



AMBASADA REPUBLICII MOLDOVA ÎN STATELE UNITE ALE AMERICII
EMBASSY OF THE REPUBLIC OF MOLDOVA TO THE UNITED STATES OF AMERICA

2101 S Street, NW, Washington D.C. 20008, Tel.: (202) 667 1130, fax: (202) 667 2624, e-mail: washington@mfa.md

No. USA/424/540

The Embassy of the Republic of Moldova to the United States of America presents its compliments to United States District Court for the District of Columbia, and with reference to Civil Action no. 14cv-1921 CRC, herewith has the honor to convey the *copies of the documents confirming the examination by the court of Appeal of Paris of the request for annulment of the arbitral sentence in the case OOO "Energoalians" v. Republic of Moldova.*

The Embassy of the Republic of Moldova to the United States of America avails itself of this opportunity to renew to the United States District Court for the District of Columbia the assurances of its highest consideration. *CB*

Washington, D.C.

Encl.: 9 pages



November 05, 2018

RECEIVED

NOV - 5 2018

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Washington D.C.**

LEAVE TO FILE GRANTED
Chris R. Cox 11/6/18



MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA :

ca. 11. 2018 nr. 09/12523

In the

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
33 Constitution Avenue N.W. Washington D.C. 20001, USA

OOO Energoalians (aka OOO Energoalliance, or OOO Энергоальянс),
2/19 Simirenka str. Kyiv, Ukraine 03134

Petitioner,

v.

The Republic of Moldova, by and through the Minister of Justice,
31 August 1989 Str., No. 82, Chisinau, MD -2033, Republic of Moldova

Respondent.

Civil Action No.14-cv-1921 CRC

Hereby, in addition to the previous correspondence, the Ministry of Justice presents the documents confirming the examination by the Court of Appeal of Paris of the request for annulment of the arbitral sentence in the case. OOO "Energoalians" (OOO Энергоальянс) v. Republic of Moldova.

- Encl:** 1. *Declaration of Appeal from July 13 th, 2018;*
2. *Findings for supporting an appeal for annulment of arbitral sentence;*
3. *Another document – On these grounds (certified translation).*


Victoria IFTODI
Minister of Justice

cc: Law Firm Arnall Golden Gregory LLP, 1775 Pennsylvania Ave., NW, Ste. 1000, Washington D.C. 20006, USA, representing OOO Energoalians (aka OOO Energoalliance, or OOO Энергоальянс), Petitioner

*A Mesdames et Messieurs les Président et
Conseillers Composant le Pôle 1 Chambre 1
de la Cour d'appel de Paris*

N° RG : 18/14721

Déposées le 5 octobre 2018

Clôture : 14 mai 2019

Plaidoiries : 13 juin 2019

**CONCLUSIONS AU SOUTIEN D'UN RECOURS EN ANNULATION CONTRE UNE
SENTENCE ARBITRALE**

POUR :

La REPUBLIQUE DE MOLDAVIE

Prise en la personne de Son Excellence le Ministre de la Justice, domiciliée en ses bureaux au
Ministère de la Justice sis 82, rue du 31 août 1989 à Chişinău, République de la Moldavie.

Ayant pour avocat postulant : Maître Matthieu BOCCON-GIBOD
Avocat du Barreau de Paris
LEXAVOUE PARIS-VERSAILLES
89 quai d'Orsay - 75007 Paris
Toque C 2477

Et pour avocats plaidants : Maîtres Michael Ostrove, Théobald Naud et Séréna Salem
Avocats au Barreau de Paris
DLA PIPER FRANCE LLP
27 rue Laffitte - 75009 Paris
Toque R 235

Demanderesse au recours en annulation

CONTRE :

La société KOMSTROY

Société immatriculée en Ukraine, sous le numéro 35996101, dont le siège social est sis 144-A,
chaussée de Kharkov à Kiev, district de Darnista (02091), Ukraine, prise en la personne de son
représentant légal en exercice et venant aux droits de la société Energoalians.

Défenderesse

COUR D'APPEL DE PARIS
- 5 OCT. 2018
Pôle 1 - Chambre 1

POUR COPIE CERTIFIÉE CONFORME
Le Greffier en Chef
le 22/10/18
la pse Mlle
PATE M R Laminé

APOSTILLE
(Convention de La Haye du 5 Octobre 1961)

1. République française *Etats-Unis*

Le présent acte public

2. a été signé par *Noah J. Hoffmann*

3. agissant en qualité de *Boon D. Appel de Paris*

4. est revêtu du sceau/timbre de *Appel de Paris*

Attesté



5. à Paris

6. le *22 Nov 2011*

7. par le Procureur général près la *Cour d'appel de Paris*

8. sous le sceau/timbre de *Appel de Paris*

9. Scéné *Michael J. Gernoff*
PREMIER AVOCAT GENERAL



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Translated into English language

*Attn.: Mrs. and Mr. President and Advisers
of
Division 1 Chamber 1 of the Court of Appeal
of Paris*

No. RG: 18/14721

Submitted on October 5th, 2018

Closure: May 14th, 2019

Pleadings: June 13th, 2019

**FINDINGS FOR SUPPORTING AN APPEAL FOR ANNULMENT OF ARBITRAL
SENTENCE**

FOR:

The REPUBLIC OF MOLDOVA

In the person of His Excellency Minister of Justice from the Ministry of Justice, located on 82, 31 august 1989 Street, Chisinau, the Republic of Moldova.

Having as instructing solicitor: Mr. Matthieu BOCCON-GIBOD
Lawyer at the Bar of Paris
LEXAVOUE PARIS-VERSAILLES
89 quai d'Orsay – 75007 Paris
Box C 2477

Having as pleading lawyers: Mr. Michael Ostrove, Theobald Naud and Serena Salem
Lawyers at the Bar of Paris
DLA PIPER FRANCE LLP
27 rue Laffitte – 75009 Paris
Box R 235

Plaintiff in appeal for annulment

AGAINST:

KOMSTROY Society

Society registered in Ukraine, under the number 35996101, with the registered address on 144-A, road of Kharkov, Kiev, Darnitsa district (02091), in the person of its duly authorized legal representative and on the rights of Energoalians society.

Respondent

Translation of the given text from French into English has been performed by the translator of the staff at the Translation Department "PROIRVAS" Ltd, Graur Elena.

Confirm: Administrator S.C. „PROIRVAS” SRL, Mitru Irina.

Republic of Moldova/Chisinau/ 26.10.2018

Translated into English language

Freedom – Equality – Brotherhood

FRENCH REPUBLIC

Paris, July 13th, 2018

**COURT OF APPEAL OF PARIS
CIVIL REGISTRY**

Access: 10, bd du Palais

Phone: 01.44.32.52.52

Submission from Monday till Friday

From 9:00 a.m. till 05:00 p.m.

File reference: No. RG 18/14721

Division 1 – Chamber 0

**Body REPUBLIC OF MOLDOVA
Ministry of Justice, 82, 31 august 1989 Street
CHISINAU, MOLDOVA**

DECLARATION OF APPEAL

REFERENCES OF THE CASE:

Body REPUBLIC OF MOLDOVA acting on the person of His Excellency Minister of Justice, represented by Mr. Matthieu BOCCON GIBOD from SELARL LEXAVOUE PARIS – VERSAILLES, lawyer at the bar of PARIS, box: C2477 – No. of file 1859824

c/

KOMSTROY Society in the person of its duly authorized legal representative, on the rights of Energoalians society, located in 2/19, Symyrenka Str., Kiev (03134), Ukraine,

**144-A road of Kharkov, Darnitsa District
02091 KIEV, UKRAINE**

No. RG 18/14721

Declaration for referral after cassation

Referral for Appeal dated of March 28th, 2018

Given the referral for cassation, the Court of Appeal of Paris received an appeal aimed at annulling the arbitral sentence ruled at Paris on October 25th, 2013 by ad hoc arbitral court composed of Mr. Dominique Pellew (President), Mr. Mihail Savranski and Mr. Victor Volcinski.

Referral received on June 7th, 2018

We notify you about the referral of the court of appeal of Paris in the above-mentioned case. This case was distributed to **Division 1 – Chamber 0.**

***Stamp:* Ministry of Justice of the Republic of Moldova. Entry No. 11928. 23.06.2018.**

FOR THE DIRECTOR OF REGISTRY JUDICIAL SERVICES

/signature/

In case you face difficulties in mobility, please, contact our service.

CA

Postal address

34, quai des Orfevres

75055 Paris Cedex 01

Translation of the given text from French into English has been performed by the translator of the staff at the Translation Department "PROIRVAS" Ltd, Graur Elena.

Confirm: Administrator S.C. „PROIRVAS” SRL, Mitru Irina.

Republic of Moldova/Chisinau/ 26.10.2018

PAR CES MOTIFS

Vu l'article 1520 du Code de procédure civile,
Vu les articles 1 et 26(1) du Traité sur la Charte de l'Energie,
Vu l'article 267 du Traité sur le Fonctionnement de l'Union Européenne,

La République de Moldavie conclut qu'il plaise à la Cour de :


- **PRONONCER** l'annulation de la Sentence Arbitrale rendue le 25 octobre 2013 par un tribunal arbitral à l'encontre de la République de la Moldavie, en ce que le tribunal arbitral s'est déclaré à tort compétent et en ce que la reconnaissance ou l'exécution de la sentence est contraire à l'ordre public international ;
- **CONDAMNER** la société Komstroy à verser à la République de la Moldavie la somme de 100.000 euros en application de l'article 700 du Code de procédure civile ainsi qu'au paiement des entiers dépens de l'instance.

A titre subsidiaire :

- **PRIER** la Cour de Justice de l'Union Européenne de bien vouloir répondre à toute question préjudicielle sur l'interprétation du Traité sur la Charte de l'Energie que la Cour d'appel considérerait déterminante pour la solution du litige et notamment les questions suivantes :
 - Une créance issue d'un contrat de vente d'électricité et n'ayant impliqué aucun apport de la part de l'investisseur dans l'état d'accueil peut-elle constituer un « investissement » au sens de l'article 1(6) et/ou 1(6)(c) du Traité sur la Charte de l'Energie ?
 - Une créance appartenant à un investisseur d'une partie contractante, issue d'un contrat de vente d'électricité (DAF), peut-elle constituer un « investissement réalisé dans la zone » d'une autre partie contractante au sens de l'article 26(1) du Traité sur la Charte de l'Energie en l'absence de toute activité économique exercée sur le territoire de cette dernière ?
- **SURSEoir A STATUER** dans l'attente de la réponse de la Cour de Justice de l'Union Européenne, par application de l'article 378 du code de procédure civile.

SOUS TOUTES RESERVES

POUR COPIE CERTIFIÉE CONFORME
Le Greffier en Chef
le 22/10/18
la greffière
PATRICIA LAURENTE



APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. République française *Etats-Unis*

Le présent acte public

2. a été signé par... *Meant*

3. agissant en qualité de... *le Greffier d'Appel de Paris*

4. est revêtu du sceau/timbre de... *Sceau de l'Appel de Paris*

Attesté



5. à Paris *27 OCT. 2018*

6. le.....

7. par le Procureur général près la Cour d'appel de Paris *[Signature]*

8. soussigné.....

9. Sceau *[Signature]*
PREMIER AVOCAT GÉNÉRAL



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Translated into English language

ON THESE GROUNDS

Given the article 1520 of the Civil Procedure Code,
Given the articles 1 and 26(1) of the Energy Charter Treaty
Given the article 267 of the Treaty on the Functioning of Europe,

The Republic of Moldova has concluded that Court should:

- **PRONOUNCE** the annulment of the Arbitral Sentence ruled on October 25th, 2013 by an arbitral court against the Republic of Moldova, for the fact that the arbitral court had wrongly declared itself as competent and for the recognition or the enforcement of the sentence is contrary to the international public order;
- **CONDEMN** Komstroy society to pay to the Republic of Moldova the amount of 100.000 Euro pursuant to the article 700 of the Civil Procedure Code and the incurred charges.

Alternatively:

- **ASK** the Court of Justice of the European Union to give its opinion on any prejudicial question regarding the interpretation of the Energy Charter Treaty, which the Court of Appeal had considered determinant for the settlement of the litigation, and namely:
 - o A debt resulting from an electricity sale contract and which did not implicate any contribution from the part of investor in the receipt condition may constitute an "investment" in respect of the article 1(6) and/or 1(6)(c) of the Energy Charter Treaty?
 - o A debt belonging to an investor of a contracting party, resulting from an electricity sale contract (DAF) may constitute an "investment realized in the area" of the other contracting party in respect of the article 26(1) of the Energy Charter Treaty, if there is no economic activity on the territory of the last?
- **STAY ITS PROCEEDINGS** while waiting the reply of the Court of Justice of the European Union in respect of the article 378 of the civil procedure code.

WITH ALL PROPER RESERVES

True certified copy.

Chief-Registrar

/signature/

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Confirm: Administrator S.C. „PROIRVAS" SRL, Mitru Irina.

Republic of Moldova/Chisinau/ 26.10.2018