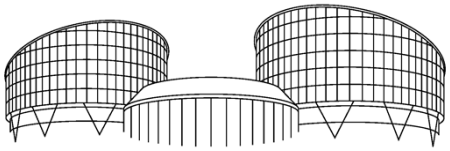

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CANTER AND MAGALEAS v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 7529/10)

JUDGMENT

STRASBOURG

18 June 2019

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

In the case of Canter and Magaleas v. the Republic of Moldova and Russia,

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

Julia Laffranque, *President,*
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 28 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 7529/10) against the Republic of Moldova and the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan nationals, Mr Roman Canter and Mr Serghei Magaleas ("the applicants"), on 3 February 2010.

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

3. The applicants complained that they had been denied a fair trial as a result of their conviction by a court which had not qualified as a tribunal within the meaning of Article 6 § 1 of the Contention.

4. On 13 June 2014 the complaint concerning Article 6 § 1 of the Contention was communicated to the respondent Governments and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The Russian Government objected to the examination of the application by a Committee. After having considered the objection, the Court rejects it.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicants, who were born in 1980 and 1977, respectively, live in Slobozia and Parcani, in the self-proclaimed "Moldovan Republic of Transdniestria" ("MRT"). In view of the fact that, in the applicants' submission, it was impossible for them to apply to the Court directly, the application was lodged by their mothers.

7. On 2 March 2005 the applicants were arrested by the "MRT" authorities and placed in detention on remand on suspicion of murder. On 1 June 2009 they were convicted by an "MRT" court and sentenced to terms of fourteen years and a half, and fourteen years' imprisonment, respectively. On 4 August 2009 the Supreme Court of the "MRT" upheld the above judgment, but reduced the sentence of the first applicant to fourteen years' imprisonment.

8. It does not appear from the material in the case file and from the parties' submissions that the applicants informed the authorities of the Republic of Moldova about the proceedings against them and the conviction and detention in the "MRT".

9. In December 2014 the applicants challenged their conviction by way of an extraordinary appeal before the Supreme Court of the Republic of Moldova which, on 14 February 2015, upheld their appeal and quashed the judgments of the "MRT" courts on the ground that they had been issued by unconstitutional tribunals.

10. The applicants were released from detention on 20 July and 20 August 2015, respectively, for reasons which were not related to the Supreme Court of Moldova's decision of 14 February 2015.

THE LAW

11. The applicants complained under Article 6 of the Convention that their conviction had been carried out by a court which had not qualified as a tribunal established by law and that the proceedings had not been fair.

I. JURISDICTION

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

A. The parties' submissions

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

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

15. For their part, the Russian Government argued that the applicants did not come within their jurisdiction and that, consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. As they did in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 92-94, 23 February 2016), 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* ([GC] no. 48787/99, ECHR 2004-VII), *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, ECHR 2012 (extracts) was wrong and at variance with public international law.

B. The Court's assessment

16. The Court recalls that the general principles concerning the issue 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, §§ 311-19), *Catan and Others* (cited above, §§ 103-07) and, more recently, *Mozer* (cited above, §§ 97-98).

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

18. The Court sees no reason to distinguish the present case from the above-mentioned cases. Besides, it notes that the Moldovan Government do not object to applying a similar approach in the present case. Therefore, it finds that Moldova has jurisdiction for the purposes of Article 1 of the Convention, but that its responsibility for the acts complained of is to be

assessed in the light of the above-mentioned positive obligations (see *Ilaşcu and Others*, cited above, § 335).

19. In so far as the Russian Federation is concerned, the Court notes that in *Ilaşcu and Others* it found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of 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 *Ivanţoc and Others*, cited above, §§ 116-20; *Catan and Others*, cited above, §§ 121-22; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-11).

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

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

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicants complained that there had been a violation of Article 6 § 1 since they had been convicted by a court that could not qualify as an "independent tribunal established by law" and that moreover that court had not afforded them a fair trial. The relevant part of Article 6 of the Convention read as follows:

Article 6

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

24. The Russian Government questioned the validity of the application in view of the fact it had not been introduced by the applicants themselves but by their parents on their behalf. The Russian Government expressed doubt as to the fact that it had not been open to the applicants themselves to introduce the application with the Court and pointed to the fact that the applicants had been able to personally lodge appeals and other claims with the "MRT" authorities.

25. The applicants submitted that all their correspondence, which had not been addressed to the "MRT" authorities, had been stopped by the prison authorities and that therefore they had no possibility to personally apply to the Court.

26. The Court notes that the applicants' parents clearly stated in the application form that they acted on behalf of their children. It also notes that a similar situation occurred in the case of *Ilaşcu and Others* (cited above, § 23) where the application had been introduced by the applicants' spouses and siblings and that the Court considered the application to have been validly introduced. In the light of the above, the Court sees no reasons to distinguish the present case from the case of *Ilaşcu and Others* and therefore dismisses the objection raised by the Russian Government.

27. The Russian Government further submitted that the applicants had failed to exhaust domestic remedies available to them in the Republic of Moldova and the Russian Federation. The Court recalls that it has already examined and dismissed a similar objection in the case of *Vardanean v. the Republic of Moldova and Russia* (no. 22200/10, §§ 27 and 31, 30 May 2017). Since no new arguments have been adduced by the Russian Government, the Court sees no reason to reach a different conclusion in this case. It follows that the Russian Government's objection of non-exhaustion of domestic remedies must also be dismissed.

28. Finally, the Russian Government submitted that since the applicants considered decisions issued by the "MRT" authorities illegal, they should not have waited for the "MRT" Supreme Court to give a final ruling on the case but should rather have complained before the Court after their conviction at first instance. Since the applicants had not done so, their application should be dismissed for failure to submit it within the six months' time-limit.

29. 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 of the Convention 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 and 2 others, §§ 259-60, ECHR 2014 (extracts); and *Blokhin v. Russia* [GC], no. 47152/06, § 106, 23 March 2016).

30. The Court notes that at the time of the events the applicants could not know that the appeal proceedings before the "MRT" Supreme Court were ineffective. The Court therefore does not consider it possible to blame the applicants for attempting to challenge their conviction before the hierarchically superior court. In such circumstances it cannot be said that the application was lodged out of time.

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

B. Merits

32. The applicants complained that the "MRT" courts that had sentenced them could not be considered as "independent tribunals established by law" within the meaning of Article 6 § 1 of the Convention and that the criminal proceedings against them had been unfair and in breach of the aforementioned provision.

33. The Russian Government did not make any submissions on the merits of these complaints while the Moldovan Government submitted that the "MRT" courts could not be considered "tribunals established by law" within the meaning of Article 6 § 1 of the Convention.

34. The Court reiterates that in certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a tribunal established by law provided that it forms part of a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see *Ilaşcu and Others*, cited above, § 460). It further recalls that in *Mozer* it held that the judicial system of the "MRT" was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-49).

35. In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too and that the "MRT" courts could not qualify as a "tribunal established by law" for the purposes of Article 6 § 1 of the Convention (see *Vardanean v. the Republic of Moldova and Russia*,

no. 22200/10, § 39, 30 May 2017; and *Apcov v. the Republic of Moldova and Russia*, no. 13463/07, §57, 30 May 2017). The Court therefore considers that there has been a breach of Article 6 § 1 of the Convention in the present case.

36. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant's rights (see paragraph 17 above). In *Mozer*, the Court held that Moldova's positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants' rights (see *Mozer*, cited above, § 151).

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

38. Turning to the second part of the positive obligations, namely to ensure respect for the applicants' rights, the Court notes that the applicants advanced no evidence to the effect that they had informed the Moldovan authorities of the alleged breach of their Convention rights (see paragraph 8 above). In such circumstances, the non-involvement of the Moldovan authorities in the case of the applicants cannot be held against them. The Court further notes that the Supreme Court of Moldova reacted promptly after being seised by the applicants by way of an extraordinary appeal against their conviction and quashed the decisions of the "MRT" courts.

39. In the light of the foregoing, the Court concludes that the Republic of Moldova did not fail to fulfil its positive obligations in respect of the applicants. There has therefore been no violation of Article 6 § 1 of the Convention by the Republic of Moldova.

40. In so far as the responsibility of the Russian Federation is concerned, the Court has established that Russia exercised effective control over the "MRT" during the period in question (see paragraphs 19-20 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicants' rights.

41. In conclusion, and after having found that the applicants' rights guaranteed by Article 6 § 1 of the Convention have been breached (see paragraph 35 above), the Court holds that there has been a violation of that provision by the Russian Federation.

42. In view of the above, the Court does not consider it necessary to examine separately any other issues under Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

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

A. Damage

44. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

45. The Governments asked the Court to dismiss the applicants' claims.

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

47. Having regard to its finding of a violation of the applicant's rights by the Russian Federation, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 6,000 to each applicant.

B. Costs and expenses

48. The applicants also claimed EUR 4,080 for costs and expenses.

49. The respondent Governments asked the Court to dismiss the applicants' claims.

50. 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.

51. 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, *Mozer*, cited above, § 240). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards the entire amount claimed for costs and expenses, to be paid by the Russian Federation.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible in respect of the Republic of Moldova;

2. *Declares* the application admissible in respect of the Russian Federation;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention by the Republic of Moldova;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention by the Russian Federation;

5. *Holds*,
   (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 non-pecuniary damage to Mr Canter;
      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to Mr Magaleas;
      (iii) EUR 4,080 (four thousand and eighty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses.
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6. *Dismisses*, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 18 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakirci	Julia Laffranque
Deputy Registrar	President