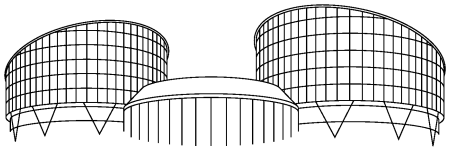

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TURTURICA AND CASIAN v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Applications nos. 28648/06 and 18832/07)

JUDGMENT

STRASBOURG

30 August 2016

FINAL

30/01/2017

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

In the case of Turturica and Casian v. the Republic of Moldova and Russia,

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

Işıl Karakaş, *President,*
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Dmitry Dedov,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 21 June 2016,

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

PROCEDURE

1. The case originated in two applications (nos. 28648/06 and 18832/07) against the Republic of Moldova and Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan nationals, Mr Iurie Turturica and Mr Petru Casian ("the applicants"), on 8 June 2006 and 18 April 2007 respectively.

2. The applicants, who had been granted legal aid, were represented by Mr S. Burlaca and Mr Pavel Postica, lawyers practising in Chisinau. The Moldovan 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 alleged, in particular, a breach of their right to the peaceful enjoyment of their possessions. One of them also complained that the criminal charges against him had not been determined by a tribunal established by law.

4. On 18 December 2014 these complaints concerning Article 6 and Article 1 of Protocol No. 1 to the Convention were communicated to the respondent Governments and the remainder of the applications was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1962 and 1951 respectively and live in Lunga and Corjova, in the Transdniestrian region of Moldova.

A. Background to the case

6. The background to the case, including the Transdniestrian armed conflict of 1991-1992 and the subsequent events, is set out in *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, §§ 28-185, ECHR 2004-VII), and in *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, §§ 8-42, ECHR 2012).

7. The present case concerns the confiscation and/or fining of the applicants for their failure to observe customs rules imposed by the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT").

8. Both applicants used cars registered with the authorities of the Republic of Moldova and had Moldovan registration plates. Like many other inhabitants of the "MRT", the applicants refused to use registration plates issued by the "MRT" authorities, which are not recognised by any country and which means that cars registered with them cannot leave the territory of Moldova. In November 2004, the "MRT" authorities adopted new rules, according to which any car with non-MRT registration plates could only enter the territory of the "MRT" after the payment of customs duties for temporary entry into the "MRT". Failure to observe the new rules was punished with a fine which could be as high as the full value of the car.

B. Application no. 28648/06 by Mr Turturica

1. Confiscation of the first car

9. On 27 January 2005 the applicant was driving a car (the first car) from his village to the right bank of the Dniester river when he was stopped by a customs officer of the "MRT", who seized his car on the grounds that such a car with Moldovan plates had not been registered with the "MRT" customs authorities and no customs duties had been paid for its temporary use on the territory of the "MRT". By a decision of 9 February 2005 by the chief of the Dubasari ("MRT") customs office, the applicant was ordered to pay a fine of 2,725 Transdniestrian roubles, equal to twenty percent of the value of the car, in order to be able to recover it.

2. Confiscation of the second car

10. On an unspecified date, the applicant borrowed a car from a friend (the second car), which also had Moldovan number plates, and registered it with the "MRT" customs authorities by paying customs duties. The registration was due to expire on 30 August 2005. On the day of the expiry, since the applicant was ill, he sent his son to prolong the car's registration period with the "MRT" customs authorities. However, registration of the car was refused on the grounds that the applicant had to be present in person. The applicant went the next day, only to have his car seized for failure to register it within the allocated time-limit. By a decision of 12 October 2005 of the Dubasari customs office the applicant was ordered to pay 4,275 Transdniestrian roubles, an amount which was equal to fifty percent of the value of the car, in order to be able to recover it.

3. The applicant's attempts to recover the cars

11. The applicant challenged the decision of 9 February 2005 before the courts of the "MRT" and argued, *inter alia*, that he had been going through the customs check-point since 2002 and that nobody had informed him about the need to pay any customs duties. Moreover, the last time he had crossed the customs check-point had only been two days prior to the confiscation of his car.

12. By a decision of 8 December 2005 the Dubasari district court rejected the first applicant's challenge to the decision of the Dubasari customs office of 9 February 2005 concerning his first car. As a result, the applicant decided not to challenge the decision of 12 October 2005 in the "MRT" courts.

13. The applicant also complained to the Moldovan authorities, which initiated criminal proceedings in respect of the unlawful seizure of his car. According to the materials submitted by the Moldovan Government, the criminal investigation was suspended on 14 December 2009 because the perpetrators could not be identified.

14. It appears from the case file that the applicant never recovered his cars from the "MRT" authorities.

C. Application no. 18832/07 by Mr Casian

15. The applicant had his car seized on 28 February 2007 on the grounds that he had failed to leave the territory of Transdniestria before the registration with the "MRT" customs authorities had expired. He was obliged to pay the equivalent of some 30 euros (EUR) in order to be able to recover his car. The applicant paid the money and had his car returned on 30 March 2007. He did not contest the decision of the "MRT" customs authorities before the "MRT" courts.

16. The applicant also complained to the authorities of Moldova. It appears that on 6 March 2007 the Dubasari chief police officer addressed a letter to the co-chair of the Joint Control Commission ("the JCC") (see paragraph 18 below), informing him about the incident of 28 February 2007, and that the Moldovan initiative to examine the matter of the second applicant's car had been ignored by the other members of the JCC, including the Russian representative.

17. In a letter dated 13 March 2007, the Reintegration Minister of the Republic of Moldova informed the second applicant about the refusal of the Transdniestrian and Russian members of the JCC, to examine the incident relating to the seizure of his car. The second applicant was also informed that the Ministry of Reintegration had brought the applicant's case to the attention of the United States, European Union and Ukrainian ambassadors to Chisinau. A general issue concerning respect for human rights in Transdniestria was raised by the Moldovan representative to the OSCE on 8 March 2007.

18. In a letter dated 7 March 2007, the applicant was informed by the Prosecutor's Office of the Republic of Moldova that it did not have the necessary means to solve the problem of the seizure of his car by the "MRT" authorities.

II. RELEVANT NON-CONVENTION MATERIAL

19. On 21 July 1992 the Presidents of the Russian Federation and the Republic of Moldova signed an agreement in Moscow to put an end to the military conflict in the Transdniestrian region of Moldova. Under the agreement, a security zone was created between the conflicting parties and a Joint Control Commission was set up to monitor the implementation of the agreement in the security zone. The JCC is composed of representatives of Russia, the Republic of Moldova and the self-proclaimed Republic of Transdniestria. Any decisions made by the JCC must have the consent of all the parties (for more details, see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 87-91, ECHR 2004-VII).

20. In *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, §§ 64-73, ECHR 2012 (extracts)) the Court summarised the content of various reports by intergovernmental and non-governmental organisations concerning the situation in the Transdniestrian region of Moldova and the Russian military personnel and equipment stationed there between 2003 and 2009. It also summarised the relevant provisions of international law (ibid., §§ 74-76).

THE LAW

21. The applicants complained that the seizure of their cars constituted an unlawful interference with their right to their property, which is guaranteed by Article 1 of Protocol No. 1 to the Convention. The first applicant also complained under Article 6 § 1 of the Convention that the proceedings before the "MRT" courts had not been fair because those courts were not "tribunals established by law". The relevant parts of Article 6 § 1 and of Article 1 of Protocol No. 1 read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

I. JOINDER OF APPLICATIONS

22. The Court notes that the subject matter of the applications (nos. 28648/06 and 18832/07) is similar. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

II. ADMISSIBILITY

23. The Moldovan Government submitted that, in so far as the complaints against Moldova were concerned, the applicants had failed to exhaust the remedies available to them in Moldova.

24. For their part, the Russian Government argued that the applicants did not come within their jurisdiction and that, consequently, the applications should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. Alternatively, they submitted that the first applicant's application was inadmissible either for the applicant's failure to exhaust domestic remedies or for his failure to lodge it within six months. They finally submitted that the second applicant's complaint was inadmissible because he had not suffered a significant financial disadvantage.

A. Jurisdiction

25. The Court must first determine whether the applicants fall within the jurisdiction of either or both of the respondent States for the purposes of the matters complained of, within the meaning of Article 1 of the Convention.

26. It notes that the parties in the present case have positions concerning the matter of jurisdiction which are identical to those expressed by the parties in *Catan and Others* (cited above, §§ 83-101) and in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 81-95, 23 February 2016). Namely, the applicants and the Moldovan Government submitted that both respondent Governments had jurisdiction while the Russian Government submitted that they had no jurisdiction and declined to take a position in respect of the jurisdiction of the Republic of Moldova. As they did in *Mozer* (cited above), the Russian Government expressed the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others v. Moldova and Russia* (cited above), in *Ivanţoc and Others v. Moldova and Russia*, (no. 23687/05, 15 November 2011), and in *Catan* (cited above) was wrong and at variance with public international law.

27. The Court observes that the general principles concerning the problem of jurisdiction under Article 1 of the Convention in respect of acts and facts occurring in the Transdniestrian region of Moldova were set out in *Ilaşcu and Others* (cited above §§ 311-319), *Catan and Others* (cited above §§ 103-107) and, more recently, in *Mozer* (cited above, §§ 97-98).

28. Turning to the facts of the present case, in so far as the Republic of Moldova is concerned, the Court notes that in *Ilaşcu, Catan* and *Mozer* (all cited above) it found that although Moldova has no effective control over the acts of the "MRT", the fact that the region is recognised under public international law as part of Moldova's territory gives rise to an obligation for that State, under Article 1 of the Convention, to take the diplomatic, economic, judicial and other measures that are both in its power and in accordance with international law in order to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there (see *Ilaşcu and Others*, cited above, § 333; *Catan and Others*, cited above, § 109; and *Mozer*, cited above § 100). Moldova's obligation under Article 1 of the Convention was found to be a positive obligation (see *Ilaşcu and Others*, cited above, §§ 322, 330-331; *Catan and Others*, cited above, §§ 109-110; and *Mozer*, cited above § 99).

29. The Court sees no reason to distinguish the present case from *Ilaşcu and Others, Catan and Others* and *Mozer* (all cited above). It notes that the Moldovan Government do not object to applying a similar approach. Therefore, it finds that Moldova had jurisdiction for the purposes of Article 1 of the Convention.

30. In so far as the Russian Federation is concerned, the Court notes that it has already found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992 (see *Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdniestrian region that up until 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 *Mozer*, cited above §§ 108 and 110). The Court therefore concluded in *Mozer* (cited above) that the "MRT"'s high level of dependency on Russian support provided a strong indication that Russia exercised effective control and a decisive influence over the "MRT" authorities and that, therefore, the applicant fell within Russia's jurisdiction under Article 1 of the Convention.

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

32. Consequently, the Court dismisses the Russian Government's objections *ratione personae* and *ratione loci* and holds that the applicants in the present case fall within Russian jurisdiction under Article 1 of the Convention.

33. The Court therefore considers that by virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention will be engaged in an automatic manner as regards any violations of the applicants' rights which are found in the present case (see, for the latest reference, *Mozer*, cited above, §§ 156-157).

B. Exhaustion of domestic remedies and the six-month rule

34. The Moldovan Government submitted that the applicants had not exhausted the remedies available to them in Moldova. In particular, they noted that they had not relied on Law no. 1545 (1998) on compensation for damage caused by illegal acts of the criminal investigation bodies, the prosecution authorities or the courts, and did not apply for compensation from the Republic of Moldova for the breach of their rights. The Moldovan Government argued therefore that the parts of the applications concerning Moldova should be declared inadmissible for failure to exhaust domestic remedies in Moldova.

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

36. The Russian Government submitted that the first applicant's application should be rejected either for failure to exhaust domestic remedies before the "MRT" courts or for failure to submit his application within six months. They explained that if the Transdniestrian remedies were considered ineffective by the Court, then the first applicant should have been expected to lodge his application within six months of the confiscation of his cars, namely before 27 July 2005 in respect of the first car and before 28 February 2006 in respect of the second car, and not on 8 June 2006, as he had done. On the other hand, if the Transdniestrian remedies were considered effective by the Court, then the first applicant had failed to exhaust them in respect of the second car.

37. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. Moreover, Article 35 § 1 of the Convention cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 259-260, ECHR 2014 (extracts); and *Blokhin v. Russia* [GC], no. 47152/06, § 106, 23 March 2016).

38. The Court notes that the first applicant only became aware of the ineffectiveness of the remedy he had pursued on 8 December 2005 (see paragraph 11 above). The Court therefore does not consider it possible to blame the applicant for attempting to challenge the confiscation of his first car before the "MRT" courts. It further notes that after the decision of 8 December 2005 (see paragraph 11 above), the first applicant decided not to challenge the decision concerning the seizure of his second car in the "MRT" courts because he understood that he had no prospect of success. Since the application was lodged by the first applicant within six months of that date, it cannot be said that the complaint about the seizure of the second car was lodged out of time.

39. It follows from the above that the Russian Government's objection in this regard must also be dismissed.

C. Significant disadvantage

40. The Russian Government contended that in view of the small amount of the fine which the second applicant was obliged to pay and the fact that his car was returned to him upon payment, his case should be declared inadmissible because he did not suffer a significant financial disadvantage.

41. The second applicant disagreed with the Russian Government and argued that the amount of fine paid by him was not insignificant if his income was taken into consideration. Moreover, respect for human rights required an examination of his application on the merits and his case had also not been duly considered by a domestic tribunal.

42. The Court notes that a case may be declared inadmissible in accordance with Article 35 § 3 if the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

43. The Court considers that respect for human rights in the Transdniestrian part of the territory of the Republic of Moldova requires an examination of the second applicant's case. It therefore does not consider it necessary to determine whether the first and the third elements of this admissibility criterion are in place and dismisses the objection raised by the Russian Government.

D. Conclusion on admissibility

44. The Court considers that the applicants' complaints raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares the applications admissible.

III. MERITS

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

45. The applicants complained that the seizure of their cars and the imposition of fines on them violated their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1.

46. The Moldovan Government submitted that the interference with the applicants' rights was not lawful because it was not provided for by the domestic laws of the Republic of Moldova.

47. The Russian Government did not submit any specific observations in this regard. Their position was that they did not have "jurisdiction" in the territory of the "MRT" and that they were therefore not in a position to make any observations on the merits of the case.

48. The Court notes that the parties did not dispute the fact that the applicants' cars constituted possessions for the purposes of Article 1 of Protocol No. 1 to the Convention. It further notes that it is similarly undisputed that the cars have been seized by the "MRT" authorities and that the applicants were forced to pay fines in order to recover them. In these circumstances, the Court finds that there was a clear interference with the applicants' right to the peaceful enjoyment of their possessions for the purposes of Article 1 of Protocol No. 1. Consistently with the Court's case-law (see among other authorities, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 142, ECHR 2005-VI), such interference constitutes a measure of control of the use of property which falls to be examined under the second paragraph of that Article. For a measure constituting control of use to be justified, it must be lawful (see, *Katsaros v. Greece*, no. 51473/99, § 43, 6 June 2002; *Herrmann v. Germany* [GC], no. 9300/07, § 74, 26 June 2012; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012) and "in accordance with the general interest". The measure must also be proportionate to the aim pursued; however, it is only necessary to examine the proportionality of an interference once its lawfulness has been established (see *Katsaros*, cited above, § 43).

49. In so far as the lawfulness of the interference is concerned, no elements in the present case allow the Court to consider that there was a legal basis for interfering with the rights of the applicants guaranteed by Article 1 of Protocol No. 1.

50. In those circumstances, the Court concludes that the interference was not lawful under domestic law. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention for which the Russian Federation is responsible (see paragraph 33 above).

51. The Court must next determine whether the Republic of Moldova fulfilled its positive obligations to take appropriate and sufficient measures to secure the applicants' rights under Article 1 of Protocol No. 1 (see paragraph 28 above). In *Mozer* (cited above, § 151), 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.

52. In so far as the measures needed to re-establish control over the Transdniestrian territory are concerned, the Court found in *Mozer* (cited above, § 152) that Moldova took such measures up until July 2010. The Court sees no reason to reach a different conclusion in the present case.

53. Turning to the second part of the positive obligation, namely to ensure respect for the applicants' rights, the Court notes that the Moldovan authorities made efforts to secure the applicants' rights, namely a criminal investigation was initiated in respect of the seizure of the first applicant's car (see paragraph 12 above), the JCC was asked to examine the seizure of the second applicant's car, as were foreign ambassadors, and the OSCE was informed about the matter (see paragraphs 16-17 above).

54. In the light of the foregoing, the Court considers that the Republic of Moldova fulfilled its positive obligations in respect of the applicants. It therefore finds that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova.

B. Alleged violation of Article 6 of the Convention

55. In view of its findings under Article 1 of Protocol No. 1 to the Convention (see paragraphs 39-55 above), the Court does not consider it necessary to examine this complaint separately (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, § 23; *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I; *Davidescu v. Romania*, no. 2252/02, § 57, 16 November 2006; and *Unistar Ventures GmbH v. Moldova*, no. 19245/03, § 99, 9 December 2008).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

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

A. Pecuniary damage

57. The first applicant claimed 6,000 euros (EUR) in respect of pecuniary damage. He claimed that the cars seized by the "MRT" authorities had been worth EUR 3,500 and EUR 2,500 when they were seized.

58. The second applicant claimed EUR 30, representing the fine paid in order to recover his car, and 14,149 Moldovan lei allegedly paid between 2007 and 2015 to the "MRT" authorities in order to register his car with the "MRT" customs.

59. The Governments considered the applicants' claims excessive and asked the Court to dismiss them.

60. The Court notes that it has not found any violation of the Convention by the Republic of Moldova in the present case. Accordingly, no award of

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

61. The Court further notes that the first applicant never recovered his cars. Since the Russian Government did not challenge that fact or the value of the cars as indicated by the first applicant, the Court considers it reasonable to award the first applicant's claim in full.

62. On the other hand, the Court notes that the amounts claimed by the second applicant in respect of customs taxes allegedly paid by him between 2007 and 2015 were not the subject matter of the application as it was communicated to the respondent Governments. It is in his submissions on Article 41 of the Convention that the second applicant invoked these amounts for the first time. It therefore dismisses the second applicant's claim in that respect and only awards him EUR 30, that is the amount paid in order to recover his car.

B. Non-pecuniary damage

63. The applicants also claimed EUR 100,000 and EUR 6,000 respectively in respect of non-pecuniary damage.

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

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

66. Having regard to the violation 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, and bearing in mind the fact that the first applicant's two cars were never returned to him, the Court awards EUR 3,000 to the first applicant and EUR 1,500 to the second applicant, to be paid by the Russian Federation.

C. Costs and expenses

67. The applicants also claimed EUR 4,200 and EUR 2,160 respectively for costs and expenses.

68. The respondent Governments considered that the sums claimed were excessive.

69. 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.

70. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be

established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Guja v. Moldova* [GC], no. 14277/04, § 108, ECHR 2008). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 1,500 to the first applicant and EUR 2,000 to the second applicant for costs and expenses.

D. Default interest

71. 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. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the applications admissible in respect of the Republic of Moldova;

3. *Declares*, by a majority, the applications admissible in respect of the Russian Federation;

4. *Holds*, by 6 votes to 1, that there has been a violation of Article 1 of Protocol No. 1 to the Convention by the Russian Federation;

5. *Holds*, by 6 votes to 1, that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova;

6. *Holds*, unanimously, that there is no need to examine the complaint under Article 6 § 1 of the Convention;

7. *Holds*, by 6 votes to 1,
   (a) that the Russian Federation is to pay the applicants, within three months, the following amounts:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to the first applicant;
      (ii) EUR 30 (thirty euros), plus any tax that may be chargeable, in respect of pecuniary damage, to the second applicant;
      (iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to the first applicant;

(iv) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to the second applicant;

(v) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;

(vi) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 August 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President

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

A.I.K.
S.H.N.

DISSENTING OPINION OF JUDGE DEDOV

I have already expressed my dissenting opinion in the Mozer case (*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 Transdniestria and on the legal tradition as regards the lawfulness of interference with the right to liberty in the form of detention. I take the same view in the present case. In paragraph 49 of the judgment the Court concludes that it has found no element to be considered as a legal basis for interfering with the applicants' property rights. This conclusion has far-reaching consequences. The Court has not merely limited itself to the fact that the independence of Transdniestria has not been recognised by the international community. In the present case the Court has aggravated the situation even further: the Court does not recognise the existence of the Transdniestrian legal system as a whole. This allows the Court to find a violation of the Convention by the Russian Federation automatically, without any legal analysis. It is difficult to imagine a more uncompromising reaction to the self-determination process. Such an approach creates the impression that there is a fundamental defect in the Court's position in such cases.