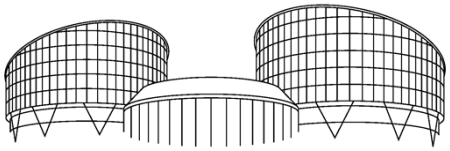

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LYPOVCHENKO AND HALABUDENCO v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Applications nos. 40926/16 and 73942/17)

JUDGMENT

Art 1 • Jurisdiction of Russia and Republic of Moldova over the "Moldavian Republic of Transnistria" (MRT) • Ongoing military presence of the Russian Federation in Transnistria, contrary to Moldovan Government's will, renewed calls for the withdrawal of its troops, economic and political support of the Russian Federation for the "MRT" regime • No grounds warranting departure from findings in previous cases on jurisdiction in respect of Transnistria • Responsibility of Russia for acts of the "MRT" authorities • No responsibility on the part of Moldova as positive obligations fulfilled
Art 3 • Inhuman and degrading treatment • Inadequate conditions of detention • Failure to provide sufficient medical assistance and treatment • Repeated forcible psychiatric hospitalisation and treatment
Art 5 § 1 (a) and (c) • Art 6 § 1 (criminal) • Unlawful arrest, detention and conviction • *De facto* "MRT" authorities and courts not constituting a "tribunal established by law" • No basis for assuming "MRT legal system" as a whole reflected a judicial tradition compatible with the Convention
Art 1 P1 • Control of the use of property • Unlawful seizure and forfeiture of money posted as bail
Art 2 P4 • Freedom of movement • Unlawful interference with the freedom to return to the "MRT" • Potential deprivation of liberty contrary to the Convention on the basis of an unlawful search-and-arrest warrant issued by a *de facto* "MRT" court
Art 13 • Lack of an effective remedy
Art 34 • Hinder the exercise of the right of application • No appearance of a failure on respondent States' part to comply with their obligation

STRASBOURG

20 February 2024

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

In the case of Lypovchenko and Halabudenco v. the Republic of Moldova and Russia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 40926/16 and 73942/17) 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 Ukrainian national, Mr Oleksandr Lypovchenko and a Moldovan national, Mr Oleg Halabudenco ("the applicants"), on 7 July 2016 and 29 September 2017 respectively;

the decision to give notice to the Moldovan and Russian Governments ("the Governments") of the application no. 40926/16, and of the complaints concerning under Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention in application no. 73942/17 and to declare inadmissible the remainder of this application;

the decision to give priority to the application no. 40296/16 (Rule 41 of the Rules of Court);

the decision to inform the Ukrainian Government of application no. 40926/16 in view of the applicant's nationality (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court) and the absence on their part of any indication that they wished to intervene;

the parties' observations;

Having deliberated in private on 23 January 2024,

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

INTRODUCTION

1. The cases concern allegations of various breaches of the applicants' rights in the self-proclaimed "Moldovan Republic of Transnistria" (a separatist administration on the territory of the Republic of Moldova – the "MRT") – see for more details *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 28-185, ECHR 2004-II and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, §§ 8-42, ECHR 2012 (extracts)).

2. In application no. 40926/16 the applicant, Mr Oleksandr Lypovchenko, complained of the alleged unlawfulness of his arrest and conviction by the *de facto* authorities of the "MRT"; his detention in allegedly inhuman conditions (including psychiatric treatment allegedly not required by his condition); his inability to obtain medical documents in support of his application to the Court and to communicate with the Court; and the absence of effective remedies. He relied on Articles 3, 5, 6, 13 and 34 of the Convention.

3. In application no. 73942/17 the applicant, Mr Oleg Halabudenco, complained of the interference with his professional activities in Tiraspol, which he had been unable to continue because of an arrest warrant issued in respect of him by the *de facto* "MRT" authorities; his forfeiture of the amount that he had posted as bail; the restriction of his freedom of movement as a result of the arrest warrant issued by the *de facto* "MRT" authorities; and the absence of any effective remedies for his grievances. He relied on Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention.

4. The applicants were born in 1979 and 1969, respectively; they live in Dnestrovsk and in Chișinău, respectively. They were represented by Mr A.Postică and Ms N. Hriplivîi, lawyers practising in Chișinău.

5. The Governments were represented by their respective Agents.

6. On 16 March 2022 the Committee of Ministers of the Council of Europe, within the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as of 16 March 2022.

7. On 22 March 2022 the Court, sitting in plenary session, in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

8. On 5 September 2022 the Plenary Court took formal note of the fact that the office of judge with respect to the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, meant that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent State.

9. By a letter of 8 November 2022, the Russian Government were informed that, *inter* alia, the Court intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of those applications against that State that the Court continued to have jurisdiction to deal with (applying by analogy Rule 29 § 2 of the Rules of Court). The Russian Government were invited to comment on that arrangement by

22 November 2022, but they did not submit any comments (*Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023).

10. Accordingly, in the present case the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b).

THE FACTS

11. The facts of the case may be summarised as follows.

I. CIRCUMSTANCES OF MR LYPOVCHENKO'S CASE (NO. 40926/16)

A. The applicant's arrest and conviction

12. On 7 July 2015 the applicant was arrested by the *de facto* "MRT authorities" and charged with inciting the public to engage in activities against the "MRT constitutional regime" (*Публичные призывы к осуществлению экстремистской деятельности*) by allegedly expressing critical opinions on social media about the "MRT" and a twenty-year-old handwritten note in his diary saying "Transnistria can be ruled only if the UN forces are introduced".

13. He was detained – on the basis of pre-trial arrest warrants issued by the "Tiraspol City Court" – from 9 July 2015 until 28 March 2016.

14. In the course of the related court proceedings, the applicant was unable to appoint a lawyer of his own choosing or to defend himself, as the *de facto* "MRT court" concluded that – owing to his alleged diagnosis of schizophrenia – he could not be allowed to refuse the services of a court-appointed lawyer and to represent himself. On 21 January 2016 the *de facto* "MRT court", at the prosecutor's request, ordered the removal of the applicant from the courtroom until the delivery of his sentence on 28 March 2016; he was thus deprived of any possibility to address the court directly.

15. On 28 March 2016 the *de facto* "Tiraspol City Court" convicted him of extremism and sentenced him to three years and six months' imprisonment, to be served in a semi-open prison – namely, prison no. 3 (*Учреждение исполнения №3, УИН-3*).

16. On 10 May 2016, following an appeal by the applicant, the *de facto* "MRT Supreme Court" upheld the sentence of 28 March 2016, noting also that the applicant had been correctly removed from the courtroom owing to multiple breaches of public order during court hearings.

B. Conditions of the applicant's detention and his forcible hospitalisation on a prison hospital's psychiatric ward

17. According to the applicant, he was initially detained in the basement and in the pre-trial detention centre of the *de facto* "Tiraspol militia"; subsequently (from 20 April until 14 or 15 August 2016) he was held in the temporary detention facility of Prison no. 3 in Tiraspol (*СИЗО УИН-3*), and then until December 2018 in Prison no. 1 in Hlinaia (*УИН-1*) – with a temporary transfer to the psychiatric ward of the hospital of Prison no. 3 in Tiraspol from 13 June until 15 August 2017. The applicant was released from detention on 29 December 2018 after serving his full sentence.

18. According to the applicant, the material conditions of his detention were characterised by overcrowding, inmates being allowed to smoke around non-smokers, a daily one-hour walk outside his cell, water and food unfit for consumption, and access to shower facilities only once per week.

19. Even though it had been decided that the applicant would serve his sentence in a semi-open prison, the *de facto* "Tiraspol City Court" decided on 15 August 2016 to transfer him to Prison no. 1 in Hlinaia, a closed-regime prison, for his alleged failure to respect prison discipline. According to the applicant this constituted a sanction imposed for his inability to work owing to his deteriorating state of health.

20. To protest against his arrest, ill-treatment (see paragraph 29 below) and improper detention conditions the applicant went on hunger strike three times: from 7 July until 13 August 2015, from 3 until 28 September 2015, and from 17 March until 18 May 2016.

21. In the light of his hunger strike, the applicant was forcibly subjected to hospitalisation and psychiatric assessment from 15 July until 11 August 2015; that assessment concluded that the schizoid psychopathy (which had been diagnosed prior to his imprisonment) from which he suffered did not affect his discernment and did not require any medical treatment. According to the applicant, he was administered psychotropic drugs without his consent and was never given information about the medication administered to him.

22. In the course of another criminal investigation against him in respect of charges of bodily injuries inflicted on the applicant's partner, on 29 February 2016 a *de facto* "MRT investigator" ordered another psychiatric assessment of the applicant. On the basis of that decision, in March 2016 the applicant was forcibly subjected to hospitalisation on the psychiatric ward of the temporary detention facility of Prison no. 3 in Tiraspol and administered psychotropic treatment. For that reason, he again went on hunger strike from 17 March until 18 May 2016.

C. Medical assistance in prison

23. The applicant submitted that during his detention he had not been provided with medical assistance that was adequate for his health problems (hepatitis C and thrombophlebitis), which had continued to deteriorate; moreover, he had been refused access to external medical consultations.

24. On 15 March 2016 in reply to a complaint lodged by the applicant's mother regarding insufficient medical assistance afforded to her son, the "MRT Ministry of Justice" informed her that the applicant had been diagnosed by prison medical authorities as suffering from dermatitis and varicose veins; it also informed her that he had been prescribed medicine to treat vasodilatation and blood clotting, antibiotics and vitamins.

25. On 18 May 2016, the administration of Prison no. 3 informed the applicant's mother that the condition of the applicant's varicose veins had deteriorated following his above-mentioned hunger strike.

26. On 6 March 2017 the *de facto* "MRT Ministry of Justice" informed the applicant's mother that the applicant had been examined by various specialists in prison and had been prescribed magnesium sulphate, Piracetam (a psychostimulant sometimes prescribed for vertigo), vitamin B, Allohol (a dietary supplement used to stimulate bile production and facilitate digestion) and Papaverine (a medication to improve blood circulation). The same letter stated that he had also been diagnosed with chronic pancreatitis and chronic gastro-duodenitis, and was suffering from the consequences arising from an organic lesion of the central nervous system; a committee was to examine the level of his disability.

27. An excerpt from the applicant's medical file provided to his mother on 18 October 2017 referred to various medical investigations carried out by prison medical authorities in the course of 2017 that confirmed a diagnosis of encephalopathy, internal and external hydrocephaly and an increased size of the liver and spleen. The document does not refer to any treatment prescribed and/or administered to the applicant. Another letter dated 22 August 2018 informed the applicant's mother that in March 2018 a vascular surgeon had confirmed that the applicant had varicose veins in his legs and had prescribed him aspirin.

28. In August 2018 the applicant was transferred to the surgery unit of another prison for an assessment of his condition and a decision on further treatment.

D. The applicant's alleged inability to obtain and to share documents for the purposes of his application to the Court

29. During his detention, the applicant submitted that he had been ill-treated on 7, 8 and 14 April 2016 for being on hunger strike and for refusing orders of the prison guards to hand over a copy of the sentence

imposed on him by the *de facto* "Tiraspol City Court" on 28 March 2016. He had intended to give the document to his mother to hand over to his lawyer for the purpose of preparing his application to the Court. The applicant complained of the way in which he was being ill-treated. On 12 May 2016 the *de facto* "Tiraspol militia" refused to investigate his allegations, but confirmed that the applicant was not allowed to hand over to his mother any kind of document when she was visiting her son in prison.

30. Requests lodged by the applicant's mother for information about the medical check-up to which the applicant had been subjected upon entering prison and for a copy of his prison medical file were refused on 1 and 3 June 2016 by the *de facto* "MRT Ministry of Justice", which stated that upon his incarceration, no signs of ill-treatment had been identified and that the use of such information was "for official purposes" and that its availability was reserved for other "authorities" only.

E. The applicant's complaints to the Russian and Moldovan authorities

31. The applicant's mother complained to Moldovan and Russian authorities of the applicant's unlawful detention in the "MRT". She also sought the assistance of the Ukrainian Embassy in the Republic of Moldova.

32. On 21 July 2015 the Moldovan authorities initiated a criminal investigation into the applicant's kidnapping and into the usurpation of official powers by the "MRT officials" who had convicted and detained the applicant. On 28 February 2018 charges were laid against two "MRT officials"; because they could not be found by investigators, a search-and-arrest warrant in respect of them was issued. The investigation was subsequently suspended but resumed on 4 April 2019.

33. On 8 October 2015 the consular section of the Ukrainian Embassy in the Republic of Moldova informed the applicant's mother that its staff had visited the applicant on 18 August 2015 and that he had not complained about prison conditions.

34. On 31 December 2015 the Prosecutor General's Office of the Russian Federation replied to an enquiry lodged by the applicant's mother that the applicant's arrest in the "MRT" had not involved any breach of Russian law on the territory of the Russian Federation.

35. On 3 June 2016 the Moldovan Reintegration Bureau informed the applicant's mother of the efforts undertaken by the Moldovan authorities – including diplomatic outreach to the "MRT" political representative in the Transnistrian settlement process, and to the OSCE Mission in Moldova. The Moldovan authorities repeatedly requested the applicant's release and that his human rights, including his right to be afforded medical assistance, be respected.

36. Following an extraordinary appeal by the applicant's lawyer, on 22 November 2016 the Supreme Court of Justice of the Republic of Moldova quashed the judgments of the *de facto* "MRT courts" in respect of the applicant. The Court found that the "MRT courts" were unconstitutional and could not therefore lawfully convict the applicant. It ordered that all relevant material be forwarded to the Prosecutor General's Office of the Republic of Moldova for further action.

II. CIRCUMSTANCES OF MR HALABUDENCO'S CASE (NO. 73942/17)

A. Background and measures taken in respect of the applicant

37. From 2014 until 2016, the applicant was a part-time lecturer at a university in Tiraspol (a city in the "MRT").

38. On 2 April 2016 the *de facto* "MRT" authorities apprehended the applicant and remanded him in custody on charges of taking a bribe from a student (T.)

39. On 5 April 2016 the *de facto* "Tiraspol City Court" set bail at 18,400 Transnistrian roubles (approximately 1,400 euros (EUR) at the relevant time). On the same day the applicant posted the bail and was released from custody. Since then the applicant has left the Transnistrian region and has been living in Chișinău.

40. On 23 December 2016 the *de facto* "MRT investigation authority" sent the case for trial to the *de facto* "Tiraspol City Court".

41. On 1 February 2017 the applicant requested the court to examine the case in his absence. However, on 17 March 2017 the *de facto* "Tiraspol City Court" rescinded the decision to release the applicant on bail in favour of ordering his preventive arrest, ordering that the applicant be apprehended and remanded in custody. The court also issued a search-and-arrest order in respect of the applicant and suspended proceedings pending the results of that search.

42. Following an appeal by the applicant, on 4 April 2017 the *de facto* "MRT Supreme Court" confirmed the decision of the first-instance court and ordered that the bail posted by the applicant be forfeit and paid into the "MRT treasury".

B. The applicant's complaints to Russian and Moldovan authorities

43. On 12 August 2016 the applicant lodged a complaint with the Prosecutor General's Office of the Republic of Moldova, arguing that he had been the victim of a police provocation organised by the *de facto* "MRT authorities" and seeking that his rights be protected. On 26 September 2016 the Moldovan authorities initiated a criminal investigation into the applicant's

complaints but suspended it on 29 June 2018, having been unable to identify the perpetrators.

44. On 4 September 2018 the applicant sought the assistance of the Moldovan Ministry of Reintegration, but their attempts to obtain information from the *de facto* "MRT authorities" failed.

45. On 16 January 2017 the applicant sent a letter to the Russian Minister of Foreign Affairs, complaining that he had been the victim of a police provocation organised by the *de facto* "MRT authorities" and seeking the protection of his rights.

46. In reply, on 4 February 2017 the Russian Ministry of Foreign Affiairs informed the applicant that the Russian Federation did not exercise jurisdiction on the territory of the "MRT".

RELEVANT MATERIAL

47. A number of items of relevant material have been summarised in *Mozer v. the Republic of Moldova and Russia* [GC] (no. 11138/10, §§ 61-77, 23 February 2016).

A. United Nations

48. The relevant parts of the United Nations General Assembly Resolution "Complete and unconditional withdrawal of foreign military forces from the territory of the Republic of Moldova", adopted on 22 June 2018, UN Doc. A/RES/72/282, read as follows.

> "... *Recognizing* that the stationing of foreign military forces on the territory of the Republic of Moldova, without its consent, violates its sovereignty and territorial integrity, and that this is a problem that must be resolved in good faith, unconditionally, without further delay and in a peaceful manner,
>
> *Recalling* the repeated past calls of the Republic of Moldova, which were reiterated at the twenty-fourth meeting of the Organization for Security and Cooperation in Europe Ministerial Council, held in Vienna in December 2017, for the full withdrawal of Russian military forces and armaments from its territory, ...
>
> *Emphasizing* the commitment by the Russian Federation to complete the withdrawal of its military forces and armaments from the territory of the Republic of Moldova within a specific timetable, as agreed at the summit of the Organization for Security and Cooperation in Europe held in Istanbul, Turkey, in 1999, ...
>
> *Stressing* that the Operational Group of Russian Forces is not a part of the military component of the Joint Control Commission established under the 1992 ceasefire agreement, which also includes a rotating Russian contingent, and, as such, has not been entrusted with any peacekeeping or other legal mandate,
>
> *Taking note with concern* of the continuous illegal joint military exercises of the Operational Group of Russian Forces with the paramilitaries of the separatist entity in the eastern part of the country, which endangers the security situation, disregards the sovereignty and territorial integrity of the Republic of Moldova and undermines the

international efforts aimed at the peaceful resolution of the protracted Transnistrian conflict,

Recognizing that the completion of the withdrawal of the Operational Group of Russian Forces, and the armaments that it guards, from the territory of the Republic of Moldova will demonstrate respect for its sovereignty, territorial integrity and permanent neutrality,

1. *Expresses deep concern* about the continued stationing of the Operational Group of Russian Forces and its armaments on the territory of the Republic of Moldova without the consent of that State Member of the United Nations;

2. *Urges* the Russian Federation to complete, unconditionally and without further delay, the orderly withdrawal of the Operational Group of Russian Forces and its armaments from the territory of the Republic of Moldova ..."

49. Presenting his follow-up report on human rights in the Transnistrian region after a visit that he made in 2018, the UN Human Rights Senior Expert, Thomas Hammarberg, stated on 5 February 2019:

"Time constraints did not allow for thorough analysis of all areas covered by the comprehensive 2013 report. It was nonetheless possible to seek information and understand developments on implementation procedures such as the steps taken to promote a culture of human rights, gender equality, rights of persons with disabilities, measures against HIV and TB epidemics. Issues related to respect for Roma rights and rights of other minority groups were also covered.

I am pleased to note a growing human rights awareness in the Transnistrian region and that the situation had generally improved in some areas since my 2013 report. One such positive aspect was the increased civil society contribution to promoting rights of persons with disabilities and an increased awareness about those rights. There are positive developments in preventing and addressing issues of domestic violence, HIV and tuberculosis.

However, further systemic measures are required to address some of the outstanding challenges and to ensure full implementation of human rights standards. To this end, it is important to develop a comprehensive human rights plan of action; to strengthen human rights mechanisms (including the Ombudsman office) and complaints procedures; to develop systematic collection of disaggregated data on human rights facts; to promote human rights awareness and education in relevant settings and to work with mass media to bolster human rights culture. Creating a culture of human rights requires that people are aware of their rights and of avenues they could use to complain when feeling that these are denied or violated. For this, positive and constructive engagement with civil society is of key importance.

Decisions are taken in Transnistrian region that international treaties on human rights should be respected. This requires, among other aspects, that those performing the law making, law enforcement, prosecution, judiciary and penitentiary functions, act with professional competence and impartial objectivity.

I repeat my previous recommendation that the penitentiary system should be thoroughly reformed. High rates of arrest and imprisonment, as well as detention conditions remain an area of concern. It would be important to conduct an urgent priority review and reforms in the areas of pre-trial arrest, prison sentences and conditions of detention to significantly reduce the number of persons in detention. ...

Ambiguous legal provisions regarding political activities of NGOs need to be reviewed not to intimidate the broad range of issues covered by civil society human rights activism. In this context, it would be of importance that security services cease the practice of routine "discussions" with active NGOs."

50. The relevant parts of the report produced by the United Nations Special Rapporteur on the situation of human rights defenders, Mr Michel Forst, following his visit to the Republic of Moldova from 25 until 29 June 2018 (UN Doc. A/HRC/40/60/Add.3), read as follows.

"Human rights defenders in the Transnistrian region

70. Civil society organizations and human rights defenders do not enjoy a safe and enabling environment in the Transnistrian region. The Special Rapporteur received reports that human rights defenders were not able to work freely in the region, and that they were subjected to various forms of intimidation, threats (including to relatives) attacks, harassment, arbitrary detention and reprisals. They are also under the tight control of security services and law enforcement authorities. The work of human rights defenders is often perceived by authorities as subversive, and security reasons have occasionally been used to restrict their activities. Nevertheless, the Special Rapporteur welcomes the fact that the human rights of people with disabilities are being taken into consideration in the region.

71. According to reports, civil society organizations work in an environment characterized by severe restrictions on freedom of expression, association and assembly. People who are independent sources of information are persecuted and their work is hindered; media outlets are placed under tight control and censorship is exercised; certain websites and online forums have been closed and people are persecuted for their opinions. While the laws allow public assemblies, authorizations for public protests are rarely granted, and when they are granted, they come with restrictions. Freedom of association is similarly circumscribed. All non-governmental activities have to be coordinated with local authorities, and organizations risk reprisals if they do not comply.

72. Civil society organizations working on human rights from the right bank of the Nistru river no longer have access to the region. The Promo-LEX Association was the only known human rights organization working consistently on human rights in the Transnistrian region until 2016, when the *de facto* authorities prohibited it from working there. Other groups such as journalists, lawyers and public officials, have also had their access to the Transnistrian region limited. The work of development agencies with local non-governmental organizations has to be coordinated with the *de facto* authorities.

73. A new section introduced to the law on non-governmental organizations in 2017 established that organizations receiving funds from abroad would be included on a register of "foreign agents", and thus would not be allowed to participate in activities perceived as political. In the event of non-compliance, organizations could be closed down. The fact that human rights were not expressly mentioned in the law as a non-political issue raised concern among civil society organizations working on human rights. The Special Rapporteur notes that the authorities have agreed with civil society organizations based in the region to create a mixed consultative body to develop regulations on the implementation of the new provisions of the law.

74. Reports have been received of threats being made to lawyers and human rights defenders trying to protect the rights of people undergoing judicial proceedings.

Journalists and bloggers have also been arbitrarily arrested, intimidated and persecuted.
...

91. The Special Rapporteur recommends that key decision makers in the Transnistrian region:

(a) Ensure that domestic legislation complies with international standards on democracy, the rule of law and human rights law;

(b) Review and abolish all administrative and legislative provisions that restrict the rights of civil society organizations, including the rights to freedom of expression, peaceful assembly and association;

(c) Ensure a safe and enabling environment for human rights defenders, journalists and lawyers, and establish a genuine, meaningful and regular dialogue with civil society organizations;

(d) Grant civil society organizations from the right bank of the Nistru river access to the Transnistrian region."

B. Organisation for Security and Co-operation in Europe (OSCE)

51. The OSCE Annual Reports from 2010 onwards make no reference to any developments in respect of a withdrawal of Russian arms and military equipment from the Republic of Moldova.

52. The Annual Report for 2011 refers to the resumption of negotiations in the "5+2" format in 2012 after a five-year hiatus, which focused on practical issues such as the reopening of rail freight traffic through Transnistria and the disposal of radioactive waste.

53. The Annual Report for 2016 refers to the signing of the Berlin Protocol, in which the Moldovan authorities and the "MRT" side committed themselves to undertaking specific steps towards building mutual confidence in respect of: the legalisation by apostille of Transnistrian university diplomas; the use of vehicles from Transnistria on international roads; the establishment of a legal framework for the implementation of a telecommunications agreement; the field of ecology; cooperation on crime-related matters and in respect of freedom of movement; the functioning of Latin-script schools in Transnistria; access on the part of Moldovan farmers to their farmlands on "MRT"-controlled territory; and other priorities. These initiatives make up the "Berlin-plus" package of confidence-building measures; however, as at the end of 2022 no information had been made public regarding the form or on progress of any possible cooperation in respect of criminal cases.

54. The OSCE Mission to Moldova has repeatedly expressed concern about unsanctioned military exercises in the Security Zone in 2018, conducted either by the "MRT" armed forces or the Operational Group of Russian Forces (the Russian military contingent stationed in the Republic of Moldova).

C. European Union

55. The relevant parts of a research study entitled "The frozen conflicts of the EU's Eastern neighbourhood and their impact on the respect of human rights" commissioned by the European Parliament's Subcommittee on Human Rights and submitted on 8 April 2016, read as follows.

> "...[I]n order to seek international recognition, the *de facto* authorities have set up an institutional-legal framework which is largely similar to the ones in recognised states, and thus in a way they are mimicking state-like functions. Hence, Transnistria has a developed *de jure* framework for the protection of human rights. The constitution contains explicit and detailed commitments to human rights; moreover, the *de facto* authorities even pledged unilaterally to respect several international human rights agreements. Since 2006, Transnistria has also had an Ombudsman responsible for the protection of human rights. However, the career path of the Ombudsman, Vassily Kalko, raises some concerns about his impartiality, taking into account that before his appointment he worked at the Investigation Department of the Ministry of Justice of the *de facto* authorities. However, while *de jure* in place, *de facto* these institutions essentially serve not the protection of human rights, but the survival and stability of the regime. Hence, victims of human rights violations have only very limited possibilities to seek justice. This is particularly the case because the Transnistrian judiciary system is highly dependent on the government, and in many cases it executes their will instead of providing justice. ...
>
> The legal system in Transnistria suffers from a large number of weaknesses and incoherences regarding respect for human rights. This is partially due to the inherently poor legal quality of the laws passed, and partially due to the massive systemic influence that political and business groups have on the legislative system. ...
>
> Separatist entities offer few prospects for the few well-trained legal professionals who do not intend to join the *de facto* government structures. Widespread corruption, incoherence concerning the system of laws, weak legal education as well as major shortcomings in the rule of law are all compelling reasons for them to leave. For Transnistrian lawyers, both Russia and Moldova are obvious destinations for working outside of the separatist entity. At this point, victims of human rights violations can mostly rely on assistance provided by civil society activists and organisations. The latter also play a key role in monitoring the human rights situation in the separatist entity, which is particularly important as the international community has only very limited access to Transnistria."

56. The relevant parts of the Resolution issued by the Euronest Parliamentary Assembly (the inter-parliamentary forum comprising members of the European Parliament and of the national parliaments of Ukraine, Moldova, Armenia, Azerbaijan and Georgia) on the deterioration of the human rights situation in the regions of Transnistria, Abkhazia, Tskhinvali Region/South Ossetia, Crimea and parts of Donetsk and Luhansk Oblast (2018/C 99/01), adopted on 15 March 2018, read as follows.

> "THE EURONEST PARLIAMENTARY ASSEMBLY,
>
> ... A. whereas the deterioration of the human rights situation in the regions of Transnistria, Abkhazia, Tskhinvali Region/South Ossetia and Crimea and in parts of Donetsk and Luhansk Oblast is alarming;

B. whereas people living in these territories have limited or no access to the justice system; whereas the legitimate authorities have no access to those areas to administer justice;...

D. whereas the so-called authorities on the ground have manifested a very limited will to effectively allow human rights and basic freedoms to be enjoyed by the local population;

E. whereas the Russian Federation bears the responsibility for the human rights violations, as it is directly or indirectly influencing the developments in the conflict areas by providing financial, military and economic assistance to the so-called authorities on the ground;

...

7. Calls on the Russian Federation, which has direct or indirect influence over the so-called 'local authorities' in the conflict areas, to ensure that human rights are protected, which is its obligation under international humanitarian law;

8. Calls on the European Court of Human Rights to consider with the highest possible priority all applications for redress coming from these conflict areas, and the cases of detainees taken from these areas to Russia, as the so-called judicial system in the conflict areas, as well as in Russia, does not provide legal remedies in these cases; ..."

57. The relevant parts of the European Parliament resolution of 5 May 2022 on the state of play of EU-Moldova cooperation (2022/2651(RSP)), read as follows.

"The European Parliament,

... F. whereas in the Transnistrian region of the Republic of Moldova, Russia maintains at least 1 500 troops on the ground, supplemented by an additional 5 000 soldiers from the so-called armed forces of Transnistria;

G. whereas on 22 April 2022 Major General Rustam Minnekayev, deputy commander of Russia's central military district, stated that one of the goals of Russia's ongoing invasion of Ukraine is to create a land corridor to the Transnistrian region; whereas Major General Minnekayev also falsely claimed that acts of oppression of the Russian-speaking population had been observed in Transnistria;

H. whereas on 25, 26 and 27 April 2022 a number of security incidents took place in the Transnistrian region, including a grenade attack on the building of the so-called state security ministry in Tiraspol, explosions damaging radio masts in the village of Maiac, and alleged gunshots fired around the Cobasna ammunition depot;

I. whereas the Cobasna depot, located within the Transnistrian region on the Ukraine-Moldova border, contains approximately 22 000 tonnes of Soviet-era ammunition and military equipment guarded by the Operational Group of Russian Forces (OGRF); whereas, in spite of commitments made in 1999 and again in 2021, the Russian Federation has failed to ensure the full destruction of these weapons; whereas concerns persist that this equipment might be utilised in armed conflict in either an operational capacity or to exert pressure on the Moldovan and Ukrainian authorities;

J. whereas Russia has used its gas exports to Moldova as a tool for advancing the Kremlin's economic and geopolitical interests in the country, most recently by artificially creating a gas supply crisis in the latter part of 2021;

K. whereas Moldova's main supply of electricity comes from the Transnistrian region from a power plant owned by the Russian company Inter RAO;

...

21. Expresses serious concern over the recent developments on the territory of the Transnistrian region and condemns them as dangerous acts of provocation undertaken in a highly volatile security situation; calls for calm in order to preserve the security and well-being of the people living on both sides of the Nistru river and in the neighbouring countries; welcomes, in this regard, the calm and restrained reaction of the authorities in Chişinău, which are helping to promote an environment conducive to a peaceful and lasting settlement of the conflict;

22. Reiterates its firm and unwavering support for the independence, sovereignty and territorial integrity of the Republic of Moldova within its internationally recognised borders;

23. Expresses its concern at the threat to the security and the environment of the region and beyond posed by the munitions stored in the Cobasna depot and calls on the international community to support the Moldovan authorities' efforts to remove or destroy these dangerous weapons;

24. Rejects and expresses concern about the statement of 3 March 2022 by the *de facto* authorities in the Transnistrian region announcing an end to the settlement process and making a renewed call for the recognition of the so-called independence of Transnistria; calls on the Russian Federation to fully and unconditionally withdraw its military forces and armaments from the Transnistrian region of Moldova, in accordance with the repeated requests of the Moldovan authorities and with respect for the Republic of Moldova's sovereignty and territorial integrity;..."

58. The relevant parts of the European Parliament resolution of 19 May 2022 on the implementation of the EU Association Agreement with the Republic of Moldova (2021/2237(INI)), read as follows.

"The European Parliament,

...C. whereas on 22 April 2022, Major General Rustam Minnekayev, deputy commander of Russia's central military district, stated that one of the goals of Russia's ongoing invasion of Ukraine is to create a land corridor to the Transnistrian region; whereas Major General Minnekayev also falsely claimed that acts of oppression of the Russian-speaking population had been observed in Transnistria;

...

20. Stresses the inadmissibility of the weaponisation of the gas supply from Russia in order to put political pressure on the Government of Moldova to change its geopolitical orientation and refrain from living up to the legitimate desires of the Moldovan electorate; ...

21. Underlines the need to increase power generation capacity in Moldova, which is currently 80 % reliant on electricity produced in the Transnistria region; welcomes the successful synchronisation of the electricity grids of Moldova and Ukraine with the Continental European Grid on 16 March 2022, which will help to ensure their stability and security of supply; ....

29. Rejects and expresses concern over the 3 March 2022 statement of the authorities in the occupied Transnistria region of Moldova, announcing an end to the settlement process and issuing a renewed call for the recognition of the so-called independence of Transnistria; reiterates its support for a comprehensive and peaceful settlement of the Transnistria conflict through the 5+2 negotiation process, based on the sovereignty and territorial integrity of Moldova, within its internationally recognised borders, with a

special status for the Transnistrian region within a viable Moldovan state; underlines that any resolution to the Transnistrian issue must respect Moldova's sovereign right to choose its own defence and foreign policy orientation; supports efforts to extend the benefits of the DCFTA and the visa-free regime to the Transnistrian region, which would enable significant growth in mobility and trade with the region;

31. Calls on Moldova, the Russian Federation, the EU Member States and other international partners to cooperate on the total removal and destruction of about 20 000 tonnes of old Soviet-era ammunition stored at the Cobasna ammunition depot, which represents a grave danger for the security of people and the environment on both banks of the Dniester river, given that it is well past its expiry date; expresses its concern over the numerous military exercises conducted by the Russian military forces in Transnistria and calls on the Russian Federation to completely and unconditionally withdraw its military forces and armaments from the Transnistria region in an orderly manner, in accordance with the repeated requests of the Moldovan authorities and with respect for Moldova's sovereignty and territorial integrity;

32. Expresses its concern over the deteriorating human rights situation in the Transnistrian region, notably the persecution of persons critical of the *de facto* administration and the deployment of the Russian army, and restrictions on the public assemblies and activities of local NGOs; reminds the Russian Federation of the responsibility it has regarding respect for human rights in the Transnistria region, as confirmed by several rulings of the European Court of Human Rights (ECtHR); calls on the Russian authorities to execute all ECtHR judgments relating to violations of human rights and the right to freedom and security in the Transnistria region; ..."

D. Council of Europe

59. It its Opinion 300(2022) of 15 March 2022, the Parliamentary Assembly of the Council of Europe noted:

"Through its attitude and actions, the leadership of the Russian Federation poses a blatant menace to security in Europe, following a path which also includes the act of military aggression against the Republic of Moldova and in particular the occupation of its Transnistrian region, the act of military aggression against Georgia and the subsequent occupation of two of its regions in 2008, the illegal annexation of Crimea and the Russian Federation's role in eastern Ukraine, which culminated in the illegal recognition of the self-proclaimed republics of Donetsk and Luhansk as "independent States".

60. By its Resolution 2463 (2022) of 13 October 2022 entitled "Further escalation in the Russian Federation's aggression against Ukraine" the Parliamentary Assembly of the Council of Europe called on the Russian Federation to withdraw its troops from the territory of the Republic of Moldova.

61. The relevant part of the Reykjavík Declaration "United around our values" adopted at the Fourth Summit of the Heads of State and Government of the Council of Europe on 16-17 May 2023 read as follows.

"We stand in solidarity with those affected by Russia's war of aggression against Ukraine and Russia's aggression against Georgia which we condemn in the strongest possible terms. We call, collectively, on the Russian Federation to comply with its international obligations and to immediately withdraw completely and unconditionally

its forces from Ukraine, Georgia and the Republic of Moldova. We reassert our unwavering support for their sovereignty, independence and territorial integrity, within their internationally recognised borders."

E. Freedom House

62. The Freedom House annual reports entitled "Freedom in the World" for 2017-2022 have constantly rated Transnistria as a 2 (out of 12) on its "rule of law" index, but with a zero rating in respect of an independent judiciary and due process and a 1 for protection from the illegal use of force and equal treatment.

F. Other developments

1. In the Republic of Moldova

63. On 2 May 2017, the Moldovan Constitutional Court adopted judgment no. 14 on the interpretation of Article 11 of the Moldovan Constitution (permanent neutrality), the relevant parts of which read as follows.

"180. Article 11 of the Constitution provides that the Republic of Moldova proclaims its permanent neutrality. Although its second paragraph is specific about the Republic of Moldova not admitting the dislocation of foreign military troops on its territory, since the Soviet occupation of the current territory of the Republic of Moldova (1944-1991) until present in the eastern part of the country are dislocated the occupation troops of the Russian Federation. In fact, the Soviet/Russian occupation has never ceased in the eastern part of the country until present day, despite the declaration of independence of the Republic of Moldova. The Russian Federation has recognised [the independence] but has withdrawn its army only from the western part of the Moldovan territory (11% of the territory of the Republic of Moldova remaining under occupation).

181. The fact that the Russian Federation has not withdrawn its occupation troops from the eastern part of the country, but, on the contrary, has consolidated its military presence in the Transnistrian part of the Republic of Moldova, constitutes a violation of the constitutional provisions concerning the independence, sovereignty, territorial integrity and permanent neutrality of the Republic of Moldova, as well as a violation of international law."

64. On 29 May 2019 the Government of the Republic of Moldova adopted the "Instruction on the certification of civil-status events occurring and recorded in the localities on the left bank of the Dniester and in Bender municipality", which simplified the procedure for recognising and registering marriages, divorces, births, and deaths recorded in Transnistria.

2. In Transnistria

65. On 27 April 2017 the *de facto* "MRT authorities" enacted a law according to which the Russian flag shall be flown next to the "MRT" flag in all official settings, including in the official headquarters of the *de facto* "MRT administration, courts, and prosecutor's offices".

66. On 22 January 2019 the Russian Federation opened a consular section in the "MRT", despite the protests of the Moldovan authorities, and a Transnistrian "socio-cultural centre" in Moscow.

67. On 27 June 2016 the "MRT Criminal Code" was amended with a view to making it a criminal offence to express disrespect or to distort "the positive role of the peacekeeping mission of the Russian Federation or belittling the merits of the Russian Federation in maintaining peace, security and stability in Transnistria", on pain of imprisonment for up to seven years (Article 278-3). On 10 June 2022 further amendments were made in the "MRT Criminal Code" making it a criminal offence for persons living in the region to lodge deliberately false complaints with the law-enforcement agencies of other States (the list of which is to be established by the "MRT President") with the purpose of initiating proceedings in respect of "MRT officials" in order either to prevent them from or to seek revenge for them carrying out their "lawful" official duties (Article 280-1). An aggravating factor may be constituted by the circumstances in which an investigation or other procedural acts (including interim or preventive measures) are taken in respect of "MRT officials". The criminal offence is punishable by up to eight years' imprisonment. The "MRT Criminal Code" was also amended to make it a criminal offence to lodge deliberately a false complaint with the law-enforcement agencies of other States against "MRT nationals" in respect of acts (or failures to act) allegedly committed in Transnistria and is punishable by up to five years' imprisonment (Article 302).

THE LAW

I. PRELIMINARY ISSUE

68. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022 the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 73, 17 January 2023, *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14 and 28525/20, § 389, 30 November 2022, and, *mutatis mutandis*, *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, §§ 56-57, 6 June 2023).

II. JOINDER OF THE APPLICATIONS

69. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

III. ADMISSIBILITY

70. The Russian Government submitted that the complaints of both applicants in respect of the Russian Federation fell outside the Court's jurisdiction because the acts that had taken place within the "MRT" did not fall under the responsibility of the Russian Federation. They further submitted that the applicant in case no. 40926/16 ("the first applicant") had failed to exhaust the available domestic remedies in the Republic of Moldova (both inside and outside the Transnistrian region).

71. The Moldovan Government submitted that the applicant in case no. 73942/17 ("the second applicant") had failed to exhaust the available domestic remedies before the constitutional authorities of the Republic of Moldova.

72. The Court finds it appropriate, before examining the admissibility and merits of each complaint lodged by the applicants, to examine these two objections – regarding jurisdiction and the non-exhaustion of domestic remedies –, which could affect all of the complaints.

A. Jurisdiction

73. The Court notes that it has considered the Russian Government's objections of inadmissibility *ratione loci* and *ratione temporis* in previous cases and rejected them (*Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 111, 23 February 2016, and *Eriomenco v. the Republic of Moldova and Russia*, no. 42224/11, § 47, 9 May 2017). The Court will now consider if any further arguments were submitted on these matters that would warrant a departure from its previous findings.

1. The parties' submissions

(a) The applicants

74. The applicants argued that there had not been any essential change in the situation on the ground after July 2010 that would warrant a departure from the Court's findings in the above-cited *Catan and others* and *Mozer* judgments, arguing that both respondent Governments had jurisdiction.

75. In respect of the Republic of Moldova, the applicants noted the efforts made by the Moldovan authorities to assist certain victims of abuse in the "MRT", and the political statements made by the Moldovan authorities and their involvement in various forms of negotiation aimed at the settlement of the conflict. However, the applicants emphasised the different stance taken by the Moldovan President, Igor Dodon, throughout his term of office from 2016 to 2019; his actions had allegedly reduced the effectiveness of the Moldovan government's efforts to restore its control over the Transnistrian region.

76. The applicants argued that, overall, the Moldovan authorities had failed to take measures to secure their individual Convention rights.

77. In respect of the Russian Federation, the applicants noted its ongoing military presence, the increase in military activity after 2011 (including Russian military exercises and joint Russian-Transnistrian military exercises) and the 2019 visit of the Russian Minister of Defence, Serghei Shoigu, to Transnistria to decorate "MRT" soldiers. The applicants emphasised the political control exercised by Russia in Transnistria, as manifested by the presence of polling stations in Transnistria set up for the purposes of Russian parliamentary elections in 2011, 2016 and 2018 and presidential elections in 2012 and 2018 – despite the protests of Moldovan authorities. They also noted that a new Russian consular office had been opened in 2013; it had soon closed, but had resumed its operations in 2019. The applicants also argued that Russia provided ongoing economic support to the "MRT authorities" – either by supplying gas free of charge or by providing funds for the purpose of supplementing pensions and other welfare payments in the region. The applicants also outlined the amendments that had been made to the "MRT Criminal Code" that criminalised any complaints made against "MRT officials" or the Russian presence in Transnistria (see paragraph 67 above).

(b) The Moldovan Government

78. The Moldovan Government submitted that no significant change had occurred after July 2010 to warrant a departure from the Court's previous findings on jurisdiction in respect of Transnistria. They noted the continuation of the Russian military presence in the region, the absence of any moves to withdraw its military equipment and the increase in the number of military exercises and incidents involving the Operational Group of Russian Forces and the "MRT" forces.

79. With reference to the Moldovan Constitutional Court judgment of 2 May 2017 (see paragraph 63 above), the Moldovan Government contended that the Transnistrian region was under Russian military occupation, in the light of the Russian military presence, the lack of consent to that presence on the part of the Moldovan authorities, and the ability of the Russian Federation to exercise authority on the ground through a proxy administration (therefore displacing the authority of the legitimate Moldovan administration).

80. The Moldovan Government referred to the economic support provided by Russia in the form of gas free of charge and non-refundable aid, such as money, goods and services, worth an estimated 100 million US dollars per year from 2010 until 2016 and to the political control exerted by Russia, as exemplified by the operation of polling stations in Transnistria in connection with Russian general and presidential elections – despite the disapproval of the Moldovan authorities.

81. They agreed that President Igor Dodon's foreign policy had differed from that of the executive but argued that there was no evidence that the

President's actions had had any effect on the applicant's individual case or on the country's overall efforts to restore control over the Transnistrian region. In this respect, they invited the Court to distinguish between the present situation and the statements made by the then Moldovan President Vladimir Voronin that had resulted in a breach of the State's obligations under Article 34 of the Convention in the case of *Ilaşcu and others* (cited above, § 482).

82. They concluded that the Republic of Moldova had jurisdiction in so far as it had a positive obligation to secure the applicants' rights and that the Russian Federation had jurisdiction owing to its continuous military presence in the region.

(c) The Russian Government

83. The Russian Government submitted that the "MRT" was a sovereign territory of the Republic of Moldova, that "MRT authorities" were not part of the Russian Federation's system of public authorities and that Russia could therefore not be held accountable for the acts or omissions of the "MRT authorities" and that the applicants did not fall within its jurisdiction. Therefore, they argued that the applications were inadmissible *ratione loci* and *personae*.

84. With reference to the case-law of the International Court of Justice and of the International Criminal Tribunal for the former Yugoslavia (specifically *Mozer*, cited above, §§ 93-94), the Russian Government argued that the criteria for "effective control" or "occupation" had not been met. They submitted that their military activities in the "MRT" had a defensive, rather than an offensive nature, and were not aimed at establishing military control over a region; rather, they were aimed at countering the projection of military power by the United States and NATO member countries. In any event, they contended that the "necessity and the expediency of the Russian military contingent abroad" was not relevant to their compliance with their human rights obligations under the Convention.

2. The Court's assessment

85. The parties maintain views on the issue of jurisdiction that are essentially similar to those expressed by the parties in *Catan and Others* (cited above, §§ 83-101) and in *Mozer* (cited above, §§ 81-95).

86. The present cases concern actions undertaken or failures to act between July 2015 and December 2018 in respect of the first applicant and from April 2016 until 16 September 2022 in respect of the second applicant. The Court notes that it has found repeatedly in the past that both respondent Governments had jurisdiction until September 2016 (see *Eriomenco,* cited above, § 46). In particular, the Court found that the Republic of Moldova had jurisdiction for the purposes of Article 1 of the Convention, but that its

responsibility for the acts complained of was to be assessed in the light of its positive obligations (see *Mozer*, cited above, § 99). The Court found that the Russian Federation also exercised jurisdiction, since that State exercised effective control and a decisive influence over the self-proclaimed authorities of the "MRT" (ibid., §§ 110-111).

87. The Court takes note of the ongoing military presence of the Russian Federation in Transnistria, contrary to the will of the Moldovan Government, the renewed calls for the withdrawal of its troops, and the economic and political support of the Russian Federation for the "MRT" regime – which was not disputed by the Russian Federation (see paragraphs 48, 51-54, 56-61, 63 and 65-66). In the absence of any information attesting to a change to the situation found in its previous judgments, the Court sees no grounds on which to distinguish the present case from *Ilaşcu and Others v. Moldova and Russia* [GC] (no. 48787/99, ECHR 2004-II), *Catan and Others v. the Republic of Moldova and Russia* [GC] (nos. 43370/04 and 2 others, ECHR 2012 (extracts)), *Mozer* (cited above) and *Eriomenco* (cited above), and concludes that both respondent Governments had jurisdiction. Accordingly, the Court dismisses the Russian Government's objections of incompatibility *ratione personae* and *ratione loci*.

B. Exhaustion of domestic remedies

1. The parties' submissions

(a) The Russian Government

88. The Russian Government submitted that the first applicant had failed to exhaust the domestic remedies available in the "MRT" in respect of his complaints concerning the conditions of his detention and his alleged forced psychiatric treatment. They submitted that the "MRT" had afforded him the opportunity to avail himself of effective remedies. In their observations submitted in May-August and December 2019-January 2020 (in respect of both cases) and in December 2021 (in respect of application no. 73942/17) the Russian Government had provided a description of the legal order of the "MRT"; they considered that legal order to be in conformity with the standards of the Convention. In particular, they submitted information on: 1) the 1995 Constitution of the "MRT" and the guarantees that it offered; 2) the judicial system of the "MRT" – including information on its functioning and a description of its commercial, civil, criminal and administrative courts, with statistics of the cases that those courts had handled; 3) the Public Prosecutor's Office and the prosecuting authorities of the "MRT"; 4) the law-enforcement authorities of the "MRT"; 5) the role and activities of the "MRT" ombudsman; 6) the functioning of the three official languages of the "MRT"; 7) the legislative framework of the "MRT" (with an emphasis on the alleged alignment of Transnistrian laws with international

standards in various fields); 8) the foreign policy of the "MRT", and 9) the education of legal professionals in the "MRT". They also provided two examples of "MRT Constitutional Court" case-law that referenced the Convention and the Court's case-law, and one decision delivered by the "MRT Supreme Court" that had upheld a plaintiff's requests. In their submissions of 2 December 2021 the Russian Government reiterated their previous submissions on the "MRT legal system" and cited various provisions of certain laws (as amended in 2017, 2018 and 2021).

89. In paragraph 156 of their submissions of 2 December 2021, the Russian Government argued that it was incorrect to compare the compliance of the "MRT legal system" with the Convention against that of the Moldovan legal system because these were "two States independent of each other" – each with its own laws that differed from the other, just as they differed from laws of other States.

90. They acknowledged that the lack of regulation in respect of certain issues raised by the applicants in respect of the "MRT judicial system" (for example, how the judiciary was organised, the independence of the judges' disciplinary body, and the absence of a transparent system for the allocation of cases) constituted a temporary shortcoming that did not undermine the "conceptual achievements of the judicial system in the MRT", noting that it had taken the Russian Federation many years to develop and adopt a legal framework through which to govern such issues. In any event, they contended that the reforms in the past decade had created in the "MRT" a judicial system that affords individuals an effective legal protection mechanism.

91. The Russian Government argued that the first applicant could not rely on the above-cited *Ilaşcu*, *Catan* and *Mozer* judgments because the situation in the "MRT" had changed significantly, as detailed in their submissions. They called on the Court to review its case-law in the light of those developments.

(b) The Moldovan Government

92. The Moldovan Government stated that the second applicant had not sought redress from any Moldovan state authority before lodging his complaints with the Court.

93. The Moldovan Government have disputed the position of the Russian Federation in respect of the possibility of seeking remedies before the "MRT" authorities and emphasised that they "have never recognised, nationally or internationally, the legitimacy of the 'MRT courts' and of other 'MRT authorities' or the 'MRT law'". The Moldovan Government maintained their argument that the "MRT legal system" did not operate on a constitutional and legal basis that reflected a judicial tradition compatible with the Convention and referred to the findings of the UN Special Expert, Thomas Hammarberg, after his visit in 2013 (see *Mozer*, cited above, § 62) and his follow-up visit in 2018 (see paragraph 49 above).

(c) The applicants' submissions

94. The applicants submitted that the "MRT legal system" did not operate on a constitutional and legal basis that was compatible with the Convention. They argued that the "MRT legal system" had no legitimacy as it relied on laws enacted by an internationally unrecognised entity and its courts could not be regarded as independent and impartial owing to the absence of any separation of powers within the "MRT administration". They cited, in particular, examples of "MRT" legal provisions" attesting to the lack of transparency in the selection and appointment of judges, the lack of rules governing the organisation and activities of the judiciary, the lack of independence of the body responsible for disciplining judges, and the lack of a system for the transparent allocation of cases. The applicants also referred to international reports describing the human rights situation in Transnistria (see paragraphs 49, 50 and 55) and noted that the Russian Government had failed to produce any evidence regarding the actual workings of the human rights framework that they had described in their submissions.

95. The second applicant additionally submitted that the situation of human rights in Transnistria had actually only become worse after 2015 and cited the report of the UN Special Representative on human rights defenders after his visit in Transnistria in 2018, the report of the UN Special Expert Thomas Hammarberg on his follow-up visit in 2018, and the report of Freedom House entitled "Freedom in the World" (see paragraphs 49, 50 and 62). He also noted that the only two cases presented by the Russian Federation as examples of case-law refer to Evghenii Shevchuk, the former Transnistrian leader, who is currently a fugitive from the "MRT" regime.

96. The first applicant argued that – given the fact that his mother had lodged multiple complaints (regarding, for example, the issues of detention conditions and forced psychiatric treatment), but to no avail – his application should not be dismissed for failure to exhaust domestic remedies in the "MRT" or in the Republic of Moldova. In any event, no remedies afforded by the "MRT" could be deemed effective, and all possible requests for redress that could have been made to Moldovan authorities had been lodged (see paragraphs 31-36 above).

97. The second applicant argued that his application should not be dismissed for failure to exhaust any remedies before the official authorities of the Republic of Moldova because the Moldovan Government had failed to indicate which particular remedy was effective and available and had not been used by the applicant.

2. The Court's assessment

98. The Court has set out in a number of judgments the general principles pertaining to the exhaustion of domestic remedies (see, amongst many authorities, *Vučković and Others v. Serbia* ((preliminary objection) [GC],

nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). It has repeatedly held that applicants are only obliged to exhaust the domestic remedies that are available in theory and in practice at the relevant time – that is to say, remedies that are accessible, capable of providing redress in respect of their complaints and offer reasonable prospects of success, and of which they can directly avail themselves (see *Sejdovic v. Italy* [GC], no 56581/00, § 46, ECHR 2006-II, and *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). In *Chiragov and Others v. Armenia* ([GC], no. 13216/05, § 116, ECHR 2015), the Court restated the general principles, including the exceptions absolving applicants from the obligation to resort to remedies, the rules regarding the distribution of the burden of proof, and the need to account for the general legal and political context in which remedies operate and to take into account the personal circumstances of applicants.

99. The Court notes its previous findings to the effect that remedies before *de facto* "MRT courts" were not to be exhausted as it deemed them to be ineffective (see *Draci v. the Republic of Moldova and Russia*, no. 5349/02, § 48, 17 October 2017) owing to the absence of any indication that those courts were "part of a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention" (see *Mozer*, cited above, §§ 148, 150 and 211).

100. Unlike in the case of *Mozer,* the Russian Government asserted that remedies had existed and that the first applicant should have availed himself of them before the *de facto* "MRT courts"; the Russian Government also provided information about the "MRT legal system". At the same time, the Russian Government have not shown what those particular remedies were and how they were capable of providing redress in respect of the first applicant's complaints.

101. In respect of the Moldovan Government's submissions that the second applicant had failed to exhaust the available domestic remedies, it is noted that the Moldovan Government have not referred to any particular remedies and how they were capable of providing redress to the second applicant. The Court reiterates that it is incumbent on a Government claiming non-exhaustion to satisfy the Court that a particular remedy was an effective one and was available both in theory and in practice.

102. Accordingly, the Court considers that both the Russian and the Moldovan Governments have failed to discharge the burden of proving the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and of offering reasonable prospects of success. Similar objections were raised and dismissed in the cases of *Mozer* (cited above, §§ 115-121), *Vardanean v. the Republic of Moldova and Russia* (no. 22200/10, §§ 27 and 31, 30 May 2017), and *Bobeico and Others v. the Republic of Moldova and Russia* (no. 30003/04, § 39, 23 October 2018).

103. The two respondent Governments' objections of non-exhaustion of domestic remedies are therefore dismissed.

C. Conclusions

104. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. The first applicant complained that he had been detained in inadequate detention conditions – without adequate medical assistance – and had been subjected to forced and unnecessary psychiatric treatment, contrary to Article 3 of the Convention, which reads as follows.

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

106. The first applicant complained that he had spent three years and eight months in conditions of detention that had amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see paragraphs 17-21 above). He relied on the findings of the local ombudsperson, who had attested in his reports to the fact that detainees were not issued with hygiene essentials, and on the follow-up report of the UN Human Rights Special Expert Hammarberg (attesting to the absence of any changes to prison conditions since his visit in 2013 – see paragraph 49 above). He also submitted that his psychiatric hospitalisation had been both forced and unnecessary from a medical point of view. The applicant concluded by stating that his health had seriously deteriorated during his detention owing to medical assistance that had been either inadequate or completely absent.

107. The Russian Government did not make any specific comments regarding these complaints.

108. The Moldovan Government argued that they had been unable to carry out any investigation into the applicant's allegations. Nevertheless, they had discharged their positive obligations in respect of the applicant by notifying both the OSCE Mission to Moldova and their political representative in the mediation process, and had repeatedly asked to no avail to be allowed to visit the applicant in detention. They referred to the criminal investigation initiated into the applicant's kidnapping and unlawful deprivation of liberty and to the quashing of his unlawful conviction (see paragraphs 32 and 36 above).

109. In the present case, the Court notes that the applicant described in detail the conditions of his detention, which had been characterised by overcrowding; inmates being allowed to smoke around non-smokers; a lack of bed linen; a lack of shower facilities in his cell; the possibility to leave his cell for only a short time each day; and generally poor hygiene. It also notes that the respondent Governments did not dispute this description.

110. Moreover, the conditions of detention prevailing in the same prisons in which the applicant was detained in the "MRT" have already been found to be substandard (see, for instance, *Mozer*, cited above, §§ 180 and 181; *Braga v. the Republic of Moldova and Russia*, no. 76957/01, § 37, 17 October 2017; *Eriomenco*, cited above, § 57; *Apcov v. the Republic of Moldova and Russia*, no. 13463/07, § 43, 30 May 2017; and *Draci*, cited above, § 58).

111. After examining the facts of the instant case and in the absence of information contradicting the applicant's submissions, the Court concludes that the conditions of the first applicant's detention indeed amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

112. In respect of medical assistance, the Court notes the various medical conditions diagnosed by the *de facto* "MRT authorities" themselves and the absence of any evidence that treatment was administered for them – in particular for hepatitis C (see paragraphs 23-28 above; see also *Machina v. the Republic of Moldova*, no. 69086/14, §§ 49-50, 17 January 2023). At the same time, it is undisputed that the applicant's state of health had significantly deteriorated in prison, given that after he had been in incarceration for one year the "MRT authorities" were scheduled to consider and rule on his degree of disability (see paragraph 26). In view of the above-noted factors, the Court concludes that the prison authorities did not monitor the applicant's health so as to be able to prescribe and/or adapt and administer specialised medical treatment – despite the recognised need for such surveillance and the complaints that he had made about his state of health.

113. In respect of the forced psychiatric assessment and treatment of the applicant, the Court sees no reason to disagree with the applicant and notes that no medical need to subject the applicant to psychiatric treatment has been shown to have existed (see paragraphs 21-22 above). Moreover, the Court notes the considerable duration of the applicant's forcible psychiatric hospitalisation, which lasted for a month on both occasions. It also notes that the applicant's second period of hospitalisation was ordered despite the fact that doctors had concluded that the applicant was able to take decisions for himself on the basis of a rational understanding of the relevant issues and that there he had no need for inpatient treatment. In the Court's view, such unlawful and arbitrary treatment was at the very least capable of arousing in the applicant feelings of fear, anguish and inferiority. Accordingly, the Court considers that the psychiatric hospitalisation of the applicant and the treatment to which the first applicant was subjected during that hospitalisation could have amounted at least to degrading treatment within the meaning of Article 3 of the Convention.

114. There has accordingly been a violation of Article 3 of the Convention in respect of the conditions of the applicant's detention, as a result of the authorities' failure to provide the first applicant with sufficient medical assistance and treatment and of their decision to repeatedly subject him to forcible psychiatric hospitalisation and treatment.

115. Determining whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights, the Court reiterates its finding in *Mozer* that, from the onset of the hostilities in 1991-1992 until July 2010, Moldova had taken all the measures in its power (see *Mozer*, cited above, § 152). Since the parties did not adduce any evidence to show that the Moldovan Government has changed its position concerning the "MRT" in the years preceding the events of the present case, the Court sees no reason to reach a different conclusion (ibid.). As to the State's obligation to ensure respect for the applicant's rights, the Court considers that Moldovan authorities did not have any real means of securing the applicant release from the "MRT"'s prisons (contrast *Pocasovschi and Mihaila v. the Republic of Moldova and Russia*, no. 1089/09, § 46, 29 May 2018). Moreover, they could not properly investigate the allegations of unlawful detention. An investigation into the unlawful acts of the *de facto* "MRT authorities" had been initiated but had had to be suspended owing to the absence of any cooperation from that region, rendering it impossible to carry out any meaningful prosecution.

116. In the light of the foregoing, the Court concludes that the Republic of Moldova fulfilled its positive obligations and that there has been no violation of Article 3 of the Convention by the Republic of Moldova in respect of the first applicant.

117. The Court has established that Russia exercised effective control over the "MRT" during the period of the applicant's detention (see paragraphs 86-87 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicant's rights (ibid.).

118. In conclusion, and after having found that the first applicant was held in inhuman conditions within the meaning of Article 3 of the Convention, and that he was deprived while in detention of the medical examinations and assistance that he needed, the Court holds that there has been a violation of that provision by the Russian Federation.

V. ALLEGED VIOLATION OF ARTICLES 5 AND 6 OF THE CONVENTION

119. The first applicant complained that his deprivation of liberty and his conviction by the *de facto* "MRT courts" were unlawful and contrary to Articles 5 and 6, respectively, of the Convention, the relevant parts of which read as follows:

"Article 5. Right to liberty and security

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

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

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

Article 6. Right to fair trial

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

120. In particular, the first applicant argued that he had been deprived of his liberty from 7 July 2015 until 29 December 2018 and convicted on 28 March 2016 following decisions taken by an "MRT court", the unconstitutionality of which had rendered his detention and conviction "unlawful". He also submitted that no change had occurred since the Court's judgment in *Mozer* to warrant a departure from the Court's findings that the "MRT legal system" did not operate on a constitutional and legal basis compatible with the Convention (see the arguments summarised in paragraph 94 above). In particular, he noted the critical assessment of human rights in Transnistria and of the "MRT" regime's operation of its "courts" (see paragraph 55 above) and concluded that the *de facto* "MRT courts" could not be seen as "tribunals established by law" within the meaning of the Convention. In addition, the applicant pointed to the absence of any reasonable suspicion that he had committed the criminal offence of extremism, the absence of reasonable and sufficient reasons for his detention, and the arbitrariness of his conviction following a trial during which he had been excluded from the courtroom and deprived of an effective defence owing to the allegedly poor state of his mental health (see paragraph 14 above) .

121. The Russian Government did not make any specific submissions on the merits of the complaints. 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. However, they argued that the *de facto* "MRT courts" and the "MRT legal system" were compatible with the Convention (see paragraphs 88-91 above).

122. The Moldovan Government reiterated that it did not recognise the "MRT" and its "laws and administration". They relied on the Court's findings in *Chiragov and Others v. Armenia* ((dec.) [GC], no. 13216/05, § 102, 14 December 2011), according to which "NKR"'s unrecognised status had prevented "NKR" laws from being considered legally valid for the purposes of the Convention. They submitted that there was no reason for the Court to

depart from its previous findings in *Vardanean* (cited above, § 39) and *Mozer* (cited above, § 150), according to which a *de facto* "MRT court" could not be deemed to constitute an "independent tribunal established by law". The Moldovan Government noted that the "MRT" system operated in parallel with Moldova's official authorities, which had territorial jurisdiction over Transnistria. Unlike those constitutional authorities, the *de facto* "MRT courts" did not apply Moldovan law but rather implemented its own alleged laws, the adoption and operation of which defied the core principles of democracy, rule of law, and human rights. They noted that it was impossible for them to assess the content of those alleged laws because they were unable to establish with accuracy what that content was. It was precisely because of the arbitrariness and unconstitutionality of those courts and of their decisions that the Supreme Court of Justice of the Republic of Moldova had quashed the applicant's conviction on 22 November 2016 (see paragraph 36 above).

123. The Court notes that in *Ilaşcu and Others* it held that the *de facto* "Supreme Court of the MRT" belonged to a system that could hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That was evidenced by the patently arbitrary nature of the circumstances in which the applicants in that case had been tried and convicted (cited above, §§ 436 and 461). Accordingly, it found that none of the applicants had been convicted by a "court", and that a sentence of imprisonment passed by a judicial body such as the *de facto* "Supreme Court of the MRT" at the close of proceedings like those conducted in the present case could not be regarded as "lawful detention" ordered "in accordance with a procedure prescribed by law" (ibid., § 462).

124. In *Mozer*, the Court found it necessary to verify whether what was established *in Ilaşcu and Others* with respect to the *de facto* "MRT courts" before the Republic of Moldova and the Russian Federation became States Parties to the Convention in 1997 and 1998, respectively, continues to be valid (cited above, § 145). From the point of view of Article 5 of the Convention, it noted that Russia had not submitted any information regarding the judicial system of the "MRT" and that nothing suggested that there existed in the Transnistrian region a system reflecting a judicial tradition in conformity with the Convention. It therefore concluded that its findings in *Ilaşcu and Others* (cited above) were still valid with respect to the period of time covered and that no "MRT" authority could lawfully order a person's arrest or detention (ibid, §§ 148-150). In the case of *Eriomenco* (cited above, § 72), the Court considered that the above-noted findings in *Mozer* remained valid with respect to the period up to September 2016.

125. The same test was applied by the Court in its recent judgment *Mamasakhlisi and Others v. Georgia and Russia* (nos. 29999/04 and 41424/04, 7 March 2023), which concerned the legal and court system in the unrecognised entity of Abkhazia in Georgia. The Court noted that, even assuming that the applicants' arrest and detention by *de facto* Abkhaz

authorities had to be regarded as having a legal basis in domestic law for the purposes of the Convention, there was nevertheless on the one hand no information by which to verify whether the *de facto* authorities and courts and their legal practice fulfilled the requirements of Article 5 of the Convention, and on the other hand no basis for assuming that there was in Abkhazia a system reflecting a judicial tradition – as was the case in respect of the judicial tradition that prevailed in the rest of Georgia – that was compatible with the Convention, (ibid., §§ 425-426).

126. Although the acts of the *de facto* "MRT courts" in respect of the first applicant occurred in the period before September 2016, which has already been examined by the Court in the *Eriomenco* case, the Court nevertheless wishes to address the submissions of the Russian Government as to the alleged changes and reforms made to the "MRT legal system" in the past decade (see paragraphs 88-91 and 121 above).

127. The Court notes that the Russian Government have provided an overview of the legal system operating in the "MRT" with reference to laws and amendments enacted by the *de facto* "MRT Supreme Council" as early as 1993 and as recently as 2021 (see paragraphs 89-90). At the same time, the Court was not provided with the content of those laws, and nor did the Russian Government provide an assessment thereof; rather, they simply contended that those laws complied with the Convention, while at the same time acknowledging a number of important deficiencies. The Russian Government argued that these deficiencies did not undermine the "conceptual achievements" of the reforms carried out in the "MRT". They provided excerpts from three judgments which, according to the Russian Government, exemplified "MRT judges"' implementation of the Convention and the Court's case-law.

128. The above-noted information does not enable the Court to determine whether the legal provisions applied in respect of the applicant were compatible with the requirements set out by Articles 5 and 6 of the Convention. The information is even less sufficient to constitute a basis for an assumption that the "MRT legal system" as a whole reflected or reflects a judicial tradition that – as is the case in respect of the judicial tradition prevailing in the rest of the Republic of Moldova – is compatible with the Convention. The absence of such a basis is further corroborated by international documents referring to the deteriorating state of human rights in the Transnistrian region (see paragraphs 49, 50, 55, 58, and 62 above) and other worrisome legal developments in the "MRT" (see paragraph 67 above).

129. The foregoing considerations are sufficient to enable the Court to conclude that the *de facto* authorities and courts in the Transnistrian region could not order the first applicant's "lawful arrest or detention" within the meaning of Article 5 § 1 (c) and 5 § 1 (a) of the Convention and did not constitute a "tribunal established by law" within the meaning of Article 6 of the Convention that was empowered to determine any criminal charges

against the applicant. Accordingly, both the applicant's detention and conviction were unlawful for the purposes of those provisions.

130. In determining whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights, the Court reiterates its findings above that the Moldovan authorities did not have any real means of releasing the applicant from the "MRT"'s prisons (see paragraph 115). Nor could they properly investigate the allegations of unlawful detention and conviction. Even so, an investigation into the unlawful acts of the *de facto* "MRT officials" was initiated by the Moldovan authorities, but it had to be suspended owing to the absence of any cooperation from those "authorities", rendering it impossible to carry out any meaningful prosecution. In addition, the applicant managed to have his conviction by the *de facto* "MRT courts" quashed by the Moldovan Supreme Court of Justice (see paragraph 31 above).

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

132. As regards the Russian Federation, for the same reasons as those mentioned in paragraphs 117-18 above, the Court finds that the Russian Federation is responsible for the breach of Articles 5 § 1 and 6 of the Convention in respect of the first applicant.

VI. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

133. The second applicant complained that the seizure and forfeiture of the money that he had posted as bail had violated his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention, which reads as follows.

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

134. In particular, the second applicant complained that the decision of 4 April 2017 of the *de facto* "MRT Supreme Court" to order the forfeiture of the bail posted by the applicant and its forfeiture to "MRT treasury" had not been lawful under domestic law; he relied on the Court's findings in *Turturica and Casian v. the Republic of Moldova and Russia* (nos. 28648/06 and 18832/07, §§ 45-54, 30 August 2016).

135. 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

136. The Moldovan Government submitted that the interference with the applicant's rights had not been lawful because it had not been provided for by the domestic laws of the Republic of Moldova. At the same time, they contended that the Moldovan Government had discharged in full its positive obligations in respect of the applicant.

137. The Court notes that the parties did not dispute the fact that the applicant's assets constituted "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. It further notes that it is similarly undisputed that the assets were seized by the *de facto* "MRT authorities" and that they were appropriated by the "MRT treasury". Given those circumstances, the Court finds that there was a clear interference with the applicant's right to the peaceful enjoyment of his possessions for the purposes of Article 1 of Protocol No. 1 to the Convention. According to the Court's case-law (see among other authorities, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 142, ECHR 2005-VI), such interference constitutes a measure of control of the use of property that falls to be examined under the second paragraph of that Article. For a measure constituting control of use to be justified, it must be lawful (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012).

138. In so far as the lawfulness of the interference is concerned, no elements in the present case allow the Court to consider that there was a legal basis for interfering with the rights of the applicant, as guaranteed by Article 1 of Protocol No. 1 to the Convention (see paragraphs 128-29 above; see also *Turturica and Casian,* cited above, § 49). Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

139. In determining whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the second applicant's rights, the Court reiterates its above-noted findings (see paragraph 115) and notes that the parties did not adduce any evidence to show that the Moldovan Government had changed its position concerning the "MRT" in the years preceding the events of the present case. For this reason, the Court sees no reason to reach a different conclusion. The Court considers that Moldovan authorities did not have any real means of countermanding the *de facto* "MRT authorities"' order that the second applicant's assets be forfeited.

140. In the light of the foregoing, the Court concludes that the Republic of Moldova fulfilled its positive obligations and that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova in respect of the second applicant.

141. Given that Russia exercised effective control over the self-proclaimed authorities of the "MRT" during the period in question (see paragraph 86-87 above), it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continuing military, economic and political support for those self-proclaimed authorities, which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the second applicant's rights.

142. Accordingly, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention by the Russian Federation in respect of the second applicant.

VII. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

143. The second applicant complained of a breach of Article 2 of Protocol No. 4 to the Convention, the relevant parts of which read as follows.

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. ...
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

144. In particular, the second applicant maintained that he had been subjected to a restriction of his liberty of movement because he had not been able to travel to the Transnistrian region of the Republic of Moldova after 17 March 2017 for fear of being arrested under the search-and-arrest warrant issued by the *de facto* "MRT court" on that day.

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

146. The Court notes that it has examined in the past a few cases where fugitives complained of being unable to travel to a country where they were sought for the purposes of bringing them to justice. In particular, in *E.M.B. v. Romania* ((dec.), no. 4488/03, §§ 32-33, 28 September 2010) the Court concluded that there had been no interference with the applicant's freedom of movement because the alleged restriction of movement in question had "represent[ed] a personal choice of the applicant not to make use of her right to freedom of movement in order to avoid confronting the justice system". In *Stapleton v. Ireland* ((dec.) no. 56588/07, § 33, 4 May 2010), after concluding

that the applicant's extradition to the United Kingdom would not have violated his rights under Article 6 of the Convention, the Court found that there was no issue under Article 2 of Protocol No. 4 in relation to the applicant's self-imposed decision to reside outside Ireland in order to avoid that extradition.

147. Within the particular context of the Transnistrian region, the Court has examined so far only restrictions on travel outside the region imposed by acts undertaken by the *de facto* "MRT agents" (see *Dobrovitskaya and Others v. the Republic of Moldova and Russia* [Committee], nos. 41660/10 and 5 others, § 94, 3 September 2019, and *Golub v. the Republic of Moldova and Russia* [Committee], no. 48020/12, 30 November 2021).

148. The present case concerns an alleged restriction on the freedom of movement which does not result from a direct act on the part of the "MRT authorities" but which stems from the applicant's own wish not to return to the "MRT" for fear of being arrested on the basis of a search-and-arrest warrant issued by a *de facto* "MRT court" that he considered unlawful.

149. In view of the Court's findings in *Mozer* (§§ 148-150) and the conclusions above that the *de facto* authorities and courts in the Transnistrian region could not order a "lawful arrest or detention" within the meaning of Article 5 of the Convention and did not constitute a "tribunal established by law" within the meaning of Article 6 of the Convention (see paragraphs 128-29), the search-and-arrest warrant issued on 17 March 2017 by a *de facto* "MRT court" was unlawful, given that it was issued by a *de facto* "MRT authority". Unlike in the above-mentioned *Stapleton* case, the applicant traveling to the "MRT" and surrendering to the *de facto* "MRT authorities" and his potential arrest under that warrant would have amounted to a deprivation of liberty contrary to the Convention. For this reason, the Court concludes that the specific circumstances of the case reveal an interference with the second applicant's freedom of movement, which in the absence of a legal basis constituted a violation of Article 2 of Protocol No. 4 to the Convention.

150. For the same reasons as those mentioned in paragraphs 139-140 above, the Court finds that the Republic of Moldova has not failed in fulfilling its positive obligations under Article 2 of Protocol No. 4 to the Convention. There has accordingly been no breach of that provision by the Republic of Moldova.

151. As concerns the Russian Federation, for the same reasons as those mentioned in paragraphs 141 and 142 above, the Court finds that the Russian Federation is responsible for the breach of Article 2 of Protocol No. 4 to the Convention in respect of the second applicant.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

152. The applicants complained that they had had no effective remedies in respect of their complaints under Articles 3, 5, 6 of the Convention and Article 1 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention. They 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."

153. In particular, the applicants submitted that they had had no means of asserting their rights in the face of the actions of the *de facto* "MRT authorities".

154. The Moldovan Government submitted that there had been no violation of Article 13 in the present case in respect of the Republic of Moldova. The Russian Government made no specific comment.

155. The Court observes that it found that the applicants' complaints under Articles 3, 5 and 6 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention, respectively, were arguable. They were therefore entitled to an effective domestic remedy within the meaning of Article 13 in respect of these complaints.

156. The Court has already found the absence of an effective remedy in respect of violations committed by the *de facto* "MRT authorities" (see for example, the above-cited cases of *Mozer*, §§ 210-212, and *Eriomenco*, § 96). Moreover, the Court has already dismissed both respondent Governments' preliminary objections on non-exhaustion of domestic remedies owing to the absence of any evidence as to existence of such remedies in respect of human rights violations occurring at the hands of "MRT" authorities (see paragraphs 102-103 above). The Court sees no reasons to depart from that conclusion.

157. The Court therefore concludes that the applicants did not have an effective remedy in respect of their complaints under Articles 3, 5 and 6 and Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention, respectively. Consequently, the Court must decide whether the violation of Article 13 can be attributed to either of the respondent States.

158. The Court notes that in *Mozer* (cited above, §§ 213-216) it found that the Republic of Moldova had made procedures available to applicants commensurate with its limited ability to protect their rights. Moldova had thus fulfilled its positive obligations, and the Court found that there had been no violation of Article 13 of the Convention by that State. The Court sees no reasons to depart from that conclusion in the present case (see *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, § 71, 17 July 2018). Accordingly, the Court finds that there has been no violation of Article 13 of the Convention by the Republic of Moldova in respect of both applicants.

159. As in the case of *Mozer* (cited above, §§ 217-218), 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, 5 and 6 of the Convention, in respect of the first applicant and of Article 13, taken in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention, in respect of the second applicant.

IX. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

160. The first applicant complained that the *de facto* "MRT authorities" had prevented him from properly communicating with the Court in respect of the present application. He relied on Article 34 of the Convention.

161. In particular, the applicant submitted that (i) on 14 April 2016 he had been beaten by prison guards because he had tried to hand his mother a copy of the sentence imposed on him by the *de facto* "Tiraspol City Court" on 28 March 2016 in order that she could give it to his lawyer for the purpose of preparing his application to the Court, and (ii) in June 2016 his mother had sought access to his medical file in prison in order to substantiate before the Court his allegation of inadequate medical care in prison, but such access had been refused (see paragraphs 29-30).

162. The Russian Government did not make any specific submissions in respect of this complaint.

163. The Moldovan Government contended that a violation had taken place in respect of the first applicant but that it was attributable to the Russian Federation.

164. The Court notes that the applicant provided several documents concerning the medical assistance afforded to him in prison (see paragraphs 24-28 above). While it is true that in June 2016 the applicant's mother was formally refused any access to his medical file, the applicant was nevertheless provided with various items of medical information before and after that date.

165. The Court also notes that the *de facto* "MRT authorities" confirmed that the applicant had been prevented in April 2016 from handing his mother a document (see paragraph 29). However, he was able to submit, along with his application to the Court, a copy of his sentence of 28 March 2016 without arguing that he had been prevented from sending this document to his representative by any means other than his meeting in April 2016 with his mother.

166. Given these circumstances, there is no appearance of a failure on the part of the respondent States to comply with their obligations under Article 34 of the Convention by hindering the first applicant's right of individual petition.

X. OTHER ALLEGED VIOLATIONS

167. The second applicant also complained that owing to the search-and-arrest warrant issued by the "MRT authorities" he had been prevented from pursuing, as part of his private life, as protected under Article 8 of the Convention, his professional activities in the Transnistrian region.

168. The Court notes that this complaint is linked to that examined above under Article 2 of Protocol No. 4 to the Convention; having regard to its findings above (see paragraph 149), the Court considers that it is not necessary to examine it separately.

XI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

169. 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."

170. The first applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,480 in costs and expenses. The second applicant claimed EUR 12,000 in respect of non-pecuniary damage and EUR 4,200 in costs and expenses. They submitted contracts signed with their legal representatives, together with a breakdown of the legal services provided. They requested the Court that any award for costs and expenses be paid directly into the bank account of their legal representatives.

171. The Moldovan Government contested the amount of non-pecuniary damage and costs and expenses claimed by the applicants, making reference to lower awards that had been made by the Court in similar cases.

172. The Russian Government disagreed with the costs and expenses claimed, arguing that owing to the similarity between the applicants' submissions and those made in other cases before the Court their legal representatives should not receive extra payment.

173. The Court notes that it has not found any violation of the Convention by the Republic of Moldova in the present case. Accordingly, no award of compensation for non-pecuniary damage or costs and expenses is to be made as regards that respondent State.

174. The Court considers that the applicants have suffered a certain level of stress. This was particularly serious in respect of the first applicant, considering his illegal detention and conviction, the psychiatric treatment forcibly administered to him, the inhuman conditions of his detention and the inadequate medical assistance rendered to him. The second applicant has also suffered a certain level of anxiety caused by the interference with his possessions, his inability to travel to the Transnistrian region of the Republic of Moldova and his lack of access to an effective remedy.

175. Having regard to the violations by the Russian Federation found above, the Court awards EUR 26,000 to the first applicant and EUR 6,500 to the second applicant, plus any tax that may be chargeable on the applicants, to be paid by the Russian Federation.

176. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 4,000 to each applicant, to be paid directly to their representatives, for costs and expenses, plus any tax that may be chargeable to the applicants, to be paid by the Russian Federation.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Holds* that the facts complained of by the applicants fall within the jurisdiction of the Republic of Moldova;

3. *Holds* that the facts complained of by the applicants fall within the jurisdiction of the Russian Federation so far as they relate to facts that took place before 16 September 2022 and dismisses the Russian Government's objections of incompatibility *ratione personae* and *ratione loci*;

4. *Dismisses* the respondent Governments' objections of non-exhaustion of domestic remedies;

5. *Declares* the applications admissible;

6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant by the Russian Federation and no violation by the Republic of Moldova;

7. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first applicant by the Russian Federation and no violation by the Republic of Moldova;

8. *Holds* that there has been a violation of Article 6 of the Convention in respect of the first applicant by the Russian Federation and no violation by the Republic of Moldova;

9. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the second applicant by the Russian Federation and no violation by the Republic of Moldova;

10. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention in respect of the second applicant by the Russian Federation and no violation by the Republic of Moldova;

11. *Holds* that there has been a violation of Article 13 of the Convention read in conjunction with Articles 3, 5 and 6 of the Convention in respect of the first applicant and of Article 13 read in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention in respect of the second applicant, by the Russian Federation and no violation by the Republic of Moldova;

12. *Holds* that the respondent States did not fail to comply with their obligation under Article 34 of the Convention in respect of the first applicant;

13. *Holds* that there is no need to examine the complaint under Article 8 of the Convention in respect of the second applicant;

14. *Holds*
    (a) that the Russian Federation is to pay the applicants, within three months from the date on which this judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
        (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to the first applicant;
        (ii) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to the second applicant;
        (iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the each 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;

15. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President