



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

FORMER FOURTH SECTION

CASE OF IVANȚOC AND OTHERS v. MOLDOVA AND RUSSIA

(Application no. 23687/05)

JUDGMENT

STRASBOURG

15 November 2011

FINAL

04/06/2012

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.



In the case of Ivanțoc and Others v. Moldova and Russia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Anatoly Kovler,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 23687/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Moldovan nationals, Mr Andrei Ivanțoc, Mr Tudor Popa, Mrs Eudochia Ivanțoc and Mr Victor Petrov (“the applicants”), on 10 June 2005.

2. The applicants were represented by Mr V. Nagacevschi, a lawyer practising in Chișinău, and Mr V. Gribincea, acting on behalf of “Lawyers for Human Rights”, a non-governmental organisation based in Chișinău. The Moldovan Government were represented by their Agent, initially Mr V. Parlog, then Mr V. Grosu. The Russian Government were initially represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

The applicants alleged that the first two applicants were unlawfully detained from 8 July 2004 until 2 and 4 June 2007 respectively, and that their conditions of detention amounted to ill-treatment and infringed their right to respect for family life. They invoked Articles 3, 5, 8, 13 and 46 of the Convention.

3. On 21 March 2006 the Court decided to give notice of the application to the respondent Governments. Written observations on its admissibility were filed on 4 December 2006 by the Moldovan Government, on 5 December 2006 by the Russian Government and on 17 July 2006 by the applicants. Observations were also submitted on 17 July 2006 by the Romanian Government, who were given leave to intervene in the proceedings pursuant to Article 36 § 1 of the Convention.

On 18 September 2007 a Chamber of the Fourth Section decided to give notice to the parties of its intention to relinquish jurisdiction in favour of the Grand Chamber in accordance with Article 30 of the Convention.

On 4 December 2007 the Chamber decided not to relinquish jurisdiction in favour of the Grand Chamber following the Russian Government’s objection.

On 30 September 2008 the Chamber decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants, Andrei Ivanțoc, Tudor Popa, Eudochia Ivanțoc and Victor Petrov, are Moldovan nationals who were born in 1961, 1963, 1963 and 1988 respectively. Mr Ivanțoc is also a Romanian national. At the time of lodging their application, the first two applicants were detained in Tiraspol and Hlinaia respectively. Andrei Ivanțoc was released on 2 June 2007 and Tudor Popa was released on 4 June 2007. The third applicant is the wife of the first applicant. She is unemployed and lives in Chișinău. The fourth applicant is the second applicant's son. He is a student and lives in Chișinău.

A. Application no. 48787/99 and the Court's judgment of 8 July 2004

5. The facts concerning the background of application no. 48787/99, including the Transnistrian armed conflict of 1991-1992 and the period up to late 2003, are set out in *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia* [GC], no. 48787/99, §§ 28-183, ECHR 2004-VII.

6. The first and second applicants were detained until their release, respectively on 2 and 4 June 2007, in the "Moldovan Republic of Transnistria" (MRT).

7. On 9 December 1993 the first and second applicants were tried and convicted by the "Supreme Court of the Moldavian Republic of Transnistria" for various crimes and offences such as murder, deliberate destruction of another's property and the unauthorised use and theft of ammunition or explosive substances. They were sentenced to 15 years' imprisonment and confiscation of their property.

8. In 1999 the first and second applicants, as well as two other individuals who had been tried and convicted with them in 1993, namely Mr Ilie Ilașcu and Mr Alexandru Leșco, filed an application with the Court concerning, *inter alia*, the alleged unlawfulness of their detention and their conditions of detention.

9. In a judgment of 8 July 2004 in application no. 48787/99 the Grand Chamber of the Court found that both Moldova and the Russian Federation's responsibility was engaged with regard to the acts complained of and held that there had been violations of various Articles of the Convention (see below, paragraph 12).

10. In the first place, the Court found that the Moldovan Government was the only legitimate government of the Republic of Moldova under international law, but that it did not exercise authority over that part of its territory that was under the effective control of the "Moldavian Republic of Transnistria" (MRT). Nevertheless, in the Court's opinion, the Moldovan Government were under a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that were in their power to take and that were in accordance with international law to secure to the applicants the rights guaranteed by the Convention (*Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII, §§ 330-331).

It further stated that it was not its task to indicate which measures the authorities had to take in order to comply with their obligations most effectively, but that it had to verify that the measures actually taken were appropriate and sufficient in the present case. When

faced with a partial or total failure to act, the Court's task was to determine to what extent a minimum effort was nevertheless possible and whether it should have been made. Determining that question was especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Articles 2 and 3 of the Convention (*ibid.* § 334).

The Court noted that until 2001, the Moldovan authorities had taken various measures aimed at obtaining the applicants' release and that as a result, Mr Ilașcu was released in May 2001. It considered that even after Mr Ilașcu's release in May 2001, it was within the power of the Moldovan Government to take measures to secure to the applicants their rights under the Convention. It further noted that the negotiations for a settlement of the situation in Transdniestria, in which the Russian Federation was acting as a guarantor State, had been on-going since 2001 without any mention of the applicants or without any measure being taken or considered by the Moldovan authorities to secure the applicants their Convention rights, although it was within the power of the Moldovan Government to take such measures (*ibid.*, §§ 350 and 351).

The Court therefore held that Moldova's responsibility was capable of being engaged under the Convention on account of its failure to discharge its positive obligations with regard to the acts complained of which occurred after May 2001 (*ibid.*, § 352).

11. As to the Russian Federation, the Court found that all of the acts committed by the Russian soldiers with regard to the applicants before the ratification of the Convention by the Russian Federation, including their transfer into the charge of the Transdniestrian separatist regime, in the context of the Russian authorities' collaboration with that illegal regime, were capable of engaging responsibility for the acts of that regime (*ibid.*, § 385).

Turning to the question whether that responsibility was still engaged at the time of the ratification of the Convention by the Russian Federation, the Court found that the "MRT", which had been set up in 1991-1992 with the support of the Russian Federation and was vested with organs of power and its own administration, remained "under the effective authority, or at the very least under the decisive influence of the Russian Federation, and in any event, it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation" (*ibid.*, § 392).

It therefore held that there was a continuous and uninterrupted link of responsibility on the part of the Russian Federation for the applicants' fate, as the Russian Federation's policy of support for the regime and collaboration with it continued beyond 5 May 1998, the date of entry into force of the Convention in respect of the Russian Federation, and after that date the Russian Federation had made no attempt to put an end to the applicants' situation brought about by its agents, and did not act to prevent the violations allegedly committed after 5 May 1998. In the light of these findings, it considered it to be of little consequence that since 5 May 1998 the agents of the Russian Federation have not participated directly in the events complained of in that application (*ibid.*, § 393).

The Court held that the applicants came within the "jurisdiction" of the Russian Federation for the purposes of Article 1 of the Convention and its responsibility was engaged with regard to the acts complained of (*ibid.*, § 394).

12. Applying these findings (paragraphs 10 and 11 above) to the alleged substantive violations of the Convention, the Court further found, in respect of the applicants Andrei Ivanțoc and Tudor Popa¹:

¹ The applicant's name at the date of the judgment on 8 July 2004 was Petrov-Popa

i) that their detention was contrary to Article 5 § 1 (a) of the Convention, that, since the applicants were still detained, this violation was of a continuous nature (§ 463), and that the conduct constituting a violation of this provision was imputable both to the Russian Federation as from 5 May 1998, and to Moldova as from May 2001 (§ 464);

ii) that any continuation of the unlawful and arbitrary detention of the applicants would necessarily entail a serious prolongation of the violation of Article 5 and a breach of the respondent States' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment, and indicated that "the respondent States must take every measure to put an end to the arbitrary detention of the applicants still detained and to secure their immediate release" (§ 490);

iii) that the persecution, ill-treatment and restrictions to which Mr Ivanțoc was subjected while in detention constituted "torture" within the meaning of Article 3 of the Convention (§§ 444-447), that the Russian Federation was responsible for the treatment inflicted on Mr Ivanțoc as from 5 May 1998, and that Moldova was responsible for that treatment from May 2001 onwards (§ 449).

iv) that the harsh conditions of detention experienced by Mr Popa could be qualified as inhuman and degrading treatment within the meaning of Article 3 of the Convention (§ 452), that the Russian Federation was responsible for that violation as from 5 May 1998, and that Moldova was responsible for that violation as from May 2001 onwards (§ 454).

13. As to the application of Article 41, the Court ordered the Russian Federation and Moldova to pay to each applicant the sum of 190,000 euros (EUR) for pecuniary and non-pecuniary damages, and awarded the overall sum of EUR 17,036 for costs and expenses.

B. The respondent States' responsibility under Article 1 of the Convention after 8 July 2004

14. The applicants refer to a number of facts concerning the respondent States' responsibility under Article 1 of the Convention after 8 July 2004, the date of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment.

1. The facts put forward by the applicants

15. The applicants submitted the following information concerning, on the one hand, the relations between Moldova, the "MRT" and the Russian Federation with regard to the applicants and, on the other hand, the alleged support provided to the "MRT" by the Russian Federation.

16. On 8 July 2004 the Moldovan Ministry of Foreign Affairs issued a statement in which it expressed its regret that the Russian Federation was delaying the withdrawal of its troops from Moldova, in violation of the decisions taken at the OSCE Summit in Istanbul in November 1999.

17. On 9 July 2004 the "Ministry of Foreign Affairs of the MRT" issued a statement accusing the European Court of Human Rights of having decided the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia* case in a superficial and biased manner

and confirming that the release of the applicants prior to completion of their term was impossible.

18. The applicants' situation was not discussed during the visit to Russia of the Moldovan Minister of Foreign Affairs on 13 and 14 July 2004, although the Moldovan Minister met Mr Lavrov, the Russian Minister of Foreign Affairs, and Mr Kozak, Head of the Government administration.

19. On 1 August 2004 Moldova prohibited the import and export of merchandise to and from the "MRT".

20. The applicants submitted the following information concerning the alleged political support provided by the Russian Federation to the "MRT":

- on 3 August 2004 the first Deputy Minister of Foreign Affairs of the Russian Federation met the "Head of the Transnistrian Institution of Foreign Affairs" in Moscow;

- on 1 September 2004 the "MRT" press agency, Olvia Press, published information stating that the acting President of the Duma and eight other leaders of various administrative provinces of the Russian Federation had congratulated the leader of the "MRT" on the occasion of the 14th anniversary of the creation of the "MRT";

- on 15 December 2004 the new Ambassador of the Russian Federation to Moldova went to Tiraspol, where he met the "President of the MRT", the "Minister of Foreign Affairs" and "the leadership of the Soviet Supreme".

- on 8 February 2005 a group from the State Duma met the "Minister of Foreign Affairs of the MRT" in Tiraspol. On that occasion, the Moldovan Ministry of Foreign Affairs expressed its indignation at this visit and the general attitude in various Russian governmental circles towards the Transnistrian region;

- on 5 March 2005 the Ambassador of the Russian Federation to Moldova went to Tiraspol, where he met the "President of the MRT".

- on 5 April 2005 the Russian First Deputy Minister of Foreign Affairs received the "leader of the institution for external relations in Transnistria" in Moscow;

- in April 2005 the "Academy for Security, Defence and Rule of Law Issues", an association created at the initiative of the Russian Security Council, awarded the "President of the MRT" the Order of Peter the Great for his personal contribution to the development and strengthening of Russia;

- on 31 August 2005 the Transnistrian news agency "Olvia Press" reported that the Mayor of Moscow city and leaders of various regions of the Russian Federation congratulated the "President of MRT" on the celebration of 15 years since the creation of the "MRT";

- on 1 September 2005, at a gathering in Tiraspol, the leader of the parliamentary faction of the Liberal Democratic Party of the State Duma of the Russian Federation, Alexei Mitrofanov, on behalf of the deputy President of the Duma, congratulated the people of Transnistria on the same achievement and declared that the Russian Federation and its economy would be present in the "MRT" forever;

- between 11 and 13 October 2005 a delegation of high officials from the Russian Federation headed by Mr Iurii Zubacov, deputy Secretary of the Security Council of the Russian Federation, visited the "MRT" and met the "President of MRT";

- on 1 February 2006 the "head of the department of foreign affairs of MRT" was received at the Ministry of Foreign Affairs of the Russian Federation;

- on 5 May 2006 the Minister of Foreign Affairs of the Russian Federation met the “President of Transdnistria”. According to Olvia Press, they discussed how Russian military presence could be maintained in the region;
- on 31 May 2006 the “President of MRT”, Mr Smirnov, declared that a referendum on the future of Transdnistria could take place in September 2006 and that Russian officials were supporting this idea;
- according to Olvia Press, on 31 May 2006 Mr S. Ivanov, Minister of Defence of the Russian Federation, declared that Russian military troops would remain in Transdnistria until the final solution of the Transdnistrian conflict;
- between 21 and 23 June 2006 an official Russian delegation headed by the adviser to the Prime Minister of the Russian Federation visited Chișinău and Tiraspol and discussed issues related to social problems and the implementation of the agreement signed between Russia and the “MRT” on 23 March 2006;
- on 18 July 2006 the Permanent Representation of the Russian Federation to the Permanent Council of the OSCE made a statement in support of the referendum in “MRT”;
- on 17 September 2006 a referendum took place in “MRT”, which resulted in the participation of 76.8% of Transdnistrians with voting rights, out of which 94.2% voted in favour of the independence of “MRT” and its adhesion to the Russian Federation;
- between 11 and 12 October 2006 a representative of the Ministry of Foreign Affairs of the Russian Federation visited Moldova and the “MRT”, where he met the “President of MRT”.

21. The applicants further provided the following information relating to the economic relations between the Russian Federation and the “MRT”:

- on 8 and 9 September 2004 a delegation from the Russian Chamber of Commerce travelled to Tiraspol on a business trip; Russian capital plays an important part in the privatisation of Transdnistrian enterprises and a branch of the Russian Chamber of Commerce and Industry was opened in “MRT”;
- on 18 February 2006, in reply to the “increase in tension in the atmosphere around Transdnistria”, the State Duma adopted a declaration recommending the Russian Government and economic agents to examine the possibility of refusing to import Moldovan alcohol products (except for Transdnistria), to supply oil and gas at world prices (except for Transdnistria) and to introduce a visa regime for Moldovan citizens (except Transdnistria);
- on 4 March 2006, following the new policy adopted by Ukraine requiring that all goods exported from “MRT” first pass through customs control with the Moldovan authorities, the Ministry of Foreign Affairs of the Russian Federation protested against the new export regime instituted by Moldova and Ukraine and called for its review;
- on 4 March 2006 the Duma asked the Prime Minister to inform it of the measures taken by the Government pursuant to the declaration of 18 February 2006. The Prime Minister explained that the Government were examining the possibilities of introducing technical barriers to the import of Moldovan alcohol products (except for Transdnistria). He also mentioned that the Government were planning to request Moldova to pay its historical debt in excess of USD 1,000 million for the supply of gas. Mr Fradcov finally noted that the question of the introduction of visas for Moldovan citizens (except those

from Transdniestria) needed to be examined further due to the role of the Russian Federation in the region;

- on 7 March 2006 a group of Russian experts went to Transdniestria to examine the export regime introduced on 3 March 2006. The amount of Russian financial assistance to “MRT” was also discussed during this visit;

- on 23 May 2006 the “President of MRT” and the Russian Deputy Prime Minister A. Jukov signed an agreement allowing the “MRT” to collaborate directly with Russian partners in the healthcare and banking spheres;

- as from 27 March 2006 Russia started prohibiting the import of all alcohol products made in Moldova, despite the periodic requests of the Moldovan authorities to review this measure;

- on 26 April 2006 “MRT” received from a fund set up by the Krasnodar region of the Russian Federation 280 million Russian Rubles by way of financial assistance;

- as from March 2006 the Moldovan Rail Company decided to avoid rail communication passing through Transdniestria, which resulted in delays to trains travelling to the Russian Federation. Consequently, the Russian partner decided to cancel, as from 1 November 2006, one out of three trains travelling from Moldova to Moscow.

2. The facts as presented by the Moldovan Government

22. The Moldovan Government considered that the Convention responsibility of the Russian Federation continued to be engaged having regard to the latter’s support for the Transdniestrian regime and to the fact that they maintained their troops on the territory of Moldova, in breach of international law, of the OSCE Summit Statements in Istanbul (1999) and in Porto (2002) (see also *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, §§ 124, 354 and 387), and of Law no. 173-VI of 22 July 2005 on essential provisions on the particular legal status of the towns on the left bank of Dniestr, which provided for a complete, urgent and transparent withdrawal by the Russian Federation of its weaponry and military personnel in Transdniestria.

23. They further submitted that they had taken all the measures in their power to secure the applicants’ release. They referred to numerous measures taken in order to comply with the Court’s judgment in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa*, and stated that these were constantly brought to the attention of the Committee of Ministers of the Council of Europe on the occasion of its meetings for the supervision of the above-mentioned judgment.

24. Among these measures, they referred to the following:

- in a letter of 22 August 2005 addressed to the President of the International Committee of the Red Cross (ICRC), Mr Jakob Kellenberger, the Moldovan Minister of Foreign Affairs asked the ICRC to intercede with the Russian authorities in order to obtain the applicants’ release;

- on 25 August 2005 the Moldovan Minister for Reintegration sent a letter to the OSCE Chief of Mission to Moldova, asking him to step up the OSCE’s efforts to secure the applicants’ release. Around the same time, the minister also sent a letter to the Transdniestrian Representative for the Settlement of the Transdniestrian Conflict, asking him to allow Moldovan medical staff to check the health of the detained applicants;

- on 28 August 2005 the Moldovan authorities sent in vain a letter to “the Minister of Foreign Affairs of the MRT” asking him to release the applicants:

- on 20 September 2005 the Moldovan Ombudsman, Mr Iurii Perevoznic, sent a letter to his Russian counterpart, Mr Vladimir Lukin, asking him to use his authority and power to obtain the applicants' release. His successor sent a similar letter to the Russian Ombudsman on 22 February 2006;

- in February 2006 the Moldovan Minister for Reintegration, M. Șova, sent a letter to the Russian Ambassador for Special Mission within the Russian Ministry of Foreign Affairs, M. Nesterushkin, and to the Transdnistrian Representative for the Settlement of the Transdnistrian Conflict, M. Litskay, asking them to collaborate in order to secure the applicants' release;

- on 9 February 2005 the President of the Moldovan Parliament, Mrs Ostapciuc, wrote to her Russian counterpart, Mr Gryzlov, to the same end;

- the Moldovan authorities also regularly raised the issue of the applicants' release with the Permanent Council of the OSCE;

- in addition, the Moldovan Minister of Foreign Affairs sent a circular letter to all Moldovan diplomatic missions, instructing them to use all possible diplomatic contacts abroad in order to obtain the applicants' release;

- the Moldovan President, Mr Voronin, raised this issue not only with the Presidents of the Russian Federation and Ukraine, but also with the NATO structures in 2005;

- following the adoption of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment, there was a change in the practice of the Moldovan courts, in that they started awarding damages for unlawful acts committed by the Transdnistrian administration. For instance, in a judgment delivered on 21 October 2004, upheld by the Moldovan Supreme Court, Orhei County Court awarded an individual non-pecuniary damages on account of his unlawful detention in the Transdnistrian region. The damages were paid by the Moldovan Ministry of Finance.

25. Furthermore, the Moldovan Government referred to developments in the relations between Moldova and the Russian Federation following the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment.

26. They submitted that the negotiations between Moldova on the one hand, and Russia and Transdnistria on the other hand, had reached a deadlock following the refusal of the Moldovan President to sign the Kozak Memorandum (see below paragraph 59 with further references).

27. In addition, after 2004 relations between Russia and Transdnistria became even closer at the political, military and economic levels.

28. The Government also referred in this respect to a study in 2006 by the New York City Bar Association, "Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova" which pointed to Russia's activities in Transdnistria, "including the intervention of its 14th Army on behalf of the separatists, the ongoing military assistance to the Moldovan Republic of Transdnistria ("MRT"), the economic support for the MRT, and effectively bargaining on behalf of the MRT using energy and other levers of power against Moldova", and which concludes that "Russia has illegally propped up the viability of the MRT and made reintegration virtually impossible".

29. The presence of Russian troops on the territory of Moldova, in the Transdnistrian part, amounted to a form of political and military support for the Transdnistrian regime.

Moldovan authorities regularly raised with the Russian Federation the issue of the illegal stationing of Russian military forces on the territory of Moldova. However, the

Russian Federation did not make the necessary efforts to ensure a complete withdrawal of their troops. Moreover, Russia refused to sign a statement on stability proposed by Moldova during the OSCE Summit in Sofia in December 2004.

30. In 2005 the Moldovan Parliament made a public statement calling on the Russian Federation to withdraw its troops and material from Moldovan territory, since the purpose of the cease-fire agreement concluded between Moldova and the Russian Federation had been achieved.

31. According to the Moldovan Government, the Russian Federation undertook once more within the framework of the OSCE to withdraw its troops from the Transdniestrian part of Moldova by 31 December 2006, but again failed to fulfil its obligations.

32. The Moldovan Government submitted that the Russian Federation continued to exert economic pressure on Moldova, while reserving preferential treatment for the Transdniestrian region.

For instance, the Russian authorities increased the price of natural gas exported to Moldova, while fixing a low price for the Transdniestrian part. Starting in 2005 the Russian Federation stopped, under false pretences, the importation of meat, wine, fruit and vegetables from Moldova, in breach of WTO regulations and the free-trade agreement between Moldova and the Russian Federation.

Likewise, the Russian Federation provided technical and financial assistance to various projects initiated by the Transdniestrian administration, for instance a project on railroads in June 2005.

33. The Moldovan Government further submitted that the Russian Federation was behind the decision of the Transdniestrian administration to forbid the use of the Latin script in schools in Transdniestria and to prevent farmers from obtaining access to the land they owned situated in the villages behind the cease-fire line.

34. Insofar as Russian political support for Transdniestria was concerned, the Moldovan Government pointed to, *inter alia*, the statement by the Russian Duma that the Transdniestrian electoral code was in accordance with Russian legislation and European requirements in that field, the statement made in October 2005 by the Russian Ambassador in Moldova during the celebration of the anniversary of the city of Tiraspol proclaiming that “Tiraspol was and continues to be an integral part of Southern Russia and of Russian history”, and the statement on 2 June 2006 by the Russian Minister of Foreign Affairs about the right to self-determination of the former Soviet republics.

3. *The Russian Government*

35. The Russian Government did not make any comments on the facts.

C. The detention of the applicants Andrei Ivanțoc and Tudor Popa after 8 July 2004

36. The applicants refer to a number of facts concerning the conditions in which Mr Ivanțoc and Mr Popa were detained since 8 July 2004, the date of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment, until their release on the expiry of their term of imprisonment in June 2007, and their effects on all applicants’ family life:

1. The applicants' detention

37. On 21 July 2005 the "Supreme Soviet of MRT" decreed a general amnesty. Under point 10 letter (b) of this decree, the term of imprisonment of persons convicted of intentional crimes for a period of more than 6 years was reduced by one third. On 10 October 2005 Mr Gribincea sent a letter to the "Ministry of Justice of MRT" requesting it to explain whether the amnesty decree of 21 July 2005 was applicable to the applicants, and if so, when and in what circumstances the applicants would be released.

On 10 April 2006 the "Minister of Justice of MRT" informed Mr Gribincea that he could neither answer Mr Gribincea's questions nor maintain correspondence with him, as Mr Gribincea had no right to represent persons on the territory of the "MRT".

38. The applicants' conditions of detention did not change following the Court's judgment of 8 July 2004.

39. Both Andrei Ivanțoc and Tudor Popa were detained in solitary confinement. No explanation was ever provided for their detention regime and conditions.

40. Mr Popa was detained until his release to Hlinaia Prison and placed in the wing for prisoners sentenced to death. His cell contained a metal cage of the same size as the cell, i.e. some 8 sq. m. Inside the cell there was a metal bed and a table.

Mr Ivanțoc was detained in Tiraspol Prison no. 2, in a cell of some 16 sq. m.

41. The applicants spent 23 hours a day in their cells, which had no natural light. Access of sunlight was blocked by special blinds, which also prevented them from looking outside.

42. Both applicants were entitled to a daily one-hour walk in a closed courtyard; no other prisoner could be present at the same time. From the courtyard the applicants could only see the sky and four very high walls. The applicants had no access to the gym or other such facilities.

They were allowed to have a shower once a week. In summertime there was no warm water. During the winter of 2004-2005 there was no cold water at all in Tiraspol Prison no. 2, so that Andrei Ivanțoc had only hot water for all his needs.

43. The cells were never heated. Unlike Mr Popa, Mr Ivanțoc was allowed to receive an electric heater from his family. He was also allowed to build a small wall in order to separate the toilet from the rest of his cell.

44. Mr Ivanțoc has liver problems and Mr Popa suffers from tuberculosis. They received neither appropriate treatment for their illnesses nor appropriate meals as prescribed by doctors. They were also prohibited from receiving medicines from their relatives.

The applicants were not permitted to receive visits from the prison doctors. They were examined by doctors from Chișinău at the request of the OSCE mission in Chișinău. Such requests were generally dealt with within a week. In March 2005 the applicants were examined by doctors from the Red Cross and Mr Popa was subsequently examined by a dentist.

45. Andrei Ivanțoc was allowed to have four short-term (two-hour) visits and two long-term (three-day) visits per year. However, his wife was the only person permitted to visit him.

46. Tudor Popa was allowed to have four short-term (two-hour) visits per year. In 2004 and 2005 only his sister Raisa Camenschi visited him. A Romanian-speaking prison guard was present throughout all the visits.

47. For the last four years of his detention Mr Popa had not been allowed any long-term visits. No explanation was provided for this refusal.

48. Short-term visits were generally granted on the same day the request was made. They took place in a special room. The applicants were separated from visitors by a window and discussion took place over the telephone. Applications for long-term visits had to be filed with the prison administration at least one month before the date requested.

49. Mr Ivanțoc was authorised to receive parcels every month. These parcels contained special dietary food which the applicant cooked for himself.

50. Mr Popa was not authorised to receive parcels every month as prescribed by law. For this reason, the special food he needed was brought to him by his sister during the short-term visits. However, he was not allowed to receive raw food such as potatoes, eggs or pasta and was not allowed to cook.

51. Tudor Popa was not allowed to receive newspapers published in the Romanian language. Neither Tudor Popa nor Andrei Ivanțoc were allowed to write to their families in Romanian using the Latin script, although some members of their families could not read the Cyrillic alphabet. Tudor Popa was not allowed to receive newspapers published in the Romanian language.

52. Neither Mr Ivanțoc nor Mr Popa were allowed to have telephone conversations as prescribed by law. They were not allowed to see their lawyers.

53. Tudor Popa had a TV set in his cell, but he had access only to Transdniestrian channels. Andrei Ivanțoc was only allowed a radio set in his cell.

54. All items received by the detainees from their families during their period in detention (TV and radio set, refrigerator, etc) had to remain in prison after their release.

2. Relations between the two detained applicants and the two other applicants

55. Andrei and Eudochia Ivanțoc have no children. The closest member of Eudochia's family is her husband, who was detained for 13 years until his release in 2007. At the time of lodging the present application, she was allowed to see her husband only once every two months, when she was granted short-term visits. She spent a maximum of three days per year with him. Every time her husband had health problems she was prohibited from visiting. She only learned about his health problems from newspapers.

56. Victor Petrov was constantly refused visits to his father if not accompanied by a person over 18, on the ground that he was a minor and had no identity documents.

57. Between 2004 and his father's release in June 2007, Victor Petrov saw his father only twice, the last time being in March 2004. During this period, he was never allowed to conduct correspondence with his father in the Latin script, although he does not know the Cyrillic script.

58. Until the release of his father, and for a period lasting three years, he used to live without his mother, who, due to financial difficulties, had had to go abroad for work. During this period, he had to take care of his younger sister by himself.

D. Reports and information from international bodies concerning the situation with regard to Transdniestria during the period since the adoption of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment

59. Detailed information with regard to Transdniestria (Russian military withdrawal, political developments, relations between Transdniestria on the one hand, and the Russian Federation and Moldova, on the other hand) during the period since the adoption of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment is set out in *Catan and Others v. Moldova and Russia* (dec.), nos. 43370/04, 8252/05 and 18454/06, 15 June 2010, §§ 34-41 and §§ 63-72.

II. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. Resolutions of the Committee of Ministers of the Council of Europe in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia*, No. 48787/99

60. The Committee of Ministers (CM) has adopted so far five interim resolutions in the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* case: on 22 April 2005, 13 July 2005, 1st March 2006, 10 May 2006 and 12 July 2007.

61. In the Interim Resolution of 22 April 2005 the CM “urgently invites the Russian authorities to comply fully with the judgment” and “invites the Moldovan authorities to continue their efforts towards securing the release of the two applicants who are still imprisoned”.

62. In the Resolution adopted on 13 July 2005, the CM took note of the information provided by the Moldovan Government as to the measures taken to execute the judgment and “encouraged the Moldovan authorities to continue their efforts towards putting an end to the detention of the applicants and securing their immediate release.”

They further stated that since the last Resolution of 22 April 2005, “the Russian authorities have again called into question the validity of the judgment and have insisted that, by paying the just satisfaction awarded, they consider that they have fully executed the judgment”. They noted that the Russian authorities “have provided no new information regarding any efforts they may have initiated to secure the release of the applicants who are still imprisoned”. The CM further stated that the “excessive prolongation of [the applicants’] unlawful and arbitrary detention fails entirely to satisfy the requirements of the Court’s judgment”. They decided “to resume its examination of this case at each of its meetings until the applicants have been released.”

The Russian Federation did not take part in the preparation of this interim resolution and opposed its adoption. Moreover, the Permanent Representative of the Russian Federation had stated, even before the adoption of this resolution, that his authorities would not participate in its implementation.

63. In a third Resolution on the matter, dated March 2006 the CM encouraged the Moldovan authorities to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release; strongly urged the Russian authorities to pursue actively all effective avenues capable of putting

an end to the arbitrary detention of the applicants still imprisoned and of securing their immediate release; and insisted that the results required by the Court's judgment be attained without any further delay.

64. In a fourth Interim Resolution adopted on 10 May 2006 the CM stated:

“Deeply deploring the fact that two applicants, Mr Ivanțoc and Mr Petrov-Popa, are still imprisoned, and stressing that the excessive prolongation of their unlawful and arbitrary detention fails entirely to satisfy the requirements of the Court's judgment and the obligation under Article 46, paragraph 1, of the Convention;

Noting that the authorities of the Republic of Moldova have regularly informed the Committee of the steps they have taken to secure the applicants' release;

Regretting profoundly that the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment, despite the Committee's successive demands² to this effect,

Encourages the authorities of the Republic of Moldova to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release;

Declares the Committee's resolve to ensure, with all means available to the Organisation, the compliance by the Russian Federation with its obligations under this judgment;

Calls upon the authorities of the member states to take such action as they deem appropriate to this end.”

65. Following the adoption the above-mentioned fourth Resolution, the respondent States continued, as in the past, to submit regularly to the Committee of Ministers observations regarding the steps taken to secure the release of the applicants still imprisoned, as appears from an Information document issued by the Committee of Ministers on 29 June 2006 (CM/Inf/DH/(2006)17 rev33).

Moldova submitted that the Russian Federation was in a position to influence the “Transnistrian authorities”.

As for its part, Moldova had directly or indirectly and regularly raised the issue of release of the applicants pursuant to the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment with various instances such as: the European Union, several European States not members of the European Union, various authorities of the Russian Federation, the Council of Europe Parliamentary Assembly, OSCE, the Council of Europe Commissioner for Human Rights, the United Nations, the Ombudsmen of the Community of the Independent States and of the Baltic States, and last, but not least, with “representatives of the administration of the Transnistrian region”.

In summary, the Moldovan authorities constantly reiterated their determination to achieve the applicants' release and constantly kept the Committee of Ministers informed of the numerous steps they had taken with a view to the execution of the judgment, “notwithstanding their limited means”. They concluded that the competent Moldovan authorities, as well as civil society, had explored all available avenues, including all diplomatic means, with a view to the execution of the judgment, including in the broader context of the Transnistrian conflict.

² Interim Resolutions ResDH(2005)42 of 22 April 2005, ResDH(2005)84 of 13 July 2005 and ResDH(2006)11 of 1 March 2006.

The Russian Federation submitted that their official position with regard to the execution of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment expressed in a press statement of the Ministry of Foreign Affairs of 8 July 2004 remained unchanged: having paid the just satisfaction awarded by the Court, the Russian Federation had satisfied its obligations under the Court's judgment.

66. On 12 July 2007, after the applicants' release, the CM adopted Interim Resolution 2007 (106), in which it stated the following:

"[...] Noting with relief that the applicants Ivanțoc and Popa have finally regained their freedom, but deeply regretting that, despite the injunction of the Court, they were only released on 2 and 4 June 2007 respectively;

Noting that the authorities of the Republic of Moldova have regularly informed the Committee of the efforts they have made to secure the applicants' release;

Recalling the various interim resolutions adopted by the Committee of Ministers³ and most particularly the call made upon the authorities of the member states of the Council of Europe to take such action as they deem appropriate to ensure the compliance by the Russian Federation with its obligations under this judgment; noting the various steps taken by the states following this call; also noting, in this context, the support of the European Union and of numerous other states⁴ with a view to achieving the execution of this judgment;

Renewing its profound regret that despite these steps, the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment;

Reaffirming most firmly that the obligation to abide by the judgments of the Court is unconditional and is a requirement for membership of the Council of Europe;

Recalling that the Court stated that "any continuation of the unlawful and arbitrary detention of the [...] applicants would necessarily entail [...] a breach of the respondent states' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment";

Deeply deploring the prolongation of the applicants' unlawful and arbitrary detention after the judgment of the Court and underlining, in the light of this situation, the obligation incumbent on respondent states under Article 46, paragraph 1, of the Convention to erase, as far as possible, the consequences of the violations at issue in this case;

Noting, in this respect, that Mr Ivanțoc and Mr Popa have lodged a new application with the Court, against Moldova and the Russian Federation (No. 23687/05), on the ground of the prolongation of their arbitrary detention beyond 8 July 2004;

DECIDES to suspend its examination of this case and to resume it after the final determination of the new application by the European Court of Human Rights."

³ Interim Resolutions ResDH(2005)42 of 22 April 2005, ResDH(2005)84 of 13 July 2005, ResDH(2006)11 of 1 March 2006 and ResDH(2006)26 of 10 May 2006.

⁴ Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Liechtenstein, Monaco, Norway, San Marino, Serbia, Switzerland, the "former Yugoslav Republic of Macedonia", Turkey and Ukraine.

B. Extracts from the report on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Transdnistrian region of the Republic of Moldova from 27 to 30 November 2000

67. On 12 December 2002 the CPT published the report following this visit, which stated, *inter alia*:

“55. Three members of the Ilașcu group had been held for more than 8 years under conditions of solitary confinement (though one of them - Tudor Petrov-Popa - had recently been offered, but had refused, the presence of other prisoners in his cell). As regards at least one of the prisoners, there were clear indications that the regime to which he was subject was having harmful psychological consequences. Certain other prisoners interviewed by the delegation had also been held under conditions of solitary confinement for prolonged periods.

The CPT pays particular attention to prisoners held, for whatever reasons, under conditions akin to solitary confinement. The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary-confinement type regime, which is a measure that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible. To hold persons under conditions of solitary confinement for years on end is scarcely justifiable under any circumstances.

56. At the end of the visit, the delegation requested that two measures be taken to attenuate the severity of the regime applied to the three members of the Ilașcu group referred to above: i) allow them access to newspapers of their own choice; ii) ensure that their rights to visits from family members and lawyers are fully respected in practice. **The CPT wishes to be informed of the action taken upon the delegation’s request.**

Beyond this, **the CPT calls upon the authorities to end the solitary confinement regime applied to Ilie Ilașcu, Andrei Ivanțoc and Tudor Petrov-Popa.** Whatever justification there might have been in the past for the application of that regime to these prisoners, to persist with such a regime for close to a decade is indefensible.”

THE LAW

68. The applicants contended that the facts of their case disclosed breaches of Article 3, 5, 8, 13 and 46 of the Convention, while the respondent Governments denied any Convention responsibility for the acts complained of.

I. AS TO THE ADMISSIBILITY

A. The Court's competence *ratione materiae* to examine the present application

1. Arguments submitted to the Court

a. The Moldovan Government

69. The Moldovan Government considered that the Court was not competent to deal with allegations of non-enforcement of a judgment, a task which was within the competence of the Committee of Ministers. They pointed out that as long as the Committee of Ministers had not put an end to the process of supervising the enforcement of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment, the Court's competence to rule on the alleged non-compliance by the Moldovan Government with their obligations was premature.

In the event of non-compliance by a State with its obligations, it was for the Committee of Ministers to find accordingly, and to take, if necessary, all measures available to it by virtue of Article 8 of the Council of Europe's Statute, including the suspension or exclusion of that State.

70. Referring to the Court's decision of 10 October 2002 in the case of *Johansen v. Norway* (dec.), no. 12750/02, the Moldovan Government invited the Court to declare the present complaint abusive and to strike it out of its list of cases. They indicated that, in any event, they had complied with the obligations incumbent on them.

b. The Government of the Russian Federation

71. The Russian Government considered that the Court was not competent to monitor the execution of its own judgments, and that this function fell to the Committee of Ministers pursuant to Article 46 § 2 of the Convention in its wording until June 2010. Referring to the decision in the case of *Lyons and Others v. the United Kingdom* (8 July 2003, no. 15227/03), they pointed out that in the present case, the Committee of Ministers had not yet completed the proceedings for execution of the Court's judgment in case no. 48787/99 and that the monitoring of that issue involved a dialogue between the authorities of the Russian Federation and the Council of Europe.

72. Moreover, they submitted that the Court cannot deal with an application that was substantially the same as a matter that had already been examined by the Court and claimed that there were hardly any new facts in the present application compared to application no. 48787/99. Insofar as the applicants' complaints did not relate to a fresh interference with their rights protected by the Convention, their complaints should be declared inadmissible under Article 35 §§ 2 and 4 of the Convention as falling outside the jurisdiction of the Court.

c. The applicants

73. The applicants rejected the respondent Governments' allegations that the Court did not have jurisdiction *ratione materiae* to examine the present application. They pointed out that their application raised novel issues not discussed previously before the

Court. They complained of the first two applicants' conditions of detention after 8 July 2004, and of their deprivation of liberty after that date. There was nothing in the Court's judgment of 8 July 2004 that referred to these claims. They also complained under Articles 13 and 46 of the Convention that they had no effective remedy before a national authority for these violations.

74. According to the applicants, the Court also had, in certain circumstances, jurisdiction to examine complaints concerning the failure to execute its judgments. Recalling that the Convention was a living instrument which must be interpreted in the light of present-day conditions, they submitted that the Court's authority and the system's credibility both depended to a large extent on the effectiveness of the process of execution of the Court's judgments. It was for the Court alone to determine its jurisdiction in the event of a dispute. There was nothing in Article 46 to prohibit the Court from assisting the Committee of Ministers in performing its task of supervision of the Court's judgments and from increasing the political pressure on respondent Governments that refused to abide by those judgments. Moreover, in Article 16 of Protocol No. 14 to the Convention, the High Contracting States agreed to modify the Convention so as to introduce express provisions to allow the Court, at the request of the Committee of Ministers, to examine a State's refusal to abide by a final judgment.

75. In the light of the importance of the observance of human rights in Europe, the limitation of this jurisdiction to requests of the Committee of Ministers would be an overly restrictive interpretation of the Convention. This was particularly true in their case concerning, as it did, a flagrant denial of liberty and of the authority of the Court's judgment.

d. The Romanian Government

76. The third-party intervener considered that in those cases where the Court indicated in its judgment the measures to be taken by the respondent Government, such as *Assanidzé v. Georgia* (judgment of 8 April 2004), the Court was also competent to examine the manner in which the State had complied with its obligations. This was so because the Committee of Ministers' supervision of the Court's judgments relied on a political mechanism. It did not have judicial powers allowing it, following a contentious procedure, to take a reasoned, in fact and in law, and binding decision on States' undertakings under the Convention. Moreover, the examination of the respect of the obligations incumbent on a State following a judgment of the Court prompted an examination of a possible new violation of a provision of the Convention.

Under these circumstances, only the Court could conduct a full judicial examination of the situation complained of.

77. The Romanian Government further pointed to a number of judgments in which the Court had examined the individual measures taken by some States in order to remedy the situation which led to the finding of a violation: *Barbera, Messengué and Jabardo v. Spain* (judgment on just satisfaction of 13 June 1994); *Schuler-Zgraggen v. Switzerland* (judgment on just satisfaction of 31 January 1995).

78. They further submitted that in its *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia* judgment, the Court had anticipated for the first time its own competence when it stated that if the applicants were not released, this would entail a serious prolongation of the violation of Article 5 and a breach of Article 46. This was so

because only a judicial organ could rule on a violation. Furthermore, only the Court could grant just satisfaction after finding a violation of a provision of the Convention.

79. It was precisely this limit to the powers of the Committee of Ministers which explained the insertion in the text of Protocol No. 14 to the Convention of the possibility to refer to the Court the question of whether a State has or has not failed to fulfil its obligations to abide by a final judgment of the Court. This provision should not be seen as an exception to the Court's competence, but rather a "channel" of communication between these two bodies.

80. The Romanian Government concluded that in the present case the Court was competent to examine the manner in which the defending States had fulfilled their obligations resulting from the Court's judgment of 8 July 2004.

2. The Court's assessment

a. General principles

81. Article 46 of the Convention, in its wording until the entry into force of Protocol No. 14 to the Convention, on 1 June 2010, provided:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

82. Article 46 of the Convention was modified on 1 June 2010, when Protocol No. 14 to the Convention entered into force. It now reads as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

83. The Court reiterates that findings of a violation in its judgments are in principle declaratory (see *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31; *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX; and *Krčmář and Others v. the Czech Republic* (dec.), no. 69190/01, 30 March 2004) and that, by Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (former Article 50), 31 October 1995, § 34, Series A no. 330-B). Nevertheless, in certain situations, the Court can indicate the specific remedy or other measure to be taken by the respondent State (see, for instance, *Assanidze v. Georgia* [GC], no. 71503/01, point 14 of the operative part, ECHR 2004-II; *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

The same also applies in cases where the Court, having adopted a pilot-judgment and identified a systemic situation, indicated specific remedial measures or actions to be taken by the respondent State to remedy them, and included appropriate directions in the operative part of the judgment: it falls to the Committee of Ministers to evaluate the implementation of such measures under Article 46 § 2 of the Convention (see, *Broniowski v. Poland* [GC], no. 31443/96, §§ 189-194 and the operative part, ECHR 2004-V; *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX; *Hutten Czapska v. Poland* [GC], no. 35014/97, §§ 231-239 and the operative part, ECHR 2006-VIII; *Hutten Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 42, ECHR 2008-...; *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 61; and *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 107, 23 November 2010).

84. The Committee of Ministers' role in this sphere does not mean, however, that measures taken by a respondent State to remedy a violation found by the Court cannot raise a new issue undecided by the original judgment (see *Mehemi v. France* (no. 2), no. 53470/99, § 43, ECHR 2003-IV, with references to *Pailot v. France*, 22 April 1998, § 57, *Reports of Judgments and Decisions* 1998-II; *Leterme v. France*, 29 April 1998, *Reports* 1998-III; and *Rando v. Italy*, no. 38498/97, § 17, 15 February 2000) and, as such, form the subject of a new application that may be dealt with by the Court. Thus, for example, the Court may entertain a complaint that a retrial at domestic level by way of implementation of one of its judgments gave rise to a new breach of the Convention (see *Lyons and Others*, cited above, and also *Hertel v. Switzerland* (dec.), no. 3440/99, ECHR 2002-I).

On that basis, the Court has also found that it was competent to examine a complaint that a domestic court had dismissed an application to reopen proceedings following the Court's judgment. The Court relied mainly on the fact that the grounds for dismissing the application to reopen proceedings constituted relevant new information capable of giving rise to a fresh violation of the Convention (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, §65, ECHR 2009-...).

85. Reference should also be made in this context to the criteria established in the case-law concerning Article 35 § 2 (b), by which an application is to be declared inadmissible if it "is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information": (i) an application is considered as being "substantially the same" where the parties, the complaints and the facts are

identical (see *Pauger v. Austria* (dec.), no. 16717/90 and no. 24872/94; *Verein Gegen Tierfabriken Schweiz (VgT)* cited above, § 63) ; (ii) the concept of complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172; *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports* 1998-I; *Previti v. Italy* (dec.), no. 45291/06, § 293); and (iii) where the applicant submits new information, the application will not be essentially the same as a previous application (see *Chappex v. Switzerland* (dec.), no. 20338/92; *Patera v. the Czech Republic* (dec.), no. 25326/03).

86. Accordingly, the powers assigned to the Committee of Ministers by Article 46 to supervise the execution of the Court's judgments and evaluate the implementation of the measures taken by the States under this Article will not be encroached on where the Court has to deal with relevant new information in the context of a fresh application (see *Verein Gegen Tierfabriken Schweiz (VgT)* cited above, § 67).

87. Moreover, in the specific context of a continuing violation of a Convention right following adoption of a judgment in which the Court has found a violation of that right during a certain period of time, it is not unusual for the Court to examine a second application concerning a violation of that right in the subsequent period (see, amongst others, *Rongoni v. Italy*, no. 44531/98, § 13, 25 October 2001; and *Wasserman v. Russia* (no. 2), no. 21071/05, §§ 36-37, 10 April 2008).

b. Application of the above principles

88. The Court must therefore ascertain whether the present application relies on the same facts as application no. 48787/99 in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia*.

89. The applicants complain about their unlawful and arbitrary detention and about their treatment while detained in the period subsequent to the Court's judgment of 8 July 2004. For the applicants, this is a consequence of the respondent States' failure to enforce the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment in that part which required those States to secure the applicants' immediate release.

90. The Court notes that in its judgment of 8 July 2004 concerning application no. 48787/99, it found, *inter alia*, a violation of Article 5 of the Convention on account of the unlawful and arbitrary detention of the applicants, and stated that "any continuation of the unlawful and arbitrary detention of the three applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent States' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment" (§ 490). Furthermore, in point 22 of the operative provisions of that judgment, the Court ordered the respondent States to take all measures "to put an end to the arbitrary detention of the applicants still detained and to secure their immediate release".

91. The Court acknowledges at the outset that it has in principle no jurisdiction to review the general and/or individual measures, if any, adopted by the respondent States to secure the rights of the applicants which the Court found to be violated in its *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia* judgment. This, it will be recalled, is a matter for the Committee of Ministers.

92. Nevertheless, the Court may take account of subsequent factual developments communicated by the parties which are likely to have a bearing on its findings with

regard to, *inter alia*, the potential responsibility of the respondent Governments in respect of alleged violations of the Convention after 8 July 2004.

93. In this context, it notes that the first two applicants continued to be detained after 8 July 2004 until June 2007, and that they alleged in this respect a violation of Article 5 of the Convention. Furthermore, they also alleged a violation of Articles 3 and 8 of the Convention between 8 July 2004 and the moment of their release, when the term of their detention expired, i.e. on 2 and 4 June 2007 respectively.

Therefore, in so far as the first two applicants' complaints concern the period between 8 July 2004 and June 2007, those complaints have not been previously examined by the Court. The same holds true in respect of the new complaint about the absence of an effective remedy against their unlawful detention during this period and of the complaints made by the third and the fourth applicants.

This conclusion is not affected by the fact that the first two applicants' detention beyond 8 July 2004 is not a new detention but a continuation of the detention found to be contrary to Article 5 of the Convention, since the Court suggested in paragraph 490 of the aforesaid judgment that in case of a continuation of the applicants' detention, a further assessment could be made as to the compliance of the respondent States with Article 5 of the Convention.

94. Furthermore, according to Article 32 of the Convention, the Court's jurisdiction extends to "all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34 and 47" and "[i]n the event of dispute as to whether the Court has jurisdiction, the Court shall decide".

In this context, the Court notes that in its Interim Resolution 2007(106) adopted on 12 July 2007, the Committee of Ministers decided to suspend the examination of the case *Ilascu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia* (application no. 48787/99) and to "resume it after the final determination of the new application [no. 23687/05] by the European Court of Human Rights".

95. Having regard to all of the above circumstances, the Court finds it established that the question of the prolongation of the applicants' arbitrary detention between 8 July 2004 and 2 and 4 June 2007 respectively falls within its jurisdiction.

In addition, if the Court were unable to examine it, not only would this matter escape all scrutiny under the Convention, but the applicants would be deprived, in case of a finding of a violation, of the just satisfaction that might be awarded to them in respect of the first and the second applicants' detention beyond 8 July 2004.

The Court has therefore competence *ratione materiae* to entertain the complaints set out in the application.

96. The respondent Governments' preliminary objection of lack of jurisdiction *ratione materiae* must therefore be dismissed.

B. Whether the applicants came within the jurisdiction of either or both of the respondent Governments

97. Both respondent Governments argued that the applicants did not come within their jurisdiction within the meaning of Article 1 of the Convention.

98. The Court considers that this question is closely linked to the merits of the applicants' complaints. It therefore joins this preliminary question to the merits.

C. Conclusion

99. The Court has dismissed the respondent Governments' objection as to the incompatibility *ratione materiae* of the present application and has joined to the merits the objection concerning the fact that the applicants do not come within their jurisdiction. It notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

II. MERITS

A. Whether the applicants came within the jurisdiction of Moldova and if so, whether Moldova has breached any of the Articles of the Convention invoked by the applicants

1. Arguments submitted to the Court

a. The Moldovan Government

100. The Moldovan Government accepted that Transdnistria fell within its territorial jurisdiction. Referring to the Court's findings in the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment, they further emphasised that this jurisdiction was not effective, as Moldova did not control the part of its territory under the effective control of the "MRT".

101. They further underlined that, following the adoption of the Court's judgment in *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* case, they had taken all necessary measures in order, on the one hand, to recover control of that part of its territory and, on the other hand, to ensure respect for the applicants' rights under the Convention. However, the attempts made by the Moldovan authorities to recover control over the Transdnistrian territory have failed as a result of the continued political, economic and military support provided by the Russian Federation to the separatist regime. Furthermore, the applicants' rights under the Convention could not be ensured due to the refusal of the Russian authorities to abide by the Court's judgment.

Consequently, Moldova could not be held responsible for the acts complained of in the present application.

b. The Government of the Russian Federation

102. The Russian Government submitted that the applicants in the present case are either the persons who were applicants in the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* case or their relatives and that the merits of the present application have already been the subject of an examination by the Court in the aforementioned case. Any "denunciatory"

conclusions about the responsibility of the Russian Federation by the inclusion of facts concerning the Russian representatives' meetings with Transdnistrians and trips to the region attest to the applicants' attempts to politicise the core issues "once again".

They further argued that the Russian Federation could in no manner influence the domestic affairs of another State, which was both a member of the Council of Europe and of the United Nations, including on issues of release from institutions of confinement and conditions of detention in colonies.

c. The applicants

103. The applicants submitted that the "MRT" was not controlled by the Moldovan authorities and that there had been no change since the Court's judgment in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* insofar as the Russian Federation was concerned. Therefore, they came within the jurisdiction of the Russian Federation alone.

d. The Romanian Government

104. The Romanian Government submitted that, according to the Court's ruling in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa*, Moldova had to take the necessary measures to ensure the applicants' immediate release. Since the applicants had not been released until the end of their term of detention, it followed that Moldova had failed to discharge its positive obligations to take measures to put an end to the detention of Mr Ivanțoc and Mr Popa and to ensure their immediate release.

2. The Court's assessment in application no. 48787/99

105. The Court recalls that in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa v. Moldova and Russia*, it found, in the light of the principles governing the concepts of jurisdiction and of State responsibility for a wrongful act summarised in paragraphs 311 to 321, that the applicants were within the jurisdiction of the Republic of Moldova for the purposes of Article 1 of the Convention but that Moldova did not exercise authority over that part of its territory under the effective control of the "Moldovan Transdnistrian Republic". Therefore, Moldova's responsibility could not be engaged under Article 1 of the Convention on account of a wrongful act within the meaning of international law. However, Moldova still had a positive obligation under Article 1 of the Convention to take diplomatic, economic, judicial or other measures that it was in its power to take and were in accordance with international law to secure to the applicants the rights guaranteed by the Convention (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, §§ 322, 330-331).

106. The Court further considered that Moldova's positive obligations related both to the measures needed to re-establish its control over the Transdnistrian territory, as an expression of its jurisdiction, and to measures to ensure respect for the applicants' rights, including attempts to secure their release. The obligation to re-establish control over Transdnistria required Moldova firstly, to refrain from supporting the separatist regime and secondly, to act by taking all the political, judicial and other measures at its disposal for re-establishing control over that territory (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa*, §§ 339-340).

It found that from the onset of hostilities in 1991-92 until the date of the judgment, in July 2004, Moldova had taken all measures in its power to re-establish control over the

Transdniestrian territory (§§ 341 to 345). Furthermore, the Court found at paragraphs 346 and 347 that until Mr Ilașcu's release in May 2001, Moldova had taken a number of judicial, political and administrative measures to secure the applicants' rights. However, no evidence was adduced that since May 2001 effective measures had been taken by the authorities to put an end to the infringements of their Convention rights complained of by the other three applicants, be it in the course of negotiations with the Transdniestrian separatists or as part of their bilateral relations with the Russian Federation (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, §§ 348-349).

It concluded in paragraph 352 that Moldova's responsibility could be engaged under the Convention on account of its failure to discharge its positive obligations with regard to the acts complained of which occurred after May 2001. To determine whether Moldova's responsibility was indeed engaged, the Court further examined each of the complaints raised by the applicants and found Moldova to be in breach of the Convention on various counts (see the operative part of the judgment and paragraph 12 above).

3. *The instant case*

107. The Court must therefore ascertain whether between the date of the Court's judgment in July 2004 and the applicants' release in June 2007 Moldova discharged its positive obligations to secure to the applicants their rights guaranteed by the Convention.

108. As to the general measures intended to re-establish control over the Transdniestrian territory, the Court recalls that in its *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment it stated that it was not its task to indicate the most appropriate measures Moldova should have taken to that end, or whether such measures were sufficient. The Court must only verify Moldova's resolve, expressed through specific acts or measures, to re-establish its control over the territory of the "MRT" (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, § 340 *in fine*).

The Court stressed in paragraph 341 *in fine* of its judgment, when confronted with a regime sustained militarily, politically and economically by a power such as the Russian Federation, there was little that Moldova could do to re-establish its authority over Transdniestrian territory.

The Court notes that even after 8 July 2004, Moldova never ceased to protest about the Russian Federation's active support for the separatist regime of the "MRT", and, while rejecting the "MRT" declaration of independence, continued to deploy its efforts with the aim of recovering its control over the Transdniestrian territory (see above paragraphs 16, 19, 22, 26, 28 to 34 and the case of *Catan and Others* cited above, § 38).

109. As regards the applicants' situation, the Court notes that, in their discussions with the Transdniestrian leaders, the Moldovan authorities systematically raised the question of the applicants' release and respect for their Convention rights. Contrary to their position prior to the Court's judgment, after 8 July 2004 the Moldovan authorities constantly raised the issue of the applicants' fate in their bilateral relations with the Russian Federation. Furthermore, they continually sought the assistance of other States and international organisations in obtaining the applicants' release (see paragraph 24 above).

110. As to other possible measures, such as judicial measures, the Court refers to its conclusion in paragraph 347 of the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* case, where it had found ineffectual any judicial investigation in respect of persons living in

Transdnistria. In the present case the Court finds that no new fact or argument has been put forward capable of persuading it to reach a different conclusion.

111. Having regard to the above considerations and to all the material in its possession, the Court considers that Moldova discharged its positive obligations to secure to the applicants their rights guaranteed by the Convention, with regard to the acts complained of, that is, after July 2004.

On that account, there has been no failure on the part of Moldova to secure the rights guaranteed by the Articles of the Convention invoked by the applicants and accordingly no breaches of any of these Articles. The Moldovan Government's objection regarding their lack of effective control in Transdnistria and the consequential extent of their responsibility under the Convention for the acts complained of is upheld.

B. Whether the applicants came within the jurisdiction of the Russian Federation and if so, whether the Russian Federation has breached any of the Articles of the Convention invoked by the applicants

1. Arguments submitted to the Court

a. The Government of the Russian Federation

112. The Russian Government maintained, firstly, that the Court had no jurisdiction to consider the merits of the case in so far as the application was directed against the Russian Federation, since the acts complained of did not come within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention.

The Russian Federation had not exercised and did not exercise any jurisdiction over the region of Transdnistria, which was a territory belonging to the Republic of Moldova. The Russian Government submitted that Transdnistria was part of the Moldovan territory. Therefore the Russian Federation could in no manner influence the domestic affairs of another State, both a member of the Council of Europe and of the United Nations.

As to relations with the "MRT", the Russian Government argued that, as a mediator in the conflict, the Russian Federation had specific obligations to maintain permanent contacts with the parties.

b. The applicants

113. The applicants submitted that there had been no change since the Court's judgment in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* insofar as the Russian Federation's support to the "MRT" was concerned. Moreover, after 8 July 2004 the support provided by the Russian Federation to the "MRT", particularly political support, had been maintained and strengthened.

Therefore, the applicants came within the jurisdiction of the Russian Federation alone.

c. The Romanian Government

114. The Romanian Government did not make any submissions on this point.

2. *The Court's assessment in application no. 48787/99*

115. The Court held in paragraph 385 of its judgment that all of the acts committed by Russian soldiers before the Convention entered into force with regard to the Russian Federation on 5 May 1998, including their transfer into the charge of the separatist regime, in the context of the Russian authorities' collaboration with that illegal regime, were capable of engaging the responsibility of the Russian Federation for the acts of that regime.

It further found that the "MRT", set up in 1991-1992 with the support of the Russian Federation, vested with organs of power and its own administration, remained under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survived by virtue of the military, economic, financial and political support given to it by the Russian Federation (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, §§ 387-392).

On that account, the Court considered that there was a continuous and uninterrupted link of responsibility on the part of the Russian Federation for the applicants' fate, as the Russian Federation's policy of support for the regime and collaboration with it continued beyond 5 May 1998, and as after that date the Russian Federation made no attempt to put an end to the applicants' situation brought about by its agents, and did not act to prevent the violations allegedly committed after 5 May 1998. In the light of the foregoing, the Court found it of little consequence that since 5 May 1998 the agents of the Russian Federation had not participated directly in the events complained of in that application.

The Court therefore found that the applicants came within the "jurisdiction" of the Russian Federation for the purposes of Article 1 of the Convention and that its responsibility was engaged with regard to the acts complained of (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, §§ 393-394).

3. *The instant case*

116. In the light of the above conditions, the Court must therefore ascertain whether the Russian Federation's policy of support for the Transdniestrian separatist regime and collaboration with it continued beyond the Court's judgment in July 2004, until the applicants' release in June 2007, and if so, whether during this period, the Russian Federation made any attempts to put an end to the applicants' situation brought about by its agents.

117. The Court refers to the information submitted to it by the applicants and the Moldovan Government in the present case (paragraphs 21 and 22, and 27 to 34 above), and in the case of *Catan and Others* cited above (§§ 78 to 82, 85 and 86). This information was not challenged by the Russian Government.

118. It appears from this information that, even after the Court's judgment in July 2004, and at least until the applicants' release in June 2007, the Russian Federation continued to enjoy a close relationship with the "MRT", amounting to providing political, financial and economic support to the separatist regime.

In addition, the Court notes that the Russian army (troops, equipment and ammunition) was at the date of the applicants' release still stationed on Moldovan territory in breach of the Russian Federation's undertakings to withdraw completely and in breach of Moldovan legislation (see above paragraphs 22 and 59 above, with further references).

119. Finally, the Court observes that the Russian Federation continued to do nothing either to prevent the violations of the Convention allegedly committed after 8 July 2004 or to put an end to the applicants' situation brought about by its agents.

120. It follows from the above considerations that the applicants continued to be within the "jurisdiction" of the Russian Federation up until the time of Mr Ivanțoc and Mr Popa's release for the purposes of Article 1 of the Convention and its responsibility is thus engaged with regard to the acts complained of. The Russian Government's objection of incompatibility *ratione personae* is accordingly dismissed.

The Court must therefore examine whether the requirements of the Convention provisions invoked by the applicants were complied with by the Russian Federation.

C. Alleged violation of Article 3 of the Convention

121. The first two applicants complained of their conditions of detention. Having regard to the close family relations between themselves and the other applicants, this detention amounted, in so far as the third and fourth applicants were concerned, to treatment contrary to Article 3, which provides:

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

122. The applicants submitted that after 7 May 2004 their conditions of detention did not change. They alleged that the purpose of the first two applicants' detention was intentionally and deliberately to humiliate and debase them and to destroy their personality and health. For these reasons, the particularly serious and cruel treatment to which they were subjected, coupled with the non-execution of the Court's judgment for more than two years and the suffering of the applicants for more than 14 years, must be considered as acts of torture within the meaning of Article 3 of the Convention.

123. The Government of the Russian Federation did not submit any observations on this allegation.

124. The Court considers, in the light of the material at its disposal, that it can take it to be established that between July 2004 and June 2007 the first two applicants were detained in the conditions mentioned above (paragraphs 37 to 54).

The Court stresses that these conditions did not differ from the conditions of the applicants' detention before 8 July 2004.

In particular, Mr Ivanțoc and Mr Popa were detained in conditions of solitary confinement amounting to almost complete social isolation, with only a one-hour walk per day, permanent lack of natural light in their cells, lack of appropriate and regular medical treatment, lack of a dietary regime as prescribed for their illnesses, absence of any contact whatsoever with their lawyers, limited contact with their closest relatives without a clear legal basis, and censorship of their correspondence without any clear legal basis.

125. In the Court's opinion, such treatment must have given rise to pain and suffering, both physical and mental. The Court also refers to the conclusions of the CPT in its report following its visit to Transdnistria in 2000, which found that the prolonged solitary confinement of the applicants was indefensible (see paragraph 67 above).

Taken as a whole, the conditions in which Mr Ivanțoc and Mr Popa were detained between 8 July 2004 and their release, in June 2007, were such that they can be qualified as inhuman and degrading treatment within the meaning of Article 3 of the Convention.

126. There has therefore been a failure to observe the requirements of Article 3 of the Convention. The violation of Article 3 is further aggravated by the fact that Mr Ivanțoc and Mr Popa's conditions of detention occurred after the Court's judgment of 8 July 2004 ordering the respondent States to put an end to their arbitrary detention and to secure their immediate release (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* judgment cited above, § 490 *in fine*).

127. Insofar as the complaints of Ms Ivanțoc and Mr Petrov are concerned, the Court considers that these complaints fall to be examined under Article 8 of the Convention.

D. Alleged violation of Articles 5 and 13 of the Convention

128. The applicants complained of their continued detention after the Court had delivered its judgment in the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* case (application no. 48787/99) on 8 July 2004 and of a lack of effective remedies in this respect. They relied on Articles 5 and 13 of the Convention, which read in the relevant parts as follows:

Article 5

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

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

...."

Article 13

"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."

1. Arguments submitted to the Court

129. The first two applicants complained of having been detained in violation of Article 5 of the Convention. They pointed out that the Court had found in its judgment of 8 July 2004 that the detention of Mr Ivanțoc and Mr Popa was unlawful and arbitrary and in violation of Article 5 (paragraph 464) and that it had stated that "any continuation of the unlawful and arbitrary detention would necessarily entail a serious prolongation of the violation of Article 5 and a breach of the respondent States' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment" (paragraph 490). They contended that the respondent Governments did not take the necessary measures to put an end to their detention. They further complained under Article 13 of the Convention that they had no effective remedy before a national authority for the above violation.

130. The Russian Government merely reiterated that the present case fell outside the scope of the Court's jurisdiction.

131. The Romanian Government submitted that after 8 July 2004, the applicants had been detained in breach of the first sentence of Article 5 § 1 of the Convention, since no justification whatsoever had been provided for their deprivation of liberty.

2. *The Court's assessment*

132. The Court recalls that in the *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* case it had found that none of the applicants had been convicted by a “court”, that the sentence of imprisonment passed by “the Supreme Court of MRT” in the circumstances of that case could not be regarded as “lawful detention” ordered “in accordance with a procedure prescribed by law”, and therefore that the deprivation of liberty suffered by the applicants until the Court’s judgment did not satisfy the conditions laid down in paragraph 1 (a) of Article 5 of the Convention (see *Ilașcu, Ivanțoc, Leșco and Petrov-Popa* cited above, §§ 459 to 463).

133. In the present case, the Court notes that the continued detention of Mr Ivanțoc and Mr Popa between 8 July 2004 and 2 and 4 June 2007 respectively, was based on the same conviction and sentence of imprisonment of the “Supreme Court of the MRT”, which were found to be contrary to the Convention.

134. The foregoing considerations are sufficient to enable the Court to conclude that there was a continuing violation of Article 5 § 1 of the Convention as regards the applicants Andrei Ivanțoc and Tudor Popa. Moreover, this violation is of a particularly grave nature due to the fact that the applicants continued to be detained despite the Court’s judgment ordering the respondent States “to take every measure to put an end to the arbitrary detention of the applicants still detained and to secure their immediate release”.

135. Furthermore, the Court finds that the applicants did not have an effective remedy for their complaint arising out of their unlawful detention after 8 July 2004.

There has therefore also been a violation of Article 13 of the Convention.

E. Alleged violation of Article 8 of the Convention

136. The applicants further complained of the fact that the conditions of detention of Mr Ivanțoc and Mr Popa were also contrary to Article 8 of the Convention, having regard to the infringements of their right to correspond with and receive visits from their close family members. Article 8 of the Convention provides:

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

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

137. The Russian Government confined their observations to the assertion that the merits of the present application had already been examined by the Court in its judgment in the case of *Ilașcu, Ivanțoc, Leșco and Petrov-Popa*.

138. The Romanian Government considered that the applicants’ conditions of detention were contrary to Article 8 of the Convention. Moreover, their detention constituted a violation of the third and fourth applicants’ right to respect for their family life and correspondence guaranteed by Article 8.

139. In respect of the applicants Andrei Ivanțoc and Tudor Popa, having regard to its findings relating to Article 3 (see paragraphs 124 to 126 above), the Court considers that it is not necessary to examine the applicants' allegations separately from the standpoint of Article 8 of the Convention.

140. Furthermore, the Court considers that the conditions of detention of Mr Ivanțoc and Mr Popa, in respect of correspondence (including parcels) with and visits from their closest relatives, namely the third and fourth applicants, represent an interference with the rights of Ms Ivanțoc and Mr Popa to respect for their private and family life, and their correspondence.

141. The Court recalls that such interference will contravene Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and, furthermore, is "necessary in a democratic society" in order to achieve them (see, among many other authorities, *Calogero Diana v. Italy*, 15 November 1996, § 28, *Reports* 1996-V).

142. The Court was not informed of any legal basis for the interference with the applicants' rights. Nor indeed was any justification provided for the necessity of such interference.

The Court finds that the absence of any justification must be considered particularly serious when it concerns relations between detainees and their closest relatives for such a long period of time.

143. Accordingly, it finds that there has been a violation of Article 8 of the Convention on account of the interference with the first and second applicants' rights under this provision.

F. Conclusion

144. The Court has found, among other Articles, violations by the Russian Federation of Articles 3 and 5 of the Convention. It has in its case-law had occasion to draw attention to particularly serious or aggravated breaches of Convention rights (see *Kurt v. Turkey*, 25 May 1998, § 129, *Reports of Judgments and Decisions* 1998-III; *Akdeniz and Others v. Turkey*, no. 23954/94, § 108, 31 May 2001; *Boicenco v. Moldova*, no. 41088/05, § 159, 11 July 2006). Having regard to the background to its findings under Articles 3 and 5, in particular the disregard by the Russian Federation of the Court's firm injunction stated in § 490 and point 22 of the operative part of the *Ilașcu and Others* judgment and the consequential suffering endured by Andrei Ivanțoc and Tudor Popa, the Court concludes that there has been an aggravated violation of these Articles.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

145. Article 41 of the Convention provides:

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

A. Damage

146. The applicants Andrei Ivanțoc and Tudor Popa each claimed EUR 200,000 for pecuniary and non-pecuniary damage, which is about EUR 178 for each day of detention. They contended that in cases of lengthy and arbitrary detention, the Court generally awarded between EUR 82 and EUR 130 for each day of detention. In the present case, an increased amount was justified: they spent almost all their youth in detention, their physical condition deteriorated, their vulnerability due to their arbitrary detention, despite a previous judgment of the Court, intensified their feelings of injustice and suffering.

147. Ms Ivanțoc and Mr Petrov maintained that the arbitrary imprisonment of the first two applicants crucially affected the development and fulfilment of their personality and limited their right to develop their relationship with respectively their spouse and father.

Ms Ivanțoc suffered over a period of 15 years because of the arbitrary imprisonment and conditions of detention of her husband. She had to take constant care of her husband, who was in a poor physical condition, and was thus limited in finding a permanent job.

Mr Petrov recalled that his father has been imprisoned when he was four years old. He was nineteen when his father was released. During this period he only saw his father a few times, and on each occasion for one hour. These meetings were supervised. Growing up without a father had caused him enormous frustration.

148. The Russian Government submitted that the applicants were not victims of the alleged violation of their rights by the authorities of the Russian Federation. No compensation should therefore be awarded to the applicants. In any event, they considered the claims to be excessive and ill-founded.

149. The Court reiterates that it has found violations of several Convention provisions by the Russian Federation.

It has found that Mr Ivanțoc and Mr Popa were subjected to inhuman and degrading treatment contrary to Article 3 of the Convention, that they were detained arbitrarily contrary to Article 5, that they did not have an effective remedy as provided for in Article 13. Moreover, it has found a breach of Article 8 of the Convention in respect to the third and fourth applicants.

150. The Court does not consider the alleged pecuniary damage to have been substantiated, but it does not find it unreasonable to suppose that the applicants suffered a loss of income and certainly incurred costs which were directly due to the violations found. It also takes the view that as a result of the violations found the applicants undeniably suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

Consequently, regard being had to the extreme seriousness of the violations of the Convention of which the applicants were victims, and ruling on an equitable basis, as

required by Article 41 of the Convention, the Court awards them the following sums, plus any amount that may be chargeable in tax:

(a) to Mr Andrei Ivanțoc and Mr Tudor Popa, each, EUR 60,000 for pecuniary and non-pecuniary damage arising from the violations of Articles 3, 5 and 13 of the Convention;

(b) to Ms Eudochia Ivanțoc and Mr Victor Petrov, each, EUR 20,000 for non-pecuniary damage arising from the breach of Article 8 of the Convention.

B. Costs and expenses

151. Providing documentary evidence in support of their claims, the applicants claimed a total amount of EUR 5,240.4 in respect of costs and expenses related to their representation by two lawyers as follows: EUR 3,980.4 for Mr Gribincea, and EUR 1,260 for Mr Nagacevski.

152. The Moldovan Government opposed the award of the sums claimed for costs and expenses on the ground that they were excessive and unsubstantiated.

153. The Russian Government considered the claim to be excessive in view of the following: the case was not complex, the submissions by the Russian authorities were not numerous, and therefore there was no justification for enlisting two lawyers for processing the case.

154. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part.

155. The evidence submitted to the Court shows that the applicants' representatives, Mr Gribincea and Mr Nagacevski, incurred costs and expenses relating to the matters found to constitute the violations.

Ruling on an equitable basis and taking account of the work needed to produce the documents and observations filed on the applicants' behalf, having regard to the fact that the representatives had no possibility to meet the applicants during their detention, the Court awards the applicants the requested amounts, as follows: EUR 3,980.40 to Mr Gribincea and EUR 1,260 to Mr Nagacevski.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that the Court has jurisdiction *ratione materiae* to examine the present application insofar as it concerns the applicants' allegations as from 8 July 2004;
2. *Decides* unanimously to join to the merits the respondent Governments' objection on grounds of compatibility *ratione personae*;
3. *Declares* by six votes to one the application admissible;
4. *Holds* by six votes to one that
 - (i) Moldova discharged its positive obligations to secure to the applicants their rights guaranteed by the Convention, with regard to the acts complained of, that is, after July 2004;
 - (ii) there has in consequence been no failure on the part of Moldova to secure the applicants' rights guaranteed by Articles 3, 5, 8 and 13 of the Convention, and accordingly no breach of these Articles by Moldova;
 - (iii) the Moldovan Government's objection regarding their lack of effective control in Transnistria and the consequential extent of their responsibility under the Convention for the acts complained of is *upheld*;
5. *Holds* by six votes to one that the applicants came within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention and, consequently, *dismisses* the Russian Government's preliminary objection on grounds of compatibility *ratione personae*;
6. *Holds* by six votes to one that there has been a violation of Article 3 of the Convention on account of the conditions in which Mr Ivanțoc and Mr Tudor Popa were detained until their release;
7. *Holds* by six votes to one that there has been a violation of Article 5 of the Convention and a violation of Article 13 of the Convention on account of the detention of Mr Ivanțoc and Mr Popa and of their lack of an effective remedy related thereto;
8. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention as regards the applicants Eudochia Ivanțoc and Victor Petrov's right to respect for their private and family life, and correspondence;
9. *Holds* by six votes to one that the Russian Federation is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, plus any tax that may be chargeable:
 - (a) to Mr Andrei Ivanțoc and Mr Tudor Popa, each, EUR 60,000 (sixty thousand euros) in respect of pecuniary and non-pecuniary damage;

(b) to Ms Eudochia Ivanțoc and Mr Victor Petrov, each, EUR 20,000 (twenty thousand euros) in respect of pecuniary and non-pecuniary damage;

(c) to the applicants, the overall sum of EUR 5,240.4 (five thousand and two hundred forty euros and forty cents) made up of EUR 3,980.4 (three thousand nine hundred and eighty euros and forty cents) for Mr Gribincea and of EUR 1,260 (one thousand two hundred and sixty euros) for Mr Nagacevschi;

10. *Holds* by six votes to one that the amounts indicated under point 9 above are to be converted into the national currency of the country of residence of each applicant, at the rate applicable at the date of settlement, and that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

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

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DISSENTING OPINION OF JUDGE KOVLER

I regret to have to express my profound disagreement with the present judgment, as I did in the Grand Chamber's *Ilașcu and Others v. Moldova and Russia* judgment ([GC], no. 48787/99, 8 July 2004, ECHR 2004-VII).

The first point of my disagreement is the procedural issue. Unlike in many other “sensitive” cases, the Chamber decided on 30 September 2008 to examine the merits of the application at the same time as its admissibility, before the entry into force on 1 June 2010 of Protocol No. 14 amending Article 29 § 1 of the Convention. Even now the amended Article states: “The decision on admissibility may be taken separately”. In the less problematic *Catan* case the Chamber decided to separate these two issues (*Catan and Others v. Moldova and Russia* (dec.), nos. 43370/04, 8252/05 and 18454/06, 15 June 2010).

The separate examination of the admissibility issue was particularly important in the present case. I find relevant both respondent Governments' submissions concerning the Court's competence *ratione materiae* to examine the present application (see §§ 69-72), the most important argument being the fact that the Committee of Ministers had not yet completed the procedure for the execution of the Court's judgment in the *Ilașcu* case. Interim Resolution 2007 (106) of the Committee of Ministers, to which the Chamber refers in justification of its decision (§ 94), suspended (underlined by me – A.K.) the examination of the *Ilașcu* judgment, intending “to resume it after the final determination of the new application” by the Court. Thus, the Committee of Ministers never decided to terminate the examination.

The Chamber could have looked more carefully at previous cases in which the Court decided that complaints about the unsatisfactory execution of its judgments were outside its competence *ratione materiae* (in particular, *Lyons and Others v. the United Kingdom* (dec.), no. 15227/93, ECHR 2003-IX; *Steck-Risch and Others v. Liechtenstein* (dec.), no. 29061/08, 11 May 2010; *Schelling v. Austria* (dec.), no. 46128/07, 16 September 2010; and *Kafkaris v. Cyprus (no.2)* (dec.), no. 9644/09, 21 June 2011). Instead, the Chamber preferred to apply the dubious “new information” criterion (§ 86), placing a broad interpretation on its prerogatives under Article 32 of the Convention.

On this occasion I would refer to my statement in the dissenting opinion in the *Ilașcu* case concerning the enforceable character of the judgment:

“I realise the objective impossibility for the second respondent State of enforcing the Court's judgment to the letter, going over the head of sovereign Moldova, particularly in order to put an end to the applicants' detention. (I voted “for” on point 22 of the operative provisions in the light of all the possible approaches.) It will be still more difficult to take general measures, as required by the Committee of Ministers of the Council of Europe. In *Drozd and Janousek*, the Court said: “The Convention does not require the Contracting Parties to impose its standards on third States or territories” (*Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240, p. 34, § 110). When that is translated into the language of international law, it surely means that neither the Convention nor any other text requires signatory States to take counter-measures to end the detention of an alien in a foreign country – the United Nations Declaration on the

Inadmissibility of Intervention and Interference in the Internal Affairs of States (Resolution 26/113 of 9 December 1981) is still in force.”

In my humble opinion the case is also inadmissible for abuse of the right of petition for a different reason than that used by the Moldovan Government (§ 70): one of the applicants’ representatives, Mr V. Nagavetschi, was the Moldovan Government Agent who in 1998-1999 executed the order of the former Minister of Justice of the Republic of Moldova “to bring an action to the ECHR on behalf of the Ilașcu group” (see Interview with Mr. Paduraru, “Moldova Azi”, 12 October 2005 – the Chamber was informed about it) and who represented the Moldovan Government in the examination of the *Ilașcu* case... (Strangely enough, the Grand Chamber’s judgment of 8 July 2004 does not mention in the Procedure part the names of both Respondent Governments’ representatives). To my regret, the Chamber did not pay any attention to this flagrant inconsistency.

The second point of my disagreement concerns the merits. I do not wish to repeat all my arguments in the dissenting opinion in the *Ilașcu* judgment – unfortunately they are still relevant for me as the Chamber again applied the *Loizidou* test in a very different situation. I wish only to say that the presentation of the facts on which the Chamber based its conclusions on the merits is even more selective and subjective than in the *Ilașcu* case. For example, in the interpretation of the Court’s judgment of 8 July 2004 by the present text one can read: “The Court noted that until 2001, the Moldovan authorities had taken various measures aimed at obtaining the applicant’s release and that as a result, Mr. *Ilașcu* was released in May 2001” (§ 10). What is more interesting is that in the *Ilașcu* judgment it is written in black and white: “After Mr. Ilașcu’s release the representative of Mr. Leșco submitted in a letter received by the Court on 1 June 2001 that the release had been prompted by the Russian authorities’ intercession with the Transdnistrian authorities” (see, for more details, § 283 of the *Ilașcu* judgment). Moreover, “At the hearing on 6 June 2001 the Moldovan Government thanked those who had contributed to Mr. Ilașcu’s release, in particular the Russian Federation” (§ 284).

This “new presentation” of the facts reinforces the Chamber’s conclusions that only Moldova discharged its positive obligations to secure the release of the first two applicants (conclusion disputed by the Romanian Government – see § 104). The Chamber even reiterates the *Ilașcu* judgment’s speculations about the possibilities of “a power such as the Russian Federation” and the “little that Moldova could do” (§ 108)! The measures of the Moldovan authorities as presented by the Moldovan Government were limited essentially to sending letters (§ 24). That was quite enough to convince the Chamber that there has been no failure on the part of Moldova to secure the rights guaranteed by the Convention (§ 111). Ironically, on the day of the adoption of the present judgment the mass media all over the world announced the liberation of the soldier G. Shalit thanks to over five years of efforts by the State of Israel to secure his liberation, using all possible means.

I leave aside the Chamber’s conclusions on “a continuous and uninterrupted link of responsibility on the part of the Russian Federation for the applicants’ fate” (§ 115), based on its “support” for the “MRT” regime. I am afraid that this linking of individual cases with global geo-strategic problems will become a kind of practice of the Court, with the danger that its role will mutate from that of a judicial body to that of a European Security Council.

In any case, J.-F. Flauss, an attentive observer of the Court's case-law, has reasoned that "accepted historical reality does not appear to require any special protection under the Convention" (Flauss J.-F., "L'Histoire dans la jurisprudence de la Cour européenne des droits de l'homme", *Revue trimestrielle des droits de l'homme*, 2006, no. 21-22, p. 17). And as I myself observed: "As to History, we must interpret it as objectively as possible without being its prisoner" (Kovler A., "La Cour devant l'Histoire, l'Histoire devant la Cour ou Comment la Cour européenne 'juge' l'Histoire", *La conscience des droits. Mélanges en l'honneur de Jean-Paul Costa*, Dalloz, 2011, p.p. 341-352).

Unfortunately, seven years later the majority has followed the way of the interpretation of History traced by the first judgment of 8 July 2004, using the same conclusions with one exception – discharging one sovereign State of all its positive obligations towards its own citizens and charging another State with "an aggravated violation". I find this truly worrying.