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

GRAND CHAMBER

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 48787/99
by Ilie Ilaşcu and Others
against Moldova and the Russian Federation

The European Court of Human Rights, sitting on 4 July 2001 as a Grand Chamber composed of

Mr L. Wildhaber, *President*,
Mrs E. Palm,
Mr C.L. Rozakis,
Mr G. Ress,
Mr J.-P. Costa,
Mr L. Ferrari Bravo,
Mr L. Loucaides,
Mr J. Makarczyk,
Mr C. Bîrsan,
Mr K. Jungwiert,
Sir Nicolas Bratza,
Mr J. Casadevall,
Mr J. Hedigan,
Mrs W. Thomassen,
Mr T. Panţîru,
Mr E. Levits,
Mr A. Kovler, *judges*,

and Mr P.J. Mahoney, *Registrar*,

Having regard to the above application introduced on 5 April 1999 and registered on 14 June 1999,

Having regard to the decision of 20 March 2001 by which the Chamber of the First Section to which the case had originally been assigned relinquished its jurisdiction in favour of the Grand Chamber (Article 30 of the Convention),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Romanian Government, intervening,

Having regard to the oral submissions of the parties and of the Romanian Government at the hearing on 2 June 2001,

Having deliberated on 6 June and 4 July 2001, decides as follows:

THE FACTS

The applicants are Moldovan nationals, who were born in 1952, 1955, 1961 and 1963 respectively and live in Chişinău, except for the fourth applicant, who lives in Tiraspol (Transdniestria, Moldova). The first and third applicants also have Romanian nationality. The applicants are currently held in custody in Tiraspol, except for the first applicant, who was released on 5 May 2001. The application was lodged by the applicants' spouses, Nina Ilaşcu, Tatiana Leşco, Eudochia Ivanţoc and Raisa Popa-Petrov. The second applicant is represented before the Court by Mr Alexandru Tănase, of the Chişinău Bar, and the other applicants are represented by Mr Corneliu Dinu, of the Bucharest Bar.

A. The circumstances of the case

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

1. General background: events connected with the secession of Transdniestria and Moldova's independence declaration

Created by a decision of the Supreme Soviet of the USSR on 2 August 1940, the Moldavian Soviet Socialist Republic consisted of part of Bessarabia and a strip of land on the left bank of the river Dniester called Transdniestria, inhabited mainly by speakers of Slavonic languages.

In June 1990 the Moldavian Soviet Socialist Republic took the name of Soviet Socialist Republic of Moldova. It proclaimed its sovereignty on 23 June 1990.

On 2 September 1990 the "Moldovan Republic of Transdniestria" ("the 'MRT'") was proclaimed.

On 23 May 1991 the Soviet Socialist Republic of Moldova changed its name to Republic of Moldova.

On 25 August 1991 the "Supreme Council of the MRT" adopted the declaration of the "MRT"'s independence.

On 27 August 1991 the Moldovan parliament adopted the Declaration of Independence of the Republic of Moldova. As the Fourteenth Army of the military district of Odessa of the USSR's Ministry of Defence ("the Fourteenth Army"), whose headquarters had been in Chişinău since 1956, had been kept on Moldovan territory, the Moldovan parliament asked the USSR Government to "enter into negotiations with the Moldovan Government in order to put an end to the unlawful occupation of the Republic of Moldova and withdraw Soviet troops from Moldovan territory".

On 1 December 1991 presidential elections were held in the counties (*raioane)* on the left bank of the Dniester (Transdniestria) and were declared illegal by the Moldovan authorities. Mr Igor Smirnov was elected "President of the MRT".

In late 1991 and early 1992 there were violent clashes between separatist forces and Moldovan Government security forces, in which several hundred people were killed.

In an appeal to the international community and the United Nations Security Council on 6 December 1991 the Moldovan President, the Speaker of the Moldovan parliament and the Prime Minister protested against the occupation on 3 December 1991 of the Moldovan towns and villages of Grigoriopol, Dubăsari, Slobozia, Tiraspol and Ribniţa, on the left bank of the Dniester, by the Fourteenth Army under the command of Lieutenant-General Iakovlev. They accused the USSR authorities, in particular the Ministry of Defence, of being behind these actions. The soldiers of the Fourteenth Army were accused of distributing military equipment to the Transdniestrian separatists and of having organised the separatists into military detachments which were terrorising the civilian population.

On 5 March 1992 the Moldovan parliament protested against the Russian authorities' silence – which it described as complicity – as to the support allegedly given to the Transdniestrian separatists by armed groups of Cossacks from Russia, organised in the Cossacks' Union, an association recognised by the Russian authorities. The Moldovan parliament asked the Supreme Soviet of the Russian Federation to intervene to secure the immediate withdrawal of the Russian Cossacks from Moldovan territory.

On 24 March 1992 the Moldovan parliament protested at the Russian Federation's interference in Moldovan affairs as manifested in a statement by the presidency of the Supreme Soviet of the Russian Federation on 20 March 1992 indicating to Moldova ways of settling the Transdniestrian conflict that would respect the rights of the "Transdniestrian people".

On 28 March 1992 the President of Moldova decreed a state of emergency.

In Decree no. 320 of 1 April 1992 the President of the Russian Federation placed the ex-USSR's military units stationed on Moldovan territory under the Russian Federation's jurisdiction, the Fourteenth Army thereby becoming the Russian Operational Group in the Dniestrian Region of the Republic of Moldova ("the ROG" or "the former Fourteenth Army").

On 20 May 1992 the office of the Speaker of the Moldovan parliament protested at the occupation on 19 May 1992 of other regions of Transdniestria, an integral part of Moldova's territory, by the forces of the former Fourteenth Army of the Russian Federation, supported by Cossack and Russian mercenaries and by Transdniestrian paramilitary forces. According to the Speaker's office, this military aggression on the part of the Russian Federation violated the Moldovan State's sovereignty and all the rules of international law, rendering illusory the negotiations that were under way at the time to find a solution to the conflict in Transdniestria. Accusing the Russian Federation of having armed the Transdniestrian separatists, the office of the Speaker of the Moldovan parliament asked the Supreme Soviet of the Russian Federation to halt the aggression and withdraw the Russian Federation's military forces from Moldovan territory.

That protest was also directed at speeches regarded as displaying aggressiveness towards Moldova that had been made by Mr Rutskoi, the Vice-President of the Russian Federation, in Moscow and in Tiraspol, and at a statement made on 19 May 1992 by the Military Council of the ROG.

On 26 May 1992 the Moldovan parliament sent a letter to the Supreme Soviet of Ukraine about the occupation of 19 May 1992, expressing the Moldovan parliament's gratitude to the Ukrainian authorities, who had not seen fit to join that occupation.

On 22 June 1992 the Moldovan parliament appealed to the international community and protested at a fresh attack in Transdniestria on 21 June 1992 by the forces of the former Fourteenth Army of the Russian Federation, which through its acts of destruction and pillage had prompted a large number of civilians to flee their homes. The parliament asked the international community to send experts to the spot to halt the "genocide" of the local population.

On 21 July 1992 a ceasefire agreement was signed by the President of Moldova, Mr Snegur, and the President of the Russian Federation, Mr Yeltsin, and co-signed by Mr Smirnov.

On 29 July 1994 Moldova adopted a new Constitution that provided, among other things, that the country was neutral and prohibited the stationing of foreign troops on its territory.

On 21 October 1994 Moldova and the Russian Federation signed an agreement on the legal status of the Russian Federation's military units temporarily stationed on Moldovan territory and the arrangements and timetable for their withdrawal. That agreement provided that the military units of the former Fourteenth Army would be withdrawn from Moldovan territory and that the installations vacated by the troops would be handed over to the local authorities of the Republic of Moldova, within three years of the agreement's taking effect. On 9 November 1994 the Moldovan Government adopted the decision to implement that agreement. At an unknown date the Government of the Russian Federation decided to submit the agreement to the State Duma for ratification.

On 20 March 1998 agreements on issues concerning the property of the former Fourteenth Army were signed by Mr Chernomyrdin, on behalf of the Russian Federation, and Mr Smirnov, "the President of the MRT". Under the agreements, the proceeds of the sale of surplus arms, munitions and assets which could be disposed of where they were stocked would be divided between the two parties, 50% of the proceeds going to the Russian Federation and 50% to Transdniestria. The agreements also provided that the military quarters evacuated by the Russian Federation's forces could be handed over to the Transdniestrian local authorities on the basis of official documents indicating the sites' real value.

On 17 November 1998, as the agreement of 21 October 1994 had still not been ratified by the Duma, the Russian Federation's Ministry of Foreign Affairs asked the Duma to withdraw it from its order of business, on the ground that "any future decision by the Ministry to return to this issue [would] depend on the development of relations with the Republic of Moldova and the Transdniestrian Region and on the political settlement in the region".

In January 1999 the agreement was withdrawn from the Duma's order of business and it has still not taken effect.

At the OSCE Istanbul summit meeting in 1999 the Russian Federation undertook to complete the withdrawal of its military forces from Moldovan territory by the end of 2002. The Russian Government have submitted to the Court the timetable which the headquarters of the Russian Federation army drew up for the dates and stages of the withdrawal of Russian forces and equipment from Transdniestrian territory.

On 16 April 2001 the President of the Republic of Moldova, Mr Voronin, and the President of the Russian Federation, Mr Putin, signed a joint statement, point 5 of which read:

> "The presidents declared that they were in favour of a rapid and fair settlement of the Transdniestrian conflict by exclusively peaceful means, based on respect for the principle of the Republic of Moldova's sovereignty and territorial integrity and on international human-rights standards."

2. The support allegedly given to the Transdniestrian separatists by the Russian Federation: position of the applicants

The applicants relied on the following facts, which, in their submission, made clear the support given to the Transdniestrian separatists by the Russian Federation:

(a) during confrontations with Moldovan Government forces, military units belonging to the Russian Federation had gone over to the separatists, as had been the case with the Parcani engineers battalion under General Butkevich, which had destroyed the bridges at Dubăsari, Gura Bâcului-Bâcioc and Coşniţa;

(b) the transfer of Russian military units to the Transdniestrian forces;

(c) the participation of senior officers from the former Fourteenth Army in public affairs in Transdniestria: General Bergman, commander of the Tiraspol garrison of the former Fourteenth Army, had acted as the town's mayor for several months; and the Russian military commander of the town of Bender had been the authority on whom the release and work programme of prisoners depended;

(d) the participation of soldiers from the former Fourteenth Army in elections in Transdniestria, military processions of the Transdniestrian forces and other public events;

(e) the presence of Cossacks who had come from Russia to fight alongside the separatists on the basis of an agreement with the Russian authorities;

(f) in statements he had made to the press, the Vice-President of the Russian Federation at the time, Mr Rutskoi, had recognised the "legitimacy of the entity created on the left bank of the Dniester";

(g) the television broadcast by the President of the Russian Federation, Mr Yeltsin, which was also reported in the press, in which he had stated: "Russia has given, is giving and will continue to give its economic and political support to the Transdniestrian region";

(h) the State Duma's Resolution no. 1334-I of 17 November 1995 declaring the Transdniestrian region an "area of special strategic interest to the Russian Federation";

(i) the agreements concluded on 20 March 1998 between Mr Chernomyrdin, on behalf of the Russian Federation, and Mr Smirnov, on behalf of the "MRT", on the division of the former Fourteenth Army's property;

(j) the issuing of Russian passports to Transdniestrian leaders, including Mr Smirnov, Mr Maracuta and Mr Caraman.

3. Applicants' arrest and conviction: position of the applicants

The applicants were arrested from 2 to 4 June 1992 by individuals claiming to represent the "MRT" authorities.

Ilie Ilaşcu, who was at the material time a local leader of the Popular Front (a party represented in the Moldovan parliament) and a campaigner for the unification of Moldova and Romania, was arrested on 2 June 1992 at about 4.30 a.m., when ten to twelve individuals armed with automatic pistols forcibly entered his house in Tiraspol. These individuals carried out a search and seized certain items. The latter included a pistol which, according to the applicant, had been placed in his house by the people who searched it. The applicant alleged that his arrest and the search took place without any warrant. The applicant was informed that he was being arrested because as a member of the Popular Front he represented a danger to the stability of the "MRT", which was at war with Moldova. The applicant Alexandru Ilaşcu

was arrested during the night of 2 June 1992, at 2.45 a.m. The following day his house was searched, with neighbours present.

Andrei Ivanţoc was arrested at his home on 2 June 1992 at 8 a.m. by several armed individuals who struck him with the butts of their weapons and kicked him. According to the applicant, several carpets, 50,000 roubles and a "fine" watch were confiscated during the search that followed.

Tudor Petrov-Popa was arrested on 4 June 1992 at 6.45 a.m. by two people, one of whom was a police officer, Victor Gusan. At about 11 a.m. two prosecutors known by the names of Starojouk and Glazyrin carried out a search, in the applicant's absence.

In a 140-page indictment drawn up by, among others, Mr Starojouk, the applicants were accused of anti-Soviet activities and of having fought by illegal means against the legitimate State of Transdniestria, under the control of the Popular Front of Moldova and of Romania. They were also charged with a number of offences under either the Criminal Code of the Republic of Moldova or the Criminal Code of the Soviet Socialist Republic of Moldova.

The applicants were brought before the "Supreme Court of the Moldovan Republic of Transdniestria", sitting successively in the recreation hall of the Kirov State undertaking and in the hall of the Tiraspol cultural centre. During the trial, which began on 21 April 1993 and ended on 9 December 1993, only Moldovan nationals with a visa allowing them to reside in Transdniestria were allowed into the courtroom. Armed police and soldiers were present in the room and on the dais where the judges were sitting. The applicants attended their trial in metal cages.

The witnesses who gave evidence were able to remain in the room throughout the proceedings, not being required to leave it while other witnesses gave evidence. On numerous occasions during the trial the applicants could only speak with their lawyers in the presence of armed policemen. The hearings took place in a tense atmosphere, with members of the public holding placards hostile to the defendants. A photo that was taken in the hearing room and which appeared in a Moldovan newspaper and was subsequently filed with the Registry by the applicants shows one of these placards bearing the words "Terrorists must be called to account!" (*"Террористов – к ответу!"*).

The applicants were tried by a bench of three judges presided over by Ms O. Ivanova, a former judge of the Moldovan Supreme Court, who had been dismissed by the Moldovan parliament on 5 February 1992. Another member of the court was Mr A. Myazin, who was 28 at the time of the trial and had worked for a year in the office of the Moldovan Procurator-General, and Mr A.M. Zenin.

The court delivered its judgment on 9 December 1993. It found the first applicant guilty of several offences under the Criminal Code of the Soviet Socialist Republic of Moldova, including incitement to crime against the security of the State (Article 67), the organisation of activities intended to bring about the commission of offences extremely dangerous to the State (Article 69), the murder of a State representative with the aim of spreading terror (Article 63), murder (Article 88), unlawful requisition of means of transport (Article 182), deliberate destruction of the property of others (Article 127) and unlawful or unauthorised use of munitions or explosives (Article 227), and convicted him and sentenced him to death; it also ordered the confiscation of his property.

The court found the second applicant guilty of the murder of a State representative with the aim of spreading terror (Article 63), deliberate destruction of the property of others (Article 127) and unauthorised use of munitions or explosives (Article 227 § 2) and convicted

him and sentenced him to twelve years' imprisonment, to be served in a labour camp with a harsh regime, and an order was made for the confiscation of his property.

The third applicant was found guilty of the murder of a State representative with the aim of spreading terror (Article 63), unauthorised use and theft of munitions or explosives (Articles 227 and 227^1 § 2), unlawful requisition of animal-drawn means of transport (Article 182 § 3), deliberate destruction of the property of others (Article 127) and assault (Article 96 § 2) and was convicted and sentenced to fifteen years' imprisonment, to be served in a labour camp with a harsh regime, and an order was made for the confiscation of his property.

The fourth applicant was found guilty of the murder of a State representative with the aim of spreading terror (Article 63), assault (Article 96 § 2), unlawful use of animal-drawn means of transport (Article 182 § 3), deliberate destruction of the property of others (Article 127) and unauthorised use and theft of munitions or explosives (Articles 227 and 227^1 § 2) and was convicted and sentenced to fifteen years' imprisonment, and an order was made for the confiscation of his property.

On the same day (9 December 1993) the President of the Republic of Moldova decreed that the applicants' conviction was unlawful, on the ground that they had been convicted by a court that was unconstitutional.

On 28 December 1993 the Deputy Procurator-General of the Republic of Moldova ordered a criminal investigation concerning the "judges", "prosecutors" and others involved in the prosecution and conviction of the applicants in Transdniestria, on a charge of unlawful arrest under Articles 190 and 192 of the Criminal Code of the Republic of Moldova.

On 3 February 1994 the Supreme Court of the Republic of Moldova examined the judgment of 9 December 1993 of the "Supreme Court of the MRT" of its own motion, quashed it on the ground that the court that had delivered it was unconstitutional and ordered the case to be sent to the Moldovan public prosecutor for a fresh investigation under Article 93 of the Code of Criminal Procedure. The Court has not been informed of the outcome of that investigation.

Furthermore, the Supreme Court of the Republic of Moldova quashed the order for the applicants' detention pending trial, ordered their release and asked the public prosecutor to consider whether it was appropriate to prosecute the judges of the "so-called" Supreme Court of Transdniestria for having deliberately rendered an unlawful decision, an offence punishable under Articles 190-192 of the Criminal Code.

The authorities of the "MRT" took no action on the judgment of 3 February 1994.

In a decree of 4 August 1995 the President of the Republic of Moldova promulgated an amnesty to mark the first anniversary of the adoption of the Moldovan Constitution. The amnesty covered, *inter alia*, convictions or offences until Articles 227, 227^1 and 227^2 of the Criminal Code that had been committed from 2 January 1990 onwards in several counties on the left bank of the Dniester.

On 3 October 1995 the Moldovan parliament adopted a decision whereby it asked, firstly, the Moldovan Government to deal as a matter of priority with the problem of the applicants' detention as political detainees and to inform Parliament regularly about progress and measures taken in this connection and, secondly, the Ministry of Foreign Affairs to seek firm support for the release of the applicants ("the Ilaşcu Group") from the countries in which Moldova had diplomatic missions.

The first applicant, although in custody, was elected to the Moldovan parliament on 25 February 1994 and again on 22 March 1998, but was never able to take his seat.

On 16 August 2000 the public prosecutor quashed the order of 28 December 1993 on the ground that unlawful deprivation of liberty was punishable under Articles 190 and 192 of the Criminal Code only if the offence had been committed by judges and prosecutors appointed in accordance with the legislation of the Republic of Moldova, and in the instant case they had not been. On the same occasion the public prosecutor decided that it was inappropriate to open an investigation in respect of unlawful deprivation of liberty or illegal use of the powers or title of an official, which were offences under Article 116 and Article 207 respectively of the Criminal Code, on the ground that any offence was now time-barred.

On the same day the prosecutor ordered a criminal investigation in respect of the governor of Hlinaia Prison for unlawful deprivation of liberty and illegal use of the powers or title of an official, under Articles 116 and 207 of the Criminal Code.

On 4 October 2000, on an application by Mr Ilaşcu, the Romanian authorities granted him Romanian nationality under the Romanian Nationality Act (Law no. 21/1991).

In December 2000 Mr Ilaşcu was elected to the Romanian parliament.

On 10 April 2001 Mr Ivanţoc likewise obtained Romanian nationality.

On 5 May 2001 Mr Ilaşcu was released. He indicated that in the morning of 5 May 2001 he was taken to Chişinău in a car together with Vladimir Şefţov, known as Antiufeev, the Transdniestrian "Minister of Security". When they arrived in Chişinău, Mr Şefţov read out in front of the head of the Moldovan secret service, Vladimir Păsat, the document recording the transfer, which read: "*The prisoner Ilaşcu, who has been sentenced to death, is transferred to the appropriate authorities of the Republic of Moldova*". After handing over the document, Mr Şefţov said that the conviction still stood and that the sentence would be carried out if Mr Ilaşcu returned to Transdniestria.

4. The applicants' conditions of detention: position of the applicants

According to the first applicant, he was taken immediately after his arrest to the office of the "MRT"'s Ministry of Security, where he found five other people, who were introduced to him as being colonels from the Russian counter-espionage service. The latter asked him, in exchange for his release, to use on behalf of Transdniestria the skills he had acquired during his military service with USSR special troops and to pass himself off as an agent working for the Romanian secret service. The applicant claimed that when he refused this proposal, he was threatened with having no other choice but the grave.

The other applicants were taken to Tiraspol police station. After a few days all the applicants were imprisoned in cells belonging to the command of the former Fourteenth Army, where they stayed for nearly two months. During that time the applicants had not been able to wash or change their clothes, they received no letters and they were allowed only fifteen minutes' exercise each day in a closed space. They were not able to see a lawyer.

Mr Ilaşcu was able to see his lawyer for the first time several months after his arrest, in September 1992.

On an unspecified date the applicants were transferred to Tiraspol Prison in preparation for their trial. During their detention pending trial the applicants were subjected to various kinds of inhuman and degrading treatment: they were savagely beaten, Alsatian dogs were set on them, they were isolated and brainwashed with false information about the political situation and the health of their families, were subsequently promised release on condition that they signed confessions and were threatened with execution.

Ilie Ilaşcu was subjected to mock execution on numerous occasions: a death sentence was read out to him; on another occasion the warders put a bulletproof vest on him and then fired at him; and he was blindfolded and taken to a field, where the warders fired at him with blanks until he fainted.

Andrei Ivanţoc and Tudor Petrov-Popa were subjected to treatment with psychotropic drugs. After being drugged, Mr Ivanţoc was taken before a television journalist and made to confess in front of him. As a result of that treatment the applicant began to suffer from psychiatric problems and tried to hang himself with strips of material from his T-shirt but failed. After that incident he was completely undressed and left naked for twenty-four hours. He was sent for examination to a hospital in Odessa (Ukraine), where he was examined by a doctor who recommended that he should be interned in a psychiatric hospital. He was nevertheless taken back to Tiraspol, where another doctor decided that he was in good health.

The applicants remained in Tiraspol Prison after their conviction.

In 1994 the first applicant was transferred to Hlinaia Prison, where he remained until 1998, when he was transferred back to Tiraspol.

In a letter to the Moldovan parliament in March 1999 concerning the government crisis in Moldova Mr Ilaşcu declared his support for Ion Sturdza, who was a candidate for the post of Prime Minister. The letter was read out by the Speaker and enabled Parliament to achieve the necessary majority to appoint Mr Sturdza as Prime Minister. In a letter of 14 May 1999 Andrei Ivanţoc indicated that since Ilie Ilaşcu had written that letter, the applicants' conditions of detention, particularly Ilie Ilaşcu's, had become worse.

The applicants were forbidden to have any visitors from outside the prison or any correspondence.

Given the conditions of their detention, their state of health worsened. Ilie Ilaşcu, although suffering from acute arthritis and a dental abscess, was not allowed a visit from a doctor for treatment. His eyesight also deteriorated.

Despite their state of health, none of the applicants was able to see a doctor, and requests made by the International Red Cross to be allowed to visit them were refused.

In a letter of 14 May 1999 Andrei Ivanţoc indicated that on 13 May 1999 civilians wearing balaclavas entered his cell, beat him about the head, on the back and in the liver with a stick and punched him in the chest. They then dragged him into the corridor, where he saw one Colonel Gusarov banging Ilie Ilaşcu's head against a wall and kicking him. Mr Gusarov subsequently put a pistol into Mr Ilaşcu's mouth and threatened to kill him. Colonel Gusarov indicated to the applicants that the reason for the assault was their application to the European Court of Human Rights.

After those events the applicants were deprived of food for two days and of light for three days. In the same letter Andrei Ivanţoc exhorted the Moldovan parliament and Government, the international media and human-rights organisations to intervene to halt the torture to which he and the other three applicants were being subjected.

In a written statement dated 29 July 1999 Andrei Ivanţoc, who was on the 77th day of a hunger strike he had begun in protest against the conditions in which he was being held, accused the leaders in Chişinău of doing nothing to protect human rights in Moldova and of "living it up" with the Transdniestrian separatist leaders. He also complained of the refusal by the Tiraspol Prison authorities to allow him and Ilie Ilaşcu access to a doctor and indicated that Ilie Ilaşcu, who had been held in solitary confinement for some time, was being ill-treated. All the furniture had been removed from his cell, his clothes had been taken away

except for a vest and he was beaten by people from the "special forces", who suggested he should commit suicide. He had allegedly once been given a ready-made noose.

In a letter of 10 May 2000 the first applicant reported that he had not been able to see a doctor since 1997, when doctors from Chişinău had examined him and had made a thorough assessment of his state of health. In the same letter the applicant accused the authorities of the Republic of Moldova of hypocrisy since, despite their statements in support of the applicants' release, they were in reality doing "everything" to ensure that the applicants did not regain their freedom.

5. *Position of the Moldovan Government*

In their written observations of 24 October 2000 the Moldovan Government said they agreed with the applicants' account of the background to their arrest, conviction and detention. In the same observations they indicated that the applicants had certainly been arrested without any warrant, that they had remained for two months on the premises of the former Fourteenth Army and that the searches and seizures had likewise been made without any warrant.

As to the applicants' allegations about the conditions in which they were being held, the Moldovan Government said that they were very plausible.

At the hearing on 6 June 2001 the Moldovan Government indicated that they wished to retract the views they had expressed earlier in the observations of 24 October 2000, but did not, however, give any indication of their new position as to the facts set out by the applicants.

On 22 June 2001 the Government informed the Court that the Moldovan authorities were not in possession of any document granting a pardon or amnesty to Mr Ilaşcu or of one certifying his transfer to the authorities of the Republic of Moldova. The President of the Republic of Moldova, Mr Voronin, had been told of Mr Ilaşcu's release in a letter Mr Smirnov had sent him on 5 May 2001.

6. *Position of the Government of the Russian Federation*

As regards the facts, the Government of the Russian Federation confined themselves to setting out the following.

The former Fourteenth Army had been in Moldova when the Transdniestrian conflict had broken out. Russian military forces had not taken part in any way in the conflict and had not been involved in the events complained of. However, when there had been unlawful armed action against soldiers from the former Fourteenth Army, appropriate measures had been taken in accordance with international law.

The ceasefire agreement of 21 July 1992 had been signed on behalf of the Republic of Moldova not only by the President of that State, Mr Snegur, but also by Mr Smirnov. The Russian Government had lodged the certified text of that agreement, which bore Mr Smirnov's handwritten signature, without any indication of his position, although the position held by Mr Snegur and Mr Yeltsin had been indicated. The Russian Government alleged that the Russian Federation had been a signatory to the agreement not as a party to the conflict but as a peacemaker.

The Government disputed that the applicants had been detained on the premises of the former Fourteenth Army and that that army had taken part in their arrest. In particular, they

maintained that Colonel Gusarov had not served in the Russian military units stationed on the territory of Transdniestria but had done his service in the "Ministry of the Interior of the MRT". They could imagine, however, that individuals claiming to be from Russia's former Fourteenth Army could have taken part in the events complained of, but pointed out that if that had been the case, such action would have grossly breached Russian legislation and the individuals would have been punished for their actions.

The Government added that they had remained neutral and, in particular, had not in any way supported, either militarily or financially, any party to the conflict, and neither had the members of the former Fourteenth Army.

7. International reactions to the applicants' conviction and detention

On 28 September 1999 the President of the Parliamentary Assembly of the Council of Europe and the Secretary General appealed to the separatist authorities of Transdniestria to allow the International Committee of the Red Cross (ICRC) to visit the applicants and demanded an immediate improvement in the conditions of their detention.

B. Declarations and reservations made by the Republic of Moldova

The instrument of ratification of the Convention deposited by the Republic of Moldova on 12 September 1997 contains several declarations and reservations, the relevant part of which reads as follows:

> "1. The Republic of Moldova declares that it will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally definitively resolved.
>
> 2. In accordance with Article 64 [now Article 57] of the Convention, the Republic of Moldova formulates a reservation to Article 4...
>
> 3. In accordance with Article 64 of the Convention, the Republic of Moldova formulates a reservation to Article 5, paragraph 3, ...
>
> 4. In accordance with Article 64 of the Convention, the Republic of Moldova formulates a reservation to Article 5...
>
> 5. The Republic of Moldova interprets the provisions set out in the second sentence of Article 2 of the first Additional Protocol..."

C. Relevant domestic law

Article 11 of the Moldovan Constitution of 29 July 1994 provides:

> "(1) The Republic of Moldova proclaims its permanent neutrality.
>
> (2) The Republic of Moldova does not authorise the stationing of foreign troops on its territory."

Article 116 of the Criminal Code provides:

> “Unlawful deprivation of liberty shall be punishable by imprisonment for a term not exceeding one year.
>
> Unlawful deprivation of liberty which has endangered the victim’s life or health or during which physical suffering has been inflicted on him shall be punishable with one to five years’ imprisonment.”

Article 207 of the Criminal Code provides:

> “The illegal use of the powers or title of an official, where it has provided the basis for the commission of an offence, shall be punishable with a fine of at most thirty times the minimum monthly remuneration or with a maximum of two years’ hard labour or a maximum of two years’ imprisonment.”

COMPLAINTS

The applicants alleged the following violations of the Convention by Moldova and the Russian Federation.

1. The applicants complained that they were being detained in breach of Article 5 of the Convention. They alleged that their detention was not lawful and that the court that had convicted them, namely “the Supreme Court of the MRT”, was not competent. They considered that they were political prisoners and submitted also that although their conviction had been quashed in the decision of 3 February 1994 of the Supreme Court of Moldova, which had also ordered their release, the Moldovan Government had not taken any measures to implement that decision.

2. The applicants complained that they had not had a fair trial in the “Supreme Court of the MRT”. They relied on Article 6 of the Convention.

3. Relying on Article 2 of the Convention, Mr Ilaşcu complained that he had been sentenced to death unlawfully. He alleged that he was at risk of being executed at any time.

4. Under Article 3 of the Convention, the applicants complained of the conditions in which they were being held. Apart from the treatment meted out to them by the Tiraspol Prison warders in breach of that Article, living conditions in Tiraspol Prison were such that they amounted to inhuman and degrading treatment. Lastly, they complained that they had no access to a doctor despite their precarious state of health. Mr Ilaşcu also complained of the conditions of his detention pending his execution. He stated that before his release he had been held on his own in a cell without any natural light; that he had not been able to correspond with the outside world; that he had not been allowed to speak to other prisoners; that he had not seen his lawyer since 1993; and that he had not had access to a doctor.

5. Relying in substance on Article 8 of the Convention, the applicants complained that the Tiraspol authorities did not allow them to correspond freely or to receive visits from their families. In particular, they complained that the prison authorities had not allowed them to apply to the Court, with the result that the present application had had to be lodged by their spouses.

6. Relying on Article 1 of Protocol No. 1, they complained of the confiscation of their possessions after a trial which had contravened Article 6 of the Convention.

The applicants alleged that the Moldovan authorities were responsible for the foregoing violations, since they had taken no measures to put an end to them. They also maintained that the Russian Federation shared that responsibility, on the ground that the territory of Transdniestria was *de facto* under the Russian Federation's control.

Lastly, in the applicants' submission, the alleged violations were continuing.

PROCEDURE

The application was lodged with the Court on 14 June 1999.

On 4 July 2000 the Court (First Section) decided to communicate the application to the respondent governments for observations on its admissibility and merits. The Court also decided to give priority to the case, under Rule 41 of the Rules of Court.

On 25 September 2000 the Moldovan Government sought an extension of time. That application was allowed by the President, who set a new deadline of 25 October 2000 for both governments. The Moldovan Government submitted their observations on 24 October 2000 and the Russian Government submitted theirs on 16 October 2000.

The applicants submitted their observations on 2 January 2001.

On 4 December 2000 the Permanent Representative of Romania to the Council of Europe informed the Court that the application for Romanian nationality made by the applicant Ilie Ilaşcu and his wife Nina had been granted by the Romanian authorities on 4 October 2000, under the Romanian Nationality Act (Law no. 21/1991).

On 16 February 2000, under Article 36 § 2 of the Convention, the President of the Chamber invited the Romanian Government to submit written comments on the case. Those comments were submitted on 27 April 2001.

On 20 March 2001, in the absence of any objections from the parties, the First Section decided to relinquish jurisdiction in favour of the Grand Chamber.

In a decision of 4 May 2001 the Grand Chamber confirmed that priority should be given to the application and that the Romanian Government should be allowed to intervene in the proceedings.

A public hearing took place in the Human Rights Building, Strasbourg, on 6 June 2001 (Rule 54 § 4). After consulting the Grand Chamber, the President had invited the Romanian Government to take part in the hearing (Article 36 of the Convention).

There appeared before the Court:

(a) for the Moldovan Government

Mr Vitalie Pârlog, Agent.

(b) for the Russian Government

Mr Pavel Laptev, the Russian Federation's representative at the Court,

Mr Yuri Berestnev, Mr Sergey Volkovsky, Mr Alexander Novozhilov and Mr Vladimir Kulakov, Advisers.

(c) for the Romanian Government

Ms Roxana Rizoiu, Agent

(d) for the applicants

Mr Corneliu Dinu and Mr Alexandru Tănase, Counsel.

The applicant Ilie Ilaşcu and Tatiana Leşco, the wife of the applicant Alexandru Leşco, also attended the hearing.

The Court heard addresses by Mr Pârlog on behalf of the Moldovan Government, Mr Laptev on behalf of the Russian Government, Ms Rizoiu on behalf of the Romanian Government and Mr Dinu and Mr Tănase on behalf of the applicants.

On 8 June 2001 the President of the Grand Chamber requested the parties and the Romanian Government to submit additional information and documents.

These were filed by the Romanian Government on 14 June 2001, by the Moldovan Government on 22 June 2001, by the Russian Government on 25 June 2001 and by the applicants on 2 July 2001.

THE LAW

In their written and oral observations the respondent governments raised a number of objections to the admissibility of the application. The Court will examine those objections in the following order:

I. jurisdiction and responsibility of the respondent governments for the acts complaints of;

II. the Court's jurisdiction *ratione temporis*;

III. whether Mr Ilaşcu can claim to be a victim;

IV. exhaustion of domestic remedies by the applicants;

V. merits of the application.

I. JURISDICTION AND RESPONSIBILITY OF THE MOLDOVAN AND RUSSIAN GOVERNMENTS FOR THE ACTS COMPLAINED OF

1. Submissions of those appearing before the Court

(a) The Moldovan Government's arguments

The Moldovan Government maintained that the organs of the Republic of Moldova did not control the territory on the left bank of the Dniester, where the acts complained of had been committed, and that *de facto* the applicants accordingly did not come under the jurisdiction of the Moldovan authorities. Referring to the declaration made by Moldova in the instrument of ratification of the Convention deposited on 12 September 1997, the Government pointed out that when Moldova had ratified the Convention, that State did not control the territory on the left bank of the Dniester. Moldova would not have been in a position to ratify the Convention if it had not been able to make that declaration, since for the Convention to apply, it must be possible for the State in question to grant and implement the rights recognised in the Convention. Consequently, the Moldovan Government had no choice but to make a declaration in order to disclaim responsibility for acts committed by persons and bodies not under its authority.

In the Government's view, it was a reservation that satisfied the requirements of Article 57 of the Convention. The reservation should be interpreted as a negative declaration under former Article 25 of the Convention and, from 1 November 1998 onwards, under Article 34 of the Convention, in the sense that Moldova did not recognise the Court's jurisdiction in respect of individual applications directed against the Republic of Moldova concerning acts

and omissions by the organs of the "MRT" on the territory actually controlled by those organs, until the conflict in the region was finally settled. The Government admitted that the reservation did not concern a specific law, but argued that the lack of any actual control over the breakaway territory was a situation of objective fact that was not capable of being governed by a law. Lastly, the reservation in issue was not of a general character as it was worded clearly and was of definite scope, namely the territory of Transdniestria.

In the Government's submission, it could not be ruled out in the instant case that Articles 56 and 57 of the Convention applied together. Article 29 of the Vienna Convention afforded States, in cases other than those specified by the treaty in question, the possibility of restricting the territorial application of the treaty, so that the Court should be able to interpret Article 56 of the Convention broadly. The Government conceded that that Article had been designed to enable a State to extend the application of the Convention to a territory for whose international relations it was responsible but pointed out that the Court was confronted for the first time with a situation like the present one, in which a State agreed to be bound by the Convention although *de facto* part of its territory was not under its control.

The Moldovan Government pointed out that their limited cooperation with the Transdniestrian authorities did not in any way mean that it controlled the territory. As to the procedure followed for the visits made to Transdniestria by Moldovan or international delegations, the Moldovan authorities applied to the Transdniestrian authorities to be able to make them and the latter decided in their discretion to approve them or not and took charge of organising such visits as were accepted. It was true that Transdniestrian leaders held Moldovan service passports. That was due to the fact that the negotiations concerning the conflict in Transdniestria often took place abroad and it would not be possible for the Transdniestrian leaders to take part in them if the Moldovan authorities did not issue them with passports.

In their written observations of 24 October 2000 the Moldovan Government argued that the Russian Federation's responsibility could be engaged in the instant case under Article 1 of the Convention, having regard to the stationing of Russian Federation troops and equipment on Transdniestrian territory. The Moldovan Government relied in this connection on the Commission's decision of 10 July 1978 in the case of Cyprus v. Turkey (application no. 8007/77) and the Court's judgment in the case of Loizidou v. Turkey (*preliminary objections*) (judgment of 23 March 1995, Series A no. 310).

At the hearing on 6 June 2001 the Moldovan Government indicated that they wished to retract the views they had earlier expressed on the possible responsibility of the Russian Federation in order to avoid undesirable effects, namely the halting of the process designed to put an end to the Transdniestrian conflict and the detention of the other applicants.

(b) The Russian Government's arguments

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 Transdniestria, which was a territory belonging to the Republic of Moldova. In particular, the Russian Federation had never occupied part of the Republic of Moldova and the armed forces stationed on that State's territory were there with Moldova's agreement. The

units of the former Fourteenth Army had not been involved in the armed conflict between Moldova and Transdniestria but had acted as a buffer between the two parties to the conflict. They had been given peacemaking duties and had prevented both the conflict from worsening and the number of victims among the civilian population from rising. Only when unlawful armed action had been taken, by both Tiraspol and Moldova, against soldiers of the former Fourteenth Army, had they been obliged to defend themselves. Furthermore, according to the agreement of 21 July 1992, the Russian Federation was not a party to the armed conflict, although it was a party to the agreement as a guarantor. The President of the Russian Federation, by means of Decree no. 320 of 1 April 1992, had placed the military units of the armed forces of the former USSR that were stationed on the territory of the Republic of Moldova under the jurisdiction of the Russian Federation in order to forestall any claims by the Tiraspol authorities to the arms and military assets of the former Fourteenth Army.

The Russian Federation had never given the Transdniestrian authorities any military, financial or other support. It had not been possible for the Russian Federation to honour its undertaking in 1994 to withdraw its military forces from the Republic of Moldova's territory by the agreed deadline, namely within three years of signing the agreement, because the withdrawal did not depend solely on the Russian Federation. The Russian Government indicated that the deadline had been put back to 31 December 2002 at the OSCE's Istanbul summit meeting and that they certainly intended to comply with the Istanbul agreements.

In conclusion, the Russian military presence on the territory of the Republic of Moldova, with the latter's consent, for the purpose of maintaining peace in the Republic, could not engage the Russian Federation's responsibility under Article 1 of the Convention.

The Russian Government submitted that they had always been opposed to the presence of Russian Cossacks on Moldovan territory. Russia had never recognised and did not recognise the self-styled "MRT". The Russian Federation regarded the Dniestrian Region as being an integral part of the south of the Republic of Moldova's territory, in the same way as the Gagauz Region. The Russian Federation did not have a consulate on Transdniestrian territory, although the matter had been on the agenda of discussions with the Republic of Moldova for a long time. As to the agreements of 20 March 1998 on issues concerning the property of the former Fourteenth Army (see "The facts" above), they were agreements made under private law between two private parties and not under international law, and no conclusion could be drawn from them as to any recognition of the "MRT" by the Russian Federation.

The Russian Government added that three other international agreements had been signed on the same date in the presence of an OSCE representative.

The Russian Government went on to argue that the Russian Federation did not *de facto* control the territory of Transdniestria and that that region had constituted its own organs of power. Since Transdniestria was part of Moldovan territory, responsibility for acts committed there lay with the Republic of Moldova.

Lastly, they maintained that Russian soldiers had not taken any part in the impugned acts associated with the arrest, imprisonment and conviction of the applicants.

(c) The applicants' arguments

The applicants submitted that the Republic of Moldova's declaration in respect of the territorial application of the Convention was a reservation of a general character which did not satisfy the conditions of Article 57 of the Convention as it did not concern a concrete provision of the Convention and had not been made in respect of a specific law.

They considered that the Moldovan Government's declaration could be described as merely a territorial declaration, which could not, however, exempt that Government from its obligations under the Convention.

The obligation of a Contracting Party to the Convention to respect the rights guaranteed by the Convention was not limited to the negative obligation not to violate those rights but was essentially a positive obligation, namely to take all necessary steps to avoid all violations of the rights on its territory and to put a stop to them. In that connection, the applicants accused the Moldovan Government of having done nothing to obtain execution of the decision whereby the judgment of 9 December 1993 was quashed or to secure their release. As an example, they mentioned the public prosecutor's order of 16 August 2000 in which it was noted that Articles 190 and 192 of the Criminal Code were inapplicable, several years after the proceedings under those Articles had been instituted. The applicants asserted that the Moldovan Government had any number of political and economic means of securing their release. In particular, the import-export operations of the Transdniestrian region were effected through the customs authorities of the Republic of Moldova; the Moldovan Prime Minister, Mr Braghiş, had decorated with the colours of the State of the Republic of Moldova several people who held important offices in the Tiraspol administration; the Moldovan police cooperated closely with the Tiraspol militia; and the leaders of the "MRT" held passports, including diplomatic ones, of citizens of the Republic of Moldova.

The applicants maintained that the Russian authorities had supported the Transdniestrian separatists by taking part in the armed conflict. In that connection, they referred to the numerous appeals made by the Moldovan authorities to the international community in 1992, denouncing the former Fourteenth Army's attack on Moldovan territory, and alleged that the Russian Federation, unlike Ukraine, had done nothing to prevent the Cossacks and other Russian mercenaries from going to Transdniestria to fight alongside the separatists. On the contrary, the Russian Federation had, they said, encouraged those mercenaries to act in that way, while the former Fourteenth Army had armed and trained the Transdniestrian separatists. The applicants also complained of other gestures of support for the Transdniestrian separatists by the Russian Federation, such as the transfer of Russian military units to the Transdniestrian forces, public pronouncements by the commanders of the former Fourteenth Army and Russian leaders in favour of the separatists, and participation by commanders of the former Fourteenth Army in the elections in Transdniestria, in military parades by the Transdniestrian forces and in other public events. In the applicants' submission, such acts entailed the Russian Federation's responsibility. In that connection, they also relied on the case-law of the International Court of Justice, which in its advisory opinion concerning South Africa's presence in Namibia had stressed the obligation of a State to ensure that the acts of individuals did not affect the inhabitants of the territory in question. The applicants also referred to the Kling case dealt with by the General Claims Commission set up by the United States and Mexico in 1923, which held that the State was responsible for rebellious conduct by its soldiers.

Furthermore, the applicants considered that the Russian Federation *de facto* controlled the Transdniestrian territory, so that its responsibility was engaged for human-rights violations committed there. They disputed the Russian Government's argument that the former Fourteenth Army had only a peacemaking role under the agreement of 21 July 1992 and pointed out that they had been arrested before that agreement had been concluded, when the Russian Federation was well and truly a party to the conflict.

The applicants alleged that the so-called organs of power of the "MRT" were in reality only puppets of the Russian Government. They also maintained that the "MRT" was recognised by the Russian Government and pointed out in that connection that the agreements on the former Fourteenth Army's property that had been concluded on 20 March 1998 between the Russian Federation and Transdniestria provided for the award of part of that property to Transdniestria; that the Russian Federation's political parties had branches in Tiraspol; and that the Russian Federation's Ministry of Foreign Affairs had opened a consular section without the agreement of the Moldovan authorities. They also claimed that Transdniestrian leaders, including Mr Smirnov, held Russian passports.

Lastly, the applicants relied on the Court's case-law in the case of Loizidou v. Turkey (judgment of 23 May 1995, cited above) to support their opinion that the Russian Federation could be held responsible for acts committed outside its territory but in an area it controlled.

(d) Observations of the Romanian Government

The Romanian Government considered, firstly, that the territorial reservation made by Moldova did not satisfy the conditions laid down in Article 57 of the Convention. Assuming that the reservation could be analysed as a negative declaration in respect of former Article 25 of the Convention, together with a territorial limitation, such a declaration was contrary to the Convention, as the Court had said in its judgment of 23 March 1995 in the case of Loizidou v. Turkey.

Secondly, a State could not limit the scope of the obligations it undertook when ratifying the Convention by pleading that it did not exercise its jurisdiction within the meaning of Article 1, since it was incumbent on it to discharge the positive obligations laid down in the case-law of the Convention institutions. Although such positive obligations were not to be interpreted in such a way as to impose an unbearable or excessive burden on the authorities, the States were nevertheless required to take reasonable steps. In the instant case the Moldovan Government had not shown that they had made every effort to ensure their sovereignty over their territory. In particular, although the Moldovan Government had coercive machinery available to them to ensure respect for legal order in their territory, they had not taken any effective measures to ensure that the judgment delivered by the Supreme Court of the Republic of Moldova on 3 February 1994 was executed.

While admitting that the events complained of had occurred and were continuing to occur in the "MRT", a part of Moldova's territory under the *de facto* authority of the separatist administration of Tiraspol, the Romanian Government emphasised the influence of the Russian Federation's troops in the creation and maintenance of the Transdniestrian zone, which was not under the control of the Chişinău Government. They pointed out that the former Fourteenth Army had contributed to the formation of the separatist military forces and that after the end of the conflict the troops of the former Fourteenth Army had remained on Moldovan territory.

The Government highlighted case-law of the Convention institutions according to which the responsibility of a Contracting Party could also be engaged where, following military action, it in practice had control over an area outside its own national territory (Cyprus v. Turkey, application no. 8007/77, Commission decision of 10 July 1978; Loizidou v. Turkey, judgment of 23 March 1995; Cyprus v. Turkey, application no. 25781/94, Commission's report of 4 June 1999). That case-law was fully applicable in the instant case on account of the fact that the forces of the former Fourteenth Army had taken

part in the military conflict whereby Moldova had attempted to re-establish in practice its sovereign jurisdiction over the territory in question and that they were stationed in the "MRT". It mattered little that the actual number of Russian Federation soldiers had been steadily reduced as the local authorities set up their own armed forces, since the deterrent effect of maintaining the former Fourteenth Army on Moldovan territory remained.

The Romanian Government also maintained that the organs of the Russian Federation had a political influence on the secessionist authorities of Tiraspol.

They submitted that a State was responsible for the acts committed by its organs, including acts committed *ultra vires*, and referred to a number of statements made by the Russian authorities, including President Yeltsin, and to the cases of the Russian soldiers who had taken weapons and gone over to the separatists. They considered, moreover, that a State should also be held responsible for the unlawful acts of individuals where the acts resulted from a lack of diligence on the part of the State's organs, whether in the form of deficient prevention, inadequate control or negligence.

In sum, the application should not be dismissed on the ground that the respondent governments were not responsible under Article 1 of the Convention.

At the hearing on 6 June 2001 the Romanian Government indicated that the purpose of their intervention was not to put forward an explicit response to the legal responsibility of one or other of the respondent parties, and that they had in fact avoided doing so. As intervener, the Government had simply supplied information about the factual situation and the legal reasoning regarded as relevant for supporting the cause of their citizens.

2. The Court's assessment

Article 1 provides:

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

The Court must therefore examine whether its jurisdiction to consider the applicants' complaints is made out, and in particular whether, and to what extent, the matters complained of come within the jurisdiction of the respondent governments and, if they do not, what the consequences are under the Convention.

(a) The Republic of Moldova

(i) The Republic of Moldova's objection based on the existence of its declaration

As to whether the matters complained of come within Moldova's "jurisdiction" under Article 1 of the Convention, the Court observes that the Republic of Moldova ratified the Convention with effect throughout the whole of its territory.

It further notes the first declaration recorded by that State in its instrument of ratification of the Convention (see "B. Declarations and reservations of the Republic of Moldova" above) and the fact that in their observations the Moldovan Government maintained that the aforementioned declaration had to be interpreted as a reservation within the meaning of the present Article 57 (formerly Article 64) of the Convention, which provides:

> ""1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then

in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2. Any reservation made under this article shall contain a brief statement of the law concerned.”

That being so, the Court will first consider the hypothesis put forward by the Moldovan Government that the declaration is a reservation as provided for in Article 57 of the Convention.

It notes that the declaration contains no express reference to the concept of “reservation” within the meaning of Article 57 (formerly Article 64) of the Convention, contrary to the second, third and fourth declarations, which do explicitly refer to former Article 64 of the Convention.

The Court reiterates that in order to establish the legal character of such a declaration, one must look behind the title given to it and seek to determine the substantive content (see the Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, p. 24, § 49) or the intention of the respondent government (Temeltasch v. Switzerland, application no. 9116/80, Commission’s report of 5 May 1982, Decisions and Reports (DR) 31, p. 147, § 73).

Furthermore, Article 57 § 1 does not allow “reservations of a general character”. A reservation is of a general character “if it does not refer to a specific provision of the Convention or if it is worded in such a way that its scope cannot be defined” (see the Temeltasch case cited above, Commission’s report, § 84).

In the instant case the Court notes, firstly, that Moldova’s declaration does not refer to any particular provision of the Convention. It is true that in their observations the Moldovan Government maintained that the declaration should be interpreted as a negative declaration under former Article 25 of the Convention and, after 1 November 1998, under Article 34 of the Convention. However, the Court observes that when the present application was lodged, on 5 April 1999, former Article 25 of the Convention was no longer in force. Furthermore, the Court’s jurisdiction to entertain an application under Article 34 of the Convention is not subject to acceptance of it by a High Contracting Party, unlike the competence of the Commission under former Article 25, which was subject to such acceptance.

Secondly, the Court notes that the declaration does not refer to a specific law in force in Moldova. The words used by the Moldovan Government – “omissions and acts committed ... within the territory actually controlled by such organs, until the conflict in the region is finally definitively resolved” – indicate rather that the declaration in question is of general scope, unlimited as to the provisions of the Convention but limited in space and time, whose effect would be that persons on that “territory” would be wholly deprived of the protection of the Convention for an indefinite period.

In so far as the Moldovan Government consider that the declaration could be examined under Article 57 taken together with Article 56 of the Convention or under Article 56 taken alone, the Court points out, firstly, that at the time when it was in force, former Article 25 of the Convention did not allow territorial restrictions under that provision (see Chrysostomos, Papachrysostomou and Loizidou v. Turkey, applications nos. 15299/89, 15300/89 and 15318/89 (joined), Commission decision of 4 March 1991, DR 68, p. 247, § 34). It considers, secondly, that neither the spirit nor the terms of Article 56, which provides for extending the Convention’s application to territories other than the metropolitan territories of the High Contracting Parties, could permit of a negative interpretation in the sense of restricting the scope of the term “jurisdiction” within the meaning of Article 1 to only part of the territory.

In view of the foregoing, the Court considers that the aforementioned declaration cannot be equated with a reservation within the meaning of the Convention, so that it must be deemed invalid.

The Court consequently dismisses the Moldovan Government's preliminary objection based on the existence of the declaration.

(ii) The responsibility and jurisdiction of the Republic of Moldova

It therefore remains to be considered whether Moldova's responsibility may be engaged under the Convention.

In the current state of the evidence the Court is of the view that it does not have sufficient information to enable it to make a ruling. Furthermore, the issues are so closely bound up with the merits of the case that it is inappropriate to determine them at the present stage of the proceedings.

(b) The Russian Federation

The Court must next consider whether it has jurisdiction to consider the applicants' complaints in so far as they allege that the matters complained of come under the Russian Government's jurisdiction. It must therefore examine whether the impugned acts are capable of coming within the Russian Federation's jurisdiction even if they have occurred outside the Russian Federation's territory.

The Court points out that the concept of "jurisdiction" within the meaning of Article 1 of the Convention is not limited to the High Contracting Parties' national territory. For example, their responsibility can be involved because of acts of their authorities producing effects outside their own territory (see the Drozd and Janousek v. France and Spain judgment of 26 June 1992, Series A no. 240, p. 29, § 91). Moreover, regard being had to the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration (see the Loizidou v. Turkey (*preliminary objections*) judgment cited above, p. 23, § 62).

In the current state of the evidence the Court is of the view that it does not have sufficient information to enable it to make a ruling. Furthermore, the issues are so closely bound up with the merits of the case that it is inappropriate to determine them at the present stage of the proceedings.

II. THE COURT'S JURISDICTION *RATIONE TEMPORIS*

In their written observations of 24 October 2000 the Moldovan Government indicated their agreement with the applicants in considering that the Court had jurisdiction *ratione temporis* to consider the matters complained of as they were continuing violations of the Convention. At the hearing on 6 June 2001 the Moldovan Government said that they wished to retract the views they had earlier expressed in writing, but made no submission on the Court's jurisdiction *ratione temporis* in the instant case.

The Russian Government maintained that, regard being had to the fact that the events complained of had taken place before 5 May 1998, when the Russian Federation had ratified

the Convention, the application had to be dismissed as being incompatible *ratione temporis* with the Convention in so far as it was directed against the Russian Federation.

The Court considers that in the particular circumstances of the present case the question whether it has jurisdiction *ratione temporis* to consider the complaints, including those of a violation of Articles 2 and 6 of the Convention, and in particular whether the alleged violations are continuing ones or not, raises difficult issues of laws and fact. In the current state of the evidence the Court is of the view that it does not have sufficient information to enable it to make a ruling. Furthermore, this question is so closely bound up with the merits of the case that it is inappropriate to determine it at the present stage of the proceedings.

The Court therefore decides to join this objection to the merits.

III. WHETHER MR ILAŞCU CAN CLAIM TO BE A VICTIM

At the hearing on 6 June 2001 the Moldovan Government asked the Court to dismiss Mr Ilaşcu's application on the ground that he had ceased to be a victim in view of his release on 5 May 2001.

In its judgment of 25 June 1996 in the case of Amuur v. France the Court reaffirmed that "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (*Reports of Judgments and Decisions* 1996-III, p. 846, § 36).

In the instant case the Court notes, firstly, that the applicant's conviction is still in existence and that there is accordingly a risk that the sentence will be executed. Furthermore, the Court has not been informed of any pardon or amnesty to which the applicant's release might have been due.

It notes, secondly, that the applicant complained not only of his death sentence but also of the unlawfulness of his detention, the unfairness of the proceedings which led to his conviction, the conditions in which he was held from 1992 to 5 May 2001 and the confiscation of his possessions.

In conclusion, the Court considers that Mr Ilaşcu can still claim to be a "victim" within the meaning of Article 34 of the Convention.

IV. EXHAUSTION OF DOMESTIC REMEDIES

In their observations at the hearing on 6 June 2001 the Russian Government indicated that in so far as the applicants' complaints were based on the actions of Russian soldiers or other personnel, the applicants could have applied to the Supreme Court of the Russian Federation or to the military high command before lodging their application with the Court.

The applicants made no comment.

The Court points out that Article 35 of the Convention only requires the exhaustion of such remedies as relate to the breaches of the Convention alleged and at the same time can provide effective and sufficient redress (see application no. 13057/87, Commission decision of 15 March 1989, DR 60, p. 248). It has also been established that it is for the State relying on the rule to prove that accessible and sufficient domestic remedies exist (see the De Jong, Baljet and Van den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77, p. 18, § 36, and the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 68).

The Court notes that the Russian Government mentioned that it was possible for the applicants to bring their complaints to the knowledge of the Russian authorities but did not state what remedies Russian domestic law might have afforded for the applicants' situation.

It notes also that the Russian Government denied all allegations that the armed forces or other officials of the Russian Federation had taken part in the applicants' arrest, imprisonment and conviction or had been involved in the conflict between Moldova and the region of Transdniestria. Given such a denial of any involvement of Russian forces in the events complained of, the Court considers that it would be contradictory to expect the applicants to have approached the Russian Federation authorities.

The Court is accordingly of the view that the application cannot be declared inadmissible for failure to exhaust domestic remedies. This objection must consequently be dismissed.

V. MERITS OF THE APPLICATION

The applicants complained of their arrest, conviction and detention in the territory of the "MRT" and relied on Articles 2, 3, 5, 6 and 8 of the Convention and Article 1 of Protocol No. 1. They also complained that the prison authorities had not allowed them to write to the Court, so that the present application had had to be lodged by their spouses.

In their observations of 24 October 2000 the Moldovan Government admitted that the applicants had not had access to a lawyer; that they had not been able to correspond with persons outside the prison or see their families; and that they had been deprived of the right to security and to a fair trial. The Moldovan Government asserted that they did not have any details about the other prison conditions complained of by the applicants, but they considered the applicants' allegations to be plausible. At the hearing on 6 June 2001, apart from retracting the views that they had expressed in writing, the Moldovan Government made no submissions on the merits of the application.

The Russian Government disputed the applicants' account of the facts. They maintained that the Russian army had not been involved in the arrest, conviction or imprisonment of the applicants and that consequently the Russian authorities had had nothing to do with the matters complained of. Lastly, they considered that only an independent national court could determine the applicants' innocence or guilt. In conclusion, the Russian Government considered that the applicants' complaints, in so far as responsibility for the matters complained of was attributed to the Russian Government, were manifestly ill-founded.

In the light of the parties' submissions taken as a whole, the Court considers that the complaints raise serious issues of fact and law which cannot be determined at this stage of the consideration of the application but require an examination of the merits; it follows that the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground of inadmissibility was raised.

For these reasons, the Court

Dismisses unanimously the Moldovan Government's objection based on the existence of their declaration;

Dismisses unanimously the Moldovan Government's objection that Mr Ilaşcu had ceased to be a victim;

Dismisses unanimously the Russian Government's objection of failure to exhaust domestic remedies;

Joins to the merits unanimously the Russian Government's objection to jurisdiction *ratione temporis* ;

Declares by a majority the application admissible in respect of the Republic of Moldova, without prejudging the merits;

Declares by a majority the application admissible in respect of the Russian Federation, without prejudging the merits.

Done in French and in English, the French text being authentic.

Paul MAHONEY
Registrar

Luzius WILDHABER
President