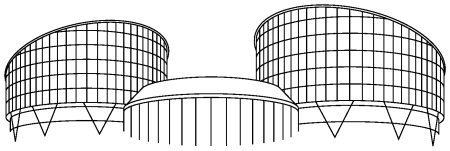


EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SOYMA v. THE REPUBLIC OF MOLDOVA, RUSSIA AND UKRAINE

(Application no. 1203/05)

JUDGMENT

STRASBOURG

30 May 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Soyma v. the Republic of Moldova, Russia and Ukraine,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Dmitry Dedov,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 1203/05) against the Republic of Moldova, the Russian Federation and Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Sergiy Volodymyrovych Soyma ("the applicant"), on 28 December 2004. After his death in 2006 his mother, Ms Pavlina Petrivna Soyma, expressed her wish to pursue the proceedings before the Court.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Zayikina and Mr L. Gulua, lawyers practising in Kharkiv, Ukraine. The Moldovan Government ("the Government") were represented by their Agent, Mr L. Apostol, and the Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained contrary to Article 5 § 1 of the Convention and that the criminal proceedings against him had been unfair. After his death, the applicant's mother also complained that Ukraine and Moldova were responsible for her son's death.

4. On 14 May 2013 the application was communicated to the Moldovan and Russian Governments. On the same date the Ukrainian Government were informed of their right to intervene in the proceedings, in accordance with Article 36 § 1 of the Convention and Rule 44 § 1(b), but they did not communicate any wish to avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and, until his death in 2006, lived in Vinnytsya.

6. The background to the case, including the Transdniestrian armed conflict of 1991-1992 and the subsequent events, is set out in *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, §§ 28-185, ECHR 2004-VII) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, §§ 8-42, ECHR 2012 (extracts)).

7. In 2001 the applicant was arrested in the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT") on charges of murder. On 28 June 2002 he was convicted in a final judgment by the "MRT" Supreme Court and sentenced to ten years' imprisonment.

8. According to the applicant, during his pre-trial detention he was subjected to ill-treatment to make him confess to committing the murder.

9. After his conviction the applicant's mother made many requests to various Ukrainian official bodies to obtain the transfer of her son to a Ukrainian prison. The case file before the Court contains approximately forty replies received by her from various Ukrainian authorities. However, her efforts were not successful. In particular, the Ministry of Foreign Affairs of Ukraine informed the applicant that it had contacted its counterpart in Moldova, which had informed it that Moldova could not secure the applicant's transfer to a Ukrainian prison because it did not have control over the territory of the "MRT". The Ukrainian authorities also contacted the "MRT" authorities, but to no avail. In a letter to the applicant's mother, the "MRT" authorities stated that they would only transfer the applicant to a Ukrainian prison after the conclusion of a treaty between Ukraine and the "MRT" which would make the transfer of prisoners possible. Since Ukraine refused to sign such a treaty with it, the transfer was not possible. The applicant's mother went so far as to initiate court proceedings against the Ukrainian Ministry of Foreign Affairs, denouncing its lack of action, but she was not successful.

10. On several occasions the applicant's representative also contacted the Moldovan authorities, enquiring about the status of the Transdniestrian region and, on at least two occasions, asking them for assistance with the question of the applicant's transfer to a Ukrainian prison. It does not appear from the material submitted by the applicant and his mother that he complained to the Moldovan authorities about alleged breaches of his Convention rights by the "MRT" authorities. In a letter of 25 April 2003 the Prosecutor General's Office of Moldova informed the applicant's representative that it had contacted the prosecuting authorities of the "MRT"

and requested the necessary documents to have the applicant transferred to a Ukrainian prison. It is not clear from the case file whether the "MRT" authorities reacted to that letter. In another letter sent to the applicant's representative by the office of the President of the Republic of Moldova, the lawyer was informed that the Moldovan authorities were unable to bring about the applicant's transfer to a Ukrainian prison while the Transdniestrian conflict remained unsettled.

11. The applicant's mother also wrote to the OSCE mission in Moldova, which informed her that her letter had been forwarded to the Ukrainian Embassy in Chisinau.

12. In around March 2006 the applicant broke his leg and was admitted to hospital. It appears from his mother's statements that she was able to spend time with him during his stay in hospital.

13. On 24 May 2006 the applicant was found hanged in the gym of the prison in which he was being detained. It does not appear that the applicant's mother requested or obtained a medical forensic report concerning the circumstances of his death. However, it appears from her statements that the applicant did not have any signs of violence on his body.

II. RELEVANT DOMESTIC LAW AND PRACTICE OF THE REPUBLIC OF MOLDOVA AND OTHER RELEVANT MATERIALS

14. Reports by inter-governmental and non-governmental organisations, the relevant domestic law and practice from the Republic of Moldova and other pertinent documents were summarised in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 61-77, ECHR 2016).

THE LAW

I. JURISDICTION

15. The Court must first determine whether the applicant falls within the jurisdiction of the respondent States for the purposes of the matters complained of, within the meaning of Article 1 of the Convention.

16. In so far as Ukraine is concerned, the Court notes that neither the applicant nor his mother adduced any evidence in support of the allegation that it had jurisdiction in the present case. In those circumstances, the Court considers that the claim concerning the jurisdiction of Ukraine is unsubstantiated and holds that the applicant did not fall within Ukrainian jurisdiction under Article 1 of the Convention. Consequently, the part of the

application directed against Ukraine must be declared inadmissible under Article 35 § 4 of the Convention.

A. The parties' submissions

17. As to the jurisdiction of the other respondent States, the applicant and the Moldovan Government submitted that both respondent Governments had jurisdiction.

18. For their part, the Russian Government argued that the applicant did not come within their jurisdiction and that, consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. As they did in *Mozer* (cited above, §§ 92-94), the Russian Government express the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others* (cited above), *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), and *Catan and Others* (cited above) was wrong and at variance with public international law.

B. The Court's assessment

19. The Court observes that the general principles concerning the problem of jurisdiction under Article 1 of the Convention in respect of acts and facts occurring in the Transdniestrian region of Moldova were set out in *Ilaşcu and Others* (cited above, §§ 311-19), *Catan and Others* (cited above, §§ 103-07) and, more recently, in *Mozer* (cited above, §§ 97-98).

20. In so far as the Republic of Moldova is concerned, the Court notes that in *Ilaşcu, Catan* and *Mozer* it found that although Moldova had no effective control over the Transdniestrian region, it followed from the fact that Moldova was the territorial State that persons within that territory fell within its jurisdiction. However, its obligation, under Article 1 of the Convention, to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, was limited to that of taking the diplomatic, economic, judicial and other measures that were both in its power and in accordance with international law (see *Ilaşcu and Others*, cited above, § 333; *Catan and Others*, cited above, § 109; and *Mozer*, cited above § 100). Moldova's obligations under Article 1 of the Convention were found to be positive obligations (see *Ilaşcu and Others*, cited above, §§ 322 and 330-31; *Catan and Others*, cited above, §§ 109-10; and *Mozer*, cited above, § 99).

21. The Court sees no reason to distinguish the present case from the above-mentioned cases. Besides, it notes that the Moldovan Government do not object to applying a similar approach in the present case. Therefore, it finds that Moldova has jurisdiction for the purposes of Article 1 of the Convention, but that its responsibility for the acts complained of is to be

assessed in the light of the above-mentioned positive obligations (see *Ilaşcu and Others*, cited above, § 335).

22. In so far as the Russian Federation is concerned, the Court notes that in *Ilaşcu and Others* it has already found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992 (see *Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdniestrian region that up until July 2010, the "MRT" was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support (see *Ivanţoc and Others*, cited above, §§ 116-20; *Catan and Others*, cited above, §§ 121-22; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-11).

23. The Court sees no grounds on which to distinguish the present case from *Ilaşcu and Others*, *Ivanţoc and Others*, *Catan and Others*, and *Mozer* (all cited above).

24. It follows that the applicant in the present case fell within the jurisdiction of the Russian Federation under Article 1 of the Convention. Consequently, the Court dismisses the Russian Government's objections *ratione personae* and *ratione loci*.

25. The Court will hereafter determine whether there has been any violation of the applicant's rights under the Convention such as to engage the responsibility of either respondent State (see *Mozer*, cited above, § 112).

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

26. The applicant complained that his arrest and detention had been unlawful and contrary to Article 5 § 1 of the Convention. The relevant parts of Article 5 read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

A. Admissibility

27. The Russian Government submitted that the complaint under Article 5 § 1 of the Convention was of an eminently personal and non-transferable nature and, as such, could not be transferred from the applicant to his mother. They relied, *inter alia*, on *Biç and Others v. Turkey* (no. 55955/00, §§ 22-24, 2 February 2006).

28. The Court notes that according to its case-law, the next-of-kin cannot lodge complaints alleging violations of Article 5 of the Convention on behalf of people who have died (see *Biç and Others*, cited above). However, next-of-kin are entitled to continue proceedings before the Court concerning complaints lodged by a person before he or she died (see, among other cases, *Lukanov v. Bulgaria*, 20 March 1997, *Reports of Judgments and Decisions* 1997-II; and *David v. Moldova*, no. 41578/05, 27 November 2007).

29. Since the complaint under Article 5 § 1 of the Convention was lodged by the applicant and not by his mother, the Russian Government's objection must be dismissed.

30. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other ground. The Court therefore declares it admissible.

B. Merits

31. The applicant complained that neither his arrest nor his detention were ordered by a lawfully constituted court as required by Article 5 § 1 of the Convention.

32. The respondent Governments did not make any submissions on the merits of this complaint.

33. The Court reiterates that it is well established in its case-law on Article 5 § 1 that any deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law; it also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention

(see, for example, *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013; and *Mozer*, cited above, § 134).

34. The Court reiterates that in *Mozer* it held that the judicial system of the "MRT" was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-49). For that reason it held that the "MRT" courts and, by implication, any other "MRT" authority, could not order the applicant's "lawful" arrest or detention, within the meaning of Article 5 § 1 of the Convention (see *Mozer*, cited above, § 150).

35. In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too. It considers therefore that there has been a breach of Article 5 § 1 of the Convention in the present case.

36. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights under Article 5 of the Convention (see paragraph 20 above). In *Mozer*, the Court held that Moldova's positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants' rights (see *Mozer*, cited above, § 151).

37. As regards the first aspect of Moldova's obligation, to re-establish control over the Transdniestrian territory, the Court found in *Mozer* that Moldova had taken all measures in its power from the onset of the hostilities in 1991-1992 until July 2010 (*Mozer*, cited above, § 152). Since the events complained of in the present case took place before that date, the Court sees no reason to reach a different conclusion (*ibidem*).

38. Turning to the second part of the positive obligations, namely to ensure respect for the applicant's individual rights, the Court notes that the applicant's efforts were mainly directed at seeking assistance from the Ukrainian authorities (see paragraph 9 above). The applicant's representative made only two requests for assistance from the Moldovan authorities to secure his transfer to a Ukrainian prison. On one occasion the Prosecutor's Office contacted the "MRT" authorities in relation to the applicant's transfer, apparently without any success. On another occasion, the applicant's representative was informed that the Moldovan authorities could not secure the transfer owing to their lack of control over the "MRT" authorities. Against that background, the Court notes that the applicant never complained to the Moldovan authorities of any breach of his Convention rights (see paragraph 10 above).

39. In the light of the foregoing, the Court concludes that the Republic of Moldova did not fail to fulfil its positive obligations in respect of the applicant and finds that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova.

40. In so far as the responsibility of the Russian Federation is concerned, the Court notes that there is no evidence that persons acting on behalf of the Russian Federation directly participated in the measures taken against the applicant.

41. Nevertheless, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraphs 22-23 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercises detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicant's rights (*ibidem*).

42. In conclusion, and after having found that the applicant's detention was unlawful under Article 5 § 1 of the Convention (see paragraph 35 above), the Court holds that there has been a violation of that provision by the Russian Federation.

III. OTHER COMPLAINTS

43. The applicant complained under Article 6 that the criminal proceedings against him had been unfair. He also complained under Article 13 that he had no effective remedies against that breach. However, the Court notes that while the criminal proceedings ended on 28 June 2002, the present application was lodged only on 28 December 2004, that is more than six months later. Consequently, these complaints must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

44. The applicant also complained under Article 8 that he could not meet his parents while in detention. However, it appears from his mother's statements that she was able to spend time with him in hospital on one occasion (see paragraph 12 above). Moreover, there is no evidence in the case file that either the applicant or his mother requested meetings from the prison administration. In those circumstances, the Court considers that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

45. The applicant further complained under Article 3 of the Convention that he had been subjected to ill-treatment while in detention. However, he failed to adduce any evidence such as medical documents and/or witness statements in support of his allegations. The Court therefore considers that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

46. Lastly, in so far as the complaint under Article 2 of the Convention is concerned, the Court notes that initially it was lodged only against the Republic of Moldova and Ukraine (with respect to Ukraine, see paragraph 16 above). It was only in the observations on the admissibility and the merits submitted in March 2014 that the applicant's mother argued for the first time that the Russian Federation was also responsible for her son's death. As the complaint against the Russian Federation was lodged almost six years after the applicant's death, it must be declared inadmissible for failure to observe the six-month rule, pursuant to Article 35 §§ 1 and 4 of the Convention.

47. Insofar as the complaint under Article 2 of the Convention is directed against the Republic of Moldova, the applicant's mother complained about a lack of investigation into the circumstances of her son's death. According to her, the Moldovan authorities accepted the version of the "MRT" authorities, without conducting or trying to conduct their own investigation. The Moldovan Government argued that, since Moldova had no effective control over the Transdniestrian region, it could not be held responsible for any violation of Article 2 of the Convention.

48. The Court considers that, for the reasons given in respect of the complaint under Article 5 § 1 of the Convention (see paragraphs 36-39 above), and taking into account the fact that the Moldovan authorities are not in a position to carry out a meaningful investigation, the complaint under Article 2 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

51. The Governments contended that the claim was excessive and asked the Court to dismiss it.

52. The Court notes that it has not found any violation of the Convention by the Republic of Moldova in the present case. Accordingly, no award of compensation is to be made with regard to this respondent State.

53. Having regard to the violations by the Russian Federation found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 20,000 to the applicant, to be paid by the Russian Federation.

B. Costs and expenses

54. The applicant also claimed EUR 1,563 for costs and expenses.

55. The respondent Governments considered that the sum claimed was excessive.

56. The Court notes that it has found that Moldova, having fulfilled its positive obligations, was not responsible for any violation of the Convention in the present case. Accordingly, no award of compensation for costs and expenses is to be made with regard to this respondent State.

57. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Mozer*, cited above, § 240). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 1,000 to the applicant for costs and expenses, to be paid by the Russian Federation.

C. Default interest

58. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 5 § 1 of the Convention admissible in respect of the Republic of Moldova;

2. *Declares*, by a majority, the complaint under Article 5 § 1 of the Convention admissible in respect of the Russian Federation;

3. *Declares*, unanimously, the remainder of the application inadmissible;

4. *Holds*, by six votes to one, that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova;

5. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention by the Russian Federation;

6. *Holds*, by six votes to one,

(a) that the Russian Federation is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(v) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses*, unanimously, the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 30 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

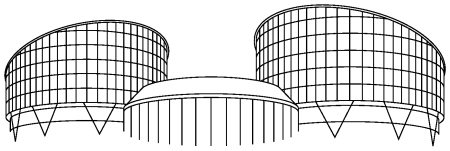
Stanley Naismith	Işıl Karakaş
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

A.I.K.
S.H.N.

DISSENTING OPINION OF JUDGE DEDOV

My vote in the present case was based on my previous dissenting opinion in the case of *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, ECHR 2016) on the issue of the Russian Federation's effective control over Transdniestria.



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

SECOND SECTION

CASE OF VARDANEAN v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 22200/10)

JUDGMENT

STRASBOURG

30 May 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vardanean v. the Republic of Moldova and Russia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Dmitry Dedov,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 22200/10) against the Republic of Moldova and the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan nationals, Mr Ernest Vardanean and Mrs Irina Vardanean ("the applicants"), on 20 April 2010.

2. The applicants were represented by Mr A. Postica and Mr. P. Postica, acting on behalf of Promo-Lex, a non-governmental organisation based in Chisinau. The Moldovan Government ("the Government") were represented by their Agent, Mr L. Apostol, and the Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The first applicant submitted, in particular, that he had been arrested and detained unlawfully. He further alleged that he had been convicted as a result of unfair criminal proceedings and that the lawyers representing him in the Court proceedings had not been able to gain access to him. Both applicants also complained about the search of their home.

4. On 13 June 2014 the above complaints were communicated to the respondent Governments and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Mr Ernest Vardanean and Ms Irina Vardanean, are Moldovan nationals who were born in 1980 and live in Chisinau.

6. The background to the case, including the Transdniestrian armed conflict of 1991-1992 and the subsequent events, is set out in *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, §§ 28-185, ECHR 2004-VII) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, §§ 8-42, ECHR 2012).

7. The applicants are husband and wife and are journalists. At the time of the events they were living in the self-proclaimed "Moldovan Republic of Transdniestria" (the "MRT"). The first applicant was employed by a Russian news agency and by a Moldovan newspaper.

8. On 7 April 2010 the first applicant was arrested by agents of the secret service of the "MRT" on charges of treason and/or espionage undertaken for the Republic of Moldova. A search was carried out in the applicants' apartment and many of their belongings – such as pictures, computers and a bank card – were seized.

9. On 16 December 2010, a tribunal from the "MRT" convicted the first applicant and sentenced him to fifteen years' imprisonment. Following international pressure, on 5 May 2011 the president of the "MRT" pardoned him. After that date, the applicant and his family moved to Chisinau.

10. During his detention the first applicant met on several occasions with representatives of the "MRT" secret services, including the chief of the secret services, and was led to believe that his family might suffer if he refused to cooperate with them. He was asked to record a video of himself admitting having worked for the Moldovan secret services. That video was aired on Transdniestrian television. On another occasion he was asked to write a letter to the foreign ambassadors to Moldova "disclosing" the fact that the Moldovan secret services were spying on the foreign embassies based in Chisinau. He subsequently was given to understand by representatives of the "MRT" secret services that the letter had served the purpose of creating tensions between Chisinau and western countries and that the whole matter, including his arrest, was being coordinated from Moscow.

11. The second applicant could only visit the first applicant on a limited number of occasions during his detention and lawyers representing the first applicant in the proceedings before the Court were denied access to him on the grounds that they were not members of the "Transdniestrian Bar Association".

12. In the meantime, the Moldovan authorities made numerous attempts to secure the first applicant's release. In particular, the problem of his detention in the "MRT" was raised by the Moldovan authorities with the European Union and the United States authorities in April 2010 in Brussels. The Moldovan delegation distributed a circular letter during the April 2010 session of the Parliamentary Assembly of the Council of Europe and raised the first applicant's situation during meetings of the Committee of Ministers of the Council of Europe in January and February 2011. The first applicant's situation was also raised by the Moldovan authorities in their discussions with the OSCE representatives in Chisinau, and a criminal investigation was initiated by the Moldovan Prosecutor's Office in respect of the applicant's detention in the "MRT". However, the criminal investigation was later discontinued.

13. The Moldovan Government also awarded financial assistance to the first applicant's family during the period of the first applicant's detention in the "MRT" and transferred to them ownership of a flat in Chisinau worth 53,000 euros (EUR) after the first applicant's release from detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE OF THE REPUBLIC OF MOLDOVA AND OTHER RELEVANT MATERIALS

14. Reports by inter-governmental and non-governmental organisations, the relevant domestic law and practice of the Republic of Moldova, and other pertinent documents were summarised in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 61-77, ECHR 2016).

THE LAW

15. The first applicant submitted that he had been arrested and detained unlawfully, contrary to Article 5 § 1 of the Convention. He also contended that he had not had a fair hearing in the determination of the criminal charges against him, as required by Article 6 § 1 of the Convention, and that, contrary to Article 34 of the Convention, the "MRT" authorities had not allowed him contact with the lawyers representing him before the Court. Both applicants complained that the search of their apartment in Tiraspol had been contrary to Article 8 of the Convention and that the restrictions on the second applicant's visits to the first applicant breached the same Article.

I. GENERAL ADMISSIBILITY ISSUES

A. Jurisdiction

16. The Court must first determine whether the applicants fall within the jurisdiction of the respondent States for the purposes of the matters complained of, within the meaning of Article 1 of the Convention.

1. The parties' submissions

17. The applicants and the Moldovan Government submitted that both respondent Governments had jurisdiction.

18. For their part, the Russian Government argued that the applicant did not come within their jurisdiction and that, consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. As they did in *Mozer* (cited above, §§ 92-94), the Russian Government express the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others* (cited above), *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), and *Catan and Others* (cited above) was wrong and at variance with public international law.

2. The Court's assessment

19. The Court observes that the general principles concerning the problem of jurisdiction under Article 1 of the Convention in respect of acts and facts occurring in the Transdniestrian region of Moldova were set out in *Ilaşcu and Others* (cited above, §§ 311-319), *Catan and Others* (cited above, §§ 103-107) and, more recently, in *Mozer* (cited above, §§ 97-98).

20. In so far as the Republic of Moldova is concerned, the Court notes that in *Ilaşcu, Catan* and *Mozer* it found that although Moldova had no effective control over the Transdniestrian region, it followed from the fact that Moldova was the territorial State that persons within that territory fell within its jurisdiction. However, its obligation, under Article 1 of the Convention, to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, was limited to that of taking the diplomatic, economic, judicial and other measures that were both in its power and in accordance with international law (see *Ilaşcu and Others*, cited above, § 333; *Catan and Others*, cited above, § 109; and *Mozer*, cited above § 100). Moldova's obligations under Article 1 of the Convention were found to be positive obligations (see *Ilaşcu and Others*, cited above, §§ 322 and 330-331; *Catan and Others*, cited above, §§ 109-110; and *Mozer*, cited above, § 99).

21. The Court sees no reason to distinguish the present case from the above-mentioned cases. Besides, it notes that the Moldovan Government do

not object to applying a similar approach in the present case. Therefore, it finds that Moldova has jurisdiction for the purposes of Article 1 of the Convention, but that its responsibility for the acts complained of is to be assessed in the light of the above-mentioned positive obligations (see *Ilaşcu and Others*, cited above, § 335).

22. In so far as the Russian Federation is concerned, the Court notes that in *Ilaşcu and Others* it has already found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992 (*Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdniestrian region that up until July 2010, the "MRT" was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support (see *Ivanţoc and Others*, cited above, §§ 116-120; *Catan and Others*, cited above, §§ 121-122; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-111).

23. The Court considers, given the absence of any new information to the contrary, that this conclusion continues to be valid for the period under consideration, namely until 5 May 2011. The Court therefore sees no grounds on which to distinguish the present case from *Ilaşcu and Others*, *Ivanţoc and Others*, *Catan and Others*, and *Mozer* (all cited above).

24. It follows that the applicants in the present case fall within the jurisdiction of the Russian Federation under Article 1 of the Convention. Consequently, the Court dismisses the Russian Government's objections *ratione personae* and *ratione loci*.

25. The Court will hereafter determine whether there has been any violation of the applicants' rights under the Convention such as to engage the responsibility of either respondent State (see *Mozer*, cited above, § 112).

B. Exhaustion of domestic remedies

26. The Moldovan Government submitted that the applicants had not exhausted the remedies available to them in Moldova. In particular, they noted that they had not relied on Law no. 1545 (1998) on compensation for damage caused by illegal acts undertaken by the criminal investigation bodies, the prosecution authorities or the courts, and had not applied for compensation from the Republic of Moldova for a breach of their rights. The Moldovan Government therefore argued that the parts of the

applications concerning Moldova should be declared inadmissible for failure to exhaust domestic remedies in Moldova.

27. The Court notes that the same objection was raised by the Moldovan Government and dismissed by the Court in *Mozer* (cited above, §§ 115-121). It sees no grounds on which to distinguish the present case from *Mozer* and rejects the Moldovan Government's objection of non-exhaustion of domestic remedies on the same grounds as in that case.

28. The Russian Government submitted that the application should be rejected for failure to exhaust domestic remedies within the Russian Federation, namely to apply for redress to the Russian courts.

29. The applicants disagreed and argued that the Russian Government had not proved the existence of any effective remedy.

30. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants firstly to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time – that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *inter alia*, *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 58, ECHR 2013 (extracts); *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; and *Gherghina v. Romania* [GC] (dec.), no. 42219/07, §§ 83-89, 9 July 2015).

31. Turning to the facts of the present case, the Court notes that not only have the Russian Government failed to show that a remedy was available to the applicants within the Russian Federation but they have also strongly emphasised their position according to which the Russian Federation has no jurisdiction in cases concerning Transdniestria. It follows that the Russian Government's objection of non-exhaustion of domestic remedies must be dismissed as ill-founded.

II. ALLEGED VIOLATION OF ARTICLES 5 § 1 AND 6 § 1 OF THE CONVENTION

32. The applicant complained that his detention had been unlawful and therefore contrary to Article 5 § 1 of the Convention. He further complained that there had been a violation of Article 6 § 1 since he had been convicted by a court that could not qualify as an "independent tribunal established by law" and that moreover it had not afforded him a fair trial. The relevant parts of Articles 5 and 6 of the Convention read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

Article 6

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

33. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that they are not inadmissible on any other ground. The Court therefore declares them admissible.

B. Merits

34. Under Article 5 § 1 of the Convention, the first applicant complained that his detention had been ordered by the authorities of the "MRT", an unrecognised state. Such a detention could not be considered "lawful" in the sense of Article 5 § 1 of the Convention.

35. Under Article 6 of the Convention, the first applicant argued that the "MRT" court that had sentenced him could not be considered as an "independent tribunal established by law" in the sense of Article 6 § 1. He moreover complained that he did not have sufficient access to the file, and

that a lawyer appointed by his family was denied the right to participate in the proceedings on the ground that he was not a citizen of the "MRT".

36. The respondent Governments did not make any submissions on the merits of these complaints.

37. The Court reiterates that it is well established in its case-law on Article 5 § 1 that any deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law; it also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see, for example, *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013; and *Mozer*, cited above, § 134).

38. The Court reiterates that in *Mozer* it held that the "judicial system" of the "MRT" was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-49). For this reason it held that the "MRT" courts – and, by implication, any other "MRT" authority – could not order the applicant's "lawful" arrest or detention within the meaning of Article 5 § 1 of the Convention (see *Mozer*, cited above, § 150).

39. In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too. Moreover, in the light of the above findings in *Mozer*, the Court considers that not only could the "MRT" courts not order the applicant's lawful detention for the purposes of Article 5 § 1 of the Convention, but also, by implication, they could not qualify as an "independent tribunal established by law" for the purposes of Article 6 § 1 of the Convention. The Court therefore considers that there has been a breach of both Articles 5 § 1 and 6 § 1 of the Convention in the present case.

40. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights (see paragraph 20 above). In *Mozer*, the Court held that Moldova's positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants' rights (see *Mozer*, cited above, § 151).

41. As regards the first aspect of Moldova's obligations, to re-establish control over the Transdniestrian territory, the Court found in *Mozer* that Moldova had taken all measures in its power from the onset of the hostilities in 1991-1992 until July 2010 (see *Mozer*, cited above, § 152). In the present

case, the parties did not submit any argument which would indicate that the Moldovan Government had changed their position in respect of Transdniestria in the intervening years up to the period of the applicant's release from detention in May 2011. The Court therefore sees no reason to reach a different conclusion in the present case (*ibidem*).

42. Turning to the second part of the positive obligations, namely to ensure respect for the first applicant's rights, the Court notes that the Moldovan authorities made efforts to secure these rights. Specifically, (i) a criminal investigation was initiated in respect of the first applicant's arrest and detention, (ii) the Council of Europe, the OSCE, the European Union and the United States were informed about the matter (see paragraph 12 above), and (iii) both applicants received from the Moldovan Government financial support and a free apartment (see paragraph 13 above).

43. In the light of the foregoing, the Court concludes that the Republic of Moldova fulfilled its positive obligations in respect of the first applicant and finds that there has been no violation of Articles 5 § 1 and 6 § 1 of the Convention provisions by the Republic of Moldova.

44. In so far as the responsibility of the Russian Federation is concerned, the Court notes that there is no evidence that persons acting on behalf of the Russian Federation directly participated in the measures taken against the first applicant.

45. Nevertheless, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraphs 22-23 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercises detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the first applicant's rights.

46. In conclusion, and after having found that the first applicant's rights guaranteed by Articles 5 § 1 and 6 § 1 have been breached (see paragraph 39 above), the Court holds that there has been a violation of those provisions by the Russian Federation.

47. In view of the above findings, the Court does not consider it necessary to examine, additionally, whether other aspects of the criminal proceedings against the first applicant complied with Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. The applicants complained that the search of their apartment in Tiraspol constituted a breach of their right to respect for their home. They also complained about the restrictions imposed on the second applicant with

respect to the possibility to visit the first applicant while he was in detention. The relevant parts of Article 8 read as follows:

Article 8

"1. Everyone has the right to respect for his ... family life, his home...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

49. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that they are not inadmissible on any other ground. The Court therefore declares them admissible.

B. Merits

50. The applicants argued that the search of their apartment had been ordered and carried out by the authorities of the "MRT", an unrecognised state. Such a search could not be considered "in accordance with the law". They also argued that the first visit by the second applicant to the first applicant, while he was in detention, was authorised only after three weeks and after the latter had confessed, without any legal basis for delaying that visit.

51. The Moldovan Government submitted that the interference with the applicants' rights had not been lawful because it had not been provided for by the domestic laws of the Republic of Moldova.

52. The Russian Government did not submit any specific observations in this regard. Their position was that they did not have "jurisdiction" in the territory of the "MRT" and that they were therefore not in a position to make any observations on the merits of the case.

53. It is undisputed that the search of the applicants' apartment constituted an interference with their right to respect for home. The Court considers, moreover, that the temporary restriction of the second applicant's visiting right constituted an interference with the applicants' right to respct for their family life. An interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2, and furthermore is "necessary in a democratic society" in order to achieve the aim or aims (see *Labita v. Italy* [GC], no. 26772/95, § 179, ECHR 2000-IV; and *Idalov v. Russia* [GC], no. 5826/03, § 200, 22 May 2012).

54. In so far as the lawfulness of the first interference is concerned, no elements in the present case allow the Court to consider that there was a legal basis for searching the applicants' apartment. Given the circumstances, the Court concludes that the interference was not lawful under domestic law. Accordingly, there has been a violation of Article 8 of the Convention.

55. Likewise, the Court considers that it has not been shown that the restriction of the scond applicant's visiting right had a legal basis. Accordingly, there has been a violation of Article 8 in this respect too.

56. For the same reasons as those given in respect of the complaints under Articles 5 § 1 and 6 § 1 of the Convention (see paragraphs 41-42 above), the Court finds that there has been no violation of Article 8 of the Convention by the Republic of Moldova.

57. For the same reasons as those given in the same context (see paragraph 45), the Court finds that there has been a double violation of Article 8 of the Convention by the Russian Federation.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

58. The first applicant complained that his representative in the proceedings before the Court had not been allowed to visit him in prison or to participate in the criminal proceedings against him. He argued that that restriction had constituted an interference with the exercise of his right of individual petition under Article 34 of the Convention.

59. The Court notes that the applicant's representative on many occasions requested access to the applicant and to the court hearings without success. However, in his requests he expressed the intention to act as the first applicant's lawyer in the criminal proceedings without indicating his status as his representative in the proceedings before the Court. Given the circumstances, there is no appearance of a failure by the respondent States to comply with their obligation under Article 34 of the Convention by hindering the applicant's right of individual petition.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

61. The first applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage and the second applicant claimed EUR 10,000.

62. The Governments contended that the claims were excessive and asked the Court to dismiss them.

63. The Court notes that it has not found any violation of the Convention by the Republic of Moldova in the present case. Accordingly, no award of compensation is to be made with regard to this respondent State.

64. Having regard to the violations by the Russian Federation found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 30,000 to the first applicant and EUR 7,000 to the second applicant, to be paid by the Russian Federation.

B. Costs and expenses

65. The applicants also claimed EUR 7,440 for costs and expenses.

66. The respondent Governments considered that the sums claimed were excessive.

67. The Court notes that it has found that Moldova, having fulfilled its positive obligations, was not responsible for any violation of the Convention in the present case. Accordingly, no award of compensation for costs and expenses is to be made with regard to this respondent State.

68. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Mozer*, cited above, § 240). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 4,000 to the applicants for costs and expenses, to be paid by the Russian Federation.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible in respect of the Republic of Moldova;

2. *Declares*, by a majority, the application admissible in respect of the Russian Federation;

3. *Holds*, by six votes to one, that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova;

4. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention by the Russian Federation;

5. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention by the Republic of Moldova;

6. *Holds*, by six votes to one, that there has been a violation of Article 6 § 1 of the Convention by the Russian Federation;

7. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention by the Republic of Moldova;

8. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention by the Russian Federation, both with respect to the search of the applicants' apartment and the restriction of the second applicant's right to visit the first applicant while in detention;

9. *Holds*, unanimously, that the respondent States did not fail to comply with their obligation under Article 34 of the Convention;

10. *Holds*, by six votes to one,
(a) that the Russian Federation is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
(ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
(iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, to both applicants, in respect of costs and expenses.

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

11. *Dismisses*, unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 30 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

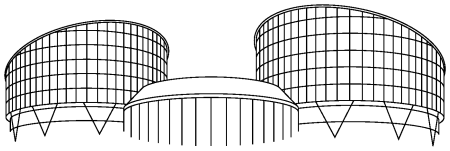
Stanley Naismith	Işıl Karakaş
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

A.I.K.
S.H.N.

DISSENTING OPINION OF JUDGE DEDOV

My vote in the present case was based on my previous dissenting opinion in the case of *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, ECHR 2016) on the issue of the Russian Federation's effective control over Transdniestria.



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

SECOND SECTION

CASE OF APCOV v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 13463/07)

JUDGMENT

STRASBOURG

30 May 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Apcov v. the Republic of Moldova and Russia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Dmitry Dedov,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 13463/07) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Sergiu Apcov ("the applicant"), on 26 March 2007.

2. The applicant was represented by Mr Pavel Postica, a lawyer practising in Chisinau. The Moldovan Government were represented by their Agent, Mr L. Apostol, and the Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant submitted, in particular, that he had been arrested and detained unlawfully. He further alleged that that he had not been given the requisite medical assistance for his condition, had been held in inhuman conditions of detention and had not had a fair hearing in the determination of the criminal charges against him.

4. On 14 May 2013 the application was communicated to the respondent Governments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982 and lives in Tiraspol.

6. The background to the case, including the Transdniestrian armed conflict of 1991-1992 and the subsequent events, is set out in *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, §§ 28-185, ECHR 2004-VII) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, §§ 8-42, ECHR 2012 (extracts)).

7. On 21 January 2005 the applicant was arrested by the authorities of the break-away "Moldavian Republic of Transdniestria" (the "MRT") on charges of robbery. He was detained in custody until 8 July 2005 when he was released on bail. During detention he was allegedly detained in very poor conditions with persons with HIV and subjected to ill-treatment. He claims that a doctor infected him with HIV after using the same syringe on all the inmates.

8. During the criminal proceedings, two and a half years after the robbery, the victim of the robbery was asked to identify the applicant from a picture. The applicant claims that no procedural guarantees were in place and suggests that the investigator indicated to the victim which picture to choose. Moreover, the applicant's alibi regarding his being away from the "MRT" on the date when the offence was committed had been dismissed without any investigation. According to the applicant, at the time of the alleged offence, he was in Moscow. He obtained a letter from his employer to confirm that on the particular day of the offence the applicant had been at work. However, the investigators seized the original of that letter during a search of his parents' home and it later disappeared. The courts refused to accept a copy of the letter as evidence and/or to check the information contained in it.

9. On 29 August 2006 the Tiraspol District Court convicted the applicant as charged and sentenced him to seven years' imprisonment.

10. The applicant was placed in detention in Tiraspol colony no. 2 where the conditions allegedly were very poor. In particular, his cell was overcrowded, he did not have daily walks, the material conditions were very poor, there were shortages of electricity sometimes for several days, and he shared space with detainees suffering from contagious diseases. The food was inedible and therefore detainees had to rely on the food supplied to them by their relatives. According to the applicant, he requested on numerous occasions that he be seen by a doctor in relation to his HIV diagnosis. However, the prison authorities ignored his requests. There was no dentist in the prison, and the inmates had to remove each other's teeth in emergencies. The applicant had his molar teeth removed in this way.

11. On 26 September 2006 the Supreme Court of the "MRT" dismissed the applicant's appeal.

12. On an unspecified date after his final conviction, the applicant's mother engaged a lawyer with a view to lodging an application to the Court. She later went to visit the applicant to obtain his signature on the application form. However, the prison guards refused to allow her to do so on the grounds that the application was not in Russian and that it had to be authorised first by the prison authorities. It appears that she eventually succeeded in having the application form signed by the applicant.

13. On 24 April 2012 the applicant was released from detention.

14. It appears from the material in the case file and from the parties' submissions that the applicant never informed the authorities of Moldova about his detention in the "MRT" or about the criminal proceedings against him.

II. RELEVANT DOMESTIC LAW AND PRACTICE OF THE REPUBLIC OF MOLDOVA AND OTHER RELEVANT MATERIALS

15. Reports by inter-governmental and non-governmental organisations, the relevant domestic law and practice from the Republic of Moldova and other pertinent documents were summarised in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 61-77, ECHR 2016).

THE LAW

16. The applicant submitted that he had been arrested and detained unlawfully, contrary to Article 5 § 1 of the Convention. He further alleged that, contrary to the provisions of Article 3 of the Convention, upon his arrest and during his first period of detention he had been ill-treated and infected with HIV. He also complained that he had not been given the requisite medical assistance for his condition and had been held in inhuman conditions of detention during both periods of detention. He also contended that he had not had a fair hearing in the determination of the criminal charges against him as required by Article 6 § 1 of the Convention. The applicant argued that there had been a breach of his rights guaranteed by Articles 8 and 34 of the Convention because he had not been able to have confidential meetings with his mother and because the prison administration had attempted to hinder the lodging of his application with the Court. Lastly, the applicant complained that he had not had any effective remedies, as provided for by Article 13 of the Convention.

I. GENERAL ADMISSIBILITY ISSUES

A. Jurisdiction

17. The Court must first determine whether the applicant falls within the jurisdiction of the respondent States for the purposes of the matters complained of, within the meaning of Article 1 of the Convention.

1. The parties' submissions

18. The applicant and the Moldovan Government submitted that both respondent Governments had jurisdiction.

19. For their part, the Russian Government argued that the applicant did not come within their jurisdiction and that, consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. As they did in *Mozer* (cited above, §§ 92-94), the Russian Government express the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others* (cited above), *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), and *Catan and Others* (cited above) was wrong and at variance with public international law.

2. The Court's assessment

20. The Court observes that the general principles concerning the problem of jurisdiction under Article 1 of the Convention in respect of acts and facts occurring in the Transdniestrian region of Moldova were set out in *Ilaşcu and Others* (cited above, §§ 311-19), *Catan and Others* (cited above, §§ 103-07) and, more recently, in *Mozer* (cited above, §§ 97-98).

21. In so far as the Republic of Moldova is concerned, the Court notes that in *Ilaşcu, Catan* and *Mozer* it found that although Moldova had no effective control over the Transdniestrian region, it followed from the fact that Moldova was the territorial State that persons within that territory fell within its jurisdiction. However, its obligation, under Article 1 of the Convention, to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, was limited to that of taking the diplomatic, economic, judicial and other measures that were both in its power and in accordance with international law (see *Ilaşcu and Others*, cited above, § 333; *Catan and Others*, cited above, § 109; and *Mozer*, cited above § 100). Moldova's obligations under Article 1 of the Convention were found to be positive obligations (see *Ilaşcu and Others*, cited above, §§ 322 and 330-31; *Catan and Others*, cited above, §§ 109-10; and *Mozer*, cited above, § 99).

22. The Court sees no reason to distinguish the present case from the above-mentioned cases. Besides, it notes that the Moldovan Government do not object to applying a similar approach in the present case. Therefore, it finds that Moldova has jurisdiction for the purposes of Article 1 of the Convention, but that its responsibility for the acts complained of is to be assessed in the light of the above-mentioned positive obligations (see *Ilaşcu and Others*, cited above, § 335).

23. In so far as the Russian Federation is concerned, the Court notes that in *Ilaşcu and Others* it has already found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992 (see *Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdniestrian region that up until July 2010, the "MRT" was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support (see *Ivanţoc and Others*, cited above, §§ 116-20; *Catan and Others*, cited above, §§ 121-22; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-11).

24. The Court considers, given the absence of any new information to the contrary, that this conclusion continues to be valid for the period under consideration, namely until 24 April 2012. The Court therefore sees no grounds on which to distinguish the present case from *Ilaşcu and Others*, *Ivanţoc and Others*, *Catan and Others*, and *Mozer* (all cited above).

25. It follows that the applicant in the present case falls within the jurisdiction of the Russian Federation under Article 1 of the Convention. Consequently, the Court dismisses the Russian Government's objections *ratione personae* and *ratione loci*.

26. The Court will hereafter determine whether there has been any violation of the applicant's rights under the Convention such as to engage the responsibility of either respondent State (see *Mozer*, cited above, § 112).

B. Exhaustion of domestic remedies

27. The Russian Government submitted that the application should be rejected for failure to exhaust domestic remedies within the Russian Federation, namely to apply for redress to the Russian courts.

28. The applicant disagreed and argued that the Russian Government had not proven the existence of any effective remedy.

29. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants firstly to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *inter alia*, *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 58, ECHR 2013 (extracts); *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; and *Gherghina v. Romania* [GC] (dec.), no. 42219/07, §§ 83-89, 9 July 2015).

30. Turning to the facts of the present case, the Court notes that not only have the Russian Government failed to show that a remedy was available to the applicant within the Russian Federation but they also strongly emphasised their position according to which the Russian Federation had no jurisdiction in cases concerning Transdniestria. It follows that the Russian Government's objection of non-exhaustion of domestic remedies must be dismissed as ill-founded.

C. Six-month rule

31. The Russian Government further submitted that the applicant's complaint concerning his poor conditions of detention between 21 January 2005 and 8 July 2005 was inadmissible owing to his failure to comply with the six-month rule. In so far as the second period of detention was concerned, the Russian Government argued that the applicant had only complained after two years of detention and had not informed the Moldovan Government, which would have offered them a possibility to solve the problem.

32. The applicant objected and argued that both periods of detention were part of a continuing situation and that, therefore, the six-month period had to be calculated starting with the date of his release, namely 24 April 2012.

33. The six-month rule stipulated in Article 35 § 1 of the Convention is intended to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time (*Jeronovičs v. Latvia* [GC], no. 44898/10, § 74, ECHR 2016). As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to an applicant, the time-limit generally expires six months after the date of the acts or measures about which he or she complains (*ibidem*, § 75). In cases of a continuing situation, the period starts to run afresh each day and it is in general only when that situation ends that the six-month period actually starts to run (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 159, ECHR 2009; *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 54, 29 June 2012; and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 261, ECHR 2014 (extracts)). The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicant a victim (*Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 86, ECHR 2014 (extracts)).

34. The Court notes that the applicant was detained within the context of the same criminal proceedings throughout his entire detention. Nonetheless, in view of the significant gap of more than one year between the two periods of detention with which the complaint is concerned (from January to July 2005, and from August 2006 to April 2012), the Court cannot treat them as a part of a continuing situation (see *Haritonov v. Moldova*, no. 15868/07, § 26, 5 July 2011). In such circumstances, the Court considers that only the complaint concerning the second period of detention was lodged within six months. Consequently, the complaint in respect of the first period of detention must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

35. Moreover, the Court notes that other complaints were also lodged out of time, in particular the complaint concerning his ill-treatment after arrest, that concerning his alleged infection with HIV during the first period of detention, and the complaint under Article 5 § 1 regarding the lawfulness of his pre-trial detention until 8 July 2005. These complaints must also be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that he had not been given the requisite medical assistance for his condition and had been held in inhuman conditions of detention. The relevant part of Article 3 of the Convention reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

37. The Court notes that this complaint, in so far as it refers to the period of detention after the applicant's conviction, from 29 August 2006 to 24 April 2012, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other ground. The Court therefore declares it admissible.

B. Merits

38. The applicant complained that he did not receive qualified medical help, as required by his state of health. He also complained about the deplorable state of the cells. He finally complained about the lack of space, being detained in a cell of 9 m^2, together with a large number of detainees.

39. The respondent Governments did not make any submissions on the merits of this complaint.

40. The Court reiterates that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Mozer*, cited above, § 178; *Muršić v. Croatia* [GC], no. 7334/13, § 99, ECHR 2016; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 159, ECHR 2016 (extracts)). In most of the cases concerning the detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 of the Convention does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see *Mozer*, cited above, §178).

41. In the present case the Court notes that the applicant suffered from HIV and needed medical treatment. It also appears that at one point the applicant needed urgent dental treatment which was not provided to him and he had to have his teeth removed by his co-detainees. In view of the lack of any evidence to the contrary or of any explanation for the refusal to offer him appropriate treatment, the Court finds that the medical assistance received by the applicant was not adequate.

42. The Court will now turn to the conditions of the applicant's detention. As indicated above (paragraph 37), it is the second period of detention, from August 2006 to April 2012, that is to be examined. While the respondent Governments have not commented on the description provided by the applicant (see paragraph 10 above), it is largely confirmed by the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Special Rapporteur on visits to various places of detention in the "MRT" (see some of the documents referred to in paragraph 15 above). The Court notes in particular that the latter's visit took place in July 2008, that is to say during the time when the applicant was in detention.

43. On the basis of the material before it, the Court finds it established that the lack of adequate medical care and the conditions of the applicant's detention amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

44. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights (see paragraph 21 above). In Mozer, the Court held that Moldova's positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants' rights (see Mozer, cited above, § 151).

45. As regards the first aspect of Moldova's obligations, to re-establish control over the Transdniestrian territory, the Court found in *Mozer* that Moldova had taken all measures in its power from the onset of the hostilities in 1991-1992 until July 2010 (see *Mozer*, cited above, § 152). In the present case, the parties did not submit any argument which would indicate that the Moldovan Government had changed their position in respect of Transdniestria in the intervening years up to the period of the applicant's release from detention in April 2012. The Court therefore sees no reason to reach a different conclusion in the present case (*ibidem*).

46. Turning to the second part of the positive obligations, namely to ensure respect for the applicant's rights, the Court notes that the applicant never informed the Moldovan authorities of his plight (see paragraph 14 above). In such circumstances, the non-involvement of the Moldovan authorities in the particular case of the applicant cannot be held against them. In the light of the foregoing, the Court concludes that the Republic of Moldova did not fail to fulfil its positive obligations in respect of the applicant and finds that there has been no violation of Article 3 of the Convention by the Republic of Moldova.

47. In so far as the responsibility of the Russian Federation is concerned, the Court notes that there is no evidence that persons acting on behalf of the Russian Federation directly participated in the measures taken against the applicant.

48. Nevertheless, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraphs 23-24 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercises detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicant's rights.

49. In conclusion and after having found that the applicant had been subjected to treatment contrary to Article 3 of the Convention (see paragraph 43 above), the Court holds that there has been a violation of that provision by the Russian Federation.

III. ALLEGED VIOLATION OF ARTICLES 5 § 1 AND 6 § 1 OF THE CONVENTION

50. The applicant complained that his detention had been unlawful and therefore contrary to Article 5 § 1 of the Convention. He further complained that there had been a violation of Article 6 § 1 since he had been convicted by a court that could not qualify as an "independent tribunal established by law" and that moreover had not afforded him a fair trial. The relevant parts of Articles 5 and 6 read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(a) the lawful detention of a person after conviction by a competent court;

..."

Article 6

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

51. The Court notes that the complaint based on Article 5 § 1 of the Convention, in so far as it refers to the applicant's detention from 29 August 2006 to 24 April 2012, and the complaint based on Article 6 § 1 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the

Convention, and that they are not inadmissible on any other ground. The Court therefore declares them admissible.

B. Merits

52. Under Article 5 § 1 of the Convention, the applicant complained that his detention had been ordered by the authorities of the "MRT", an unrecognised state. Such a detention could not be considered "lawful" in the sense of Article 5 § 1 of the Convention.

53. Under Article 6 of the Convention, the applicant argued that the "MRT" court that had sentenced him could not be considered as an "independent tribunal established by law" in the sense of Article 6 § 1. He moreover complained that the court had failed to verify his alibi and had not given sufficient reasons for its decision.

54. The respondent Governments did not make any submissions on the merits of these complaints.

55. The Court reiterates that it is well established in its case-law on Article 5 § 1 that any deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law; it also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see, for example, *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013; and *Mozer*, cited above, § 134).

56. The Court reiterates that in *Mozer* it held that the judicial system of the "MRT" was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-49). For this reason it held that the "MRT" courts and, by implication, any other "MRT" authority, could not order the applicant's "lawful" arrest or detention within the meaning of Article 5 § 1 of the Convention (see *Mozer*, cited above, § 150).

57. In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too. Moreover, in the light of the above findings in *Mozer*, the Court considers that not only could the "MRT" courts not order the applicant's lawful detention for the purposes of Article 5 § 1 of the Convention, but also, by implication, they could not qualify as an "independent and impartial tribunal established by law" for the purposes of Article 6 § 1 of the Convention. The Court therefore considers that there has been a breach of both Articles 5 § 1 and 6 § 1 of the Convention in the present case.

58. For the same reasons as those given in respect of the complaint under Article 3 of the Convention (see paragraphs 45-46 above), the Court finds that there has been no violation of Articles 5 § 1 and 6 § 1 of the Convention by the Republic of Moldova.

59. For the same reasons as those given in the same context (see paragraph 48), the Court finds that there has been a violation of Articles 5 § 1 and 6 § 1 of the Convention by the Russian Federation.

60. In view of the above findings, the Court does not consider it necessary to examine, additionally, whether other aspects of the criminal proceedings against the applicant complied with Article 6 § 1 of the Convention.

IV. OTHER COMPLAINTS

61. In his initial application before the Court, the applicant complained under Articles 8 and 34 of the Convention, that he had not been able to have confidential meetings with his mother and that the prison administration had attempted to hinder his lodging of the application with the Court. He also complained that he did not have any effective remedies as provided for by Article 13 of the Convention without however specifying against which alleged breaches of the Convention. Having examined the material in the case file, the Court concludes that the above complaints are manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

62. In his observations on the admissibility and merits, lodged in December 2013, the applicant complained for the first time under Article 13 of the Convention taken in conjunction with Article 3. The Court notes that this complaint was lodged out of time and, therefore, it declares it inadmissible under Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

64. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

65. The Governments contended that the claims were excessive and asked the Court to dismiss them.

66. The Court notes that it has not found any violation of the Convention by the Republic of Moldova in the present case. Accordingly, no award of compensation is to be made with regard to this respondent State.

67. Having regard to the violations by the Russian Federation found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 40,000 to the applicant, to be paid by the Russian Federation.

B. Costs and expenses

68. The applicant also claimed EUR 4,750 for costs and expenses.

69. The respondent Governments considered that the sums claimed were excessive.

70. The Court notes that it has found that Moldova, having fulfilled its positive obligations, was not responsible for any violation of the Convention in the present case. Accordingly, no award of compensation for costs and expenses is to be made with regard to this respondent State.

71. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Mozer*, cited above, § 240). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 3,000 to the applicant for costs and expenses, to be paid by the Russian Federation.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning Article 3 of the Convention in so far as they refer to the applicant's detention after conviction, Article 5 § 1 concerning the applicant's detention after conviction and Article 6 § 1 admissible in respect of the Republic of Moldova;

2. *Declares*, by a majority, the complaints concerning Article 3 of the Convention in so far as they refer to the applicant's detention after

conviction, Article 5 § 1 concerning the applicant's detention after conviction and Article 6 § 1 admissible in respect of the Russian Federation;

3. *Declares*, unanimously, the remainder of the application inadmissible;

4. *Holds*, by six votes to one, that there has been no violation of Article 3 of the Convention by the Republic of Moldova;

5. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention by the Russian Federation;

6. *Holds*, by six votes to one, that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova;

7. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention by the Russian Federation;

8. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention by the Republic of Moldova;

9. *Holds*, by six votes to one, that there has been a violation of Article 6 § 1 of the Convention by the Russian Federation;

10. *Holds*, by six votes to one,

(a) that the Russian Federation is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses.

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

11. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

A.I.K.
S.H.N.

DISSENTING OPINION OF JUDGE DEDOV

My vote in the present case was based on my previous dissenting opinion in the case of *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, ECHR 2016) on the issue of the Russian Federation's effective control over Transdniestria.