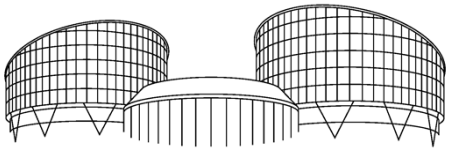

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CILEI AND ROSIP v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Applications nos. 48145/10 and 8387/15)

JUDGMENT

STRASBOURG

13 July 2021

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

In the case of Cilei and Rosip v. the Republic of Moldova and Russia,

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

Carlo Ranzoni, *President,*
Egidijus Kūris,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 48145/10 and 8387/15) against the Republic of Moldova and Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan nationals, Mr Alexandr Cilei and Mr Ivan Rosip ("the applicants"), on 11 August 2010 and 3 February 2015, respectively;

the decision to give notice to the Moldovan and Russian Governments ("the Governments") of the application no. 8387/15, and of the complaints concerning unlawful detention in application no. 48145/10 and to declare inadmissible the remainder of this application;

the Russian Government's objection to the examination of the application by a Committee and to the Court's decision to reject it;

the parties' observations;

Having deliberated in private on 22 June 2021,

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

INTRODUCTION

1. The case concerns the applicants' arrest and detention in the Transdniestrian region of Moldova (the self-proclaimed "Moldovan Republic of Transdniestria" (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)). They both complained about their unlawful detention, while the second applicant also complained about inhuman conditions of detention, unlawful seizure of his property and the lack of effective remedies in respect of his other complaints.

THE FACTS

2. The applicants were born in 1976 and 1958 and live in Tiraspol and Bender, respectively. The applicants were represented by Mr A. Postică and Mr P. Cazacu, lawyers practising in Chișinău.

3. The Governments were represented by their Agents.

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

I. APPLICATION NO. 48145/10

5. On 30 January 2008 the first applicant was arrested by the "MRT" authorities on charges of attempted murder. On 5 June 2009 he was convicted by the "MRT" courts and sentenced to eleven years' imprisonment.

6. The applicant sought the annulment of his conviction before the Supreme Court of Justice of the Republic of Moldova. By a letter of 10 May 2010, the Supreme Court of Justice returned his extraordinary appeal without examination, citing the absence of competence to examine judgments delivered by the "MRT" courts.

7. On 1 August 2012 the applicant was released from detention after being pardoned by the president of the "MRT".

II. APPLICATION NO. 8387/15

8. The second applicant was the founder and the director of a company in the "MRT". On 20 December 2012 he was arrested by the "MRT" authorities on charges of misappropriating funds of his business partners. His detention was extended repeatedly.

9. On 24 December 2012 all his personal property (two cars, two golden rings, a golden watch, 159 "MRT" roubles, the share in his company, and two mobile phones) and his company's property was seized.

10. On 16 June 2014 the applicant was convicted by the "Bender City Court" for abuse of position of trust and sentenced to 1 year and 8 months of imprisonment and a fine of 270 "MRT" roubles. The court also upheld the civil action lodged by two alleged victims and obliged the applicant to pay them 1,899,050 "MRT" roubles. The court further ordered the levy of execution upon the seized personal property of the applicant and the removal of all restriction measures in respect of his company's property.

11. On 5 August 2014 the "MRT" Supreme Court modified the first-instance judgment, increasing the amount of the civil award to 2,553,000 "MRT" roubles (equivalent to 212,750 euros (EUR)) and dispensing the applicant from serving the sentence because of the expiry of the statutory limitation period. On the same day the applicant was released from detention.

12. On 6 August 2014 a writ of enforcement was issued to levy execution upon the applicant's personal property (see paragraph 9). On 26 November 2014, the applicant was informed that in the course of enforcement proceedings an expert had evaluated his personal property to a total of 106,002 "MRT" roubles (equivalent to EUR 8,832).

13. The applicant was held in several detention facilities and often moved for short stretches of time from one to another.

14. From 20 December 2012 to 14 January 2013 he was detained in the temporary detention facility of the Tiraspol police headquarters (IVS Tiraspol), as described by him, in conditions of high humidity, overcrowding, no working ventilation and lack of access to natural light (since the detention facility was in the basement of the building), smoking, wooden bunk beds, no bed linen, unsanitary conditions, scarce and inedible food, cells infested by parasites.

15. From 14 to 22 January 2013 the applicant was held in prison no. 1 in Hlinaia, in overcrowded cells, without any heating, surviving on food and medication brought by his relatives.

16. From 22 January 2013 to 5 August 2014 the applicant was detained mainly in prison no. 3 in Tiraspol (UIN-3) in overcrowded cells, without any bed linen, the quality of the tap water was bad, and the cells' windows were very small and allowed damp and cold air into the cells. Daily walks were only allowed for a very short time each day. There was a weight limit on the items that could be sent to a detainee by his relatives (20 kg a month, including bottled water), which, combined with the inedible food provided by the detention facility, meant that he was often hungry.

17. Transportation from detention facilities to the court, investigator or another detention facility was in a metal truck, which had no heating and no toilet, and at times the applicant had to spend 9 hours in this vehicle on freezing temperatures.

18. The applicant submitted that neither of the detention facilities had adequate medical staff and that for his health condition he needed to rely on medication brought by his relatives.

19. Following an extraordinary appeal by the applicant's lawyer, on 7 April 2015 the Supreme Court of Justice of the Republic of Moldova quashed the judgments of the "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 all materials to be forwarded to the Moldovan General Prosecutor's Office for further action.

20. On 12 November 2014 the applicant submitted complaints to the Moldovan and to the Russian prosecution offices seeking the prosecution of perpetrators responsible for his unlawful deprivation of liberty and the protection of his property against the unlawful levy of execution ordered by the "MRT" courts.

21. On 2 December 2014 the Russian prosecutor's office replied that the applicant's complaint did not pertain to any violation of rights on the territory of the Russian Federation.

22. On 15 May 2015 the applicant was informed by the Bender prosecutor's office that a criminal investigation had been initiated, however in the absence of information concerning the identity of the perpetrators, it

had been suspended. The request for protection measures was not granted as the Moldovan criminal procedure law did not provide for such measures in respect of a victim's property.

RELEVANT MATERIALS

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

THE LAW

I. JOINDER OF THE APPLICATIONS

24. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ADMISSIBILITY

A. Exhaustion of domestic remedies

25. In respect of the first applicant's case, the Moldovan Government submitted that the applicant had not exhausted the remedies available to him in Moldova. In particular, he could have asked repeatedly the Moldovan Supreme Court of Justice to quash his conviction by the "MRT" courts, because after 2013 the Supreme Court of Justice had changed its practice and had declared itself competent to examine such cases. According to the Moldovan Government, the applicant could have complained to the Moldovan prosecutor's office and to the Bureau for reintegration.

26. The applicant disagreed.

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

B. Jurisdiction

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

29. The applicants submitted that both respondent Governments had jurisdiction.

30. The Moldovan Government submitted that they had positive obligations to secure the applicants' rights.

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

32. The Court notes that the parties in the present case maintain views on the issue of jurisdiction which are similar to those expressed by the parties in *Catan and Others* (cited above, §§ 83-101) and in *Mozer* (cited above, §§ 81-95). In particular, the applicants and the Moldovan Government submitted that both respondent Governments had jurisdiction, while the Russian Government submitted that they had no jurisdiction.

33. The Court recalls that the general principles concerning the issue of jurisdiction under Article 1 of the Convention in respect of actions and facts pertaining to the Transdniestrian region of Moldova were set out in *Ilaşcu and Others* (cited above, §§ 311-319), *Catan and Others* (cited above, §§ 103-107) and *Mozer* (cited above, §§ 97-98).

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

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

36. The Court notes that in *Ilaşcu and Others* it has already found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992 (see *Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdniestrian region that up until at least September 2016 (see *Eriomenco v. the Republic of Moldova and Russia*, no. 42224/11, § 72, 9 May 2017), the "MRT" was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support (see *Ivanţoc and Others*, cited above, §§ 116-120; *Catan and Others*, cited above, §§ 121-122; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (*Mozer*, cited above, §§ 110-111).

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

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

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

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

40. The applicants complained of a violation of Article 5 § 1 of the Convention, owing to their detention on the basis of unlawful decisions by the "MRT" authorities. The relevant parts of Article 5 § 1 read:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ..."

A. Admissibility

1. Application no. 48145/10

41. The Russian Government argued that after the passage of over eleven years since the relevant events, the Court's supervision of the observance of the first applicant's rights would not be "practical and effective". They therefore invited the Court to end its examination of the case.

42. The Court notes that the first applicant lodged his application in 2010, shortly after his conviction, and cannot be faulted for the time that has passed since then (*Mîrca v. the Republic of Moldova and Russia*, no. 7845/06, § 60, 27 April 2021). In the absence of any measures capable of depriving the first applicant of his victim status, the Court considers that continuing the examination of the case will serve as an effective protection of his rights.

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

2. Application no. 8387/15

44. In respect of the second applicant, the Russian Government submitted that his complaint under Article 5 of the Convention should be rejected for failure to submit it within six months. They explained that if the Transdniestrian remedies were considered ineffective by the Court, then the second applicant should not have waited for the "MRT" Supreme Court to give a final ruling on the case and should have lodged his application within six months of his conviction on 16 June 2014 by the first-instance "MRT" court.

45. The second applicant disagreed and argued that he could not be blamed for appealing his conviction before the "MRT" courts.

46. The Court reiterates the general principles concerning the calculation of the six-month period as summarised in *Sabri Güneş v. Turkey* ([GC], no. 27396/06, § 54, 29 June 2012).

47. The Court has previously found the absence of an effective remedy in the Russian Federation in respect of complaints of unlawful detention by the "MRT" authorities (see *Mozer*, cited above, §§ 211 et 218; and *Draci v. the Republic of Moldova and Russia*, no. 5349/02, § 41, 17 October 2017) and that in their respect the six-month period started running from the date when the applicant had been released (*Istratiy v. the Republic of Moldova and Russia*, no. 15956/11, § 31, 17 September 2019). The Court sees no reason to depart from that finding in the present case.

48. In particular, the Court finds that the applicant's alleged unlawful detention constituted a continuous situation which ended on 5 August 2014. The applicant submitted his application on 3 February 2015 before the expiry of the six-month period.

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

B. Merits

50. The applicants submitted that their deprivation of liberty was ordered by unlawful authorities and lacked legal basis. They argued that both respondent Governments were responsible for the breach of their rights.

51. The Moldovan Government submitted that they had difficulties in assessing the situation, in the absence of any effective control over the territory controlled by the "MRT".

52. In the first applicant's case, the Russian Government argued that the Court's findings made in *Mozer* (cited above) and *Vardanean v. the Republic of Moldova and Russia* (no. 22200/10, § 39, 30 May 2017) were based on the findings in *Ilaşcu and Others* (cited above), which in turn were based on a report written in 1994 by two persons at the request of the OSCE. That report, together with the absence of any new information about the legal and judicial system in the "MRT", should not still be the basis for the Court's conclusions in 2020. They submitted a summary of various legal provisions and agreements in force on the territory of the "MRT", including information about the judicial organisation and guarantees of independence of the judges and examples of successful protection of human rights in the region. They did not submit any copies of the relevant documents and invited the Court to conduct a fact-finding mission in case it disagreed with the submitted information.

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

54. In the first applicant's case, it is noted that the Russian Federation submitted a summary of documents concerning the judicial system in the "MRT", without submitting copies of the documents themselves (see paragraph 19 above). However, they failed to explain whether the judicial system or legislation which they have described in the "MRT" was in force during the relevant events (2008-2012).

55. The Court recalls that for the period 2008-2014 relevant to both applications, it has already established that the judicial system of the "MRT" was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-149 in respect of the facts going up to June 2010 and *Eriomenco*, cited above, § 72, up to September 2016). For that reason it held that the "MRT" courts and, by implication, any other "MRT" authority, could not order the applicants' "lawful" arrest or detention, within the meaning of Article 5 § 1 of the Convention (see *Mozer*, cited above, § 150).

56. In the light of the above, the Court considers that the conclusion reached in *Mozer* and *Eriomenco* is valid in the present case too. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of both applicants.

C. Responsibility of the respondent Governments

57. The Court must next determine whether the Republic of Moldova fulfilled its positive obligations to take appropriate and sufficient measures to secure the applicants' rights under Article 5 of the Convention (see paragraph 34 and 35 above). In *Mozer* the Court held that Moldova's positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicant's rights (see *Mozer*, cited above, § 151).

58. As regards the first aspect of Moldova's obligation, to re-establish control, the Court found in *Mozer* that, from the onset of the hostilities in 1991 and 1992 until July 2010, Moldova had taken all the measures in its power (*Mozer*, cited above, § 152). The events concerned in the first application took place before the latter date, while the events in the second application took place in 2012-2014. The Court notes that none of the parties submitted any evidence that the Republic of Moldova had changed its position towards the Transdniestrian issue during this period of time and it therefore sees no reason to reach a different conclusion from that reached in *Mozer* (cited above, § 152).

59. Turning to the second aspect of the positive obligations, namely to ensure respect for the applicant's individual rights, the Court found in *Ilaşcu and Others* (cited above, §§ 348-352) that the Republic of Moldova had failed to fully comply with its positive obligations, to the extent that from

May 2001 it had failed to take all the measures available to it in the course of negotiations with the "MRT" and Russian authorities to bring an end to the violation of the applicants' rights. In the present case, the applicants submitted that the Republic of Moldova had not discharged its positive obligations because the initiated criminal investigation had not been efficient to protect the second applicant's rights and because since November 2016 the position of the Moldovan president had been ambiguous in respect of the "MRT" authorities.

60. The Court considers that Moldovan authorities did not have any real means of improving the conditions of detention in the "MRT" prisons, nor could they move the applicants to other prisons or release them from the "MRT" prisons (see, *a contrario*, *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 ill-treatment or of unlawful detention.

61. As is clear from the case-file, the first applicant did not seek any assistance from the Government of the Republic of Moldova. Although his request to quash the conviction by the "MRT" courts had been left without examination, it appears that he can repeatedly ask and obtain the quashing of the said conviction given the change in the practice of the Moldovan Supreme Court of Justice after 2013 (*Mozer*, cited above, § 73).

62. In respect of the second applicant, an investigation into the unlawful acts of the "MRT" authorities had been initiated but had to be suspended due to the absence of cooperation by that region, making it impossible to carry out any meaningful prosecution. In addition, the second applicant managed to have his conviction by the "MRT" courts quashed by the Moldovan Supreme Court of Justice (see paragraph 19 above).

63. The Court notes that the facts of the case go up to 2015 and, therefore, it was not necessary to consider the applicants' arguments concerning the conduct of the Moldovan authorities beyond that date.

64. In the light of the foregoing, the Court concludes that the Republic of Moldova had fulfilled its positive obligations and that there has been no violation of Article 5 of the Convention by the Republic of Moldova.

65. The Court has established that Russia exercised effective control over the "MRT" during the period of the applicants' detention (see paragraphs 36-38 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercises detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicants' rights (*ibidem*).

66. In conclusion, and having found that the applicants' detention had been unlawful in breach of Article 5 of the Convention (see paragraph 56

above), the Court holds that there has been a violation of that provision by the Russian Federation.

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

67. The applicants also complained about the absence of an effective remedy within the meaning of Article 13 of the Convention in respect of their complaints under Article 5 § 1 of the Convention.

68. Article 5 § 4 being the *lex specialis* in relation to Article 13, the Court considers that this complaint should be examined solely from the standpoint of Article 5 § 4 of the Convention.

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

70. However, in view of its finding that the detention of the applicants was as a whole contrary to Article 5 § 1 of the Convention, the Court considers that it is unnecessary to examine separately the complaint under the other provisions of Article 5 (see *Mozer*, cited above, § 163).

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

71. The second applicant complained that that he had been held in inhuman conditions of detention, without the necessary medical assistance, contrary to the requirements of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

72. The Russian Government submitted that the second applicant's complaints under Article 3 of the Convention concerning conditions of detention before 16 June 2014 should be rejected for failure to submit them within six months.

73. The applicant disagreed and argued that his complaint concerning conditions of detention revealed a "continuing situation" which ended only on 5 August 2014 when he had been released and that he had lodged his application within six months from that date.

74. The Court refers to the principles established in its case-law concerning the calculation of the six-month time-limit for lodging applications concerning conditions of detention which amount to a "continuing situation" when the main characteristics of the periods of detention under examination are essentially the same (see, for instance, *I.D.*

v. Moldova, no. 47203/06, §§ 27-29, 30 November 2010; *Segheti v. the Republic of Moldova*, no. 39584/07, § 25, 15 October 2013; *Shishanov v. the Republic of Moldova*, no. 11353/06, § 65, 15 September 2015).

75. As it follows from the facts above (paragraphs 14-16), the second applicant complained about cell overcrowding, poor food and hygiene conditions in all facilities. Therefore, these aspects of conditions of detention in the three facilities can be considered to amount to a continuing situation. Any complaint in that regard should have been lodged with the Court within six months of the applicant's release on 5 August 2014, which the applicant did.

76. In such circumstances it cannot be said that his complaint under Article 3 of the Convention was lodged out of time. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

77. The applicant complained about the inhuman conditions in which he had been held in the "MRT" detention facilities and provided a detailed description thereof.

78. The Moldovan Government agreed with the applicant's description of conditions of detention but argued that they lacked effective control over the "MRT" and therefore were not responsible of a breach of the applicant's rights in this respect.

79. The Russian Government argued that since the "MRT" was part of Moldovan territory and, in the absence of any control by Russia over the events on that territory, only the Moldovan Government could submit any comments concerning the merits of the case.

80. The Court has already had the occasion to examine the conditions of detention in the "MRT" (see among others, *Mozer*, cited above, §§ 180-182; *Eriomenco*, cited above, §§ 55-56; *Apcov v. the Republic of Moldova and Russia,* no. 13463/07, § 42, 30 May 2017) and concluded that there had been a violation of Article 3 of the Convention.

81. After having examined the facts of this case and in the absence of information contradicting the applicant's submissions (see paragraphs 14-18), the Court concludes that the applicant's conditions of detention amount to inhuman and degrading treatment contrary to Article 3 of the Convention. In view of this finding, the Court considers that it is unnecessary to examine separately the complaint concerning the medical assistance in detention.

82. There has accordingly been a violation of Article 3 of the Convention.

83. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights.

84. For the same reasons as those mentioned above (see paragraphs 57-63), the Court finds that there has been no violation of Article 3 of the Convention by the Republic Moldova.

85. For the same reasons as those mentioned above (see paragraph 65), the Court finds that Russia is responsible for the breach of Article 3 of the Convention.

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

86. The second applicant further complained that the seizure of his assets and levy of execution on them 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."

87. The respondent Governments made no specific submissions.

88. 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 had been seized by the "MRT" authorities and that they had been used to cover the civil award against the applicant. In these 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. Consistently with 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 which 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, *Katsaros v. Greece*, no. 51473/99, § 43, 6 June 2002; *Herrmann v. Germany* [GC], no. 9300/07, § 74, 26 June 2012; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012) and "in accordance with the general interest". The measure must also be proportionate to the aim pursued; however, it is only necessary to

examine the proportionality of an interference once its lawfulness has been established (see *Katsaros*, cited above, § 43).

89. 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 guaranteed by Article 1 of Protocol No. 1 (see also *Turturica and Casian v. the Republic of Moldova and Russia*, nos. 28648/06 and 18832/07, § 49, 30 August 2016; *Babchin v. the Republic of Moldova and Russia*, no. 55698/14, § 74, 17 September 2019).

90. In those circumstances, the Court concludes that the interference was not lawful under domestic law. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

91. For the same reasons as those mentioned above (see paragraphs 57-63), the Court finds that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic Moldova.

92. For the same reasons as those mentioned above (see paragraph 65), the Court finds that Russia is responsible for the breach of Article 1 of Protocol No. 1 to the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

93. Lastly, the second applicant complained that he had no effective remedies in respect of his complaints under Article 3 of the Convention, and under Article 1 of Protocol No. 1 to the Convention. He relied on Article 13 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

95. The second applicant submitted that he had had no means of asserting his rights in the face of the actions of the "MRT" authorities.

96. The Moldovan Government submitted that there had been a violation of Article 13 in the present case, for which they could not be held responsible. The Russian Government did not make any specific comment.

97. The Court observes that it found that the applicant's complaints under Article 3 of the Convention and Article 1 of Protocol No. 1 to the Convention were arguable. He was therefore entitled to an effective domestic remedy within the meaning of Article 13 in respect of these complaints.

98. The Court already found the absence of an effective remedy in respect of violations committed by the "MRT" authorities (see for example, *Mozer*, cited above, §§ 210-212, and *Eriomenco*, cited above, § 96; *Babchin*, cited above, § 83). In view of the similarity of the complaints made and of the coincidence of the time-frame of the events in the present case with those in *Eriomenco* and *Babchin* (both cited above), the Court sees no reasons to depart from that conclusion in the present case.

99. The Court therefore concludes that the second applicant did not have an effective remedy in respect of his complaints under Article 3 of the Convention and Article 1 of Protocol. No. 1 to the Convention. Consequently, the Court must decide whether the violation of Article 13 can be attributed to any of the respondent States.

100. The Court notes that in *Mozer* (cited above, §§ 213-216) it found that Moldova had made procedures available to applicants commensurate with its limited ability to protect their rights. It 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 (*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.

101. As in *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 Article 3 of the Convention and with Article 1 of Protocol No. 1 to the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

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

A. Pecuniary damage

103. The second applicant claimed EUR 212,750 as pecuniary damage, which according to him represented the value of his seized assets.

104. The respondent Governments considered the applicant's claims excessive and asked the Court to dismiss them.

105. 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 pecuniary damage is to be made as regards that respondent State.

106. The Court further notes that the second applicant had not recovered his assets. As to their value, according to the "MRT" authorities it constituted EUR 8,832 (see paragraph 12 above). Although the second applicant disputed this amount, he did not provide any element of evidence in support of his claims. Since the Russian Government did not challenge that fact or the value of the assets as indicated by the second applicant, the Court considers it reasonable to award the second applicant EUR 8,832 as pecuniary damage, plus any tax that may be chargeable on the applicant, to be paid by the Russian Federation.

B. Non-pecuniary damage

107. The applicants also claimed EUR 9,000 and EUR 50,000 respectively in respect of non-pecuniary damage.

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

109. 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 is to be made as regards that respondent State.

110. The Court considers that the applicants have suffered a certain level of stress following their unlawful detention. This was particularly serious in respect of the second applicant, considering the inhuman conditions of detention, as well as the unjustified interference with the enjoyment of his possessions and the lack of an effective remedy.

111. Having regard to the violations by the Russian Federation found above, the Court awards EUR 9,000 to the first applicant and EUR 16,300 to the second applicant, plus any tax that may be chargeable on the applicants, to be paid by the Russian Federation.

C. Costs and expenses

112. The applicants also claimed EUR 1,500 and EUR 8,040 respectively for costs and expenses. The applicants submitted a copy of their contracts with their representatives and an itemized timesheet of their work. The first applicant asked that the amount of costs and expenses be paid directly to his representative.

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

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

115. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Guja v. Moldova* [GC], no. 14277/04, § 108, ECHR 2008). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 1,500 to the first applicant, to be paid directly to his representative, and EUR 3,000 to the second applicant for costs and expenses, plus any tax that may be chargeable on the applicants, to be paid by the Russian Federation.

D. Default interest

116. 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. *Decides* to dismiss the Moldovan Government's preliminary objection in application no. 48145/10 concerning the non-exhaustion of domestic remedies;

3. *Declares* the complaints concerning Article 5 §§ 1 and 4 of the Convention in application no. 48145/10 and application no. 8387/15 admissible;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova, in respect of both applicants;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention by the Russian Federation, in respect of both applicants;

6. *Holds* that there is no need to examine the complaints under Article 5 § 4 of the Convention, in respect of both applicants;

7. *Holds* that there has been no violation of Article 3 of the Convention by the Republic of Moldova, in respect of the second applicant;

8. *Holds* that there has been a violation of Article 3 of the Convention by the Russian Federation, in respect of the second applicant;

9. *Holds* 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;

10. *Holds* 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;

11. *Holds* that there has been no violation of Article 13 of the Convention in respect of the complaints concerning conditions of detention and protection of property by the Republic of Moldova, in respect of the second applicant;

12. *Holds* that there has been a violation of Article 13 of the Convention in respect of the complaints concerning conditions of detention and protection of property by the Russian Federation, in respect of the second applicant;

13. *Holds*
    (a) that the Russian Federation is to pay the applicants, within three months, the following amounts:
        (i) EUR 8,832 (eight thousand eight hundred thirty two euros), plus any tax that may be chargeable, in respect of pecuniary damage, to the second applicant;
        (ii) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
        (iii) EUR 16,300 (sixteen thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
        (iv) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of costs and expenses, to be paid directly to the first applicant's representative's bank account;
        (v) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of costs and expenses, to the second applicant;
    (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;

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

Done in English, and notified in writing on 13 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Carlo Ranzoni
Deputy Registrar	President