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1 (9.34 am Tuesday, 12 December 2017)

THE PRESIDENT: Good morning, everybody.

I hope you had a very satisfactory evening in Vienna.

We have a full schedule ahead of us, with legal experts this morning. We have a full morning for that so we have no pressures of time, and then in the afternoon the agricultural experts.

There are just three housekeeping matters that we have. You may have other issues you want to raise, and do feel free to do so.

Firstly, on the errata sheet introduced by the Respondent yesterday, Claimant has now had an opportunity to receive those. Are there any issues arising from the errata sheet that we need to be aware of?

MR ASTUNO: No, Claimants' would restate that its own expert's supplemental report will be provided to opposing counsel by the end of the day.

THE PRESIDENT: Has Respondent not received the supplemental?

MR KOPECKY: We heard this morning. The end of the day would be a bit difficult.

MR ASTUNO: Our expert is working on it as we speak. I can push for lunch, if that is okay.
1 I promise that none of my requests will be an exclusion request. We have noticed Claimants' reference exhibits C-143, C-144 and C-145 in their opening yesterday.

Mr Gleason: As well as C-142.

Mr Kopecz: Indeed, but we already know what that is. We would like Claimants to offer some guidance on where to find those exhibits on the record.

Mr Astuno: I referenced C-143, slide 14 of my opening remarks yesterday. C-144 was in slide 20. C-145 was in slide 15. All of these documents and authorities, including C-142, are open in the public domain, and they are documents and authorities that directly respond to Michael Peer's report, specifically paragraph 5.2.2 in the overall conclusions of his report, generally speaking.

The President: Thank you. That is what you want to say on that matter.

Mr Astuno: I am happy to provide more specific information.

The President: No. Let's hear from Respondent on this.

Mr Kopecz: We wished him to be on the record and we would not object to them being put on the record.

The record in this hearing, but would like them to be on record and not just in the public domain.

Mr Astuno: They have already been uploaded.

The President: Can I seek by way of clarification, are you saying you are comfortable with them being put on the record because they are responsive to Michael Peer's report, or are you saying you are happy with them being put on the record because they are in the public domain?

Mr Kopecz: I have not seen those documents. I understand that they are in the public domain. I cannot verify it having not seen them, but if both those statements are true, no objection to them being on the record. If we receive those documents and we see that they are not true, or one is not true, we would not want them on the record, but I trust Claimants' explanation that they are both in the public domain and responsive.

The President: And it is because of both elements that you are not objecting to them being put on the record. I want to be clear about this because I want to avoid a situation that we get subject to a whole lot of documents that are in the public domain. That is not the position you are.
principle here. If we have a document on the record which has only been partly translated, presumably if Respondent is saying they want to translate other bits, it does not matter which other bits.

MR GLEASON: Would it be appropriate for them to do that with their Rejoinder. I am just a little confused at what parts are not translated.

THE PRESIDENT: I think we do not need to get into the detail. There is here an underlying issue of principle which is that, under the Procedural Orders, we have agreed you do not have to translate the whole document, but I think in the interests of the sound administration of justice, in the course of the procedure if another bit of the document becomes relevant, and speaking only for myself under the control of my two colleagues, I can't see how there can be an objection to putting in a translation of an additional bit on the understanding, of course, that the other side is entitled to say it is not accurately translated or whatever.

MR FORTIER: I agree with my President, but the best proof would have been to bring these witnesses, these villagers, alive to testify before us.

MR KOPCEKY: Indeed, but it was difficult to gather those 500 villagers.

MR FORTIER: You said that yesterday.

I don't want to get into a long discussion but this is a case of, from my perspective, after the evidence yesterday, a case of empty chairs. Why could you not go to your clients and say we would like to have this witness, we would like to have that witness? I am sure you considered it.

MR KOPCEKY: We indeed did, but we did what we could and we have the evidence that we have.

MR FORTIER: Yes.

THE PRESIDENT: You would like to put in additional parts of the translation. Claimant will then have an opportunity to review that translation, and indeed if there are other parts of it that you consequently consider need to be translated so we end up with a full document, I think the Tribunal is saying we are open to that procedure.

MR KOPCEKY: That is fair.

THE PRESIDENT: Probably the sooner that is done for both of you the better, so if you can have someone on your teams getting on with that translation so that the Claimants, in a timely fashion, can check the translation before it is
presumably relied upon in the closing, which might
be one moment where that would come up, given that
we have no more fact witnesses.

**MR KOPECKY:** It is handwritten, hard to
read, but we will try to send it to everyone today.

**THE PRESIDENT:** Thank you very much. Any
other housekeeping issues? No? Then let us have
Mr Gladei.

**ROGER GLADEI**

**THE PRESIDENT:** Good morning, Mr Gladei.
Thank you for joining us. My name is
Philippine Sands. I am Chair of this Tribunal. I sit
with Mr Yves Fortier and Professor Rolf Knieper.
Frauke Nitschke is our secretary. You have been
present so you have seen who is who. You are aware
of the format.

The first thing I am going to ask you to
do is to read out the expert's declaration which
should be in front of you. I understand you are
going to be mostly speaking in English, but you may
occasionally take to Romanian. Is that correct?

**MR GLADEI:** Yes. Thank you. Good
morning. Yes, with your permission I will speak in
English because I prepared the reports in English,
but if some questions will be unclear, with your
permission I will ask for the translation and for
some terms. I may want to provide the Romanian
equivalent as well because they might not
necessarily have a fully corresponding English
equivalent.

**THE PRESIDENT:** Thank you for that. If
you could read the declaration.

**MR GLADEI:** I solemnly declare upon my
honour and conscience that my statement will be in
accordance with my sincere belief

**THE PRESIDENT:** Thank you very much. Just
to explain to you the procedure we are going to
follow this morning and the Tribunal in consultation
with both parties, you will first be subject to an
examination. You will have a chance to make a
statement or have a question in relation to various
matters and then to make a presentation, I don't
quite know how you are going to proceed, but for up
to 15 minutes. We will then have your counterpart
expert come and go through the same process, and the
Tribunal is then going to invite both of you to sit
together and we will find it particularly helpful to
hear from you in a conversation with your colleague,
and the Tribunal will then have, I suspect, a number
of questions for both of you.

When we have concluded with our questions,
the parties will then have an opportunity to
question you. The Respondent will begin by putting
its questions to you in the light of what has
transpired. Claimant will then put its questions to
the counterpart. There will also be in the meantime
an opportunity for re-direct in relation to the
cross-examination to which you have been subject.
Is that reasonably clear for you?

**MR GLADEI:** Yes, thank you.

**THE PRESIDENT:** I think it is now over to
you to begin. You have your 15 minutes and it is
for the Claimants to determine how they wish to use
those 15 minutes.

Examination by Claimants

**MR HINKLE:** Mr Gladei, did you author your
expert report, Claimants' exhibit 1?

**MR GLADEI:** Yes.

**MR HINKLE:** As well as the expert report
Claimants exhibit 4 in front of you?

**MR GLADEI:** Yes.

**MR HINKLE:** If you scroll down to the
bottom of the first one, is that your signature?

**MR GLADEI:** Yes.

**MR HINKLE:** And scroll down to the bottom
of the second one, is that your signature as well,
correct?

**MR GLADEI:** It is.

**MR HINKLE:** Do you adopt all the
conclusions contained in those reports?

**MR GLADEI:** Yes.

**MR HINKLE:** Are there any quick citation
corrections you would like to make?

**MR GLADEI:** Yes. I think in the Second
Report there are some typos. On section 8.4 there
is a reference to a legal provision. It should be a
reference to a similar legal provision of the same
law. It is Article 32(2) instead of Article 20(5).

**MR HINKLE:** That is in the first sentence?

**MR GLADEI:** Yes. The correct legal
provision is, to my knowledge, as far as I recall in
the First Report in paragraph 28. It is
Article 32(2) of the same Law on the Local Public
Administration.

**MR HINKLE:** But that doesn't change your
conclusion, does it?

**MR GLADEI:** Not at all.

**MR HINKLE:** Are there any other citation
corrections you need to make?

**MR GLADEI:** Yes. In paragraph 19.4 of the
MR HINKLE: So that is point (ii)?

MR GLADEI: Yes.

MR HINKLE: Any others you need to make?

MR GLADEI: Yes. In paragraph 40 of the Second Report, the reference in 40.3, if I am not wrong, the reference should not be to paragraph 42, but to paragraph 41.

MR HINKLE: In the last parentheses in the last sentence that should read paragraph 41?

MR GLADEI: Yes.

MR HINKLE: I understand that you have a presentation here today?

MR GLADEI: I have.

MR HINKLE: Before we start with that, I want to ask you a few quick questions. There was some discussion yesterday about Claimants’ exhibit 42. This is the writ of summons for the Administrative Court from the Chancellery, correct?

MR GLADEI: Yes. It is a translation of something. It is a document addressed by the Territorial Office Soroca to the Court of Floresti.

MR HINKLE: Does this document have any legal binding effect?

MR GLADEI: In which sense?

MR HINKLE: On any of the parties? Is it a final decision of any regard?

MR GLADEI: No, not at all. It is just as it is written, a written summons, an order of the Administrative Court. It is a submission to court. It is neither a court judgment nor a decision of that authority.

MR HINKLE: Did this end up being the basis for the 2014 Floresti court decision that invalidated the dispositions?

MR GLADEI: Let me see. Yes, it is a submission to the court whereby the State Chancellery is seeking for the total cancellation of the Disposition 1-A. Yes, probably this one was the grounds for the court judgment, either the first one or the second one. Primarily the first one and then the second. As far as I recall it was the first judgment, then it was cancelled and then there was the second one in July 2014, so probably this is the document which served as the grounds for commencement of that proceeding, but that is the lawsuit. That is not the judgment, it is not substituting the judgment. It triggered the proceeding.

MR FORTIER: It is a commencement of a lawsuit?

MR GLADEI: Right.

MR FORTIER: Then the 2013/2014 decisions, they didn’t become final and bidding until the Supreme Court reviewed them in 2015, correct?

MR GLADEI: Well, in Moldova a first court judgment is not final unless expressly provided by the law. In this case the first court judgment was not either final or irrevocable upon issuance because it was properly appealed, and then, after appeal, the judgment issued in appeal in the same 2014, if I am not wrong, was further subject to appeal on points of law. We call it "recurs". "Cassation" is the other translation.

Then, in January 2015, as far as I recall, the final and irrevocable judgment was issued by the Supreme Court of Justice, and from the moment of issuance of that judgment, it has become final and irrevocable.

MR HINKLE: Please feel free to begin your presentation.

MR GLADEI: Thank you.

Presentation by Mr Gladei

MR GLADEI: Good morning, once again, Mr President, dear Members of the Tribunal. I will use my time to try to address those issues which were debated yesterday, and I had a chance to revise my presentation so I will go through some of the following matters, specifically the principles of the Moldovan law which applies, the lease recording phases, the manner of correction --

MR KOPECKY: I hate to interject, but is this on the record? We don’t have this.

THE PRESIDENT: This is an illustrative slide show that summarises what you are going to say now, and it does not contain new material. Is that correct?

MR GLADEI: It contains some reflection about Mr Rusu’s last report.

MR FORTIER: It is CH-6?

THE PRESIDENT: It is the one we were given this morning.

MR KOPECKY: We were not given it this morning.

THE PRESIDENT: I hadn’t seen it either.

I was given it half an hour ago and I haven’t had a chance to have a look at it.

MR KOPECKY: So it contains some reflections?
MR GŁADEK: It contains some opinions of mine, some comments of mine, but it is essentially a summary of the First and Second Report of mine.

MR KOPECKY: I think we reserve on that.

THE PRESIDENT: Very good. Please continue.

MR GŁADEK: Correction of entries, effects of deregistration, so-called, we refer to the dispositions, to the requirements to send the dispositions for control, and the role and authority of the mayor.

The applicable principles, to sum them up, are in front of you. Inviolability, freedom of business activity, protection of fair competition, the fact that the exercise of rights and freedoms may not be subordinated to other restrictions unless for those provided by the law.

Security, protection, fair and equal conditions of activity. The fact that investments cannot be expropriated or otherwise exposed to measures of similar effect. Proportionality, a very important new principle, in relations between state and business, I will address it later on. The fact that authorities shall not take excessive actions to meet the needs of society.

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Legality and the other principles of activity of the public servants.

As regards the lease recording phases, because I think that it was somehow mixed up in the submissions, the law is pretty clear, and specifically Article 20(1) of the Law on Registries says that registration of the object refers to the initial registration, the operation of amendments, and the deletion of the objects from the register.

The term for each of those actions are determined by the rules of keeping the register for each object of the respective register.

In our case these are the Regulation No 72/2004, and specifically these are the provisions of the law against the provisions of the regulations, so when it comes to registration, Article 20(2) and (3) is the sedio materiae, and then it is complemented by Chapter III, namely sections 12-22, including section 20 on refusal of the regulations.

Then amendment is a separate chapter. Then deletion is dealt with in Article 20(5) specifically and Chapter IV of the regulations. So, as you can see, deletion has nothing to do with registration. It is a separate phase.

Refusal in registration can happen only in certain circumstances, and certain conditions are met. First, it can happen only before registration. In any case not thereafter. In Chapter III it is called Registration of the Lease Agreements. This is where section 20 is located.

Refusal can happen only if – the law is very specific on that – there are a number of circumstances when the refusal can happen. It is specifically referred in section 20 of Regulation 72, no other grounds.

Refusal can happen at the proposal of the registrar. We haven’t seen the proposal here. The mayor cannot by himself/herself order dispose the refusal in registration. Section 10 of the same regulation says that the authorised person has the right to propose to the mayor to refuse, otherwise it cannot be done. Then the documents submitted shall be returned.

There are other allegations like ex post, retroactive, post-factum, or other similar refusals are against the principles which I referred to before. Against the rules of the interpretation of the law which I provided are, the solutions should be in the exact sense of the norm. Against the powers of the public servants, including the mayor, where the freedom of appreciation is absent, the mayor has no freedom of appreciation. It is permitted everything which is stipulated in the law.

It is not like considering in the law everything which is not prohibited is allowed. It is vice versa.

THE PRESIDENT: Or an old general international law in the famous Lotus case.

MR GŁADEK: Maybe. This is captured specifically in the book co-authored by Professor Viorel Rusu on page 26 and that is fair.

The principle of legality will also be breached in case of such interpretation, because the acts of the administrative authorities shall not contravene or exceed the limits of the law, and we refer to the law applicable, and shall not harm the rights, liberties and lawful interests of the private persons. It seems that this has happened.

Deletion of entries only have some specific conditions. Only upon occurrence of certain events, as provided by Article 20(5) of the Law on Registries. Those events are either...
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

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.

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.
They rule both to refuse and to delete which is confusing and unlawful. They fail to refer to any specific problem. They just mention generally, even if it refers to hundreds of lease agreements, which means that it is not well-grounded in a proper sense of the word, and it fails to contain the means to contest. It is said that it can be contested without indicating where and when.

Further, Disposition 1-A was requested to be repealed by the Soroca State Chancellery, it was contested by the Soroca State Chancellery, only found unlawful by that court judgment final and irrevocable from the moment of issuance of the Supreme Court of Justice judgment.

We noticed also some very strange things like there are two sets of dispositions in both cases, and we have pointed here specifically to the difference between the initial dispositions and the dispositions which were then obtained and are attached to my First Report, which is very strange.

I do not go on commenting but it is at least strange.

The same refer to the second disposition. It can be seen very easily that it has a different formatting and even in one case it is on two pages.

in the other case the same disposition. Presumably the same disposition is just on one page. I cannot explain this, but this is casting reasonable doubt again on how this disposition was issued, and whether it is lawful or not.

Whether they should have been sent for control. Yes. I refer here to the applicable legal provisions which I referred to in the report, and then I notice that Professor Rusu is trying to argue that they were not be sent to the mandatory control because it was instituted in 2007 based on the Law on Decentralisation. No. The registries were created in 2004 under the then applicable rules, which means that the rules instituted by the Law on Administrative Decentralisation starting from 1 January 2007 do not apply retroactively, do not apply to the legal situations emerged under the previous Law of Lease in Agriculture of 2003.

The last one is about the role and authority of the mayor. There was some debate yesterday. To cite the applicable legal provision, the mayor is the head of the local public administration. He is the representative authority of the population. He is obliged to comply with all of the laws, including the international treaties.
MR RUSU: Yes, I confirm. They are in front of me. I have two reports here in the Romanian language: May 12, 2017, and the Second Report was written in November 9, 2017.

MIRKO KOPECKY: Thank you, Professor.

I notice there are some translation discrepancies with your Second Report. Would you kindly clarify those?

MR RUSU: Yes, indeed, you are right. The lawyers of the Respondent told me on the phone that there were questions about the translation into English, and I accepted when it comes to point 56 –

THE PRESIDENT: First or Second report?

MR RUSU: Second Report, in the Second Report, it is about transfers to the local budgets, because in the Romanian language this is not specified.

Now for point 73 in the Second Report, I accepted the deletion in the English language, the administrative units with a special status, because that referred to Gagauzia and it is not relevant for our case.

THE PRESIDENT: I am reading it and I am not sure what line it is you are referring to and what words could have been – it may be nothing turns on this but since you have mentioned it let’s make sure we have understood correctly what it is you are saying. I have got in front of me the English text at page 19, paragraph 73. I think that is the one you referred to? There is three lines down under Article 61(1), is that where it goes?

MIRKO KOPECKY: I think the issue in the translation is actually shorter than in his original report, that is paragraph 73, and he is explaining why. If you look at the translation, paragraph 73 –

MR RUSU: If you allow me just a remark for Article 61, for the brackets, the parenthesis, and the suspension points. The suspension dots, I will try to explain. Activity of authority of local public administration of first and second level and on this point there is one omission.

THE PRESIDENT: Understood.

MR RUSU: Under point 84, that is about the law about complaints and petitions –

THE PRESIDENT: Of report 1 or 2?

MR RUSU: We are talking about the Second Report. I added between brackets the trade unions as a relevant example when they represent persons or groups of persons in accordance with the Law on Retirement, which is quite clear in the sense of our legislation, and I gave this example. The trade unions represent a group or a community.

MR FORTIER: So do we delete that? The "(eg trade unions)"?

MR RUSU: No. It was introduced in the English version for the sake of clarity.

PROFESSOR KNEIPER: Does that mean it is not in the Romanian version? It is only in the English version?

MR RUSU: Yes, only in the English version.

THE PRESIDENT: So it is not a translation. It is in effect an addition?

MR RUSU: It is more concrete for the English version for the sake of clarity. Because we wanted to be more specific we didn’t add legal analysis, nothing of the kind.

THE PRESIDENT: Thank you, Professor.

MR KOPECKY: Professor Rusu, in your First Report, paragraph 12, you write that the registration of agricultural lease agreements serves a declaratory purpose. Could you please clarify that?

MR RUSU: What refers to the registration of the lease agreements, I was trying to explain the purpose, why this is important, and I want to draw your attention upon that. In the legislation we have the public domain and the private domain, and they are interwoven.

I underscore the fact that the registration has a declaratory purpose in the sense that it pursues an advertising purpose and it does not affect the obligations and the rights of the parties to the contract. In other words, the contract terms stay valid, and they cannot be affected because this is a totally different domain.

That is the private domain.

The validity and other things discussed there is at the discretion of the parties and in accordance with the applicable procedures.

MR KOPECKY: Thank you. You also mention the term "opposability". Could you explain the meaning of this term?

MR RUSU: Yes, indeed. In the analysis of the questions asked I have to say that the legislation does not contain the term "opposability". We have the term "inopposability" in paragraph 5 in the law concerning Lease in
1 Agriculture, but this opposability was necessary to be introduced for the sake of the declarative aspect of the document, but the legislation under Article 10(5) uses only opposability related to the third parties. Third parties can be public authorities as well.

MR KOPECKY: With respect to third parties, could you please tell us whether unregistered leases are opposable or not opposable against third parties acting in bad faith?

MR RUSU: I would like to draw your attention upon the fact that what relates to opposability, this is about the good faith of the parties. One cannot invoke that opposability that if one of the parties is ill-faithed, this is a key moment that is making the difference, the distinction between those aspects. In other words, we have to have in mind the good faith of the parties, which is examined in another part of the document.

MR KOPECKY: Is that a principle of civil or administrative law?

MR RUSU: Well, let me tell you that in the law concerning Lease in Agriculture there are norms of public law and norms of private law.

 discretions are only used as a sanction to discipline the parties and make them register the lease agreements with the City Hall. As concerns the good faith of the parties, this is a matter of civil law, civil legislation and other aspects.

MR KOPECKY: Thank you. Could you please describe the function of the registrar that has been mentioned? Well, first describe the function of the registrar, please?

MR RUSU: The functions of the registrars are provided for in the law concerning the Lease in Agriculture and in the regulation concerning the registration of the Lease in Agriculture. This is about a government decision, which is a document subordinated through the law. In other words, it substitutes the provisions of the law concerning the Lease in Agriculture, which is the special law that analyses and sets out the relations between the parties.

In that particular decision we find the rights and, if necessary, other things such as point 9, the rights, the duties, the obligations, the responsibilities. It is not called a registrar but it is called an empowered person, if I remember the regulation correctly.

Dispositions 1-A and 2 based on a reasonable interpretation of the law?

THE PRESIDENT: That is 4.2. Are we on the Second Report or the First Report?

MR RUSU: Honoured Tribunal, can I be more concrete? If you look at the summary of the conclusions, you envisaged the second question, right?

MR KOPECKY: I do apologise, Prof Rusu. The Tribunal is of course correct. We are talking about 4.2 of your First Report and 3.2 of your Second Report, but the question is the same.

MR RUSU: Let me say that in the course of my report I just formulated a reasonable interpretation of the law, and I will submit to the Tribunal my reasons, or the reasoning interpretation of the law, what I meant by that.

I started out from the function and activity of an administrative body, which is the mayor's office and I stress that it is conducted by the mayor. The responsible person of this executive body is the mayor. Obviously I could not analyse only the functions of the empowered person or entity, as you said, in order not to cause any confusion and, as the attorney of Respondent said, I
analysed both the functions of the registrar and the
functions of the mayor, because we could not examine
only one side of the functions of the registrars
without doing the same with the functions and role
of the mayor for the respective activity.

Let me stress the fact that this control,
or this audit, is permanent, and here we can say it
is either prior to, or can be simultaneous with a
registration or opposed a registration because the
mayor or the registrar cannot be there all the time.

That is why I exceeded the existing
functions of these authorities and the facts of the
deeds that were performed by them. I examined as an
expert these functions that derive from the fact
that the mayor sometimes, you know, he is not an
expert in justice, he is not a justice person. The
level of competence of these authorities is not that
high. On the other hand, the registrar has only
technical knowledge, technical expertise, related to
cadaster, for instance. Therefore, I concluded that
that was a reasonable interpretation of the law
hence the formulation.

MR KOPECKY: Could the mayor deny
registration of all leases by issuing a single
disposition?

MR RUSU: It was not very clear for me.
What do you mean by functions? You take into
consideration several contracts --

MR KOPECKY: I think we are having
translation issues throughout this examination, but
I would like to rephrase it and maybe ask the
interpreter to focus on the words.

Can the mayor deny the registration of all
multiple leases by issuing a single disposition?

MR RUSU: Yes, it is clear now.
This is related to the object of the
application. If there is a package of applications,
then as to this petition he has not the right to
divide it. The mayor must examine it in its
entirety, because this request coming from the
petitioner is coming, so it is possible.

MR KOPECKY: If the request is coming in
bulk?
MR RUSU: Yes. Yes. For instance, this
request has an annex of ten contracts, then you
cannot issue a disposition for each one of them and
there is an economic activity or a private activity,
and in accordance with the legal provisions the
local bodies as well cannot be in the middle of some
private activity locally.
In my appreciation of the law, and I would like both, whoever wants to reply first, I have the impression that there are three levels of different legal relations. One level are private law leases between the Claimants and landowners. The other level are also leases, this time not between the Claimants and the landowners but between Bio-Alianta and landowners. Both these, in my appreciation, levels belong to private law relations. Then there is a third level, and that is the level where public officials on a different level exercise public authority. Would you see these three levels like I do? Is that a correct appreciation of the complexity of the case that we are dealing with here? Mr Gladei, perhaps we start with you?

MR GLADEI: I do agree that there are both elements of private law and public law. Indeed, the relations between the parties, both between the Claimants and the lessors, between Bio-Alianta and the lessors, are governed by the private law. And, on the other side there is a public law element when it comes to the registration of those leases.

PROFESSOR KNEIPER: Professor Rusu, what is your answer?

MR RUSU: Yes, indeed. In my report I mentioned that there are private issues. Let me stress that as regards the contracting parties, in simple terms, starting from simple principles, because these are private entities, and of course we envisage civil law private law but, as to registration, that is a public element. Let me confirm if you have noticed from my expertise, I also worked as an expert for the Foundation of the Fiscal Code, and when we talked about registration up to three years the lessor/lessee contracts by the authority of the mayor's office, this regards administration of taxes for assets. Why do I want to explain this? Because with these contracts it is very difficult to identify the person or the entity from where we levy the tax. The lessor will say that he does not own the land, and vice versa, and the lessee will say that he is not the legal landowner, and then he will, well, just transmit that to the lessor.

PROFESSOR KNEIPER: Let us then go to the first level, the lease contracts. Are we in agreement between all of us that these lease contracts have specific private law elements and requirements to be valid? Go ahead, Mr Gladei.

MR GLADEI: As regards the essential clauses of the agreement, Moldovan law says as follows, and this is Article 679 from my memory. There are essential those elements which are expressly referred by the law which are arising out of the nature of the agreement, or which are agreed upon by the parties.

PROFESSOR KNEIPER: What are these essential elements? Would you say, for instance, price is one of the essential elements for the validity of the lease?

MR GLADEI: It depends on the agreement. So as regards the lease, the elements are set both in the Civil Code. There is a special chapter on agricultural lease. Not only on the lease, so the structure is like this, there is a general chapter on the leases, and then there is a dedicated subchapter, let's put it like this, as regards agricultural leases. This is deemed to be a special area which has enjoyed special regulation. Second, there are a number of provisions in the Law on Agricultural Lease which refers to the essential elements, essential clauses of the agricultural lease. So putting them together,
1 lease is also provided as a condition.
2 PROFESSOR Knieper: The short sense of your long answer is that the fixation of a price, of a rent, is an essential element for the conclusion of a rent contract?
3 Mr Rusu: Yes, if the parties convened to that.
4 PROFESSOR GLADE: The template of the lease agreement is by no means setting the essential elements of the lease agreement.
5 PROFESSOR Knieper: I didn't ask you about the template. I simply wanted to know under general Moldovan law whether a valid conclusion of a contract depends also on an agreement of the price in contracts for money? That is a general, general question.
6 Mr Glade: I answered the question, but --
7 PROFESSOR Knieper: You answered the question and said yes. Is that right?
8 Mr Glade: Yes.
9 PROFESSOR Knieper: That is all I wanted to know. We come back to the other elements a little later, because now what I want to do now is come to the question of writing. Is the written

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agricultural land, is that an essential element to fix the rent?
2 Mr Glade: As far as I recall, and now I had the chance when you checked the translation issue, it is.
3 PROFESSOR Knieper: Mr Rusu, would you confirm that?
4 Mr Rusu: Indeed, as to the mandatory binding conditions, they were not within the limit of private law.
5 I must draw the Tribunal's attention to a more specific matter, but I will refer to the general aspect of the law. We must start from the provisions of the Civil Code, the civil law. Let me say it simply now from what I have here.
6 In the decision of the Government No 72 of 13 January 2004, governmental decision regarding implementation of the rent agreement in agriculture, there is an annex, annex 1, which includes the model agreement for renting land, for lease. This says that the authorities were willing to help, to give assistance to the locals. The landowners did not have legal knowledge. In this model of the agreement, chapter 1 provides the term of "arrenda" in Romanian which means lease, and payment of the

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1 a valid lease agreement?
2 MR GLADEI: I didn't want to say that.
3 What I said is that both are relevant: first the
4 essential elements, and, second, the signature
5 PROFESSOR KNIEPER: I repeat my question
6 Do you want to say that the signature of a lease
7 agreement is -- well, if you don't want to hear the
8 word "element" -- necessary to validate the
9 contract?
10 MR GLADEI: Yes, even if not an essential
11 clause, the signature is necessary.
12 PROFESSOR KNIEPER: Is needed?
13 MR GLADEI: Yes.
14 PROFESSOR KNIEPER: Mr Rusu, would you
15 confirm that?
16 MR RUSU: Yes, I do confirm because if
17 there is no signature you may wonder who is a party
18 to the contract.
19 PROFESSOR KNIEPER: What is the
20 consequence of the lack of signature, Mr Gladei?
21 MR GLADEI:Generally or specifically as
22 regards lease agreements?
23 PROFESSOR KNIEPER: In our context.
24 MR GLADEI: The contracts which need to be
25 in a written form are deemed null and void in the

2 cases provided by the law if it is not in written
3 form, meaning if the signature is not applied. As
4 far as I recall, this is mandatory here as regards
5 the lease agreement, which means that without the
6 signature the agreement will be deemed as not
7 concluded in written form and thus null and void
8 PROFESSOR KNIEPER: Mr Rusu, would you
9 agree to that?
10 MR RUSU: I would like to refer myself to
11 point 20 in that particular regulation. It is
12 written there that they check that point in the
13 lease agreement. You have to indicate the address,
14 name and surname, and at point 20 --
15 PROFESSOR KNIEPER: Let us stick to the
16 questions and then let's come to other points after
17 these questions, right?
18 There was a certain disagreement between
19 the two reports of yours where, as one of the
20 experts said that the signature has to be made
21 simultaneously or not simultaneously. Mr Gladei,
22 what is your opinion on that point?
23 MR GLADEI: The signature shall not
24 necessarily come simultaneously.
25 PROFESSOR KNIEPER: Professor Rusu?
26 MR RUSU: Well, the question is not quite

1 contract is before a notary it has to be
2 simultaneous. That was your opinion?
3 MR GLADEI: Yes.
4 PROFESSOR KNIEPER: You say it would be
5 better if also non notarial contracts would be
6 signed simultaneously but this is not a legal
7 requirement. Is that a correct interpretation of
8 what you are saying?
9 MR RUSU: I never referred myself to legal
10 requirements. I said what would be the most
11 reasonable thing to do by both parties
12 PROFESSOR KNIEPER: Okay, reasonable, but
13 not necessarily illegal. When I sum up my question
14 so far into a statement which I will present to you
15 and I ask your opinion whether my conclusion is
16 correct or not, all contracts which were before us
17 here which had the signature of both parties to the
18 piece of land, given simultaneously or not, would at
19 least fulfill the requirement of a valid written
20 form. Is that correct?
21 MR GLADEI: That is correct, at least.
22 PROFESSOR KNIEPER: Professor Rusu?
23 MR RUSU: As concerns the contracts, the
24 agreements, I will give you an example.
25 PROFESSOR KNIEPER: I just want to know,
1. we have a number of contracts, a little more than a thousand. Some of these contracts have been signed by both parties. Some of the contracts have been signed by one party. My question was very simple: The contracts that we have before us that we have signed by both parties, even not simultaneously, would at least fulfill the requirement of written form. Is that correct? This is my question, Professor Rusu. Would you say that is correct?

2. MR RUSU: I don't think you are right.

3. How was the written form met without signatures?

4. The written form between who and who?

5. PROFESSOR KNIEPER: Perhaps we have a translation problem. My question was whether the contracts that were before us and had been signed by both parties and by each time another landowner, whether all these contracts which had been signed by both parties to these agricultural leases at least fulfilled the requirement of the written form? That is the simple question.

6. MR RUSU: No, I don't think so. The written form should be taken in its entirety. Some elements should not be missing, such as the signatures.

7. PROFESSOR KNIEPER: That was not the question I asked. I asked whether the signature which is on the page fulfills the requirement of the signed contracts, and by this token be at least fulfilling this requirement of written form, even if not simultaneous?

8. MR RUSU: The signature should be affixed when the contract is examined. Everything else depends on the will of the parties. The contract should have a signature.

9. PROFESSOR KNIEPER: The contract should have a signature. Both? Two signatures?


11. PROFESSOR KNIEPER: Now, the contracts which were before us that were not signed by one of the parties, were these contracts then null and void? Mr Gladei?

12. MR GLADEI: Yes.

13. PROFESSOR KNIEPER: Mr Rusu?

14. MR RUSU: Yes. It is null and void because it is the written form.

15. PROFESSOR KNIEPER: Now the next question is the registration which comes later, after the submission of all these contracts, signed and unsigned to the registrar, or the empowered person,
1. particular aspects, namely that the public
2. authorities cannot interfere with the private
3. relationships.
4. PROFESSOR KNEIPE: 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 KNEIPE: 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 KNEIPE: 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

I confuse too many things, with another example.
1. I know a policeman in Moldova. He is a friend of
2. mine and I tell him -- you smile because one cannot
3. be friends with a policeman?
4. I could not use the German example either
5. because you can't really be friends with a German
6. policeman either.
7. Let's say a Romanian policeman. I am
8. friends with a Romanian policeman and I ask this
9. policeman, "Can you buy me a car? Can you act for
10. me to buy me a car?" Could he do that?
11. MR GLADEI: It depends on the capacity in
12. which he or she is acting.
13. PROFESSOR KNEIPE: Yes, but I ask as a
14. friend, and in his profession he is a policeman.
15. MR GLADEI: It does not matter. Your
16. friend can be either a policeman, lawyer or anything
17. else. If he is a friend of yours and he is offering
18. you a service, why not?
19. PROFESSOR KNEIPE: He would act as my
20. agent, right?
21. MR GLADEI: If it is friendship, it does
22. not necessarily mean it is an agency.
23. PROFESSOR KNEIPE: Yes, but let's say it
24. is for a token remuneration to make it more
25. realistic.

MR GLADEI: If you offer him a glass of
3. wine it might not be remuneration.
4. PROFESSOR KNEIPE: 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 KNEIPE: 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 KNEIPE: 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
MR GLADEI: Not at the same time.

PROFESSOR KNIEPER: Consecutively, of course.

MR GLADEI: Okay. Let's say if he has a working schedule, say from 8 o'clock to 12 o'clock he is working as a cadastral engineer, then he has his own personal hour for rest, and then during that hour he can either eat something or he can help anyone else to do anything else, so that is not prohibited, unless it creates a conflict of interest, which is where he would be prohibited.

PROFESSOR KNIEPER: That is not really our point. We do not want to sanction the cadastral agents for having helped the parties to fill out these 1000 leases. The only thing I wanted to know is that a cadastral agent can also, let's say in his free time, in his lunch break or whatever, help one of the private parties to conclude a private contract, execute a private contract?

MR GLADEI: Not to conclude, not to execute. Let's say to assist, to help him, to support him, anything else which relates to the simple help.

PROFESSOR KNIEPER: That is excellent.

That would not be considered an exercise of public authority?

MR GLADEI: No.

PROFESSOR KNIEPER: Mr Rusu, would that be your opinion also?

MR RUSU: Yes. I would only like to say that if in the Republic of Moldova the clerks and the officials' salaries in general are very low, up to a maximum let's say 200 EUR per month, obviously officials, besides or outside their official jobs, also look for other jobs in order to survive. Yes, it is possible.

PROFESSOR KNIEPER: I understood the double meaning of this. Of course very low salaries lead to difficult behaviour.

MR GLADEI: It brought me to the other potential situation when he is bound, when he is compelled to do this by his, let's say, superior.

That is another situation, because when you turn to exercise of the public authority, if he is directed, pressed, or imposed, required -- whatever the word is -- to do that, that is another situation. It is not at will. If it acted forcefully, if it acted under pressure, that is another situation.

PROFESSOR KNIEPER: That would be another private law contracts? That was the question.

MR GLADEI: Yes, subject to the remarks I made. First, if it is not a conflict of interest.

Second, if there is no undue pressure, let's generalise it.

PROFESSOR KNIEPER: Yes. Let's go to the other question, to the famous dispositions, and to the process that followed after the dispositions.

Mr Gladei, you said that at the bottom of the disposition there is a sentence saying that a person which does not agree to this disposition can go to court and have remedies, and you say this phrase is not precise enough.

MR GLADEI: A very good point.

PROFESSOR KNIEPER: You say it is not valid. Is that correct?

MR GLADEI: It is a good point. It doesn't say it should go to court. If it would have said that, that would at least this, and also the term for appealing, and that is why we have included in the First Report some references to the other judgments, decisions, and other acts which expressly provided for the correct means of appeal, or means of contestation of that decision.

My answer is, and my point was, that...
merely saying that the parties communicated that it has the right to contest in accordance with the legal provisions is not enough, it doesn’t serve the purpose of the free access to justice, of the right to defence, the constitutional right to defence which is developed by the commentary to the Constitution as the right of self-defence. The person needs to know where to go in order to self-help in order to self-defend. So these kind of acts should say where the person should go, when, in which timeframe the person should go, at least.

Professor Knieper: And if it is not precise enough you would say this is one of the elements why the disposition is illegal?

MR GLADEJ: You could say, but my point is that in this instance it prejudiced the access to justice. It prejudiced the right of the defence, Article 24 of the Constitution.

Professor Knieper: Mr Rusu, what is your opinion of that particular point of the last sentence? I am trying to find the reference.

MR RUSU: This disposition, if we look at it from the legal point of view, we, as experts, is rather faulty because it is not very clear, very precise. If we examine it from all aspects, that is the functions and role of the mayor, for instance, the authority, and given the fact that at the level of the local public administration the mayor is an elected person -- he can be a musician, he can be a sports teacher by profession -- and only in big cities does it happen that the mayor is also a legal expert or a magistrate in some way. If there is no expert -- excuse me, I am speaking about a secretary -- so if there is no expert for that job for which a certain level of education is necessary, I believe that the people who comply with a respective job have passed the level of contestation, and the way to attack or appeal will belong to the person in question who is free to appeal to the expert, because there are several stages of appeals.

Yes, I do think that it is faulty, the phrasing of this sentence, but because the Mayor is not an expert in that field, he would do the following in practice. He would take the text of the law and copy and paste it into the respective document disposition.

MR GLADEJ: I will make reference to the Book of Administrative Law co-authored by Mr Viorel Rusu, which says precisely when it comes to the requirements toward the administrative acts on page 168, and I think we referred to this in our reports, that the administrative act should be first legal, issued in compliance with all legal provisions; second, fundamented, can be translated as well reasoned, well reasoned meaning to include all of the elements so that -- let me cite, I am trying to translate -- "as long as its content represents a unilateral expression of will with the imperative character, with the mandatory character, of the public authority (the addressee cannot remain absent). From this perspective the act can be rational and logical", which means that the purposes, legal effects which would be produced should be clearly indicated and so on.

Second, the fact that the mayor is not a lawyer does not mean that the mayoralty, or the mayor's office or the City Hall does not have lawyers. They necessarily have specialists, and it is customary, at least in our practice, I would say it is widespread, it is an overwhelming situation, that no public officer, no public official will issue any document before it is seen, it is scrutinised, it is opined by a lawyer. This is an expected behaviour.

This behaviour will be in compliance with Article 5 of the Law on the Public Service, which we have referred to, asking them to be again in compliance with the principle of legality requiring the well ground and this will adequately ensure the protection and exercise of the private person's rights. So even if he is a musician or a former policeman, it doesn't mean that he should be right in reason.

Professor Knieper: Mr Rusu, you both quote from the same book, I have the impression!

MR RUSU: Yes, honourable Tribunal. Thank you, Mr Gladej, for making a reference to my own textbook, but this cannot be torn into separate pieces as regards the normative acts. We did not manage to pass onto individual acts, and in the university I understand that now it is very important for our state -- I am referring to level 2 of education, Master's degrees -- only recently did we introduce the chapter on normative acts, and we make mention of the fact that what regards individual legal acts, the instructions and provisions are much more simple, because if we are to apply and comply with them, the administrative authority will have to do extra work in order to...
1. comply with them, and they will not be able to comply with the current issues.
2. I don't know whether the translation is complete of what I said. I spoke very quickly the speaker says.
3. Anyway, we have to provide what the concrete decision of the government is or stipulates in this respect because they say that there is a way to appeal.

**PROFESSOR KNIEPER:** Let me ask the other question, because you have given already partly an answer to the question that I want to ask now, but perhaps it is not complete. You have translated the Romanian word "motivata", and since I speak Italian I understood what "motivata" could mean, into you said "well grounded", and you, Mr Rusu, said "reasoned". Do you see a difference in this translation? Is "well grounded" a better translation of "motivata" than "reasoned"?

**MR GLADE:** Not necessarily. "Reasoned" is also probably an appropriate term. What is more important is the content, the essence of this meaning and, as we said, (?) will not suffice. It is not enough when it comes to refusal, let's say, refusal and deletion, if you refer to these dispositions, because it refers to hundreds of lease agreements. It is not enough at all to say that they are not in compliance with the legal provisions, or even to say that they are struck by absolute nullity. As I said in my presentation, the mayor is not the judge. It is only the judge to find this and to determine this, that are indeed struck by absolute nullity. It is not enough just to say that some of the elements are missing. There are, as you notice as regards the signatures, different situations insofar as different contracts are concerned.

What the Mayor has done is not even a pattern argumentation. It is just laying down a couple, in my understanding, because I have seen many documents like that, and you have seen the Floresti court judgment. Maybe it is not ideal, but it contains the reasoning. It gives the party the possibility to understand why they were addressed, not to say punished this way.

**PROFESSOR KNIEPER:** Thank you. That is already in your written statement. Mr Rusu, do you want to elaborate a little on the difference between "well grounded" and "reasoned"?

**MR RUSU:** Maybe this is an element of translation or equivalence. For me it is not very clear because, if we speak about the disposition here under discussion, what regards contestation is the resolution proper, what decision was taken, but partly motivation does exist within the disposition. The motivation is only displayed there or mentioned. Did you refer to that? For me in the resolution part where the decision is taken there cannot be any motivation there. The motivation regards the content of the disposition, the reasoning.

**PROFESSOR KNIEPER:** That brings me to the next point. You have disagreement on that point and I wanted to understand your disagreement a little better. You say that the dispositions had to be sent to the State Chancellery, and you insist on the word "sent". On several occasions you say "sent" to the State Chancellery. Is it correct that this word "sent" means for control? Or was it a necessary step for these dispositions to enter into legal force to be approved by the State Chancellery? Or is it simply a submission that I send you by registered mail this document? What is it?

**MR GLADE:** It is part of the control. This requirement is instituted in order to ensure the State Chancellery to exercise the administrative control.
1 of administrative act within the administration. A person who feels prejudiced by an administrative act first goes to a higher administrative instance to object to the initial act, and it is to the higher administrative instance to validate or to invalidate the act. Is that the same that you have described in your report?

MR GLADEI: Not exactly. The prejudiced person, who considers himself or herself prejudiced, can either go to the State Chancellery, seeking for this administrative control, but this is not impeding him to go directly to the court.

PROFESSOR KNIEPER: That is enough, Mr Gladei, because I am reminded that I have to hurry up. Mr Rusu, would you agree with that? That in Moldova a prejudiced person has the choice to either go to the higher administrative authority or directly to the court in a certain period of time, right?

MR RUSU: For me maybe the translation is not clear, but let me give you an example. The optimal way, the optimal path, I would say, which is that the prejudiced person addresses the issuing authority, and then the person goes into the litigation administrative body, or they go to the Chancellery, but it is the Chancellery which decides.

MR GLADEI: There is no such legal provisions on optimal versus nonoptimal. It is up to the person, depending on all the circumstances of the case. This might be a theoretical concept of optimal or nonoptimal, but we probably cannot now elaborate on this.

PROFESSOR KNIEPER: The next question is the following: you both write in your report that if an aggrieved person wants to go either to court or to the administrative hierarchy, he has to do that in a certain period of time. You both say that it is 30 days. When does that start to run, this period of 30 days? To be more specific, because we talk about this case, when is it not officially notified to the person?

MR GLADEI: When the person is notified.

The person has to be notified.

PROFESSOR KNIEPER: But he was not notified, and still we have a valid administrative act. When does his obligation to go to either the court or to the Chancellery start to run?

MR GLADEI: I cannot speculate but only refer to provisions of Article 32(3) of the Law on Public Administration which says that the disposition with the individual character become enforceable only after they are notified to the person concerned. They do not exist before that, so the person does not exist as regards -- well, they are not enforceable -- I stick to the legal language -- so the person cannot exercise any of those two ways.

PROFESSOR KNIEPER: But now the person receives an administrative act, for instance, a parking ticket, and I don't do anything, and then one day I have to pay the parking ticket, and the authorities come after me and they make me pay. You say if it is not notified, the administrative act is completely null and void and not enforceable? Is that what you say?

MR GLADEI: I quoted the legal provision.

It says it is not enforceable until communicated, because the person aggrieved does not know about that.

PROFESSOR KNIEPER: But if he knows about it?

MR GLADEI: It should be communicated.

PROFESSOR KNIEPER: Officially?

MR GLADEI: Officially.
PROFESSOR KNEIEP: After a year, meaning that about a year after the issuance of Disposition 1-A, I think Mr Tugui wrote a letter to the State Chancellery saying look into the legality of Disposition 1-A, that would be perfectly okay?

MR GLADEI: Yes, and if you will allow me to elaborate, I will refer to the same provision of Article 32(3) of the same Law on Local Public Administration, and Article 67 which refers to the control required by the prejudiced person, which is saying that the 30-day term starts accruing after the date of publication -- probably this refers to the normative acts -- or communication of the act. Where communication under Article 32(3) is an active obligation, they should be brought to knowledge, they are brought to the attention.

You cannot just drop them in the mailbox and say you know it, you are presumed. There is no such presumption in Moldova. Just by way of example, there was such a presumption instituted in the Law on Mortgage back in 2009, saying that if the notification of mortgage enforcement is not received, then it is deemed received and elapsing seven days, and this was declared unconstitutional recently.

PROFESSOR KNEIEP: Mr Rusu, what is your opinion on that?

MR RUSU: Let me specify my question again. We have Disposition 1-A and Disposition 2, and these two disposions are never officially communicated, as you describe it, to the Claimant. Does that mean that they never entered into force and there was never a period starting to run for the Claimants to go to court, or to the Chancellery, when they had knowledge of these documents?

Did you understand this question?

MR RUSU: We have to clarify a few things here. As indeed the legislation and not necessarily the administrative legislation, it is the same for the local authorities and the central authorities, does not provide for the clear-cut mechanisms of notifying someone about something. Indeed, the person can be notified of something and asked to sign for the reception of that notification, but the person notified might claim that they never received the notification.

PROFESSOR KNEIEP: In our case, Mr Rusu, here we have been told -- and that was not contested as far as I have seen it -- that these two dispositions were never in any official way communicated to the Claimants. They simply took knowledge of these two dispositions in court proceedings that concerned a different matter.

MR KOPCEKY: That was not uncontested.

PROFESSOR KNEIEP: I am very sorry.

MR KOPCEKY: Just for the record.

PROFESSOR KNEIEP: Of course. Thank you.

MR RUSU: Just to make a few things clear,

I am not aware of the proceedings. I am not an expert. You checked all the facts. Do you have the whole picture, the whole sequence of the moments? If you do, we can talk. Because you excluded the fact that the addressee did not want to hear about the notification in ill-faith.

PROFESSOR KNEIEP: In Germany you could get a parking ticket and the policeman would simply put it on the windshield and that would be enough to be communicated. Would that be enough to be communicated in Moldova, a parking ticket under the windshield or not?

MR RUSU: The most efficient thing is a registered letter to the person fined.

PROFESSOR KNEIEP: Let's talk about the case. It simply didn't happen. At one point in time the Claimants knew about these dispositions but they were not received.

MR GLADEI: It is about the burden of proof. If the person which is believed to be prejudiced made the request and the other party, be it the court, be it the State Chancellery, would say you have omitted the term, you would have to prove that indeed it was not brought to the knowledge, let's say, of the person.

So the law indeed does not necessarily say it should be sent by registered mail. It is normally how it happens through the registered mail, this is customary, but if there are other compelling evidences, like in the case of the car ticket, probably they will make a picture, they will argue this in court, when I received this letter I paid it immediately in order to prevent any dispute, but indeed it should be communicated, so it is not enough.

PROFESSOR KNEIEP: Let's take our case. Mr Grot comes back from the United States by the end of March 2011, and he has a meeting, and at this meeting he has the dispositions. However he found them -- it is a disputed matter whether it was officially or not officially communicated -- but he has them in his possession and discusses these.
dispositions with politicians. Would that then
trigger a period from which time on he would have to
go and fight these dispositions, or would it be
ever not to do anything? 
MR GLADE: It depends on the
circumstances but, put to plainly no, it would
not be sufficient. First because, as far as
I understand, he is not the administrator of
Laguardia.

PROFESSOR KNEPER: He was. This point is
clear.

MR GLADE: He was --
PROFESSOR KNEPER: All the administrators
had these dispositions by the end of March
MR GLADE: No, I mean administrator in
the sense of the person who is registered in the
registration chamber.

PROFESSOR KNEPER: Well, all the
officials of Laguardia had this disposition by the
end of March.

MR GLADE: There's not all of them.

PROFESSOR KNEPER: And that one had it
also?

MR GLADE: That is the first one. The
second one, how he or she got to have the notice
disposition should be relevant, because once again
it is the active obligation, the positive obligation
of the authorities, to communicate the document to
the parties, either by registered mail or through
the bailiff. Moldovan bailiffs are offering private
services because they are private agents, and you
can go joined by a bailiff and document the fact of
receipt or refusal to receive the document

PROFESSOR KNEPER: Every parking ticket
in Moldova is distributed by a bailiff?

MR GLADE: I didn't say that. I said it
would be prudent for the purpose of the burden of
proof.

PROFESSOR KNEPER: Yes, of course, but it
is not a matter of validity. Unfortunately the
parking ticket is valid, although it was not
delivered to me by the bailiff, but I could say
I didn't find it because the wind blew it away

MR GLADE: And they would show you the
picture and then it would be up to the judge to
decide whether the picture is in evidence.

PROFESSOR KNEPER: Mr Rusu, the
administrator of the Claimants had these
dispositions in their hands at a certain period of
time. From that period of time of positive
knowledge of the dispositions, was there an active
duty to go to the Chancellery or to the court within
30 days, or did this period never start to run?

MR RUSU: I would like to make some
comments to what Mr Gladei said. I would like to
draw the attention that the legislation does not
specify the way this notification is going to be
made. It is obvious that it has to be made in a
reasonable way. For example, the bailiff is not
appropriate in this particular situation because the
mayor and these people who are executing the orders
are private people -- please allow me to just finish
my sentence, because I would like to have fair
treatment here.

I would like to draw the attention that
this notification has to be done in a reasonable
way, but once the party has knowledge of this
notification, they have to act, if I may say so, in
an active way, so they can defend their rights, and
that is natural, so they would have had the right to
request from the town hall.

PROFESSOR KNEPER: That is why I wanted
to ask the question differently. We know that at a
certain point of time these dispositions were in the
possession of the administrator of the Claimant.

Was that a point in time where the Claimant had to
start complaining or objecting, either with the
court in the period of 30 days? Does the period run
from the moment of positive knowledge, or does it
only start to run when the document is delivered by
a bailiff or by formal notification with signature?

MR RUSU: There is no clear specification
when exactly this acknowledgment -- it is not
defined, the date of the acknowledgment.

Hypothetically I could say this: Possibly a
disposition or a draft disposition had been seen,
and not the real document, so in this case I would
have had to go to the town hall. We can just talk
hypothetically, but we need to see what exactly
happened in the real circumstances.

THE PRESIDENT: The court reporters need a
break. Mr Gladei, finish what you were going to
say.

MR GLADE: I feel it necessary
(interruption in sound) active reaction from the
citizen or another private person, meaning to try to
seek for, to request for, any administrative acts
which might concern this person. That would be
abusive interpretation. That would be against the
THE PRESIDENT: Let us now break until quarter past twelve. Thank you.

Mr Rusu, Mr Gladei, I should have mentioned, no conversations between the experts and the parties or anyone else.

(Short break from 12.04 pm to 12.16 pm)

THE PRESIDENT: Professor Knieper?

PROFESSOR KNIEPER: One last question. We are on the State Chancellery now and we have something which the State Chancellery calls a writ of summons. Yesterday in his examination of Mr Grot, Mr Gleason said that this piece of paper, C-42, when he asked Mr Grot, was the first decision of the State Chancellery issued in favour of your position. Today I heard you saying that this was not at all a decision. Why do you say that it was not a decision?

MR GLEASON: Can I correct the record? My position yesterday was that this was not a decision comparable --

PROFESSOR KNIEPER: I read your phrase now from the transcript.

MR GLEASON: Comparable to a court decision. That was the phrase. I said this is a
determination. That is why I came to the second idea that if it were binding then the local authority would say okay, I have to cancel it. Still, the local authority, being an autonomous power, they might say no, I believe it is legal, and I will not cancel it, and it seems this is what happened in this case.

PROFESSOR KNIEPER: Then it goes to court.

MR GLEADE: Then the State Chancellery has the right to resort to court to defend the position that it is unlawful.

THE PRESIDENT: In the period after which it is issued and before it reaches, let's say, the local municipality, the mayor's office, whoever, and then goes to the court, what is the status of the underlying disposition?

MR GLEADE: I don't know.

THE PRESIDENT: It continues to have effect, even if it may later be found to be illegal?

MR GLEADE: It continues to have effect, but assuming that it was properly communicated.

PROFESSOR KNIEPER: We come back to the --

MR GLEADE: We come back to the issue of communication.

PROFESSOR KNIEPER: Professor Rusu, what
is your opinion on that? The question is what is the effect of the findings of the State Chancellery?

MR RUSU: Your Honour, there are some issues that have not been clarified so that you understand the system. What I can see, I don't think this is the notification of the State Chancellery. That is not what I think is in front of me. In order not to go into a lot of detail, I would like to explain how the system works.

Mr. Gladei said correctly that the local authorities are autonomous, but this notification involves an administrative control of the central administration. The scientific term is that the local authority has two options: it either complies with the notification or it risks to go to court, and the court would cancel this disposition.

I do not have the facts at my disposal. I was focusing on the legislation, but I think there is this option.

PROFESSOR KNIPEER: That means that the effect at least is that the mayor, having received this document, could have complied and the disposition would have been out of the world, right?

MR RUSU: [Nodded]

---

MR GLADEI: Yes. There is an option that the mayor complies and cancels the disposition.

PROFESSOR KNIPEER: On the basis of such a writ of summons.

MR GLADEI: On the basis of reconsidering the legal grounds from the perspective of this claim of the position/finding of the State Chancellery, and then agree with the arguments of the State Chancellery and cancel it without court.

PROFESSOR KNIPEER: Thank you. That completes my questioning.

THE PRESIDENT: Just to check that, to be absolutely clear, that did not happen. The mayor did not give effect.

MR GLADEI: It seems so.

THE PRESIDENT: As far as we know. That is the evidence that is before us.

MR GLADEI: It seems so.

THE PRESIDENT: Thank you, Professor Knipeer. I think Mr. Fortier has a number of questions.

MR FORTIER: First of all, I also thank my friend and colleague, Professor Knipeer, for having asked some very pertinent questions and having cleared the air somewhat.
Local Public Administration there are several ways of control. One of these is the control required by the person prejudiced. The other is control required by the public authority. I cannot judge specifically based on the circumstances because not all the circumstances are known to me, so if it were a complaint from the person prejudiced that would be a valid trigger. If it were sent that would be a valid trigger. I cannot comment on the other situations.

MR FORTIER: Mr Rusu, do you have anything to add to what your colleague has said about the writ of summons and the initiation of the writ? And whether the State Chancellery has the legal authority to act on his own?

MR RUSU: To be honest, I think it is very important to understand the principle. It is true, Mr Gladei has just made a partial reference. We have a mandatorv and a non-mandatory control of the State Chancellery. I think in this case it is a non-mandatory, a voluntary control, and that could be triggered, and I would like to stress that, by the local administration, not by the State, these are two different things, so the police is not in this category, and the aggrieved party. It is

Article 66 and 67 in the local public administration law from that moment in time.

To be more concrete, either the council or the mayor, and they are independent from each other, for example, if the mayor does not agree with the legality of the council decision, the mayor could then go forward to the Territorial Office, and vice versa, and of course the aggrieved party whose rights have been violated.

MR GLADEI: On this voluntary control, what the law is saying, I am trying to answer this question based on the legal provisions, and the best way probably is to cite the law. The law is saying under Article 65, voluntary control, that by the date of 10th of each month, the secretary or the council shall send to the Territorial Office of the State Chancellery a list of the acts issued by the mayor and the President or Chairman of the region in the previous month. Then paragraph 2 is saying that is the Territorial Office can, subject to control of legality, any act, which is not subject to mandatory control within 30 days from receiving that list.

MR FORTIER: Thank you.

MR RUSU: I would just like to add this article is not relevant for this case because what
 Whereas the manner the mayor treated the private 1 2 lives is unseen, for me at least, and if I compare 2 it with the activity of the cadastral registers, 3 that would be, let’s use the word “outrageous” — 4 I am more accustomed to working with the cadastral 5 offices — you cannot even imagine that a cadastral 6 office would first register and then deregister, 7 even an individual act, but I have never even seen a 8 document which would refer to a number of, let’s 9 say, more than one record. 10 MR FORTIER: And, in effect, have legal 11 consequences for thousands of people? 12 MR GLADEI: It was at least purported to do though. 13 MR FORTIER: I am sorry? 14 MR GLADEI: It was purported to have these 15 kind of consequences. It targeted, it purported to refer, if not to say to affect, hundreds of private 16 persons. 17 MR FORTIER: In the various laws that you 18 refer to in your report to which you referred during 19 your conversation with Professor Knieper, there is no provision that requires a disposition — I am 20 focusing on these two dispositions obviously — 21 there is no provision in any of these laws for the 22 service of these dispositions on the owner of the 23 land and on the lessee of the land. Is that correct? 24 MR GLADEI: I can tell what does exist in 25 the legal provisions and that is specifically 26 section 11 of the Regulation 72, which was referred 27 to earlier today, which is saying that the reasoned 28 or well grounded, whatever the translation is, 29 “motivatsa” disposition which is signed by the mayor 30 on the refusal to register the documents, filed 31 within the term provided by the law, shall include 32 the means of attack or the means of contestation. 33 That is the only place where I was able to locate a 34 reference to the disposition on refusal, but 35 amazingly it is not referred to in this disposition. 36 MR FORTIER: To your knowledge you have 37 not seen any evidence that either one of these 38 dispositions was actually communicated, served upon 39 any one of the owners of the land or the lessees of the 40 land? 41 MR GLADEI: Not to my knowledge. 42 MR FORTIER: Mr Rusu, do you have anything 43 to add to what your friend and colleague has said? 44 MR RUSU: Mr Fortier, you had a lengthy 45 discussion and you touched on several aspects. I am 46 not quite sure what I could add, but I would like to 47 draw your attention to the following things: 48 First of all, we should distinguish very 49 clearly between the objective of the administrative 50 act which could be complex. I have not seen such an 51 act, with the exception of these two dispositions, 52 but to make an analogy there are complex acts 53 whereby the list of the assets is approved, and that 54 list can include all sort of annexes of ten pages. 55 According to Mr Gladei, if we cancel a 56 particular act which has an annex, we have to issue 57 10,000 acts, so that means that the activities of 58 the authorities would be blocked. It would take 59 them at least a week to do that. We have to 60 understand that in a town hall like that there may 61 be three or five people who are working, so that may 62 take half a month. 63 MR FORTIER: So what do you make of 64 persons who were in fact prejudiced by this decision 65 and who are simply referred to in the caption of the 66 disposition with the following word: 67 “With regard to the refusal of 68 registration of lease contracts concluded between 69 ICS Laguardia SRL and the owners of agricultural 70 lands of Cosemita village” (1-A) and in 2, “with 71 regard to the refusal of registration of lease 72 contracts concluded between ICS Laguardia SRL and 73 the owners of agricultural lands of Varvareuca 74 village”, these hundreds of owners of agricultural 75 lands are not described in any way, are not 76 identified, and you have these two dispositions that 77 fall from the hands of the mayor of these two 78 villages. They prejudice hundreds of people and 79 these people are not identified. How do you explain 80 that? 81 MR RUSU: It is not clear for me, but from 82 the very beginning I said that that is the subject 83 and the object of the act. The subject is the 84 authority that does the registration and the lessee. 85 The lessee is either Bio-Alianta or Laguardia. 86 I have not seen who was prejudiced. I have never 87 seen any factual things. I do not know who the 88 people are, because the people have transmitted the 89 act to the lessee. They delegated the lessee to 90 fulfil these functions. But there is a norm -- 91 I don’t have now the time to give you exactly 92 where -- that if the lessor has not registered the 93 lessee, Bio-Alianta, or Laguardia, then the lessee 94 could come and register itself. 95 For me there is a lot of uncertainty. We
have certain subjects of the administrative act and
then there are subjects that are kind of
intermediary. I have not seen anything in this
connection. I don't know who was prejudiced and
how. Maybe I am missing something here?

**MR FORTIER:** I don't either. That is the
problem. I am in the same situation as you are.

**MR GLADEI:** Can I make a comment?
Professor Rusu fairly pointed that there are two
sorts of administrative act, normative and
individual. The second category is an individual
act, meaning that by definition they refer to
individual situations and persons. If he allows me
to quote from the same manual, from the same book,
which distinguishes between those two categories,
saying that “individual acts are those which are
personalised” -- “personificate” -- which means that
they have a specific concrete addressee, “adresant
concret”.

To say all the owners from a specific/vue from not at all personalised and a specific
addressee. It refers to both. Not only to the
lessee, which is one in those hundreds of leases,
but lessors, who are different.

**MR FORTIER:** Thank you very much. I have

MR FORTIER: With your permission, if you
allow me, I thank him again for making reference to
this, but I think why make a classification of the
administrative acts?

There is some overlapping between the
individual and the normative acts. As far as the
normative acts go, I specified that they regulate,
there are some mandatory rules for an indefinite
number of legal situations, whereas the individual
acts normally are addressed to a particular person,
but they also relate to a concrete legal situation
which is registration of a certain number of
contracts that the investor had land which could not
be divided.

**THE PRESIDENT:** Thank you. I only have a
couple of questions. I am very grateful to my
colleagues for what they have said
I would like to go back, because we have
one intervening act of which I am curious, and I am
very grateful to Professor Knieper for
distinguishing very clearly between what is governed
by private law on the one hand, leases, and what one
might call the public law element on the other side,
the registration of the leases, and that was very

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.

**MR KOPECKY:** Mr President, I think there
11. is a translation issue. (Pause)

**THE INTERPRETER:** It is not the
12. termination. I said something that could be
13. interpreted as concluding the contract. It is
14. resiliation, finish, termination of the contract.

**THE PRESIDENT:** C-95. Really just to be
15. clear, what I am seeking is just your assistance.
16. 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,

Could we go to page 5? If you could both
23. have a look at this document. I appreciate it is in
24. Russian. Do you both speak Russian?

no further questions, Mr Chairman.

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distinguishing very clearly between what is governed
by private law on the one hand, leases, and what one
might call the public law element on the other side,
1 seems that the mayor has signed it in confirmation of something, which is leading me to the --
2
3 THE PRESIDENT: The English translation does not include that word. Which is the bit that says "for confirmation", because the English doesn't have that?
4
5 MR KOPECKY: Same reservation as before.
6
7 MR GLEASON: Can you point to what language is not in the translation?
8 [The President indicated on the document]
9
10 THE PRESIDENT: There is additional text in the original which is not in the translation -- and Professor Rusu you will have a chance to confirm -- well, is that what it says? Does it say "for confirmation"?
11
12 MR RUSU: Yes. "For confirmation".
13
14 THE PRESIDENT: Back to you, Mr Gladei.
15
16 Can you explain to us, I appreciate you were not there and cannot give us first-hand testimony, but on your basis of the knowledge of the law and practice under the law, what is happening here?
17
18 What is occurring, if you could help us to understand why the mayor is confirming?
19
20 MR GLADEI: Yes. To answer I will try to look from the perspective of the Moldovan law.
21

1 I could not -- at least it is not coming to my mind now -- identify any provision of the Moldovan law which would require the mayor to confirm a document like that, which means that, first, in an ordinary exercise of his or her duty he is not to do that.
2
3 Second, anything which is done besides that legal provision, under the principles to which I have referred in my report specifically, legality, no right to intervene, Article 1 of the Civil Code, no right to do what is not prescribed by the law, this would be difficult to find a proper word -- strange to understand -- or let's say "unusual".
4
5 THE PRESIDENT: Could you explain to us in the practice of Moldova, the signature does not just have the name of the person signing. It refers to the Varvareuca official, as it is in the translation, maybe it is the Varvareuca Mayor, I am not sure what the best translation is, but this person signing purportedly in an official capacity?
6
7 What I am getting at is, is this a private act, or purportedly a public act?
8
9 MR GLADEI: I think the latter, it is purportedly a public act, because first the title of the person is indicated, the Mayor of the village of Varvareuca, not just Ms Ivanescu. Second, I see the resemblance of a stamp there. It seems there is a stamp there. So a person, an individual, normally does not have a stamp in Moldova, unless he is very creative, so I assume this is the stamp of the mayor.
10
11 THE PRESIDENT: If you go down to page 13, you will see there is another stamp. I appreciate it is very far away --
12
13 MR GLEASON: We have the originals.
14
15 THE PRESIDENT: Can you zoom in on the stamp so that both Mr Gladei and Professor Rusu can tell us what this stamp is?
16
17 MR GLADEI: Yes, it is clear in the bottom side there is the word "primaria", which means the mayor's office or the other translation is City Hall. Then I see the word "Florești". This is the name of the region. "Consiliul Communal Varvareuca", Local Council of Varvareuca. So the "primaria" is the mayor's office of the Varvareuca council.
18
19 THE PRESIDENT: Would it be a reasonable conclusion that this is a purported exercise of public authority?
20
21 MR GLADEI: This is an exercise of the public authority. I do not qualify it, but it is not a private act.
22
23 THE PRESIDENT: We have hundreds of these all signed on the same day. In fact, I have been going through them slowly and I have noticed that the dates, for example, at the bottom, 11 February, they are all handwritten by the same person, so one forms the impression -- we don't know, of course -- that they were all prepared by the same person and the mayor has signed hundreds of these documents not being familiar with practice in a municipality in Moldova or the law of Moldova, could you help us understand what you believe, with your professional experience, is happening in this instance of hundreds of these documents being confirmed by the local mayor?
24
25 MR GLADEI: The first comment is that the mayor has found time to confirm all those hundreds of documents but the mayor has not had time to issue hundreds of dispositions, just to comment on the previous discussion, which is again -- I don't want to enter into speculation -- which is interesting, let's use a neutral term.
26
27 THE PRESIDENT: I don't want to put words in your mouth but one conclusion is if the mayor found time to confirm individual lease terminations,
1. the mayor could have found time to sign individual
dispositions?

3. Mr GLADE: That is fair to say. Even if
the amount of work is a bit different, here she
should just put the name and the signature. There
she should have used hundreds of pages of A4 format
7. THE PRESIDENT: Are you able to tell us
what are the consequences in Moldovan law of the
mayor having confirmed these documents? What do we
draw from this fact, beyond that the mayor had some
involvement in this process? What else can we draw
from the totality of hundreds of these documents
confirmed by the mayor, if anything? It may be we
can draw nothing from it.
15. Mr GLADE: First, in a strict sense it
doesn't mean anything, the fact that the mayor put a
signature under any wording there.
18. Second, reasonably thinking, it brings any
independent observer to the conclusion that that
specific individual in his or her position as public
officer intended to do something, intended to
attribute to a document a certain character.
23. I don't know what was the real intent of
the person. I can only comment from outside, as
25. I said, as an independent observer, and from my
particular experience. Whenever I see that a public
officer is putting his or her signature — which is
very difficult to obtain, by the way. If you want
an administrative act you will stay in the queue to
get it. And here, all of a sudden, the signature
and the stamp appears on many documents. It is very
interesting; it is unusual; and it means that
specific person wanted to do something by date.
9. I cannot go on commenting.
10. THE PRESIDENT: Could one imagine a
reasonable mayor signing and stamping hundreds of
documents for no reason?
13. Mr GLADE: To answer I would turn to the
last slide of my presentation where I refer to the
role of the mayor and, to recall yesterday's
discussion, there is probably a witness saying that
the mayors are important persons in the communities,
in the villages. I remember yesterday a witness
saying that the role of the mayor is to gather the
people in order to organise something. So probably
from the same area of reasoning one might say that
the mayor had an intent by doing this document. I
don't know what the intent was, but that is
reasonable.

THE PRESIDENT: The timing is as follows:
1. If one goes to Disposition 2, in this area the
leases were registered on 8 February 2011. Three
days later the mayor signs hundreds of confirmations
that the leases have been terminated — I am coming
to you, Mr Rusu, I am going to give you a full
chance —
7. Mr KOPECKY: I need to note for the record
that this is the second time in this arbitration
where a supposition is put to a witness and a
witness is induced to make suppositions of events
where he has no personal recollection on the basis
of documents which he has never seen before.
13. I would like this for the public record of this
arbitration.
15. THE PRESIDENT: We are absolutely clear
and I have been very clear in saying he was not
there, he does not know for fact, I am acutely
aware. We are all in the difficulty that we are in
a country that we know nothing about. We have
before us two excellent independent legal experts
but we understand it is supposition and speculation;
it is absolutely understood.
23. Mr KOPECKY: Thank you.
24. THE PRESIDENT: Professor Rusu?
25. Mr RUSU: If you allow me, please,
1 certification of certain documents as well as notary acts. I know the situation because I do study local administration. I think that the people of these villages have been deceived several times by investors, and even here I saw that the rent payments were not made, and often I am just assuming that there were some kinds of meetings and people were asking for the mayor's support. I do admit that the mayor was maybe too enthusiastic, that the mayor made an error, of course, and for that the mayor may be sanctioned.

THE PRESIDENT: We are not sure what the error is, but what do you think the mayor has done that the mayor should not have done?

MR RUSU: This is a private law issue that should not have been confirmed, but there are public acts that a mayor would confirm, like certificates, for example. For example, a certificate on somebody's farm, or they can confirm certificates of all sorts. From the perspective of private law this certification has no value.

As far as public law is concerned, yes, a mayor made a mistake and needs to be sanctioned but these are all assumptions. I have not seen the factual things and I didn't have the time for that.

---

1 I just want, however, to tell you one thing.

According to the statistics in the Republic of Moldova, this is worthwhile mentioning, and you can check that the mayors enjoy the trust of the population second only to the church and the priests.

MR GLADE: In Moldova the mayor exercises the notarial actions. Secretaries, yes. Mayors not, that would be the confusion.

THE PRESIDENT: I didn't understand Professor Rusu to say this was a notarial action.

He didn't say that.

MR RUSU: No. What I said, I mentioned the Council secretary together with the mayor. But the Council secretary --

THE PRESIDENT: Professor Rusu, can you help me, since I am appreciating very much your words, and again we are all constantly aware that we are in a slightly grey area because neither of you were present and you are legal experts, not fact experts, so we are not drawing any conclusions of fact from what you are saying. We are trying to understand how things work in law and practice under the law in Moldova, no more than that. That is as far as it goes.

---

1 I noticed that the act of registration of these leases took place on 8 February 2011, and then three days later we get this termination purportedly of the leases confirmed by the mayor of the same town. Is that a normal practice? Does that happen often? Again, I don't know Moldova, I regret to say, and I am just asking for guidance if this happens a lot and it is not unusual, or is it unusual. I think Mr Gladei said he thought these kinds of things had an unusual --

MR RUSU: I have never seen that in my life.

THE PRESIDENT: Because you have never seen it in your life, do you draw any conclusions -- and I appreciate we are in the realms of speculation -- as to what might have happened here?

You know the culture of the communities. You have told us about the trust that people in Moldova have for their mayors. Are you able to offer us any possible explanation as to what happened here?

MR RUSU: I can only tell you what this trust is based on. It is a psychological moment.

Most of the population is made up of retired people, elderly people. The Moldovan villages are depopulated because of various reasons and the mayor is the closest person because he is an elected official.

The investors come and go and often the villagers are deceived. The investor says I will give you 100 kilos of wheat, but they receive only 50 kilos. The population has been cheated, deceived several times with the privatisation and other things, but the mayor is there to stay, and he wants to be reelected, which doesn't happen with the others, including the investors. We have to admit that.

THE PRESIDENT: I want to turn to one final issue to help me understand again. We have now understood in relation to this particular village registration on 8 February, purported termination of the leases on 11 February, purported "deregistration" on 15 March, and then not in relation to this village, but in relation to the other village the matter goes off to the State Chancellery which expresses, as I have understood it, a position or opinion that an illegality has occurred.

By now we are in May. I think the date of the Chancellery decision was 2012. I am trying to imagine from the perspective of an investor who has
a lease, or thought they had leases for three years
and want to move things along -- and again I am not
making any assumptions as to what did or did not
happen and what went wrong or what did not go
wrong -- but after 15 March in the village of
Varvareuca what options were available in law for an
investor such as this one to move things along as
quickly as possible, if the investor wanted to, to
continue the agricultural activity?

I am going to put the question first to
Professor Rusu. If you had been advising the
investor who wants to get going as quickly as
possible, what realistic options were available to
the investor in the domestic legal context?

MR RUSU: I'm not aware of all the
circumstances but, hypothetically speaking, I would
advise him that it is a matter of investment, first
of all. He should have clarified those contracts,
those agreements. Perhaps the other company is
ill-fated. He should have gone to court to settle
the matter and asked for some compensation, or be
given back his rights. Let me tell you, there is a
connection between the civil procedure and the
administrative procedure.

THE PRESIDENT: But which court would you
advise the investor to go to? A civil court or an
administrative court?

MR RUSU: Allow me to finish. The common
law courts. He could have raised the exception of
the legality of the disposition, so the common law
court if he thought that the disposition would stop
him from moving on with his investment.

The way he chose is quite lengthy, and
I don't understand the purpose of it. It only leads
to public matters, and not private matters. Well
the disposition is cancelled, and what is the next?
Does the disposition give him the land back? No, it
doesn't.

THE PRESIDENT: English people try to be
as practical as possible, so I am just trying to be
practical. His leases have been purportedly
terminated. Purportedly they are no longer
registered on the registry in the local village.
You have identified a number of legal options. In
light of your lengthy experience as a scholar and as
a writer in this field, what timeframe are we
talking about, before which courts, until this
matter was resolved? How long would it take and
what direction would it have taken?

MR RUSU: I will talk from the scientific
point of view. There is a problem here when it
comes to the legislation. The administrative
procedure or the administrative legislation should
be quite operative, because on the one side we have
an economic operator, or a citizen, and on the other
we have the state, which is a heavyweight
institution. But I have to admit that because of
the influence of the civil procedure in our
legislation the administrative procedure that should
be a quick procedure to give satisfaction to the
citizen has become as lengthy as the civil
procedure, from one year to several years.

THE PRESIDENT: We have a situation where
the Police Commissariat of Floresti sent a complaint
to the State Chancellery almost a year after the
events occurred, and it then took four months. Is
there any possibility from your experience,
Professor Rusu, in the civil and administrative
courts, assuming that one court could deal with the
totality of the issues in a single set of
proceedings, that after the events of March 2011 it
would have been possible to resolve the entire
matter in the courts of Moldova in time for the
investment to continue in the 2011-2012 growing
season? Is that possible?
1 professional experience and your legal experience of
2 having this matter resolved in such a way as to
3 allow the investor to continue in a timely manner
4 with his investment?
5 MR GLADE: 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 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 GLADE: 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

not yet properly in place; practical poor
availability of safeguard measures, injunctive
measures, so-called "mesuri de asigurare a actiunii"
meaning that it is very difficult to successfully
plead an injunction.

Courts are traditionally highly reluctant
to offer such measures, including because the law
has changed to say that this is offered when absent
those measures the judgment would not be able to be
enforced.

So practically from my experience and
general I would say experience it is hard to
successfully plead these kind of requests, and this
is why it is hard to obtain a protective measure in
the form of safeguard measures.

The same refers to Administrative Court,
because the second avenue would be to start an
administrative litigation, go to the
Administrative Court -- the person aggrieved
himself, the person prejudiced himself -- trying to
obtain an injunctive measure to freeze the
situation. Again, here I have less experience, but
still I probably can fairly claim that it is not at
all as it is written in the law. It is very
difficult to obtain this kind of injunctive measure.

MR GLADE: I think it would be
1 and be very tight with the questions.
2 We have time. We have our two
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 to 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

1 because I am a professor, and I underlined some
2 holes in the legislation. I sit from one year to
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,
yesterday in the transcript is consistent with what we said this morning.

THE PRESIDENT: I think you can rest assured, Mr Gleason, you have a Tribunal that is not looking to cause any difficulties. What is said is said, and no doubt there will be an opportunity, if there are any infelicities that crept in to the record to modify them or whatever steps are taken. But you are pushing at an open door.

MR GLEASON: I just want to preserve the right. Thank you.

THE PRESIDENT: I think the running order is Mr Kopecky is going to begin with Mr Gladei.

MR KOPECKY: To answer your first question, we need about 45 to 60 minutes on the agricultural experts in cross.

THE PRESIDENT: I think the Tribunal will have far less to ask of the agricultural experts, is what I am picking up from my colleagues, so we may find ourselves coming back within time. Our two colleagues are very important, so let's do this properly. Over to you, Mr Kopecky.

Questions by Respondent

MR KOPECKY: Welcome. Mr Gladei, would you kindly confirm that you wrote your First Report on 12 January 2017?

MR GLADEI: Yes, it is dated that date.


MR GLADEI: Yes. It is issued on 12 August. Of course I worked more days than just one day on it.

MR KOPECKY: Indeed. You signed it on that date. Could you confirm to us when Claimants retained you to prepare your report?

MR GLADEI: No. I cannot remember exactly when it happened.

MR KOPECKY: Can you give us the week, the month maybe of the year?

MR GLADEI: It was before that. Definitely before. I cannot tell you more precisely when.

MR KOPECKY: You cannot tell me the month?

MR GLADEI: No. The month of the year probably.

MR KOPECKY: Yes. That is all I need.

MR GLADEI: No. I don't want to guess now. I handled this work for the company, for the firm, and you might imagine that we have many clients.

MR KOPECKY: But this is not your client.

You are testifying as an expert.

MR GLADEI: I have much administrative work, so no, I don't want to guess now to give you a best guess answer.

MR KOPECKY: If I may take you to your report, page 21, First Report, that is your signature and the date of your report, and then if you flip the page we get to a Romanian document which I understand is a response of the Soroca Territorial Office to the State Chancellery to a letter of Laguardia SRL. It is on page 23 of your report, the first exhibit, attached in Romanian. The date of the translation is filed at the end of your report.

MR GLADEI: Which page?

MR KOPECKY: It is the first page after the last page of your report. So your report is 22/2.

MR GLADEI: So it is supposed to be 23.

MR KOPECKY: So it is the bundle that forms part of your report, and this is the response of the Soroca Territorial Office to Laguardia. Is that right?
MR GLADEI: That is right, but to explain to you how the legal profession works in Moldova, there is a number of attorneys working under the same roof, let's say. It is not the law firm in a proper sense of the word. Well, from the Moldovan perspective, there is no such word as "law firm". So it might be, that is my probably best guess, that one of my colleagues received it, but not me.

MR KOPECKY: Well, when you say that one of your colleagues belongs to the law firm Gladei & Partners of which you are the managing partner?

MR GLADEI: Not necessarily. We sit in the same building, we sit on the same floor, but not necessarily all of them are my associates in the associated attorneys office. We have different structure of relationship, as you probably know, because Schönerr is also present in Moldova and I think it also has let's say a kind of structure.

MR KOPECKY: So do we. It is very complicated to have a legal profession organised, especially across multiple jurisdictions, but I wonder is Mr Viorica Bejan an associate of yours?

MR GLADEI: She is an associate.

MR KOPECKY: In that case I would like to take you to a document which is not in the bundle because it in effect is annex 1 to Claimants' request for document production. If I can take you to pages 5 and 6 of that document in the original, and 8 and 9 in the Moldovan.

THE PRESIDENT: Just to be clear, this isn't in the hyperlinked index?

MR KOPECKY: It is not.

THE PRESIDENT: We are waiting for you to bring it up on the screen. I think it is fair to Mr Gladei that he has it in front of him before he talks about it.

MR KOPECKY: Absolutely. I don't expect an answer before he has had a chance to review it in its entirety.

If you scroll to page 8, please, that is the original, and if you scroll to page 13, please, this is a translation, and this is a request for information on behalf of the administrator of ICS Lagaardia, Mrs Grout, to send us the information, which is what this answer which we just looked at was all about, and to send this information to Chisinau str.V.Parcatalb 63, contact person Viorica Bejan, your associate, and I also wonder that number (022 240577) that is the phone number of Gladei & Partners, isn't it?

1 or have you been working with somebody else?

Because I understand there is a difference between "I" and "we".

MR GLADEI: What is the question? If someone has written it for me, or if someone assisted me in working on that?

MR KOPECKY: No. The question is if you wrote all of that alone and, if yes, why didn't you use the first person plural?

MR GLADEI: That is unfair to say that I used everywhere the first person plural.

MR KOPECKY: Not everywhere. Those five instances I have just told you of.

MR GLADEI: That is probably representative that in all other cases, all other probably if you call in dozens of them I say I, which means that the explanation is I am the author of this report. Yes, I was assisted with the other people, but not to write the report. The conclusions are mine. When you collect some court judgments, for instance, I may ask someone else to do it for me for the sake of a time-saving, but I am the only author of this document.

Whenever I say "we", that is probably a tribute to the manner that we are writing down the
1 documents, and it is not uncustomary in Moldova to say "we" as an alternative to "I". It is not an individualistic, it is more a collectivist society. I would not say it is a sin, but we have this approach. There is a famous saying we provided Nicolai Il about the Russian Tsar -- I am not saying I am close to the Tsar -- but whenever I say "we" there, I mean "I".

2 MR KOPECKY: I really understand, and that is quite humorous, but I still see you as being the only signatory and then in paragraph 26.3 saying "our position from the first report remains unchanged".

3 MR GLAEDE: I explained.

4 MR KOPECKY: You refer to yourself in the plural?

5 MR GLAEDE: Yes.

6 PROFESSOR KNIEPER: In Austria we call that "pluralis majestatis".

7 THE PRESIDENT: In England we call it the Royal "we".

8 MR FORTIER: In Canada it is the humble "I".

9 MR KOPECKY: I too will say that words have a meaning and singular and plural have different meanings. Can we agree that the choice of your words in your report are not entirely accurate?

10 MR GLAEDE: Maybe from your perspective, but as long as the report is issued by myself, not by us but by myself, I answered the question and I explained the way it went. It might have different meanings under different cultural traditions, that is why I referred to the individualistic versus collectivist societies, and yesterday I heard the word "cohost", the collective farmers, so yes, maybe it is a tribute to the past or another manner to express that thing. I hope it is not a personality disorder at least.

11 MR KOPECKY: You would agree there is a difference between a cohost farmer and a legal expert?

12 MR GLAEDE: I was not referring to that. I was referring to a collectivist society and a collectivist past, and if I said "we", because of the fact I was born in the Soviet Union, that might be attributable, but on the other side I don't believe this is enough ground to say that a group of comrades have written this document.

13 MR KOPECKY: Neither you nor I are the judge of that, so let's leave it to the Tribunal.

14

1 In paragraph 2 of your First Expert Report you say that you reviewed several leases, namely one lease from Cosmernita, one lease from Varvareuca and one lease from Rosetici which collectively and together you referred to as "lease agreements".

2 MR GLAEDE: That is right.

3 MR KOPECKY: And your report pertains to those three lease agreements?

4 MR GLAEDE: Yes.

5 MR KOPECKY: Just for the record, you have not seen or verified the other leases that reportedly were signed with the same content on or about 17 November, 1 September or 1 September 2010?

6 MR GLAEDE: I said in the Second Report something different about that, because then we got access to the other lease agreements. If you look into the Second Report, in the introduction, E, paragraph 4, (ii), it says "the following documents", and specifically I refer to a copy of -- It is not here. This refers to the termination notification.

7 MR KOPECKY: So we can agree that you have not seen other leases except those three?

8 MR GLAEDE: I remember for sure that I have seen those. I cannot remember if I have seen the others.

9 MR KOPECKY: Moving on to the civil law part, private leases are signed between two private parties, correct?

10 MR GLAEDE: Yes.

11 MR KOPECKY: Pursuant to Article 9 of the Moldovan Civil Code, parties are presumed to be acting in good faith?

12 MR GLAEDE: They are.

13 MR KOPECKY: You earlier confirmed -- actually you did before during conferencing -- that the registration of a lease does not cure invalidity?

14 MR GLAEDE: Correct.

15 MR KOPECKY: And that the failure to register does not make a valid lease invalid? Is that correct?

16 MR GLAEDE: Once again?

17 MR KOPECKY: If you fail to register a valid lease, the lease is not registered, but it is still valid.

18 MR GLAEDE: Correct.

19 MR KOPECKY: Where are disputes between private parties resolved in the Republic of Moldova?

20 MR GLAEDE: Normally in the common court.
1. In a certain period there was a specialised court, the commercial court, also called the economic court, so it depends on the character of the dispute. If it is let’s say a common dispute, it goes to the ordinary common court, and if it is a business dispute, a commercial dispute, then there is an exclusive, an alternative correspondence of the commercial court called the economic court.

2. MR KOPECKY: Where would a dispute between a lessee and a third private party acting in bad faith be resolved?

3. MR GLADEI: Depending on the status of the parties, whether they are legal entities or individuals.

4. MR KOPECKY: Two legal entities?

5. MR GLADEI: There are two principles which would apply. First is the place where the movable asset is located, and the second is if it is a commercial dispute.

6. MR KOPECKY: So it is the locality. In terms of the authority, which authority would that be? Would that be the courts?

7. MR GLADEI: If it is a litigation it is a court of law. In the first case it is a local court and in the second case it is the economic court.

8. MR KOPECKY: We heard before during conferencing that there was an option that the mayor complied with the opinion of the Territorial State Chancery Office voluntarily.

9. MR KOPECKY: However, you say in your First Report, paragraph 38, that “after the registration of the leases the only legal way to get registration cancelled or annulled would be judicially”. So I wonder in that case he has to go to court, yet in the other case he doesn’t and he can act by himself?

10. MR GLADEI: That is right. Paragraph 38 specifically refers to the manner the registration can be cancelled or annulled. It is not possible to be done discretionarily by the act of the public authority. Then I came to the conclusion that the usual alternative should apply specifically in court.

11. MR KOPECKY: Who is entitled to challenge administrative acts in administrative courts?

12. MR GLADEI: Any aggrieved person.

13. MR KOPECKY: That list of aggrieved persons, am I assuming correctly that it is listed in Article 5 of the Law on Administration?
control, but he has no right to intervene and cancel
a right or a faculty, let's say, which was given to
a person. That would be abusive to say that he is
titled to come thereafter, so it is a matter of
corroborated application of different laws. You
need to put them all together. Yes, he has the
right to exercise ongoing control, you are right,
there is such a provision –

MR KOPECKY: It is a duty, right? It is
not a right, because it says "shall". He shall do
things. Not that he has a right to do things.

MR GLAIDE: Where does it say "shall"?
MR KOPECKY: Paragraph 23 of your First
Report, and there citing paragraph 5 of the
regulation on keeping the registrars on agricultural
leases.

MR GLAIDE: Correct.
MR KOPECKY: Under Article 5A of the Law

on Administrative Litigation, which we looked at
earlier, an aggrieved person is a person considered
deprived of a right and not a person exercising a
duty, because you just confirmed that the Mayor has
duty to hopefully, correctly, ensure that the
register is set up, leases are registered and
deregistered according to the law, but there is no
right that arises for him.

MR GLAIDE: Yes, technically speaking. A
right and obligation is a different thing. Rights
are exercised, whereas obligations are performed
executed, and so on. One might say that by having
the obligation he has the right to do that, and this
would qualify him. That would be an interpretation
not necessarily endorsed by me, but that might have
some ground

MR KOPECKY: As long as you do not endorse
it, I am happy.

MR GLAIDE: I said in my report that it is
for example,

MR KOPECKY: I don't think there was a
question yet, but there may be re-direct, so let's
leave it at that.

We have discussed during conferencing that
both dispositions stated the right to challenge them
in accordance with the legal provisions in force,
and we were not so sure about the quality of that
notice. You said it did not comply with the laws.
I think even Professor Rusu confirmed it was not
entirely clear. Are you aware whether at the time
of the issuance of Disposition 1-A and 2 Lagardia
was represented by counsel?

MR GLAIDE: I heard this yesterday because
I was allowed into the hearing, and I understand
that there were some counsel around
MR KOPECKY: Moldovan laws are published
Is that right?

MR GLAIDE: Yes.

MR KOPECKY: And the conditions and
procedure for challenging administrative acts in an
Administrative Court are stated on the already
mentioned Law on Administrative Litigation.

MR GLAIDE: Including.

MR KOPECKY: Including. And the procedure
of administrative review by the Territorial Office
of State Chancellery is stated in the Law on Local
Public Administration and other laws. Correct?

MR GLAIDE: Right.

MR KOPECKY: And those laws are published
in the Official Gazette and online?

MR GLAIDE: They were supposed to.

MR KOPECKY: And a Moldovan licensed
lawyer should know about the existence of those
laws, correct?

MR GLAIDE: I cannot answer this question.

MR KOPECKY: Should he? I am not asking
if he does. I am asking if he should be a lawyer
licensed to practise.

MR GLAIDE: You mean is expected?

MR KOPECKY: Indeed, yes.

MR GLAIDE: Yes. It is fair to say he is
expected, but that is not relevant.

MR KOPECKY: For what is it irrelevant?

MR GLAIDE: For the purpose of —

MR KOPECKY: My question? My question was
merely whether it is expected under law. I didn't
ask any practical application.

Lastly I would like to deal with the
injunctions that have been issued, despite your
statement that injunctions are very hard to obtain.
We know there are injunctions on record, but before
we go there, according to Article 177 of the Code of
Civil Procedure, "the request for granting an
interim measure to secure the claim shall be
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<td>MR GLADEI: No. That is the court order.</td>
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<td>2</td>
<td>MR KOPECKY: But it doesn’t mention</td>
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<td>3</td>
<td>disposition anywhere, does it? Because you said</td>
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<td>that it was used to obtain this injunction,</td>
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<td>Disposition 1-A, but this injunction doesn’t mention</td>
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<td>the disposition.</td>
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<td>MR GLADEI: But it is not coming from the</td>
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<td>8</td>
<td>order.</td>
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<td>9</td>
<td>MR KOPECKY: But the order doesn’t mention</td>
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<td>disposition. You say it was used. If they used</td>
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<td>something it would be in their grounds, in the</td>
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<td>reasoning.</td>
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<td>MR GLADEI: Bio-Alianta is not a court.</td>
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<td>I said I further noted that the disposition was used</td>
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<td>by Bio-Alianta in court proceedings.</td>
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<td>MR KOPECKY: But I wonder how, because the</td>
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<td>court doesn’t even mention it?</td>
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<td>MR GLADEI: You ask the court this</td>
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<td>question, because not necessarily that if something</td>
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<td>is in the file of the court it necessarily appears</td>
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<td>in the reasoning of the court. In most of the cases</td>
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<td>only certain facts are captured in the reasoning of</td>
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<td>the court, so the fact that the court order does not</td>
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<td>contain any reference to the dispositions, does not</td>
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<td>mean that the dispositions were not used by the</td>
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<td>2</td>
<td>MR KOPECKY: I understand the disposition</td>
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<td>was annulled, am I right? Because in paragraph 49</td>
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<td>of your First Report you state that “the above</td>
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<td>injunctive reliefs and protective measures were</td>
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<td>later on cancelled, upon the request of Laguardia”</td>
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<td>7</td>
<td>It is paragraph 49, page 17, at the top. So the</td>
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<td>injunction was cancelled. But at that time</td>
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<td>Disposition 1-A was still in force, was it not?</td>
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<td>10</td>
<td>MR GLADEI: Was still what?</td>
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<td>11</td>
<td>MR KOPECKY: In force. It had not been</td>
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<td>12</td>
<td>annulled yet.</td>
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<td>13</td>
<td>MR GLADEI: Depending on the dating.</td>
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<td>14</td>
<td>There is a sequence of dates there. Indeed it was</td>
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<td>15</td>
<td>a separate procedure, this injunction</td>
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<td>16</td>
<td>MR KOPECKY: Exhibit C-105, if you would</td>
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<td>17</td>
<td>like to look at the date, which is the decision on</td>
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<td>18</td>
<td>the annulment of the injunction of 15 January 2013.</td>
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<td>19</td>
<td>The date is wrong -- 8 April 2011 --</td>
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<td>20</td>
<td>I read entirely the wrong date into the record.</td>
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<td>21</td>
<td>8 April 2011, so much earlier than that. Again,</td>
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<td>22</td>
<td>take all the time you need to read.</td>
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<td>23</td>
<td>MR FORTIER: Which paragraph is it?</td>
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<td>24</td>
<td>MR KOPECKY: In the First Report it is</td>
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<tr>
<td>25</td>
<td>paragraph 49, page 17, at the top. And the</td>
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annulment was on 8 April 2011.
2. My question is at that time
3. Disposition 1-A was still in force.
4. **MR GLADEI:** Was enforced?
5. **MR KOPECKY:** In force. It had not yet
6. been annulled. It existed under the law
7. **MR GLADEI:** Whether it was in force or not
8. depends on the fact whether it was communicated or
9. not. If we are talking about these dispositions
10. which we have discussed extensively. That is
11. another pattern. If it was communicated to the
12. party it was in force and it was applicable to that
13. party.
14. **MR KOPECKY:** Let me be precise and
15. rephrase: it had not yet been annulled, because we
16. are in agreement that it was annulled later on.
17. **MR GLADEI:** The disposition?
18. **MR KOPECKY:** Yes.
19. **MR GLADEI:** By whom? You mean by the
20. Supreme Court in January 2015?
21. **MR KOPECKY:** Annulled by the District
22. Court and it went all the way to the Supreme Court,
23. yes.
24. **MR GLADEI:** That is right, in July 2014.
25. **MR KOPECKY:** So on 8 April 2011 the

documents. I don't know to which documents, and
2. probably no one can say to which documents, unless
3. you have access to the court file
4. **MR KOPECKY:** I wish I had, but I do not.
5. I would like you to look at the reasoning. I am
6. only interested in the reasoning, not so much the
7. court file, because that contains party pleadings
8. and other things, only the reasoning which is about
9. four paragraphs, and I would like you to tell me,
10. unless we agree already now, that the reasoning does
11. not mention Disposition 1-A and it does not mention
12. the registration of the leases. It mentions the
13. signing of new lease contracts with Bio-Alianta and
14. the previous signing of contracts by Laguardia, but
15. I do not see the word "registration" or
16. "disposition" anywhere in the reasoning of this
17. judgment?
18. **MR GLADEI:** Directly not, but by reference
19. to the documents you might admit that in those
20. documents there may be other documents than those
21. referred expressly by the court.
22. **MR KOPECKY:** But this is the operative
23. part of the judgment, isn't it? So whatever is
24. relevant under law would have to be here.
25. **MR GLADEI:** No. This is a general rule

Disposition 1-A was still in force?
2. **MR GLADEI:** Yes.
3. **MR KOPECKY:** So the injunction came and
4. went while this disposition was still in force. If
5. we look at the court's decision containing the
6. parties' argument, it says, "the court heard the
7. parties, analysed the documents in the file and
8. considered it necessary to admit the request having
9. found the following reasons". It is in the
10. reasoning. Let's scroll to that. I am back to
11. C-105. Again, take your time to read it. Would you
12. like the original? I think the English is better
13. because the Romanian is really hard to read. Just
14. let us know when we should scroll, and I would like
15. you to search for a mentioning of Disposition 1-A,
16. or even the registration of leases and, if you find
17. it, let me know.
18. **MR GLADEI:** What I see is that the court
19. found by hearing the parties and analysing the
20. documents annexed in the file, it is a general
21. reference to the documents in the file. Not annexed
22. in the file in Moldova and court language means
23. contained in the file, without referring
24. specifically to those documents. From this
25. perspective I can say that it has a reference to the

saying that only the most important, most material
2. arguments should be in order to prevent breach of
3. the European Convention for Human Rights for the
4. allegation that the party was not heard, which means
5. that it is quite common in Moldova that the court
6. judgments, including the orders, are very short.
7. Even if I referred earlier to the Floresti court
8. judgment as an example, probably it was not
9. flawless, and you might not see all of the first
10. pertinent arguments captured there and pertinent
11. evidence, and second, reference to all of the
12. relevant documents. It is quite widespread. I will
13. refrain from giving a qualification for that. As a
14. practising attorney I am unhappy to see quite often
15. that the court judgments miss material information
16. which is making me hard to appeal them and to
17. subject them to appeal on points of law, but that is
18. the case.
19. **MR KOPECKY:** This is a judgment that was
20. good for Laguardia because the injunction of
21. Bio-Alianta was actually lifted.
22. **MR GLADEI:** I don't think we are speaking
23. about good for one or good for the other. We speak
24. about quality of the court judgment and the fact
25. whether this document makes a proper reference to
MR KOPECKY: Understood, but we agree that this court document does not mention disposition, nor registration, and that at the time of the issuance of this court judgment, Disposition 1-A was still in force?

MR GLADE: It is not relevant for my answer.

MR KOPECKY: No, no. I asked you about the contents of this document.

MR GLADE: And I answered you. My answer was twofold. I don't want to repeat because it is on the record.

MR KOPECKY: But we agree that this reasoning does not mention Disposition 1-A or registration, this reasoning that we have in front of us on the screen.

MR GLADE: Yes, it is seen. You can see it.

MR FORTIER: Neither C-33 nor C-105 explicitly mention Disposition 1-A

MR KOPECKY: Yes.

MR FORTIER: And yet Disposition 1-A was still in force?

MR KOPECKY: Yes.

MR FORTIER: The plot thickens.

MR KOPECKY: Thank you very much. No further questions.

Questions by the Arbitral Tribunal

PROFESSOR KNIPEPER: I have one question to you, because to give you my impression you know that I come from Germany and by European standards Germany is quite quick in rendering decisions, but when I read the diligence with which the Moldovan court worked in this particular case of issuing injunctions and lifting them a couple of weeks later, or even having a police report going to the State Chancellery and you have a decision three months later, and then you have six months later a first instance decision, I was quite impressed by the rapidity and diligence. Would you think it is so unusual that your general statement is not touched by that rapidity and diligence of the Moldovan courts?

MR GLADE: Absolutely, because the impression is not quite fair and probably, and I will try to explain why, because yes, taking a part of the general context, you might believe that this is generally how the Moldovan authorities operate, but on the other side you look into the other relevant circumstances, on this specific case, and I can confirm fairly, again from our previous experience, that is not at all that seamless, that has appeared in several specific instances.

As regards specifically the injunctions, yes, probably what is fair to mention is that there is an explanatory ruling of the Supreme Court of Justice on that, on imposition of a safeguard measure. This means that there was much inconsistent practice before, because these kind of explanatory judgments are normally issued when there is a contradictory court ruling before. I know, and that is in the Supreme Court plenum explanatory judgment that they found that the practice is quite inconsistent. Sometimes you may see the courts very robust and doing their job issuing these kind of orders on the spot, including in the term referred to in the legal provision which was referred by the counsel of the defendant, but that is not the prevailing rule.

From my experience, which is referred to in that Supreme Court of Justice plenum, it followed that there is an inconsistent approach. Second, the law is not necessarily applied in the same fashion as it is written, so there is a big problem in Moldova between law and books and enforcement of the law. This is a good example of how big the difference is.

THE PRESIDENT: If you could keep your answers as short as possible because we really now are very behind with time. Please finish, but ...

MR GLADE: The problem is not that the court are in all cases slow. The problem is that the courts are inconsistent. Sometimes they are very quick, sometimes they are hugely late.
PROFESSOR KNEIPER: But here they were quick?
MR GLADEI: In some of the cases.
PROFESSOR KNEIPER: In addition one has to say what I found also remarkable is that all these decisions, starting from the first police inquiry going to the State Chancellery and then to the Floresti court, they were all in favour of the foreign investor and in disfavour of the State.
Isn't that quite amazing also?
MR GLADEI: I am not sure that all of them were in favour of the investor. For instance, the appeal was--
PROFESSOR KNEIPER: The three I am talking about, the police report which triggered the decision of the State Chancellery, which was in favour of the investor, and then the first Floresti decision of January 2013, which is half a year after the State Chancellery decision. I find it quite remarkably swift.
MR GLADEI: Look from the other perspective.
PROFESSOR KNEIPER: All these three decisions were in favour of the investor.
MR GLADEI: First, as regards the main decision which was on the table which comes to my mind, the judgment of July 2014, remember that the first time it was rendered in January 2013, and then it went around to go back just because the High Court deemed that the persons aggrieved were not invited. Okay, that might be valid here, one and a half years were spent. Then in the second round no one appeared, so then it went the second round. Even if the majority has filed an unsubstantiated appeal, it still was given the chance to file it, it was not dismissed immediately. So it is difficult to weigh whether it was in favour of one or the other.
Then I heard recently about the actions of the prosecution office who started the criminal proceeding, closed the criminal proceeding, depending on -- I don't know.
THE PRESIDENT: But we don't have evidence of that before us and I think we need to stick to what is before us.
PROFESSOR KNEIPER: Thank you.
THE PRESIDENT: Any more questions? Thank you. What is your plan?
MR GLEASON: We do have some re-direct. Proceed, but we are now at a point where we will now almost certainly have to go into tomorrow for the agricultural experts. I am in the hands of the parties.
Questions by Claimants
MR GLEASON: Mr Gladei, I am going to start by asking you a couple of questions based on the facts in this case and the conversation exchange of course you had with Mr Kopecky and then Mr Hinkle will follow up with some of the more legalistic questions based on your exchange.
THE PRESIDENT: Can I ask how long you propose to speak for?
MR GLEASON: Less than five minutes for me.
THE PRESIDENT: The same.
MR HINKLE: Thank you very much.
MR GLEASON: I want to put C-105 back up on the screen. We were just discussing this document with Mr Kopecky, right? C-105. This is the court judgment. This is page 31 I believe you guys were discussing, concerning how this document does not reference the dispositions, plus the dispositions were not at issue concerning the injunction proceedings in Cosernita. Is that correct? Is that your understanding?
MR GLEASON: Very good. In short, you would say, based on what you have just looked at here, that the disposition was used in this proceeding?

MR GLADEI: I think so, because it is referenced.

MR GLEASON: Thank you very much. Can we also look at exhibit C — I am going to move on to my next point since we are short on time. I think it is clear from the record on this point.

MR GLADEI: This fragment was not shown to me now by the defendant counsel, only the second part. Only the reasoning was shown to me, that is why I did not notice that.

MR KOPECKY: Thank you. The reasoning, indeed. That is what the questioning was about. It was not about Disposition 1-A being on record. It was about the reasoning.

MR GLEASON: I believe the statement was that the disposition was not mentioned in this document.

MR KOPECKY: In the reasoning, counsel.

THE PRESIDENT: I think the Tribunal is able to form its own view.

MR GLEASON: But it is fair to say that this disposition was used in this proceeding.

MR GLADEI: It is fair.

MR GLEASON: I would also like to move on to the conversation we had about your office and your relationship with Mr Grot and the Claimants in this case. This is a document that I didn’t readily have available, I apologise. It is because it was not part of the consolidated index. This is annex 1, which was part of the document production request record, and this is what was shown to you earlier. I want to scroll down to what exactly was shown to you. It was part of this translation here, where it says that, “We respectfully ask to send us the information by mail to ... Viorica Bejari” -- who is Viorica again?

MR GLADEI: My associate.

MR GLEASON: Who made the request for this information to be sent to your office? Who sent this letter requesting that information be sent to Viorica?

MR GLADEI: Not me.

MR GLEASON: It says right below.


MR GLEASON: No. If you look at it it says "Respectfully". Who does it say after that?

MR GLADEI: It says the signatory of the document and to whom the document belongs.

MR GLEASON: Can you read what it says under "Respectfully"?

MR GLADEI: "Administrator of Laguardia and representative of Laguardia."

MR GLEASON: Continue. Can you read what it says?

MR GLADEI: "Annex: A copy of the representative’s power of attorney."

MR GLEASON: Let’s take a step back. Under the word "Respectfully" can you read the names of the people who sent this letter?

MR GLADEI: Yes.

MR GLEASON: Can you read their names?

MR GLADEI: zbigniew Grot, Igor Tcaci.

MR GLEASON: Who sent this letter requesting records?

MR KOPECKY: How would he know who was the author?

MR GLEASON: I am asking him to read the information which is on the screen. I am trying not to lead him. Did your office send this letter?

MR GLADEI: No.
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<td>1</td>
<td>MR GLEASON: Of course it was Ms Bejan who received this information, was it not?</td>
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<td>MR GLADE: Yes, on the one side, and on the other it is more than one year from then.</td>
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<td>MR GLEASON: Were you ever Mr Grot's attorney? Did you ever have an attorney-client relationship with Mr Grot?</td>
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<td>MR GLADE: No, what do you mean?</td>
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<td>5</td>
<td>MR GLEASON: Were you ever his representative? Or were you an impartial legal expert?</td>
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<td>MR GLADE: I said I am not his attorney.</td>
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<td>MR GLEASON: Good. Thank you. That is all I wanted to know. I pass over to Mr Hinkle.</td>
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<td>MR HINKLE: I will be very brief. Mr Gladei, how did the mayor's dispositions affect Laguardia's rights?</td>
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<td>MR GLADE: I probably referred to this in my presentation. So the disposition made the lease unopposable, and that is why the practical efficiency, if I quote correctly from my memory, the commentary to the Civil Code, is severely reduced and damaged, and it allows the other party, the other party meaning any other party — in this case, to be more specific, Bio-Alianta who has used that — it allows Bio-Alianta to create an appearance that by further registering their own list, to be fully complete, that they are the lawful lessee of that land plot. Sorry for being long, but this should be put in the context of all the circumstances of the case.</td>
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<td>MR HINKLE: Earlier Mr Kopecky seemed to imply that if a party had a lawyer that they should be deemed to be able to know what the challenge provisions are for a disposition. I am wondering if a party does have a lawyer, does that waive the City Hall's obligation regarding the means on how to appeal on a disposition?</td>
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<td>MR GLADE: Not at all. Maybe this is how it happens here, but in Moldova, and we have been very elaborated on the legal provisions, there is a right of self-defence that the party should be made aware, not resorting to a lawyer — a man of the street, a common person, because these are normally the people who are affected by the administrative acts — and Professor Rusu did elaborate on that in more detail. But from those old principles, legal provisions, and Council of Europe recommendation which I have cited in my reports, it comes that the public authorities should be diligently exercising its powers, including at this juncture to make aware the person that had received the act to create a full picture of where to go and what is the timeframe to that. Maybe also if you want this is a tribute to older times when the protection offered by the State was necessarily expected, but still, this is the case in Moldova. You cannot just say that as long as one person can be assisted by a lawyer, that it is up to that lawyer to substitute the public authority and do what the public authority was expected to do. So the answer is not at all. In the manner provided by the legislation means nothing.</td>
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<td>MR HINKLE: Two more questions. No follow ups after that.</td>
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<td>MR GLADE: In the cadastral, in the City Hall, the mayor works with several cadastral agents, correct?</td>
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<td>MR GLADE: I don't know. Probably.</td>
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<td>15</td>
<td>MR HINKLE: There may be more than just the mayor himself?</td>
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<td>MR GLADE: Probably.</td>
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<td>MR HINKLE: So when one public official instructs another, lower level public official, to do an action at City Hall during work hours, would that be considered part of their job?</td>
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<td>MR KOPECKY: How is this re-direct?</td>
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<td>THE PRESIDENT: Is that a legal question, and did it come up in the cross-examination?</td>
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<td>MR Gladei is a legal expert, not an expert on the functioning of municipalities and their day-to-day activities.</td>
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<td>21</td>
<td>MR HINKLE: I can move on from that.</td>
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<td>There is a little debate about what initiated the Chancellery review that inevitably led to the District Court decisions. I just want to highlight some language that is in the 2014 Floresti District Court decision that appears to acknowledge that the genesis of the review by the Chancellery was a request from Laguardia. Is that a correct understanding of that particular paragraph?</td>
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<td>THE PRESIDENT: For the record, can you tell us what this document is that we are looking at?</td>
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<td>MR HINKLE: This is R-6, the 2014 Floresti District Court decision.</td>
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| 25 | MR GLADE: What I can read there in the second highlighted paragraph is, "By letter dated 21/02/2012, FIE Laguardia LTD required the Soroca Territorial Office of the State Chancellery to conduct control of legality of order No 1-A of
1 20/02/2011 'on the refusal of registration of lease
agreements concluded between FIE Laguardia LTD and
the owners of agricultural lands in Cosernita
village'?
5 **MR HINKLE**: So Laguardia's letter was what
6 started the review process that inevitably led to
7 this decision. Is that correct?
8 **MR GLADE**: This is what I see.
9 **MR HINKLE**: Thank you.
10 **MR FORTER**: The reference to this
document is?
13 **THE PRESIDENT**: I think we have no more
14 questions from the Tribunal.
15 **PROFESSOR KNIPE**: Simply to complete the
record, I think the decision refers to C-38a, which
is a letter by Mr Tugui asking the State Chanceller
to consider this question.
19 **THE PRESIDENT**: Very good. Thank you.
20 That will be noted for the record.
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.

1 (Short break from 3.28 pm to 3.40 pm)
2 **THE PRESIDENT**: We are ready when you are.
3 **MR HINKLE**: Good afternoon,
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?
10 **MR RUSU**: Please tell me which report you
11 are referring to, because I want to have it in
12 Romanian.
13 **MR HINKLE**: I apologise. From your
14 Second Report.
15 **MR RUSU**: Yes, I opened it.
16 **MR HINKLE**: And you reviewed Claimants'
17 Reply Memorial. Is that correct?
18 **MR RUSU**: Do you speak about point 4?
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?
24 **MR RUSU**: Yes. I understand. I was asked
25 about the laws, but these are documents. These were

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
5 **MR HINKLE**: Did you review many documents
6 in preparation to write your report from this case?
7 **MR KOPECKY**: He lists them.
8 **MR RUSU**: What do you mean? Other
9 documents besides what is mentioned here?
10 **MR HINKLE**: Yes. We have:
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.
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?
19 **MR RUSU**: For me it is not clear. What
20 exhibits? What exhibits? What kind of exhibits?
21 **MR HINKLE**: I am simply asking if you
22 reviewed the exhibits that were sent and referenced
23 in Claimants' Reply Memorial?
24 **MR RUSU**: Let me explain. Indeed, the
25 respective memorial has hundreds of pages and
referring to this because quite often this happens, that instead of 100 kilograms of wheat there is just 50 kilograms of wheat. Maybe you are referring to this fact.

MR HINKLE: In reference to the Laguardia leases, do you know whether payment was due before the termination notices were issued?

THE PRESIDENT: Can I just say, Professor Rusu is a legal expert. That really is a question of, it seems to me, fact on a particular lease. He is here to give us his expertise on Moldovan regulatory and legal practice, and it just seems to me that goes into a degree of factual detail that it is not fair to put him in a position to answer that question. Take him to a document and ask him how it relates to something he knows about, which is Moldovan law, but the content of a lease is surely not something that he, as a professor of public law, can express any useful view on.

MR HINKLE: My concern is that earlier he had provided testimony that the landowners had wanted the leases terminated -- basically it was terminated because the landowners had not been paid -- and my only question was whether the obligation to pay had arisen?

THE PRESIDENT: We all heard that, but we are all also very conscious that he is here as a legal expert and that went to an issue. I think you can be quite satisfied that you have three very experienced arbitrators who respect very much Professor Rusu and Mr Gadel for what they are, which is legal experts, and we will not in any way be relying upon them for their testimony as to factual matters in this case, because that is not something on which they have firsthand knowledge, or indeed any knowledge. So you can rest absolutely comfortably that we are very on top of those issues.

MR HINKLE: Then I just have one line of questioning. In your report you assert that the term "refuse" could mean ex post refusal.

MR RUSU: What I mentioned was if it was possible, so what I said was that in the legislation or in the respective case the ex ante/ex post term is not used. What is used is the function as such, that is the functions and obligations/duties of the mayor, and the functions and obligations of the registrar who is an empowered person. The mayor is the authority.

If we take the provisions of the law which is in force, the law has been modified, meanwhile the mayor is the head of local public administration. In other words, he is the controller and the checker. He checks the way in which public officials, the clerks, comply with their obligations and duties, for instance, the cadastral engineers. I would say that the fluctuation -- there are many people who are employed and then dismissed and others come-- now the mayor comes to check, to control whether the respective person complied with the obligations.

MR HINKLE: Are you aware of any provisions in Moldovan law that use the term "ex post refusal"?

MR RUSU: The term is used, but in other contexts. For instance, in my textbook I also mentioned that when we speak about internal -- domestic so to say -- administrative control, and I can give you the page, it can be of three different categories. First, the ex ante or prior control, when, for example, the mayor comes and asks the registrar --

MR HINKLE: We didn't ask a question about control. We just asked about whether or not the term "ex post refusal" is used anywhere in actual
MR RUSU: I don't understand. To what end? What is the sense of your question?

THE PRESIDENT: The President of the Tribunal doesn't understand either. It may be you want to rephrase your question or ask another question.

MR HINKLE: You cannot refuse to sign this particular document now because you have already signed it in the past. Is that correct?

MR RUSU: I apologise, I do not see the reason why. Why should I do the same thing twice, if I did it once? It is meaningless to me. What do you mean? I don't understand. I apologise in front of the Tribunal. This is a strange question.

THE PRESIDENT: No apology is needed.

MR HINKLE: I think the point has been made. We tender the witness.

THE PRESIDENT: Thank you, Mr Hinkle. Mr Kopceky, your chance for re-direct within the areas covered by counsel for Claimant.

MR KOPECKY: None, thank you.

THE PRESIDENT: Thank you. Any concluding questions from my colleagues?

Very good.

Professor Rusu and Mr Gladei, we have held you for a very, very long time. You have been in my view, and I am not expressing any view on the substance, but heroic in sitting there patiently and quietly, having questions thrown at you from all sides of the room. On behalf of Professor Knieper, Mr Fortier and myself, I want to thank you very sincerely for coming here today and sitting so patiently and doing your best to answer a raft of questions. On behalf of us all, it is very deeply appreciated. You are now released and we will no doubt have a two-minute break just to rearrange the room, and we can invite our agricultural experts in.

You are very welcome to stay and listen for hours to our questioning of agricultural experts if you feel that is a good way to spend a few hours in Vienna.

(MIHAIL RURAC and ANDREI GUMOVSKI)

THE PRESIDENT: Are these their own reports?

MR KOPECKY: I don't know. I don't mind the books, but I mind the handwritten notes.

MR GLEASON: They can't have notes?

THE PRESIDENT: It is not normal. I think you can keep your book. You can have in front of you your report which is cowritten by the two of you, but other documents are best kept. Thank you very much.

Over to you, counsel for Claimant.

Questions by Claimants.

MR GLEASON: Good afternoon, Mr Rurac and Mr Gumovski. Thank you for your patience today.

Have you ever done anything like this before?

MR RURAC: It is the first time for me.

Never.

MR GLEASON: And you, Mr Gumovski?

MR GUMOVSKI: Never before. It is my first also.

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

MR GLEASON: No problem. Looking at the next document you see, what is this document?

MR RURAC: The phytosanitary products required for an average production, an average yield, in Floresti. For instance, corn. The herbicides you see there are enough to obtain the yield of 2.36, and the same for the sunflower.

MR GLEASON: So this is not the cost structure of Laguardia?

MR RURAC: No, not at all.

MR GLEASON: And, finally, table 6 --

THE PRESIDENT: My comment on CH-8 is the same. We are unable to work out how this relates to the other table 5.

MR GLEASON: It is the same analysis. It is a document which shows the cost structure not to achieve the yields that they predicted, but rather to achieve the average yields which were used by the quantum expert. In other words, costs to achieve the lower average yields used by Mr Peer are much lower than the costs required to achieve the yields calculated by Mr Weichen, who will testify tomorrow.

This is just to compare the cost structure of both approaches.

THE PRESIDENT: My earlier point goes. If you can resubmit with a guide to us as to what we are looking at.

MR GLEASON: I wanted to authenticate the documents for the benefit of the Tribunal so that you knew where they came from.

THE PRESIDENT: The witnesses have produced both these documents?

MR RURAC: Yes, it was us.

MR GLEASON: It is fair to say that Laguardia's costs were much higher than costs required to achieve average yields?

MR RURAC: Yes, you are right.

MR GLEASON: Is it reasonable to say that Laguardia's cost structure will lead to better yields than average yields?

MR RURAC: Yes, it is correct.

MR GLEASON: And that is because the cost structure included additional use of things like fertilizers, phytosanitary products, et cetera?

MR RURAC: And technique.

MR GLEASON: I would like to look very quickly at your report. There are two paragraphs, 23 and 24 of your expert report, CEX-3. I will keep it in the Romanian language for your benefit on the screen, unless the Tribunal requests that I put it in English language.

Very quickly, paragraph 23 has been challenged by the other side saying that there is no basis for the numbers that you put in this paragraph. Can you provide the basis for the numbers or substantiate the numbers that you put in this paragraph?

MR RURAC: Well, we used our logic. That is the average. This is how we compute the average.

MR GLEASON: So this sentence is included just to provide an example that the average of 2 t/ha could be anywhere from 0.3 tons to 3.7 tons. Is that correct?

MR RURAC: Yes, right. When we calculated the average, a farmer has one ton, another farmer has four tons, and we add up the two numbers and we divide that number by two. This is statistics.

MR GLEASON: Then I would like to just look at paragraph 24, where you say there is an assumption that some households do not fully declare the results of their yields each year. What is the basis of that statement?
<table>
<thead>
<tr>
<th>Page</th>
<th>Mr Rurac</th>
<th>Ms Pernt</th>
<th>Mr Gleason</th>
<th>Mr Gumoivsci</th>
<th>Mr Kopecky</th>
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<td>1</td>
<td>Yes</td>
<td></td>
<td>Thank you.</td>
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<td>Mr Gleason: Is that it, Mr Gleason?</td>
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<td>That is.</td>
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<td>Mr Gleason: That is.</td>
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<td>The President: Thank you very much. Over to you, Mr Kopecky.</td>
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<td>Questions by Respondent.</td>
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<td>Ms Pernt: My name is Victorija Pernt.</td>
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<td>7</td>
<td>I am counsel for Respondent. Can you hear me all right?</td>
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<td>Mr Rurac: Yes, we can.</td>
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<td>Ms Pernt: I will now take you through some questions with regard to the expert report. In the interests of time I ask that you please respond to the question I address to you specifically and I appreciate both of you having come to Vienna. Mr Gumoivsci, have you worked with Mr Grot or any of his companies before writing this report?</td>
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<td>Mr Rurac: I never worked with him.</td>
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<td>Mr Rurac: No, I never met him before.</td>
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<td>Ms Pernt: You confirmed earlier that this is your report and that you signed it. Is that correct?</td>
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<td>Mr Gumoivsci: Yes.</td>
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<td>Ms Pernt: Did you write this report?</td>
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<td>Mr Gumoivsci: I wrote it with my colleague, with Mr Rurac.</td>
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<td>Ms Pernt: The expert report, at least in part, is written in the first person. Is that correct?</td>
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<td>Mr Gumoivsci: It might be our mistake.</td>
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<td>Ms Pernt: Writing in the first person is one author. Is that correct?</td>
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<td>Mr Gumoivsci: I suppose that the translators made a mistake here.</td>
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<td>Ms Pernt: Was the report originally written in Romanian?</td>
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<td>Mr Gumoivsci: Yes.</td>
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<td>Ms Pernt: And in Romanian it does not say &quot;I&quot;.</td>
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<td>Mr Rurac: We do have the word &quot;I&quot;.</td>
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<td>Ms Pernt: Did you use it in the report?</td>
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<td>Mr Gumoivsci: No. I think it is not there.</td>
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<td>Mr Gleason: Maybe she could show the report to them? What she is referring to in Romanian perhaps?</td>
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1 paragraph 6?

2 Mr Rurac: Yes. Everyone signed as "I". Ms Pernt: It was signed by both of you as "I", but the text in the original was written by both of you in Romanian?

3 Mr Gumoivsci: Yes. Ms Pernt: Can we please pull up the expert report of Mr Wechen? This is paragraph 6 in the report of Deloitte, and it would appear that they used the exact same wording as you did in your report. Is that correct?

4 Mr Rurac: Perhaps they copied us. We didn't copy them, they copied us.

5 Could you please show the Romanian version?

6 Ms Pernt: I am afraid this is the Romanian version. How about paragraph 7 and 8 of Deloitte report? Would those seem to be exactly the same?

7 Mr Gumoivsci: We brought the report. We submitted the report.

8 Ms Pernt: In Romanian?

9 Mr Gumoivsci: Hmm mm.

10 Ms Pernt: Can we just quickly show that also the headings are identical before we move on?
1. you relied on in your opinion to your report?
2. MR GUMOVSKI: Yes. In the references in
3. the bibliography, and I put also the articles that
4. I wrote about the fertilizers, is the
5. recommendations for Moldova, for all the farmers,
6. and for all the types of crops, and not just the
7. crops of Mr Grot.
8. MS PERNT: That would be paragraph 10. Is
9. that correct? Do we have that in Romanian?
10. MR GUMOVSKI: Yes.
11. MS PERNT: So in paragraph 10 of your
12. report you list information and documents you have
13. reviewed. Is that correct?
15. MS PERNT: Is there information about
16. crops, areas and technical equipment obtained from
17. Laguardia? Is that correct?
18. MR GUMOVSKI: We took the data from
19. Floresti, from Soroca, and from the National
20. Statistics Office. At point 10 we said that the
21. average yield is the Moldova yield for the regions
22. of Floresti and Soroca.
23. MS PERNT: The first bullet point of
24. paragraph 10 states that you reviewed the original
25. information about crops, areas and technical
26. equipment obtained from Laguardia. Is that correct?
27. MR GUMOVSKI: Yes, we received those data
28. from Bucharest. They were sent to us via email, the
29. approximate area, as well as the types of crops. At
30. the same time we received from the representative of
31. Mr Grot the type of equipment, as well as the photos
32. he was going to use in those three holdings that he
33. had in lease.
34. MS PERNT: Did you submit that information
35. together with your report?
36. MR GUMOVSKI: Yes. When we submitted the
37. report, we attached all this information.
38. MS PERNT: When you sent your report to
39. counsel, you provided that information to counsel.
40. Is that correct?
41. MR GUMOVSKI: Yes. I received all the
42. information to counsel and if you scroll down, you
43. will find the tables. The average data for Soroca,
44. for Floresti, and the average for the Vîsoica test
45. centre, if you look at the next tables.
46. MS PERNT: We will get to the tables in a
47. minute. Have you received any information from
48. Laguardia that you do not list in paragraph 10?
49. MR GUMOVSKI: I didn't understand the
50. question.
1. **MS PERNT:** You state that you received information about crops, areas and technical equipment from Laguardia. Have you received any other information from Laguardia?

2. **MR GUMOVSKI:** No. I haven’t received any other information from Laguardia.

3. **MS PERNT:** Have you received leases from Laguardia, the actual lease contracts?

4. **MR GUMOVSKI:** No, we didn’t.

5. **MR GLEASON:** Can counsel explain how that is relevant in the context of agricultural testimony, please?

6. **MS PERNT:** I would be happy to.

7. **THE PRESIDENT:** Table 7 refers to rent payments of USD per year, and it has a source reference to a lease agreement

8. **MR GUMOVSKI:** Yes. Yes, it is, but we have not seen leases or contracts.

9. **MS PERNT:** I think that is the second bullet point. You state you have reviewed technological maps collected by Deloitte, so that would be information you received from Deloitte. Is that okay?

10. **MR GUMOVSKI:** From agricultural enterprises in the Republic of Moldova, yes.

---

1. **MS PERNT:** Did you receive those technological maps from Deloitte?

2. **MR GUMOVSKI:** I didn’t understand.

3. **MS PERNT:** I’m not sure if this is translation issues, but the English version says technological maps collected by Deloitte is information that you reviewed. Am I right to assume that these technological maps were provided to you by Deloitte? Mr Rurac, can you help, maybe? You are nodding.

4. **MR RURAC:** We did not receive them from Deloitte, technological maps.

5. **MS PERNT:** You also said that you reviewed acquisition prices offered by collection companies.

6. **MS PERNT:** That is the second to last bullet point.

7. **MR GUMOVSKI:** Yes. That is we obtained these prices from different companies and we calculated the average.

8. **MS PERNT:** But you did not indicate which companies or how many. Is that correct?

9. **MR GUMOVSKI:** What we showed, there is a specification in the text further on, and I can tell you from Novostoc, from Agrostoc, from Prograin, organic/inorganic, we took these prices.

10. **MS PERNT:** So Agrostoc features in acquisition price and in prices, the bullet point just above. Is that correct?

11. **MR GUMOVSKI:** Yes.

12. **MS PERNT:** You provide several tables, including tables on costs and prices. Is that correct?

13. **MR GUMOVSKI:** Yes.

14. **MS PERNT:** And those amounts are in USD.

15. **MS PERNT:** Is that correct?

16. **MR GUMOVSKI:** Yes, USD.

17. **MS PERNT:** Also table 8.

18. **MR GUMOVSKI:** Yes, in table 8 everything we calculated was in USD.

19. **MS PERNT:** Can we have a look at table 6, please? That table lists costs of mechanised works. Is that correct?

20. **MR GUMOVSKI:** Yes, technological files.

21. **MS PERNT:** These were calculated in accordance with the guidelines of the economics institute, and it is the table of results that were taken by research of several households. These guidelines come from the economics institute. They were approved by the Ministry of Agriculture, and they were forwarded to the scientific council of this institute and they were issued as a special set of guidelines for farmers.
1 adjusted for inflation. Is that correct?
2 MR GUMOVSCI: Yes. We took it into account
3 the inflation rate as well, and we specified it in
4 the text. There is a sentence there.
5 MS PERNT: Do you indicate which inflation
6 rate you used?
7 MR GUMOVSCI: I don't remember, but we
8 did use it, the inflation rate.
9 MS PERNT: Could it be 6.2 per cent?
10 MR GUMOVSCI: Yes, it can be from 3, to
11 6, to 7, it can be, but I do not remember.
12 MS PERNT: Can we look at table 6? I put
13 to you that if you take 295.52 and divide that by
14 278.26, that you get to an inflation of
15 6.2 per cent. Would you like to calculate that, or
16 do you recall using 6.2 per cent here?
17 MR GUMOVSCI: In this case I think I took
18 the figures from the book on tariffs. In the
19 guidelines the new prices were written. It was in
20 this way. So the new prices were there in the
21 guidelines. Where there were no such figures we
22 calculated the inflation rate, but there where we
23 found it we took it from the guidelines, but what
24 was higher was the prices of the mechanisation
25 operations, technical operations, not only for oil

---

1 but also for labour, for everything.
2 MS PERNT: I understand. 6.2 per cent is
3 the inflation rate for Moldova. Is that correct?
4 MR ASTUNO: Excuse me, Mr President,
5 I don't believe these are witnesses that are
6 qualified in economics. I think they are here to
7 speak to the agricultural inputs
8 MR KOPECKY: They did the economics so
9 I think they should answer questions about it
10 THE PRESIDENT: They are being asked about
11 a table they have produced and I think counsel is
12 entitled to ask them how they have calculated the
13 prices as that have risen over three years.
14 MS PERNT: Is 6.2 per cent the inflation
15 rate for Moldova?
16 MR GUMOVSCI: On a yearly basis, an
17 annual inflation rate, yes. It can be even higher,
18 yes. Something like that.
19 MS PERNT: Also in table 8 the same
20 inflation rate of 6.2 per cent is used for all
21 years.
22 MR GUMOVSCI: Here I would like to
23 explain that it is not the inflation rate that
24 causes the figures but the achievement or
25 accomplishment rate. You know, year-by-year, the

---

1 price of grains is increasing, and we tried to
2 demonstrate that with this table. Is it clear, what
3 I said?
4 MS PERNT: Maybe I can clarify.
5 Year-by-year it increases steadily by the inflation
6 rate.
7 MR GUMOVSCI: Well, you see, I am not an
8 economist, but what I did was to take over data,
9 figures, from the companies that provided the
10 figures for each cereal -- for rape, for corn, for
11 wheat -- in the respective year when the production
12 was purchased, and I calculated in this way. The
13 inflation rate was taken and used by those who
14 bought the products from there and the producers,
15 those who sold the production, the yield.
16 MS PERNT: Can we have a look at exhibit 5
17 to REX-3, please?
18 MR GLEASON: What is this document?
19 MR GUMOVSCI: Please will you show me
20 this in Romanian?
21 MS PERNT: I am very sorry, I do not have
22 this in Romanian but I am happy to explain the
23 document.
24 THE PRESIDENT: Is it on the hyperlink?
25 MR ASTUNO: There is a reference to table
1 I am saying.

2 THE PRESIDENT: Mr Gumovshi, this is the
3 inflation rate in the United States. It is not
4 immediately apparent why you would have worked with
5 it, but perhaps counsel can explain
6
7 MS PERNT: In paragraph 42 you state that
8 you used the prices from the guidelines, you
9 converted them into USD for the due period, and then
10 you modified them following the inflation. You
11 stated you used the Moldovan inflation rate, and
12 I suggest that this is the more accurate inflation
13 rate, the US inflation rate, for prices in USD? Do
14 you agree?
15
16 THE PRESIDENT: Do you think it is
17 appropriate working on a Moldovan table to use
18 inflation rates in Moldova or in the United States
19 for the purpose of your work?
20
21 MR GUMOVSHI: Of course in Moldova. Of
22 course in Moldova, not in the United States because
23 this is for Moldova. But we were not requested and
24 we did the calculations. The calculations were
25 based on facts, because since the variation of the
26 USD there is a lot of fluctuation there.
27
28 MS PERNT: You stated earlier that the
29 prices increased steadily, as you showed in table 8,
30 by the inflation rate -- we now clarified the
31 Moldovan inflation rate -- can we please have
32 exhibit 13 to REX-3 on the screen?
33
34 MR GLEASON: Are we going to have the same
35 line of questioning for Mr Rurac? Is that the plan?
36 For timing purposes?
37
38 THE PRESIDENT: No, I think it is for you
39 to decide. The questions are put to both experts as
40 they see fit.
41
42 MS PERNT: I have not yet determined.
43 This table shows the variations in prices.
44 If we look at wheat, that is the third line.
45
46 THE PRESIDENT: Could you explain to the
47 experts what this document is, what its source is,
48 where it comes from, which currency it is in, so
49 they understand what they are looking at?
50
51 MS PERNT: This is a document that was
52 filed together with the quantum expert report of
53 Respondent. It shows the prices of agricultural
54 production, sale and price indices on agricultural
55 products.
56
57 THE PRESIDENT: Since I don't have it in
58 front of me, what is the source of this information?
59
60 MR GUMOVSHI: I see this for the first
61 time.
calculations are based on this data when we provided this table.

**MS PERNT:** Thank you. Why does Marius from Bucharest have the data on leases for Laguardia?

**THE PRESIDENT:** I am not sure that is a question for these experts on agricultural matters. That is a question of fact. They are in a position of producing an expert report. They are not knowledgeable of the leases. They have been very honest in saying they have relied on information provided to them. It is open to you to say to other fact witnesses, or in closing, that this is or is not an accurate way of doing it, but I think it is not fair to put them in the position of challenging the documents that have been provided to them. They have just been given the figures and they have been very honest about that.

**MS PERNT:** Thank you. Can I clarify, given to you by Claimant? Unless you don't know that and that is fine.

**MR GUMOVSCHI:** I do not know. We received it from these people, from Marius and Athena from Bucharest.

**MR KOPECKY:** Mr President, how much time do we have left? We would need half an hour and it may be better to break now.

**THE PRESIDENT:** I am not sure. We have to finish at 5.30 today and we will have a very tight day tomorrow. I think we want to use our full amount of time today.

**MS PERNT:** I will do my best. Did you communicate with Deloitte when you prepared your report?

**MR GUMOVSCHI:** Yes, we did co-ordinate. **MS PERNT:** Did you provide your report to Deloitte?

**MR GUMOVSCHI:** Yes. **MS PERNT:** Did you provide any other materials to Deloitte?

**MR GUMOVSCHI:** Yes, also materials that were requested by Deloitte. From the book they wanted the guide as well, and all the other results from the state committee, from Visoca, and also statistical data and averages from the districts of Floresti and Soroca.

**MS PERNT:** That is a lot of information. Can we just note that we did not receive any of that information together with your report or otherwise?

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

MS PERNT: There is a translation issue.

I am going to read the same question. You explained earlier the benefits of using fertilizers and pesticides saying that could increase the yield and that the farmers would thus use the fertilizers and pesticides could have increased their profit margin.

MR ASTUNO: Was that a question?

MS PERNT: Is that true?

MR RURAC: I am sorry, but in order to have a higher yield you need a lot of factors -- soil, pesticide, good works, all sorts of things. In our case, instead of picking up the weeds manually or mechanically, we used herbicides. They are pesticides. This is the minimum we use. We cannot use it here. If you refer to table 5, they are an intensifying factor, not at all.

MS PERNT: But generally if you use pesticides and fertilizers you can increase your profit margins?

MR RURAC: Generally, yes.

THE PRESIDENT: You have five minutes left.

MS PERNT: I would like to take you to table 2 of your expert report. You explained earlier that the harvest in the testing centres is by average 20 per cent higher than a harvest on a farmer's land. In table 2, I see in the first row average of the testing centre, and in the second average Floresi.

MR RURAC: This is scientific truth throughout the world. In a farmer's field harvests are 20 per cent lower than in scientific centres. This is not related to our table. We confirm here that the data from Floresi cannot be used as a guideline because they are smaller. They are about half the ones in a scientific centre.

MS PERNT: If I look, for instance, at sunflower and I compare the yield rate of Visoca and of Floresi, then I get an increase of 96 per cent?

If I look for soy, I get 315 per cent. That is considerably more than 20 per cent. Would you agree?

MR RURAC: I repeat again: 20 per cent is considered -- on research centres it is by 20 per cent more than on the farmer's land. Moldova would have died if you had used only 1.66 of sunflower, the official data. This is a main technical crop in Moldova: canola or rape and sunflower.

MS PERNT: Can we agree the increase shown in the table is considerably above 20 per cent?

MR RURAC: Where exactly?

THE PRESIDENT: Even I can read what is in the table. The table is the table. We are not complete idiots as Tribunal members; frankly. We are able to read a table and we will interpret it. But it says what it says. To have got an hour and 20 in and to invite them to confirm what it says is not really a helpful use of your time. Do you really have more questions of this kind?

MS PERNT: No, I do not, but I thought it was fair to ask them about 20 per cent and the numbers in the table, rather than not asking them about that.

MR KOPECKY: It is a contradiction and I think they should be given the chance to explain that contradiction, and that is what we have tried to do, but if the Tribunal already saw that and it is on record we need not continue on that.

THE PRESIDENT: I appreciate what you are trying to do. We have read the tables. We are very experienced arbitrators. We read everything we are given. We are able to calculate, some of us are perhaps not so great at mathematics, but we are able to work out what they have said, why they have said it and then test the propositions by reference.

We are running out of time. We are going to be continuing anyway tomorrow with both experts. This is probably a good time to stop. How many more minutes of questions do you think you have got?

MS PERNT: 15/20 minutes.

THE PRESIDENT: You told me 30 minutes ago you had 35 minutes, so you have grown with an additional 20 minutes in the intervening 30 minutes. I wonder whether that is -- it is up to you, but do you really need it? You are getting a sense of a Tribunal that is on top of this material, and I would invite you to reflect overnight --

MS PERNT: I will reflect.

THE PRESIDENT: -- how long you need for re-direct realistically, given the one and a half hours we have just spent?

MR GLEASON: It is hard to say right now without knowing what the additional questions will be. We will need to reflect this evening.
THE PRESIDENT: On the basis of the 1.5 hours we have had so far, how long do you need?

MR GLEASON: I was pretty liberal because I do not know what the remainder of the questions will be, but I would just like to go back and discuss the nature in which the report was actually created with these two experts. I think that is important because that was a matter of significant examination from opposing counsel, and perhaps just give them an opportunity to clarify some of their answers.

THE PRESIDENT: Fair enough.

Professor Kieper will have a comment. We have to tell both experts -- this is very important -- you are on oath, you are not allowed to speak to anyone overnight. We are going to break now. You can go out and have a fabulous evening in Vienna, but one thing you cannot do is you can have no conversations at all, and no contact by email, by telephone or in any way at all with anyone on that side of the room or anyone on that side of the room, or us.

MR GLEASON: There is a very practical problem with that and that is these gentlemen have planned on leaving today because that was the schedule and we are going to have to keep them overnight and help them arrange that. Is there a way that can be done?

THE PRESIDENT: I think we will have to take it -- provided Respondent is comfortable with it -- we will have to take it on professional good faith that you will make arrangements, change plane tickets, extend hotel rooms for one night, if necessary make sure they are in funds so they are able to eat tonight because we don’t want them to be starving when they come tomorrow morning.

MR GLEASON: Can we have a brief conversation with them about those issues in the presence of opposing counsel, perhaps?

THE PRESIDENT: Is Respondent comfortable with that?

MR KOPECKY: Yes.

THE PRESIDENT: While we are on that, for tomorrow we have the two quantum experts, and

1 I think what we agreed was we would continue with them as we had held with our earlier legal experts.
2 We -- I think I can say -- will have questions but I suspect they will be far fewer questions than we had, and that will give you a lot more leeway. We appreciate we have used a lot of time, but the legal experts had an important role on both sides.
3 I think you have understood that.
4 We have 25 minutes of introduction for one, 15 minutes for another. How much time -- it is hard to estimate but for planning purposes, and we have plenty of flexibility tomorrow -- how much time, Claimant, will you need for cross-examination?
5 MR ASTUNO: Estimating on the liberal side I would say 45 minutes.
6 THE PRESIDENT: Respondent?
7 MR KOPECKY: About the same. An hour max.
8 THE PRESIDENT: We think we will invert the order and let you go with your cross-examinations before we weigh in, so to speak, so we will come after and limit our questions until after you have had your cross-examination, so that we will then be able to exercise self restraint. We are conscious you will want a little time over lunch to be able to prepare your closing arguments to wrap up, so we are trying to factor that in also.
9 Any other housekeeping matters?
10 MR GLEASON: Just one. During the examination of Mr Gladei earlier there was a document used, and I have confirmed it was not actually in the linked index provided by Respondent. It was an annex provided in the document production process but not actually submitted as an exhibit.
11 We would request that that document not become part of the record. We understand that the Tribunal is fully capable of assessing that information, but we wanted to get on record that that document used in examination was not part of the index that was provided to us.
12 MR KOPECKY: Agreed it was not part of the consolidated index, because we agreed only exhibits, memorials and statements. It was part of the record, however, being sent by Claimants to Ms Nitschke on 27 February 2017 and being forwarded by Ms Nitschke to the Tribunal on 28 February 2017, together with Claimants’ document production request, and the Tribunal I believe based its PO3 document production decision on this bundle of documents, so it is on record.
documents produced by Claimants were actually submitted to the Tribunal. They were submitted directly to opposing counsel.

THE PRESIDENT: We have had a chat. If it was submitted as part of these proceedings it is part of the record and it is already before us so it is just a question of fact which we don't need to sort out now, you can sort it out overnight, as to whether it was or was not appended and attached to an email, including one that went to us. If it was it is part of the record: if it wasn't it is not part of the record. We leave it to you two teams overnight to work out whether it was or not. If there is a dispute, you can raise it tomorrow.

MR GLEASON: That is fair. There are a lot of documents and sometimes it is hard to remember every single one.

THE PRESIDENT: Tell me about it!

MR KOPECKY: May I read it into the record? "Email of Ms Nitschke. 28 February 2017. 5:36 CET" --

THE PRESIDENT: We will leave it to you overnight to sort out. We have proceeded in excellent good faith. Terrific co-operation by both sides. We trust you both overnight to sort it out.

MR KOPECKY: We will.

THE PRESIDENT: I think we are in okay time on the basis of the indications you have given us. If we can get done tomorrow morning by around 10.15 with our two experts on agricultural matters starting at 9.30 we will then continue straight on, and we may have lunch delayed but we ought to be able to complete our experts on quantum by the lunch break, whatever time that is, and you will then have a little time to both reflect, and the operative principle is that Claimant will make its closing remarks first and Respondent will follow on immediately. So it is not about Respondent following what Claimant has said. Your closing comments, both of you, are based on everything we have heard over the next three days, so we will follow seriatim and we can run on as late as necessary tomorrow night subject to the needs of the interpreters and court reporters.

MR GLEASON: Concerning the timing on the closing, is that a firm one hour?

THE PRESIDENT: There is always a degree of flexibility on the part of the Tribunal but I once had the incredible privilege of appearing before the greatest lawyer in English practice over the last fifty years, Tom Bingham, Lord Bingham, and early in my career in an English court he let it be known, rather too publicly for my liking, "Mr Sands, often in life, less is more. Do not forget that". We have listened very attentively. I hope you have noticed we really are on top of the record here; we do not need you in your closings to repeat anything you have already said; we are acutely aware of the evidence, the legal arguments, the expert opinions, the issues that divide. The purpose of the closing is to be responsive to what has happened in this hearing.

To put my own cards on the table I would not expect a PowerPoint for a closing. A PowerPoint (I am speaking only for myself) has the terrible effect of causing people to dive into a text and not really address the Tribunal. To best way to stand before us is with a single sheet of paper, five or six key points on it -- bullet points, one word -- to stand up and tell us what are the issues we should be thinking about.

What we are very keen to hear tomorrow is your response to what we have heard. We don't need elegant fabulous PowerPoints with lots of tables.

What we want is points put simply, the points that divide the parties. We have been very much helped by you with counsel in these proceedings and by the experts to help us understand your differences on interpretation, on the facts, and your task is to persuade us in an hour why your view on those differences is right, and why your view is right. And that is a very simple, elegant exercise. "Less is more". You will have your hour, you will have it a little bit more if you need it, but ask yourself honestly how much time do you need to persuade us. It is not a case that raises a multitude of complex issues. There are some, but you can basically count them on the fingers of a single hand.

Tell us what the real issues are, tell us what you need to persuade us on those small number of issues. That is what the closing is about. We will find that very helpful and be very appreciative.

MR FORTIER: To summarise what the Chairman has said, we want points, not power!

(Short discussion on timing off the record)

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