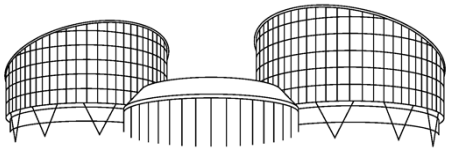

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PANTELEICIUC v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 57468/08)

JUDGMENT

STRASBOURG

2 July 2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

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

Julia Laffranque, *President,*
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 11 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 57468/08) 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 Viorel Panteleiciuc ("the applicant"), on 27 November 2008.

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

3. On 17 January 2013 the complaint under Article 6 § 1 of the Convention was communicated to the respondent Governments.

4. The Russian Government objected to the examination of the application by a Committee. After having considered the Russian Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Grimăncăuți.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The applicant's arrest and administrative proceedings

7. The applicant is a farmer who grows and sells potatoes. On 5 February 2008 he and his brother went to the Varnița village, in the vicinity of the city of Bender/Tighina. The latter is controlled by the authorities of the self-proclaimed "Moldovan Republic of Transdiestria" ("the MRT"), while Varnița itself is under Moldovan control.

8. Having sold potatoes for some time in various places in Varnița, with authorisation from the local administration, on 5 February 2008 at around 2.30 p.m. the applicant was approached by plain clothed officers of the "MRT" customs authority. The latter asked for documents for the merchandise, including evidence of payment of taxes for importing merchandise into the "MRT". The applicant explained that he had all the relevant documents and had paid taxes to the Moldovan local authorities in Varnița. Shortly thereafter two more officers from the "MRT" security and customs authorities arrived in a car. When the applicant's brother announced that he had called the Moldovan police, the applicant was attacked by the "MRT" officers, forced into their car and driven away. The Moldovan police arrived after the impugned event.

9. Later in the evening, the applicant's car with the remainder of merchandise was seized by the "MRT" customs authority. According to the applicant, an officer of the Moldovan police was present and did not interfere.

10. On 6 February 2008 the Bender city court (an "MRT" court) found the applicant guilty of having committed the administrative offence of resistance to the customs officers. The applicant explained that he considered having been arrested on Moldovan territory (Varnița village) and not having seen any signs warning that he was about to cross into the territory under the "MRT" control. The court sentenced him to three days' detention. According to the applicant, the hearing took place in Russian, a language which he understood only to a limited degree, and in the absence of a translator. He was refused the right to be assisted by a lawyer when preparing for the hearing, and a court-appointed lawyer was only present at the court hearing, not assisting him in any manner. The applicant was given neither a copy of the record of his arrest prior to its examination by the court, nor a copy of the court decision of 6 February 2008.

11. The decision was enforced immediately and the applicant served all three days until the evening of 8 February 2008, when he was released. He could recover his car and merchandise at 11 p.m. on the same day.

12. On 15 February 2008 the applicant lodged a summary appeal against the decision of the first-instance court, noting that he would submit a full appeal once he received a copy of the decision of 6 February 2008. At his request, on 17 March 2008 he obtained a copy of that decision.

13. On 18 March 2008 the "MRT" Supreme Court quashed the lower court's decision because of the failure to specify the exact place where the offence had been committed. The case was sent for re-examination by the lower court. The applicant was not informed of that decision. On 25 April 2008 the "MRT" Supreme Court accepted an extraordinary appeal lodged by the president of that court's chair and decided that the case was to be re-examined by that court. The applicant was not informed of that decision.

14. On 27 May 2008 the applicant received by fax a letter dated 12 May 2008 summoning him to the hearing of the "MRT" Supreme Court on 27 May 2008 at 10 a.m. Because of this late summoning he could not appear at the hearing. On the same day the court rejected the applicant's appeal against the decision of 6 February 2008, finding that he had been arrested on the territory of the city of Bender after refusing to abide by orders of the "MRT" customs authority.

B. Complaints made to the Moldovan and foreign authorities

15. On 6 February 2008 the applicant's brother made a criminal complaint in the applicant's name to various Moldovan authorities, including the Prosecutor General's Office, about the applicant's unlawful arrest by officers from the "MRT". He asked for the criminal prosecution of those responsible.

16. On 7 February 2008 the applicant's brother sent a complaint about the applicant's abduction by the "MRT" authorities to the embassies of several countries in Moldova, including that of the Russian Federation. On 11 February 2008 the applicant sent letters to various embassies, including that of the Russian Federation, thanking them for their intervention into the case by bringing the matter before the Joint Control Commission.[1] Following this alleged intervention the applicant's car and merchandise were returned to him.

17. On 28 February 2008 the Moldovan police station in Bender started a criminal investigation into the applicant's abduction by "MRT" officers. Several witnesses confirmed that the applicant had been forcibly taken away in a car from near a bar in Varnița village and that two of the "MRT" officers were identified. In view of the Moldovan prosecuting authorities' inability to effectively prosecute persons on the territory controlled of the "MRT", on 28 August 2008, the investigation was suspended. On 30 May 2013 the investigation was resumed and was pending by the time of the last submissions made to the Court (December 2013). The parties did not inform the Court of any subsequent developments in that regard.

1. A body set up under the Agreement on the principles for the friendly settlement of the armed conflict in the Transdniestrian region of the Republic of Moldova (signed by the Republic of Moldova and the Russian Federation and 21 July 1992) composed of representatives of the Republic of Moldova, the Russian Federation and the "MRT", with its headquarters in Tighina (Bender). For further details, see *Ilaşcu and Others v. Moldova and Russia* [GC] (no. 48787/99, § 17, ECHR 2004-VII).

THE LAW

I. GENERAL ADMISSIBILITY ISSUES

A. Jurisdiction

18. The Russian Government argued that the applicant did not come within their jurisdiction. Consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. For their part, the Moldovan Government did not contest that the Republic of Moldova retained jurisdiction over the territory controlled by the "MRT".

19. The Court notes that the parties in the present case have positions concerning the matter of jurisdiction which are similar to those expressed by the parties in *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, §§ 83-101, ECHR 2012 and in *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §§ 81-95, ECHR 2016. Namely, the applicant and the Moldovan Government submitted that both respondent Governments had jurisdiction, while the Russian Government submitted that they had no jurisdiction. The Russian Government expressed 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.

20. The Court observes that the general principles concerning the issue of jurisdiction under Article 1 of the Convention in respect of acts undertaken and facts arising 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, *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 had 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 at least 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 (*Mozer*, cited above, §§ 110-11).

24. 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).

25. 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*.

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

1. The objection raised by the Moldovan Government

27. The Moldovan Government submitted that the applicant had not exhausted the domestic remedies available to him under Moldovan law and court practice. In particular, he could have asked the Supreme Court of Justice to annul his conviction by the "MRT" court. He could also have claimed compensation in a civil law suit.

28. The Court notes that it has already rejected a similar argument raised by the Moldovan Government in *Mozer* (cited above, §§ 115-21; see also *Draci v. the Republic of Moldova and Russia*, no. 5349/02, §§ 34, 17 October 2017). Accordingly, this objection must be dismissed in the present case.

2. The objection raised by the Russian Government

29. The Russian Government submitted that the application should be rejected for failure to exhaust domestic remedies before the Russian courts.

30. The Court notes that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain, not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Mozer*, cited above, § 116).

31. By contrast, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others v. Turkey*, 16 September 1996, § 67, *Reports of Judgments and Decisions* 1996-IV). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to use that means of redress (see *Akdivar and Others*, cited above, § 71; and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009).

32. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, and available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used, 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 this 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).

33. The Court notes the Russian Government's submission concerning the failure to exhaust domestic remedies before the Russian courts. It observes that it examined essentially the same objection in *Ilaşcu and Others*, finding that:

> "... the Russian Government mentioned that it was possible for the applicants to bring their complaints to the knowledge of the Russian authorities but did not state what remedies Russian domestic law might have afforded for the applicants' situation.
>
> It notes also that the Russian Government denied all allegations that the armed forces or other officials of the Russian Federation had taken part in the applicants' arrest, imprisonment and conviction or had been involved in the conflict between Moldova and the region of Transdniestria. Given such a denial of any involvement of Russian forces in the events complained of, the Court considers that it would be contradictory to expect the applicants to have approached the Russian Federation authorities" (*Ilaşcu and Others* [GC] (dec.), no. 48787/99, 4 July 2001).

34. In the present case, the Russian Government did not specify which of their courts had jurisdiction over complaints against the actions of the "MRT" authorities. Moreover, no details were given as to the legal basis for examining such complaints and to the manner in which any decision taken would be enforced. In addition, the Russian Government continued to deny any involvement in the Transdniestrian conflict. Given those circumstances the Court is not satisfied that the remedies referred to by the Russian Government were available and sufficient.

35. It follows from the above that the Russian Government's objection must be dismissed (see *Draci*, cited above, §§ 35-42).

C. Compliance with the six-month period for lodging the application

36. The Court needs to verify whether the applicant complied with the six-month time-limit for lodging his application, in accordance with Article 35 § 1 of the Convention. It reiterates that the six-month rule stipulated in that provision is intended to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It protects the authorities and other persons concerned from uncertainty for a prolonged period of time. Finally, it ensures that, in so far as possible, matters are examined while they are still fresh, before the passage of time makes it difficult to ascertain the pertinent facts and renders a fair examination of the question at issue almost impossible (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 74, ECHR 2016).

37. In the present case, the Court notes that on 8 February 2008 the applicant was released after serving the sentence of three days' imprisonment (see paragraph 11 above). According to the Court's case-law, he should have lodged any complaints concerning his pre-trial detention within six months from the date of his actual release (see, for instance, *Idalov v. Russia* [GC], no. 5826/03, § 130, 22 May 2012). However, he lodged his application on 27 November 2008, more than six months later. Therefore, the complaint under Article 5 §§ 1, 3, 4 and 5 were lodged outside the time-limit set down by Article 35 § 1 of the Convention, and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

D. Complaint under Article 13 of the Convention

38. The applicant company claimed that he did not have at his disposal effective remedies in respect of his complaints under Article 5 of the Convention.

39. The Court notes that Article 13 requires that a remedy be available in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Nada v. Switzerland* [GC], no. 10593/08, § 208, ECHR 2012).

40. The Court has found that the applicant's complaint under Article 5 of the Convention is out of time. It accordingly finds that that claim cannot be said to be "arguable" within the meaning of the Convention case-law.

41. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

42. The applicant complained about a breach of his procedural rights during the administrative proceedings against him, contrary to the requirements of Article 6 §§ 1 and 3 of the Convention which, insofar as relevant, read as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ...
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Scope of the case

44. The Court notes that in his observations on the merits of the present case the applicant complained about the unlawfulness of the decisions sanctioning him with administrative arrest, in view of the fact that the "MRT" courts had themselves been created in breach of the Moldovan law. However, no such complaint was included in the application form which he initially submitted to the Court and it was accordingly not communicated to the respondent Governments. Therefore, the Court will not examine this part of the complaint under Article 6.

C. Merits

1. The parties' submissions

45. The applicant argued that the letter which he had received on 27 May 2008 summoning him to the hearing on the same day (see paragraph 14 above) prevented him from participating at that hearing. Moreover, he was not assisted by a translator during the court hearing of 6 February 2008 (see paragraph 10 above). A lawyer hired by his brother was present at the hearing, but was not allowed to talk to the applicant or to represent his interests. The decision adopted by the court on 6 February 2008 confirmed that, mentioning the participation of the applicant and two "MRT" officers, but not of any defence lawyer. Before the beginning of the trial the applicant was not allowed to see the minutes of the administrative offence or any other materials. After the decision was taken, he did not receive a copy thereof, which he also mentioned in his summary appeal (see paragraph 12 above).

46. The Moldovan Government submitted that they did not have any knowledge of the applicant's factual situation, nor any control over the activity of the "MRT" Supreme Court. Accordingly, they left the issue to the Court's assessment, while arguing that there had been no breach of Article 6 §§ 1 or 3 of the Convention.

47. The Russian Government argued that, despite not being internationally recognised, the "MRT" had functioning bodies of local administration which were not under Russian control. Therefore, the Russian Federation was not in a position to assess compliance by the "MRT" authorities' actions with the legislation in force in that region.

2. The Court's assessment

(a) Alleged breach of Article 6 §§ 1 and 3 of the Convention

48. The Court reiterates that the concept of a "criminal charge" within the meaning of Article 6 § 1 is an autonomous one. The Court's established case-law sets out three criteria, commonly known as the "Engel criteria"

(see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22), to be considered in determining whether or not there was a "criminal charge" within the meaning of Article 6 § 1 of the Convention. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see, in particular, *Jussila v. Finland* [GC], no. 73053/01, § 30-31, ECHR 2006-XIII and *Blokhin v. Russia* [GC], no. 47152/06, §§ 179 and 180, ECHR 2016).

49. The Court reiterates that according to its well-established case-law, the guarantees contained in paragraph 3 of Article 6 are specific aspects of the general concept of a fair trial set forth in paragraph 1. The various rights, of which a non-exhaustive list appears in paragraph 3, reflect certain of the aspects of the notion of a fair trial in criminal proceedings. When compliance with paragraph 3 is being reviewed, its basic purpose must not be forgotten nor must it be severed from its roots. The Court therefore considers complaints under Article 6 § 3 under paragraphs 1 and 3 of Article 6 taken together (see, *inter alia*, *Meftah and Others v. France* [GC], nos. 32911/96 and 2 others, § 40, ECHR 2002-VII, with further references and *Correia de Matos v. Portugal* [GC], no. 56402/12, § 119, 4 April 2018).

The minimum rights listed in Article 6 § 3, which exemplify the requirements of a fair trial in respect of typical procedural situations which arise in criminal cases, are not aims in themselves: their intrinsic aim is always to contribute to ensuring the fairness of the criminal proceedings as a whole (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 251, ECHR 2016 and *Correia de Matos v. Portugal* [GC], no. 56402/12, § 120, 4 April 2018).

50. In the present case, the Court notes that the applicant was convicted of an administrative offence and sentenced to three days' imprisonment. In view of this sanction involving deprivation of liberty, the Court considers that the proceedings against the applicant were such as to bring the "charge" against him within the criminal sphere for purposes of Article 6 § 1 (see paragraph 48 above).

51. It observes that the hearing of 6 February 2008 before the Bender city court took place on the next day after the applicant's arrest. The respondent Governments did not dispute the applicant's account of events and there is nothing in the documents contained in the case file to contradict it. In fact, certain elements of the file confirm the applicant's allegations, such as the decision of 6 February 2008 not mentioning the participation of a lawyer or of an interpreter during the hearing (see paragraph 10 above).

52. The Court will thus accept the applicant's submissions that during the time which he spent in detention before the hearing he was not allowed to contact his relatives and was not given a copy of the minutes of the offence with which he was charged or of any other materials. He was therefore totally unprepared for his defence. Thereafter, while his brother hired a local lawyer to represent the applicant, that lawyer was only present at the hearing, not being allowed to either consult with his client or to address the court. The applicant was not assisted by a translator either (see paragraph 10 above).

53. The applicant received a copy of the decision taken on 6 February 2008 only on 17 March 2008, a day before the hearing of the "MRT" Supreme Court (see paragraphs 12 and 13 above). Finally, after the latter court annulled its own final decision without summoning the applicant, he received the summons to a new hearing in the morning of the day for which that hearing had been scheduled (see paragraph 14 above). He was thus deprived of the possibility to participate at the hearing or to be represented therein.

54. In the Court's view, the various shortcomings of the proceedings mentioned in paragraphs 51 and 53 above, none of which was accompanied by any reasons given either by the "MRT" courts, or the respondent Governments, amount to breaches of Article 6 § 3(b), (c) and (e) of the Convention.

55. At the same time, the cumulative effect of all these breaches leads to the overall conclusion that the trial was unfair, since the applicant was unprepared for the trial, unassisted by a lawyer or an interpreter and could neither prepare his position nor be present at the hearing of the "MRT" Supreme Court due to the late summons received (see paragraphs 49 and 50 above).

There has thus also been a breach of Article 6 § 1 of the Convention in the present case.

(b) Responsibility of the respondent Governments

(i) The responsibility of the Republic of Moldova

56. The Court must next determine whether the Republic of Moldova fulfilled its positive obligations to take appropriate and sufficient measures to secure the applicant's rights under Article 6 §§ 1 and 3 (see paragraph 22 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).

57. As regards the first aspect of Moldova's obligation, to re-establish control, the Court found in *Mozer* that, from the onset of the hostilities in 1991 and 1992 until July 2010, Moldova had taken all the measures in its

power (*Mozer*, cited above, § 152). Since the events complained of in the present case took place before the latter date, the Court sees no reason to reach a different conclusion (*ibidem*).

58. Turning to the second aspect of the positive obligations, namely to ensure respect for the applicant's rights, the Court notes that the Moldovan prosecuting authorities have initiated a criminal investigation into the applicant's unlawful detention (see paragraph 17 above). However, in view of the lack of cooperation by the "MRT" authorities that investigation could not continue. Having examined the materials in the case file, the Court considers that the Republic of Moldova did not fail to fulfil its positive obligations in respect of the applicant (see *Mozer*, cited above, § 154). While the applicant argued that his minibus and the merchandise had been seized by the "MRT" authorities and a Moldovan police officer had not opposed this, the present case does not involve a complaint under Article 1 of Protocol No. 1 to the Convention. Therefore, this particular inaction by the Moldovan police cannot be regarded as a failure by the Republic of Moldova to observe its positive obligations.

59. There has therefore been no violation of Article 6 §§ 1 and 3 of the Convention by the Republic Moldova.

(ii) The responsibility of the Russian Federation

60. In so far as the responsibility of the Russian Federation is concerned, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraphs 23-25 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercised 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*).

61. In conclusion, and having found that there has been a breach of the applicant's rights under Article 6 §§ 1 and 3 of the Convention (see paragraphs 54 and 55 above), the Court holds that there has been a violation of those provisions by the Russian Federation.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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."

63. The Court notes that it has not found a breach of any Convention provision by the Republic of Moldova. Accordingly, it will not make any award to be paid by the aforementioned respondent State.

A. Damage

64. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

65. The Russian Government considered that the sum claimed was obviously excessive.

66. The Court considers that the applicant has suffered a certain level of stress following his conviction in the absence of basic guarantees of a fair trial. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court awards in respect of non-pecuniary damage EUR 7,800, to be paid by the Russian Federation.

B. Costs and expenses

67. The applicant also claimed EUR 4,125 for the costs and expenses incurred before the Court. He relied on a contract with his lawyer, based on an hourly rate of EUR 75 and itemised lists of 55 hours spent working on the case.

68. The Russian Government argued that since the applicant had not submitted any evidence that he had paid anything to his lawyer, no award should be made in this respect.

69. According to the Court's case-law (see for a recent example *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, ECHR 2017 (extracts)), an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 1,500 covering costs under all heads, to be paid by the Russian Federation.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 §§ 1 and 3 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 of the Convention by the Republic of Moldova;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention by the Russian Federation;

4. *Holds*
   (a) that the Russian Federation is to pay the applicant, within three months the following amounts:
      (i) EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Julia Laffranque
Deputy Registrar	President