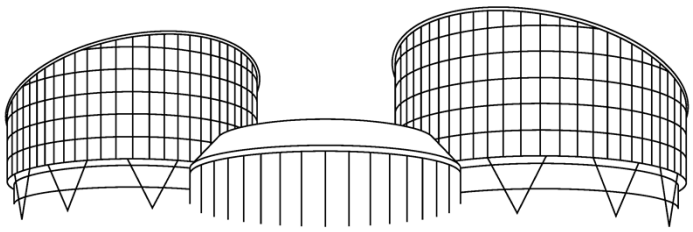

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF MOZER v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 11138/10)

JUDGMENT

STRASBOURG

23 February 2016

This judgment is final.

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

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,
Dean Spielmann,
Işıl Karakaş,
Josep Casadevall,
Luis López Guerra,
Mark Villiger,
Ján Šikuta,
George Nicolaou,
Nebojša Vučinić,
Kristina Pardalos,
Erik Møse,
Paul Lemmens,
Paul Mahoney,
Johannes Silvis,
Ksenija Turković,
Dmitry Dedov, *judges*,
Mihai Poalelungi, ad hoc *judge*,
and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 4 February 2015 and 7 December 2015,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 11138/10) 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 a Moldovan national, Mr Boris Mozer ("the applicant"), on 24 February 2010.

2. The applicant was represented by Mr A. Postica, Ms D. Străisteanu and Mr P. Postica, lawyers practising in Chişinău. The Moldovan Government were represented by their Agent, Mr L. Apostol. The Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Government at the European Court of Human Rights.

3. The applicant submitted, in particular, that he had been arrested and detained unlawfully. He further alleged that he had not been given the requisite medical assistance for his condition, that he had been held in inhuman conditions of detention and that he had been prevented from seeing his parents and his pastor.

4. On 29 March 2010 the respondent Governments were given notice of the application.

5. Valeriu Grițco, the judge elected in respect of the Republic of Moldova, withdrew from the case (Rule 28 of the Rules of Court). Accordingly, the President of the Third Section decided to appoint Mihai Poalelungi to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

6. On 20 May 2014 a Chamber of the Third Section composed of Josep Casadevall, President, Ján Šikuta, Luis López Guerra, Kristina Pardalos, Johannes Silvis, Dmitry Dedov, judges, Mihai Poalelungi, *ad hoc* judge, and Santiago Quesada, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

7. A hearing took place in the Human Rights Building, Strasbourg, on 4 February 2015 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Moldovan Government*
Mr L. APOSTOL, *Agent*,
Ms I. GHEORGHIEȘ,
Mr R. CAȘU, *Advisers*;

(b) *for the Russian Government*
Mr G. MATYUSHKIN, Representative of the Russian Federation at the European Court of Human Rights, *Agent*,
Mr N. MIKHAYLOV,
Ms O. OCHERETYANAYA,
Mr D. GURIN, *Advisers*;

(c) *for the applicant*
Mr A. POSTICA,
Mr P. POSTICA, *Counsel*,
Ms N. HRIPLIVII,
Mr V. VIERU,
Mr A. ZUBCO,
Ms O. MANOLE, *Advisers*.

The Court heard addresses by Mr Apostol, Mr Matyushkin, Ms Hriplivii and Mr Postica and also replies from Mr Apostol, Mr Matyushkin and Mr Postica to questions put by judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Moldovan national belonging to the German ethnic minority. He was born in 1978 and lived in Tiraspol until 2010. Since 2011 he has been an asylum-seeker in Switzerland.

9. The Moldovan Government submitted that despite all their efforts they had been unable to verify most of the facts of the present case owing to a lack of cooperation on the part of the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT"). They had therefore proceeded, broadly speaking, on the basis of the facts as submitted by the applicant.

10. The Russian Government did not make any submissions in respect of the facts of the case.

11. The facts of the case, as submitted by the applicant and as may be determined from the documents in the case file, are summarised below.

12. The background to the case, including the Transdniestrian armed conflict of 1991-92 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).

A. The applicant's arrest, detention and release

13. On 24 November 2008 the applicant was detained on suspicion of defrauding the company he worked for and another company belonging to the same group. The companies allegedly claimed initially that the damage had been 40,000 United States dollars (USD) and then increased that amount to USD 85,000. The applicant was asked to confess to the crime, which he claims he did not commit. He signed various confessions, allegedly following threats to him and his relatives. He claimed to have first been detained by his company's security personnel and subjected to threats if he did not confess to the crime, before being handed over to the investigating authority.

14. On 26 November 2008 the "Tiraspol People's Court" remanded the applicant in custody for an undetermined period.

15. On 5 December 2008 the "MRT Supreme Court" rejected an appeal by the applicant's lawyer as unfounded. Neither the applicant nor his lawyer was present at the hearing.

16. On 20 March 2009 the "Tiraspol People's Court" extended the applicant's detention for up to five months from the date of his arrest.

17. On 21 May 2009 the "Tiraspol People's Court" extended the applicant's detention for up to eight months from the date of his arrest. That

decision was upheld by the "MRT Supreme Court" on 29 May 2009. Neither the applicant nor his lawyer was present at the hearing.

18. On 22 July 2009 the "Tiraspol People's Court" extended the applicant's detention until 24 September 2009.

19. On 22 September 2009 the "Tiraspol People's Court" extended the applicant's detention until 24 November 2009. That decision was upheld by the "MRT Supreme Court" on 2 October 2009. The applicant's lawyer was present at the hearing.

20. On 4 November 2009 the applicant's criminal case was submitted to the trial court.

21. On 21 April 2010 the applicant's detention was extended again until 4 August 2010.

22. On 1 July 2010 the "Tiraspol People's Court" convicted the applicant under Article 158-1 of the "MRT Criminal Code" of defrauding two companies, and sentenced him to seven years' imprisonment, suspended for five years. It ordered the confiscation of the money in his and his girlfriend's bank accounts and of his personal car, which totalled the equivalent of approximately USD 16,000, and additionally ordered him to pay the two companies the equivalent of approximately USD 26,400. It also released him subject to an undertaking not to leave the city. No appeal was lodged against that decision. According to the applicant, in order to pay a part of the damages his parents sold his flat and paid USD 40,000 to the companies.

23. On an unknown date shortly after 1 July 2010 the applicant left for treatment in Chișinău. In 2011 he arrived in Switzerland.

24. On 25 January 2013 the "Tiraspol People's Court" amended the judgment in the light of certain changes to the "MRT Criminal Code" providing for a more lenient punishment for the crime of which the applicant had been convicted. He was thus sentenced to six years and six months' imprisonment, suspended for a period of five years.

25. By a final decision of 15 February 2013, the same court replaced the suspended sentence owing to the applicant's failure to appear before the probation authorities, and ordered that the prison sentence be served in full.

26. Following a request from the applicant's lawyer of 12 October 2012, on 22 January 2013 the Supreme Court of Justice of the Republic of Moldova quashed the judgment of the "Tiraspol People's Court" of 1 July 2010. With reference to Articles 114 and 115 of the Constitution and section 1 of the Law on the status of judges (see paragraphs 69-70 below), the court found that the courts established in the "MRT" had not been created in accordance with the Moldovan legislation and could not therefore lawfully convict the applicant. It ordered the materials in the criminal file to be forwarded to the prosecutor's office with a view to prosecuting the persons responsible for the applicant's detention and also to determining whether the applicant had breached the rights of other persons.

27. On 31 May 2013 the Prosecutor General's Office of the Republic of Moldova informed the applicant's lawyer that it had initiated a criminal investigation into his unlawful detention. Within that investigation, "all possible procedural measures and actions [were] planned and carried out". No further progress could be achieved owing to the impossibility of carrying out procedural steps on the territory of the self-proclaimed "MRT".

B. The applicant's conditions of detention and medical treatment

28. The applicant's medical condition (bronchial asthma, an illness which he has had since childhood) worsened while in prison, and he suffered several asthma attacks. He was often moved from one temporary detention facility (IVS) to another (such as the IVS at Tiraspol police headquarters and the IVS in Slobozia, as well as colony no. 3 in Tiraspol and the IVS in Hlinaia), all of which allegedly provided inadequate conditions of detention.

29. The applicant described the conditions at Tiraspol police headquarters as follows. There was high humidity, no working ventilation and a lack of access to natural light (since the detention facility was in the basement of the building), while the windows were covered with metal sheets with small holes in them. The cell was overcrowded (he was held in a 15 sq. m cell together with twelve other people). They had to take turns to sleep on the single large wooden platform, which was not covered. The applicant was allowed fifteen minutes of exercise daily, spending the remainder of the time in the cell. Many of the detainees smoked in the cell, which contributed to his asthma attacks. The metal truck he was transported in when being brought before the investigator was suffocating, and he was placed in a cell without a toilet for hours on end (while waiting to be interviewed by the investigator) and suffered numerous asthma attacks. Laundry could only be done in the cells, where wet clothes would also be hung out to dry. The food was scarce and inedible. The cells were full of parasites. There were no hygiene products except for those brought in by detainees' relatives. For several months the applicant was detained in a cell which became very hot in summer, causing him to suffer more asthma attacks.

30. The applicant described in a similar manner the conditions of his detention in the Slobozia detention facility, where there were no hygiene products at all, he was transported in a crammed and unventilated truck, and was fully reliant on his parents for any sort of medication.

31. As for colony no. 3 in Tiraspol, the applicant again noted the insufficient medical treatment, overcrowding (with one hour's exercise per day, the remaining time being spent in the cell) and a lack of ventilation coupled with the heavy smoking of his cellmates. The food was inedible, full of worms and made from rotten produce. In the winter the heating was

on for only a few hours a day and, as at the Tiraspol police headquarters, the detainees were allowed to shower only once a week (all the detainees in his cell had a combined total of twenty minutes in which to take a shower with cold water).

32. In the IVS in Hlinaia the applicant was again placed in an overcrowded cell and received virtually no medical assistance.

33. During his detention the applicant often complained about his medical condition and asked for medical assistance. His parents requested on many occasions that their son be seen by a lung specialist. On 12 March 2009 he was eventually seen and various tests were carried out. He was diagnosed with unstable bronchial asthma and prescribed treatment.

34. In May 2009 the applicant was transferred to the Medical Assistance and Social Rehabilitation Centre of the "MRT Ministry of Justice" ("the Centre"). Doctors there confirmed his previous diagnosis and the fact that he suffered frequent asthma attacks and had second and third degree respiratory insufficiency, and that his medical condition was continuing to get worse. On 7 May 2009 the Centre informed the applicant's relatives that it had neither a lung specialist nor the required laboratory equipment to treat the applicant properly. The doctors added that he needed to be transferred to the respiratory medicine department of the Republican Clinical Hospital, but that this would be impossible to arrange because the hospital was short-staffed and had no one to guard the applicant during his stay.

35. On an unknown date in 2009 the applicant's mother asked for the applicant to be transferred to a specialist hospital, as bronchial asthma was one of the illnesses listed by the "MRT Ministry of the Interior" as a reason warranting a transfer to hospital. In its reply of 1 June 2009, the "MRT Ministry of the Interior" informed her that only convicted prisoners could be transferred to hospital on those grounds.

36. On 21 September 2009 the Centre informed the applicant's parents that since May 2009 their son had continued to be treated on an in-patient basis, but that his medical condition was continuing to get worse, with no visible improvement as a result of treatment.

37. On 15 February 2010 a medical panel composed of four senior "MRT" doctors established as follows.

> "Despite the repeated treatment given, the respiratory dysfunction continues to increase and treatment is having no noticeable effect. A continuing downward trend is observed, with an increase in the frequency of asthma attacks and difficulty in stopping them."

In addition to the initial diagnosis of bronchial asthma and respiratory insufficiency, the panel found that the applicant had second degree post-traumatic encephalopathy. It concluded that

> "[t]he [applicant's] life expectancy/prognosis is not favourable. His continued detention in the conditions of [pre-trial detention centres] appears problematic owing

to the absence of laboratory equipment and specially qualified medical staff at [the Centre] for the purposes of carrying out the required treatment and its monitoring."

38. Despite the panel's findings, the applicant was transferred on the same day to the IVS in Hlinaia, which, as stated by the applicant and not contradicted by the respondent Governments, was less well equipped than the Centre. On 16 February 2010 the applicant's mother was allowed to see him. He told her about his poor conditions of detention (lack of ventilation, heavy smoking by detainees, overcrowding) and said that he had already had two asthma attacks that day. The applicant's mother was told by the prison staff that she had to bring her son the medication he required since there was none available in the prison.

39. On 18 February 2010 the applicant's mother asked the "MRT President" for the applicant to be transferred as a matter of urgency to a specialist hospital and for his release from detention pending trial in order to obtain the treatment he required. On 20 February 2010 she received a reply saying that her complaint had not disclosed any breach of the law.

40. On an unknown date after 18 February 2010, the applicant was transferred to Prison no. 1 in Tiraspol. On 17 March 2010 he was again admitted to the Centre for in-patient treatment.

41. In a letter to the applicant's lawyer of 11 June 2010, the Centre's director stated that, in addition to the applicant's main diagnosis of asthma, he was also found to have terminal respiratory insufficiency, symptoms of a head injury with localised areas of brain damage, the first signs of hypertonic disease, an allergy in his lungs making treatment and the ability to stop his asthma attacks more difficult, post-traumatic encephalopathy, arterial hypertension, toxoplasmosis, giardiasis (a parasite), chronic gastroduodenitis, pancreatitis and pyelonephritis. His prognosis was worsening.

42. In a number of replies to complaints by the applicant's parents, the "MRT" authorities informed them that the applicant was seen regularly by various doctors. After his transfer from the Centre to the IVS in Hlinaia on 15 February 2010, his state of health had deteriorated and on 17 March 2010 he had been immediately transferred to the Centre for treatment.

43. According to the applicant, his state of health improved after his release and the treatment he received in Chişinău. However, because he feared re-arrest by "MRT militia", he fled to Switzerland and applied for asylum there (see paragraph 23 above).

C. The applicant's visits with his parents and his pastor

44. From November 2008 until May 2009 the applicant was not allowed to see his parents, despite repeated requests (for instance on 5 March and 13, 16 and 30 April 2009). The first authorised visit took place six months after the applicant's arrest, on 4 May 2009. On 9 December 2009 a judge of

the "Tiraspol People's Court" refused to allow a further visit because examination of the case was pending. Another request for a visit was refused on 15 February 2010. On 16 February 2010 a visit was authorised, but the applicant and his mother had to talk to each other in the presence of a prison guard. They were not allowed to speak their own language (German) and were made to speak Russian or risk the guard calling off the visit.

45. In June and September 2009 pastor Per Bergene Holm from Norway attempted to visit the applicant at the latter's request in order to provide him with religious services, including "listening to [the applicant's] confession and giving him the sacraments". He was denied access to the applicant, a refusal which he subsequently confirmed in a letter to the Court dated 29 September 2010. On 30 September 2009 an "MRT presidential adviser" acknowledged that there was no reason to refuse the pastor access and that such a refusal was incompatible with the "MRT Constitution and laws". The pastor was finally allowed to see the applicant on 1 February 2010. As stated by the applicant and not disputed by the Governments, a guard remained in the room throughout the visit.

D. Complaints to various authorities

46. The applicant's parents made several complaints to the Moldovan authorities and the Russian embassy in Moldova concerning their son's situation.

47. On 12 October 2009 the Centre for Human Rights of Moldova (the Moldovan Ombudsman) replied that it had no means of monitoring the applicant's case.

48. On 3 November 2009 the Moldovan Prosecutor General's Office informed the applicant's parents that it could not intervene owing to the political situation in the Transdniestrian region since 1992. It also referred to Moldova's reservations in respect of its ability to ensure observance of the Convention in the eastern regions of Moldova.

49. A complaint made on an unknown date to the Russian embassy in Moldova was forwarded to the "MRT prosecutor's office". The latter replied on 1 February 2010, saying that the applicant's case was pending before the "MRT courts", which alone were competent to deal with any complaints after the case had been submitted to the trial court. On 10 February 2010 the Russian embassy forwarded that reply to the applicant's mother.

50. The applicant also complained to the Joint Control Commission, a trilateral peacekeeping force operating in a demilitarised buffer zone on the border between Moldova and Transdniestria known as the "Security Area". For further details, see *Ilaşcu and Others* (cited above, § 90). It is unclear whether he obtained any response.

51. After notice of the present application had been given to the respondent Governments, the Moldovan Deputy Prime Minister wrote on 9 March 2010 to the Russian, Ukrainian and US ambassadors to Moldova, as well as to the Council of Europe, the European Union and the Organization for Security and Co-operation in Europe (OSCE), asking them to assist in securing the applicant's rights.

52. On 16 July 2010 the applicant asked the Moldovan Prosecutor General's Office to provide witness protection to him and his parents, since the "MRT militia" had been looking for him at his home in Tiraspol while he was in hospital in Chişinău. On the same day the applicant was officially recognised as a victim. However, on 19 July 2010 the Bender prosecutor's office refused his request to be provided with witness protection, since it had not been established that his life or health were at risk.

53. On 6 August 2010, following a complaint by the applicant, the investigating judge of the Bender District Court in Moldova set aside the decision of 19 July 2010 on the grounds that the applicant had been unlawfully arrested and convicted and had had his property taken away from him. He ordered the Bender prosecutor's office to provide witness protection to the applicant and his family. The parties did not inform the Court of any further developments in this regard.

E. Information concerning alleged Russian support for the "MRT"

54. The applicant submitted reports from various "MRT" media outlets. According to an article dated 13 April 2007 from Regnum, one of the leading Russian online news agencies at the relevant time, the Russian ambassador to Moldova had given a speech in Tiraspol the previous day in which he declared that Russia would continue its support for the "MRT" and would never give up its interests there. The diplomat added that "Russia has been here for more than a century. Our ancestors' remains are buried here. A major part of our history is situated here".

55. On 20 April 2007 the same news agency informed the public of a decision by the Russian Ministry of Finance to give the "MRT" USD 50 million in non-reimbursable aid, as well as USD 150 million in loans secured on "MRT" property.

56. In a news report dated 23 November 2006, the Regnum news agency reported a statement by the "MRT President" to the effect that each "MRT Ministry" was working on harmonising the legislation of the "MRT" with that of Russia, and that a group of representatives of "MRT Ministries" was to travel to Moscow within the next few days to discuss the matter.

57. According to the Moldovan Government, "the last and non-significant" withdrawal of armaments from the "MRT" to Russia took place on 25 March 2004. Almost twenty thousand tonnes of ammunition and military equipment are purportedly still stored on the territory controlled by

the "MRT". On 26 January 2011 Russian and Ukrainian officials were able to visit the Colbasna arms depot, while Moldovan officials were neither informed of nor invited to participate in the visit.

58. In February 2011 the Russian ambassador to Moldova declared, *inter alia*, in public speeches that since 2003, when Moldova had refused to sign a settlement agreement with the "MRT" (the so-called "Kozak Memorandum"), Russia had no longer been able to withdraw arms from the "MRT" owing to the latter's resistance.

59. According to the Moldovan Government, Tiraspol Airport, which was officially closed down by the Russian authorities on 1 December 2005, continues to serve "MRT" military and civilian helicopters and aircraft. Russian military planes and helicopters are still parked there. Between 2004 and 2009, over eighty flights from that airport which were not authorised by the Moldovan authorities were recorded, some of which appear to have been bound for Russia.

60. According to the Moldovan Government, the "MRT" received a total of USD 20.64 million in Russian aid in 2011, in the form of either the waiving of debts for natural gas consumed or of non-refundable loans. During 2010 the "MRT" consumed natural gas from Russia to a value of USD 505 million. It paid the Russian company Gazprom USD 20 million, about 4% of the price for that gas. At the same time, the local population paid the "MRT" authorities approximately USD 163 million for gas in 2010, a sum which remained largely at the disposal of the "MRT".

II. RELEVANT REPORTS OF INTER-GOVERNMENTAL AND NON-GOVERNMENTAL ORGANISATIONS

A. The United Nations

61. The relevant parts of the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, concerning his visit to the Republic of Moldova from 4 to 11 July 2008 (UN Human Rights Council, 12 February 2009, UN Doc. A/HRC/10/44/Add.3), read as follows.

> "**Transnistrian region of the Republic of Moldova**
>
> ...
>
> 29. The Special Rapporteur also received information that in the Transnistrian region of the Republic of Moldova transfers of prisoners are conducted by the police. Prisoners are packed on top of each other in a metal wagon with only one tiny window. In the summer the heat in the wagon becomes unbearable after a few minutes but they have to stay inside for hours. Different categories of prisoners are mixed during these transports (adults, minors, sick, including those with open tuberculosis), which puts the prisoners at risk of contamination with diseases.

...

45. According to several of his interlocutors, including detainees, progress has been made with improving conditions in the penitentiary system, e.g. functioning heating, food quality improved, HIV treatment in prisons commenced in September 2007. However, complaints about the poor quality and sometimes lack of food were common. The Special Rapporteur also received reports that international programmes are often not extended into the Transnistrian region of the Republic of Moldova, which means less out-reach in terms of health care and problems in particular with regard to tuberculosis treatment and a higher percentage of persons sick with tuberculosis and HIV.

46. The Special Rapporteur is concerned that many human rights violations flow from the legislation in force, which, for instance, requires solitary confinement for persons sentenced to capital punishment and to life imprisonment and which prescribes draconic restrictions on contacts with the outside world.

47. Conditions in custody of the militia headquarters in Tiraspol were clearly in violation of minimum international standards. The Special Rapporteur considers that detention in the overcrowded cells with few sleeping facilities, almost no daylight and ventilation, 24 hours artificial light, restricted access to food and very poor sanitary facilities amounts to inhuman treatment."

62. The relevant parts of the "Report on Human Rights in the Transnistrian Region of the Republic of Moldova" (by UN Senior Expert Thomas Hammarberg, 14 February 2013) read as follows.

"... the *de facto* authorities in Transnistria have ... pledged unilaterally to respect some of the key international treaties, including the two UN Covenants on human rights, the European Convention on Human Rights and the Convention on the Rights of the Child." (p. 4)

"The changes of the role of the Prosecutor and the creation of the Investigation Committee would have an impact on the functioning of the judiciary as well. If correctly implemented, it would be clear that the Prosecutor would not have an oversight or supervisory role in relation to the functioning of the courts." (p. 17)

"The Expert was confronted with many and fairly consistent complaints against the functioning of the justice system. One was that the accusations in a number of cases were 'fabricated'; that procedures were used to intimidate persons; that the defence lawyers were passive; that people with money or contacts had an upper-hand compared to ordinary people; and that witnesses changed their statements because of threats or bribery – and that such tendencies sabotaged the proceedings.

It is very difficult for an outsider to assess the basis for such accusations but some factors made the Expert reluctant to ignore them. They were strikingly frequent and even alluded to by a few high level actors in the system." (p. 18)

"**Comments**

Building a competent, non-corrupt and independent judiciary is a huge challenge in any system. However, it is an indispensable human right to have access to independent and impartial tribunals.

The Transnistrian Constitution states that judges cannot be members of political parties or take part in political activities. It is as important that the judiciary avoids close relationships with big business or organized partisan interests.

The procedures for the recruitment of judges should be impartial and reward professional skills and high moral standards. Corrupt behaviour and other breaches of trust should be investigated and punished through a credible and competent disciplinary mechanism. A reasonable salary level will also counter temptations of accepting bribes.

The judge has a crucial role in protecting the principle of 'equality of arms'. The Expert heard complaints that the defence in general was disadvantaged in comparison with the prosecution. Such perceptions undermine the credibility of the system and the sense of justice in general.

The prestige of judges in society will of course depend largely on their competence, their knowledge of the laws and the case law as well as familiarity with problems in society. Update training is one way of meeting this need.

Special training is needed for those judges involved in *juvenile justice* matters.

The United Nations adopted a set of basic principles on the Independence of the Judiciary, which were unanimously endorsed by the General Assembly in [1985]. These principles, representing universally accepted views on this matter by the UN Member States, set out parameters to ensure independence and impartiality of the judges, condition of service and tenure, freedoms of expression and association and modalities for qualification, selection and trainings. [Office of the UN High Commissioner for Human Rights] and the International Bar Association have jointly developed extensive guidance material on human rights in the administration of justice, which might also be used for the training of legal professionals working in the Transnistrian region.

The Expert considers that an evaluation ought to be undertaken on the present situation with regard to minors in detention, including, *inter alia*, their length of stay, their individual background as well as efforts to assist their reintegration in society.

Such survey could serve as a background to a review of the whole approach to juvenile crime. The Expert feels that there is an acute need to develop preventive programmes and alternatives to institutional punishment.

...

The Expert was informed that there were, as of October 1, 2 858 inmates in these institutions, of whom 2 224 were convicted and 634 held on remand. This means that there are approximately 500 prisoners per every 100 000 persons, one of the highest figures in Europe.

The number had gone down during 2012 from an even higher figure as a consequence of releases through reduction of sentences and pardons granted to a considerable number of prisoners.

Furthermore, the Code of Criminal Procedure was amended in the autumn in order to reduce the number of persons kept on remand during investigations. Another amendment opened for alternatives to imprisonment, such as fines or controlled, non-penitentiary community work, for the less serious crimes.

Detention on remand

When the Expert visited the remand facility in prison no. 3 in Tiraspol, there were 344 detainees kept there. Some were under investigation before trial. Others had been charged and were defendants at court proceedings. Still others had appealed a sentence in the first instance.

None of these three categories had an unconditional right to receive visitors. The reason given was that visits might disturb the investigations. However, relatives may on request get permission from the investigator or the judge to pay a visit, though not in private.

...

The Expert talked with inmates who had been kept on remand longer than 18 months. One woman who had appealed an original sentence had been detained for four years. Her two small children had been taken to a children's home and she had not been able to see them for the entire period of her detention.

The Expert was told that the total detention period before and during a trial could be as long as seven years.

...

Penitentiary facilities in Tiraspol and Glinnoe

The Expert visited the colony in Tiraspol (prison no. 2) in May and the one in Glinnoe (prison no. 1) in September. The former had at the time 1 187 inmates, of whom 170 were under strict special regime. The average sentence was 13 years, the Expert was told. Terms of 22-25 years are being served for murder, repeat offences and trafficking crimes.

In Glinnoe, the Expert was told that there were 693 convicted prisoners; the number had gone down as a consequence of the recent revision of the Criminal Code. The Expert was told that the average sentence was 5 years though many prisoners had sentences of between 10 and 15 years.

...

The possibility of visits by relatives was limited. In Tiraspol no. 2, the basic rule was to allow visits four times a year, two short and two longer. Phone calls were allowed for 15 minutes once a month – with supervision except for discussions with the lawyer.

Both visits and phone calls could be reduced as a method of disciplinary sanction. Such measures were taken in cases of infringements such as possessing alcohol or having a mobile telephone. Disciplinary measures could also include solitary confinement of up to 15 days.

...

Health situation in prisons

Health service in the penitentiary institutions is also under the authority of the Transnistrian Ministry of Justice; doctors and nurses there are seen as part of the prison staff. The resources are limited and the Expert found the health situation, in particular in the Glinnoe prison, to be alarming and the care services substandard. There is limited communication with the civilian health system which results in low coverage with testing and treatment.

...

Few human resources and limited capacities of existing medical personnel create barriers to enjoying access to quality medical services in penitentiaries. The standard of health care in the Glinnoe prison appeared to the Expert to be especially bad on all accounts, including on record keeping and preventive measures such as diet control.

There, the complaints about the quality of the food were particularly bitter." (pp. 19-23)

B. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

63. In the report on its visit to Moldova between 21 and 27 July 2010 (CPT/Inf (2011) 8) the CPT stated that, following the refusal of the "MRT" authorities to allow members of the Committee to meet in private with detainees, the CPT had decided to call off its visit because a limitation of this kind ran counter to the fundamental characteristics of the prevention mechanism enshrined in its mandate.

64. The relevant parts of the report of the CPT on its visit to Moldova between 27 and 30 November 2000 (CPT/Inf (2002) 35) read as follows.

"40. At the outset of the visit, the authorities of the Transnistrian region provided the delegation with detailed information on the five penitentiary establishments currently in service in the region.

In the time available, the delegation was not in a position to make a thorough examination of the whole of the penitentiary system. However, it was able to make an assessment of the treatment of persons deprived of their liberty in Prison No. 1, at Glinoe, Colony No. 2, at Tiraspol, and the SIZO (i.e. pre-trial) section of Colony No. 3, again at Tiraspol.

41. As the authorities are certainly already aware, the situation in the establishments visited by the delegation leaves a great deal to be desired, in particular in Prison No. 1. The CPT will examine various specific areas of concern in subsequent sections of this report. However, at the outset, the Committee wishes to highlight what is perhaps the principal obstacle to progress, namely the high number of persons who are imprisoned and the resultant overcrowding.

42. According to the information provided by the authorities, there are approximately 3,500 prisoners in the region's penitentiary establishments i.e. an incarceration rate of some 450 persons per 100,000 of the population. The number of inmates in the three establishments visited was within or, in the case of Prison N° 1, just slightly over their official capacities. Nevertheless, the delegation found that in fact the establishments were severely overcrowded.

The situation was at its most serious in Prison N° 1. The cells for pre-trial prisoners offered rarely more – and sometimes less – than 1 m² of living space per prisoner, and the number of prisoners often exceeded the number of beds. These deplorable conditions were frequently made worse by poor ventilation, insufficient access to natural light and inadequate sanitary facilities. Similar, albeit slightly better, conditions were also observed in the SIZO section of Colony No. 3 and in certain parts of Colony No. 2 (for example, Block 10).

43. An incarceration rate of the magnitude which presently prevails in the Transnistrian region cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies, prosecutors and judges must, in part, be responsible for the situation. At the same time, it is unrealistic from an economic standpoint to offer decent conditions of detention to such vast numbers

of prisoners; to attempt to solve the problem by building more penitentiary establishments would be a ruinous exercise.

The CPT has already stressed the need to review current law and practice relating to custody pending trial ... **More generally, the Committee recommends that an overall strategy be developed for combating prison overcrowding and reducing the size of the prison population. In this context, the authorities will find useful guidance in the principles and measures set out in Recommendation N° R (99) 22 of the Committee of Ministers of the Council of Europe, concerning prison overcrowding and prison population inflation ...**

...

48. The CPT recognises that in periods of economic difficulties, sacrifices may have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty to ensure that that person has access to certain basic necessities. Those basic necessities include appropriate medication. Compliance with this duty by public authorities is all the more imperative when it is a question of medication required to treat a life-threatening disease such as tuberculosis.

At the end of the visit, the CPT's delegation requested the authorities to take steps without delay to ensure that all penitentiary establishments are supplied on a regular basis with medicines of various types and, in particular, with a suitable range of anti-tuberculosis drugs. **The CPT wishes to be informed of the action taken in response to that request.**

...

49. Official health-care staffing levels in the penitentiary establishments visited were rather low and, at the time of the visit, this situation was exacerbated by the fact that certain posts were vacant or staff members on long-term leave had not been replaced. This was particularly the case at Prison N° 1 and Colony N° 2. **The CPT recommends that the authorities strive to fill as soon as possible all vacant posts in the health-care services of those two establishments and to replace staff members who are on leave.**

The health-care services of all three penitentiary establishments visited had very few medicines at their disposal, and their facilities were modestly equipped. The question of the supply of medicines has already been addressed (cf. paragraph 48). As regards the level of equipment, the CPT appreciates that the existing situation is a reflection of the difficulties facing the region; it would be unrealistic to expect significant improvements at the present time. However, it should be possible to maintain all existing equipment in working order. In this context, the delegation noted that all the radiography machines in the establishments visited were out of use. **The CPT recommends that this deficiency be remedied.**

On a more positive note, the CPT was very interested to learn of the authorities' plans for a new prison hospital, with a region-wide vocation, at Malaieşti. This is a most welcome development. **The Committee would like to receive further details concerning the implementation of those plans.**

...

51. The CPT has already highlighted the poor material conditions of detention which prevailed in the establishments visited and has made recommendations designed to address the fundamental problem of overcrowding (cf. paragraphs 42 and 43).

In addition to overcrowding, the CPT is very concerned by the practice of covering cell windows. This practice appeared to be systematic vis-à-vis remand prisoners, and was also observed in cells accommodating certain categories of sentenced prisoners. The Committee recognises that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of such security measures should be the exception rather than the rule. Further, even when specific security measures are required, such measures should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

It is also inadmissible for cells to accommodate more prisoners than the number of beds available, thereby compelling prisoners to sleep in shifts.

Consequently, the CPT recommends that the authorities set the following as short-term objectives:

i) all prisoner accommodation to have access to natural light and adequate ventilation;

ii) every prisoner, whether sentenced or on remand, to have his/her own bed.

Further, as measures to tackle overcrowding begin to take effect, the existing standards concerning living space per prisoner should be revised upwards. **The CPT recommends that the authorities set, as a medium-term objective, meeting the standard of 4m² of floor space per prisoner.**

52. As the delegation pointed out at the end of its visit, material conditions of detention were particularly bad at Prison Nº 1 in Glinoe. The CPT appreciates that under the present circumstances, the authorities have no choice but to keep this establishment in service. However, the premises of Prison Nº 1 belong to a previous age; **they should cease to be used for penitentiary purposes at the earliest opportunity.**"

C. Organization for Security and Co-operation in Europe (OSCE)

65. In its Annual Report for 2005, the OSCE referred to events in Transdniestria as follows.

"The Mission concentrated its efforts on restarting the political settlement negotiations, stalled since summer 2004. The mediators from the Russian Federation, Ukraine, and the OSCE held consultations with representatives from Chisinau and Tiraspol in January, May and September. At the May meeting, Ukraine introduced President Victor Yushchenko's settlement plan, *Toward a Settlement through Democratization*. This initiative envisages democratization of the Transdniestrian region through internationally conducted elections to the regional legislative body, along with steps to promote demilitarization, transparency and increased confidence.

In July, the Moldovan Parliament, citing the Ukrainian Plan, adopted a law *On the Basic Principles of a Special Legal Status of Transdniestria*. During consultations in September in Odessa, Chisinau and Tiraspol agreed to invite the EU and US to participate as observers in the negotiations. Formal negotiations resumed in an enlarged format in October after a 15-month break and continued in December following the OSCE Ministerial Council in Ljubljana. On 15 December, the Presidents of Ukraine and the Russian Federation, Victor Yushchenko and

Vladimir Putin, issued a Joint Statement welcoming the resumption of negotiations on the settlement of the Transdniestrian conflict.

In September, Presidents Voronin and Yushchenko jointly requested the OSCE Chairman-in-Office to consider sending an International Assessment Mission (IAM) to analyse democratic conditions in Transdniestria and necessary steps for conducting democratic elections in the region. In parallel, the OSCE Mission conducted technical consultations and analyses on basic requirements for democratic elections in the Transdniestrian region, as proposed in the Yushchenko Plan. At the October negotiating round, the OSCE Chairmanship was asked to continue consultations on the possibility of organizing an IAM to the Transdniestrian region.

Together with military experts from the Russian Federation and Ukraine, the OSCE Mission completed development of a package of proposed confidence- and security-building measures, which were presented by the three mediators in July. The Mission subsequently began consultations on the package with representatives of Chisinau and Tiraspol. The October negotiating round welcomed possible progress on enhancing transparency through a mutual exchange of military data, as envisaged in elements of this package."

On the question of Russian military withdrawal, the OSCE observed:

"There were no withdrawals of Russian arms and equipment from the Transdniestrian region during 2005. Roughly 20,000 metric tons of ammunition remain to be removed. The commander of the Operative Group of Russian Forces reported in May that surplus stocks of 40,000 small arms and light weapons stored by Russian forces in the Transdniestrian region have been destroyed. The OSCE has not been allowed to verify these claims."

In its Annual Report for 2006 the OSCE reported as follows:

"*... The 17 September 'independence' referendum and the 10 December 'presidential' elections in Transnistria – neither one recognized nor monitored by the OSCE – shaped the political environment of this work ...*

To spur on the settlement talks, the Mission drafted in early 2006 documents that suggested: a possible delimitation of competencies between central and regional authorities; a mechanism for monitoring factories in the Transnistrian military-industrial complex; a plan for the exchange of military data; and an assessment mission to evaluate conditions and make recommendations for democratic elections in Transnistria. The Transnistrian side, however, refused to continue negotiations after the March introduction of new customs rules for Transnistrian exports, and thus no progress could be made including on these projects. Attempts to unblock this stalemate through consultations among the mediators (OSCE, Russian Federation and Ukraine) and the observers (European Union and the United States of America) in April, May and November and consultations of the mediators and observers with each of the sides separately in October were to no avail.

...

On 13 November, a group of 30 OSCE Heads of Delegations, along with OSCE Mission members, gained access for the first time since March 2004 to the Russian Federation ammunition depot in Colbasna, near the Moldovan-Ukrainian border in northern Transnistria. There were no withdrawals, however, of Russian ammunition or equipment from Transnistria during 2006, and more than 21,000 tons of ammunition remain stored in the region. ..."

The Annual Report for 2007 stated:

> "The mediators in the Transnistrian settlement process, the Russian Federation, Ukraine and the OSCE, and the observers, the European Union and the United States, met four times. The mediators and observers met informally with the Moldovan and Transnistrian sides once, in October. All meetings concentrated on finding ways to restart formal settlement negotiations, which have nonetheless failed to resume.
>
> ...
>
> The Mission witnessed that there were no withdrawals of Russian ammunition or equipment during 2007. The Voluntary Fund retains sufficient resources to complete the withdrawal tasks."

In its Annual Report for 2008 the OSCE observed:

> "Moldovan President Vladimir Voronin and Transnistrian leader Igor Smirnov met in April for the first time in seven years and followed up with another meeting on 24 December. Mediators from the OSCE, Russian Federation and Ukraine and observers from the European Union and the United States met five times. Informal meetings of the sides with mediators and observers took place five times. These and additional shuttle diplomacy efforts by the Mission notwithstanding, formal negotiations in the '5+2' format were not resumed.
>
> ...
>
> There were no withdrawals of Russian ammunition or equipment from the Transnistrian region during 2008. The Voluntary Fund retains sufficient resources to complete withdrawal tasks."

In its Annual Report for 2009 the OSCE observed:

> "*Withdrawal of Russian ammunition and equipment*. The Mission maintained its readiness to assist the Russian Federation to fulfil its commitment to withdraw ammunition and equipment from Transdniestria. No withdrawals took place in 2009. The Voluntary Fund retains sufficient resources to complete withdrawal tasks."

Subsequent OSCE reports describe the confidence-building measures taken and note the various meetings between those involved in the negotiations concerning the settlement of the Transdniestrian conflict. They do not contain any reference to the withdrawal of troops from the "MRT".

D. Other materials from international organisations

66. In *Catan and Others* (cited above, §§ 64-73) the Court summarised the content of various reports by intergovernmental and non-governmental organisations concerning the situation in the Transdniestrian region of Moldova and the Russian military personnel and equipment stationed there during 2003 and 2009. It also summarised the relevant provisions of international law (ibid., §§ 74-76).

67. In paragraph 18 of Resolution 1896 (2012) on the honouring of obligations and commitments by the Russian Federation, the Parliamentary Assembly of the Council of Europe noted as follows:

"The opening of polling stations in Abkhazia (Georgia), South Ossetia (Georgia) and Transnistria (Republic of Moldova) without the explicit consent of the *de jure* authorities in Tbilisi and Chişinău, as well as the prior 'passportisation' of populations in these territories, violated the territorial integrity of these States, as recognised by the international community, including the Parliamentary Assembly."

68. On 10 May 2010 the International Committee of the Red Cross (ICRC) replied to a letter from the Permanent Mission of the Republic of Moldova concerning the applicant's case, stating that an ICRC delegate and a doctor had seen the applicant on 29 April 2010. During their visit, they had met with the applicant in private and had been told that he had regular contact with his family and could receive parcels from them.

III. RELEVANT DOMESTIC LAW AND PRACTICE OF THE REPUBLIC OF MOLDOVA

69. The relevant provisions of the Constitution read as follows.

Article 114
Administration of justice

"Justice shall be administered in the name of the law only by the courts of law."

Article 115
Courts of law

"1. Justice shall be administered by the Supreme Court of Justice, the courts of appeal and the courts of law.

2. For certain categories of cases special law courts may operate under the law.

3. The setting up of extraordinary courts shall be forbidden.

4. The structure of the law courts, their sphere of competence and legal procedures shall be laid down by organic law."

70. Section 1 of the Law on the status of judges (no. 544, 20 July 1995, as in force at the time of the events) reads as follows.

Section 1
Judges – bearers of judicial authority

"(1) Judicial authority shall be exercised only by the courts, in the person of the judge, who shall be the sole bearer of such authority.

(2) Judges shall be the persons constitutionally vested with judicial duties, which they shall exercise in accordance with the law.

(3) Judges of the courts shall be independent, impartial and immovable, and shall obey only the law.

..."

71. Under Annexes 2 and 3 to the Law on judicial organisation (no. 514, 6 July 1995, as in force at the time of the events), six first-instance courts

and one second-instance court (the Bender Court of Appeal), empowered to examine cases originating from the various settlements on the territory controlled by the "MRT" were created. On 16 July 2014 Parliament decided to close down the Bender Court of Appeal because it was examining a considerably smaller number of cases than the other Courts of Appeal. The judges working there were transferred to other Courts of Appeal, while the cases on its docket were transferred to the Chişinău Court of Appeal.

72. In accordance with section 1 of the Law on compensation for damage caused by illegal acts of the criminal investigation bodies, the prosecution authorities or the courts (no. 1545, 25 February 1998), compensation may be sought in court where damage is caused by the unlawful actions of the criminal investigation bodies, the prosecution authorities or the courts within the framework of criminal or administrative-contravention proceedings.

73. The Moldovan Government submitted examples of past rulings by the Moldovan Supreme Court of Justice similar to the decision of 22 January 2013 (see paragraph 26 above), in which that court quashed convictions imposed by various "MRT courts" on the grounds that they had been handed down by unlawfully created courts. They also referred to the cases of *Topa v. Moldova* ((dec.), no. 25451/08, 14 September 2010), *Mătăsaru and Savițchi v. Moldova* (no. 38281/08, §§ 60-76, 2 November 2010) and *Bisir and Tulus v. Moldova* (no. 42973/05, §§ 21 et seq., 17 May 2011) in support of their assertion that compensation for wrongful prosecution or conviction could be claimed under Law no. 1545 (1998).

IV. OTHER RELEVANT MATERIALS

74. On 19 May 2009 the press office of the "MRT prosecutor" published a report according to which a visit to the detention facilities in the Slobozia region of the "MRT" had revealed multiple regulatory breaches regarding hygiene, the physical conditions of detention and medical assistance.

75. The applicant submitted copies of decisions of the "Tiraspol City Court" of 14 April 2009, 11 June 2010, 1 April 2011, 25 February 2012 and 18 November 2013 in cases not related to the present one, ordering the detention pending trial of persons accused of various crimes. None of these decisions specified the period of detention of the persons concerned.

76. He also submitted the text of several provisions of the "MRT Code of Criminal Procedure". According to Article 79, detention pending trial cannot exceed two months. If the investigation cannot be completed in that period, it may be extended by the court. Under Article 78, paragraph 15, a person accused of serious and extremely serious offences may be detained pending trial on the basis of the severity of the crime alone. Under Articles 212-1 and 212-2, the duration of detention of a person whose case is being examined by the trial court cannot exceed six months initially, but

may be extended by the court. According to the applicant, the practice of the "MRT courts" is that, once a case has been submitted to the trial court, no further extension of the period of detention pending trial is required during the first six months of such detention.

77. The applicant also submitted various news reports from the media published on the territory controlled by the "MRT" regarding the judiciary system in the region. Some of these reports refer to politically motivated persecution using the "courts" as a means of exerting pressure, or allege that the "MRT Supreme Court" is a "puppet court" of the "MRT President". Others mention the appointment of new judges to the "MRT courts", referring to the freshly appointed "judges" as having barely any experience, and citing examples such as that of a person who became a judge of the "Tiraspol City Court" at the age of 25, three years after graduating from the local university.

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78. The applicant complained, *inter alia*, that he had been arrested and detained unlawfully by the "MRT" authorities. He further alleged that he had not been given the requisite medical assistance for his condition, had been held in inhuman conditions of detention and had been prevented from seeing his parents and his pastor. He submitted that both Moldova and Russia had jurisdiction and were responsible for the alleged violations.

I. GENERAL ADMISSIBILITY ISSUES

79. 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. For their part, the Moldovan Government did not contest that the Republic of Moldova retained jurisdiction over the territory controlled by the "MRT", but submitted that the applicant had failed to exhaust the remedies available to him in Moldova. The Court finds it appropriate, before examining the admissibility and merits of each complaint lodged by the applicant, to examine these two objections potentially affecting all of the complaints.

A. Jurisdiction

80. The Court must first determine whether, for the purposes of the matters complained of, the applicant falls within the jurisdiction of either or

both of the respondent States, within the meaning of Article 1 of the Convention.

1. The parties' submissions

(a) The applicant

(i) Jurisdiction of the Republic of Moldova

81. The applicant submitted that, although Moldova lacked effective control over Transdniestria, the region clearly remained part of Moldovan national territory and the protection of human rights there remained Moldova's responsibility.

82. He argued that, apart from the general measures taken by Moldova aimed at resolving the conflict and ensuring observance of human rights in the Transdniestrian region, the authorities had failed to take measures to secure his individual Convention rights.

(ii) Jurisdiction of the Russian Federation

83. The applicant submitted that the Court's findings of fact in *Ilaşcu and Others* (*v. Moldova and Russia* [GC], no. 48787/99, §§ 379-91, ECHR 2004-VII), which had led it to conclude that Russia exercised a decisive influence over the "MRT" (§ 392), also applied to the present case. The "MRT" continued to survive only by virtue of Russia's military, economic, financial, informational and political support. Russia had "effective control or at the very least a decisive influence" over the "MRT".

84. Furthermore, the actions of the Russian authorities in the present case sent out a different message from the country's official position: it was unclear why the Russian embassy would send the complaint made by the applicant's mother to the "MRT prosecutor's office" (see paragraph 49 above) if Russia did not recognise the "MRT" as a lawfully created entity.

(b) The Moldovan Government

(i) Jurisdiction of the Republic of Moldova

85. The Moldovan Government submitted that, according to the rationale of *Ilaşcu and Others* (cited above), the applicant fell within Moldova's jurisdiction because, by claiming the territory and by trying to secure applicants' rights, the Moldovan authorities assumed positive obligations in respect of applicants. The Moldovan Government maintained that they still had no jurisdiction over the Transdniestrian territory in the sense of authority and control; nevertheless, they continued to fulfil the positive obligations established by *Ilaşcu and Others* and were intensifying their diplomatic efforts in that regard.

86. For instance, the Moldovan authorities kept all the parties in the ongoing negotiations concerning the Transdniestrian region informed of all relevant developments; they also continued to request Russia's withdrawal of its military equipment and personnel from the region and to ensure observance of human rights there. At Moldova's insistence the European Union (EU) had been included in the negotiation format in 2005, and later that year the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) had started its work of offering technical advice to Moldova and Ukraine in securing better control of their borders with the Transdniestrian region. Moldovan officials continued to ask Russia to honour its obligations in various international fora such as the United Nations, the Council of Europe, the European Union and the Organization for Security and Co-operation in Europe (OSCE).

87. Moreover, still according to the Moldovan Government, they had – in response to the high number of complaints of alleged breaches of human rights in the "MRT" – set up a number of legal mechanisms aimed at guaranteeing constitutional rights, including the right to property, medical treatment, justice, education, and so forth. Hence, the Moldovan authorities had opened various amenities in settlements near the region, such as passport and other documentation offices, prosecutors' offices and courts.

88. With regard to specific cases of alleged violations of human rights in the region such as that of the applicant, the Moldovan authorities were taking the only steps available to them, that is to say, asking for assistance from Russia and other countries and international organisations in influencing the "MRT" authorities to ensure the observance of such rights.

(ii) Jurisdiction of the Russian Federation

89. The Moldovan Government submitted a number of media reports from the "MRT" and Russia, which in their view confirmed that in 2010 the Russian Federation had continued to support the separatist regime. They referred to bans on selling Moldovan wine in Russia in 2006 and 2010; the continued payment of up to 50% of pensions and salaries in the public sector with money received from Russia; declarations by various Russian and "MRT" officials concerning close relations with and support from Russia; the continued delivery of natural gas from Russia to the "MRT" for only a nominal payment; the development of a common education system and textbooks and the recognition of "MRT" diplomas in Russia; allegations in the "MRT" media that by choosing which political parties received economic aid, Russia was able to influence politics there; messages from the Russian Foreign Minister, Sergei Lavrov, and the Russian ambassador to Moldova, Valeri Kuzmin, congratulating the separatist leaders on the twentieth anniversary of the self-proclamation of their independence; and the attendance of various Russian officials at the anniversary celebrations in Tiraspol.

90. According to the Moldovan Government, the "MRT" continued to have Russia's political, economic and financial support. The presence of Russian troops and the massive assistance given to the "MRT" complicated the negotiations aimed at settling the conflict.

(c) The Russian Government

(i) Jurisdiction of the Republic of Moldova

91. The Russian Government did not comment on the jurisdictional position of the Republic of Moldova in the present case.

(ii) Jurisdiction of the Russian Federation

92. The Russian Government took issue with the Court's approach to jurisdiction in *Ilaşcu and Others* (cited above). They contended that, in keeping with the Court's reasoning in *Loizidou v. Turkey* ((preliminary objections), 23 March 1995, § 62, Series A no. 310) and *Cyprus v. Turkey* ([GC], no. 25781/94, § 76, ECHR 2001-IV), a State could be considered to be exercising extraterritorial jurisdiction if it (a) continued to exercise control through subordinate local authorities and (b) kept control over the whole territory owing to the presence of a large number of troops and "practically exercised a global control over" the relevant territory. Neither of these two conditions was met in the present case. The situation was similar to that in *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, ECHR 2001-XII), in which the Court had recognised that jurisdiction could only be extended extraterritorially in exceptional cases.

93. Moreover, the concept of "effective control" as applied by the Court when establishing whether a State exercised extraterritorial jurisdiction was at variance with its meaning in public international law. The notion of "effective and overall control" had first appeared in the case-law of the International Court of Justice (ICJ), but had a different meaning there. Comparing the present situation to that in *Military and Paramilitary Activities in and against Nicaragua* (*(Nicaragua v. United States of America)*, Judgment of 27 June 1986, *ICJ Reports* 1986, §§ 109-15), the Russian Government argued that they had much less influence over the "MRT" authorities than the United States of America had had over the rebels in Nicaragua, notably in terms of the strength of Russia's military presence in the "MRT". In fact, Russia was one of the mediators of the conflict between Moldova and the self-proclaimed "MRT". The ICJ had confirmed its position in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*(Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, *ICJ Reports* 2007, p. 43 – "the Bosnian Genocide case"). The notion of "overall control" had been further developed by the International Criminal Tribunal for the former

Yugoslavia. The Court's interpretation of this notion differed from the interpretations of these international tribunals.

94. Moreover, Russia had never engaged in the occupation of any part of Moldovan territory. It could not be said that Russia exercised jurisdiction in the present case, where the territory was controlled by a *de facto* government which was not an organ or instrument of Russia and which did not depend on Russia in any way. On the contrary, Russia considered the "MRT" to be an integral part of the Republic of Moldova. Russia's military presence was restricted to a limited number of peacekeepers; therefore, there were no grounds for concluding that it exercised control through the strength of its military presence. The Russian Government referred in that connection to *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, § 139, ECHR 2011) and *Jaloud v. the Netherlands* ([GC], no. 47708/08, § 139, ECHR 2014). They referred to a newspaper article submitted by the applicant, according to which there had been fewer than 400 Russian peacekeepers in the region in October 2006, "on a par with the number of military servicemen from the 'MRT' and Moldova".

95. In reply to a question by the Court as to whether there had been any relevant developments since the adoption of its judgment in *Ilaşcu and Others* (cited above), the Russian Government submitted that Moldova had in the meantime been accepted into the World Trade Organization (WTO) as an entire trade zone which included the Transdniestrian region. This, in their opinion, showed that there was scope for negotiation and cooperation between Moldova and the "MRT".

2. The Court's assessment

96. Article 1 of the Convention reads as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

In the present case, issues arise as to the meaning of "jurisdiction" with regard to both territorial jurisdiction (in the case of Moldova) and the exercise of extraterritorial jurisdiction (in the case of the Russian Federation).

(a) General principles

97. In *Ilaşcu and Others* (cited above), the Court established the following principles regarding the presumption of territorial jurisdiction.

> "311. It follows from Article 1 that member States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their 'jurisdiction'.
>
> The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.

312. The Court refers to its case-law to the effect that the concept of 'jurisdiction' for the purposes of Article 1 of the Convention must be considered to reflect the term's meaning in public international law (see *Gentilhomme and Others v. France*, nos. 48205/99, 48207/99 and 48209/99, § 20, judgment of 14 May 2002; *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, §§ 59-61, ECHR 2001-XII; and *Assanidze v. Georgia* [GC], no. 71503/01, § 137, ECHR 2004-II).

From the standpoint of public international law, the words 'within their jurisdiction' in Article 1 of the Convention must be understood to mean that a State's jurisdictional competence is primarily territorial (see *Banković and Others*, cited above, § 59), but also that jurisdiction is presumed to be exercised normally throughout the State's territory.

This presumption may be limited in exceptional circumstances, particularly where a State is prevented from exercising its authority in part of its territory. That may be as a result of military occupation by the armed forces of another State which effectively controls the territory concerned (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, and *Cyprus v. Turkey*, §§ 76-80, cited above, and also cited in the above-mentioned *Banković and Others* decision, §§ 70-71), acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned.

313. In order to be able to conclude that such an exceptional situation exists, the Court must examine on the one hand all the objective facts capable of limiting the effective exercise of a State's authority over its territory, and on the other the State's own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory (see, among other authorities, *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V).

Those obligations remain even where the exercise of the State's authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take.

...

333. The Court considers that where a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up, whether or not this is accompanied by military occupation by another State, it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State.

Nevertheless, such a factual situation reduces the scope of that jurisdiction in that the undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State's positive obligations towards persons within its territory. The State in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention.

334. Although it is not for the Court to indicate which measures the authorities should take in order to comply with their obligations most effectively, it must verify that the measures actually taken were appropriate and sufficient in the present case.

When faced with a partial or total failure to act, the Court's task is to determine to what extent a minimum effort was nevertheless possible and whether it should have been made. Determining that question is especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Articles 2 and 3 of the Convention."

These principles were recently reiterated in *Sargsyan v. Azerbaijan* ([GC], no. 40167/06, § 128, ECHR 2015).

98. As regards the general principles concerning the exercise of extraterritorial jurisdiction, the Court, in so far as relevant, summarised them as follows in *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, ECHR 2012.

"103. The Court has established a number of clear principles in its case-law under Article 1. Thus, as provided by this Article, the engagement undertaken by a Contracting State is confined to "securing" ('*reconnaître*' in the French text) the listed rights and freedoms to persons within its own "jurisdiction" (see *Soering v. the United Kingdom*, 7 July 1989, § 86, Series A no. 161; *Banković and Others*, cited above, § 66). "Jurisdiction" under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Ilaşcu and Others*, cited above, § 311, and *Al-Skeini and Others*, cited above, § 130).

99. A State's jurisdictional competence under Article 1 is primarily territorial (see *Soering*, cited above, § 86; *Banković and Others*, cited above, §§ 61-67; *Ilaşcu and Others*, cited above, § 312; and *Al-Skeini and Others*, cited above, § 131). Jurisdiction is presumed to be exercised normally throughout the State's territory (see *Ilaşcu and Others*, cited above, § 312, and *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004-II). Conversely, acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases (see *Banković and Others*, cited above, § 67, and *Al-Skeini and Others*, cited above, § 131).

100. To date, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts (see *Al-Skeini and Others*, cited above, § 132).

101. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV; *Banković and Others*, cited above, § 70; *Ilaşcu and Others*, cited above, §§ 314-16; *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; and *Al-Skeini and Others*, cited above, § 138). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions

of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (see *Cyprus v. Turkey*, cited above, §§ 76-77, and *Al-Skeini and Others*, cited above, § 138).

102. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see *Loizidou* (merits), cited above, §§ 16 and 56, and *Ilaşcu and Others*, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Ilaşcu and Others*, cited above, §§ 388-94, and *Al-Skeini and Others*, cited above, § 139).

...

115. The Russian Government contend that the Court could only find that Russia was in effective control if it found that the 'government of the MRT' could be regarded as an organ of the Russian State in accordance with the approach of the International Court of Justice in the *Case Concerning the Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro ...* The Court notes that in the judgment relied upon by the Russian Government, the International Court of Justice was concerned with determining when the conduct of a person or group of persons could be attributed to a State, so that the State could be held responsible under international law in respect of that conduct. In the instant case, however, the Court is concerned with a different question, namely whether facts complained of by an applicant fell within the jurisdiction of a respondent State within the meaning of Article 1 of the Convention. As the summary of the Court's case-law set out above demonstrates, the test for establishing the existence of 'jurisdiction' under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law."

These principles were recently reiterated in *Chiragov and Others v. Armenia* ([GC], no. 13216/05, § 168, ECHR 2015).

(b) Application of these principles to the facts of the case

(i) Jurisdiction of the Republic of Moldova

103. The Court must first determine whether the case falls within the jurisdiction of the Republic of Moldova. In this connection it notes that the applicant was at all times detained on Moldovan territory. It is true, as all the parties accept, that Moldova has no authority over the part of its territory to the east of the River Dniester, which is controlled by the "MRT". Nevertheless, in *Ilaşcu and Others* (cited above), the Court held that individuals detained in Transdniestria fell within Moldova's jurisdiction because it was the territorial State, even though it did not have effective control over the Transdniestrian region. Moldova's obligation under Article 1 of the Convention to "secure to everyone within [its] jurisdiction

the [Convention] rights and freedoms", was, however, limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (ibid., § 331). The Court reached a similar conclusion in *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, §§ 105-11, 15 November 2011) and *Catan and Others* (cited above, §§ 109-10).

104. The Court sees no reason to distinguish the present case from those cited above. Although Moldova has no effective control over the acts of the "MRT" in Transdniestria, the fact that the region is recognised under public international law as part of Moldova's territory gives rise to an obligation for that State, under Article 1 of the Convention, to use all the legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there (see *Ilaşcu and Others*, cited above, § 333, and *Catan and Others*, cited above, § 109). The Court will consider below (see paragraphs 151-55) whether Moldova has satisfied this positive obligation.

(ii) Jurisdiction of the Russian Federation

105. It follows from the Court's case-law set out above (see paragraphs 97-98), that a State can exercise jurisdiction extraterritorially when, as a consequence of lawful or unlawful military action, it exercises effective control of an area outside its national territory (see paragraph 98 above and *Loizidou* (preliminary objections), cited above, § 62; *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; *Cyprus v. Turkey*, cited above, § 76; and *Ilaşcu and Others*, cited above, §§ 314-16; compare and contrast *Banković and Others*, cited above, § 70). Moreover, the Court reiterates that a State can, in certain exceptional circumstances, exercise jurisdiction extraterritorially through the assertion of authority and control by that State's agents over an individual or individuals (see *Al-Skeini and Others*, cited above, §§ 136 and 149, and *Catan and Others*, cited above, § 114). In the present case, the Court accepts that there is no evidence of any direct involvement of Russian agents in the applicant's detention and treatment. However, it is the applicant's submission that Russia has "effective control or at the very least a decisive influence" over the "MRT" and the Court must establish whether or not this was the case at the time of the applicant's detention, which lasted from November 2008 until July 2010.

106. The Russian Government submitted an argument based on the Bosnian Genocide case, as they had done in *Catan and Others* (cited above, § 96), and *Nicaragua v. United States of America* (see paragraph 93 above), which was part of the case-law taken into account by the Court in *Catan and Others* (cited above, § 76). In these cases the ICJ was concerned with determining when the conduct of a group of persons could be attributed to a

State, with the result that the State could be held responsible under international law for that conduct. In the instant case, however, the Court reiterates that it is concerned with a different issue, namely whether the facts complained of by the applicant fall within the jurisdiction of a respondent State within the meaning of Article 1 of the Convention. As the Court has already found, the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law (see paragraph 98 above, and *Catan and Others*, cited above, § 115).

107. Although in *Catan and Others* the Court focused on determining whether Russia had jurisdiction over the applicants between 2002 and 2004, in establishing the facts of that case the Court referred to a number of developments that occurred subsequently. It thus took note, *inter alia*, of resolutions adopted by the Duma in February and March 2005 calling on the Russian government to ban imports of alcohol and tobacco from Moldova (see *Catan and Others*, cited above, § 29); the Russian government's ban on meat products, fruit and vegetables from Moldova in 2005 (§ 30); the absence of any verified withdrawals of Russian military equipment from the "MRT" since 2004 (§ 36); the continued presence (by the date of the judgment in *Catan and Others*, October 2012) of approximately a thousand Russian military servicemen in the "MRT" to guard its arms store (§ 37); the economic support being provided through close cooperation with Russian military production companies or through the purchase by Russian companies of "MRT" companies, as well as the purchases of supplies in Transdniestria (§ 39); the close economic ties between the "MRT" and Russia, including the token payment to Gazprom of only approximately 5% of the cost of the natural gas consumed (data for 2011, § 40); the economic aid provided to the "MRT" between 2007 and 2010 (§ 41); and the number of "MRT" residents granted Russian citizenship (§ 42).

108. In addition, various reports from intergovernmental organisations cited in *Catan and Others* (§§ 64-70) refer to the period from 2005 to 2008, and reports by non-governmental organisations (ibid., §§ 71-73) cover the period from 2004 to 2009.

109. The Court further notes that some of its conclusions in *Catan and Others*, while referring to the period between August 2002 and July 2004, were based on factual findings in respect of which the parties in the present case have not submitted any new information. These concern the quantity of weapons and munitions stored at Colbaşna (§ 117); the dissuasive effect of the relatively small Russian military presence in the Transdniestrian region and its historical background, namely the intervention of Russian troops in the 1992 conflict between the Moldovan authorities and the "MRT" forces, the transfer of weapons to the separatists and the arrival in the region of Russian nationals to fight alongside the separatists (§ 118); and the

combination of the continued Russian military presence and the storage of weapons in secret and in breach of international commitments, sending "a strong signal of continued support for the 'MRT' regime" (§ 119).

110. In *Ivanţoc and Others* (cited above, §§ 116-20) the Court analysed whether Russia's policy of supporting the "MRT" had changed between 2004 and the date of the applicants' release in 2007. It concluded as follows.

> "118. ... the Russian Federation continued to enjoy a close relationship with the 'MRT', amounting to providing political, financial and economic support to the separatist regime.
>
> In addition, the Court notes that the Russian army (troops, equipment and ammunition) was at the date of the applicants' release still stationed on Moldovan territory in breach of the Russian Federation's undertakings to withdraw completely and in breach of Moldovan legislation ...
>
> 119. ... the Russian Federation continued to do nothing either to prevent the violations of the Convention allegedly committed after 8 July 2004 or to put an end to the applicants' situation brought about by its agents."

111. The Court also notes that Russia was criticised for opening polling stations in the "MRT" without Moldova's consent and issuing passports to a large number of people in the Transdniestrian region as recently as 2012 (see paragraph 67 above).

112. In *Catan and Others* (cited above), the Court concluded as follows.

> "121. ... the Russian Government have not persuaded the Court that the conclusions it reached in 2004 in *Ilaşcu and Others* (cited above) were inaccurate. The 'MRT' was established as a result of Russian military assistance. The continued Russian military and armaments presence in the region sent a strong signal, to the 'MRT' leaders, the Moldovan Government and international observers, of Russia's continued military support for the separatists. In addition, the population were dependent on free or highly subsidised gas supplies, pensions and other financial aid from Russia."

The Court considers, given the absence of any relevant new information to the contrary, that this conclusion continues to be valid for the period under consideration, namely November 2008 to July 2010.

113. Lastly, it should be noted that in the present case the Russian Government's arguments concerning the jurisdictional issue are essentially the same as those which they advanced in *Catan and Others* (cited above). The only development cited by the Russian Government which occurred since the period covered by the two judgments in *Ilaşcu and Others* and *Catan and Others* (that is, the period prior to 2004), namely Moldova's acceptance into the WTO (which, the Russian Government argued, provided scope for cooperation between Moldova and the "MRT", see paragraph 95 above), does not, in the Court's view, have a bearing on this issue.

114. The Court therefore maintains its findings in *Ilaşcu and Others*, *Ivanţoc and Others* and *Catan and Others* (all cited above), to the effect that the "MRT" is 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 Russia's military, economic and political support. In these circumstances, the "MRT's" high level of dependency on Russian support provides a strong indication that Russia continues to exercise effective control and a decisive influence over the "MRT" authorities (see *Catan and Others*, cited above, § 122).

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

116. The Court must therefore 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.

B. Exhaustion of domestic remedies

1. The parties' submissions

117. In paragraphs 114 and 115 of their observations of 31 October 2014, the Moldovan Government submitted that the applicant had not exhausted the remedies available to him in Moldova (see paragraph 79 above). In particular, they noted that, while he had obtained the quashing by the Supreme Court of Justice of his conviction by the "MRT court", he had not applied, on the basis of the quashing of that judgment and relying on Law no. 1545 (1998) (see paragraph 72 above), for compensation from the Republic of Moldova for the breach of his rights.

118. The applicant did not comment on this issue.

2. The Court's assessment

119. According to the Court's settled case-law, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014; and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 84, 9 July 2015).

120. The obligation to exhaust domestic remedies therefore 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 (see *Akdivar and Others*, § 66; *Vučković and Others*, § 71; and

Gherghina, § 85, all cited above). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Vučković and Others*, cited above, § 74; and *Gherghina*, cited above, § 85).

121. In the present case the Court notes that section 1 of Law no. 1545 (1998) expressly states that it applies to cases where damage is caused by the unlawful actions of the criminal investigation bodies, the prosecution authorities or the courts (see paragraph 72 above). According to the Moldovan Government (see paragraph 129 below), only those authorities (in particular the courts) which were created in accordance with Moldovan law can be officially recognised as such. In the Court's view, this seems to exclude any compensation for the unlawful acts of any "courts" or "prosecution" or other authorities created by the "MRT".

122. Moreover, despite the fact that the Moldovan Government submitted several examples in which the Supreme Court of Justice had quashed rulings handed down by the "MRT courts" (as in *Ilaşcu and Others*, cited above, § 222), as well as cases where Law no. 1545 (1998) had served as a basis for successfully claiming compensation, they did not submit any example of an individual obtaining compensation from Moldova after the quashing of an "MRT court" conviction. The Court is not convinced that in such circumstances Law no. 1545 (1998) applies to the applicant's case.

123. The Court observes that in paragraph 129 of their observations of 31 October 2014 the Moldovan Government specified that the domestic remedies to be exhausted by the applicant in Moldova "[were] available remedies, which [were] effective to the extent of the Government's positive obligations and lack of effective control". In the light of this statement, their objection can be understood as referring only to the possibility of obtaining compensation under Law no. 1545 (1998) for the four-month delay (see paragraphs 48 and 51 above) in fulfilling the positive obligation to take diplomatic, economic, judicial or other measures aimed at ensuring observance of the applicant's Convention rights.

124. However, the Court considers that there is nothing in Law no. 1545 (1998) that would allow the applicant to claim compensation for such a delay, since it deals with cases in which the various Moldovan investigating authorities or courts (see paragraphs 72 and 117 above) have breached an individual's rights in the framework of criminal or administrative-contravention proceedings, and not with the delayed use or failure to make use of diplomatic or other means at the State level.

125. In view of the above considerations, the Court rejects the Moldovan Government's objection of non-exhaustion of domestic remedies.

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

126. The applicant complained that he had been arrested and detained by unlawfully created militia and courts. He relied on Article 5 § 1 of the Convention, the relevant part of which reads as follows:

> "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:
>
> ...
>
> (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

127. The Court notes that the complaints under Article 5 § 1 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

128. The applicant complained that his detention had been unlawful. The Court's case-law in respect of the requirement of lawfulness referred primarily to the observance of domestic law. Since the applicant's detention had been ordered by "MRT courts", created in breach of the relevant Moldovan legislation (see paragraphs 69-70 above), it could not be considered "lawful" within the meaning of Article 5 § 1 of the Convention. Moreover, the principle of *ex injuria jus non oritur* dictated that acts which were contrary to international law could not become a source of legal acts for the wrongdoer.

129. Referring to *Ilaşcu and Others* (cited above, § 460), the applicant submitted in particular that the judicial system of the "MRT" did not reflect a legal tradition compatible with the Convention. The "MRT courts" lacked independence and impartiality. Relying on a number of documents, he argued that the appointment procedures for judges were not transparent and that judges were not sufficiently independent from the executive, in particular from the "President of the MRT". In his view, there had been

frequent incidents of corruption and abuse of criminal procedures for private business interests, and his own case provided an example. Moreover, the procedures which the "MRT courts" applied in respect of detention did not comply with Convention standards and did not offer guarantees against arbitrariness. The Court should therefore confirm the approach taken in *Ilaşcu and Others* (cited above).

130. The applicant argued further that there were important differences between the present case and the cases concerning the "Turkish Republic of Northern Cyprus" ("TRNC"). Firstly, the attitude of the State exercising effective control over the area differed. While Turkey recognised the "TRNC" as an independent State, Russia did not recognise the "MRT" and, as was clear from the Russian Government's observations in respect of jurisdiction in the present case, continued to consider the "MRT" as part of the Republic of Moldova. Secondly, Moldova had established a parallel system of courts for the Transdniestrian region. The task of these courts, located on the territory controlled by Moldova, was to examine civil and criminal cases relating to the Transdniestrian region. Any recognition by the Court that the "MRT courts" could be regarded as "tribunals established by law" or that they could impose "lawful" detention would undermine the functioning of these legitimate Moldovan courts. Thirdly, in contrast to the situation in the "TRNC", the "MRT courts" did not apply the laws of the Republic of Moldova or the laws of the Russian Federation, but rather their own legal system, which was not compatible with Convention standards.

131. The applicant finally complained that after his case had been sent to the trial court his detention was unlawful since the last court order extending his detention had expired on 24 November 2009 and no new order was adopted until 21 April 2010.

(b) The Moldovan Government

132. The Moldovan Government argued that the Court should follow the approach taken in *Ilaşcu and Others* (cited above, §§ 436 and 460-62).

133. They referred to the judgment of 22 January 2013 of the Supreme Court of Justice of the Republic of Moldova (see paragraph 26 above) and stressed that it had confirmed the unlawful and arbitrary nature of the applicant's conviction. They maintained that the "MRT courts" were organs of an illegal entity which had not been recognised by any State. The applicant's detention as ordered by the courts of the "MRT" could not be regarded as "lawful" within the meaning of Article 5 § 1 of the Convention. In the Moldovan Government's view, any conclusion to the contrary would imply a recognition of certain powers on the part of the unrecognised entity.

134. The Moldovan Government also pointed out differences between the legal traditions of the "MRT" and the "TRNC" which had led to different conclusions being reached by the Court in *Ilaşcu and Others* (cited above), on the one hand, and in *Foka v. Turkey* (no. 28940/95, 24 June

2008) and *Protopapa v. Turkey* (no. 16084/90, 24 February 2009), on the other. The same approach as in *Ilaşcu and Others* should be taken in the present case. The legal system of the "MRT" was based on the old Soviet system and did not reflect any commitment to the Convention or other international human rights standards. The Moldovan Government referred in particular to the "Report on Human Rights in the Transnistrian Region of the Republic of Moldova" (see paragraph 62 above). In their view, this report showed that the judicial organisation of the "MRT" did not comply with the basic principles of independence and impartiality.

135. Finally, the Moldovan Government submitted that they could not comment on the lawfulness of the applicant's detention from the point of view of compliance with "MRT" law, since in any event that law was unconstitutional and the "MRT" legal system did not correspond to the principles of democracy, independence and impartiality of the judicial organisation.

(c) The Russian Government

136. 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.

2. The Court's assessment

137. The Court notes that the applicant was arrested on 24 November 2008 and subsequently held in detention pending trial from 26 November 2008 to 1 July 2010 (see paragraphs 13 and 22 above). Accordingly, Article 5 § 1 (c) of the Convention is applicable.

138. It is well established in the Court's 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, but 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).

139. In the present case, the question arises whether the applicant's arrest and pre-trial detention can be regarded as "lawful" for the purpose of Article 5 § 1 of the Convention, given that they were ordered by organs of the "MRT", an unrecognised entity. The Court therefore considers it appropriate to set out the general principles established in its case-law in

respect of the lawfulness of acts adopted by the authorities of unrecognised entities.

(a) General principles concerning the lawfulness of acts adopted by unrecognised entities

140. The Court considers that this issue is to be viewed in the context of its general approach to the exercise of extraterritorial jurisdiction in unrecognised entities. In that context the Court has had regard to the special character of the Convention as an instrument of European public order for the protection of individual human beings and its mission, as set out in Article 19 of the Convention, to "ensure the observance of the engagements undertaken by the High Contracting Parties". It has emphasised the need to avoid a vacuum in the system of human rights protection and has thus pursued the aim of ensuring that Convention rights are protected throughout the territory of all Contracting Parties, even on territories effectively controlled by another Contracting Party, for instance through a subordinate local administration (see *Cyprus v. Turkey*, cited above, § 78).

141. In *Cyprus v. Turkey* (cited above, §§ 91-94) the Court examined the question whether applicants could be required to exhaust remedies available in the "TRNC", that is, in an unrecognised entity. It drew inspiration, *inter alia*, from the stance of the ICJ in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion, *ICJ Reports* 1971, § 125). In that Advisory Opinion, the ICJ had found that, while official acts performed by the government of South Africa on behalf of or concerning Namibia after the termination of the mandate were illegal and invalid, this invalidity could not be extended to those acts such as, for instance, the registration of births, deaths or marriages, the effects of which could be ignored only to the detriment of the inhabitants of that territory. The Court found that use should be made of remedies available in the "TRNC" provided that it could be shown that they existed to the advantage of individuals and offered them reasonable prospects of success. On a more general level it noted that the absence of courts in the "TRNC" would work to the detriment of the members of the Greek-Cypriot community. The Court then concluded as follows.

> "96. ... the obligation to disregard acts of *de facto* entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the *de facto* authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they are entitled."

142. The Court confirmed this approach in *Demopoulos and Others v. Turkey* ((dec.) [GC], nos. 46113/99 and 7 others, § 95, ECHR 2010). Again in the context of exhaustion of domestic remedies, the Court noted that those affected by the policies and actions of the "TRNC" came within the jurisdiction of Turkey, with the consequence that Turkey could be held responsible for violations of Convention rights taking place within that territory. It went on to say that it would not be consistent with such responsibility under the Convention if the adoption by the authorities of the "TRNC" of civil, administrative or criminal-law measures, or their application or enforcement within their territory, were to be denied any validity or regarded as having no "lawful" basis in terms of the Convention. Furthermore it noted (ibid., § 96) as follows:

> "... The right of individual petition under the Convention is no substitute for a functioning judicial system and framework for the enforcement of criminal and civil law. ..."

143. In *Cyprus v. Turkey* (cited above) the Court also had to deal with another issue of relevance in the present context. The applicant Government complained under Article 6 that Greek Cypriots in northern Cyprus were denied the right to have their civil rights and obligations determined by independent and impartial courts established by law. The Court held as follows.

> "231. As to the applicant Government's claim that 'TRNC' courts failed to satisfy the criteria laid down in Article 6, the Commission noted, firstly, that there was nothing in the institutional framework of the 'TRNC' legal system which was likely to cast doubt either on the independence and impartiality of the civil courts or the subjective and objective impartiality of judges, and, secondly, those courts functioned on the basis of the domestic law of the 'TRNC' notwithstanding the unlawfulness under international law of the 'TRNC''s claim to statehood. The Commission found support for this view in the Advisory Opinion of the International Court of Justice in the Namibia case ... Moreover, in the Commission's opinion due weight had to be given to the fact that the civil courts operating in the 'TRNC' were in substance based on the Anglo-Saxon tradition and were not essentially different from the courts operating before the events of 1974 and from those which existed in the southern part of Cyprus.
>
> ...
>
> 236. As to the applicant Government's challenge to the very legality of the 'TRNC' court system, the Court observes that they advanced similar arguments in the context of the preliminary issue concerning the requirement to exhaust domestic remedies in respect of the complaints covered by the instant application ... The Court concluded that, notwithstanding the illegality of the 'TRNC' under international law, it cannot be excluded that applicants may be required to take their grievances before, *inter alia*, the local courts with a view to seeking redress. It further pointed out in that connection that its primary concern in this respect was to ensure, from the standpoint of the Convention system, that dispute-resolution mechanisms which offer individuals the opportunity of access to justice for the purpose of remedying wrongs or asserting claims should be used.

> 237. The Court observes from the evidence submitted to the Commission (see paragraph 39 above) that there is a functioning court system in the 'TRNC' for the settlement of disputes relating to civil rights and obligations defined in 'domestic law' and which is available to the Greek-Cypriot population. As the Commission observed, the court system in its functioning and procedures reflects the judicial and common-law tradition of Cyprus (see paragraph 231 above). In its opinion, having regard to the fact that it is the 'TRNC domestic law' which defines the substance of those rights and obligations for the benefit of the population as a whole it must follow that the domestic courts, set up by the 'law' of the 'TRNC', are the fora for their enforcement. For the Court, and for the purposes of adjudicating on 'civil rights and obligations' the local courts can be considered to be 'established by law' with reference to the 'constitutional and legal basis' on which they operate.
>
> In the Court's opinion, any other conclusion would be to the detriment of the Greek-Cypriot community and would result in a denial of opportunity to individuals from that community to have an adjudication on a cause of action against a private or public body ... It is to be noted in this connection that the evidence confirms that Greek Cypriots have taken successful court actions in defence of their civil rights."

144. In several judgments concerning Turkey, the Court has applied the principles established in *Cyprus v. Turkey* to criminal matters (see *Foka*, cited above, § 83, where the arrest of the Greek-Cypriot applicant by a "TRNC" police officer was found to be lawful for the purpose of Article 5; *Protopapa*, cited above, § 60, where both the pre-trial detention and the detention after conviction imposed by the "TRNC" authorities were considered to be lawful for the purpose of Article 5 and a criminal trial before a "TRNC" court was found to be in accordance with Article 6; and also *Asproftas v. Turkey*, no. 16079/90, § 72, 27 May 2010; *Petrakidou v. Turkey*, no. 16081/90, § 71, 27 May 2010; and *Union européenne des droits de l'homme and Josephides v. Turkey* (dec.), no. 7116/10, § 9, 2 April 2013).

145. In *Ilaşcu and Others* (cited above, § 460), when examining whether the applicants' detention following their conviction by the "MRT Supreme Court" could be regarded as "lawful" under Article 5 § 1 (a) of the Convention, the Court formulated the general principle as follows.

> "In certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a tribunal 'established by law' provided that it forms part of a judicial system operating on a 'constitutional and legal basis' reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, §§ 231 and 236-37)."

(b) Application of these principles to the present case

146. With reference to the above general principles established in its case-law, the Court considers that the primary concern must always be for Convention rights to be effectively protected throughout the territory of all Contracting Parties, even if a part of that territory is under the effective control of another Contracting Party (see paragraph 136 above).

Accordingly, it cannot automatically regard as unlawful, for the limited purposes of the Convention, the decisions taken by the courts of an unrecognised entity purely because of the latter's unlawful nature and the fact that it is not internationally recognised.

147. In line with this rationale the Court finds it already established in its case-law that the decisions taken by the courts of unrecognised entities, including decisions taken by their criminal courts, may be considered "lawful" for the purposes of the Convention provided that they fulfil certain conditions (see *Ilaşcu and Others*, cited above, § 460). This does not in any way imply any recognition of that entity's ambitions for independence (see *mutatis mutandis*, *Cyprus v. Turkey*, cited above, § 92).

148. At the same time, the Court has long held that "[t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32). It is insufficient to declare that the Convention rights are protected on a certain territory – the Court must be satisfied that such protection is also effective. A primary role in ensuring that such rights are observed is assigned to the domestic courts, which must offer guarantees of independence and impartiality and fairness of proceedings. Consequently, when assessing whether the courts of an unrecognised entity satisfy the test established in *Ilaşcu and Others*, namely whether they form "part of a judicial system operating on a 'constitutional and legal basis' ... compatible with the Convention" (cited above, § 460), the Court will attach weight to the question whether they can be regarded as independent and impartial and are operating on the basis of the rule of law.

149. In verifying whether the "MRT courts" which ordered the applicant's detention, namely the "Tiraspol People's Court" and the "MRT Supreme Court" satisfy the above criteria, the Court must start from the findings made in its previous case-law concerning this unrecognised entity. In *Ilaşcu and Others* (cited above, §§ 436 and 461), referring to "the patently arbitrary nature of the circumstances in which the applicants were tried and convicted" in 1993, the Court found that the "Supreme Court of the MRT" "belongs to a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention" (§ 436). At the same time, it cannot be excluded that the situation has evolved since that judgment was rendered in 2004. This makes it necessary to verify whether what was established in *Ilaşcu and Others* with respect to the "MRT courts" before the Republic of Moldova and the Russian Federation became Parties to the Convention in 1997 and 1998 respectively continues to be valid in the present case.

150. The Court notes that the parties were asked, with specific reference to its case-law, to comment on the question whether the "MRT courts" could order the applicant's lawful arrest and detention within the meaning of Article 5 § 1 of the Convention. Moreover, they were asked to comment

on the specific legal basis for the applicant's detention in the "MRT". The Moldovan Government commented briefly that the legal system of the "MRT" was based on the former Soviet system and that the "MRT courts" lacked independence and impartiality (see paragraph 130 above). As to the legal basis for the applicant's arrest and detention, they stated that they could not submit such information. The Russian Government referred to their position concerning their lack of jurisdiction and did not make any comments on the merits. The applicant, for his part, alleged in particular that the "MRT courts" lacked independence and impartiality.

151. In the Court's view, it is in the first place for the Contracting Party which has effective control over the unrecognised entity in issue to show that its courts form "part of a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention" (see paragraph 144 above). As the Court has already established (see paragraph 111 above), in the case of the "MRT" it is Russia which has such effective control. To date, the Russian Government have not submitted to the Court any information on the organisation of the "MRT courts" which would enable it to assess whether they fulfil the above requirement. Nor have they submitted any details of the "MRT" law which served as a basis for the applicant's detention. Furthermore, the Court notes the scarcity of official sources of information concerning the legal and court system in the "MRT", a fact which makes it difficult to obtain a clear picture of the applicable laws. Consequently, the Court is not in a position to verify whether the "MRT courts" and their practice fulfil the requirements mentioned above.

152. There is also no basis for assuming that there is a system reflecting a judicial tradition compatible with the Convention in the region, similar to the one in the remainder of the Republic of Moldova (compare and contrast with the situation in Northern Cyprus, referred to in *Cyprus v. Turkey*, cited above, §§ 231 and 237). The division of the Moldovan and "MRT" judicial systems took place in 1990, well before Moldova joined the Council of Europe in 1995. Moreover, Moldovan law was subjected to a thorough analysis when it requested membership of the Council of Europe (see Opinion No. 188 (1995) of the Parliamentary Assembly of the Council of Europe on the application by Moldova for membership of the Council of Europe), with amendments proposed to ensure compatibility with the Convention, which Moldova finally ratified in 1997. No such analysis was made of the "MRT legal system", which was thus never part of a system reflecting a judicial tradition considered compatible with Convention principles before the split into separate judicial systems occurred in 1990 (see paragraph 12 above, and *Ilaşcu and Others*, cited above, §§ 29-30).

153. The Court also considers that the conclusions reached above are reinforced by the circumstances in which the applicant in the present case was arrested and his detention was ordered and extended (see

paragraphs 13-15 and 17 above, in particular the order for his detention for an undefined period of time and the examination in his absence of the appeal against the decision to extend that detention), as well as by the case-law referred to by the applicant (see paragraph 75 above) and the various media reports which raise concerns about the independence and quality of the "MRT courts" (see paragraph 77 above).

154. In sum, the Court concludes that its findings in *Ilaşcu and Others* (cited above, §§ 436 and 460-62) are still valid with respect to the period of time covered by the present case. It therefore finds 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 (c) of the Convention. Accordingly, the applicant's detention based on the orders of the "MRT courts" was unlawful for the purposes of that provision.

3. Responsibility of the respondent States

(a) The Republic of Moldova

155. 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 5 § 1 (see paragraph 100 above). In *Ilaşcu and Others* (cited above, §§ 339-40), 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. The obligation to re-establish control over Transdniestria required Moldova to refrain from supporting the separatist regime and to act by taking all the political, judicial and other measures at its disposal for re-establishing control over the territory. The Court took the same approach in *Catan and Others* (cited above, § 145).

156. As regards the first aspect of Moldova's positive obligation, to re-establish control, the Court found in *Ilaşcu and Others* (cited above, §§ 341-45) that from the onset of the hostilities in 1991-92 until July 2004, when judgment was given, Moldova had taken all the measures in its power to re-establish control over Transdniestrian territory. The Court found no reason to depart from that finding in *Catan and Others* (cited above, § 146). In the present case, the parties did not submit any new argument on the issue. There is nothing to indicate that the Moldovan Government changed their position in respect of Transdniestria in the intervening years up to the period of the applicant's detention from November 2008 to July 2010. The Court therefore sees no reason to reach a different conclusion in the present case.

157. Turning to the second aspect of the positive obligation, namely to ensure respect for the applicants' rights, the Court found in *Ilaşcu and*

Others (cited above, §§ 348-52) that Moldova had failed to comply fully with its positive obligations to the extent that from May 2001 it had failed to take all the measures available to it in the course of negotiations with the "MRT" and Russian authorities to bring an end to the violation of the applicants' rights. In the present case, however, the Court considers that the Moldovan Government made considerable efforts to support the applicant. In particular, the authorities made a number of appeals to various intergovernmental organisations and foreign countries, notably Russia, asking them to assist in securing the applicant's rights (see paragraph 51 above). When the applicant asked the Moldovan Supreme Court of Justice to quash his conviction, he obtained such a decision (see paragraph 26 above) and the prosecutor's office did eventually take whatever steps it could to investigate the applicant's allegations relating to his unlawful detention (see paragraphs 52-53 above).

158. It is true that the Prosecutor General's Office and the Human Rights Centre did not intervene when the applicant's parents complained to them (see paragraphs 47-48 above). However, this may be seen against the background of the efforts made by other authorities, including those at the highest level, to ensure the protection of the applicant's rights. Considering the number of complaints concerning breaches of Convention rights by the "MRT" authorities and the inevitable delay in dealing with all of them at a high diplomatic level, the Court cannot conclude that the initial lack of reaction amounts, by itself, to a failure by Moldova to take whatever steps it could in order to secure the applicant's rights.

159. In the light of the foregoing, the Court considers that the Republic of Moldova fulfilled its positive obligations in respect of the applicant. It therefore finds that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova.

(b) The Russian Federation

160. 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.

161. Nevertheless, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraph 110 above). In the light of this conclusion, and in accordance with the Court's 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 *Catan and Others*, cited above, §§ 106 and 150). 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.

162. In conclusion, and having found that the applicant's detention was unlawful under Article 5 § 1 of the Convention (see paragraph 150 above), the Court holds that there has been a violation of that provision by the Russian Federation.

163. Having reached this conclusion, the Court finds it unnecessary to examine separately the additional complaint under Article 5 § 1 (see paragraph 127 above).

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

164. The applicant complained that he had been absent from some of the court hearings concerning his detention pending trial. He relied on Article 5 § 1 of the Convention. The Court considers that this complaint is to be examined under Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

165. The Moldovan Government did not make any specific submissions in respect of this complaint.

166. The Russian Government did not make any submissions on this point.

167. 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. However, in view of the reasons for finding that the applicant's detention was unlawful (see paragraph 150 above), the Court considers that it is unnecessary to examine separately the complaint under Article 5 § 4.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

168. The applicant complained of the authorities' failure to provide him with the requisite medical assistance for his condition. He argued that this failure exposed him to a real risk to his life, contrary to Article 2 of the Convention, the relevant part of which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ..."

A. Admissibility

169. 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. Merits

1. The parties' submissions

170. The applicant submitted that in view of the acute nature of his condition and the many asthma attacks he suffered, coupled with the unfavourable prognosis he had been given by the doctors, the "MRT" authorities' failure to provide him with the requisite medical assistance for his condition or to release him pending trial in order to seek medical assistance in civilian hospitals had exposed him to a real risk of suffocating to death. Moreover, after a medical panel had established that risk, and in the absence of appropriate medical equipment at the Centre, he had in fact been transferred on 15 February 2010 to an ordinary prison which was even less well equipped (see paragraph 38 above).

171. The Moldovan Government submitted that they were unable to verify the facts of the case. As well as taking general measures aimed at ensuring observance of human rights in the Transdniestrian region, on being informed of the application lodged with the Court they had taken all the measures available to them by asking various intergovernmental organisations and foreign embassies to assist in securing the applicant's rights.

172. The Russian Government submitted that all questions concerning the protection of the applicant's rights were to be answered exclusively by Moldova. They added that in the absence of any means of confirming the facts of the case, such as medical evidence, they could not assess the conditions of the applicant's detention or the quality of the medical treatment he had received.

2. The Court's assessment

173. The Court has established that there may be a positive obligation on a State under the first sentence of Article 2 § 1 to protect the life of an individual from third parties or from the risk of life-endangering illness (see *Osman v. the United Kingdom*, 28 October 1998, §§ 115-22, *Reports* 1998-VIII; *Yaşa v. Turkey*, 2 September 1998, §§ 92-108, *Reports* 1998-VI; and *L.C.B. v. the United Kingdom*, 9 June 1998, §§ 36-41, *Reports* 1998-III). At the same time, it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention (see *Makaratzis v. Greece* [GC], no. 50385/99, § 51, ECHR 2004-XI).

174. In the present case the Court notes that, despite the applicant's unfavourable overall prognosis, the doctors at no point established that there

was an immediate risk to his life. They were able to stop the applicant's asthma attacks, even though doing so required the use of medication brought in by his parents.

175. That being so, the Court considers that the facts complained of by the applicant do not call for a separate examination under Article 2 of the Convention, but would be more appropriately examined under Article 3 instead (see, *mutatis mutandis*, *Ilaşcu and Others*, cited above, § 418).

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

176. 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. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

177. 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. Merits

1. The parties' submissions

178. The applicant complained that the two respondent Governments had failed to secure his rights under Article 3, particularly with regard to the provision of medical assistance and the conditions of his detention.

179. The Moldovan Government submitted that they were unable to verify the facts of the case. As well as taking general measures aimed at ensuring observance of human rights in the Transdniestrian region, on being informed of the application lodged with the Court they had taken all the measures available to them by asking various intergovernmental organisations and foreign embassies to assist in securing the applicant's rights.

180. According to the Russian Government, in the absence of any jurisdiction within the meaning of Article 1 of the Convention over the territory of Transdniestria, they could neither verify the facts as described by the applicant nor comment on the merits of his complaint.

2. The Court's assessment

181. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III; *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009; and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

182. 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 to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cited above, § 94, and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 116, ECHR 2014) and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, § 94, and *Idalov v. Russia* [GC], no. 5826/03, § 93, 22 May 2012). 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 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 *Pakhomov v. Russia*, no. 44917/08, § 61, 30 September 2010, and *Gladkiy v. Russia*, no. 3242/03, § 83, 21 December 2010).

183. In the present case the Court notes that, although the doctors considered the applicant's condition to be deteriorating and the specialists and equipment required to treat him to be lacking, the "MRT" authorities not only refused to transfer him to a civilian hospital for treatment but also exposed him to further suffering and a more serious risk to his health by transferring him to an ordinary prison on 15 February 2010 (see paragraph 38 above). It is indisputable that the applicant suffered greatly from his asthma attacks. The Court is also struck by the fact that the applicant's illness, while considered serious enough to warrant the transfer to a civilian hospital of a convicted person, was not a ground for the similar transfer of a person awaiting trial (see paragraph 35 above). In view of the

lack of any explanation for the refusal to offer him appropriate treatment, the Court finds that the applicant did not receive adequate medical assistance.

184. The Court will now turn to the conditions of the applicant's detention. According to him, the cell was very hot, humid and poorly ventilated and lacked access to natural light. It was overcrowded and full of cigarette smoke as well as parasitic insects. He ldid not have access to a toilet for hours on end and was unable to dry clothes outside the cell. The food was inedible and there were no hygiene products. Throughout his detention he did not receive the medical assistance required by his condition (see paragraphs 28-41 above).

185. While the respondent Governments have not commented on the description provided by the applicant (see paragraphs 28-38 above), it is largely confirmed by the reports of the CPT and the United Nations Special Rapporteur on visits to various places of detention in the "MRT" (see paragraphs 61-64 above). The Court notes in particular that the latter's visit took place in July 2008, some four months before the applicant was taken into detention.

186. On the basis of the material before it, the Court finds it established that the conditions of the applicant's detention amounted to inhuman and degrading treatment within the meaning of Article 3, in particular on account of severe overcrowding, lack of access to daylight and lack of working ventilation which, coupled with cigarette smoke and dampness in the cell, aggravated the applicant's asthma attacks.

3. Responsibility of the respondent States

187. The Court considers that there is no material difference in the nature of each respondent State's responsibility under the Convention in respect of the various complaints made in the present case. Accordingly, for the same reasons given in respect of the complaint under Article 5 § 1 of the Convention (see paragraphs 151-55 above), the Court finds that there has been no violation of Article 3 of the Convention by the Republic of Moldova.

188. For the same reasons as above (see paragraphs 156-59), the Court finds that there has been a violation of Article 3 of the Convention by the Russian Federation.

VI. ALLEGED VIOLATION OF ARTICLES 8 AND 9 OF THE CONVENTION

189. The applicant further complained that for no apparent reason he had been unable to see his parents for a considerable length of time, and that during the visits that had eventually been authorised they had not been allowed to speak their own language. He had also been prevented from

seeing his pastor. He relied on Articles 8 and 9 of the Convention, which read as follows:

Article 8

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

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."

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

190. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

191. The applicant submitted that for a considerable length of time during the investigation he had been unable to see his parents. When they were finally allowed to see each other they had been asked to speak Russian rather than their native language. He had also been unable to see his pastor, and when this was eventually allowed a prison guard had been present. No reasons had been advanced as to why such strict measures had been implemented in his case, and it had been at the discretion of the investigator in charge of the criminal case against him whether to allow such visits.

192. The Moldovan Government submitted that in view of the content of the letter of the International Committee of the Red Cross (ICRC) (see paragraph 68 above), they doubted the veracity of the applicant's complaint concerning the visits with his parents.

193. The Russian Government did not make any submissions on this point.

2. The Court's assessment

194. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, help him, to maintain contact with his close family (see, among many other authorities, *Messina v. Italy (no. 2)*, no. 25498/94, §§ 61-62, ECHR 2000-X; *Lavents v. Latvia*, no. 58442/00, § 139, 28 November 2002; and *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, ECHR 2015). At the same time the Court recognises that some measure of control over prisoners' contact with the outside world is called for and is not of itself incompatible with the Convention (see *Khoroshenko*, cited above, § 123).

195. In the present case the applicant claimed that he had been completely denied visits by his parents during the first six months of his detention. The first visit had been authorised on 4 May 2009. He submitted evidence of his requests to see his parents submitted on 5 March and 13, 16 and 30 April 2009, 9 December 2009 and 15 February 2010. Moreover, when a visit had been allowed on 16 February 2010, the applicant and his mother had had to talk to each other in the presence of a prison guard and had been asked to speak Russian instead of their mother tongue, German (see paragraph 44 above).

196. The Moldovan Government doubted the veracity of this claim, referring to the letter from the ICRC (see paragraph 68 above). The Court notes that the ICRC visited the applicant in April 2010, whereas his complaint referred to the period from 2009 until the visit of 16 February 2010. Moreover, the letter relied on by the Moldovan Government merely mentioned that the applicant was in regular contact with his family, without specifying the nature of that contact. In the light of the above, the Court sees no reason to doubt the applicant's account of the facts and concludes that there was interference with his right to respect for his family life within the meaning of Article 8 § 1 of the Convention in that he was prevented from seeing his parents for a considerable length of time. It remains to be examined whether this interference was justified under the second paragraph of Article 8.

197. The Court reiterates that Article 8 § 2 requires any interference to be "in accordance with the law". It notes that the applicant did not argue that the interference with his rights under Articles 8 and 9 had been unlawful because it had been carried out pursuant to the decisions of unlawfully constituted courts or other authorities. In any event, the Court notes that the respondent Governments have not submitted any details, while the limited material available from the applicant is insufficient to

form a clear understanding of the applicable "MRT" law. The Court is therefore not in a position to assess whether the interference complained of was "in accordance with the law" and whether it was based on any clear criteria or was at the investigator's discretion, as submitted by the applicant. However, it notes that no reasons for refusing family visits are apparent from the documents in the file and it is clear that the applicant was unable to see his parents for six months after his initial arrest.

198. The respondent Governments did not submit any explanation as to why it had been necessary to separate the applicant from his family for such a considerable length of time. It has therefore not been shown that the interference pursued a legitimate aim or was proportionate to that aim, as required under Article 8 § 2 of the Convention.

199. Similarly, the Court finds it unacceptable in principle that a prison guard was present during family visits (compare *Khoroshenko*, cited above, § 146). It is clear that the guard was there specifically in order to monitor what the family discussed, given that they were at risk of having the visit cancelled if they did not speak a language he understood (see paragraph 44 above). Again, no explanation has been given as to why the visits had to be monitored so closely.

200. The Court therefore finds that, regardless of whether there was a legal basis for the interference with the applicant's rights, the restriction on prison visits from his parents did not comply with the other conditions set out in Article 8 § 2 of the Convention.

201. Turning now to the applicant's complaint that he was not allowed to see Pastor Per Bergene Holm, the Court reiterates that the authorities' refusal to allow a prisoner to meet a priest constitutes interference with the rights guaranteed under Article 9 of the Convention (see, for instance, *Poltoratskiy v. Ukraine*, no. 38812/97, § 167, ECHR 2003-V).

202. The applicant alleged that the pastor who attempted to visit him was denied access in June and September 2009. This was confirmed by the pastor in a letter to the Court (see paragraph 45 above). The two respondent Governments have not made any submissions on this point. The Court sees no reason to doubt the description of the facts provided by the applicant and the pastor and accepts that there was interference with the applicant's right to freedom of religion.

203. Again, it is not clear whether there was a legal basis for the refusal to allow visits, and no reasons have been advanced to justify the refusal. The Court considers that it has not been shown that the interference with the applicant's right pursued a legitimate aim or was proportionate to that aim, as required under Article 9 § 2 of the Convention.

3. Responsibility of the respondent States

204. The Court finds, for the same reasons given in respect of the complaint under Article 5 § 1 of the Convention (see paragraphs 151-55

above), that there has been no violation of Articles 8 and 9 of the Convention by the Republic of Moldova.

205. For the same reasons as above (see paragraphs 156-59), the Court finds that there has been a violation of Articles 8 and 9 of the Convention by the Russian Federation.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 2, 3, 5, 8 AND 9

206. The applicant further complained that he had had no effective remedies in respect of his complaints under Articles 2, 3, 5, 8 and 9 of the Convention. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

207. The Court notes that the complaint under Article 13 taken in conjunction with Articles 2, 3, 5, 8 and 9 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. Merits

1. The parties' submissions

208. The applicant submitted that he had had no means of asserting his rights in the face of the actions of the "MRT" authorities, and that the respondent Governments had not indicated any remedies that he should have exhausted.

209. The Moldovan Government submitted that the applicant had had at his disposal the ordinary remedies available in Moldova, where courts, prosecutors' offices, notaries' offices and so forth had been created for the specific purpose of protecting the rights and interests of persons living in the Transdniestrian region.

210. The Russian Government did not make any submissions on this point.

2. The Court's assessment

211. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority

both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under that provision (see *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports* 1996-V). The remedy required by Article 13 must be "effective", both in practice and in law. However, such a remedy is required only for complaints that can be regarded as "arguable" under the Convention (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 78, ECHR 2012, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 148, ECHR 2014).

212. The Court observes that it found no need to examine the complaint under Article 2 of the Convention separately, considering that the facts of the case were more appropriately examined under Article 3 (see paragraph 171 above). Similarly, it does not find it necessary to examine separately whether his complaint under Article 2 was arguable for the purposes of Article 13 as it will in any event deal with the matter under the head of Article 3. The Court observes that the applicant's complaint under Article 3, as well as those under Articles 5, 8 and 9 of the Convention were arguable. However, as regards the applicant's complaint under Article 5 § 1, the Court observes that Article 5 § 4, which the Court did not consider necessary to examine separately in the circumstances of the case (see paragraph 163 above), is the *lex specialis* in relation to Article 13.

213. The applicant was therefore entitled to an effective domestic remedy within the meaning of Article 13 in respect of his complaints under Articles 3, 8 and 9 of the Convention. Accordingly, the Court will examine whether such a remedy was available to the applicant.

214. As far as the applicant's complaint against Moldova is concerned, the Court refers to the considerations it set out above in respect of the Moldovan Government's objection of non-exhaustion, which led it to the conclusion that the proceedings for damages the applicant could have pursued before the Moldovan courts could not be considered an effective remedy in respect of any of his complaints (see paragraphs 115-21) above.

215. As far as the applicant's complaint against Russia is concerned, the Court reiterates that in certain circumstances applicants may be required to exhaust effective remedies available in an unrecognised entity (see *Demopoulos and Others*, cited above, §§ 89 and 92-96). However, there is no indication in the file, and the Russian Government have not claimed, that any effective remedies were available to the applicant in the "MRT" in respect of the above-mentioned complaints.

216. The Court therefore concludes that the applicant did not have an effective remedy in respect of his complaints under Articles 3, 8 and 9 of the Convention. Consequently, the Court must decide whether any violation of Article 13 can be attributed to either of the respondent States.

3. Responsibility of the respondent States

(a) The Republic of Moldova

217. The Court notes at the outset that the nature of the positive obligations to be fulfilled by the Republic of Moldova (see paragraphs 99-100 above) does not require the payment of compensation for breaches by the "MRT". Accordingly, the rejection of the preliminary objection concerning non-exhaustion of domestic remedies owing to the absence of a proven right to compensation from the Moldovan authorities for breaches of Convention rights by the "MRT" (see paragraphs 115-21 above) does not have any effect on the Court's analysis concerning the fulfilment of positive obligations by the Republic of Moldova.

218. The Court considers that it would be inconsistent for it to find that Moldova, while having no means of controlling the actions of the "MRT" authorities, should be held responsible for its inability to enforce any decisions adopted by the Moldovan authorities on the territory under the effective control of the "MRT". The Court reiterates that the positive obligation incumbent on Moldova is to use all the legal and diplomatic means available to it to continue to guarantee to those living in the Transdniestrian region the enjoyment of the rights and freedoms defined in the Convention (see paragraph 100 above). Accordingly, the "remedies" which Moldova must offer the applicant consist in enabling him to inform the Moldovan authorities of the details of his situation and to be kept informed of the various legal and diplomatic actions taken.

219. In this connection the Court notes that Moldova has created a set of judicial, investigative and civil-service authorities which work in parallel with those created by the "MRT" (see paragraph 205 above). While the effects of any decisions taken by these Moldovan authorities can only be felt outside the Transdniestrian region, they have the function of enabling cases to be brought in the proper manner before the Moldovan authorities, which can then initiate diplomatic and legal steps to attempt to intervene in specific cases, in particular by urging Russia to fulfil its obligations under the Convention in its treatment of the "MRT" and the decisions taken there.

220. In the light of the foregoing, the Court considers that the Republic of Moldova has made procedures available to the applicant commensurate with its limited ability to protect the applicant's rights. It has thus fulfilled its positive obligations. Accordingly, the Court finds that there has been no violation of Article 13 of the Convention by that State.

(b) The Russian Federation

221. In the present case, the Court has found that the Russian Federation continues to exercise effective control over the "MRT" (see paragraph 110 above). In accordance with its case-law it is thus not necessary to determine whether Russia exercises detailed control over the policies and actions of

the subordinate local authority. Russia's responsibility is engaged by virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive.

222. In the absence of any submission by the Russian Government as to any remedies available to the applicant, the Court concludes that there has been a violation by the Russian Federation of Article 13 taken in conjunction with Articles 3, 8 and 9.

VIII. ALLEGED VIOLATION OF ARTICLE 17 OF THE CONVENTION

223. Lastly, the applicant complained of a breach of Article 17 of the Convention by both respondent States on account of their tolerance towards the unlawful regime installed in the "MRT", which did not recognise any rights set forth in the Convention. Article 17 reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

224. The Moldovan Government submitted that Moldova had never tolerated the creation and continued existence of the "MRT" and had consistently called for the restoration of democracy, the rule of law and human rights in the Transdniestrian region. Moldova had never sought to act in a manner aimed at destroying the rights and freedoms protected by the Convention or setting new limitations on such rights.

225. The Russian Government did not make any submissions on this point.

226. The Court observes that Article 17 of the Convention can only be applied in conjunction with the substantive provisions of the Convention. In so far as it refers to groups and individuals, its purpose is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention (see *Lawless v. Ireland (no. 3)*, 1 July 1961, p. 45, § 7, Series A no. 3, and *Orban and Others v. France*, no. 20985/05, § 33, 15 January 2009). In so far as it refers to the State, Article 17 has been relied on in alleging that a State has acted in a manner aimed at the destruction of any of these rights and freedoms or at limiting them to a greater extent than is provided for in the Convention (see, for instance, *Engel and Others v. the Netherlands*, 8 June 1976, § 104, Series A no. 22).

227. The Court considers that the complaint, as formulated by the applicant, alleging a breach of Article 17 on account of the respondent States' tolerance of the "MRT" falls outside the scope of that Article. In any case, the Court finds no evidence to suggest that either of the respondent States set out deliberately to destroy any of the rights relied on by the

applicant in the present case, or to limit any of these rights to a greater extent than is provided for in the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

228. 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. Pecuniary damage

229. The applicant claimed 74,538 euros (EUR) in respect of pecuniary damage. This included the cost of the medication, food and clothes brought to him in prison, as well as the money already paid (see paragraph 22 above) or which might be paid by his parents from the sale of his apartment in order to repay to the third party the damages awarded by the "Tiraspol People's Court" as part of the applicant's sentence.

230. The Moldovan Government submitted that in the absence of a violation by the Republic of Moldova of any Convention rights no compensation was payable. In any event, there was no causal link between the violations complained of and the loss or potential loss of real estate.

231. The Russian Government submitted that they should not be liable to pay compensation, since they could not be held responsible for any violation of the applicant's rights. In any event, it was impossible to verify the sums claimed, which moreover appeared excessive.

232. The Court notes that it has not found the Republic of Moldova responsible for any violation of the Convention in the present case. Accordingly, no award of compensation for pecuniary damage is to be made as regards this respondent State.

233. The Court observes that it has found breaches by the Russian Federation of Articles 3, 5 § 1, 8, 9 and 13 of the Convention. However, it does not discern any causal link between the violation of these provisions and the payment of any sums of money following the applicant's conviction. In this context it notes that no complaint under Article 6 was made and that the applicant's conviction was not examined as part of the present case. It therefore rejects this part of the claim.

234. Conversely, it awards the applicant EUR 5,000 in respect of the cost of his medication and treatment after his release from prison and the cost of the food and clothing the prison could not provide, to be paid by the Russian Federation.

B. Non-pecuniary damage

235. The applicant claimed EUR 50,000 in respect of non-pecuniary damage in compensation for the suffering caused to him.

236. The Moldovan Government submitted that the sum claimed was excessive.

237. The Russian Government made a similar submission to that made in paragraph 227 above.

238. The Court notes that it has found that the Republic of Moldova was not responsible for any violation of the applicant's rights protected by the Convention in the present case. Accordingly, no award of compensation for non-pecuniary damage is to be made with regard to this respondent State.

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

C. Costs and expenses

240. The applicant also claimed EUR 1,575 for the costs and expenses incurred before the domestic courts and EUR 14,850 for those incurred before the Court. He relied on receipts for sums paid at domestic level and on a contract with the lawyers who represented him before the Court, which included an itemised list of the hours spent on the case (ninety-nine hours at an hourly rate of EUR 150).

241. The Moldovan Government considered that both the number of hours worked on the case and the sum claimed were excessive.

242. The Russian Government argued that, given that the applicant's lawyer had relied heavily on the judgment in *Ilaşcu and Others* and had had to carry out only limited additional research, the sum claimed for legal costs was excessive.

243. The Court notes that it has found that the Republic of 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.

244. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were 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 sum of EUR 4,000 covering costs under all heads, to be paid by the Russian Federation.

D. Default interest

245. 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. *Holds*, unanimously, that the facts complained of by the applicant fall within the jurisdiction of the Republic of Moldova;

2. *Holds*, by sixteen votes to one, that the facts complained of by the applicant fall within the jurisdiction of the Russian Federation and *dismisses* the Russian Government's objections of incompatibility *ratione personae* and *ratione loci*;

3. *Dismisses*, unanimously, the Moldovan Government's objection of non-exhaustion of domestic remedies;

4. *Declares*, unanimously, the complaint under Article 17 of the Convention inadmissible and the remainder of the application admissible;

5. *Holds,* unanimously, that there is no need to examine separately the complaint under Article 2 of the Convention either alone or taken in conjunction with Article 13;

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

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

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

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

10. *Holds*, unanimously, that there is no need to examine separately the complaint under Article 5 § 4 of the Convention;

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

12. *Holds*, by sixteen votes to one, that there has been a violation of Article 8 of the Convention by the Russian Federation;

13. *Holds*, by sixteen votes to one, that there has been no violation of Article 9 of the Convention by the Republic of Moldova;

14. *Holds*, by sixteen votes to one, that there has been a violation of Article 9 of the Convention by the Russian Federation;

15. *Holds*, by sixteen votes to one, that there has been no violation by the Republic of Moldova of Article 13 of the Convention taken in conjunction with Articles 3, 8 and 9;

16. *Holds*, by sixteen votes to one, that there has been a violation by the Russian Federation of Article 13 of the Convention taken in conjunction with Articles 3, 8 and 9;

17. *Holds*, by sixteen votes to one,
(a) that the Russian Federation is to pay the applicant, within three months, the following amounts:
(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 4,000 (four 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;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 February 2016.

Søren Prebensen	Guido Raimondi
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge López Guerra;

(b) dissenting opinion of Judge Dedov.

G.RA.
S.C.P.

CONCURRING OPINION OF JUDGE LÓPEZ GUERRA

I agree with the Grand Chamber's judgment. However, with respect to its finding of a violation of Article 5 § 1 of the Convention concerning the way in which the applicant's arrest and detention occurred, I must express my disagreement with the reasoning contained in paragraphs 145 to 148 of the present judgment. In my opinion there were sufficient grounds for finding a Convention violation without the need to formulate in those paragraphs what amounts to a wholesale invalidation of the entire judicial system of the Transdniestrian region.

As I see it, and this is actually underscored as a supporting argument in paragraph 149, the circumstances in which the applicant was arrested and his detention ordered and extended lead to the conclusion that his Article 5 § 1 rights were indeed violated. As shown in the findings of fact, the applicant was remanded in custody initially for an undetermined period, and on two occasions neither the applicant nor his lawyer was present at the hearings on appeal before the "MRT Supreme Court" in the proceedings to contest the detention orders.

Given these circumstances, which were clearly contrary to the Convention guarantees on detention, there was no need to justify the Court's finding of a violation by categorically stating that neither the "MRT courts" nor any other "MRT" authority could lawfully order the applicant's arrest or detention (see paragraph 150). This general conclusion is not only unsupported by the available information, but may also lead to unacceptable consequences.

The wholesale invalidation of the "MRT" judicial system appears to be the result of negative reasoning: it is the scarcity of official sources of information that prompts the Grand Chamber to consider that it "is not in a position to verify" (paragraph 147) whether the "MRT" courts fulfill the independence requirements derived from the Convention. Continuing this negative reasoning, the Grand Chamber concludes that "there is no basis for assuming that there is a system reflecting a judicial tradition compatible with the Convention in the region", while also admitting the lack of an in-depth analysis of the "MRT" legal system.

I find it extremely difficult to evaluate with any certainty whether a whole judicial system is in breach of the Convention on the basis of such scant evidence. But in this case, this type of evaluation poses an additional problem: if taken to its logical consequences, the Court's finding implies that any arrest or detention order issued in respect of any person, for any reason, by the "MRT" authorities (even in cases of serious crimes or endangerment to society, persons or property) should be considered contrary to the Convention, in view of the Grand Chamber's assessment of a general lack of judicial independence. The reasoning resulting in this extreme conclusion (one which is unavoidable according to the terms of the

judgment) is unsupported by the evidence and unnecessary for the final finding of a violation of the applicant's Article 5 § 1 rights, and should therefore have been excluded from the text of the Grand Chamber judgment.

DISSENTING OPINION OF JUDGE DEDOV

1. I can accept that the actions of the MRT authorities in respect of the applicant did not meet Convention standards and I agree with the analysis of the Court. However, I regret that I cannot agree with the Court's conclusion as regards the jurisdiction of the Russian Federation over Transdniestrian territory and the sole responsibility of the Russian Federation for the violations committed by the Transdniestrian authorities.

The effective control approach

2. Following the general principles established in *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, ECHR 2012), the Court noted that there is no evidence of any direct participation by Russian agents in the measures taken against the applicant (see paragraph 101 of the present judgment). Nevertheless, the Court established that Russia exercises effective control over the MRT by virtue of its continued military, economic and political support for that entity, which could not otherwise survive. This led the Court to the conclusion that Russia's responsibility under the Convention is engaged for violations committed on Transdniestrian territory.

3. Given that support does not in itself lead to effective control, and following Judge Kovler's dissenting opinion in *Catan and Others*, cited above, I am not certain that this position of the Court is well founded. The fact is that the Russian Federation did not initiate the independence of the MRT. Russia provided the MRT with the military support to ensure peace and security in the border region because of the Transdniestrian military conflict, without any view to taking effective control over the MRT.

4. There is no evidence of any direct participation by Russian agents in the measures taken against the applicant. Nor is there any evidence of Russian involvement in or approval for the MRT's policy regarding the medical treatment of detainees or the conditions of detention in general. Nevertheless, the Court has followed the position previously adopted in other Transdniestrian cases, where it established that Russia exercises effective control over the MRT by virtue of its continued military, economic and political support for that entity, which could not otherwise survive. Moreover, in taking such an approach the Court is encouraging the Russian authorities to establish effective control in the MRT through the activity of their agents, which they have explicitly refused to do. The Court's approach in MRT cases may fail to find acceptance because of the incorrect application of the general principles of extraterritorial jurisdiction to the circumstances of the conflict in the region (as mentioned in paragraph 1 of this opinion). In *Chiragov and Others v. Armenia* ([GC], no. 13216/05, ECHR 2015), Judge Pinto de Albuquerque expressed a dissenting opinion

criticising the Court's conclusions with regard to Armenia's jurisdiction over the Nagorno-Karabakh region, arguing that military, economic and political support do not legitimise a legal presumption of effective control. The same approach can be applied in Transdniestrian cases.

5. Any discussion about effective control based on general support without the involvement of State agents is, in my view, speculation, in which no court, as a powerful institution, can afford to engage. Moreover, any discussion of the nature of the separatist "regime" or "support" for that "regime" (hidden behind the term "legal tradition") also amounts to mere speculation, since there is no evidence of mass violence against civilians as an obstacle to self-determination. However, the Court has concluded that the Transdniestrian authorities have no legitimacy. This makes the situation much worse and makes any compromise based on self-determination/autonomy almost impossible to achieve. One case cannot by itself be used as evidence to conclude that an entire legal tradition is incompatible with a human rights system, especially when compared with the Anglo-Saxon legal tradition, as this means that the tradition in question is completely illegal. This conception cannot achieve anything other than to humiliate the people of Transdniestria and of all those former Soviet republics which were recognised under international law, including under international covenants on fundamental rights, prior to their membership of the Council of Europe. It goes without saying that a society simply cannot survive without the application of minimum human rights standards and a perception of justice, although the legal tradition may admittedly have a decisive impact on the quality of life.

The problem of self-determination

6. Although Russia has not officially recognised the independence of the MRT in the context of the process of international recognition of a new State, the Russian authorities have consistently expressed their respect for the right of the Transdniestrian people to self-determination. I would point out that the Transdniestrian problem has never been addressed by the international community (including, first and foremost, by the Council of Europe) from the standpoint of self-determination.

7. I believe that the Court's judgment should encourage, not the Russian Federation, but the international community and ultimately the Republic of Moldova, to assume effective control. It is not practicable to implement this idea without resolving the main problem. However the Court, in my opinion, has failed in the Transdniestrian cases (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII; *Catan and Others*, cited above; and *Ivanţoc and Others v. Moldova and Russia*, no. 23687/05, 15 November 2011, all referred to in the judgment), and also

in the present case, to establish the principles of self-determination and remedial secession after the collapse of the Soviet Union.

8. Without such an assessment of the events and without understanding the sources of the conflict, it is impossible to determine the problem, to establish the truth and, ultimately, to find a solution. In all the previous Transdniestrian cases the Court's analysis was very narrow and subjective. In *Chiragov and Others*, cited above, the Court was for the first time criticised, by Judge Pinto de Albuquerque, for the lost opportunity to address this issue in relation to the secession of the Nagorno-Karabakh region following the independence of the former Soviet republics of Azerbaijan and Armenia. Judge Pinto de Albuquerque raised the issue of developing the self-determination principle "in a non-colonial context", and I would further define the context as a post-Soviet one.

9. It is simply a matter of choice and legal strategy whether it is enough to protect the fundamental rights and freedoms of those who live in the region under the MRT Constitution or whether those rights and freedoms should also be safeguarded by the Convention system. I am in favour of the second option, but this task can only be achieved through the self-determination process, with the aim of providing the Transdniestrian population with some degree of autonomy within the framework of Moldovan sovereignty.

10. I would suggest that the Court be cautious in making an assessment of the events relating to the self-proclamation of the MRT. This did not happen "as a result of foreign military intervention", as the Russian 14th Army had been located in the region since 1956 and its mission was to stop the war and to bring the opposing parties to peace. Also, it must be noted that the conflict was provoked by the Moldovan authorities' plans to grant the Moldovan language official status and to introduce the Latin instead of the Cyrillic alphabet, without taking any account of the interests of the Russian-speaking population in Moldova, including Russian nationals, with regard to self-identity. These plans were realised in the Constitution of Moldova adopted in 1994, with all protests being disregarded.

11. Unfortunately, international custom takes a black-and-white approach, recognising only occupiers and suffering States. But the nature of conflict is different. The conflict was caused by ignoring the minority's fundamental right to use their native language in official correspondence with the Moldovan authorities. No transitional measures were introduced after the collapse of the Soviet Union. It seems that the international community was not ready to solve such sensitive problems relating to national identity; it did not undertake any efforts, nor did it issue any recommendations of this sort to Moldova. The international community simply recognised the jurisdiction of Moldova over Transdniestrian territory without imposing any additional requirements in the sphere of self-determination of the MRT. Without such requirements the Republic of

Moldova will never have any interest in solving the problem or any incentive to do so.

12. Guarantees for the protection of fundamental rights and freedoms relating to the self-identity and self-governance of those who live in the region were reflected in the 1997 Memorandum signed by the leaders of both Moldova and the MRT, and in the 2003 Kozak Memorandum. Again, they have never been implemented by Moldova.

13. I am not sure that keeping the remaining military ammunition and armaments in place could prevent the transfer of effective control to Moldova, since a political agreement needs to be achieved. However, I believe that the termination by Russia of its financial support to the region – without appropriate commitments on the part of Moldova – could not be considered as a responsible measure as it would lead to social and humanitarian problems. I cannot but observe that, twenty-five years after the conflict, nothing has changed and that Russia cannot be blamed for that. Ultimately, the Republic of Moldova gave an undertaking to apply the Convention throughout its territory, including in Transdniestria.

14. The fact that a new entity has not been recognised as a State under international law raises the issue of the responsibility of the international community and both respondent States to take all the necessary constitutional measures to bring such an uncertain situation to an end, as soon as possible, for the sake of the establishment and development of human rights, the rule of law and democracy in the region. The Russian Federation took general and balanced measures, including in the form of the Kozak plan, to transfer the region to the jurisdiction of Moldova with a degree of autonomy, so that both the Moldovan and regional interests would be satisfied. It should be noted that the regional interests cannot be ignored, especially after the war which claimed more than a thousand victims. However, the Moldovan government rejected the Kozak plan, leaving all the stakeholders in a situation of even deeper uncertainty. I would not blame the MRT authorities for refusing to follow the proposals as they were not invited to participate in the Court proceedings.

15. I am not convinced that Moldova has fulfilled its obligation to take all the political, judicial and other measures at its disposal to re-establish its control over MRT territory. There is no evidence of such measures, including any aimed at providing guarantees regarding the official use of the Russian language, autonomy, representation in the Moldovan Parliament, and so forth.

16. I regret that the Court's judgment in the present case – in a context of uncertainty with regard to self-determination – will lead to an escalation of tension between the Russian Federation and the Council of Europe.