



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

SECOND SECTION

**CASE OF MANGÎR AND OTHERS v. THE REPUBLIC OF
MOLDOVA AND RUSSIA**

(Application no. 50157/06)

JUDGMENT

STRASBOURG

17 July 2018

FINAL

03/12/2018

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

In the case of Mangîr and Others v. the Republic of Moldova and Russia,

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

Robert Spano, *President*,

Paul Lemmens,

Işıl Karakaş,

Nebojša Vučinić,

Valeriu Griţco,

Dmitry Dedov,

Jon Fridrik Kjølbro, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 26 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 50157/06) against the Republic of Moldova and the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Moldovan nationals, Mr Ştefan Mangîr, Mr Vitalie Vasiliev, Mr Igor Daţco, Mr Constantin Condrea and Mr Alexandru Pohila (“the applicants”), on 1 December 2006.

2. The applicants were represented by Mr A. Bivol, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr L. Apostol, and the Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained that their detention had been contrary to Article 5 § 1 of the Convention. They also complained under Article 3 of the Convention that the conditions of their detention had amounted to inhuman and degrading treatment and that they had been subjected to ill-treatment.

4. On 10 April 2012 the application was communicated to the respondent Governments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, who are police officers, were born in 1967, 1978, 1976, 1979 and 1964 respectively. The first and second applicants live in Chişinău and Căuşeni and the remaining applicants live in Bender.

A. The applicants' arrest and alleged ill-treatment

6. On 14 June 2006 officers Mangîr, Vasiliev and Condrea, who were conducting a criminal investigation in Tiraspol, were arrested by the secret service of the self-proclaimed "Moldovan Republic of Transdnistria" ("MRT")¹. During their arrest they managed to call the Bender police station.

7. The other two applicants (officers Daţco and Pohila) went to Tiraspol to clarify the reasons for the arrest of their colleagues, but were also arrested upon their arrival.

8. The applicants were placed in the Tiraspol Remand Centre (IVS Tiraspol).

9. On 17 June 2006 officers Pohila, Daţco and Vasiliev were released without charge and without any explanation for their arrest.

10. On 18 June 2006 officer Mangîr was allegedly beaten up and injected with an unknown substance, which rendered him unconscious for four days. After his release he was admitted for in-patient treatment in the hospital of the Ministry of Internal Affairs of the Republic of Moldova, where he was diagnosed with, *inter alia*, concussion.

11. On 20 June 2006 the Tiraspol City Court issued a warrant for officer Mangîr to be detained for thirty days. On 23 June 2006 the "MRT" authorities released officers Mangîr and Condrea. The head of the "MRT" secret service declared in an interview that the officers had been released after Russian authorities had "given assurances" that Moldovan authorities would not "kidnap people" in the "MRT".

12. The applicants were accused in the "MRT" media of being members of "black squadrons" created for the purpose of kidnapping politicians and other persons causing nuisance to the Moldovan authorities. According to the applicants, during their detention they were questioned by the "MRT" secret service and forced to declare that in Tiraspol they had been trying to kidnap "MRT" politicians. Officers Pohila, Daţco and Vasiliev were allegedly beaten on the soles of their feet and threatened with the killing of members of their families, as well as with being transferred to cells

¹ For further details, see *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII).

occupied by common criminals, where they would be ill-treated or even killed.

13. Officer Condrea was allegedly subjected to so-called “Palestinian hanging” for up to seven hours and was taken to his cell unconscious thereafter.

B. Conditions of the applicants’ detention

14. The applicants described as follows their conditions of detention at the Tiraspol Remand Centre. The cells in which they had been held had been in the basement and had not had access to natural light. In the absence of ventilation and because of overcrowding it had been difficult to breathe. Officer Condrea submits that he was detained in the same cell as that in which Mr Ilie Ilaşcu had been detained (for more details see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII).

15. During their detention the applicants did not have any daily exercise and were not given access to a shower; they could not receive parcels containing food from their relatives, they did not have bed linen and they were not allowed to be seen by doctors.

C. The actions undertaken by the Moldovan authorities

16. After the applicants’ release the Moldovan authorities initiated two sets of criminal proceedings concerning their unlawful detention and their alleged ill-treatment while in detention. However, several years later the investigation was discontinued.

17. The applicants were also subjected to medical check-ups, which found no traces of violence on their bodies. Only one applicant, Stefan Mangîr, was found to be suffering from the consequences of concussion.

II. RELEVANT DOMESTIC LAW AND PRACTICE OF THE REPUBLIC OF MOLDOVA AND OTHER RELEVANT MATERIALS

18. Reports by inter-governmental and non-governmental organisations, the relevant domestic law and practice of the Republic of Moldova, and other pertinent documents were summarised in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 61-77, ECHR 2016).

THE LAW

19. The applicants submitted that they had been arrested and detained unlawfully, contrary to Article 5 § 1 of the Convention. They further complained under Article 5 §§ 3 and 4 of the Convention that they had not been brought before a judge in order for the lawfulness of their arrest to be decided upon and therefore could not appeal against a non-existent decision to detain them. The applicants also complained under Article 3 of the Convention that they had been held in inhuman conditions of detention, ill-treated and refused medical assistance. They lastly complained of a violation of Article 13 of the Convention since they had not had a remedy before the Moldovan or Russian courts.

I. JURISDICTION

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

A. The parties' submissions

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

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

23. For their part, the Russian Government argued that the applicants did not fall within their jurisdiction and that, consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. As they did in *Mozer* (cited above, §§ 92-94), the Russian Government expressed the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others* (cited above); *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, ECHR 2012 (extracts); and *Ivanțoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011) was wrong and at variance with public international law.

B. The Court's assessment

24. The Court notes that the parties in the present case have positions concerning the matter of jurisdiction which are similar to those expressed by the parties in *Catan and Others* (cited above, §§ 83-101) and in *Mozer* (cited above, §§ 81-95). Namely, the applicants and the Moldovan

Government submitted that both respondent Governments had jurisdiction, while the Russian Government submitted that they had no jurisdiction.

25. The Court recalls that the general principles concerning the issue of jurisdiction under Article 1 of the Convention in respect of actions and facts pertaining to the Transdnistrian region of Moldova were set out in *Ilaşcu and Others* (cited above, §§ 311-19), *Catan and Others* (cited above, §§ 103-07) and, more recently, *Mozer* (cited above, §§ 97-98).

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

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

28. In so far as the Russian Federation is concerned, the Court notes that in *Ilaşcu and Others* it found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdnistria in 1991-1992 (see *Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdnistrian region that up until July 2010, the "MRT" was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support (see *Ivanțoc and Others*, cited above, §§ 116-20; *Catan and Others*, cited above, §§ 121-22; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdnistrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-11).

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

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

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

II. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1, 3 AND 4 OF THE CONVENTION

32. The applicants complained that their arrest and detention had been unlawful and contrary to Article 5 § 1 of the Convention. They also submitted that their rights, as guaranteed by Article 5 §§ 3 and 4 of the Convention, had been breached. The relevant parts of Article 5 read 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:

...

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

..."

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

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

A. Admissibility

33. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that they are not inadmissible on any other grounds. The Court therefore declares them admissible.

B. Merits

34. The applicants complained that neither their arrest nor their detention had been ordered and carried out in accordance with a procedure prescribed by law, as required by Article 5 § 1 of the Convention.

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

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

37. The Court reiterates that in *Mozer* it held that the judicial system of the “MRT” was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-49). For that reason it held that the “MRT” courts and, by implication, any other “MRT” authority, could not order the applicant’s “lawful” arrest or detention, within the meaning of Article 5 § 1 of the Convention (see *Mozer*, cited above, § 150).

38. In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too. It therefore considers that there has been a breach of Article 5 § 1 of the Convention in the present case.

39. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicants’ rights under Article 5 § 1 of the Convention (see paragraph 27 above). In *Mozer*, the Court held that Moldova’s positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants’ rights (see *Mozer*, cited above, § 151).

40. As regards the first aspect of Moldova’s obligation, to re-establish control, the Court found in *Mozer* that, from the onset of the hostilities in 1991-1992 until July 2010, Moldova had taken all the measures in its power (*Mozer*, cited above, § 152). Since the events complained of in the present case took place before the latter date, the Court sees no reason to reach a different conclusion (*ibid.*).

41. Turning to the second part of the positive obligations, namely to ensure respect for the applicants' rights, the Court notes that the Moldovan authorities made efforts to secure the applicants' rights. In particular, a criminal investigation was initiated in respect of the applicants' detention by the "MRT" authorities (see paragraph 16 above).

42. In the light of the foregoing, the Court concludes that the Republic of Moldova did not fail to fulfil its positive obligations in respect of the applicants and finds that there has been no violation of Article 5 § 1 of the Convention by that State. For the same reasons, the Court finds that there has been no violation of Article 5 §§ 3 and 4 of the Convention by the Republic of Moldova.

43. In so far as the responsibility of the Russian Federation is concerned, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraphs 28-29 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", without which the latter could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicants' rights (*ibid.*).

44. In conclusion, and having found that the applicants' detention was unlawful under Article 5 § 1 of the Convention (see paragraph 38 above), the Court holds that there has been a violation of that provision by the Russian Federation.

45. In the light of the above, the Court does not consider it necessary to examine separately the applicants' respective complaints under Article 5 §§ 3 and 4 of the Convention in respect of the Russian Federation.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicants complained that they had been held in inhuman conditions of detention and had not been given the requisite medical assistance. They also complained of being subjected to ill-treatment and torture at the hands of the "MRT" authorities. They relied on Article 3 of the Convention, which reads as follows:

Article 3

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

A. Admissibility

47. The applicants complained under Article 3 of the Convention that they had been subjected to ill-treatment while in detention. However, only Mr Mangîr adduced medical evidence proving that he had been diagnosed with concussion after his release from detention. The other applicants failed to adduce any evidence, such as medical documents or witness statements, in support of their allegations. The Court therefore considers that this part of the complaint under Article 3, in respect of the four other applicants, is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible, in accordance with Article 35 § 4 of the Convention.

48. The applicants further complained that they had not received adequate medical care while in detention. However, the Court notes that none of the applicants adduced any evidence that they had been in need of any urgent medical care during their detention. The Court therefore considers that this part of the complaint under Article 3 of the Convention, in respect of all of the applicants, is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

49. The Court notes that the rest of the complaint under Article 3 of the Convention, namely the parts pertaining to the material conditions of detention of all five applicants and the ill-treatment of Mr Mangîr, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other grounds. The Court therefore declares it admissible.

B. Merits

50. The applicants complained in the first place that their cells had been in the basement and had not afforded them any access to natural light. There had been no ventilation and the cells had been overcrowded. Moreover, the applicants had not had daily exercise or access to a shower.

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

52. The Court reiterates that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Mozzer*, cited above, § 178; *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 160 (c), ECHR 2016 (extracts); and *Muršić v. Croatia* [GC], no. 7334/13, § 99, ECHR 2016).

53. In the present case the Court notes that the respondent Governments did not comment on the applicants' description of the conditions of their detention. However, the Court has already reviewed the material conditions in the "MRT" prisons in *Mozer* (cited above, § 181, with further references, notably to visits to the region by the European Committee for the Prevention of Torture and the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and found a violation of Article 3 of the Convention on account of inhuman conditions of detention (*ibid.*, § 182). The Court notes in particular that the Special Rapporteur's visit took place in July 2008 – that is to say after the time when the applicants were in detention.

54. On the basis of the material before it and in the absence of any material contradicting the applicants' submissions, the Court finds it established that the conditions of the applicants' detention amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

55. Mr Mangîr further complained about ill-treatment during his detention.

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

57. Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention. In addition, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of any such explanation, the Court can draw inferences which may be unfavourable for the Government. This is justified by the fact that persons in the hands of the police or a comparable authority are in a vulnerable position and the authorities are under a duty to protect them (see *Blokhin v. Russia* [GC], no. 47152/06, § 140, ECHR 2016; *Bouyid v. Belgium* [GC], no. 23380/09, § 83, ECHR 2015; and *Khlaifia and Others*, cited above, § 205).

58. In view of the medical evidence according to which the applicant suffered the consequences of a head concussion after his release from the "MRT" prison and of the lack of a plausible explanation as to how the injury was caused, the Court finds that the applicant was subjected to treatment contrary to Article 3 of the Convention.

59. For the same reasons as those given in respect of the complaint under Article 5 § 1 of the Convention (see paragraphs 40-41 above), the

Court finds that there has been no violation of Article 3 of the Convention by the Republic of Moldova.

60. For the same reasons as those given in the same context (see paragraph 43 above), the Court finds that there has been a violation of Article 3 of the Convention by the Russian Federation.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 5

61. The applicants furthermore complained that they had no effective remedies in respect of their respective complaints under Articles 3 and 5 of the Convention. They relied on Article 13 of the Convention, which reads as follows:

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

A. Admissibility

62. The Court notes that the complaint under Article 13 of the Convention, taken in conjunction with Articles 3 and 5 of the Convention, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

63. The applicants submitted that they had had no means of asserting their rights in the face of the actions of the “MRT” authorities, and that the respondent Governments had not indicated any remedies which they should have exhausted.

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

65. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy by which to complain of a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention, but the remedy must in any event be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions

of the authorities of the State (*Mozer*, cited above, § 207; *Khlaifia and Others*, cited above, § 268; and *De Tommaso v. Italy* [GC], no. 43395/09, § 179, ECHR 2017 (extracts)). However, Article 13 of the Convention requires that a remedy be available in domestic law only in respect of grievances which can be regarded as “arguable” in terms of the Convention (*Mozer*, cited above, § 207; and *De Tommaso*, cited above, § 180).

66. The Court observes that the applicants’ complaints under Article 3 of the Convention, concerning the conditions of their detention and the ill-treatment of Mr Mangîr, were arguable. However, as regards the applicants’ complaint under Article 5 § 1 of the Convention, the Court observes that Article 5 § 4 is the *lex specialis* in relation to Article 13, and recalls that, with respect to the Russian Federation, it did not consider it necessary to examine that complaint separately, given the circumstances of the case (see paragraph 45 above).

67. Accordingly, the Court will examine only whether a domestic remedy was available to the applicants in respect of their complaints under Article 3 of the Convention.

68. In so far as the applicants complained against Moldova, the Court notes that the Moldovan Government did not point to the existence of any effective remedy under Moldovan domestic law.

69. In so far as the applicants complain against Russia, the Court also notes that there is no indication in the file, and the Russian Government have not claimed, that any effective remedies were available to the applicants in the “MRT” in respect of the above-mentioned complaints.

70. The Court therefore concludes that the applicants did not have an effective remedy in respect of their respective complaints under Article 3 of the Convention. Consequently, the Court must decide whether any violation of Article 13 can be attributed to either of the respondent States.

71. In so far as the responsibility of Moldova is concerned, the Court recalls that it found that the “remedies” which this State must offer to applicants consisted of enabling them to inform the Moldovan authorities of the details of their situation and to be kept informed of the various legal and diplomatic actions taken by these authorities (*Mozer*, cited above, § 214). In *Mozer*, it concluded among other things that Moldova had made procedures available to the applicant commensurate with its limited ability to protect the applicant’s rights and that it had thus fulfilled its positive obligations (*ibid.*, § 216). In the present case, the Court sees no reason to reach a different conclusion. Accordingly, it finds that there has been no violation of Article 13 of the Convention by Moldova.

72. In so far as the responsibility of the Russian Federation is concerned, for the same reasons as those given in respect of the complaint under Article 5 § 1 of the Convention (see paragraph 43 above) and in the absence of any submission by the Russian Government as to any remedies available to the applicants, the Court concludes that there has been a violation by the

Russian Federation of Article 13 of the Convention, taken in conjunction with Article 3 of the Convention (see *Mozzer*, cited above, § 218).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. Mr Mangîr and Mr Condrea claimed 25,000 euros (EUR) each in respect of non-pecuniary damage, and the rest of the applicants claimed EUR 15,000 each.

75. The Governments asked the Court to dismiss the applicants’ claims for non-pecuniary damage.

76. The Court notes that it has not found any violation of the Convention by Moldova in the present case. Accordingly, no award of compensation is to be made with regard to this respondent State.

77. Having regard to the violations by the Russian Federation found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 25,000 to Mr Mangîr and EUR 20,000 to Mr Condrea and EUR 15,000 to each of the remaining applicants.

B. Costs and expenses

78. The applicants also claimed EUR 3,000 for costs and expenses.

79. The respondent Governments asked the Court to dismiss the applicants’ claims.

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

81. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Mozzer*, cited above, § 240). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards the entire amount claimed for costs and expenses, to be paid by the Russian Federation.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning Article 3 of the Convention, in so far as they concern the ill-treatment of Mr Mangîr and the poor conditions of detention of all the applicants, as well as their complaints under Article 5 §§ 1, 3 and 4 of the Convention and under Article 13 of the Convention admissible in respect of the Republic of Moldova;
2. *Declares*, by a majority, the complaints concerning Article 3 of the Convention in so far as they concern the ill-treatment of Mr Mangîr and the poor conditions of detention of all the applicants, as well as their complaints under Article 5 §§ 1, 3 and 4 of the Convention and under Article 13 of the Convention admissible in respect of the Russian Federation;
3. *Declares*, unanimously, the remainder of the application inadmissible;
4. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention by the Republic of Moldova in so far as it concerns the ill-treatment of Mr Mangîr;
5. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention by the Russian Federation in so far as it concerns the ill-treatment of Mr Mangîr;
6. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention by the Republic of Moldova in so far as it pertains to the poor conditions of detention of the applicants;
7. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention by the Russian Federation in so far as it pertains to the poor conditions of detention of the applicants;
8. *Holds*, unanimously, that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova;

9. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention by the Russian Federation;
10. *Holds*, unanimously, that there has been no violation of Article 5 §§ 3 and 4 of the Convention by the Republic of Moldova;
11. *Holds*, six votes to one, that it is not necessary to examine separately the complaints under Article 5 §§ 3 and 4 of the Convention in respect of the Russian Federation;
12. *Holds*, unanimously, that there has been no violation of Article 13 in conjunction with Article 3 of the Convention by the Republic of Moldova;
13. *Holds*, by six votes to one, that there has been a violation of Article 13 in conjunction with Article 3 of the Convention by the Russian Federation;
14. *Holds*, by six votes to one,
 - (a) 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 amounts:
 - (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to Mr Mangîr;
 - (ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to Mr Condrea;
 - (iii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to Mr Vasiliev;
 - (iv) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary, damage to Mr Datco;
 - (v) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to Mr Pohila;
 - (vi) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses.
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
15. *Dismisses*, unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 17 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President

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

R.S.
S.H.N.

DISSENTING OPINION OF JUDGE DEDOV

My vote in the present case was based on my previous dissenting opinion in the case of *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, ECHR 2016) on the issue of the Russian Federation's effective control over Transdnistria.