 registrations after the leases were registered? You 7 already said that was a reasonable interpretation. 8 I would like to have more detail on what the law 9 says on the issue. 10 MR RUSU: The mayor considers, for 11 instance, that the law is not very clear in that 12 respect and I said that. That is that there is no 13 clear delimitation of actions. If we overlap the 14 registrar's work or the empowered person's activity 15 and functions, and the control activity of the 16 mayor, because he is the responsible authority, and 17 this is admissible at any stage, because otherwise 18 the mayor's activity can be restricted and his 19 functions could be restricted if this does not 20 apply. 21 MR KOPECKY: Thank you. I promised that 22 was my final question. I have no others. 23 THE PRESIDENT: Thank you very much 24 Mr Rusu. You are now going to be joined by 25 Mr Gladei.</p>
<p>1 MR RUSU: It was not very clear for me. 2 What do you mean by functions? You take into 3 consideration several contracts -- 4 MR KOPECKY: I think we are having 5 translation issues throughout this examination, but 6 I would like to rephrase it and maybe ask the 7 interpreter to focus on the words. 8 Can the mayor deny the registration of all 9 multiple leases by issuing a single disposition? 10 MR RUSU: Yes, it is clear now. 11 This is related to the object of the 12 application. If there is a package of applications, 13 then as to this petition he has not the right to 14 divide it. The mayor must examine it in its 15 entirety, because this request coming from the 16 petitioner is coming, so it is possible. 17 MR KOPECKY: If the request is coming in 18 bulk? 19 MR RUSU: Yes. Yes. For instance, this 20 request has an annex of ten contracts, then you 21 cannot issue a disposition for each one of them and 22 there is an economic activity or a private activity, 23 and in accordance with the legal provisions the 24 local bodies as well cannot be in the middle of some 25 private activity locally.</p>	<p>1 ROGER GLADEI and VIOREL RUSU 2 (with the assistance of the interpreters) 3 THE PRESIDENT: Welcome back. We will now 4 proceed to some questions from the Tribunal before 5 reverting back to the parties. I am going to invite 6 my colleagues and I think we will begin with 7 Professor Knieper who may have some questions. 8 MR KOPECKY: Just before we start, for the 9 record, we had some translation issues in the 10 beginning and I would like to kindly ask everyone, 11 especially when we speak with Professor Rusu, to 12 speak slower. The translator also to speak slower 13 and the translator to reconfirm any unclear terms 14 before they are put into the record with 15 Professor Rusu. I understand that it is a hassle, 16 but in the interests of fairness -- 17 THE PRESIDENT: And in the interests of 18 clarity as well, and to be fair to both experts, 19 including Professor Rusu, we want to maximise our 20 comprehension. With that word, Professor Knieper. 21 Questions by the Arbitral Tribunal 22 PROFESSOR KNiePER: Thank you for giving 23 me the floor. I want to ask a couple of questions 24 on the rather complex legal situation in this 25 dispute.</p>

<p>1 In my appreciation of the law, and I would</p> <p>2 like both, whoever wants to reply first, I have the</p> <p>3 impression that there are three levels of different</p> <p>4 legal relations. One level are private law leases</p> <p>5 between the Claimants and landowners. The other</p> <p>6 level are also leases, this time not between the</p> <p>7 Claimants and the landowners but between Bio-Alianta</p> <p>8 and landowners. Both these, in my appreciation,</p> <p>9 levels belong to private law relations. Then there</p> <p>10 is a third level, and that is the level where public</p> <p>11 officials on a different level exercise public</p> <p>12 authority. Would you see these three levels like</p> <p>13 I do? Is that a correct appreciation of the</p> <p>14 complexity of the case that we are dealing with</p> <p>15 here? Mr Gladei, perhaps we start with you?</p> <p>16 MR GLADEI: I do agree that there are both</p> <p>17 elements of private law and public law. Indeed, the</p> <p>18 relations between the parties, both between the</p> <p>19 Claimants and the lessors, between Bio-Alianta and</p> <p>20 the lessors, are governed by the private law. And,</p> <p>21 on the other side there is a public law element when</p> <p>22 it comes to the registration of those leases.</p> <p>23 PROFESSOR KNIEPER: Professor Rusu, what</p> <p>24 is your answer?</p> <p>25 MR RUSU: Yes, indeed. In my report</p>	<p>1 requirements to be valid? Go ahead, Mr Gladei.</p> <p>2 MR GLADEI: As regards the essential</p> <p>3 clauses of the agreement, Moldovan law says as</p> <p>4 follows, and this is Article 679 from my memory.</p> <p>5 There are essential those elements which are</p> <p>6 expressly referred by the law which are arising out</p> <p>7 of the nature of the agreement, or which are agreed</p> <p>8 upon by the parties.</p> <p>9 PROFESSOR KNIEPER: What are these</p> <p>10 essential elements? Would you say, for instance,</p> <p>11 price is one of the essential elements for the</p> <p>12 validity of the lease?</p> <p>13 MR GLADEI: It depends on the agreement.</p> <p>14 So as regards the lease, the elements are set both</p> <p>15 in the Civil Code. There is a special chapter on</p> <p>16 agricultural lease. Not only on the lease, so the</p> <p>17 structure is like this, there is a general chapter</p> <p>18 on the leases, and then there is a dedicated</p> <p>19 subchapter, let's put it like this, as regards</p> <p>20 agricultural leases. This is deemed to be a special</p> <p>21 area which has enjoyed special regulation</p> <p>22 Second, there are a number of provisions</p> <p>23 in the Law on Agricultural Lease which refers to the</p> <p>24 essential elements, essential clauses of the</p> <p>25 agricultural lease. So putting them together,</p>
<p>1 I mentioned that there are private issues.</p> <p>2 Let me stress that as regards the</p> <p>3 contracting parties, in simple terms, starting from</p> <p>4 simple principles, because these are private</p> <p>5 entities, and of course we envisage civil law</p> <p>6 private law but, as to registration, that is a</p> <p>7 public element.</p> <p>8 Let me confirm if you have noticed from my</p> <p>9 expertise, I also worked as an expert for the</p> <p>10 Foundation of the Fiscal Code, and when we talked</p> <p>11 about registration up to three years of the</p> <p>12 lessor/lessee contracts by the authority of the</p> <p>13 mayor's office, this regards administration of taxes</p> <p>14 for assets.</p> <p>15 Why do I want to explain this? Because</p> <p>16 with these contracts it is very difficult to</p> <p>17 identify the person or the entity from where we levy</p> <p>18 the tax. The lessor will say that he does not own</p> <p>19 the land, and vice versa, and the lessee will say</p> <p>20 that he is not the legal landowner, and then he</p> <p>21 will, well, just transmit that to the lessor.</p> <p>22 PROFESSOR KNIEPER: Let us then go to the</p> <p>23 first level, the lease contracts. Are we in</p> <p>24 agreement between all of us that these lease</p> <p>25 contracts have specific private law elements and</p>	<p>1 summing them up, these are the elements which are</p> <p>2 deemed as essential for the lease agreement.</p> <p>3 PROFESSOR KNIEPER: My question was a</p> <p>4 little bit different. I wanted to know whether in a</p> <p>5 contract for money, and a lease contract is a</p> <p>6 contract for money, is one of the essential elements</p> <p>7 the price to be agreed by the parties?</p> <p>8 MR GLADEI: Yes, so my answer is, as far</p> <p>9 as I recall, as regards agricultural leases, the</p> <p>10 rent, if you refer to the rent?</p> <p>11 PROFESSOR KNIEPER: Yes.</p> <p>12 MR GLADEI: The rent is reward,</p> <p>13 remuneration.</p> <p>14 PROFESSOR KNIEPER: Is that the essential</p> <p>15 element of validity?</p> <p>16 MR GLADEI: I don't recall exactly, but</p> <p>17 what I can recall now by heart is that the</p> <p>18 remuneration can be set in money or in goods.</p> <p>19 PROFESSOR KNIEPER: It would be better for</p> <p>20 me if you answered my question. I know it can be in</p> <p>21 nature, in money. I want to know whether the</p> <p>22 negotiation and the conclusion by the parties on a</p> <p>23 price of rent in nature –</p> <p>24 MS CRACIUNEANU: The translation is wrong.</p> <p>25 The conclusion. "Incheierea". The conclusion of</p>

<p>1 the contract is not "conclusia". 340 10:58</p> <p>2 PROFESSOR KNiePER: My question is much</p> <p>3 less complicated than it seems to be. I simply want</p> <p>4 to know in normal contracts for money, is one of the</p> <p>5 essential elements to have for the conclusion of a</p> <p>6 contract the negotiation and the agreement on the</p> <p>7 price, be it in nature or in money?</p> <p>8 MR GLADEI: There is no such concept as</p> <p>9 normal contract, normal circumstances. It depends</p> <p>10 on the agreement, so we need to be very specific, to</p> <p>11 look into the special provisions of the Civil Code,</p> <p>12 or the special laws, and whenever the price is</p> <p>13 indicated as an essential element it should be</p> <p>14 present, otherwise it cannot.</p> <p>15 PROFESSOR KNiePER: Let me ask the</p> <p>16 question differently: I buy a car and we don't</p> <p>17 specify what car and for how much I want to buy it.</p> <p>18 Would that be a valid contract?</p> <p>19 MR GLADEI: To answer the question we need</p> <p>20 to look into the chapter of the Civil Code dedicated</p> <p>21 to the sale and purchase agreement. If you see</p> <p>22 there the reference to the price is an essential</p> <p>23 element, then yes, it should be present. Otherwise</p> <p>24 the agreement would be deemed not concluded.</p> <p>25 PROFESSOR KNiePER: And in a contract of</p>	<p>1 lease is also provided as a condition. 342 11:01</p> <p>2 PROFESSOR KNiePER: The short sense of</p> <p>3 your long answer is that the fixation of a price, of</p> <p>4 a rent, is an essential element for the conclusion</p> <p>5 of a rent contract?</p> <p>6 MR RUSU: Yes, if the parties convened to</p> <p>7 that.</p> <p>8 MR GLADEI: The template of the lease</p> <p>9 agreement is by no means setting the essential</p> <p>10 elements of the lease agreement.</p> <p>11 PROFESSOR KNiePER: I didn't ask you about</p> <p>12 the template. I simply wanted to know under general</p> <p>13 Moldovan law whether a valid conclusion of a</p> <p>14 contract depends also on an agreement of the price</p> <p>15 in contracts for money? That is a general, general</p> <p>16 question.</p> <p>17 MR GLADEI: I answered the question,</p> <p>18 but --</p> <p>19 PROFESSOR KNiePER: You answered the</p> <p>20 question and said yes. Is that right?</p> <p>21 MR GLADEI: Yes.</p> <p>22 PROFESSOR KNiePER: That is all I wanted</p> <p>23 to know. We come back to the other elements a</p> <p>24 little later, because now what I want to do now is I</p> <p>25 come to the question of writing. Is the written</p>
<p>1 agricultural land, is that an essential element to 341 10:59</p> <p>2 fix the rent?</p> <p>3 MR GLADEI: As far as I recall, and now</p> <p>4 I had the chance when you checked the translation</p> <p>5 issue, it is.</p> <p>6 PROFESSOR KNiePER: Mr Rusu, would you</p> <p>7 confirm that?</p> <p>8 MR RUSU: Indeed, as to the mandatory</p> <p>9 binding conditions, they were not within the limit</p> <p>10 of private law.</p> <p>11 I must draw the Tribunal's attention to a</p> <p>12 more specific matter, but I will refer to the</p> <p>13 general aspect of the law. We must start from the</p> <p>14 provisions of the Civil Code, the civil law. Let me</p> <p>15 say it simply now from what I have here.</p> <p>16 In the decision of the Government No 72 of</p> <p>17 13 January 2004, governmental decision regarding</p> <p>18 implementation of the rent agreement in agriculture,</p> <p>19 there is an annex, annex 1, which includes the model</p> <p>20 agreement for renting land, for lease. This says</p> <p>21 that the authorities were willing to help, to give</p> <p>22 assistance to the locals. The landowners did not</p> <p>23 have legal knowledge. In this model of the</p> <p>24 agreement, chapter 1 provides the term of "arenda"</p> <p>25 in Romanian which means lease, and payment of the</p>	<p>1 form an essential element for the validity of a 343 11:02</p> <p>2 lease contract?</p> <p>3 MR GLADEI: Not exactly.</p> <p>4 PROFESSOR KNiePER: Not exactly?</p> <p>5 MR GLADEI: Let me elaborate. For the</p> <p>6 agricultural lease agreement the law is generally</p> <p>7 saying that the lease agreement should first contain</p> <p>8 the essential elements and, second, be signed, so it</p> <p>9 should be treated apart of the essential element.</p> <p>10 The signature is not an essential element. It is</p> <p>11 not a clause, it is not a provision, the signature,</p> <p>12 but whenever the law says it should be signed, it</p> <p>13 should be signed. In the case of a lease agreement,</p> <p>14 indeed it should be signed.</p> <p>15 PROFESSOR KNiePER: That means the</p> <p>16 validity of a lease agreement depends on its</p> <p>17 signature?</p> <p>18 MR GLADEI: The validity depends on</p> <p>19 meeting the essential elements of the agreement.</p> <p>20 PROFESSOR KNiePER: Of which the</p> <p>21 signature?</p> <p>22 MR GLADEI: The signature is not an</p> <p>23 essential provision of the agreement</p> <p>24 PROFESSOR KNiePER: You want to say now</p> <p>25 that an oral lease agreement of agricultural land is</p>

<p>1 a valid lease agreement? 344 11:04</p> <p>2 MR GLADEI: I didn't want to say that.</p> <p>3 What I said is that both are relevant: first the</p> <p>4 essential elements, and, second, the signature</p> <p>5 PROFESSOR KNIEPER: I repeat my question:</p> <p>6 Do you want to say that the signature of a lease</p> <p>7 agreement is -- well, if you don't want to hear the</p> <p>8 word "element" -- necessary to validate the</p> <p>9 contract?</p> <p>10 MR GLADEI: Yes, even if not an essential</p> <p>11 clause, the signature is necessary.</p> <p>12 PROFESSOR KNIEPER: Is needed?</p> <p>13 MR GLADEI: Yes.</p> <p>14 PROFESSOR KNIEPER: Mr Rusu, would you</p> <p>15 confirm that?</p> <p>16 MR RUSU: Yes, I do confirm because if</p> <p>17 there is no signature you may wonder who is a party</p> <p>18 to the contract.</p> <p>19 PROFESSOR KNIEPER: What is the</p> <p>20 consequence of the lack of signature, Mr Gladei?</p> <p>21 MR GLADEI: Generally or specifically as</p> <p>22 regards lease agreements?</p> <p>23 PROFESSOR KNIEPER: In our context.</p> <p>24 MR GLADEI: The contracts which need to be</p> <p>25 in a written form are deemed null and void in the</p>	<p>1 clear to me. How did they get to an agreement, the 346 11:07</p> <p>2 two parties?</p> <p>3 PROFESSOR KNIEPER: Just listen to my</p> <p>4 question. Is it your opinion that in a contract</p> <p>5 which has to be signed to be valid, both signatures</p> <p>6 have to be applied to the paper simultaneously, or</p> <p>7 could that be one after the other and on different</p> <p>8 places?</p> <p>9 MR RUSU: Well, obviously and normally</p> <p>10 speaking the signature should be affixed at the same</p> <p>11 time, otherwise there are risks</p> <p>12 PROFESSOR KNIEPER: You say normally, but</p> <p>13 that does not indicate that it is invalid if it is</p> <p>14 done at different times?</p> <p>15 MR RUSU: Well, it all depends on the</p> <p>16 agreement between the parties. What they agreed</p> <p>17 between themselves.</p> <p>18 PROFESSOR KNIEPER: I did not ask the</p> <p>19 hypothesis that the parties agreement should be</p> <p>20 simultaneously. I simply asked the question in</p> <p>21 general in these contracts where there is no party</p> <p>22 agreement that it should be simultaneously, must be</p> <p>23 signed simultaneously. Mr Gladei says no, and he</p> <p>24 even quotes, and I have found that very convincing</p> <p>25 by the way, the Law on Notaries, because when a</p>
<p>1 cases provided by the law if it is not in written 345 11:05</p> <p>2 form, meaning if the signature is not applied. As</p> <p>3 far as I recall, this is mandatory here as regards</p> <p>4 the lease agreement, which means that without the</p> <p>5 signature the agreement will be deemed as not</p> <p>6 concluded in written form and thus null and void</p> <p>7 PROFESSOR KNIEPER: Mr Rusu, would you</p> <p>8 agree to that?</p> <p>9 MR RUSU: I would like to refer myself to</p> <p>10 point 20 in that particular regulation. It is</p> <p>11 written there that they check that point in the</p> <p>12 lease agreement. You have to indicate the address,</p> <p>13 name and surname, and at point 20 --</p> <p>14 PROFESSOR KNIEPER: Let us stick to the</p> <p>15 questions and then let's come to other points after</p> <p>16 these questions, right?</p> <p>17 There was a certain disagreement between</p> <p>18 the two reports of yours where, as one of the</p> <p>19 experts said that the signature has to be made</p> <p>20 simultaneously or not simultaneously. Mr Gladei,</p> <p>21 what is your opinion on that point?</p> <p>22 MR GLADEI: The signature shall not</p> <p>23 necessarily come simultaneously.</p> <p>24 PROFESSOR KNIEPER: Professor Rusu?</p> <p>25 MR RUSU: Well, the question is not quite</p>	<p>1 contract is before a notary it has to be 347 11:08</p> <p>2 simultaneous. That was your opinion?</p> <p>3 MR GLADEI: Yes.</p> <p>4 PROFESSOR KNIEPER: You say it would be</p> <p>5 better if also non notarial contracts would be</p> <p>6 signed simultaneously but this is not a legal</p> <p>7 requirement. Is that a correct interpretation of</p> <p>8 what you are saying?</p> <p>9 MR RUSU: I never referred myself to legal</p> <p>10 requirements. I said what would be the most</p> <p>11 reasonable thing to do by both parties</p> <p>12 PROFESSOR KNIEPER: Okay, reasonable, but</p> <p>13 not necessarily illegal. When I sum up my question</p> <p>14 so far into a statement which I will present to you</p> <p>15 and I ask your opinion whether my conclusion is</p> <p>16 correct or not, all contracts which were before us</p> <p>17 here which had the signature of both parties to the</p> <p>18 piece of land, given simultaneously or not, would at</p> <p>19 least fulfil the requirement of a valid written</p> <p>20 form. Is that correct?</p> <p>21 MR GLADEI: That is correct, at least.</p> <p>22 PROFESSOR KNIEPER: Professor Rusu?</p> <p>23 MR RUSU: As concerns the contracts, the</p> <p>24 agreements, I will give you an example.</p> <p>25 PROFESSOR KNIEPER: I just want to know,</p>

<p>1 we have a number of contracts, a little more than a 2 thousand. Some of these contracts have been signed 3 by both parties. Some of the contracts have been 4 signed by one party. My question was very simple: 5 The contracts that we have before us that we have 6 signed by both parties, even not simultaneously, 7 would at least fulfil the requirement of written 8 form. Is that correct? This is my question, 9 Professor Rusu. Would you say that is correct? 10 MR RUSU: I don't think you are right. 11 How was the written form met without signatures? 12 The written form between who and who? 13 PROFESSOR KNiePER: Perhaps we have a 14 translation problem. My question was whether the 15 contracts that were before us and had been signed 16 both by Laguardia and by each time another 17 landowner, whether all these contracts which had 18 been signed by both parties to these agricultural 19 lease contracts at least fulfilled the requirement 20 of the written form? That is the simple question. 21 MR RUSU: No, I don't think so. The 22 written form should be taken in its entirety. Some 23 elements should not be missing, such as the 24 signatures. 25 PROFESSOR KNiePER: That was not the</p>	<p>1 does that validate the as up to this moment void 2 contracts? Does the registration have any effect, 3 in other terms, on the validity? 4 MR GLADEI: No, the registration does not 5 validate the otherwise invalid. 6 PROFESSOR KNiePER: This is one of the 7 linkages between the private law aspect and the 8 public law aspect. The registration is there and 9 the contract is there, but the public law 10 registration has no effect on the private law 11 elements of the lease contract. Do we agree on that 12 point? 13 MR GLADEI: Yes, and I mentioned it in my 14 report. Only valid leases are subject to 15 registration. 16 PROFESSOR KNiePER: Professor Rusu, what 17 is your point? 18 MR RUSU: No, it has no effect. The 19 purpose is different. 20 PROFESSOR KNiePER: So we agree that these 21 private law elements of the conclusion of the 22 contract and the registration are distinct legal 23 requirements. Mr Gladei? 24 MR GLADEI: This is your first question? 25 PROFESSOR KNiePER: Yes.</p>
<p>1 question I asked. I asked whether the signature 2 which is on the page fulfils the requirement of the 3 signed contracts, and by this token be at least 4 fulfilling this requirement of written form, even if 5 not simultaneous? 6 MR RUSU: The signature should be affixed 7 when the contract is examined. Everything else 8 depends on the will of the parties. The contract 9 should have a signature 10 PROFESSOR KNiePER: The contract should 11 have a signature. Both? Two signatures? 12 MR RUSU: Yes, definitely. Two 13 signatures. 14 PROFESSOR KNiePER: Now, the contracts 15 which were before us that were not signed by one of 16 the parties, were these contracts then null and 17 void? Mr Gladei? 18 MR GLADEI: Yes. 19 PROFESSOR KNiePER: Mr Rusu? 20 MR RUSU: Yes. It is null and void 21 because it is the written form. 22 PROFESSOR KNiePER: Now the next question 23 is the registration which comes later, after the 24 submission of all these contracts, signed and 25 unsigned to the registrar, or the empowered person,</p>	<p>1 MR GLADEI: Yes, I answered. 2 PROFESSOR KNiePER: Now does the 3 deregistration, or the retroactive refusal to 4 register, does that have any effect on the validity 5 of the lease contracts? Mr Gladei? 6 MR GLADEI: Which specific deregistration 7 are you referring to? There is no such thing and 8 I put them in quotes. I don't understand. The 9 correct refusal or the incorrect refusal? 10 PROFESSOR KNiePER: The thing that 11 happened. Mr Rusu said it was a retroactive refusal 12 of registration, and you say it was a deletion of 13 the registration, whatever you want to say it 14 MR GLADEI: No, I didn't say neither one 15 nor the other. 16 PROFESSOR KNiePER: To use the term you 17 wanted to say, the act of the mayor when he issued 18 dispositions. 19 MR GLADEI: Okay. 20 PROFESSOR KNiePER: Did that have any 21 effect on the validity of the lease contracts? 22 MR GLADEI: No. 23 PROFESSOR KNiePER: Mr Rusu? 24 MR RUSU: Distinguished Tribunal, 25 Professor Knieper, I draw your attention to those</p>

<p>1 particular aspects, namely that the public 2 authorities cannot interfere with the private 3 relationships. 4 PROFESSOR KNIEPER: So what you say 5 actually is that it has not an effect on the 6 validity of the lease contracts? 7 MR RUSU: This concerns the parties. 8 PROFESSOR KNIEPER: Would you say yes, it 9 has no consequence for the validity of the lease 10 contracts? Could you say yes, or no, or it has not? 11 MR RUSU: No, it has no effect or 12 consequence on the validity, but let me just add a 13 few things – 14 PROFESSOR KNIEPER: We will come back to 15 this, perhaps. I just want to have a very simple 16 clarity in my head on the validity or the invalidity 17 of the lease contracts. That is the point. 18 Now I come to another point still with 19 respect where we touch upon private law and public 20 law to a certain extent which I find quite a 21 complicated question. We have heard in written 22 submissions that the cadastral agents helped the 23 Claimants to fill out the contract forms and 24 supervised the signing process and then registered. 25 I want to start, because I don't want to</p>	<p>1 realistic. 2 MR GLADEI: If you offer him a glass of 3 wine it might not be remuneration 4 PROFESSOR KNIEPER: This is not my point. 5 My point is a person who also has a public function 6 can at the same time in his normal life also be an 7 agent in private law? 8 MR GLADEI: Yes. 9 PROFESSOR KNIEPER: Is that your opinion 10 also, Mr Rusu? 11 MR RUSU: Are we talking in general here 12 or the fulfilment of the job responsibilities of a 13 policeman, because this is very important? If a 14 policeman as a private person, he can be an agent 15 but not as a policeman per se 16 PROFESSOR KNIEPER: Let us get back to the 17 cadastral agents. They are public civil servants, 18 but at the same time they could also act, for 19 whatever reason, as a private agent to help somebody 20 to do something for him in a private law matter. Is 21 that so? 22 MR GLADEI: Generally yes, but I would 23 probably need to elaborate on that. He can do 24 anything which is of course not prohibited by the 25 law, unless this is creating a conflict of interest</p>
<p>1 confuse too many things, with another example. 2 I know a policeman in Moldova. He is a friend of 3 mine and I tell him – you smile because one cannot 4 be friends with a policeman? 5 I could not use the German example either 6 because you can't really be friends with a German 7 policeman either. 8 Let's say a Romanian policeman. I am 9 friends with a Romanian policeman and I ask this 10 policeman, "Can you buy me a car? Can you act for 11 me to buy me a car?" Could he do that? 12 MR GLADEI: It depends on the capacity in 13 which he or she is acting. 14 PROFESSOR KNIEPER: Yes, but I ask as a 15 friend, and in his profession he is a policeman. 16 MR GLADEI: It does not matter. Your 17 friend can be either a policeman, lawyer or anything 18 else. If he is a friend of yours and he is offering 19 you a service, why not? 20 PROFESSOR KNIEPER: He would act as my 21 agent, right? 22 MR GLADEI: If it is friendship, it does 23 not necessarily mean it is an agency. 24 PROFESSOR KNIEPER: Yes, but let's say it 25 is for a token remuneration to make it more</p>	<p>1 for him. 2 PROFESSOR KNIEPER: Very important point. 3 MR GLADEI: For instance, normally he is 4 expected to be a professional because he is dealing 5 with these kinds of issues. He is accustomed with 6 the templates of the lease agreement, he is expected 7 to be accustomed with the regulations, and 8 I think – it is my opinion – that if in his or her 9 free time he is helping a peasant, a villager, the 10 other party, to look into a lease agreement, to help 11 him complete the lease agreement, again unless it 12 goes into conflict with his professional duties, 13 that is absolutely okay. 14 PROFESSOR KNIEPER: Would you be of the 15 same opinion, Mr Rusu? 16 MR RUSU: Yes, I agree. 17 PROFESSOR KNIEPER: Thank you very much 18 for that. I think that is an important point, at 19 least for my understanding. A cadastral agent 20 could, the same day let's say, act in a capacity of 21 being somehow – let us not even define the role – 22 an agent in a nontechnical term for a private party, 23 and then once the private negotiation activity is 24 finished, he puts on another hat and he registers 25 these lease agreements. So he could act in two</p>

<p>1 capacities? 356 11:22</p> <p>2 MR GLADEI: Not at the same time.</p> <p>3 PROFESSOR KNIEPER: Consecutively, of</p> <p>4 course.</p> <p>5 MR GLADEI: Okay. Let's say if he has a</p> <p>6 working schedule, say from 8 o'clock to 12 o'clock</p> <p>7 he is working as a cadastral engineer, then he has</p> <p>8 his own personal hour for rest, and then during that</p> <p>9 hour he can either eat something or he can help</p> <p>10 anyone else to do anything else, so that is not</p> <p>11 prohibited, unless it creates a conflict of</p> <p>12 interest, which is where he would be prohibited</p> <p>13 PROFESSOR KNIEPER: That is not really our</p> <p>14 point. We do not want to sanction the cadastral</p> <p>15 agents for having helped the parties to fill out</p> <p>16 these 1000 leases. The only thing I wanted to know</p> <p>17 is that a cadastral agent can also, let's say in his</p> <p>18 free time, in his lunch break or whatever, help one</p> <p>19 of the private parties to conclude a private</p> <p>20 contract, execute a private contract?</p> <p>21 MR GLADEI: Not to conclude, not to</p> <p>22 execute. Let's say to assist, to help him, to</p> <p>23 support him, anything else which relates to the</p> <p>24 simple help.</p> <p>25 PROFESSOR KNIEPER: That is excellent.</p>	<p>1 situation indeed, but if, for instance, Laguardia 358 11:25</p> <p>2 came, as we have read, and said Look, I give you a</p> <p>3 couple of lei for helping us to fill out these</p> <p>4 hundreds of contracts, and the mayor didn't mind,</p> <p>5 that would avoid this conclusion. Is that correct?</p> <p>6 MR GLADEI: If Laguardia would have paid</p> <p>7 him that might raise the issue of a conflict of</p> <p>8 interest, and even the issue of undue remuneration.</p> <p>9 PROFESSOR KNIEPER: Mr Rusu?</p> <p>10 MR RUSU: Again, I cannot give a straight</p> <p>11 answer because we have to know whether, besides his</p> <p>12 job obligations, he will also pay his taxes. What</p> <p>13 would the undue income be then?</p> <p>14 PROFESSOR KNIEPER: The core of the</p> <p>15 question is really to understand whether the</p> <p>16 cadastral agent that acted to complete these many</p> <p>17 lease agreements and then register them in good</p> <p>18 faith, everything in good faith, whether that would</p> <p>19 be possible?</p> <p>20 Of course I understand the reservation you</p> <p>21 make on disciplinary problems, sanctions, et cetera,</p> <p>22 but that was not my point. I simply wanted to</p> <p>23 understand whether in principle in Moldova it would</p> <p>24 be possible that a civil servant could, under</p> <p>25 certain circumstances, also act in the sphere of</p>
<p>1 That would not be considered an exercise of public 357 11:24</p> <p>2 authority?</p> <p>3 MR GLADEI: No.</p> <p>4 PROFESSOR KNIEPER: Mr Rusu, would that be</p> <p>5 your opinion also?</p> <p>6 MR RUSU: Yes. I would only like to say</p> <p>7 that if in the Republic of Moldova the clerks and</p> <p>8 the officials' salaries in general are very low, up</p> <p>9 to a maximum let's say 200 EUR per month, obviously</p> <p>10 officials, besides or outside their official jobs,</p> <p>11 also look for other jobs in order to survive. Yes,</p> <p>12 it is possible.</p> <p>13 PROFESSOR KNIEPER: I understood the</p> <p>14 double meaning of this. Of course very low salaries</p> <p>15 lead to difficult behaviour.</p> <p>16 MR GLADEI: It brought me to the other</p> <p>17 potential situation when he is bound, when he is</p> <p>18 compelled to do this by his, let's say, superior.</p> <p>19 That is another situation, because when you turn to</p> <p>20 exercise of the public authority, if he is directed,</p> <p>21 pressed, or imposed, required -- whatever the word</p> <p>22 is -- to do that, that is another situation. It is</p> <p>23 not at will. If it acted forcefully, if it acted</p> <p>24 under pressure, that is another situation.</p> <p>25 PROFESSOR KNIEPER: That would be another</p>	<p>1 private law contracts? That was the question. 359 11:27</p> <p>2 MR GLADEI: Yes, subject to the remarks</p> <p>3 I made. First, if it is not a conflict of interest.</p> <p>4 Second, if there is no undue pressure, let's</p> <p>5 generalise it.</p> <p>6 PROFESSOR KNIEPER: Yes. Let's go to the</p> <p>7 other question, to the famous dispositions, and to</p> <p>8 the process that followed after the dispositions.</p> <p>9 Mr Gladei, you said that at the bottom of</p> <p>10 the disposition there is a sentence saying that a</p> <p>11 person which does not agree to this disposition can</p> <p>12 go to court and have remedies, and you say this</p> <p>13 phrase is not precise enough</p> <p>14 MR GLADEI: A very good point.</p> <p>15 PROFESSOR KNIEPER: You say it is not</p> <p>16 valid. Is that correct?</p> <p>17 MR GLADEI: It is a good point. It</p> <p>18 doesn't say it should go to court. If it would have</p> <p>19 said that, that would at least this, and also the</p> <p>20 term for appealing, and that is why we have included</p> <p>21 in the First Report some references to the other</p> <p>22 judgments, decisions, and other acts which expressly</p> <p>23 provided for the correct means of appeal, or means</p> <p>24 of contestation of that decision.</p> <p>25 My answer is, and my point was, that</p>

<p>1 merely saying that the parties communicated that it</p> <p>2 has the right to contest in accordance with the</p> <p>3 legal provisions is not enough, it doesn't serve the</p> <p>4 purpose of the free access to justice, of the right</p> <p>5 to defence, the constitutional right to defence</p> <p>6 which is developed by the commentary to the</p> <p>7 Constitution as the right of self-defence. The</p> <p>8 person needs to know where to go in order to</p> <p>9 self-help in order to self-defend. So these kind of</p> <p>10 acts should say where the person should go, when, in</p> <p>11 which timeframe the person should go, at least.</p> <p>12 PROFESSOR KNIEPER: And if it is not</p> <p>13 precise enough you would say this is one of the</p> <p>14 elements why the disposition is illegal?</p> <p>15 MR GLADEI: You could say that, but my</p> <p>16 point is that in this instance it prejudiced the</p> <p>17 access to justice. It prejudiced the right of</p> <p>18 defence, Article 24 of the Constitution</p> <p>19 PROFESSOR KNIEPER: Mr Rusu, what is your</p> <p>20 opinion of that particular point of the last</p> <p>21 sentence? I am trying to find the reference</p> <p>22 MR RUSU: This disposition, if we look at</p> <p>23 it from the legal point of view, we, as experts, is</p> <p>24 rather faulty because it is not very clear, very</p> <p>25 precise. If we examine it from all aspects, that is</p>	<p>1 requirements toward the administrative acts on page</p> <p>2 168, and I think we referred to this in our reports,</p> <p>3 that the administrative act should be first legal,</p> <p>4 issued in compliance with all legal provisions;</p> <p>5 second, fundamented, can be translated as well</p> <p>6 reasoned, well reasoned meaning to include all of</p> <p>7 the elements so that -- let me cite, I am trying to</p> <p>8 translate -- "as long as its content represents a</p> <p>9 unilateral expression of will with the imperative</p> <p>10 character, with the mandatory character, of the</p> <p>11 public authority (the addressee cannot remain</p> <p>12 absent). From this perspective the act can be</p> <p>13 rational and logical", which means that the</p> <p>14 purposes, legal effects which would be produced</p> <p>15 should be clearly indicated and so on.</p> <p>16 Second, the fact that the mayor is not a</p> <p>17 lawyer does not mean that the mayoralty, or the</p> <p>18 mayor's office or the City Hall does not have</p> <p>19 lawyers. They necessarily have specialists, and it</p> <p>20 is customary, at least in our practice, I would say</p> <p>21 it is widespread, it is an overwhelming situation,</p> <p>22 that no public officer, no public official will</p> <p>23 issue any document before it is seen, it is</p> <p>24 scrutinised, it is opined by a lawyer. This is an</p> <p>25 expected behaviour.</p>
<p>1 the functions and role of the mayor, for instance,</p> <p>2 the authority, and given the fact that at the level</p> <p>3 of the local public administration the mayor is an</p> <p>4 elected person -- he can be a musician, he can be a</p> <p>5 sports teacher by profession -- and only in big</p> <p>6 cities does it happen that the mayor is also a legal</p> <p>7 expert or a magistrate in some way. If there is no</p> <p>8 expert -- excuse me, I am speaking about a</p> <p>9 secretary -- so if there is no expert for that job</p> <p>10 for which a certain level of education is necessary,</p> <p>11 I believe that the people who comply with a</p> <p>12 respective job have passed the level of</p> <p>13 contestation, and the way to attack or appeal will</p> <p>14 belong to the person in question who is free to</p> <p>15 appeal to the expert, because there are several</p> <p>16 stages of appeals.</p> <p>17 Yes, I do think that it is faulty, the</p> <p>18 phrasing of this sentence, but because the Mayor is</p> <p>19 not an expert in that field, he would do the</p> <p>20 following in practice. He would take the text of</p> <p>21 the law and copy and paste it into the respective</p> <p>22 document disposition</p> <p>23 MR GLADEI: I will make reference to the</p> <p>24 Book of Administrative Law co-authored by Mr Viorel</p> <p>25 Rusu, which says precisely when it comes to the</p>	<p>1 This behaviour will be in compliance with</p> <p>2 Article 5 of the Law on the Public Service, which we</p> <p>3 have referred to, asking them to be again in</p> <p>4 compliance with the principle of legality requiring</p> <p>5 the well ground and this will adequately ensure the</p> <p>6 protection and exercise of the private person's</p> <p>7 rights. So even if he is a musician or a former</p> <p>8 policeman, it doesn't mean that he should be right</p> <p>9 in reason.</p> <p>10 PROFESSOR KNIEPER: Mr Rusu, you both</p> <p>11 quote from the same book, I have the impression!</p> <p>12 MR RUSU: Yes, honourable Tribunal. Thank</p> <p>13 you, Mr Gladei, for making a reference to my own</p> <p>14 textbook, but this cannot be torn into separate</p> <p>15 pieces as regards the normative acts. We did not</p> <p>16 manage to pass onto individual acts, and in the</p> <p>17 university I understand that now it is very</p> <p>18 important for our state -- I am referring to level 2</p> <p>19 of education, Master's degrees-- only recently did</p> <p>20 we introduce the chapter on normative acts, and we</p> <p>21 make mention of the fact that what regards</p> <p>22 individual legal acts, the instructions and</p> <p>23 provisions are much more simple, because if we are</p> <p>24 to apply and comply with them, the administrative</p> <p>25 authority will have to do extra work in order to</p>

<p>1 comply with them, and they will not be able to</p> <p>2 comply with the current issues.</p> <p>3 I don't know whether the translation is</p> <p>4 complete of what I said. I spoke very quickly the</p> <p>5 speaker says.</p> <p>6 Anyway, we have to provide what the</p> <p>7 concrete decision of the government is or stipulates</p> <p>8 in this respect because they say that there is a way</p> <p>9 to appeal.</p> <p>10 PROFESSOR KNIEPER: Let me ask the other</p> <p>11 question, because you have given already partly an</p> <p>12 answer to the question that I want to ask now, but</p> <p>13 perhaps it is not complete. You have translated the</p> <p>14 Romanian word "motivata", and since I speak Italian</p> <p>15 I understood what "motivata" could mean, into you</p> <p>16 said "well grounded", and you, Mr Rusu, said</p> <p>17 "reasoned". Do you see a difference in this</p> <p>18 translation? Is "well grounded" a better</p> <p>19 translation of "motivata" than "reasoned"?</p> <p>20 MR GLADEI: Not necessarily. "Reasoned"</p> <p>21 is also probably an appropriate term. What is more</p> <p>22 important is the content, the essence of this</p> <p>23 meaning and, as we said, (?) will not suffice. It</p> <p>24 is not enough when it comes to refusal, let's say,</p> <p>25 refusal and deletion, if you refer to these</p>	<p>1 translation or equivalence. For me it is not very</p> <p>2 clear because, if we speak about the disposition</p> <p>3 here under discussion, what regards contestation is</p> <p>4 the resolution proper, what decision was taken, but</p> <p>5 partly motivation does exist within the disposition.</p> <p>6 The motivation is only displayed there or mentioned.</p> <p>7 Did you refer to that? For me in the resolution</p> <p>8 part where the decision is taken there cannot be any</p> <p>9 motivation there. The motivation regards the</p> <p>10 content of the disposition, the reasoning.</p> <p>11 PROFESSOR KNIEPER: That brings me to the</p> <p>12 next point. You have disagreement on that point and</p> <p>13 I wanted to understand your disagreement a little</p> <p>14 better. You say that the dispositions had to be</p> <p>15 sent to the State Chancellery, and you insist on the</p> <p>16 word "sent". On several occasions you say "sent" to</p> <p>17 the State Chancellery. Is it correct that this word</p> <p>18 "sent" means for control? Or was it a necessary</p> <p>19 step for these dispositions to enter into legal</p> <p>20 force to be approved by the State Chancellery? Or</p> <p>21 is it simply a submission that I send you by</p> <p>22 registered mail this document? What is it?</p> <p>23 MR GLADEI: It is part of the control.</p> <p>24 This requirement is instituted in order to ensure</p> <p>25 the State Chancellery to exercise the administrative</p>
<p>1 dispositions, because it refers to hundreds of lease</p> <p>2 agreements. It is not enough at all to say that</p> <p>3 they are not in compliance with the legal</p> <p>4 provisions, or even to say that they are struck by</p> <p>5 absolute nullity. As I said in my presentation, the</p> <p>6 mayor is not the judge. It is only the judge to</p> <p>7 find this and to determine this, that are indeed</p> <p>8 struck by absolute nullity. It is not enough just</p> <p>9 to say that some of the elements are missing. There</p> <p>10 are, as you notice as regards the signatures,</p> <p>11 different situations insofar as different contracts</p> <p>12 are concerned.</p> <p>13 What the Mayor has done is not even a</p> <p>14 pattern argumentation. It is just laying down a</p> <p>15 couple, in my understanding, because I have seen</p> <p>16 many documents like that, and you have seen the</p> <p>17 Floresti court judgment. Maybe it is not ideal, but</p> <p>18 it contains the reasoning. It gives the party the</p> <p>19 possibility to understand why they were addressed,</p> <p>20 not to say punished this way.</p> <p>21 PROFESSOR KNIEPER: Thank you. That is</p> <p>22 already in your written statement. Mr Rusu, do you</p> <p>23 want to elaborate a little on the difference between</p> <p>24 "well grounded" and "reasoned"?</p> <p>25 MR RUSU: Maybe this is an element of</p>	<p>1 control.</p> <p>2 PROFESSOR KNIEPER: If the</p> <p>3 State Chancellery receives these dispositions and</p> <p>4 doesn't react at all, if the disposition invalid?</p> <p>5 Or does it need the approval –</p> <p>6 MR GLADEI: Not at all. It is the local</p> <p>7 autonomy. It doesn't need endorsement.</p> <p>8 PROFESSOR KNIEPER: We agree on that</p> <p>9 point, that a formal decision of the</p> <p>10 State Chancellery was not necessary to have the</p> <p>11 administrative act of the mayor validated?</p> <p>12 MR GLADEI: No.</p> <p>13 PROFESSOR KNIEPER: Mr Rusu, is that also</p> <p>14 your opinion?</p> <p>15 MR RUSU: According to the law of local</p> <p>16 public administration there is a special aspect. We</p> <p>17 have to make a distinction between entry into force</p> <p>18 of the disposition and control, because these are</p> <p>19 two separate elements. They are not linked. They</p> <p>20 are not related. Control is a subsequent phase of</p> <p>21 the act.</p> <p>22 PROFESSOR KNIEPER: Thank you. We come to</p> <p>23 this control. If I understood correctly, and that</p> <p>24 would be like in Germany, and I think like in most</p> <p>25 continental legal systems, we have a twotier system</p>

<p>1 of administrative act within the administration. A 2 person who feels prejudiced by an administrative act 3 first goes to a higher administrative instance to 4 object to the initial act, and it is to the higher 5 administrative instance to validate or to invalidate 6 the act. Is that the same that you have described 7 in your report?</p> <p>8 MR GLADEI: Not exactly. The prejudiced 9 person, the person who considers himself or herself 10 prejudiced, can either go to the State Chancellery, 11 seeking for this administrative control, but this is 12 not impeding him to go directly to the court</p> <p>13 PROFESSOR KNIEPER: That is enough, 14 Mr Gladei, because I am reminded that I have to 15 hurry up. Mr Rusu, would you agree with that? That 16 in Moldova a prejudiced person has the choice to 17 either go to the higher administrative authority or 18 directly to the court in a certain period of time, 19 right?</p> <p>20 MR RUSU: For me maybe the translation is 21 not clear, but let me give you an example. The 22 optimal way, the optimal path, I would say, which is 23 that the prejudiced person addresses the issuing 24 authority, and then the person goes into the 25 litigation administrative body, or they go to the</p>	<p>1 Public Administration which says that the 2 disposition with the individual character become 3 enforceable only after they are notified to the 4 person concerned. They do not exist before that, so 5 the person does not exist as regards -- well, they 6 are not enforceable -- I stick to the legal 7 language -- so the person cannot exercise any of 8 those two ways.</p> <p>9 PROFESSOR KNIEPER: But now the person 10 receives an administrative act, for instance, a 11 parking ticket, and I don't do anything, and then 12 one day I have to pay the parking ticket, and the 13 authorities come after me and they make me pay. You 14 say if it is not notified, the administrative act is 15 completely null and void and not enforceable? Is 16 that what you say?</p> <p>17 MR GLADEI: I quoted the legal provision. 18 It says it is not enforceable until communicated, 19 because the person aggrieved does not know about 20 that.</p> <p>21 PROFESSOR KNIEPER: But if he knows about 22 it?</p> <p>23 MR GLADEI: It should be communicated. 24 PROFESSOR KNIEPER: Officially? 25 MR GLADEI: Officially.</p>
<p>1 Chancellery, but it is the Chancellery which 2 decides.</p> <p>3 MR GLADEI: There is no such legal 4 provisions on optimal versus nonoptimal. It is up 5 to the person, depending on all the circumstances of 6 the case. This might be a theoretical concept of 7 optimal or nonoptimal, but we probably cannot now 8 elaborate on this.</p> <p>9 PROFESSOR KNIEPER: The next question is 10 the following: you both write in your report that if 11 an aggrieved person wants to go either to court or 12 to the administrative hierarchy, he has to do that 13 in a certain period of time. You both say that it 14 is 30 days. When does that start to run, this 15 period of 30 days? To be more specific, because we 16 talk about this case, when it is not officially 17 notified to the person?</p> <p>18 MR GLADEI: When the person is notified. 19 The person has to be notified.</p> <p>20 PROFESSOR KNIEPER: But he was not 21 notified, and still we have a valid administrative 22 act. When does his obligation to go to either the 23 court or to the Chancellery start to run?</p> <p>24 MR GLADEI: I cannot speculate but only 25 refer to provisions of Article 32(3) of the Law on</p>	<p>1 PROFESSOR KNIEPER: With a registered 2 letter. Is that your opinion also?</p> <p>3 MR RUSU: Just a question for translation 4 clarification. What does "notification" mean? Does 5 it mean "acknowledgment of reception"? Why? Again, 6 maybe this is not very important, the terminology. 7 What is certain, and this is a general principle, 8 the normative act enters into force at the moment 9 when there is public notification, through the act, 10 but the individual act we are speaking about enters 11 into force including the addressee at a moment when 12 the addressee is notified publicly.</p> <p>13 PROFESSOR KNIEPER: But if he is not 14 notified, but he finds it in his letterbox or he 15 finds it in a lawsuit where another party waives 16 Disposition 1-A. Now the other party knows that 17 there is Disposition 1-A and Disposition 2. They 18 know but they are not officially notified. Would 19 they have to go and complain about it or would they 20 simply say well, it doesn't concern me because it is 21 not notified and therefore it is not valid.</p> <p>22 MR GLADEI: The latter, the second. 23 PROFESSOR KNIEPER: So the 30-day period 24 never started to run? 25 MR GLADEI: Right.</p>

<p>1 PROFESSOR KNIEPER: After a year, meaning 2 that about a year after the issuance of 3 Disposition 1-A, I think Mr Tugui wrote a letter to 4 the State Chancellery saying look into the legality 5 of Disposition 1-A, that would be perfectly okay? 6 MR GLADEI: Yes, and if you will allow me 7 to elaborate, I will refer to the same provision of 8 Article 32(3) of the same Law on Local Public 9 Administration, and Article 67 which refers to the 10 control required by the prejudiced person, which is 11 saying that the 30-day term starts accruing after 12 the date of publication -- probably this refers to 13 the normative acts -- or communication of the act. 14 Whereas communication under Article 32(3) is an 15 active obligation, they should be brought to 16 knowledge, they are brought to the attention. 17 You cannot just drop them in the mailbox 18 and say you know it, you are presumed. There is no 19 such presumption in Moldova. Just by way of 20 example, there was such a presumption instituted in 21 the Law on Mortgage back in 2008, saying that if the 22 notification of mortgage enforcement is not 23 received, then it is deemed received and elapsing 24 seven days, and this was declared unconstitutional 25 recently.</p>	<p>1 communicated to the Claimants. They simply took 2 knowledge of these two dispositions in court 3 proceedings that concerned a different matter. 4 MR KOPECKY: That was not contested. 5 PROFESSOR KNIEPER: I am very sorry. 6 MR KOPECKY: Just for the record. 7 PROFESSOR KNIEPER: Of course. Thank you. 8 MR RUSU: Just to make a few things clear, 9 I am not aware of the proceedings. I am not an 10 expert. You checked all the facts. Do you have the 11 whole picture, the whole sequence of the moments? 12 If you do, we can talk. Because you excluded the 13 fact that the addressee did not want to hear about 14 the notification in ill-faith. 15 PROFESSOR KNIEPER: In Germany you could 16 get a parking ticket and the policeman would simply 17 put it on the windshield and that would be enough to 18 be communicated. Would that be enough to be 19 communicated in Moldova, a parking ticket under the 20 windshield or not? 21 MR RUSU: The most efficient thing is a 22 registered letter to the person fined. 23 PROFESSOR KNIEPER: Let's talk about the 24 case. It simply didn't happen. At one point in 25 time the Claimants knew about these dispositions but</p>
<p>1 PROFESSOR KNIEPER: Mr Rusu, what is your 2 opinion on that? 3 Let me specify my question again. We have 4 Disposition 1-A and Disposition 2, and these two 5 dispositions are never officially communicated, as 6 you describe it, to the Claimant. Does that mean 7 that they never entered into force and there was 8 never a period starting to run for the Claimants to 9 go to court, or to the Chancellery, when they had 10 knowledge of these documents? 11 Did you understand this question? 12 MR RUSU: We have to clarify a few things 13 here. As indeed the legislation and not necessarily 14 the administrative legislation, it is the same for 15 the local authorities and the central authorities, 16 does not provide for the clear-cut mechanisms of 17 notifying someone about something. Indeed, the 18 person can be notified of something and asked to 19 sign for the reception of that notification, but the 20 person notified might claim that they never received 21 the notification. 22 PROFESSOR KNIEPER: In our case, Mr Rusu, 23 here we have been told -- and that was not contested 24 as far as I have seen it -- that these two 25 dispositions were never in any official way</p>	<p>1 they were not received. 2 MR GLADEI: It is about the burden of 3 proof. If the person which is believed to be 4 prejudiced made the request and the other party, be 5 it the court, be it the State Chancellery, would say 6 you have omitted the term, you would have to prove 7 that indeed it was not brought to the knowledge, 8 let's say, of the person. 9 So the law indeed does not necessarily say 10 it should be sent by registered mail. It is 11 normally how it happens through the registered mail, 12 this is customary, but if there are other compelling 13 evidences, like in the case of the car ticket, 14 probably they will make a picture, they will argue 15 this in court, when I received this letter I paid it 16 immediately in order to prevent any dispute, but 17 indeed it should be communicated, so it is not 18 enough. 19 PROFESSOR KNIEPER: Let's take our case. 20 Mr Grot comes back from the United States by the end 21 of March 2011, and he has a meeting, and at this 22 meeting he has the dispositions. However he found 23 them -- it is a disputed matter whether it was 24 officially or not officially communicated -- but he 25 has them in his possession and discusses these</p>

<p>1 dispositions with politicians. Would that then 2 trigger a period from which time on he would have to 3 go and fight these dispositions, or would it be 4 enough not to do anything?</p> <p>5 MR GLADEI: It depends on the 6 circumstances but, to put it plainly no, it would 7 not be sufficient. First because, as far as 8 I understand, he is not the administrator of 9 Laguardia.</p> <p>10 PROFESSOR KNIEPER: He was. This point is 11 clear.</p> <p>12 MR GLADEI: He was –</p> <p>13 PROFESSOR KNIEPER: All the administrators 14 had these dispositions by the end of March</p> <p>15 MR GLADEI: No, I mean administrator in 16 the sense of the person who is registered in the 17 registration chamber.</p> <p>18 PROFESSOR KNIEPER: Well, all the 19 officials of Laguardia had this disposition by the 20 end of March.</p> <p>21 MR GLADEI: There's not all of them. 22 There is just one of him.</p> <p>23 PROFESSOR KNIEPER: And that one had it 24 also?</p> <p>25 MR GLADEI: That is the first one. The</p>	<p>1 time. From that period of time of positive 2 knowledge of the dispositions, was there an active 3 duty to go to the Chancellery or to the court within 4 30 days, or did this period never start to run?</p> <p>5 MR RUSU: I would like to make some 6 comments to what Mr Gladei said. I would like to 7 draw the attention that the legislation does not 8 specify the way this notification is going to be 9 made. It is obvious that it has to be made in a 10 reasonable way. For example, the bailiff is not 11 appropriate in this particular situation because the 12 mayor and these people who are executing the orders 13 are private people – please allow me to just finish 14 my sentence, because I would like to have fair 15 treatment here.</p> <p>16 I would like to draw the attention that 17 this notification has to be done in a reasonable 18 way, but once the party has knowledge of this 19 notification, they have to act, if I may say so, in 20 an active way, so they can defend their rights, and 21 that is natural, so they would have had the right to 22 request from the town hall.</p> <p>23 PROFESSOR KNIEPER: That is why I wanted 24 to ask the question differently. We know that at a 25 certain point of time these dispositions were in the</p>
<p>1 second one, how he or she got to have the notice 2 disposition should be relevant, because once again 3 it is the active obligation, the positive obligation 4 of the authorities, to communicate the document to 5 the parties, either by registered mail or through 6 the bailiff. Moldovan bailiffs are offering private 7 services because they are private agents, and you 8 can go joined by a bailiff and document the fact of 9 receipt or refusal to receive the document</p> <p>10 PROFESSOR KNIEPER: Every parking ticket 11 in Moldova is distributed by a bailiff?</p> <p>12 MR GLADEI: I didn't say that. I said it 13 would be prudent for the purpose of the burden of 14 proof.</p> <p>15 PROFESSOR KNIEPER: Yes, of course, but it 16 is not a matter of validity. Unfortunately the 17 parking ticket is valid, although it was not 18 delivered to me by the bailiff, but I could say 19 I didn't find it because the wind blew it away</p> <p>20 MR GLADEI: And they would show you the 21 picture and then it would be up to the judge to 22 decide whether the picture is in evidence.</p> <p>23 PROFESSOR KNIEPER: Mr Rusu, the 24 administrator of the Claimants had these 25 dispositions in their hands at a certain period of</p>	<p>1 possession of the administrator of the Claimant. 2 Was that a point in time where the Claimant had to 3 start complaining or objecting, either with the 4 court in the period of 30 days? Does the period run 5 from the moment of positive knowledge, or does it 6 only start to run when the document is delivered by 7 a bailiff or by formal notification with signature?</p> <p>8 MR RUSU: There is no clear specification 9 when exactly this acknowledgment – it is not 10 defined, the date of the acknowledgment. 11 Hypothetically I could say this: Possibly a 12 disposition or a draft disposition had been seen, 13 and not the real document, so in this case I would 14 have had to go to the town hall. We can just talk 15 hypothetically, but we need to see what exactly 16 happened in the real circumstances.</p> <p>17 THE PRESIDENT: The court reporters need a 18 break. Mr Gladei, finish what you were going to 19 say.</p> <p>20 MR GLADEI: I feel it necessary 21 (interruption in sound) active reaction from the 22 citizen or another private person, meaning to try to 23 seek for, to request for, any administrative acts 24 which might concern this person. That would be 25 abusive interpretation. That would be against the</p>

<p>1 rule of legality. 380 12:03</p> <p>2 THE PRESIDENT: Let us now break until</p> <p>3 quarter past twelve. Thank you.</p> <p>4 Mr Rusu, Mr Gladei, I should have</p> <p>5 mentioned, no conversations between the experts and</p> <p>6 the parties or anyone else.</p> <p>7 (Short break from 12.04 pm to 12.16 pm)</p> <p>8 THE PRESIDENT: Professor Knieper?</p> <p>9 PROFESSOR KNIEPER: One last question. We</p> <p>10 are on the State Chancellery now and we have</p> <p>11 something which the State Chancellery calls a writ</p> <p>12 of summons. Yesterday in his examination of</p> <p>13 Mr Grot, Mr Gleason said that this piece of paper,</p> <p>14 C-42, when he asked Mr Grot, was the first decision</p> <p>15 of the State Chancellery issued in favour of your</p> <p>16 position. Today I heard you saying that this was</p> <p>17 not at all a decision. Why do you say that it was</p> <p>18 not a decision?</p> <p>19 MR GLEASON: Can I correct the record? My</p> <p>20 position yesterday was that this was not a</p> <p>21 decision comparable –</p> <p>22 PROFESSOR KNIEPER: I read your phrase now</p> <p>23 from the transcript.</p> <p>24 MR GLEASON: Comparable to a court</p> <p>25 decision. That was the phrase. I said this is a</p>	<p>1 efectuat...". 382 12:20</p> <p>2 MR GLADEI: There. "In drept". So it is</p> <p>3 my understanding that this is exactly what is</p> <p>4 required by the law on public administration, which</p> <p>5 in Article 68 said that when it considers, it deems,</p> <p>6 considers, that an act is illegal, then the</p> <p>7 territorial office shall notify the local public</p> <p>8 authority the effect of illegality, seeking for its</p> <p>9 cancellation.</p> <p>10 So it is a position of the</p> <p>11 State Chancellery. They seem to follow in the legal</p> <p>12 text quite accurately, even in the wording, and this</p> <p>13 way they have found, I would say another equivalent,</p> <p>14 they have found in their understanding and their</p> <p>15 belief or an exercise of their powers of</p> <p>16 administrative control, they consider it as unlawful</p> <p>17 and that is why they requested the mayor to</p> <p>18 terminate it, and then the mayor also has the option</p> <p>19 either to comply or to refuse to cancel it</p> <p>20 PROFESSOR KNIEPER: To really understand,</p> <p>21 Mr Gladei, it has substance, this sentence? Or has</p> <p>22 it not substance?</p> <p>23 THE PRESIDENT: Can I put it another way.</p> <p>24 Does it have legal consequences?</p> <p>25 MR GLADEI: No, it is not a binding</p>
<p>1 writ of summons, not a court decision. Perhaps we 381 12:18</p> <p>2 can look at the transcript. I want to be clear</p> <p>3 about what the argument was yesterday before we get</p> <p>4 into any detailed conversation about that. The</p> <p>5 conversation does seem to be based on my argument.</p> <p>6 PROFESSOR KNIEPER: Can you scroll down to</p> <p>7 the third paragraph, which starts with, "As</p> <p>8 a result", there the State Chancellery says "the</p> <p>9 State Chancellery considers the disposition in</p> <p>10 question illegal, being issued contrary to the</p> <p>11 provisions of legislation in force ..." et cetera,</p> <p>12 and asks the court, if we scroll up again, "the</p> <p>13 Territorial Office Soroca of the State Chancellery</p> <p>14 requires the total cancellation of the mayor's</p> <p>15 disposition."</p> <p>16 I would like to understand better what is</p> <p>17 it, this document? Is it a simple writ of summons</p> <p>18 or is it also a substantive decision in favour of</p> <p>19 the Claimants?</p> <p>20 MR GLADEI: Can we see the original</p> <p>21 Romanian text? [Displayed] I see it now. Can you</p> <p>22 scroll down to the reasoning part? I want to see</p> <p>23 the reasoning part.</p> <p>24 PROFESSOR KNIEPER: There it is, the</p> <p>25 correct paragraph. "Ca rezultat al controlului</p>	<p>1 determination. That is why I came to the second 383 12:22</p> <p>2 idea that if it were binding then the local</p> <p>3 authority would say okay, I have to cancel it.</p> <p>4 Still, the local authority, being an autonomous</p> <p>5 power, they might say no, I believe it is legal, and</p> <p>6 I will not cancel it, and it seems this is what</p> <p>7 happened in this case.</p> <p>8 PROFESSOR KNIEPER: Then it goes to court</p> <p>9 MR GLADEI: Then the State Chancellery has</p> <p>10 the right to resort to court to defend the position</p> <p>11 that it is unlawful.</p> <p>12 THE PRESIDENT: In the period after which</p> <p>13 it is issued and before it reaches, let's say, the</p> <p>14 local municipality, the mayor's office, whoever, and</p> <p>15 then goes to the court, what is the status of the</p> <p>16 underlying disposition?</p> <p>17 MR GLADEI: It doesn't change.</p> <p>18 THE PRESIDENT: It continues to have</p> <p>19 effect, even if it may later be found to be illegal?</p> <p>20 MR GLADEI: It continues to have effect,</p> <p>21 but assuming that it was properly communicated.</p> <p>22 PROFESSOR KNIEPER: We come back to the –</p> <p>23 MR GLADEI: We come back to the issue of</p> <p>24 communication.</p> <p>25 PROFESSOR KNIEPER: Professor Rusu, what</p>

<p>1 is your opinion on that? The question is what is 2 the effect of the findings of the State Chancellery? 3 MR RUSU: Your Honour, there are some 4 issues that have not been clarified so that you 5 understand the system. What I can see, I don't 6 think this is the notification of the 7 State Chancellery. That is not what I think is in 8 front of me. In order not to go into a lot of 9 detail, I would like to explain how the system 10 works. 11 Mr Gladei said correctly that the local 12 authorities are autonomous, but this notification 13 involves an administrative control of the central 14 administration. The scientific term is that the 15 local authority has two options: it either complies 16 with the notification or it risks to go to court, 17 and the court would cancel this disposition. 18 I do not have the facts at my disposal. 19 I was focusing on the legislation, but I think there 20 is this option. 21 PROFESSOR KNIEPER: That means that the 22 effect at least is that the mayor, having received 23 this document, could have complied and the 24 disposition would have been out of the world, right? 25 MR RUSU: [Nodded]</p>	<p>1 Let me commence with the end, which is 2 C-42 that we have been discussing for the last 10/15 3 minutes. Did the State Chancellery, according to 4 the record that you have both seen, act on his own 5 in issuing this writ of summons? Mr Gladei? 6 MR GLADEI: As far as I know no, because 7 as far as I know the dispositions were not sent for 8 administrative control. 9 MR FORTIER: But how did he come to issue 10 this writ of summons? 11 MR GLADEI: Probably he was addressed by 12 the prejudiced party. 13 MR FORTIER: You have seen the record? 14 You have examined the record? 15 MR GLADEI: No. 16 MR FORTIER: You do say in your expert 17 opinion that you have looked at a number of 18 documents. Has any of these documents conveyed to 19 you who approached the State Chancellor in order for 20 him to issue this writ of summons, exhibit C-42? 21 I would like to know who pressed the button? 22 MR GLADEI: I understand it was the 23 Claimant. If you allow me to check if I referred to 24 that. (Pause) I referred in paragraph 48 in my 25 First Report that the disposition was contested by</p>
<p>1 MR GLADEI: Yes. There is an option that 2 the mayor complies and cancels the disposition. 3 PROFESSOR KNIEPER: On the basis of such a 4 writ of summons. 5 MR GLADEI: On the basis of reconsidering 6 the legal grounds from the perspective of this claim 7 of the position/finding of the State Chancellery, 8 and then agree with the arguments of the 9 State Chancellery and cancel it without court. 10 PROFESSOR KNIEPER: Thank you. That 11 completes my questioning. 12 THE PRESIDENT: Just to check that, to be 13 absolutely clear, that did not happen. The mayor 14 did not give effect. 15 MR GLADEI: It seems so. 16 THE PRESIDENT: As far as we know. That 17 is the evidence that is before us. 18 MR GLADEI: It seems so. 19 THE PRESIDENT: Thank you, 20 Professor Knieper. I think Mr Fortier has a number 21 of questions. 22 MR FORTIER: First of all, I also thank my 23 friend and colleague, Professor Knieper, for having 24 asked some very pertinent questions and having 25 cleared the air somewhat.</p>	<p>1 the State Chancellery. I do not recall having seen 2 the document which serves as a trigger. 3 THE PRESIDENT: Professor Knieper points 4 out, if you go back to C-42, the first main 5 paragraph. 6 MR FORTIER: That is what I wanted. Could 7 you put it up on the screen? 8 THE PRESIDENT: It says 9 "on February 2012" – the translation is probably 10 inaccurate – the Police Commissariat of Floresti 11 district sent by the approach nr 1122 from 22 12 February 2012 to the office the copy of the 13 disposition in question, demanding the examination 14 under the aspect of its legality". So one issue 15 would be how did the Police Commissariat – 16 MR FORTIER: That was going to be my next 17 question. Do you know whether the police was asked 18 by anyone to put this writ of summons in motion? 19 MR GLADEI: This was not the subject of my 20 review for the purpose of the reports. 21 MR FORTIER: Does the State Chancellery in 22 circumstances such as those which obtained in this 23 file have the authority to act on his own in these 24 circumstances? 25 MR GLADEI: Returning to the Law on the</p>

<p>1 Local Public Administration there are several ways 2 of control. One of these is the control required by 3 the person prejudiced. The other is control 4 required by the public authority. I cannot judge 5 specifically based on the circumstances because not 6 all the circumstances are known to me, so if it were 7 a complaint from the person prejudiced that would be 8 a valid trigger. If it were sent that would be a 9 valid trigger. I cannot comment on the other 10 situations.</p> <p>11 MR FORTIER: Mr Rusu, do you have anything 12 to add to what your colleague has said about the 13 writ of summons and the initiation of the writ? And 14 whether the State Chancellery has the legal 15 authority to act on his own?</p> <p>16 MR RUSU: To be honest, I think it is very 17 important to understand the principle. It is true, 18 Mr Gladei has just made a partial reference. We 19 have a mandatory and a non-mandatory control of the 20 State Chancellery. I think in this case it is a 21 non-mandatory, a voluntary control, and that could 22 be triggered, and I would like to stress that, by 23 the local administration, not by the State, these 24 are two different things, so the police is not in 25 this category, and the aggrieved party. It is</p>	<p>1 we see here is that the police made a request. That 2 is what I understand from this document, that this 3 is a legal analysis that I made based on the 4 document. Maybe we should check again if this is 5 not correct.</p> <p>6 MR FORTIER: No, we looked at it before. 7 I am looking at both the dispositions, the key words 8 in Disposition 1-A, Disposition 2, exhibits 9 respectively C-031 and C-048. The conclusions of 10 the Chancellor in respect of these many thousands of 11 lease contracts are pretty dire.</p> <p>12 In 1-A, "I dispose to refuse the 13 registration of the lease contracts, and to erase 14 the registration of contracts made on 15 7 February 2011".</p> <p>16 And in disposition 2, words to the same 17 effect: "I dispose to refuse the registration of 18 the lease contracts and to radiate the registration 19 of the contracts made on the following day, on 20 8 February 2011, for the lack of the legal ground 21 that was basis for this registration".</p> <p>22 In your experience in Moldova have you 23 ever seen a decision by the State Chancellor which 24 was as far reaching as this one, in effect erasing 25 the registration of thousands of leases? Mr Gladei,</p>
<p>1 Article 66 and 67 in the local public administration 2 law from that moment in time.</p> <p>3 To be more concrete, either the council or 4 the mayor, and they are independent from each other, 5 for example, if the mayor does not agree with the 6 legality of the council decision, the mayor could 7 then go forward to the Territorial Office, and 8 vice versa, and of course the aggrieved party whose 9 rights have been violated.</p> <p>10 MR GLADEI: On this voluntary control, 11 what the law is saying, I am trying to answer this 12 question based on the legal provisions, and the best 13 way probably is to cite the law. The law is saying 14 under Article 65, voluntary control, that by the 15 date of 10th of each month, the secretary or the 16 council shall send to the Territorial Office of the 17 State Chancellery a list of the acts issued by the 18 mayor and the President or Chairman of the region in 19 the previous month. Then paragraph 2 is saying that 20 is the Territorial Office can, subject to control of 21 legality, any act, which is not subject to mandatory 22 control within 30 days from receiving that list.</p> <p>23 MR FORTIER: Thank you.</p> <p>24 MR RUSU: I would just like to add this 25 article is not relevant for this case because what</p>	<p>1 let me start with you?</p> <p>2 MR GLADEI: I have seen many instances in 3 my professional life, including different actions or 4 omissions from the state authorities, but I have 5 never – I have never – seen such an interpretation 6 of the law. We can comment attributing different 7 terms of the shape of that interpretation, but that 8 interpretation simply dismissed certain rights, be 9 it only the right of publicity, this way. I have 10 never seen it.</p> <p>11 MR FORTIER: As an expert in Moldovan law 12 familiar with the use which are made of the registry 13 offices for the registration of leases such as 14 these, I repeat: have you ever seen, in effect, 15 thousands of leases cancelled at the same time 16 because of a lack of legal ground that was the basis 17 for the registration?</p> <p>18 MR GLADEI: Never ever. Never ever, both 19 from the perspective of one act, deleting the 20 records for a bunch of leases. Each lease is 21 individual. Each lease has an individual behind 22 that. An individual person, including this person, 23 has personal data, has the right to privacy. He 24 might not want his neighbour to know about his 25 private business. This is his private business.</p>

<p>1 Whereas the manner the mayor treated the private 2 lives is unseen, for me at least, and if I compare 3 it with the activity of the cadastral registers, 4 that would be, let's use the word "outrageous" -- 5 I am more accustomed to working with the cadastral 6 offices -- you cannot even imagine that a cadastral 7 office would first register and then deregister, 8 even an individual act, but I have never ever seen a 9 document which would refer to a number of, let's 10 say, more than one record.</p> <p>11 MR FORTIER: And, in effect, have legal 12 consequences for thousands of people?</p> <p>13 MR GLADEI: It was at least purported to 14 do though.</p> <p>15 MR FORTIER: I am sorry?</p> <p>16 MR GLADEI: It was purported to have these 17 kind of consequences. It targeted, it purported to 18 refer, if not to say to affect, hundreds of private 19 persons.</p> <p>20 MR FORTIER: In the various laws that you 21 cite in your report to which you referred during 22 your conversation with Professor Knieper, there is 23 no provision that requires a disposition -- I am 24 focusing on these two dispositions obviously -- 25 there is no provision in any of these laws for the</p>	<p>392 12:39</p>	<p>1 not quite sure what I could add, but I would like to 2 draw your attention to the following things:</p> <p>3 First of all, we should distinguish very 4 clearly between the objective of the administrative 5 act which could be complex. I have not seen such an 6 act, with the exception of these two dispositions, 7 but to make an analogy there are complex acts 8 whereby the list of the assets is approved, and that 9 list can include all sort of annexes of ten pages.</p> <p>10 According to Mr Gladei, if we cancel a 11 particular act which has an annex, we have to issue 12 10,000 acts, so that means that the activities of 13 the authorities would be blocked. It would take 14 them at least a week to do that. We have to 15 understand that in a town hall like that there may 16 be three or five people who are working, so that may 17 take half a month.</p> <p>18 MR FORTIER: So what do you make of 19 persons who were in fact prejudiced by this decision 20 and who are simply referred to in the caption of the 21 disposition with the following word:</p> <p>22 "With regard to the refusal of 23 registration of lease contracts concluded between 24 ICS Laguardia SRL and the owners of agricultural 25 lands of Cosernita village" (1-A) and in 2, "with</p>	<p>394 12:42</p>
<p>1 service of these dispositions on the owner of the 2 land and on the lessee of the land. Is that 3 correct?</p> <p>4 MR GLADEI: I can tell what does exist in 5 the legal provisions and that is specifically 6 section 11 of the Regulation 72, which was referred 7 to earlier today, which is saying that the reasoned 8 or well grounded, whatever the translation is, 9 "motivata" disposition which is signed by the mayor 10 on the refusal to register the documents, filed 11 within the term provided by the law, shall include 12 the means of attack or the means of contestation. 13 That is the only place where I was able to locate a 14 reference to the disposition on refusal, but 15 amazingly it is not referred to in this disposition.</p> <p>16 MR FORTIER: To your knowledge you have 17 not seen any evidence that either one of these 18 dispositions was actually communicated, served upon 19 any one of the owners of the land or the lessees of 20 the land?</p> <p>21 MR GLADEI: Not to my knowledge.</p> <p>22 MR FORTIER: Mr Rusu, do you have anything 23 to add to what your friend and colleague has said?</p> <p>24 MR RUSU: Mr Fortier, you had a lengthy 25 discussion and you touched on several aspects. I am</p>	<p>393 12:41</p>	<p>1 regard to the refusal of registration of lease 2 contracts concluded between ICS Laguardia SRL and 3 the owners of agricultural lands of Varvareuca 4 village", these hundreds of owners of agricultural 5 lands are not described in any way, are not 6 identified, and you have these two dispositions that 7 fall from the hands of the mayor of these two 8 villages. They prejudice hundreds of people and 9 these people are not identified. How do you explain 10 that?</p> <p>11 MR RUSU: It is not clear for me, but from 12 the very beginning I said that that is the subject 13 and the object of the act. The subject is the 14 authority that does the registration and the lessee. 15 The lessee is either Bio-Alianta or Laguardia. 16 I have not seen who was prejudiced. I have never 17 seen any factual things. I do not know who the 18 people are, because the people have transmitted the 19 act to the lessee. They delegated the lessee to 20 fulfil these functions. But there is a norm -- 21 I don't have now the time to give you exactly 22 where -- that if the lessor has not registered the 23 lessee, Bio-Alianta, or Laguardia, then the lessee 24 could come and register itself.</p> <p>25 For me there is a lot of uncertainty. We</p>	<p>395 12:45</p>

<p>1 have certain subjects of the administrative act and 2 then there are subjects that are kind of 3 intermediary. I have not seen anything in this 4 connection. I don't know who was prejudiced and 5 how. Maybe I am missing something here? 6 MR FORTIER: I don't either. That is the 7 problem. I am in the same situation as you are. 8 MR GLADEI: Can I make a comment? 9 Professor Rusu fairly pointed that there are two 10 sorts of administrative act, normative and 11 individual. The second category is an individual 12 act, meaning that by definition they refer to 13 individual situations and persons. If he allows me 14 to quote from the same manual, from the same book, 15 which distinguishes between those two categories, 16 saying that "individual acts are those which are 17 personalised" -- "personificate" -- which means that 18 they have a specific concrete addressee. "adresant 19 concret". 20 To say all the owners from a specific 21 village is not at all personalised and a specific 22 addressee. It refers to both. Not only to the 23 lessee, which is one in those hundreds of leases, 24 but lessors, who are different. 25 MR FORTIER: Thank you very much. I have</p>	<p>1 helpful. 2 If I have understood correctly, the public 3 authority, let us say the mayor, would not have a 4 role in relation to the termination of a lease in 5 normal circumstances, and you will no doubt correct 6 me if I am wrong, but that is my understanding. 7 I see you nodding, Professor Rusu. Mr Gladei, I am 8 assuming that that is the position, but you will 9 correct me if I am wrong. 10 I wonder if we could put up again, C-95. 11 MR KOPECKY: Mr President, I think there 12 is a translation issue. (Pause) 13 THE INTERPRETER: It is not the 14 termination. I said something that could be 15 interpreted as concluding the contract. It is 16 resiliation, finish, termination of the contract. 17 THE PRESIDENT: C-95. Really just to be 18 clear, what I am seeking is just your assistance. 19 I of course have no knowledge or expertise of the 20 law of Moldova or of practice under that law, and 21 I appreciate that practice is often very 22 significant. 23 Could we go to page 5? If you could both 24 have a look at this document. I appreciate it is in 25 Russian. Do you both speak Russian?</p>
<p>1 no further questions, Mr Chairman. 2 MR RUSU: With your permission, if you 3 allow me, I thank him again for making reference to 4 this, but I think why make a classification of the 5 administrative acts? 6 There is some overlapping between the 7 individual and the normative acts. As far as the 8 normative acts go, I specified that they regulate, 9 there are some mandatory rules for an indefinite 10 number of legal situations, whereas the individual 11 acts normally are addressed to a particular person, 12 but they also relate to a concrete legal situation 13 which is registration of a certain number of 14 contracts that the investor had land which could not 15 be divided. 16 THE PRESIDENT: Thank you. I only have a 17 couple of questions. I am very grateful to my 18 colleagues for what they have said 19 I would like to go back, because we have 20 one intervening act of which I am curious, and I am 21 very grateful to Professor Knieper for 22 distinguishing very clearly between what is governed 23 by private law on the one hand, leases, and what one 24 might call the public law element on the other side, 25 the registration of the leases, and that was very</p>	<p>1 MR GLADEI: I do. 2 THE PRESIDENT: It is a termination of a 3 lease in the village of Varvareuca. Professor Rusu, 4 do you speak Russian also? 5 MR RUSU: Yes, I do. 6 THE PRESIDENT: So you are able to read it 7 for yourselves and form your view. It says at the 8 top that it is an announcement of the termination of 9 the lease and on the right-hand side the village of 10 Varvareuca, and on the left-hand side the date of 11 11 February, 2011. If you go down to the bottom of 12 that document there is a reference which is 13 translated in English as the Varvareuca official, 14 Ms Ivanes, NF, and then a signature which we 15 understand is the mayor's signature. 16 My question is for each of you -- 17 Mr Gladei, you may want to start -- is why would the 18 mayor of Varvareuca sign such a document? Is that 19 an exercise of public power? Is it her signing in 20 another capacity? She signs it as the mayor. I am 21 just curious to know how you might explain this act 22 of signature? 23 MR GLADEI: To answer I would pay 24 attention to the text above the signature which says 25 in a direct translation "for confirmation". So it</p>

<p>1 seems that the mayor has signed it in confirmation 400 2 of something, which is leading me to the -- 12:54 3 THE PRESIDENT: The English translation 4 does not include that word. Which is the bit that 5 says "for confirmation", because the English doesn't 6 have that? 7 MR KOPECKY: Same reservation as before. 8 MR GLEASON: Can you point to what 9 language is not in the translation? 10 [The President indicated on the document] 11 THE PRESIDENT: There is additional text 12 in the original which is not in the translation -- 13 and Professor Rusu you will have a chance to 14 confirm -- well, is that what it says? Does it say 15 "for confirmation"? 16 MR RUSU: Yes. "For confirmation". 17 THE PRESIDENT: Back to you, Mr Gladei. 18 Can you explain to us, I appreciate you were not 19 there and cannot give us first-hand testimony, but 20 on your basis of the knowledge of the law and 21 practice under the law, what is happening here? 22 What is occurring, if you could help us to 23 understand why the mayor is confirming? 24 MR GLADEI: Yes. To answer I will try to 25 look from the perspective of the Moldovan law.</p>	<p>1 resemblance of a stamp there. It seems there is a 402 2 stamp there. So a person, an individual, normally 12:58 3 does not have a stamp in Moldova, unless he is very 4 creative, so I assume this is the stamp of the 5 mayoralty. 6 THE PRESIDENT: If you go down to page 13, 7 you will see there is another stamp. I appreciate 8 it is very far away -- 9 MR GLEASON: We have the originals. 10 THE PRESIDENT: Can you zoom in on the 11 stamp so that both Mr Gladei and Professor Rusu can 12 tell us what this stamp is? 13 MR GLADEI: Yes, it is clear in the bottom 14 side there is the word "primaria", which means the 15 mayor's office or the other translation is 16 City Hall. Then I see the word "Floresti". This is 17 the name of the region. "Consiliul Communal 18 Varvareuca", Local Council of Varvareuca. So the 19 "primaria" is the mayor's office of the Varvareuca 20 council. 21 THE PRESIDENT: Would it be a reasonable 22 conclusion that this is a purported exercise of 23 public authority? 24 MR GLADEI: This is an exercise of the 25 public authority. I do not qualify it, but it is</p>
<p>1 I could not -- at least it is not coming to my mind 401 2 now -- identify any provision of the Moldovan law 12:56 3 which would require the mayor to confirm a document 4 like that, which means that, first, in an ordinary 5 exercise of his or her duty he is not to do that. 6 Second, anything which is done besides 7 that legal provision, under the principles to which 8 I have referred in my report specifically, legality, 9 no right to intervene, Article 1 of the Civil Code, 10 no right to do what is not prescribed by the law, 11 this would be difficult to find a proper word -- 12 strange to understand -- or let's say "unusual". 13 THE PRESIDENT: Could you explain to us in 14 the practice of Moldova, the signature does not just 15 have the name of the person signing. It refers to 16 the Varvareuca official, as it is in the 17 translation, maybe it is the Varvareuca Mayor, I am 18 not sure what the best translation is, but is this 19 person signing purportedly in an official capacity? 20 What I am getting at is, is this a private act, or 21 purportedly a public act? 22 MR GLADEI: I think the latter, it is 23 purportedly a public act, because first the title of 24 the person is indicated, the Mayor of the village of 25 Varvareuca, not just Ms Ivanes. Second, I see the</p>	<p>1 not a private act 403 2 THE PRESIDENT: We have hundreds of these 12:59 3 all signed on the same day. In fact, I have been 4 going through them slowly and I have noticed that 5 the dates, for example, at the bottom, 11 February, 6 they are all handwritten by the same person, so one 7 forms the impression -- we don't know, of course -- 8 that they were all prepared by the same person and 9 the mayor has signed hundreds of these documents 10 Not being familiar with practice in a 11 municipality in Moldova or the law of Moldova, could 12 you help us understand what you believe, with your 13 professional experience, is happening in this 14 instance of hundreds of these documents being 15 confirmed by the local mayor? 16 MR GLADEI: The first comment is that the 17 mayor has found time to confirm all those hundreds 18 of documents but the mayor has not had time to issue 19 hundreds of dispositions, just to comment on the 20 previous discussion, which is again -- I don't want 21 to enter into speculation -- which is interesting, 22 let's use a neutral term 23 THE PRESIDENT: I don't want to put words 24 in your mouth but one conclusion is if the mayor 25 found time to confirm individual lease terminations,</p>

<p>1 the mayor could have found time to sign individual 2 dispositions? 3 MR GLADEI: That is fair to say. Even if 4 the amount of work is a bit different, here she 5 should just put the name and the signature. There 6 she should have used hundreds of pages of A4 format 7 THE PRESIDENT: Are you able to tell us 8 what are the consequences in Moldovan law of the 9 mayor having confirmed these documents? What do we 10 draw from this fact, beyond that the mayor had some 11 involvement in this process? What else can we draw 12 from the totality of hundreds of these documents 13 confirmed by the mayor, if anything? It may be we 14 can draw nothing from it. 15 MR GLADEI: First, in a strict sense it 16 doesn't mean anything, the fact that the mayor put a 17 signature under any wording there. 18 Second, reasonably thinking, it brings any 19 independent observer to the conclusion that that 20 specific individual in his or her position as public 21 officer intended to do something, intended to 22 attribute to a document a certain character. 23 I don't know what was the real intent of 24 the person. I can only comment from outside, as 25 I said, as an independent observer, and from my</p>	<p>1 If one goes to Disposition 2, in this area the 2 leases were registered on 8 February 2011. Three 3 days later the mayor signs hundreds of confirmations 4 that the leases have been terminated -- I am coming 5 to you, Mr Rusu, I am going to give you a full 6 chance -- 7 MR KOPECKY: I need to note for the record 8 that this is the second time in this arbitration 9 where a supposition is put to a witness and a 10 witness is induced to make suppositions of events 11 where he has no personal recollection on the basis 12 of documents which he has never seen before. 13 I would like this for the public record of this 14 arbitration. 15 THE PRESIDENT: We are absolutely clear 16 and I have been very clear in saying he was not 17 there, he does not know for fact, I am acutely 18 aware. We are all in the difficulty that we are in 19 a country that we know nothing about. We have 20 before us two excellent independent legal experts 21 but we understand it is supposition and speculation; 22 it is absolutely understood. 23 MR KOPECKY: Thank you. 24 THE PRESIDENT: Professor Rusu? 25 MR RUSU: If you allow me, please,</p>
<p>1 particular experience. Whenever I see that a public 2 officer is putting his or her signature -- which is 3 very difficult to obtain, by the way. If you want 4 an administrative act you will stay in the queue to 5 get it. And here, all of a sudden, the signature 6 and the stamp appears on many documents. It is very 7 interesting; it is unusual; and it means that 8 specific person wanted to do something by date. 9 I cannot go on commenting. 10 THE PRESIDENT: Could one imagine a 11 reasonable mayor signing and stamping hundreds of 12 documents for no reason? 13 MR GLADEI: To answer I would turn to the 14 last slide of my presentation where I refer to the 15 role of the mayor and, to recall yesterday's 16 discussion, there is probably a witness saying that 17 the mayors are important persons in the communities, 18 in the villages. I remember yesterday a witness 19 saying that the role of the mayor is to gather the 20 people in order to organise something. So probably 21 from the same area of reasoning one might say that 22 the mayor had an intent by doing this document. I 23 don't know what the intent was, but that is 24 reasonable. 25 THE PRESIDENT: The timing is as follows:</p>	<p>1 Mr President, you asked him a question and I would 2 find it difficult to answer. For me it is very 3 difficult to answer, but please don't ask me two 4 questions at the same time because I have a lot to 5 say. 6 THE PRESIDENT: Well, let's then give you 7 an opportunity, question by question. Could I first 8 ask you, do you agree with what Mr Gladei has said, 9 that this act of signature by a mayor of Varvareuca, 10 along with an official stamp, indicates in his view 11 this purports to be a public act rather than a 12 private act? 13 MR RUSU: I would not be so categorical to 14 make this distinction between a public and private 15 act. What I would say, we make some presumptions. 16 I see a trend. I see some kind of inference that 17 the mayor acts in bad faith. That is not the case. 18 I said from the beginning that the mayor 19 often does not have a lot of training. Sometimes it 20 is in the service of the community. Mr Gladei 21 correctly stated that the mayor can organise 22 meetings, and please take into account the fact that 23 sometimes they could be making reasonable errors. 24 If you look at the duties of a mayor and 25 of the council secretary, their duties include a</p>

<p>1 certification of certain documents as well as notary 2 acts. I know the situation because I do study local 3 administration. I think that the people of these 4 villages have been deceived several times by 5 investors, and even here I saw that the rent 6 payments were not made, and often I am just assuming 7 that there were some kinds of meetings and people 8 were asking for the mayor's support. I do admit 9 that the mayor was maybe too enthusiastic, that the 10 mayor made an error, of course, and for that the 11 mayor may be sanctioned.</p> <p>12 THE PRESIDENT: We are not sure what the 13 error is, but what do you think the mayor has done 14 that the mayor should not have done?</p> <p>15 MR RUSU: This is a private law issue that 16 should not have been confirmed, but there are public 17 acts that a mayor would confirm, like certificates, 18 for example. For example, a certificate on 19 somebody's farm, or they can confirm certificates of 20 all sorts. From the perspective of private law this 21 certification has no value.</p> <p>22 As far as public law is concerned, yes, a 23 mayor made a mistake and needs to be sanctioned but 24 these are all assumptions. I have not seen the 25 factual things and I didn't have the time for that.</p> <p style="text-align: right;">408 13:07</p>	<p>1 I noticed that the act of registration of 2 these leases took place on 8 February 2011, and then 3 three days later we get this termination purportedly 4 of the leases confirmed by the mayor of the same 5 town. Is that a normal practice? Does that happen 6 often? Again, I don't know Moldova, I regret to 7 say, and I am just asking for guidance if this 8 happens a lot and it is not unusual, or is it 9 unusual. I think Mr Gladei said he thought these 10 kinds of things had an unusual –</p> <p>11 MR RUSU: I have never seen that in my 12 life.</p> <p>13 THE PRESIDENT: Because you have never 14 seen it in your life, do you draw any conclusions – 15 and I appreciate we are in the realms of 16 speculation – as to what might have happened here? 17 You know the culture of the communities. You have 18 told us about the trust that people in Moldova have 19 for their mayors. Are you able to offer us any 20 possible explanation as to what happened here?</p> <p>21 MR RUSU: I can only tell you what this 22 trust is based on. It is a psychological moment. 23 Most of the population is made up of retired people, 24 elderly people. The Moldovan villages are 25 depopulated because of various reasons and the mayor</p> <p style="text-align: right;">410 13:11</p>
<p>1 I just want, however, to tell you one thing. 2 According to the statistics in the 3 Republic of Moldova, this is worthwhile mentioning, 4 and you can check that the mayors enjoy the trust of 5 the population second only to the church and the 6 priests.</p> <p>7 MR GLADEI: In Moldova the mayor exercises 8 the notarial actions. Secretaries, yes. Mayors 9 not, that would be the confusion.</p> <p>10 THE PRESIDENT: I didn't understand 11 Professor Rusu to say this was a notarial action. 12 He didn't say that.</p> <p>13 MR RUSU: No. What I said, I mentioned 14 the Council secretary together with the mayor. But 15 the Council secretary –</p> <p>16 THE PRESIDENT: Professor Rusu, can you 17 help me, since I am appreciating very much your 18 words, and again we are all constantly aware that we 19 are in a slightly grey area because neither of you 20 were present and you are legal experts, not fact 21 experts, so we are not drawing any conclusions of 22 fact from what you are saying. We are trying to 23 understand how things work in law and practice under 24 the law in Moldova, no more than that. That is as 25 far as it goes.</p> <p style="text-align: right;">409 13:10</p>	<p>1 is the closest person because he is an elected 2 official.</p> <p>3 The investors come and go and often the 4 villagers are deceived. The investor says I will 5 give you 100 kilos of wheat, but they receive only 6 50 kilos. The population has been cheated, deceived 7 several times with the privatisation and other 8 things, but the mayor is there to stay, and he wants 9 to be reelected, which doesn't happen with the 10 others, including the investors. We have to admit 11 that.</p> <p>12 THE PRESIDENT: I want to turn to one 13 final issue to help me understand again. We have 14 now understood in relation to this particular 15 village registration on 8 February, purported 16 termination of the leases on 11 February, purported 17 "deregistration" on 15 March, and then not in 18 relation to this village, but in relation to the 19 other village the matter goes off to the 20 State Chancellery which expresses, as I have 21 understood it, a position or opinion that an 22 illegality has occurred.</p> <p>23 By now we are in May. I think the date of 24 the Chancellery decision was 2012. I am trying to 25 imagine from the perspective of an investor who has</p> <p style="text-align: right;">411 13:13</p>

<p>1 a lease, or thought they had leases for three years 2 and want to move things along -- and again I am not 3 making any assumptions as to what did or did not 4 happen and what went wrong or what did not go 5 wrong -- but after 15 March in the village of 6 Varvareuca what options were available in law for an 7 investor such as this one to move things along as 8 quickly as possible, if the investor wanted to, to 9 continue the agricultural activity? 10 I am going to put the question first to 11 Professor Rusu. If you had been advising the 12 investor who wants to get going as quickly as 13 possible, what realistic options were available to 14 the investor in the domestic legal context? 15 MR RUSU: I'm not aware of all the 16 circumstances but, hypothetically speaking, I would 17 advise him that it is a matter of investment, first 18 of all. He should have clarified those contracts, 19 those agreements. Perhaps the other company is 20 ill-faithed. He should have gone to court to settle 21 the matter and asked for some compensation, or be 22 given back his rights. Let me tell you, there is a 23 connection between the civil procedure and the 24 administrative procedure 25 THE PRESIDENT: But which court would you</p>	<p>1 point of view. There is a problem here when it 2 comes to the legislation. The administrative 3 procedure or the administrative legislation should 4 be quite operative, because on the one side we have 5 an economic operator, or a citizen, and on the other 6 we have the state, which is a heavyweight 7 institution. But I have to admit that because of 8 the influence of the civil procedure in our 9 legislation the administrative procedure that should 10 be a quick procedure to give satisfaction to the 11 citizen has become as lengthy as the civil 12 procedure, from one year to several years. 13 THE PRESIDENT: We have a situation where 14 the Police Commissariat of Floresti sent a complaint 15 to the State Chancellery almost a year after the 16 events occurred, and it then took four months. Is 17 there any possibility from your experience, 18 Professor Rusu, in the civil and administrative 19 courts, assuming that one court could deal with the 20 totality of the issues in a single set of 21 proceedings, that after the events of March 2011 it 22 would have been possible to resolve the entire 23 matter in the courts of Moldova in time for the 24 investment to continue in the 2011-2012 growing 25 season? Is that possible?</p>
<p>1 advise the investor to go to? A civil court or an 2 administrative court? 3 MR RUSU: Allow me to finish. The common 4 law courts. He could have raised the exception of 5 the legality of the disposition, so the common law 6 court if he thought that the disposition would stop 7 him from moving on with his investment. 8 The way he chose is quite lengthy, and 9 I don't understand the purpose of it. It only leads 10 to public matters, and not private matters. Well 11 the disposition is cancelled, and what is the next? 12 Does the disposition give him the land back? No, it 13 doesn't. 14 THE PRESIDENT: English people try to be 15 as practical as possible, so I am just trying to be 16 practical. His leases have been purportedly 17 terminated. Purportedly they are no longer 18 registered on the registry in the local village. 19 You have identified a number of legal options. In 20 light of your lengthy experience as a scholar and as 21 a writer in this field, what timeframe are we 22 talking about, before which courts, until this 23 matter was resolved? How long would it take and 24 what direction would it have taken? 25 MR RUSU: I will talk from the scientific</p>	<p>1 MR RUSU: Let me tell you something. The 2 police could have sanctioned them with no 3 State Chancellery involved, because the police can 4 sanction people. As concerns the procedural 5 aspects, well, it is quite possible, because there 6 are measures in this respect provided for in the 7 law. He could have acted before a final decision 8 was pronounced. 9 THE PRESIDENT: Finally, Mr Gladei, I want 10 to give you a chance to respond 11 MR KOPECKY: I have a question about the 12 translation. When you said "resolve" you meant 13 resolve conclusively, so not -- 14 THE PRESIDENT: Concluded in order to 15 allow the investor to carry on with its activity. 16 MR KOPECKY: So no interim resolvment, 17 for instance, in the form of injunctions? 18 THE PRESIDENT: Concluded in order to 19 allow the investor to continue. 20 MR KOPECKY: So including provisional 21 resolving? Okay. 22 THE PRESIDENT: Mr Gladei, if you had been 23 advising the investor at that point what advice 24 would you have given and was there any realistic 25 prospect in accordance with what you know in your</p>

<p>1 professional experience and your legal experience of 416 2 having this matter resolved in such a way as to 13:22 3 allow the investor to continue in a timely manner 4 with his investment? 5 MR GLADEI: First, I want to mention that 6 Moldova lawyers try to be very practical, including 7 when advising their clients, because from that 8 myriad of legal alternatives not all of them are 9 working well, or some of them are not working at 10 all. 11 Indeed, I would have weighed the following 12 alternatives: first, going to the Civil Court in 13 order to defend my leases against a seemingly bad 14 faith competitor, which means a civil law litigation 15 which is -- I would not say by definition -- 16 traditionally very slow. 17 THE PRESIDENT: What do you mean by very 18 slow? 19 MR GLADEI: Just to give you an example, 20 doing a business report from Moldova is year by year 21 showing that Moldova has much to do on that matter, 22 and even collecting a debt would take you a very 23 long period of time due to, first, three instances, 24 second, huge delays, huge backlogs in the courts, no 25 real alternatives, the commercial arbitrations are</p>	<p>1 Courts are highly reluctant to offer this kind of 418 2 protection. 13:26 3 Third, going to the public authorities. 4 Moldovan public authorities are keen, or at least 5 claim to be keen to take care to support the foreign 6 investors. This is in the official documents, 7 including those principles on page 1 of my 8 presentation, and we are very proud of this 9 legislation. This is the so-called reformed 10 legislation, new wave of legislation, including the 11 so-called guillotine laws which make it very 12 friendly for an investor, at least purportedly 13 friendly to do business in Moldova, as long as those 14 principles are properly applied. 15 It would be quite reasonable for an 16 investor to go to the authorities, meaning either to 17 go to the State Chancellery, which is the first 18 place to assist a person who is prejudiced by an 19 administrative act, but why not to the upper levels, 20 including to the levels of the central executive 21 power. I have referred in my reports to the rights 22 and obligations of the government, including of the 23 Prime Minister, as regards this area. 24 Nowadays it is a bit easier because the 25 Prime Minister has a dedicated staff for protection</p>
<p>1 not yet properly in place; practical poor 417 2 availability of safeguard measures, injunctive 13:24 3 measures, so-called "masuri de asigurare a actiunii" 4 meaning that it is very difficult to successfully 5 plead an injunction. 6 Courts are traditionally highly reluctant 7 to offer such measures, including because the law 8 has changed to say that this is offered when absent 9 those measures the judgment would not be able to be 10 enforced. 11 So practically from my experience and 12 general I would say experience it is hard to 13 successfully plead these kind of requests, and this 14 is why it is hard to obtain a protective measure in 15 the form of safeguard measures. 16 The same refers to Administrative Court, 17 because the second avenue would be go to start an 18 administrative litigation, go to the 19 Administrative Court -- the person aggrieved 20 himself, the person prejudiced himself -- trying to 21 obtain an injunctive measure to freeze the 22 situation. Again, here I have less experience, but 23 still I probably can fairly claim that it is not at 24 all as it is written in the law. It is very 25 difficult to obtain this kind of injunctive measure.</p>	<p>1 of investment, a cabinet for this purpose, which is 419 2 supported internationally. Probably at that time 13:28 3 the then Prime Minister did not enjoy that, but if 4 I am trying to recall it is for a while already this 5 team of investment protection, and this team is 6 expected to or it is purported to offer support for 7 the investors, including in order to prevent 8 litigations, including in order to prevent 9 international litigations as well, because that is 10 the objective to say that Moldova has been recently 11 involved in a number of international arbitrations, 12 both commercial and investment, and practically the 13 day after Moldova joined the ICSID convention the 14 first case emerged. That is it. 15 THE PRESIDENT: I am very grateful for 16 this account. In practical and reasonable terms, 17 what were the prospects, if any of those avenues had 18 been followed, of this investor, on the basis of 19 what you know of the facts, of being able to engage 20 in agricultural activity starting again in the 21 spring of 2012, by which point two of the three 22 seasons if you like in the initial leases would have 23 gone? What prospect was there of starting to sow in 24 the spring of 2012, a year after these events? 25 MR GLADEI: I think it would be</p>

<p>1 unreasonable to believe that the litigation would be 420 2 solved in less than a year. Even if, as 13:29 3 Professor Rusu mentioned, there are special rules 4 according to an administrative proceeding. It is 5 purported to be expedited based on the law in the 6 administrative proceeding. It is not. 7 THE PRESIDENT: Thank you. That is my 8 last question. I think that concludes the questions 9 from the Tribunal. We have used a lot of your time, 10 but speaking for all of us we have found it 11 extremely useful. We are very, very grateful to 12 both of you for having taken the time to come. 13 Practically, how do we proceed? 14 MR KOPECKY: I wanted to ask 15 Professor Rusu, if I may, whether the question that 16 Mr Gladei just answered was the same question that 17 was put to him before. I don't speak Romanian but 18 I understand from my colleague that there were some 19 translation issues. Was the question that Mr Gladei 20 just answered the same as was put to you? 21 THE PRESIDENT: Certainly my intention was 22 to ask the same question. 23 MR RUSU: It seems to me that yes, but 24 I don't have the practical experience of Mr Gladei. 25 I talked from the perspective of the legislation</p>	<p>1 and be very tight with the questions. 422 2 We have time. We have our two 13:32 3 agricultural experts this afternoon. It may be that 4 we have to continue them over into tomorrow. I do 5 have to finish today at 5.30, I am afraid, and 6 I don't want to rush the agricultural experts. They 7 are very important and we will need to consider 8 starting earlier tomorrow. But we have some 9 flexibility tomorrow because we have the two 10 economic experts, and I deign to express the slight 11 hope that both I and perhaps my colleagues will have 12 fewer questions for the quantum experts, but that 13 may not be the case. 14 MR GLEASON: As a practical matter we had 15 sent some tables to Respondent yesterday concerning 16 the agricultural expert's report. This was 17 discussed yesterday. I do have hard copies. 18 I prefer to distribute that now so they can review 19 them – I know you already have it – and perhaps 20 the Tribunal as well. 21 THE PRESIDENT: Have you seen these 22 before? 23 MR KOPECKY: I believe it is the same 24 document, so yes. 25 THE PRESIDENT: We have not seen this. Is</p>
<p>1 because I am a professor, and I underlined some 421 2 holes in the legislation. I sit from one year to 13:30 3 several years, but I cannot give you a timeframe. 4 Perhaps Mr Gladei knows better from practice how the 5 courts work. 6 THE PRESIDENT: You have both been 7 extremely careful and very professional, if I may 8 say, in not speaking beyond your expertise and 9 I express my gratitude for that 10 We have an opportunity for the parties to 11 ask you some questions. (Pause) My colleagues are 12 so much wiser than I am and they invite me to ask 13 both parties whether, following this helpful and 14 extensive exchange, do you have any questions? 15 First, Claimant, and then Respondent? 16 MR HINKLE: Yes. 17 THE PRESIDENT: Are you able to estimate 18 how many and how long? 19 MR HINKLE: Maybe 30 to 45 minutes. 20 THE PRESIDENT: Respondent? 21 MR KOPECKY: About the same. A little bit 22 longer. 23 THE PRESIDENT: We are now 1.30. Let us 24 break for half an hour. Let's return at 2 o'clock 25 and let's see whether we can finish by 3 o'clock,</p>	<p>1 there another document to come? 423 2 MR KOPECKY: It is probably the same we 13:34 3 saw yesterday. 4 THE PRESIDENT: The order to the witnesses 5 is as previously, no communication. You can have 6 lunch together, I think it is fair to say, but no 7 communication with either party for each of you over 8 the course of the lunch break and we will be back 9 promptly at 2 o'clock. 10 MR GLEASON: I do believe we have sent the 11 expert report for Mr Wiechen, the expert 12 presentation, to your team, Mr Kopecky. 13 THE PRESIDENT: And no doubt you will 14 comment in due course. Table 4 will be CH-7 and 15 table 5, Plant Production, will be CH-8. 16 (Luncheon adjournment from 1.35 pm to 2.10 pm) 17 THE PRESIDENT: Welcome back. 18 MR GLEASON: I had a brief note concerning 19 this morning's proceedings. I just want to make a 20 statement on record concerning an exchange that 21 Professor Knieper and I had about exhibit C-42. 22 There was some confusion concerning what was said 23 yesterday and I have highlighted where that was on 24 the transcript from yesterday. I just want to 25 maintain that Claimants' position as stated</p>

<p>1 yesterday in the transcript is consistent with what 2 we said this morning. 3 THE PRESIDENT: I think you can rest 4 assured, Mr Gleason, you have a Tribunal that is not 5 looking to cause any difficulties. What is said is 6 said, and no doubt there will be an opportunity, if 7 there are any infelicities that crept in to the 8 record to modify them or whatever steps are taken. 9 But you are pushing at an open door. 10 MR GLEASON: I just want to preserve the 11 right. Thank you. 12 THE PRESIDENT: I think the running order 13 is Mr Kopecky is going to begin with Mr Gladei. 14 MR KOPECKY: To answer your first 15 question, we need about 45 to 60 minutes on the 16 agricultural experts in cross. 17 THE PRESIDENT: I think the Tribunal will 18 have far less to ask of the agricultural experts, is 19 what I am picking up from my colleagues, so we may 20 find ourselves coming back within time. Our two 21 colleagues are very important, so let's do this 22 properly. Over to you, Mr Kopecky. 23 Questions by Respondent 24 MR KOPECKY: Welcome. Mr Gladei, would 25 you kindly confirm that you wrote your First Report</p>	<p>1 clients. 2 MR KOPECKY: But this is not your client. 3 You are testifying as an expert 4 MR GLADEI: I have much administrative 5 work, so no, I don't want to guess now to give you a 6 best guess answer. 7 MR KOPECKY: If I may take you to your 8 report, page 21, First Report, that is your 9 signature and the date of your report, and then if 10 you flip the page we get to a Romanian document 11 which I understand is a response of the Soroca 12 Territorial Office to the State Chancellery to a 13 letter of Laguardia SRL. It is on page 23 of your 14 report, the first exhibit, attached in Romanian. 15 The date of the translation is filed at the end of 16 your report. 17 MR GLADEI: Which page? 18 MR KOPECKY: It is the first page after 19 the last page of your report. So your report is 20 22/2. 21 MR GLADEI: So it is supposed to be 23. 22 MR KOPECKY: So it is the bundle that 23 forms part of your report, and this is the response 24 of the Soroca Territorial Office to Laguardia. Is 25 that right?</p>
<p>1 on 12 January 2017? 2 MR GLADEI: Yes, it is dated that date. 3 MR KOPECKY: And that you wrote your 4 Second Report on 12 August 2017. 5 MR GLADEI: Yes. It is issued on 6 12 August. Of course I worked more days than just 7 one day on it. 8 MR KOPECKY: Indeed. You signed it on 9 that date. Could you confirm to us when Claimants 10 retained you to prepare your report? 11 MR GLADEI: No, I cannot remember exactly 12 when it happened 13 MR KOPECKY: Can you give us the week, the 14 month maybe of the year? 15 MR GLADEI: It was before that. 16 Definitely before. I cannot tell you more precisely 17 when. 18 MR KOPECKY: You cannot tell me the month? 19 Just the month? 20 MR GLADEI: No. The month of the year 21 probably. 22 MR KOPECKY: Yes. That is all I need. 23 MR GLADEI: No. I don't want to guess 24 now. I handled this work for the company, for the 25 firm, and you might imagine that we have many</p>	<p>1 MR GLADEI: It seems so. 2 MR KOPECKY: The address indicated on the 3 right side, where it says "Dlui Zbigniew Piotr Grot, 4 Administrator al SRL "Laguardia", and then it says 5 "Adrea: mun. Chisinau, str.V.Pircalab 63, of .5 F2" 6 and I would like to ask you isn't that an address of 7 Gladei & Partners? 8 MR GLADEI: Yes. That is our office 9 address. 10 MR KOPECKY: Can you explain why a 11 document addressed to Laguardia was delivered to 12 your offices if you are not the representative but 13 only an expert? I appreciate you won't tell me when 14 you were retained, but I understand if you are 15 delivered a document on behalf of a party, you are 16 representative of a party, so I would like an 17 explanation as to you to how a document addressed to 18 Laguardia and Mr Grot was sent to your address? 19 MR GLADEI: The same address is for the 20 other attorneys, let's say, which we have a relation 21 with, not to enter into details. So I did not 22 receive this document from the Territorial Office. 23 MR KOPECKY: But is it the exact address 24 of your firm, Gladei & Partners. Of which you are 25 the managing partner?</p>

<p>1 MR GLADEI: That is right, but to explain 2 to you how the legal profession works in Moldova, 3 there is a number of attorneys working under the 4 same roof, let's say. It is not the law firm in a 5 proper sense of the word. Well, from the Moldovan 6 perspective, there is no such word as "law firm". 7 So it might be, that is my probably best guess, that 8 one of my colleagues received it, but not me. 9 MR KOPECKY: Well, when you say that one 10 of your colleagues belongs to the law firm Gladei & 11 Partners of which you are the managing partner? 12 MR GLADEI: Not necessarily. We sit in 13 the same building, we sit on the same floor, but not 14 necessarily all of them are my associates in the 15 associated attorneys office. We have different 16 structure of relationship, as you probably know, 17 because Schönherr is also present in Moldova and 18 I think it also has let's say a kind of structure. 19 MR KOPECKY: So do we. It is very 20 complicated to have a legal profession organised, 21 especially across multiple jurisdictions, but I 22 wonder is Mr Viorica Bejan an associate of yours? 23 MR GLADEI: She is an associate. 24 MR KOPECKY: In that case I would like to 25 take you to a document which is not in the bundle</p>	<p>1 MR GLADEI: Yes. 2 MR KOPECKY: So you stand by the statement 3 you made in paragraph 6 of your First Report that 4 you are entirely independent of the parties and 5 their counsel? You stand by this in its entirety? 6 MR GLADEI: Yes. 7 MR KOPECKY: I also understand that 8 certain parts of your expert report are written in 9 the plural. For example, if I may take you to 10 paragraph 5 of your First Expert Report, where it 11 speaks of document disclosure, (iv), "I have assumed 12 that no documents or information relevant for the 13 scope of work hereof has been omitted from 14 disclosure to us". That is in the plural, yet you 15 are the only signature on the report. 16 If I take you to paragraph 40 of your 17 report, and this is now your finding as a legal 18 expert, you also say "we have found", in the middle 19 of that paragraph. 20 In paragraph 57 you say "we have been 21 provided". 22 In your Second Report, paragraph 26.2, you 23 write "our position is". 24 All those parts that are written in the 25 first person plural have been prepared by you alone,</p>
<p>1 because it in effect is annex 1 to Claimants' 2 request for document production. If I can take you 3 to pages 5 and 6 of that document in the original, 4 and 8 and 9 in the Moldovan. 5 THE PRESIDENT: Just to be clear, this 6 isn't in the hyperlinked index? 7 MR KOPECKY: It is not. 8 THE PRESIDENT: We are waiting for you to 9 bring it up on the screen. I think it is fair to 10 Mr Gladei that he has it in front of him before he 11 talks about it. 12 MR KOPECKY: Absolutely. I don't expect 13 an answer before he has had a chance to review it in 14 its entirety. 15 If you scroll to page 8, please, that is 16 the original, and if you scroll to page 13, please, 17 this is a translation, and this is a request for 18 information on behalf of the administrator of ICS 19 Laguardia, Mrs Grout, to send us the information, 20 which is what this answer which we just looked at 21 was all about, and to send this information to 22 Chisinau str.V.Parcalab 63, contact person Viorica 23 Bejan, your associate, and I also wonder that number 24 (022 240577) that is the phone number of Gladei & 25 Partners, isn't it?</p>	<p>1 or have you been working with somebody else? 2 Because I understand there is a difference between 3 "I" and "we". 4 MR GLADEI: What is the question? If 5 someone has written it for me, or if someone 6 assisted me in working on that? 7 MR KOPECKY: No. The question is if you 8 wrote all of that alone and, if yes, why didn't you 9 use the first person plural? 10 MR GLADEI: That is unfair to say that 11 I used everywhere the first person plural. 12 MR KOPECKY: Not everywhere. Those five 13 instances I have just told you of. 14 MR GLADEI: That is probably 15 representative that in all other cases, all other 16 probably if you call in dozens of them I say I, 17 which means that the explanation is I am the author 18 of this report. Yes, I was assisted with the other 19 people, but not to write the report. The 20 conclusions are mine. When you collect some court 21 judgments, for instance, I may ask someone else to 22 do it for me for the sake of a time-saving, but I am 23 the only author of this document. 24 Whenever I say "we", that is probably a 25 tribute to the manner that we are writing down the</p>

<p>1 documents, and it is not uncustomary in Moldova to 2 say "we" as an alternative to "I". It is not an 3 individualistic, it is more a collectivistic 4 society. I would not say it is a sin, but we have 5 this approach. There is a famous saying we provided 6 Nicolai II about the Russian Tsar – I am not saying 7 I am close to the Tsar – but whenever I say "we" 8 there, I mean "I".</p> <p>9 MR KOPECKY: I really understand, and that 10 is quite humorous, but I still see you as being the 11 only signatory and then in paragraph 26.3 saying 12 "our position from the first report remains 13 unchanged".</p> <p>14 MR GLADEI: I explained.</p> <p>15 MR KOPECKY: You refer to yourself in the 16 plural?</p> <p>17 MR GLADEI: Yes.</p> <p>18 PROFESSOR KNIOPER: In Austria we call 19 that "pluralis majestatis".</p> <p>20 THE PRESIDENT: In England we call it the 21 Royal "we".</p> <p>22 MR FORTIER: In Canada it is the humble 23 "I".</p> <p>24 MR KOPECKY: I too will say that words 25 have a meaning and singular and plural have</p>	<p>1 In paragraph 2 of your First Expert Report 2 you say that you reviewed several leases, namely one 3 lease from Cosernita, one lease from Varvareuca and 4 one lease from Rosietici which collectively and 5 together you referred to as "lease agreements".</p> <p>6 MR GLADEI: That is right.</p> <p>7 MR KOPECKY: And your report pertains to 8 those three lease agreements?</p> <p>9 MR GLADEI: Yes.</p> <p>10 MR KOPECKY: Just for the record, you have 11 not seen or verified the other leases that 12 reportedly were signed with the same content on or 13 about 17 November, 1 September or 1 September 2010?</p> <p>14 MR GLADEI: I said in the Second Report 15 something different about that, because then we got 16 access to the other lease agreements. If you look 17 into the Second Report, in the introduction, E, 18 paragraph 4, (ii), it says "the following 19 documents", and specifically I refer to a copy of – 20 It is not here. This refers to the termination 21 notification.</p> <p>22 MR KOPECKY: So we can agree that you have 23 not seen other leases except those three?</p> <p>24 MR GLADEI: I remember for sure that 25 I have seen those. I cannot remember if I have seen</p>
<p>1 different meanings. Can we agree that the choice of 2 your words in your report are not entirely accurate?</p> <p>3 MR GLADEI: Maybe from your perspective, 4 but as long as the report is issued by myself, not 5 by us but by myself, I answered the question and 6 I explained the way it went. It might have 7 different meanings under different cultural 8 traditions, that is why I referred to the 9 individualistic versus collectivistic societies, and 10 yesterday I heard the word "cohost", the collective 11 farmers, so yes, maybe it is a tribute to the past 12 or another manner to express that thing. I hope it 13 is not a personality disorder at least.</p> <p>14 MR KOPECKY: You would agree there is 15 a difference between a cohost farmer and a legal 16 expert?</p> <p>17 MR GLADEI: I was not referring to that. 18 I was referring to a collectivistic society and a 19 collectivistic past, and if I said "we", because of 20 the fact I was born in the Soviet Union, that might 21 be attributable, but on the other side I don't 22 believe this is enough ground to say that a group of 23 comrades have written this document</p> <p>24 MR KOPECKY: Neither you nor I are the 25 judge of that, so let's leave it to the Tribunal.</p>	<p>1 the others.</p> <p>2 MR KOPECKY: Moving on to the civil law 3 part, private leases are signed between two private 4 parties, correct?</p> <p>5 MR GLADEI: Yes.</p> <p>6 MR KOPECKY: Pursuant to Article 9 of the 7 Moldovan Civil Code, parties are presumed to be 8 acting in good faith?</p> <p>9 MR GLADEI: They are.</p> <p>10 MR KOPECKY: You earlier confirmed – 11 actually you did before during conferencing – that 12 the registration of a lease does not cure 13 invalidity?</p> <p>14 MR GLADEI: Correct.</p> <p>15 MR KOPECKY: And that the failure to 16 register does not make a valid lease invalid? Is 17 that correct?</p> <p>18 MR GLADEI: Once again?</p> <p>19 MR KOPECKY: If you fail to register a 20 valid lease, the lease is not registered, but it is 21 still valid.</p> <p>22 MR GLADEI: Correct.</p> <p>23 MR KOPECKY: Where are disputes between 24 private parties resolved in the Republic of Moldova?</p> <p>25 MR GLADEI: Normally in the common court.</p>

<p>1 In a certain period there was a specialised court, 2 the commercial court, also called the economic 3 court, so it depends on the character of the 4 dispute. If it is let's say a common dispute, it 5 goes to the ordinary common court, and if it is a 6 business dispute, a commercial dispute, then there 7 is an exclusive, an alternative correspondence of 8 the commercial court called the economic court. 9 MR KOPECKY: Where would a dispute between 10 a lessee and a third private party acting in bad 11 faith be resolved? 12 MR GLADEI: Depending on the status of the 13 parties, whether they are legal entities or 14 individuals. 15 MR KOPECKY: Two legal entities? 16 MR GLADEI: There are two principles which 17 would apply. First is the place where the movable 18 asset is located, and the second is if it is a 19 commercial dispute. 20 MR KOPECKY: So it is the locality. In 21 terms of the authority, which authority would that 22 be? Would that be the courts? 23 MR GLADEI: If it is a litigation it is a 24 court of law. In the first case it is a local court 25 and in the second case it is the economic court.</p>	<p>1 Litigation? It is the Rusu Report, paragraph 56. 2 Do you have it? 3 (Technical interruption from 2.33 pm to 2.39 pm) 4 THE PRESIDENT: Mr Kopecky? Maybe you 5 want to ask your last question again, if you are 6 able to find it? 7 MR KOPECKY: I hope to remember it. 8 Article 5 of the Law on Administrative Litigation 9 lists a person who made a challenge an 10 administrative act and among them it lists "an 11 aggrieved person who is considered to be deprived of 12 his or her right by an administrative act". This is 13 the First Report Rusu, paragraph 56, and although 14 you commented thrice on his reports, this you left 15 uncommented, so I understand it is common ground 16 MR GLADEI: Yes, that is right. Aggrieved 17 persons. 18 MR KOPECKY: And mayors, subject to 19 conditions laid down in the Law on Local Public 20 Administration, but under that law a mayor is not 21 among those persons who may challenge an 22 administrative act, is it? 23 MR GLADEI: Under which law? 24 MR KOPECKY: The wrongful entry in the 25 register of agricultural leases, that is not</p>
<p>1 MR KOPECKY: We heard before during 2 conferencing that there was an option that the mayor 3 complied with the opinion of the Territorial 4 State Chancellery Office voluntarily. 5 MR GLADEI: Yes. 6 MR KOPECKY: However, you say in your 7 First Report, paragraph 38, that "after the 8 registration of the leases the only legal way to get 9 registration cancelled or annulled would be 10 judicially". So I wonder in that case he has to go 11 to court, yet in the other case he doesn't and he 12 can act by himself? 13 MR GLADEI: That is right. Paragraph 38 14 specifically refers to the manner the registration 15 can be cancelled or annulled. It is not possible to 16 be done discretionarily by the act of the public 17 authority. Then I came to the conclusion that the 18 usual alternative should apply specifically in 19 court. 20 MR KOPECKY: Who is entitled to challenge 21 administrative acts in administrative courts? 22 MR GLADEI: Any aggrieved person. 23 MR KOPECKY: That list of aggrieved 24 persons, am I assuming correctly that it is listed 25 in Article 5 of the Law on Administration</p>	<p>1 something that the mayor can challenge an 2 Administrative Court on the basis of the Law on 3 Local Public Administration, right, which is the law 4 referred here under 56(b)? 5 MR GLADEI: What is the question? 6 MR KOPECKY: Whether a wrongful entry in 7 the register of agricultural leases is an 8 administrative act which a mayor can challenge 9 according to that provision? 10 MR GLADEI: It is difficult to say. If he 11 qualifies, yes. 12 MR KOPECKY: He would qualify if he were 13 an aggrieved person, right? 14 MR GLADEI: Yes. 15 MR KOPECKY: An aggrieved person is 16 somebody who is considered to be deprived of his or 17 her right by an administrative act, but my 18 understanding is that the Mayor did not obtain any 19 rights by exercising his administrative act because 20 it was his duty and his duty to control, so no 21 rights arose out of this administrative act and 22 therefore he could not have been an aggrieved 23 person? 24 MR GLADEI: Incorrect. He has rights. He 25 has many rights, including while exercising that</p>

<p>1 control, but he has no right to intervene and cancel 2 a right or a faculty, let's say, which was given to 3 a person. That would be abusive to say that he is 4 entitled to come thereafter, so it is a matter of 5 corroborated application of different laws. You 6 need to put them all together. Yes, he has the 7 right to exercise ongoing control, you are right, 8 there is such a provision -- 9 MR KOPECKY: It is a duty, right? It is 10 not a right, because it says "shall". He shall do 11 things. Not that he has a right to do things. 12 MR GLADEI: Where does it say "shall"? 13 MR KOPECKY: Paragraph 23 of your First 14 Report, and there citing paragraph 5 of the 15 regulation on keeping the registrar on agricultural 16 leases. 17 MR GLADEI: Correct. 18 MR KOPECKY: So it is a duty, not a right. 19 MR GLADEI: Yes. It is a duty. [Romanian 20 language spoken]^ The plain translation is that 21 the mayor exercises the ongoing control, but it is 22 fair to say that it is a duty, because in Moldovan 23 laws, when it is said in the present tense 24 "exercises the control", it means it "shall" 25 exercise the control, the ongoing control.</p>	<p>1 both dispositions stated the right to challenge them 2 in accordance with the legal provisions in force, 3 and we were not so sure about the quality of that 4 notice. You said it did not comply with the laws. 5 I think even Professor Rusu confirmed it was not 6 entirely clear. Are you aware whether at the time 7 of the issuance of Disposition 1-A and 2 Laguardia 8 was represented by counsel? 9 MR GLADEI: I heard this yesterday because 10 I was allowed into the hearing, and I understand 11 that there were some counsel around 12 MR KOPECKY: Moldovan laws are published 13 Is that right? 14 MR GLADEI: Yes. 15 MR KOPECKY: And the conditions and 16 procedure for challenging administrative acts in an 17 Administrative Court are stated on the already 18 mentioned Law on Administrative Litigation 19 MR GLADEI: Including. 20 MR KOPECKY: Including. And the procedure 21 of administrative review by the Territorial Office 22 of State Chancellery is stated in the Law on Local 23 Public Administration and other laws. Correct? 24 MR GLADEI: Right. 25 MR KOPECKY: And those laws are published</p>
<p>1 MR KOPECKY: Under Article 5A of the Law 2 on Administrative Litigation, which we looked at 3 earlier, an aggrieved person is a person considered 4 deprived of a right and not a person exercising a 5 duty, because you just confirmed that the Mayor has 6 a duty to hopefully, correctly, ensure that the 7 register is set up, leases are registered and 8 deregistered according to the law, but there is no 9 right that arises for him. 10 MR GLADEI: Yes, technically speaking. A 11 right and obligation is a different thing. Rights 12 are exercised, whereas obligations are performed 13 executed, and so on. One might say that by having 14 the obligation he has the right to do that, and this 15 would qualify him. That would be an interpretation 16 not necessarily endorsed by me, but that might have 17 some ground 18 MR KOPECKY: As long as you do not endorse 19 it, I am happy. 20 MR GLADEI: I said in my report that it is 21 for example. 22 MR KOPECKY: I don't think there was a 23 question yet, but there may be re-direct, so let's 24 leave it at that. 25 We have discussed during conferencing that</p>	<p>1 in the Official Gazette and online? 2 MR GLADEI: They were supposed to. 3 MR KOPECKY: And a Moldovan licensed 4 lawyer should know about the existence of those 5 laws, correct? 6 MR GLADEI: I cannot answer this question. 7 MR KOPECKY: Should he? I am not asking 8 if he does. I am asking if he should being a lawyer 9 licensed to practise. 10 MR GLADEI: You mean is expected? 11 MR KOPECKY: Indeed, yes. 12 MR GLADEI: Yes. It is fair to say he is 13 expected, but that is not relevant. 14 MR KOPECKY: For what is it irrelevant? 15 MR GLADEI: For the purpose of -- 16 MR KOPECKY: My question? My question was 17 merely whether it is expected under law. I didn't 18 ask any practical application. 19 Lastly I would like to deal with the 20 injunctions that have been issued, despite your 21 statement that injunctions are very hard to obtain. 22 We know there are injunctions on record, but before 23 we go there, according to Article 177 of the Code of 24 Civil Procedure, "the request for granting an 25 interim measure to secure the claim shall be</p>

<p>1 resolved by the judge examining the case on the date 2 of filing without summoning the defendant and other 3 participants in the proceedings". Is that correct? 4 MR GLADEI: That the law is saying that, 5 or this is happening in practice? 6 MR KOPECKY: That the law is saying that 7 MR GLADEI: You read the law. 8 MR KOPECKY: So interim measures are 9 issued ex parte? 10 MR GLADEI: They are not issued ex parte. 11 They are supposed to be, they are required to be. 12 You read the law and that is why I wanted to clarify 13 this, because if you ask theoretically, 14 theoretically I had nothing to say than to confirm 15 that you correctly read or at least correctly 16 translated it. Practically they are other issues, 17 so I wanted to be specific 18 MR KOPECKY: I think if that comes up you 19 can bring it up, but since you testify as a legal 20 expert, not as a factual expert, and you have no 21 personal recollection of this case let's stick to 22 the theory and I am sure it will come up again. 23 MR GLADEI: I thought the legal expert 24 meaning including personal experience. 25 MR KOPECKY: I think you already stated</p>	<p>1 MR GLADEI: No. That is the court order. 2 MR KOPECKY: But it doesn't mention 3 disposition anywhere, does it? Because you said 4 that it was used to obtain this injunction, 5 Disposition 1-A, but this injunction doesn't mention 6 the disposition. 7 MR GLADEI: But it is not coming from the 8 order. 9 MR KOPECKY: But the order doesn't mention 10 disposition. You say it was used. If they used 11 something it would be in their grounds, in the 12 reasoning. 13 MR GLADEI: Bio-Alianta is not a court. 14 I said I further noted that the disposition was used 15 by Bio-Alianta in court proceeding. 16 MR KOPECKY: But I wonder how, because the 17 court doesn't even mention it? 18 MR GLADEI: You ask the court this 19 question, because not necessarily that if something 20 is in the file of the court it necessarily appears 21 in the reasoning of the court. In most of the cases 22 only certain facts are captured in the reasoning of 23 the court, so the fact that the court order does not 24 contain any reference to the dispositions, does not 25 mean that the dispositions were not used by the</p>
<p>1 that it takes longer than anticipated by the law. 2 So if you want to repeat it, be my guest. 3 MR GLADEI: What exactly? 4 MR KOPECKY: What you said before that the 5 law and practice differs. 6 MR GLADEI: I said what I said and it is 7 on the record. 8 MR KOPECKY: Exactly, so we don't need to 9 repeat it. 10 In your Second Report, 17.2, you write 11 that "there is a direct causal link between the 12 Dispositions and the injunctions barring Laguardia 13 from entering the leased lands"; "a direct causal 14 link". 15 MR GLADEI: Hmm mm. 16 MR KOPECKY: In your First Report, 17 paragraph 49, you state, "I have further noted that 18 Disposition 1-A was used by Bio-Alianta in court 19 proceedings against Laguardia to substantiate the 20 requests for injunctive relief". That is correct? 21 MR GLADEI: This is what is written. 22 MR KOPECKY: I would like to take you to 23 exhibit C-33, which is the injunction itself. This 24 injunction does not mention Disposition 1-A, does 25 it? Take all the time you need to read it.</p>	<p>1 parties and are not in the court file. 2 MR KOPECKY: I understand the disposition 3 was annulled, am I right? Because in paragraph 49 4 of your First Report you state that "the above 5 injunctive reliefs and protective measures were 6 later on cancelled, upon the request of Laguardia". 7 It is paragraph 49, page 17, at the top. So the 8 injunction was cancelled. But at that time 9 Disposition 1-A was still in force, was it not? 10 MR GLADEI: Was still what? 11 MR KOPECKY: In force. It had not been 12 annulled yet. 13 MR GLADEI: Depending on the dating. 14 There is a sequence of dates there. Indeed it was 15 a separate procedure, this injunction 16 MR KOPECKY: Exhibit C-105, if you would 17 like to look at the date, which is the decision on 18 the annulment of the injunction of 15 January 2013. 19 The date is wrong -- 8 April 2011 -- 20 I read entirely the wrong date into the record. 21 8 April 2011, so much earlier than that. Again, 22 take all the time you need to read. 23 MR FORTIER: Which paragraph is it? 24 MR KOPECKY: In the First Report it is 25 paragraph 49, page 17, at the top. And the</p>

<p>1 annulment was on 8 April 2011.</p> <p>2 My question is at that time</p> <p>3 Disposition 1-A was still in force.</p> <p>4 MR GLADEI: Was enforced?</p> <p>5 MR KOPECKY: In force. It had not yet</p> <p>6 been annulled. It existed under the law</p> <p>7 MR GLADEI: Whether it was in force or not</p> <p>8 depends on the fact whether it was communicated or</p> <p>9 not. If we are talking about these dispositions</p> <p>10 which we have discussed extensively. That is</p> <p>11 another pattern. If it was communicated to the</p> <p>12 party it was in force and it was applicable to that</p> <p>13 party.</p> <p>14 MR KOPECKY: Let me be precise and</p> <p>15 rephrase: it had not yet been annulled, because we</p> <p>16 are in agreement that it was annulled later on.</p> <p>17 MR GLADEI: The disposition?</p> <p>18 MR KOPECKY: Yes.</p> <p>19 MR GLADEI: By whom? You mean by the</p> <p>20 Supreme Court in January 2015?</p> <p>21 MR KOPECKY: Annulled by the District</p> <p>22 Court and it went all the way to the Supreme Court,</p> <p>23 yes.</p> <p>24 MR GLADEI: That is right, in July 2014.</p> <p>25 MR KOPECKY: So on 8 April 2011 the</p>	<p>1 documents. I don't know to which documents, and</p> <p>2 probably no one can say to which documents, unless</p> <p>3 you have access to the court file.</p> <p>4 MR KOPECKY: I wish I had, but I do not.</p> <p>5 I would like you to look at the reasoning. I am</p> <p>6 only interested in the reasoning, not so much the</p> <p>7 court file, because that contains party pleadings</p> <p>8 and other things, only the reasoning which is about</p> <p>9 four paragraphs, and I would like you to tell me,</p> <p>10 unless we agree already now, that the reasoning does</p> <p>11 not mention Disposition 1-A and it does not mention</p> <p>12 the registration of the leases. It mentions the</p> <p>13 signing of new lease contracts with Bio-Alianta and</p> <p>14 the previous signing of contracts by Laguardia, but</p> <p>15 I do not see the word "registration" or</p> <p>16 "disposition" anywhere in the reasoning of this</p> <p>17 judgment?</p> <p>18 MR GLADEI: Directly not, but by reference</p> <p>19 to the documents you might admit that in those</p> <p>20 documents there may be other documents than those</p> <p>21 referred expressly by the court.</p> <p>22 MR KOPECKY: But this is the operative</p> <p>23 part of the judgment, isn't it? So whatever is</p> <p>24 relevant under law would have to be here.</p> <p>25 MR GLADEI: No. This is a general rule</p>
<p>1 Disposition 1-A was still in force?</p> <p>2 MR GLADEI: Yes.</p> <p>3 MR KOPECKY: So the injunction came and</p> <p>4 went while this disposition was still in force. If</p> <p>5 we look at the court's decision containing the</p> <p>6 parties' argument, it says, "the court heard the</p> <p>7 parties, analysed the documents in the file and</p> <p>8 considered it necessary to admit the request having</p> <p>9 found the following reasons". It is in the</p> <p>10 reasoning. Let's scroll to that. I am back to</p> <p>11 C-105. Again, take your time to read it. Would you</p> <p>12 like the original? I think the English is better</p> <p>13 because the Romanian is really hard to read. Just</p> <p>14 let us know when we should scroll, and I would like</p> <p>15 you to search for a mentioning of Disposition 1-A,</p> <p>16 or even the registration of leases and, if you find</p> <p>17 it, let me know.</p> <p>18 MR GLADEI: What I see is that the court</p> <p>19 found by hearing the parties and analysing the</p> <p>20 documents annexed in the file, it is a general</p> <p>21 reference to the documents in the file. Not annexed</p> <p>22 in the file in Moldova and court language means</p> <p>23 contained in the file, without referring</p> <p>24 specifically to those documents. From this</p> <p>25 perspective I can say that it has a reference to the</p>	<p>1 saying that only the most important, most material</p> <p>2 arguments should be in order to prevent breach of</p> <p>3 the European Convention for Human Rights for the</p> <p>4 allegation that the party was not heard, which means</p> <p>5 that it is quite common in Moldova that the court</p> <p>6 judgments, including the orders, are very short.</p> <p>7 Even if I referred earlier to the Floresti court</p> <p>8 judgment as an example, probably it was not</p> <p>9 flawless, and you might not see all of the first</p> <p>10 pertinent arguments captured there and pertinent</p> <p>11 evidence, and second, reference to all of the</p> <p>12 relevant documents. It is quite widespread. I will</p> <p>13 refrain from giving a qualification for that. As a</p> <p>14 practising attorney I am unhappy to see quite often</p> <p>15 that the court judgments miss material information</p> <p>16 which is making me hard to appeal them and to</p> <p>17 subject them to appeal on points of law, but that is</p> <p>18 the case.</p> <p>19 MR KOPECKY: This is a judgment that was</p> <p>20 good for Laguardia because the injunction of</p> <p>21 Bio-Alianta was actually lifted.</p> <p>22 MR GLADEI: I don't think we are speaking</p> <p>23 about good for one or good for the other. We speak</p> <p>24 about quality of the court judgment and the fact</p> <p>25 whether this document makes a proper reference to</p>

<p>1 the documents which are filed by the parties and 2 which are found relevant, pertinent, admissible -- 3 I am trying now to recall the legal words for all 4 these things. 5 What I see again is that the court did 6 make reference to the documents annexed in the file. 7 I don't think it is sufficient reference. I believe 8 that the court was supposed to make a more accurate 9 and detailed list and analysis of the documents 10 which the court found pertinent and relevant and 11 admissible as evidence, but that is not, how should 12 I say, uniform that this is happening. You can see 13 this and it is not illustrative, it is not 14 conclusive, you cannot draw a conclusion, only 15 looking into this document that a certain document 16 was present or absent in the court file 17 MR KOPECKY: Understood, but we agree that 18 this court document does not mention disposition, 19 nor registration, and that at the time of the 20 issuance of this court judgment, Disposition 1-A was 21 still in force? 22 MR GLADEI: It is not relevant for my 23 answer. 24 MR KOPECKY: No, no. I asked you about 25 the contents of this document.</p>	<p>452 15:00</p>	<p>1 injunctions and lifting them a couple of weeks 2 later, or even having a police report going to the 3 State Chancellery and you have a decision three 4 months later, and then you have six months later a 5 first instance decision, I was quite impressed by 6 the rapidity and diligence. Would you think it is 7 so unusual that your general statement is not 8 touched by that rapidity and diligence of the 9 Moldovan courts? 10 MR GLADEI: Absolutely, because the 11 impression is not quite fair and probably, and 12 I will try to explain why, because yes, taking a 13 part of the general context, you might believe that 14 this is generally how the Moldovan authorities 15 operate, but on the other side you look into the 16 other relevant circumstances, on this specific case, 17 and I can confirm fairly, again from our previous 18 experience, that is not at all that seamless, that 19 has appeared in several specific instances. 20 As regards specifically the injunctions, 21 yes, probably what is fair to mention is that there 22 is an explanatory ruling of the Supreme Court of 23 Justice on that, on imposition of a safeguard 24 measure. This means that there was much 25 inconsistent practice before, because these kind of</p>	<p>454 15:03</p>
<p>1 MR GLADEI: And I answered you. My answer 2 was twofold. I don't want to repeat because it is 3 on the record. 4 MR KOPECKY: But we agree that this 5 reasoning does not mention Disposition 1-A or 6 registration, this reasoning that we have in front 7 of us on the screen. 8 MR GLADEI: Yes, it is seen. You can see 9 it. 10 MR FORTIER: Neither C-33 nor C-105 11 explicitly mention Disposition 1-A 12 MR KOPECKY: Yes. 13 MR FORTIER: And yet Disposition 1-A was 14 still in force? 15 MR KOPECKY: Yes. 16 MR FORTIER: The plot thickens. 17 MR KOPECKY: Thank you very much. No 18 further questions. 19 Questions by the Arbitral Tribunal 20 PROFESSOR KNIEPER: I have one question to 21 you, because to give you my impression you know that 22 I come from Germany and by European standards 23 Germany is quite quick in rendering decisions, but 24 when I read the diligence with which the Moldovan 25 court worked in this particular case of issuing</p>	<p>453 15:01</p>	<p>1 explanatory judgments are normally issued when there 2 is a contradictory court ruling before. I know, and 3 that is in the Supreme Court plenum explanatory 4 judgment that they found that the practice is quite 5 inconsistent. Sometimes you may see the courts very 6 robust and doing their job issuing these kind of 7 orders on the spot, including in the term referred 8 in the legal provision which was referred by the 9 counsel of the defendant, but that is not the 10 prevailing rule. 11 From my experience, which is referred to 12 in that Supreme Court of Justice plenum, it followed 13 that there is an inconsistent approach. 14 Second, the law is not necessarily applied 15 in the same fashion as it is written, so there is a 16 big problem in Moldova between law and books and 17 enforcement of the law. This is a good example of 18 how big the difference is. 19 THE PRESIDENT: If you could keep your 20 answers as short as possible because we really now 21 are very behind with time. Please finish, but ... 22 MR GLADEI: The problem is not that the 23 court are in all cases slow. The problem is that 24 the courts are inconsistent. Sometimes they are 25 very quick, sometimes they are hugely late.</p>	<p>455 15:04</p>

<p>1 PROFESSOR KNIEPER: But here they were 456 2 quick? 15:06 3 MR GLADEI: In some of the cases. 4 PROFESSOR KNIEPER: In addition one has to 5 say what I found also remarkable is that all these 6 decisions, starting from the first police inquiry 7 going to the State Chancellery and then to the 8 Floresti court, they were all in favour of the 9 foreign investor and in disfavour of the State. 10 Isn't that quite amazing also? 11 MR GLADEI: I am not sure that all of them 12 were in favour of the investor. For instance, the 13 appeal was – 14 PROFESSOR KNIEPER: The three I am talking 15 about, the police report which triggered the 16 decision of the State Chancellery, which was in 17 favour of the investor, and then the first Floresti 18 decision of January 2013, which is half a year after 19 the State Chancellery decision. I find it quite 20 remarkably swift. 21 MR GLADEI: Look from the other 22 perspective. 23 PROFESSOR KNIEPER: All these three 24 decisions were in favour of the investor. 25 MR GLADEI: First, as regards the main</p>	<p>1 a point where we will now almost certainly have to 458 2 go into tomorrow for the agricultural experts. I am 15:09 3 in the hands of the parties. 4 Questions by Claimants 5 MR GLEASON: Mr Gladei, I am going to 6 start by asking you a couple of questions based on 7 the facts in this case and the conversation exchange 8 of course you had with Mr Kopecky and then Mr Hinkle 9 will follow up with some of the more legalistic 10 questions based on your exchange. 11 THE PRESIDENT: Can I ask how long you 12 propose to speak for? 13 MR GLEASON: Less than five minutes for 14 me. 15 MR HINKLE: The same. 16 THE PRESIDENT: Thank you very much. 17 MR GLEASON: I want to put C-105 back up 18 on the screen. We were just discussing this 19 document with Mr Kopecky, right? C-105. This is 20 the court judgment. This is page 3 I believe you 21 guys were discussing, concerning how this document 22 does not reference the dispositions, plus the 23 dispositions were not at issue concerning the 24 injunction proceedings in Cosernita. Is that 25 correct? Is that your understanding?</p>
<p>1 decision which was on the table which comes to my 457 2 mind, the judgment of July 2014, remember that the 15:07 3 first time it was rendered in January 2013, and then 4 it went around to go back just because the 5 High Court deemed that the persons aggrieved were 6 not invited. Okay, that might be valid here, one 7 and a half years were spent. Then in the second 8 round no one appeared, so then it went the second 9 round. Even if the mayoralty has filed an 10 unsubstantiated appeal, it still was given the 11 chance to file it, it was not dismissed immediately. 12 So it is difficult to weigh whether it was in favour 13 of one or the other. 14 Then I heard recently about the actions of 15 the prosecution office who started the criminal 16 proceeding, closed the criminal proceeding, 17 depending on – I don't know 18 THE PRESIDENT: But we don't have evidence 19 of that before us and I think we need to stick to 20 what is before us. 21 PROFESSOR KNIEPER: Thank you. 22 THE PRESIDENT: Any more questions? Thank 23 you. What is your plan? 24 MR GLEASON: We do have some re-direct 25 THE PRESIDENT: Proceed, but we are now at</p>	<p>1 MR GLADEI: Yes. 459 2 MR GLEASON: Do you have this document 15:12 3 memorised by heart? 4 MR GLADEI: Not at all. 5 MR GLEASON: Can we scroll up to page 2? 6 The paragraph with the highlight in yellow, can you 7 just read that paragraph out loud and pay special 8 attention to the highlight in yellow. 9 MR GLADEI: "The representative of the 10 Claimant, O Utica, opposed to the request, declared 11 that the lease contracts of the landowners were not 12 registered at the mayor's office and by the mayor's 13 disposition their registration was forbidden". 14 MR GLEASON: That is I think sufficient. 15 Is it fair to say that the disposition was not on 16 record during the injunction proceeding concerning 17 the Cosernita lands, based on what you just read? 18 MR GLADEI: Yes, I see the reference to 19 the disposition and I see it in the context of the 20 Bio-Alianta request for injunction, and I can – 21 assuming that is the same disposition, then 22 indeed – 23 MR GLEASON: Who is the claimant in this 24 matter, do you know? 25 MR GLADEI: The claimant was Bio-Alianta.</p>

<p>1 MR GLEASON: Very good. In short, you 2 would say, based on what you have just looked at 3 here, that the disposition was used in this 4 proceeding? 5 MR GLADEI: I think so, because it is 6 referenced. 7 MR GLEASON: Thank you very much. Can we 8 also look at exhibit C -- I am going to move on to 9 my next point since we are short on time. I think 10 it is clear from the record on this point. 11 MR GLADEI: This fragment was not shown to 12 me now by the defendant counsel, only the second 13 part. Only the reasoning was shown to me, that is 14 why I did not notice that. 15 MR KOPECKY: Thank you. The reasoning, 16 indeed. That is what the questioning was about. It 17 was not about Disposition 1-A being on record. It 18 was about the reasoning. 19 MR GLEASON: I believe the statement was 20 that the disposition was not mentioned in this 21 document. 22 MR KOPECKY: In the reasoning, counsel. 23 THE PRESIDENT: I think the Tribunal is 24 able to form its own view. 25 MR GLEASON: But it is fair to say that</p>	<p>1 says "Respectfully". Who does it say after that? 2 MR GLADEI: It says the signatory of the 3 document and to whom the document belongs. 4 MR GLEASON: Can you read what it says 5 under "Respectfully"? 6 MR GLADEI: "Administrator of Laguardia 7 and representative of Laguardia." 8 MR GLEASON: Continue. Can you read what 9 it says? 10 MR GLADEI: "Annex: A copy of the 11 representative's power of attorney". 12 MR GLEASON: Let's take a step back. 13 Under the word "Respectfully" can you read the names 14 of the people who sent this letter? 15 MR GLADEI: Yes. 16 MR GLEASON: Can you read their names? 17 MR GLADEI: Zbigniew Grot, Igor Tcaci. 18 MR GLEASON: Who sent this letter 19 requesting records? 20 MR KOPECKY: How would he know who was the 21 author? 22 MR GLEASON: I am asking him to read the 23 information which is on the screen. I am trying not 24 to lead him. Did your office send this letter? 25 MR GLADEI: No.</p>
<p>1 this disposition was used in this proceeding. 2 MR GLADEI: It is fair. 3 MR GLEASON: I would also like to move on 4 to the conversation we had about your office and 5 your relationship with Mr Grot and the Claimants in 6 this case. This is a document that I didn't readily 7 have available, I apologise. It is because it was 8 not part of the consolidated index. This is 9 annex 1, which was part of the document production 10 request record, and this is what was shown to you 11 earlier. I want to scroll down to what exactly was 12 shown to you. It was part of this translation here, 13 where it says that, "We respectfully ask to send us 14 the information by mail to ... Viorica Bejan" -- who 15 is Viorica again? 16 MR GLADEI: My associate. 17 MR GLEASON: Who made the request for this 18 information to be sent to your office? Who sent 19 this letter requesting that information be sent to 20 Viorica? 21 MR GLADEI: Not me. 22 MR GLEASON: It says right below. 23 MR GLADEI: Who is the author of the 24 document? I assume Viorica. 25 MR GLEASON: No. If you look at it it</p>	<p>1 MR GLEASON: Mr Grot sent this letter. 2 MR GLADEI: Probably, or Mr Tcaci. I do 3 not know. 4 MR GLEASON: Based on what you see, is it 5 reasonable to assume that Mr Grot sent this letter? 6 MR GLADEI: Either Mr Grot or Mr Tcaci. 7 MR GLEASON: Why would Mr Grot and 8 Mr Tcaci ask for some information to be sent to your 9 office? The date of this was September 26, 2016 10 Is there any reasonable explanation why, in 11 September 2016, Mr Grot would have asked government 12 officials to send information to your office? 13 MR GLADEI: At least because it is a point 14 of contact. 15 MR GLEASON: What were you doing at this 16 particular point in time? 17 MR GLADEI: Me personally? 18 MR GLEASON: Concerning your relationship 19 with Mr Grot? Were you researching the case? Were 20 you learning about the case because you had been 21 asked to write a report? 22 MR GLADEI: Yes, the report is produced 23 thereafter and as I said it took me some time to 24 work on the report. I cannot say exactly what I was 25 doing in September 2016.</p>

<p>1 MR GLEASON: Of course it was Ms Bejan who 2 received this information, was it not? 3 MR GLADEI: Yes, on the one side, and on 4 the other it is more than one year from then 5 MR GLEASON: Were you ever Mr Grot's 6 attorney? Did you ever have an attorney-client 7 relationship with Mr Grot? 8 MR GLADEI: No. What do you mean? 9 MR GLEASON: Were you ever his 10 representative? Or were you an impartial legal 11 expert? 12 MR GLADEI: I said I am not his attorney. 13 MR GLEASON: Good. Thank you. That is 14 all I wanted to know. I pass over to Mr Hinkle. 15 MR HINKLE: I will be very brief. 16 Mr Gladei, how did the mayor's dispositions affect 17 Laguardia's rights? 18 MR GLADEI: I probably referred to this in 19 my presentation. So the disposition made the lease 20 unopposable, and that is why the practical 21 efficiency, if I quote correctly from my memory, the 22 commentary to the Civil Code, is severely reduced 23 and damaged, and it allows the other party, the 24 other party meaning any other party – in this case, 25 to be more specific, Bio-Alianta who has used</p>	<p>1 its powers, including at this juncture to make aware 2 the person that had received the act to create a 3 full picture of where to go and what is the 4 timeframe to that. Maybe also if you want this is a 5 tribute to older times when the protection offered 6 by the State was necessarily expected, but still, 7 this is the case in Moldova. You cannot just say 8 that as long as one person can be assisted by a 9 lawyer, that it is up to that lawyer to substitute 10 the public authority and do what the public 11 authority was expected to do. So the answer is not 12 at all. In the manner provided by the legislation 13 means nothing. 14 MR HINKLE: Two more questions. No follow 15 ups after that. 16 In the cadastral, in the City Hall, the 17 mayor works with several cadastral agents, correct? 18 MR GLADEI: I don't know. Probably. 19 MR HINKLE: There may be more than just 20 the mayor himself? 21 MR GLADEI: Probably. 22 MR HINKLE: So when one public official 23 instructs another, lower level public official, to 24 do an action at City Hall during work hours, would 25 that be considered part of their job?</p>
<p>1 that -- it allows Bio-Alianta to create an 2 appearance that by further registering their own 3 list, to be fully complete, that they are the lawful 4 lessee of that land plot. Sorry for being long, but 5 this should be put in the context of all the 6 circumstances of the case. 7 MR HINKLE: Earlier Mr Kopecky seemed to 8 imply that if a party had a lawyer that they should 9 be deemed to be able to know what the challenge 10 provisions are for a disposition. I am wondering if 11 a party does have a lawyer, does that waive the 12 City Hall's obligation regarding the means on how to 13 appeal on a disposition? 14 MR GLADEI: Not at all. Maybe this is how 15 it happens here, but in Moldova, and we have been 16 very elaborated on the legal provisions, there is a 17 right of self-defence that the party should be made 18 aware, not resorting to a lawyer – a man of the 19 street, a common person, because these are normally 20 the people who are affected by the administrative 21 acts – and Professor Rusu did elaborate on that in 22 more detail. But from those old principles, legal 23 provisions, and Council of Europe recommendation 24 which I have cited in my reports, it comes that the 25 public authorities should be diligently exercising</p>	<p>1 MR KOPECKY: How is this re-direct? 2 THE PRESIDENT: Is that a legal question, 3 and did it come up in the cross-examination? 4 Mr Gladei is a legal expert, not an expert on the 5 functioning of municipalities and their day-to-day 6 activities. 7 MR HINKLE: I can move on from that. 8 There is a little debate about what initiated the 9 Chancellery review that inevitably led to the 10 District Court decisions. I just want to highlight 11 some language that is in the 2014 Floresti District 12 Court decision that appears to acknowledge that the 13 genesis of the review by the Chancellery was a 14 request from Laguardia. Is that a correct 15 understanding of that particular paragraph? 16 THE PRESIDENT: For the record, can you 17 tell us what this document is that we are looking 18 at? 19 MR HINKLE: This is R-6, the 2014 Floresti 20 District Court decision. 21 MR GLADEI: What I can read there in the 22 second highlighted paragraph is, "By letter dated 23 21/02/2012, FIE Laguardia LTD required the Soroca 24 Territorial Office of the State Chancellery to 25 conduct control of legality of order No 1-A of</p>

<p>1 20/02/2011 'on the refusal of registration of lease 2 agreements concluded between FIE Laguardia LTD and 3 the owners of agricultural lands in Cosernita 4 village".</p> <p>5 MR HINKLE: So Laguardia's letter was what 6 started the review process that inevitably led to 7 this decision. Is that correct?</p> <p>8 MR GLADEI: This is what I see.</p> <p>9 MR HINKLE: Thank you.</p> <p>10 MR FORTIER: The reference to this 11 document is?</p> <p>12 MR HINKLE: R-6. Page 6.</p> <p>13 THE PRESIDENT: I think we have no more 14 questions from the Tribunal.</p> <p>15 PROFESSOR KNIEPER: Simply to complete the 16 record, I think the decision refers to C-38a, which 17 is a letter by Mr Tugui asking the State Chancellery 18 to consider this question.</p> <p>19 THE PRESIDENT: Very good. Thank you. 20 That will be noted for the record.</p> <p>21 We now hand back to Mr Gleason and you can 22 put questions to Mr Rusu. I want to ask our court 23 reporters -- we have been going for an hour and 24 20 -- if they need a break? 25 Let's take a break. We are back at 15.40.</p>	<p>468 15:25</p>	<p>1 given to me, conveyed to me, and I reviewed them to 2 the extent to which they were important for my 3 answers, to answer the questions that I had been 4 posed, that were transmitted to me</p> <p>5 MR HINKLE: Did you review many documents 6 in preparation to write your report from this case?</p> <p>7 MR KOPECKY: He lists them.</p> <p>8 MR RUSU: What do you mean? Other 9 documents besides what is mentioned here?</p> <p>10 MR HINKLE: Yes.</p> <p>11 MR RUSU: Yes. The documents that were 12 conveyed to me I indicated in my report, but if you 13 think that there is also legislation -- if you are 14 referring to legislation too -- the legislation, the 15 laws, are in point 4.</p> <p>16 MR HINKLE: I am asking, in your review of 17 Claimants' Reply Memorial dated 14 August 2017, did 18 you also review the accompanying exhibits?</p> <p>19 MR RUSU: For me it is not clear. What 20 exhibits? What exhibits? What kind of exhibits?</p> <p>21 MR HINKLE: I am simply asking if you 22 reviewed the exhibits that were sent and referenced 23 in Claimants' Reply Memorial?</p> <p>24 MR RUSU: Let me explain. Indeed, the 25 respective memorial has hundreds of pages and</p>	<p>470 15:42</p>
<p>1 (Short break from 3.28 pm to 3.40 pm)</p> <p>2 THE PRESIDENT: We are ready when you are.</p> <p>3 MR HINKLE: Good afternoon,</p> <p>4 Professor Rusu. I would like you to take a look at 5 your expert report that you authenticated a little 6 bit earlier. In that report it lists a number of 7 documents that you reviewed, including Claimants' 8 Reply Memorial. Is that what you did, you reviewed 9 the Claimants' Reply Memorial?</p> <p>10 MR RUSU: Please tell me which report you 11 are referring to, because I want to have it in 12 Romanian.</p> <p>13 MR HINKLE: I apologise. From your 14 Second Report.</p> <p>15 MR RUSU: Yes, I opened it.</p> <p>16 MR HINKLE: And you reviewed Claimants' 17 Reply Memorial. Is that correct?</p> <p>18 MR RUSU: Do you speak about point 4?</p> <p>19 MR HINKLE: No. In point 3, the very 20 first bullet point that indicates that you have been 21 provided copies of the following documents, it 22 states that you were provided Claimants' Reply 23 Memorial. Did you read it?</p> <p>24 MR RUSU: Yes. I understand. I was asked 25 about the laws, but these are documents. These were</p>	<p>469 15:28</p>	<p>1 I limited myself, because I am not a party in the 2 trial, I referred to the legislation mostly, that is 3 to the legal aspects of the Moldovan law, because 4 I started from the prerequisite, from the premise 5 that I am expert in legislation, in law, and I do 6 not know the facts too well. I did not have time to 7 come in touch with the facts as such of the case</p> <p>8 MR HINKLE: Earlier during conferencing 9 you had expressed the position that many of the 10 landowners had expressed that they wanted to 11 terminate the leases because they had not received 12 payment under the leases. Do you recall that 13 testimony?</p> <p>14 MR RUSU: In the process here today and 15 yesterday, what I heard here, and I did mention the 16 fact that during conference yesterday I heard about 17 this, and when the respective question was raised, 18 several dispositions were mentioned, but as to the 19 nonpayment, I referred to the current practice that 20 is quite current, I would say, or usual in the 21 Republic of Moldova. It does not necessarily or 22 specifically refer to Laguardia or to the specific 23 case. I only heard about this fact yesterday. But 24 my reference was general to some aspects that are 25 related to practice or reality. I think you are</p>	<p>471 15:44</p>

<p>1 referring to this because quite often this happens, 472 2 that instead of 100 kilograms of wheat there is just 15:46 3 50 kilograms of wheat. Maybe you are referring to 4 this fact. 5 MR HINKLE: In reference to the Laguardia 6 leases, do you know whether payment was due before 7 the termination notices were issued? 8 THE PRESIDENT: Can I just say, 9 Professor Rusu is a legal expert. That really is a 10 question of, it seems to me, fact on a particular 11 lease. He is here to give us his expertise on 12 Moldovan regulatory and legal practice, and it just 13 seems to me that goes into a degree of factual 14 detail that it is not fair to put him in a position 15 to answer that question. Take him to a document and 16 ask him how it relates to something he knows about, 17 which is Moldovan law, but the content of a lease is 18 surely not something that he, as a professor of 19 public law, can express any useful view on. 20 MR HINKLE: My concern is that earlier he 21 had provided testimony that the landowners had 22 wanted the leases terminated -- basically it was 23 terminated because the landowners had not been 24 paid -- and my only question was whether the 25 obligation to pay had arisen?</p>	<p>1 is in force, the law has been modified, meanwhile 474 2 the mayor is the head or chief of local public 15:50 3 administration. In other words, he is the 4 controller and the checker. He checks the way in 5 which public officials, the clerks, comply with 6 their obligations and duties, for instance, the 7 cadastral engineers. I would say that the 8 fluctuation -- there are many people who are 9 employed and then dismissed and others come-- now 10 the mayor comes to check, to control whether the 11 respective person complied with the obligations. 12 MR HINKLE: Are you aware of any 13 provisions in Moldovan law that use the term 14 "ex post refusal"? 15 MR RUSU: The term is used, but in other 16 contexts. For instance, in my textbook I also 17 mentioned that when we speak about internal -- 18 domestic so to say -- administrative control, and 19 I can give you the page, it can be of three 20 different categories. First, the ex ante or prior 21 control, when, for example, the mayor comes and asks 22 the registrar -- 23 MR HINKLE: We didn't ask a question about 24 control. We just asked about whether or not the 25 term "ex post refusal" is used anywhere in actual</p>
<p>1 THE PRESIDENT: We all heard that, but we 473 2 are all also very conscious that he is here as a 15:48 3 legal expert and that went to an issue. I think you 4 can be quite satisfied that you have three very 5 experienced arbitrators who respect very much 6 Professor Rusu and Mr Gladei for what they are, 7 which is legal experts, and we will not in any way 8 be relying upon them for their testimony as to 9 factual matters in this case, because that is not 10 something on which they have first-hand knowledge, 11 or indeed any knowledge. So you can rest absolutely 12 comfortably that we are very on top of those issues. 13 MR HINKLE: Then I just have one line of 14 questioning. 15 In your report you assert that the term 16 "refuse" could mean ex post refusal. 17 MR RUSU: What I mentioned was if it was 18 possible, so what I said was that in the legislation 19 or in the respective case the ex ante/ex post term 20 is not used. What is used is the function as such, 21 that is the functions and obligations/duties of the 22 mayor, and the functions and obligations of the 23 registrar who is an empowered person. The mayor is 24 the authority. 25 If we take the provisions of the law which</p>	<p>1 statute legislation in Moldova? 475 2 MR RUSU: Of course I would need some 15:51 3 additional research, but in the documents relating 4 to policies, the ex ante analysis is used. This 5 category of ex ante analysis is being used, but very 6 rarely. 7 MR HINKLE: If I can direct your attention 8 to your expert report once again, the second expert 9 report, this is your signature, correct? 10 MR RUSU: Yes. 11 MR HINKLE: You signed this presumably 12 around the time that you submitted this report? 13 MR RUSU: I do not remember well. Yes, at 14 the time. But whether I took it, I signed it, and 15 I submitted it to the attorney of the Respondent. 16 MR HINKLE: That is your signature, 17 correct? 18 MR RUSU: Yes, it is my signature. 19 MR HINKLE: So sitting here today, you 20 cannot refuse to sign that document, can you? 21 MR RUSU: Once again, to sign it? 22 MR KOPECKY: Twice? 23 MR HINKLE: No. I am asking, sitting here 24 today, can you refuse to sign this document that you 25 have already signed in the past?</p>

<p>1 MR RUSU: I don't understand. To what 2 end? What is the sense of your question? 3 THE PRESIDENT: The President of the 4 Tribunal doesn't understand either. It may be you 5 want to rephrase your question or ask another 6 question. 7 MR HINKLE: You cannot refuse to sign this 8 particular document now because you have already 9 signed it in the past. Is that correct? 10 MR RUSU: I apologise, I do not see the 11 reason why. Why should I do the same thing twice, 12 if I did it once? It is meaningless to me. What do 13 you mean? I don't understand. I apologise in front 14 of the Tribunal. This is a strange question 15 THE PRESIDENT: No apology is needed. 16 MR HINKLE: I think the point has been 17 made. We tender the witness. 18 THE PRESIDENT: Thank you, Mr Hinkle. 19 Mr Kopecky, your chance for re-direct within the 20 areas covered by counsel for Claimant. 21 MR KOPECKY: None, thank you. 22 THE PRESIDENT: Thank you. Any concluding 23 questions from my colleagues? 24 Very good. 25 Professor Rusu and Mr Gladei, we have held</p>	<p>1 We are very glad to welcome you. 2 You should have before you a piece of 3 paper which I will ask each of you to read out your 4 declaration as experts acting independently before 5 this Tribunal. Mr Rurac, if you would like to 6 begin? 7 MR RURAC: I solemnly declare upon my 8 honour and conscience that my statement will be in 9 accordance with my sincere belief. 10 THE PRESIDENT: And Mr Gumovschi? 11 MR GUMOVSKI: I solemnly declare upon my 12 honour and conscience that my statement will be in 13 accordance with my sincere belief as a university 14 professor and an agronomist. 15 THE PRESIDENT: You will first have an 16 opportunity to have your counsel address either 17 questions to you or invite you to make short 18 statements for up to 15 minutes between the two of 19 you, and then counsel for the Respondent will then 20 ask you a series of questions. We may or may not 21 have questions for you. 22 MR KOPECKY: On a point of order, may we 23 ask that the witnesses are given clean documents 24 because I see some handwritten notes on their 25 documents?</p>
<p>1 you for a very, very long time. You have been in my 2 view, and I am not expressing any view on the 3 substance, but heroic in sitting there patiently and 4 quietly, having questions thrown at you from all 5 sides of the room. On behalf of Professor Knieper, 6 Mr Fortier and myself, I want to thank you very 7 sincerely for coming here today and sitting so 8 patiently and doing your best to answer a raft of 9 questions. On behalf of us all, it is very deeply 10 appreciated. You are now released and we will no 11 doubt have a two-minute break just to rearrange the 12 room, and we can invite our agricultural experts in. 13 You are very welcome to stay and listen for hours to 14 our questioning of agricultural experts if you feel 15 that is a good way to spend a few hours in Vienna. 16 (Short break from 3.57 pm to 4.03 pm) 17 MIHAIL RURAC and ANDREI GUMOVSKI 18 THE PRESIDENT: Are we ready? May I, on 19 behalf of the Tribunal, welcome Mr Rurac and 20 Mr Gumovschi. My name is Philippe Sands, I have the 21 honour to chair this Tribunal, and I sit with my 22 colleagues to my left, Professor Knieper and 23 Mr Fortier. I am from England. Professor Knieper 24 is from Germany and Mr Fortier is from Canada, so it 25 is a truly International Tribunal meeting in Vienna.</p>	<p>1 THE PRESIDENT: Are these their own 2 reports? 3 MR KOPECKY: I don't know. I don't mind 4 the books, but I mind the handwritten notes. 5 MR GLEASON: They can't have notes? 6 THE PRESIDENT: It is not normal. I think 7 you can keep your book. You can have in front of 8 you your report which is cowritten by the two of 9 you, but other documents are best kept. Thank you 10 very much. 11 Over to you, counsel for Claimant. 12 Questions by Claimants 13 MR GLEASON: Good afternoon, Mr Rurac and 14 Mr Gumovschi. Thank you for your patience today. 15 Have you ever done anything like this before? 16 MR RURAC: It is the first time for me. 17 Never. 18 MR GLEASON: And you, Mr Gumovschi? 19 MR GUMOVSKI: Never before. It is my 20 first also. 21 MR GLEASON: Well, I hope you are not too 22 nervous. We are going to just look very quickly at 23 your report, and this is the report that you see on 24 the screen in front of you. This is the report that 25 you submitted in this case, and I would like to just</p>

<p>1 go down to the end of the report and look at your 2 signature. Do you see the signatures on the page? 3 MR RURAC: Yes. 4 MR GUMOVSKI: Yes, I do. 5 MR GLEASON: Are these your signatures? 6 MR RURAC: Yes. 7 MR GUMOVSKI: Yes. 8 MR GLEASON: Do you adopt this report? 9 MR RURAC: Yes. 10 MR GUMOVSKI: Yes. 11 MR GLEASON: Are there any corrections or 12 modifications that you would like to make to this 13 report? 14 MR RURAC: No. 15 MR GLEASON: Are the conclusions in your 16 report based on a reasonable degree of certainty? 17 MR GUMOVSKI: Yes. 18 MR RURAC: Yes, of course. 19 MR GLEASON: Thank you very much. I would 20 like to very briefly talk about some of the numbers 21 that you used to achieve the projected yields of 22 Laguardia SRL. You used the numbers from the Visoca 23 Test Centre averages. Why was that more appropriate 24 than general Floresti district or other averages? 25 MR RURAC: The Floresti numbers are</p>	<p>1 of the practices that they planned to use in 2 Floresti. Let's first look at table 4. This table 3 shows the projected fertilizers costs for Laguardia, 4 correct? 5 MR RURAC: Yes. 6 MR GUMOVSKI: Yes. 7 MR GLEASON: Can you speak, rather than 8 nodding? We have to have everything for the 9 recording. If you just shake your head, yes or no, 10 we won't know afterwards what you said. 11 This is the cost structure of fertilizer 12 required to achieve yields similar to the Visoca 13 Centre, correct? 14 MR RURAC: From Visoca and – 15 MR GUMOVSKI: And from the farm owned by 16 Mr Grot, the same fertilizers. 17 MR GLEASON: I would like to now put a 18 different document on the screen. This was handed 19 out earlier today. It is called CH-7. This is a 20 modified version of table 4. Do you recognise this 21 document? What is it? 22 MR RURAC: Yes, I do. It is the table you 23 asked me to write for an average yield in Floresti. 24 It is the cost of the fertilizers for an average 25 crop or an average yield.</p>
<p>1 average numbers, arithmetical average. The Floresti 2 numbers were received when in Moldova. They said we 3 have no certainty that the statistics is real in the 4 agricultural field. 5 MR GLEASON: Was there anything about the 6 practices of Laguardia SRL that made you believe 7 that using the Visoca numbers, which we can see from 8 table 2 on the screen, are higher than the Floresti 9 or Soroca averages, was a more appropriate number to 10 use for this company? 11 MR RURAC: Yes. When we planned or 12 projected the Laguardia numbers we based our 13 computation on the numbers from the Visoca 14 Institute. I think those are better because 15 Laguardia wanted to apply new technologies that were 16 saving money. 17 MR GLEASON: What do you mean by new 18 technologies? Can you explain? 19 MR RURAC: New technology. First of all, 20 the technique, the chemicals used, the seeds used, 21 the working of the land, the farming of the land, 22 and everything that is included in the word 23 "technology". 24 MR GLEASON: Thank you. I would like to 25 talk about the cost structure of Laguardia and some</p>	<p>1 MR GLEASON: So, in other words, this 2 would be the fertilizer cost for a farmer who 3 achieves average yields? 4 MR RURAC: That is right. For a corn 5 production of 2.36, no fertilizers are needed. 6 MR GLEASON: This is not the cost 7 structure of Laguardia? 8 MR RURAC: No, not at all. 9 MR GLEASON: I would also like to look at 10 the second document you see here, table 5, Plant 11 Protection Products. 12 THE PRESIDENT: How does this table, CH-7, 13 relate to the table 4 at page 10 of the expert 14 report? I am not quite working out what is 15 intended. Is it a replacement of the winter wheat? 16 MR GLEASON: It is to show the costs that 17 would be required to achieve not the Visoca Centre 18 yields, but rather the average yield for Floresti 19 district. 20 THE PRESIDENT: I think you may want to 21 provide us with another header, because it has the 22 same header as table 4. 23 MR GLEASON: I understand. I did not 24 create the document. This was the work of the 25 experts.</p>

<p>1 THE PRESIDENT: I think if you could work 2 with them afterwards and resubmit with the correct 3 title so we know what we are looking at. 4 MR GLEASON: No problem. Looking at the 5 next document you see, what is this document? 6 MR RURAC: The phytosanitary products 7 required for an average production, an average 8 yield, in Floresti. For instance, corn. The 9 herbicides you see there are enough to obtain the 10 yield of 2.36, and the same for the sunflower. 11 MR GLEASON: So this is not the cost 12 structure of Laguardia? 13 MR RURAC: No, not at all. 14 MR GLEASON: And, finally, table 6 – 15 THE PRESIDENT: My comment on CH-8 is the 16 same. We are unable to work out how this relates to 17 the other table 5. 18 MR GLEASON: It is the same analysis. It 19 is a document which shows the cost structure not to 20 achieve the yields that they predicted, but rather 21 to achieve the average yields which were used by the 22 quantum expert. In other words, costs to achieve 23 the lower average yields used by Mr Peer are much 24 lower than the costs required to achieve the yields 25 calculated by Mr Wiechen, who will testify tomorrow.</p>	<p>1 paragraphs 23 and 24 of your expert report, CEX-3. 2 I will keep it in the Romanian language for your 3 benefit on the screen, unless the Tribunal requests 4 that I put it in English language. 5 Very quickly, paragraph 23 has been 6 challenged by the other side saying that there is no 7 basis for the numbers that you put in this 8 paragraph. Can you provide the basis for the 9 numbers or substantiate the numbers that you put in 10 this paragraph? 11 MR RURAC: Well, we used our logic. That 12 is the average. This is how we compute the average. 13 MR GLEASON: So this sentence is included 14 just to provide an example that the average of 15 2 t/ha could be anywhere from 0.3 tons to 3.7 tons. 16 Is that correct? 17 MR RURAC: Yes, right. When we calculated 18 the average, a farmer has one ton, another farmer 19 has four tons, and we add up the two numbers and we 20 divide that number by two. This is statistics. 21 MR GLEASON: Then I would like to just 22 look at paragraph 24, where you say there is an 23 assumption that some households do not fully declare 24 the results of their yields each year. What is the 25 basis of that statement?</p>
<p>1 This is just to compare the cost structure of both 2 approaches. 3 THE PRESIDENT: My earlier point goes. If 4 you can resubmit with a guide to us as to what we 5 are looking at. 6 MR GLEASON: I wanted to authenticate the 7 documents for the benefit of the Tribunal so that 8 you knew where they came from. 9 THE PRESIDENT: The witnesses have 10 produced both these documents? 11 MR RURAC: Yes, it was us. 12 MR GLEASON: It is fair to say that 13 Laguardia's costs were much higher than costs 14 required to achieve average yields? 15 MR RURAC: Yes, you are right. 16 MR GLEASON: Is it reasonable to say that 17 Laguardia's cost structure will lead to better 18 yields than average yields? 19 MR RURAC: Yes, it is correct. 20 MR GLEASON: And that is because the cost 21 structure included additional use of things like 22 fertilizers, phytosanitary products, et cetera? 23 MR RURAC: And technique. 24 MR GLEASON: I would like to look very 25 quickly at your report. There are two paragraphs,</p>	<p>1 MR RURAC: The statement is based on the 2 fact that, up until 2015, in Moldova the farmers 3 were put in a situation to not declare the entire 4 yield or production, and we tested that. We 5 discussed with the farmers. The corruption reports 6 indicated that Moldova was one of the most corrupt 7 countries in Europe, so the statistics could not be 8 correct. The country was poor and it was corrupt 9 and we could not believe those were right numbers. 10 MR GLEASON: One final question from me. 11 When calculating the yields of a modern farming 12 operation, is it a good idea to use average yields 13 from a government database? 14 MR RURAC: You mean the statistical data? 15 MR GLEASON: The statistical data 16 available from the central Government. 17 MR RURAC: If all the players in the 18 business think they are right, why not, but the 19 government itself said that the numbers were not 20 correct. 21 MR GLEASON: Aside from the underreporting 22 issue, you believe that the yield figures of a 23 modern farming practice would be greater than the 24 averages of the government statistical database, 25 correct?</p>

<p>1 MR RURAC: Yes.</p> <p>2 MR GLEASON: Thank you.</p> <p>3 THE PRESIDENT: Is that it, Mr Gleason?</p> <p>4 MR GLEASON: That is.</p> <p>5 THE PRESIDENT: Thank you very much. Over</p> <p>6 to you, Mr Kopecky.</p> <p>7 Questions by Respondent.</p> <p>8 MS PERNT: My name is Victoria Pernt.</p> <p>9 I am counsel for Respondent. Can you hear me all</p> <p>10 right?</p> <p>11 MR RURAC: Yes, we can.</p> <p>12 MS PERNT: I will now take you through</p> <p>13 some questions with regard to the expert report. In</p> <p>14 the interests of time I ask that you please respond</p> <p>15 to the question I address to you specifically and</p> <p>16 I appreciate both of you having come to Vienna.</p> <p>17 Mr Gumovschi, have you worked with Mr Grot</p> <p>18 or any of his companies before writing this report?</p> <p>19 MR GUMOVSKI: I never worked with him.</p> <p>20 I never met him actually.</p> <p>21 MS PERNT: Mr Rurac, have you worked with</p> <p>22 Mr Grot or any of his companies before?</p> <p>23 MR RURAC: No, I never met him before.</p> <p>24 MS PERNT: You confirmed earlier that this</p> <p>25 is your report and that you signed it. Is that</p>	<p>1 MR RURAC: Yes, right.</p> <p>2 MS PERNT: How about paragraph 1. The</p> <p>3 first word. Is that "I"?</p> <p>4 MR GLEASON: I think it would be helpful</p> <p>5 if you showed them in Romanian.</p> <p>6 MR KOPECKY: It is in Romanian.</p> <p>7 MR GLEASON: I see. At the very top.</p> <p>8 "I provide".</p> <p>9 MS PERNT: How about paragraphs 4, or 5,</p> <p>10 or 6? Can we agree the original also uses the term</p> <p>11 "I"?</p> <p>12 MR GUMOVSKI: Could you show me the</p> <p>13 Romanian version, please?</p> <p>14 MR KOPECKY: Unfortunately this is the</p> <p>15 Romanian version.</p> <p>16 MS PERNT: Can we agree that the original</p> <p>17 version is partly written in English?</p> <p>18 MR GUMOVSKI: No, no. It is us who wrote</p> <p>19 the report. It was never written in English. It</p> <p>20 was written in the Romanian language.</p> <p>21 MS PERNT: So all of that was originally</p> <p>22 written in Romanian by either/or both of you?</p> <p>23 MR GUMOVSKI: Yes.</p> <p>24 MR RURAC: Yes.</p> <p>25 MS PERNT: Including, for instance,</p>
<p>1 correct?</p> <p>2 MR GUMOVSKI: Yes.</p> <p>3 MS PERNT: Did you write this report?</p> <p>4 MR GUMOVSKI: I wrote it with my</p> <p>5 colleague, with Mr Rurac.</p> <p>6 MS PERNT: The expert report, at least in</p> <p>7 part, is written in the first person. Is that</p> <p>8 correct?</p> <p>9 MR GUMOVSKI: It might be our mistake.</p> <p>10 MS PERNT: Writing in the first person is</p> <p>11 one author. Is that correct?</p> <p>12 MR GUMOVSKI: I suppose that the</p> <p>13 translators made a mistake here.</p> <p>14 MS PERNT: Was the report originally</p> <p>15 written in Romanian?</p> <p>16 MR GUMOVSKI: Yes.</p> <p>17 MS PERNT: And in Romanian it does not say</p> <p>18 "I"?</p> <p>19 MR RURAC: We do have the word "I".</p> <p>20 MS PERNT: Did you use it in the report?</p> <p>21 MR GUMOVSKI: No. I think it is not</p> <p>22 there.</p> <p>23 MR GLEASON: Maybe she could show the</p> <p>24 report to them? What she is referring to in</p> <p>25 Romanian perhaps?</p>	<p>1 paragraph 6?</p> <p>2 MR RURAC: Yes. Everyone signed as "I".</p> <p>3 MS PERNT: It was signed by both of you as</p> <p>4 "I", but the text in the original was written by</p> <p>5 both of you in Romanian?</p> <p>6 MR GUMOVSKI: Yes.</p> <p>7 MS PERNT: Can we please pull up the</p> <p>8 expert report of Mr Wiechen? This is paragraph 6 in</p> <p>9 the report of Deloitte, and it would appear that</p> <p>10 they used the exact same wording as you did in your</p> <p>11 report. Is that correct?</p> <p>12 MR RURAC: Perhaps they copied us. We</p> <p>13 didn't copy them, they copied us.</p> <p>14 Could you please show the Romanian</p> <p>15 version?</p> <p>16 MS PERNT: I am afraid this is the</p> <p>17 Romanian version. How about paragraph 7 and 8 of</p> <p>18 Deloitte report? Would those seem to be exactly the</p> <p>19 same also?</p> <p>20 MR GUMOVSKI: We brought the report. We</p> <p>21 submitted the report.</p> <p>22 MS PERNT: In Romanian?</p> <p>23 MR GUMOVSKI: Hmm mm.</p> <p>24 MS PERNT: Can we just quickly show that</p> <p>25 also the headings are identical before we move on?</p>

<p>1 (Document displayed) 492 16:33</p> <p>2 When we scroll down in the original</p> <p>3 Romanian we see that it actually does contain also</p> <p>4 Romanian.</p> <p>5 MR GUMOVSKI: True.</p> <p>6 MS PERNT: The English parts were drafted</p> <p>7 by you in Romanian originally and were then</p> <p>8 translated into English?</p> <p>9 MR GUMOVSKI: We never corrected from</p> <p>10 English into Romanian. We wrote the report in the</p> <p>11 Romanian language.</p> <p>12 MS PERNT: You do not speak English,</p> <p>13 Dr Gumovski. Is that correct?</p> <p>14 MR GUMOVSKI: No. I don't speak English.</p> <p>15 I speak a little bit of French and I speak Russian</p> <p>16 very well. I am very good at the Russian language.</p> <p>17 I speak it perfectly.</p> <p>18 MS PERNT: So the entire report was</p> <p>19 authored by the both of you. Is that correct?</p> <p>20 MR GUMOVSKI: Yes.</p> <p>21 MR RURAC: Yes.</p> <p>22 MS PERNT: And the entire report</p> <p>23 represents the opinion of both of you?</p> <p>24 MR GUMOVSKI: Right.</p> <p>25 MS PERNT: And the calculations in the</p>	<p>1 you relied on in your opinion to your report? 494 16:36</p> <p>2 MR GUMOVSKI: Yes. In the references in</p> <p>3 the bibliography, and I put also the articles that</p> <p>4 I wrote about the fertilizers, is the</p> <p>5 recommendations for Moldova, for all the farmers,</p> <p>6 and for all the types of crops, and not just the</p> <p>7 crops of Mr Grot.</p> <p>8 MS PERNT: That would be paragraph 10. Is</p> <p>9 that correct? Do we have that in Romanian?</p> <p>10 MR GUMOVSKI: Yes.</p> <p>11 MS PERNT: So in paragraph 10 of your</p> <p>12 report you list information and documents you have</p> <p>13 reviewed. Is that correct?</p> <p>14 MR GUMOVSKI: Yes.</p> <p>15 MS PERNT: Is there information about</p> <p>16 crops, areas and technical equipment obtained from</p> <p>17 Laguardia? Is that correct?</p> <p>18 MR GUMOVSKI: We took the data from</p> <p>19 Floresti, from Soroca, and from the National</p> <p>20 Statistics Office. At point 10 we said that the</p> <p>21 average yield is the Moldova yield for the regions</p> <p>22 of Floresti and Soroca.</p> <p>23 MS PERNT: The first bullet point of</p> <p>24 paragraph 10 states that you reviewed the original</p> <p>25 information about crops, areas and technical</p>
<p>1 report were made by both of you? 493 16:35</p> <p>2 MR GUMOVSKI: Yes.</p> <p>3 MR RURAC: Yes.</p> <p>4 MS PERNT: So the numbers provided in the</p> <p>5 report were provided by both of you?</p> <p>6 MR GUMOVSKI: Yes. Part of the numbers</p> <p>7 were collected by my colleague and part by myself,</p> <p>8 and we sat at the same table and put them together</p> <p>9 MS PERNT: Thank you. In paragraph 25 it</p> <p>10 says "according to data provided by</p> <p>11 Professor Andrei Gumovski". I assume you do not</p> <p>12 talk about yourself in the third person, meaning</p> <p>13 I don't think you wrote paragraph 25, so that would</p> <p>14 be your colleague discussing data you collected? Is</p> <p>15 that fair?</p> <p>16 MR GUMOVSKI: In that paragraph I used my</p> <p>17 own materials that are also included in my books and</p> <p>18 my recommendations concerning the introduction of</p> <p>19 fertilizers in Moldova.</p> <p>20 MS PERNT: Did you submit that on record?</p> <p>21 Your own materials that you have collected, did you</p> <p>22 submit them on record, together with the report?</p> <p>23 MR GLEASON: Perhaps you could explain to</p> <p>24 him what it means to submit something on record</p> <p>25 MS PERNT: Did you attach the materials</p>	<p>1 equipment obtained from Laguardia. Is that correct? 495 16:39</p> <p>2 MR GUMOVSKI: Yes, we received those data</p> <p>3 from Bucharest. They were sent to us via email, the</p> <p>4 approximate area, as well as the types of crops. At</p> <p>5 the same time we received from the representative of</p> <p>6 Mr Grot the type of equipment, as well as the photos</p> <p>7 he was going to use in those three holdings that he</p> <p>8 had in lease.</p> <p>9 MS PERNT: Did you submit that information</p> <p>10 together with your report?</p> <p>11 MR GUMOVSKI: Yes. When we submitted the</p> <p>12 report, we attached all this information.</p> <p>13 MS PERNT: When you sent your report to</p> <p>14 counsel, you provided that information to counsel.</p> <p>15 Is that correct?</p> <p>16 MR GUMOVSKI: Yes. I received all the</p> <p>17 information to counsel and, if you scroll down, you</p> <p>18 will find the tables. The average data for Soroca,</p> <p>19 for Floresti, and the average for the Visoca test</p> <p>20 centre, if you look at the next tables.</p> <p>21 MS PERNT: We will get to the tables in a</p> <p>22 minute. Have you received any information from</p> <p>23 Laguardia that you do not list in paragraph 10?</p> <p>24 MR GUMOVSKI: I didn't understand the</p> <p>25 question.</p>

<p>1 MS PERNT: You state that you received 2 information about crops, areas and technical 3 equipment from Laguardia. Have you received any 4 other information from Laguardia? 5 MR GUMOVSKI: No. I haven't received any 6 other information from Laguardia. 7 MS PERNT: Have you received leases from 8 Laguardia, the actual lease contracts? 9 MR GUMOVSKI: No, we didn't. 10 MR GLEASON: Can counsel explain how that 11 is relevant in the context of agricultural 12 testimony, please? 13 MS PERNT: I would be happy to. 14 THE PRESIDENT: Table 7 refers to rent 15 payments of USD per year, and it has a source 16 reference to a lease agreement 17 MR GUMOVSKI: Yes. Yes, it is, but we 18 have not seen leases or contracts. 19 MS PERNT: I think that is the second 20 bullet point. You state you have reviewed 21 technological maps collected by Deloitte, so that 22 would be information you received from Deloitte. Is 23 that okay? 24 MR GUMOVSKI: From agricultural 25 enterprises in the Republic of Moldova, yes.</p>	<p>1 acquisition price and in prices, the bullet point 2 just above. Is that correct? 3 MR GUMOVSKI: Yes. 4 MS PERNT: You provide several tables, 5 including tables on costs and prices. Is that 6 correct? 7 MR GUMOVSKI: Yes. 8 MS PERNT: And those amounts are in USD. 9 Is that correct? 10 MR GUMOVSKI: Yes, USD. 11 MS PERNT: Also table 8. 12 MR GUMOVSKI: Yes, in table 8 everything 13 we calculated was in USD. 14 MS PERNT: Can we have a look at table 6, 15 please? That table lists costs of mechanised works. 16 Is that correct? 17 MR GUMOVSKI: Yes, technological files. 18 These were calculated in accordance with the 19 guidelines of the economics institute, and it is the 20 table of results that were taken by research of 21 several households. These guidelines come from the 22 economics institute. They were approved by the 23 Ministry of Agriculture, and they were forwarded to 24 the scientific council of this institute and they 25 were issued as a special set of guidelines for</p>
<p>1 MS PERNT: Did you receive those 2 technological maps from Deloitte? 3 MR GUMOVSKI: I didn't understand. 4 MS PERNT: I'm not sure if this is 5 translation issues, but the English version says 6 technological maps collected by Deloitte is 7 information that you reviewed. Am I right to assume 8 that these technological maps were provided to you 9 by Deloitte? Mr Rurac, can you help, maybe? You 10 are nodding. 11 MR RURAC: We did not receive them from 12 Deloitte, technological maps. 13 MS PERNT: You also said that you reviewed 14 acquisition prices offered by collection companies. 15 That is the second to last bullet point. 16 MR GUMOVSKI: Yes. That is we obtained 17 these prices from different companies and we 18 calculated the average. 19 MS PERNT: But you did not indicate which 20 companies or how many. Is that correct? 21 MR GUMOVSKI: What we showed, there is a 22 specification in the text further on, and I can tell 23 you from Novostoc, from Agrostoc, from Prograin, 24 organic/inorganic, we took these prices. 25 MS PERNT: So Agrostoc features in</p>	<p>1 farmers. 2 MS PERNT: Thank you. That is the source 3 "Costs tariffs in agriculture, 2007", correct? 4 MR GUMOVSKI: Yes. 5 MS PERNT: That would be costs and tariffs 6 in Moldova in Moldovan lei? 7 MR GUMOVSKI: In the Republic of Moldova, 8 yes. 9 MS PERNT: In the guideline they would be 10 presented in Moldovan lei, correct? 11 MR GUMOVSKI: Yes, but we recalculated 12 these amounts in USD, by the then exchange rate -- 13 that is 2007 -- well 2010/2011. That is on the day 14 and in the respective year we recalculated the 15 amounts. 16 MS PERNT: Did you indicate which exchange 17 rate you used in the report? 18 MR GLEASON: I believe that the witness 19 just answered the question and indicated he used the 20 exchange rate as of 2010. 21 MS PERNT: Did he indicate that in the 22 report? 23 MR ASTUNO: It is on the record. He just 24 answered the question. 25 MS PERNT: After you converted to USD, you</p>

<p>1 adjusted for inflation. Is that correct? 500 16:49</p> <p>2 MR GUMOVSKI: Yes. We took into account</p> <p>3 the inflation rate as well, and we specified it in</p> <p>4 the text. There is a sentence there.</p> <p>5 MS PERNT: Do you indicate which inflation</p> <p>6 rate you used?</p> <p>7 MR GUMOVSKI: I don't remember, but we</p> <p>8 did use it, the inflation rate.</p> <p>9 MS PERNT: Could it be 6.2 per cent?</p> <p>10 MR GUMOVSKI: Yes, it can be from 3, to</p> <p>11 6, to 7, it can be, but I do not remember.</p> <p>12 MS PERNT: Can we look at table 6? I put</p> <p>13 to you that if you take 295.52 and divide that by</p> <p>14 278.26, that you get to an inflation of</p> <p>15 6.2 per cent. Would you like to calculate that, or</p> <p>16 do you recall using 6.2 per cent here?</p> <p>17 MR GUMOVSKI: In this case I think I took</p> <p>18 the figures from the book on tariffs. In the</p> <p>19 guidelines the new prices were written. It was in</p> <p>20 this way. So the new prices were there in the</p> <p>21 guidelines. Where there were no such figures we</p> <p>22 calculated the inflation rate, but there where we</p> <p>23 found it we took it from the guidelines, but what</p> <p>24 was higher was the prices of the mechanisation</p> <p>25 operations, technical operations, not only for oil</p>	<p>1 price of grains is increasing, and we tried to 502 16:54</p> <p>2 demonstrate that with this table. Is it clear, what</p> <p>3 I said?</p> <p>4 MS PERNT: Maybe I can clarify.</p> <p>5 Year-by-year it increases steadily by the inflation</p> <p>6 rate.</p> <p>7 MR GUMOVSKI: Well, you see, I am not an</p> <p>8 economist, but what I did was to take over data,</p> <p>9 figures, from the companies that provided the</p> <p>10 figures for each cereal -- for rape, for corn, for</p> <p>11 wheat -- in the respective year when the production</p> <p>12 was purchased, and I calculated in this way. The</p> <p>13 inflation rate was taken and used by those who</p> <p>14 bought the products from there and the producers,</p> <p>15 those who sold the production, the yield.</p> <p>16 MS PERNT: Can we have a look at exhibit 5</p> <p>17 to REX-3, please?</p> <p>18 MR GLEASON: What is this document?</p> <p>19 MR GUMOVSKI: Please will you show me</p> <p>20 this in Romanian?</p> <p>21 MS PERNT: I am very sorry, I do not have</p> <p>22 this in Romanian but I am happy to explain the</p> <p>23 document.</p> <p>24 THE PRESIDENT: Is it on the hyperlink?</p> <p>25 MR ASTUNO: There is a reference to table</p>
<p>1 but also for labour, for everything. 501 16:52</p> <p>2 MS PERNT: I understand. 6.2 per cent is</p> <p>3 the inflation rate for Moldova. Is that correct?</p> <p>4 MR ASTUNO: Excuse me, Mr President,</p> <p>5 I don't believe these are witnesses that are</p> <p>6 qualified in economics. I think they are here to</p> <p>7 speak to the agricultural inputs</p> <p>8 MR KOPECKY: They did the economics so</p> <p>9 I think they should answer questions about it</p> <p>10 THE PRESIDENT: They are being asked about</p> <p>11 a table they have produced and I think counsel is</p> <p>12 entitled to ask them how they have calculated the</p> <p>13 prices as that have risen over three years.</p> <p>14 MS PERNT: Is 6.2 per cent the inflation</p> <p>15 rate for Moldova?</p> <p>16 MR GUMOVSKI: On a yearly basis, an</p> <p>17 annual inflation rate, yes. It can be even higher,</p> <p>18 yes. Something like that.</p> <p>19 MS PERNT: Also in table 8 the same</p> <p>20 inflation rate of 6.2 per cent is used for all</p> <p>21 years.</p> <p>22 MR GUMOVSKI: Here I would like to</p> <p>23 explain that it is not the inflation rate that</p> <p>24 causes the figures but the achievement or</p> <p>25 accomplishment rate. You know, year-by-year, the</p>	<p>1 5. This does not appear to be table 5? 503 16:56</p> <p>2 THE PRESIDENT: I just have REX-3 open.</p> <p>3 MS PERNT: This is exhibit 5 to the REX.</p> <p>4 I don't think it is the same document</p> <p>5 THE PRESIDENT: I don't think we have it</p> <p>6 on the hyperlink.</p> <p>7 MR GLEASON: Can they be a little more</p> <p>8 specific about what this document is and where it</p> <p>9 comes from?</p> <p>10 MS PERNT: This is OECD data and it shows</p> <p>11 that the consumer price index in 2011 was</p> <p>12 1.1 per cent.</p> <p>13 MR ASTUNO: Is that the consumer price</p> <p>14 index in the United States?</p> <p>15 MR GLEASON: This is information for the</p> <p>16 United States, correct?</p> <p>17 MS PERNT: Yes.</p> <p>18 MR ASTUNO: Mr President, Claimants now</p> <p>19 would question what --</p> <p>20 MR GUMOVSKI: I --</p> <p>21 THE PRESIDENT: One speaker at a time.</p> <p>22 The expert, Mr Gumovski, is trying to say something</p> <p>23 on the record. Please, Mr Gumovski.</p> <p>24 MR GUMOVSKI: I do not understand this</p> <p>25 table. I did not work with this table. That is all</p>

<p>1 I am saying. 504 16:58</p> <p>2 THE PRESIDENT: Mr Gumovschi, this is the</p> <p>3 inflation rate in the United States. It is not</p> <p>4 immediately apparent why you would have worked with</p> <p>5 it, but perhaps counsel can explain</p> <p>6 MS PERNT: In paragraph 42 you state that</p> <p>7 you used the prices from the guidelines, you</p> <p>8 converted them into USD for the due period, and then</p> <p>9 you modified them following the inflation. You</p> <p>10 stated you used the Moldovan inflation rate, and</p> <p>11 I suggest that this is the more accurate inflation</p> <p>12 rate, the US inflation rate, for prices in USD? Do</p> <p>13 you agree?</p> <p>14 THE PRESIDENT: Do you think it is</p> <p>15 appropriate working on a Moldovan table to use</p> <p>16 inflation rates in Moldova or in the United States</p> <p>17 for the purpose of your work?</p> <p>18 MR GUMOVSKI: Of course in Moldova. Of</p> <p>19 course in Moldova, not in the United States because</p> <p>20 this is for Moldova. But we were not requested and</p> <p>21 we did the calculations. The calculations were</p> <p>22 based on facts, because since the variation of the</p> <p>23 USD there is a lot of fluctuation there.</p> <p>24 MS PERNT: You stated earlier that the</p> <p>25 prices increased steadily, as you showed in table 8,</p>	<p>1 MS PERNT: I understand that you see this 506 17:01</p> <p>2 for the first time. I am showing you this because</p> <p>3 it would appear that the prices of wheat do not</p> <p>4 steadily increase just by the inflation rate</p> <p>5 MR ASTUNO: Is there a question to this,</p> <p>6 Mr President?</p> <p>7 MS PERNT: If you would agree that prices</p> <p>8 do not steadily increase with the inflation rate at</p> <p>9 all times as you showed in table 8. Sometimes</p> <p>10 prices do not steadily increase by the inflation</p> <p>11 rate. Is that correct?</p> <p>12 MR GLEASON: I would object to that</p> <p>13 question because that table does not actually take</p> <p>14 into consideration the years at issue in this case.</p> <p>15 It takes into consideration years 2008 and 2009.</p> <p>16 THE PRESIDENT: I think counsel is</p> <p>17 entitled to ask the questions but I would point out</p> <p>18 these show over a three or four year period in some</p> <p>19 cases a jump of 50 per cent in the cost, so I am not</p> <p>20 sure how far it gets you.</p> <p>21 MR GUMOVSKI: What I see is that from</p> <p>22 2009 and 2011 they did increase quite a lot. If in</p> <p>23 2008 we did not have this data. We did not have</p> <p>24 data from 2008. That was not our purpose.</p> <p>25 MS PERNT: Can we look at paragraph 44?</p>
<p>1 by the inflation rate – we now clarified the 505 16:59</p> <p>2 Moldovan inflation rate – can we please have</p> <p>3 exhibit 13 to REX-3 on the screen?</p> <p>4 MR GLEASON: Are we going to have the same</p> <p>5 line of questioning for Mr Rurac? Is that the plan?</p> <p>6 For timing purposes?</p> <p>7 THE PRESIDENT: No, I think it is for you</p> <p>8 to decide. The questions are put to both experts as</p> <p>9 they see fit.</p> <p>10 MS PERNT: I have not yet determined.</p> <p>11 This table shows the variations in prices.</p> <p>12 If we look at wheat, that is the third line.</p> <p>13 THE PRESIDENT: Could you explain to the</p> <p>14 experts what this document is, what its source is,</p> <p>15 where it comes from, which currency it is in, so</p> <p>16 they understand what they are looking at?</p> <p>17 MS PERNT: This is a document that was</p> <p>18 filed together with the quantum expert report of</p> <p>19 Respondent. It shows the prices of agricultural</p> <p>20 production, sale and price indices on agricultural</p> <p>21 products.</p> <p>22 THE PRESIDENT: Since I don't have it in</p> <p>23 front of me, what is the source of this information?</p> <p>24 MR GUMOVSKI: I see this for the first</p> <p>25 time.</p>	<p>1 It deals with payment for agricultural land rent. 507 17:03</p> <p>2 You state here that you "assessed the production</p> <p>3 costs, we used the data under the lease agreements</p> <p>4 for each locality and for each year". However, you</p> <p>5 confirmed earlier that you did not receive any</p> <p>6 leases from Laguardia. Your list did not calculate</p> <p>7 the payments under the leases based on the leases.</p> <p>8 Is that correct?</p> <p>9 MR GUMOVSKI: We took the data that was</p> <p>10 available to us, it was conveyed to us by electronic</p> <p>11 mail, and we calculated for each farm, but we did</p> <p>12 not see the actual contracts.</p> <p>13 MS PERNT: Who transmitted the data by</p> <p>14 email?</p> <p>15 MR ASTUNO: Can we go to table 7 –</p> <p>16 MR GUMOVSKI: Marius and Athena from</p> <p>17 Bucharest.</p> <p>18 MS PERNT: Why do they have the data on</p> <p>19 the leases of Laguardia?</p> <p>20 MR GUMOVSKI: They had this data and they</p> <p>21 conveyed the data to us. They sent us the data</p> <p>22 MS PERNT: Do you know why they have that</p> <p>23 data?</p> <p>24 MR GUMOVSKI: I am saying to you that</p> <p>25 they have forwarded this data to us, and that our</p>

<p>1 calculations are based on this data when we provided 2 this table. 508 17:04</p> <p>3 MS PERNT: Thank you. Why does Marius 4 from Bucharest have the data on leases for 5 Laguardia?</p> <p>6 THE PRESIDENT: I am not sure that is a 7 question for these experts on agricultural matters. 8 That is a question of fact. They are in a position 9 of producing an expert report. They are not 10 knowledgeable of the leases. They have been very 11 honest in saying they have relied on information 12 provided to them. It is open to you to say to other 13 fact witnesses, or in closing, that this is or is 14 not an accurate way of doing it, but I think it is 15 not fair to put them in the position of challenging 16 the documents that have been provided to them. They 17 have just been given the figures and they have been 18 very honest about that.</p> <p>19 MS PERNT: Thank you. Can I clarify, 20 given to you by Claimant? Unless you don't know 21 and that is fine.</p> <p>22 MR GUMOVSKI: I do not know. We received 23 it from these people, from Marius and Athena from 24 Bucharest.</p> <p>25 MR KOPECKY: Mr President, how much time</p>	<p>1 MS PERNT: No, it is not a question. That 510 17:08 2 is why I said "I would like to note that". 3 In paragraph 31 of your report you state 4 that because Laguardia would have used pesticides, 5 its average expected harvest over five years for the 6 listed crops would be equal to the average harvest 7 of the Visoca state centre. Is that correct? 8 THE PRESIDENT: Minus 15 per cent 9 MR GUMOVSKI: My colleague is going to 10 answer. 11 MR RURAC: The state centre in Visoca, 12 they do not use plant protection products, and that 13 leads to a 15 or 20 per cent decrease of the 14 harvest. This is a scientific fact. We believe 15 that Laguardia's crops could have been bigger 16 because they planned to use these plant protection 17 materials. Do you understand? 18 MS PERNT: I am trying. It appears there 19 are many factors. In paragraph 31 you say that 20 considering that no plant protection products were 21 applied on the state centre fields, but such 22 products shall be applied on Laguardia's fields, the 23 average expected harvest over five years for the 24 listed crops will then be equal to the average 25 harvest for the Visoca state centre. At least that</p>
<p>1 do we have left? We would need half an hour and it 509 17:06 2 may be better to break now. 3 THE PRESIDENT: I am not sure. We have to 4 finish at 5.30 today and we will have a very tight 5 day tomorrow. I think we want to use our full 6 amount of time today. 7 MS PERNT: I will do my best. 8 Did you communicate with Deloitte when you 9 prepared your report? 10 MR GUMOVSKI: Yes, we did co-ordinate. 11 MS PERNT: Did you provide your report to 12 Deloitte? 13 MR GUMOVSKI: Yes. 14 MS PERNT: Did you provide any other 15 materials to Deloitte? 16 MR GUMOVSKI: Yes, also materials that 17 were requested by Deloitte. From the book they 18 wanted the guide as well, and all the other results 19 from the state committee, from Visoca, and also 20 statistical data and averages from the districts of 21 Floresti and Soroca. 22 MS PERNT: That is a lot of information. 23 Can we just note that we did not receive any of that 24 information together with your report or otherwise 25 MR ASTUNO: That is not a question.</p>	<p>1 is what the English text says 511 17:11 2 MR GUMOVSKI: Yes. 3 MS PERNT: In paragraph 30 you state that 4 the harvest in the Visoca testing centre is 5 20 per cent on average higher, in the second 6 sentence, that is. 7 MR GUMOVSKI: Yes. 8 MS PERNT: In paragraph 29 above you state 9 that farmers do not apply fertilizers in sufficient 10 quantities to increase crops in maintain soil 11 fertility. Correct? 12 MR GUMOVSKI: Are you talking about 13 Visoca? 14 MS PERNT: The farmers do not apply 15 fertilizers in sufficient quantities but Visoca does 16 apply fertilizers, if I understood correctly? 17 MR RURAC: Yes. Visoca is not the 18 farmers, it is a centre. It is a state centre that 19 uses fertilizers of 250 kilograms for wheat, but 20 they do use fertilizers on the territory on 21 Laguardia. All these fertilizers – 22 THE INTERPRETER: I did not catch the last 23 part. 24 MR RURAC: In Laguardia the same 25 quantities of fertilizers as were used in Visoca</p>

<p>1 would have been used 512 17:13</p> <p>2 MS PERNT: In paragraph 30 you state that</p> <p>3 when you use pesticides, harvest could increase by</p> <p>4 20 per cent.</p> <p>5 THE PRESIDENT: Can I just say, Ms Pernt,</p> <p>6 we have read the reports and what you seem to be</p> <p>7 doing is taking them through the reports and</p> <p>8 confirming what they have said. We have all read</p> <p>9 these reports and we are well aware of what it says</p> <p>10 and we would invite you to consider how best you can</p> <p>11 assist us with any differences you may have in</p> <p>12 relation to this matter. We have read it.</p> <p>13 MS PERNT: I will do that.</p> <p>14 Can you finally confirm that when you use</p> <p>15 pesticides, as Laguardia would, that would increase</p> <p>16 the yield by 20 per cent above the Visoca State</p> <p>17 Centre's average which does not use pesticides?</p> <p>18 MR RURAC: I can confirm that if there is</p> <p>19 a field that pesticides were against weeds and</p> <p>20 pesticides were not used, the harvest would grow,</p> <p>21 otherwise we would not have had these inputs.</p> <p>22 I repeat again, Visoca obtained those harvests</p> <p>23 without pesticides. We had the right to say that we</p> <p>24 can add 20 per cent due to the use of pesticides.</p> <p>25 MS PERNT: The Visoca testing centre is a</p>	<p>1 material you have read elsewhere, unless you put it 514 17:17</p> <p>2 before them.</p> <p>3 MS PERNT: Can I ask if it is the case,</p> <p>4 without putting it to them?</p> <p>5 THE PRESIDENT: Well, I am just not sure</p> <p>6 how it is going to assist you. We have an expert</p> <p>7 report before us. Your task presumably is to</p> <p>8 challenge that expert report, but in the absence of</p> <p>9 any evidence that you have put in, I can understand</p> <p>10 the difficulty that you face. I do not think it is</p> <p>11 going to get you very far because the expert report</p> <p>12 stands untested by contrary evidence. That is a</p> <p>13 matter you have chosen to take, but it obviously</p> <p>14 limits what you can ask.</p> <p>15 We have spent an hour and 15 with these</p> <p>16 two gentlemen, and essentially what I have got out</p> <p>17 of it so far is they have confirmed what they have</p> <p>18 said in their report.</p> <p>19 MS PERNT: I would like to ask you</p> <p>20 something about the tables we received yesterday</p> <p>21 with the adjusted calculations.</p> <p>22 THE PRESIDENT: Is this CH-7 and 8? Or is</p> <p>23 it something else?</p> <p>24 MS PERNT: The same tables that were</p> <p>25 introduced in direct. I think, yes.</p>
<p>1 testing centre for new hybrids is that correct? 513 17:15</p> <p>2 MR GUMOVSKI: Yes. For soya and hybrids.</p> <p>3 The control are already the hybrids, and the soya</p> <p>4 that is already accepted or used as a benchmark in</p> <p>5 Moldova, patented in Moldova. Why don't they use</p> <p>6 pesticides? Because soya is more resistant to pests</p> <p>7 and diseases.</p> <p>8 MS PERNT: I looked it up and I learned</p> <p>9 that the Visoca State Centre uses 170 ha of all</p> <p>10 tested crops. Is that correct?</p> <p>11 THE PRESIDENT: Sorry, we are a Tribunal.</p> <p>12 We have to rely on evidence before us. You haven't</p> <p>13 put in an expert report. You haven't put in any</p> <p>14 evidence to support that proposition. It is simply</p> <p>15 not fair to ask these two experts on the basis of</p> <p>16 what you happen to have looked up. You have to rely</p> <p>17 on evidence that is before you.</p> <p>18 The purpose of cross-examination is to</p> <p>19 test the opinions of experts. That usually requires</p> <p>20 material to have been put in. For reasons that are</p> <p>21 entirely for you, you have not put in any material</p> <p>22 and you are therefore going to be somewhatamstrung</p> <p>23 in what you can put to them. The purpose of</p> <p>24 cross-examination is not to get them to repeat what</p> <p>25 they have said but to test it. You cannot rely on</p>	<p>1 THE PRESIDENT: For the record CH-7 and 515 17:19</p> <p>2 CH-8.</p> <p>3 MS PERNT: Those are the costs that you</p> <p>4 would have to spend as an average farmer that does</p> <p>5 not use fertilizer or uses less or insufficient</p> <p>6 qualities of fertilizers and pesticides, as opposed</p> <p>7 to the materials you presented before for the</p> <p>8 business plan of Mr Grot?</p> <p>9 MR RURAC: These materials have been</p> <p>10 added. Here we present for the average harvest for</p> <p>11 Floresti the possible costs in order to have such a</p> <p>12 harvest. For example, in order to get the maize or</p> <p>13 the corn on the Moldovan germosiums, you do not need</p> <p>14 to apply fertilizers.</p> <p>15 MR GUMOVSKI: We are providing some</p> <p>16 scientific arguments, and some practical –</p> <p>17 MR RURAC: Any agronomist in Moldova would</p> <p>18 say that for 2.5 tons of corn you do not need to use</p> <p>19 fertilizer.</p> <p>20 MS PERNT: You explained earlier the</p> <p>21 benefits of using fertilizers and pesticides, saying</p> <p>22 that that could increase the yield and that the</p> <p>23 farmers would thus have higher profit margins if</p> <p>24 they used fertilizers and pesticides</p> <p>25 MR RURAC: Of course, that is true, but we</p>

<p>1 have to understand one thing. We are talking here 516 2 about a necessary minimum. We can assume even less 17:21 3 can be used but there is a minimum that is needed. 4 We did not use in our table only herbicides. There 5 is nobody in Moldova to pick up the weeds. 6 MS PERNT: There is a translation issue. 7 I am going to read the same question. You explained 8 earlier the benefits of using fertilizers and 9 pesticides saying that could increase the yield and 10 that the farmers would thus use the fertilizers and 11 pesticides could have increased their profit margin 12 MR ASTUNO: Was that a question? 13 MS PERNT: Is that true? 14 MR RURAC: I am sorry, but in order to 15 have a higher yield you need a lot of factors – 16 soil, pesticide, good works, all sorts of things. 17 In our given case, instead of picking up the weeds 18 manually or mechanically, we used herbicides. They 19 are pesticides. This is the minimum we use. We 20 cannot use it here. If you refer to table 5, they 21 are an intensifying factor, not at all. 22 MS PERNT: But generally if you use 23 pesticides and fertilizers you can increase your 24 profit margins? 25 MR RURAC: Generally, yes.</p>	<p>1 would have died if you had used only 1.66 of 518 2 sunflower, the official data. This is a main 17:26 3 technical crop in Moldova: canola or rape and 4 sunflower. 5 MS PERNT: Can we agree the increase shown 6 in the table is considerably above 20 per cent? 7 MR RURAC: Where exactly? 8 THE PRESIDENT: Even I can read what is in 9 the table. The table is the table. We are not 10 complete idiots as Tribunal members, frankly. We 11 are able to read a table and we will interpret it. 12 But it says what it says. To have got an hour and 13 20 in and to invite them to confirm what it says is 14 not really a helpful use of your time. Do you 15 really have more questions of this kind? 16 MS PERNT: No, I do not, but I thought it 17 was fair to ask them about 20 per cent and the 18 numbers in the table, rather than not asking them 19 about that. 20 MR KOPECKY: It is a contradiction and 21 I think they should be given the chance to explain 22 that contradiction, and that is what we have tried 23 to do, but if the Tribunal already saw that and it 24 is on record we need not continue on that. 25 THE PRESIDENT: I appreciate what you are</p>
<p>1 THE PRESIDENT: You have five minutes 517 2 left. 17:23 3 MS PERNT: I would like to take you to 4 table 2 of your expert report. You explained 5 earlier that the harvest in the testing centres is 6 by average 20 per cent higher than a harvest on a 7 farmer's land. In table 2, I see in the first row 8 average of the testing centre, and in the second 9 average Floresti. 10 MR RURAC: This is scientific truth 11 throughout the world. In a farmer's field harvests 12 are 20 per cent lower than in scientific centres. 13 This is not related to our table. We confirm here 14 that the data from Floresti cannot be used as a 15 guideline because they are smaller. They are about 16 half the ones in a scientific centre. 17 MS PERNT: If I look, for instance, at 18 sunflower and I compare the yield rate of Visoca and 19 of Floresti, then I get an increase of 96 per cent? 20 If I look for soy, I get 315 per cent. That is 21 considerably more than 20 per cent. Would you 22 agree? 23 MR RURAC: I repeat again: 20 per cent is 24 considered – on research centres it is by 25 20 per cent more than on the farmer's land. Moldova</p>	<p>1 trying to do. We have read the tables. We are very 519 2 experienced arbitrators. We read everything we are 17:27 3 given. We are able to calculate, some of us are 4 perhaps not so great at mathematics, but we are able 5 to work out what they have said, why they have said 6 it and then test the propositions by reference. 7 We are running out of time. We are going 8 to be continuing anyway tomorrow with both experts. 9 This is probably a good time to stop. How many more 10 minutes of questions do you think you have got? 11 MS PERNT: 15/20 minutes. 12 THE PRESIDENT: You told me 30 minutes ago 13 you had 35 minutes, so you have grown with an 14 additional 20 minutes in the intervening 30 minutes. 15 I wonder whether that is -- it is up to you, but do 16 you really need it? You are getting a sense of a 17 Tribunal that is on top of this material, and 18 I would invite you to reflect overnight-- 19 MS PERNT: I will reflect. 20 THE PRESIDENT: -- how long you need for 21 re-direct realistically, given the one and an half 22 hours we have just spent? 23 MR GLEASON: It is hard to say right now 24 without knowing what the additional questions will 25 be. We will need to reflect this evening.</p>

<p>1 THE PRESIDENT: On the basis of the 1.5 2 hours we have had so far, how long do you need? 3 MR GLEASON: I would say probably 25-30 4 minutes. 5 THE PRESIDENT: Are you able to explain to 6 me what it is that we have heard in the last hour 7 and a half that would require 30 minutes of 8 re-direct when essentially we have been taken 9 through the report -- 10 MR GLEASON: I was pretty liberal because 11 I do not know what the remainder of the questions 12 will be, but I would just like to go back and 13 discuss the nature in which the report was actually 14 created with these two experts. I think that is 15 important because that was a matter of significant 16 examination from opposing counsel, and perhaps just 17 give them an opportunity to clarify some of their 18 answers. 19 THE PRESIDENT: Fair enough. 20 Professor Knieper will have a comment. We have to 21 tell both experts -- this is very important -- you 22 are on oath, you are not allowed to speak to anyone 23 overnight. We are going to break now. You can go 24 out and have a fabulous evening in Vienna, but one 25 thing you cannot do is you can have no conversations</p>	<p>1 I think what we agreed was we would continue with 2 them as we had held with our earlier legal experts. 3 We -- I think I can say -- will have questions but 4 I suspect they will be far fewer questions than we 5 had, and that will give you a lot more leeway. We 6 appreciate we have used a lot of time, but the legal 7 experts had an important role on both sides. 8 I think you have understood that. 9 We have 25 minutes of introduction for 10 one, 15 minutes for another. How much time -- it is 11 hard to estimate but for planning purposes, and we 12 have plenty of flexibility tomorrow -- how much 13 time, Claimant, will you need for cross-examination? 14 MR ASTUNO: Estimating on the liberal side 15 I would say 45 minutes. 16 THE PRESIDENT: Respondent? 17 MR KOPECKY: About the same. An hour max. 18 THE PRESIDENT: We think we will invert 19 the order and let you go with your 20 cross-examinations before we weigh in, so to speak, 21 so we will come after and limit our questions until 22 after you have had your cross-examination so that 23 we will then be able to exercise self restraint. We 24 are conscious you will want a little time over lunch 25 to be able to prepare your closing arguments to wrap</p>
<p>1 at all, and no contact by email, by telephone or in 2 any way at all with anyone on that side of the room 3 or anyone on that side of the room, or us. 4 MR GLEASON: There is a very practical 5 problem with that and that is these gentlemen have 6 planned on leaving today because that was the 7 schedule and we are going to have to keep them 8 overnight and help them arrange that. Is there a 9 way that can be done? 10 THE PRESIDENT: I think we will have to 11 take it -- provided Respondent is comfortable with 12 it -- we will have to take it on professional good 13 faith that you will make arrangements, change plane 14 tickets, extend hotel rooms for one night, if 15 necessary make sure they are in funds so they are 16 able to eat tonight because we don't want them to be 17 starving when they come tomorrow morning. 18 MR GLEASON: Can we have a brief 19 conversation with them about those issues in the 20 presence of opposing counsel, perhaps? 21 THE PRESIDENT: Is Respondent comfortable 22 with that? 23 MR KOPECKY: Yes. 24 THE PRESIDENT: While we are on that, for 25 tomorrow we have the two quantum experts, and</p>	<p>1 up, so we are trying to factor that in also. 2 Any other housekeeping matters? 3 MR GLEASON: Just one. During the 4 examination of Mr Gladei earlier there was a 5 document used, and I have confirmed it was not 6 actually in the linked index provided by Respondent. 7 It was an annex provided in the document production 8 process but not actually submitted as an exhibit. 9 We would request that that document not become part 10 of the record. We understand that the Tribunal is 11 fully capable of assessing that information, but we 12 wanted to get on record that that document used in 13 examination was not part of the index that was 14 provided to us. 15 MR KOPECKY: Agreed it was not part of the 16 consolidated index, because we agreed only exhibits, 17 memorials and statements. It was part of the 18 record, however, being sent by Claimants to 19 Ms Nitschke on 27 February 2017 and being forwarded 20 by Ms Nitschke to the Tribunal on 28 February 2017, 21 together with Claimants' document production 22 request, and the Tribunal I believe based its PO3 23 document production decision on this bundle of 24 documents, so it is on record. 25 MR GLEASON: I am not sure that the</p>

<p>1 documents produced by Claimants were actually 2 submitted to the Tribunal. They were submitted 3 directly to opposing counsel. 4 THE PRESIDENT: We have had a chat. If it 5 was submitted as part of these proceedings it is 6 part of the record and it is already before us so it 7 is just a question of fact which we don't need to 8 sort out now, you can sort it out overnight, as to 9 whether it was or was not appended and attached to 10 an email, including one that went to us. If it was 11 it is part of the record: If it wasn't it is not 12 part of the record. We leave it to you two teams 13 overnight to work out whether it was or not. If 14 there is a dispute, you can raise it tomorrow 15 MR GLEASON: That is fair. There are a 16 lot of documents and sometimes it is hard to 17 remember every single one. 18 THE PRESIDENT: Tell me about it! 19 MR KOPECKY: May I read it into the 20 record? "Email of Ms Nitschke. 28 February 2017. 21 5:36 CET" – 22 THE PRESIDENT: We will leave it to you 23 overnight to sort out. We have proceeded in 24 excellent good faith. Terrific co-operation by both 25 sides. We trust you both overnight to sort it out.</p>	<p>1 the last fifty years, Tom Bingham, Lord Bingham, and 2 early in my career in an English court he let it be 3 known, rather too publicly for my liking, "Mr Sands, 4 often in life, less is more. Do not forget that". 5 We have listened very attentively, I hope you have 6 noticed we really are on top of the record here; we 7 do not need you in your closings to repeat anything 8 you have already said; we are acutely aware of the 9 evidence, the legal arguments, the expert opinions, 10 the issues that divide. The purpose of the closing 11 is to be responsive to what has happened in this 12 hearing. 13 To put my own cards on the table I would 14 not expect a PowerPoint for a closing. A PowerPoint 15 (I am speaking only for myself) has the terrible 16 effect of causing people to dive into a text and not 17 really address the Tribunal. To best way to stand 18 before us is with a single sheet of paper, five or 19 six key points on it – bullet points, one word – 20 to stand up and tell us what are the issues we 21 should be thinking about. 22 What we are very keen to hear tomorrow is 23 your response to what we have heard. We don't need 24 elegant fabulous PowerPoints with lots of tables. 25 What we want is points put simply, the points that</p>
<p>1 MR KOPECKY: We will. 2 THE PRESIDENT: I think we are in okay 3 time on the basis of the indications you have given 4 us. If we can get done tomorrow morning by around 5 10.15 with our two experts on agricultural matters 6 starting at 9.30 we will then continue straight on, 7 and we may have lunch delayed but we ought to be 8 able to complete our experts on quantum by the lunch 9 break, whatever time that is, and you will then have 10 a little time to both reflect, and the operative 11 principle is that Claimant will make its closing 12 remarks first and Respondent will follow on 13 immediately. So it is not about Respondent 14 following what Claimant has said. Your closing 15 comments, both of you, are based on everything we 16 have heard over the next three days, so we will 17 follow seriatim and we can run on as late as 18 necessary tomorrow night subject to the needs of the 19 interpreters and court reporters. 20 MR GLEASON: Concerning the timing on the 21 closing, is that a firm one hour? 22 THE PRESIDENT: There is always a degree 23 of flexibility on the part of the Tribunal but I 24 once had the incredible privilege of appearing 25 before the greatest lawyer in English practice over</p>	<p>1 divide the parties. We have been very much helped 2 by you with counsel in these proceedings and by the 3 experts to help us understand your differences on 4 interpretation, on the facts, and your task is to 5 persuade us in an hour why your view on those 6 differences is right, and why your view is right. 7 And that is a very simple, elegant exercise. "Less 8 is more". You will have your hour, you will have it 9 a little bit more if you need it, but ask yourself 10 honestly how much time do you need to persuade us. 11 It is not a case that raises a multitude of complex 12 issues. There are some, but you can basically count 13 them on the fingers of a single hand. 14 Tell us what the real issues are, tell us 15 what you need to persuade us on those small number 16 of issues. That is what the closing is about. We 17 will find that very helpful and be very 18 appreciative. 19 MR FORTIER: To summarise what the 20 Chairman has said, we want points, not power! 21 (Short discussion on timing off the record) 22 (The hearing was adjourned at 5.41 pm) 23 24 25</p>

<p>MR ASTUNO: [18] 293/16 293/23 294/4 294/11 297/9 297/19 298/2 299/10 499/22 501/3 502/24 503/12 503/17 506/4 507/14 509/24 516/11 522/13</p> <p>MR FORTIER: [34] 300/25 302/21 303/2 303/11 309/25 311/15 326/4 330/18 385/21 386/8 386/12 386/15 387/5 387/15 387/20 388/10 389/22 390/5 391/10 392/10 392/14 392/19 393/15 393/21 394/17 396/5 396/24 432/21 447/22 453/9 453/12 453/15 468/9 527/18</p> <p>MR GLADEI: [267] MR GLEASON: [102] 294/19 295/3 295/7 296/21 297/4 299/14 301/22 302/4 380/18 380/23 400/7 402/8 422/13 423/9 423/17 424/9 457/23 458/4 458/12 458/16 459/1 459/4 459/13 459/22 459/25 460/6 460/18 460/24 461/2 461/16 461/21 461/24 462/3 462/7 462/11 462/15 462/17 462/21 462/25 463/3 463/6 463/14 463/17 463/25 464/4 464/8 464/12 479/4 479/12 479/17 479/20 480/4 480/7 480/10 480/14 480/18 481/4 481/16 481/23 482/6 482/16 482/25 483/5 483/8 483/15 483/22 484/3 484/10 484/13 484/17 485/5 485/11 485/15 485/19 485/23 486/12 486/20 487/9 487/14 487/20 488/1 488/3 489/22 490/3 490/6 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475/10 475/15 475/18 475/22 476/6 476/15</p> <p>MR KOPECKY: [178] 293/21 294/2 294/6 295/5 296/14 296/20 296/24 297/5 297/23 298/10 299/1 299/7 299/16 300/2 300/5 300/11 301/3 301/8 301/16 302/25 303/9 303/19 304/3 311/7 311/18 311/23 312/3 317/14 317/24 322/17 323/19 323/23 324/4 325/6 326/20 327/17 328/6 328/20 329/5 329/25 330/14 330/19 330/24 331/8 332/22 333/3 333/16 333/25 334/2 334/20 335/7 374/3 374/5 398/10 400/6 406/6 406/22 415/10 415/15 415/19 420/13 421/20 422/22 423/1 424/13 424/23 425/2 425/7 425/12</p>	<p>425/17 425/21 426/1 426/6 426/17 426/21 427/1 427/9 427/22 428/8 428/18 428/23 429/6 429/11 430/1 430/6 431/6 431/11 432/8 432/14 432/23 433/13 433/23 434/6 434/9 434/21 435/1 435/5 435/9 435/14 435/18 435/22 436/8 436/14 436/19 436/25 437/5 437/19 437/22 438/6 438/17 438/23 439/5 439/11 439/14 440/8 440/12 440/17 440/25 441/17 441/21 442/11 442/14 442/19 442/24 443/2 443/6 443/10 443/13 443/15 444/5 444/7 444/17 444/24 445/3 445/7 445/15 445/21 446/1 446/8 446/15 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