SECOND SECTION

CASE OF CAZAC AND SURCHICIAN v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 22365/10)

JUDGMENT

STRASBOURG

7 January 2020

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

In the case of Cazac and Surchician 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 10 December 2019,

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

1. PROCEDURE

1.  The case originated in an application (no. 22365/10) 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, Ilie Cazac and Stela Surchician (“the applicants”), on 22 April 2010.

2.  The applicants were represented by Mr A. Postică, Mr V. Postică, Mr V. Ursu and Mr A. Zubco, lawyers practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr O. Rotari, and the Russian Government were represented by their Agent, Mr M. Galperin.

3.  On 2 November 2017 notice of the complaints concerning Articles 3, 5, 6, 8 and 13 of the Convention was given to the Governments and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

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

1. THE FACTS
	1. THE CIRCUMSTANCES OF THE CASE

5.  The applicants were born in 1985 and 1966 respectively and live in Bender.

* + 1. The first applicant’s arrest and detention and related events

6.  The first applicant is the second applicant’s son. He worked as a tax inspector in the self-proclaimed “Moldovan Republic of Transdniestria” (“the MRT”). On 19 March 2010 he was arrested by officers from the “Ministry of State Security” (“MSS”). He was not allowed to inform anyone of his arrest.

7.  The second applicant found out about the arrest on 21 March 2010 from her other son and from a *pro bono* lawyer who had called her and told her that she was representing her son. She also told her that her son was accused of treason in the form of espionage against the “MRT” and in favour of Moldova. No documents concerning the first applicant’s arrest were issued to the applicants by the date of lodging this application. According to the first applicant, another lawyer (K.) was subsequently appointed to represent him. He was threatened with ill-treatment, being infected with HIV by fellow detainees, and placement in a cell for detainees ill with active forms of tuberculosis if he did not agree to be represented by K.

8.  During the night of 21 March 2010 searches were carried out at two apartments belonging to the second applicant in her absence and without showing her other son, who was present, any order confirming the lawfulness of the searches. During the searches furniture was allegedly destroyed and a list of items taken from the apartments was never drawn up.

9.  On 25 March 2010 the second applicant complained to the Bender police station (Moldovan police) and the Moldovan Prosecutor General’s Office about the first applicant’s illegal arrest and the unlawful searches. On 26 March 2010 she asked the “MRT Prosecutor’s Office” to inform her of her son’s whereabouts and to be issued copies of procedural documents concerning him.

10.  On 1 April 2010 the first applicant’s *pro bono* lawyer asked the Moldovan prosecutor’s office to initiate criminal proceedings into his client’s abduction and the unlawful searches. On 17 April 2010 he was informed that such a criminal investigation had been initiated on 31 March 2010.

11.  On 4 April 2010 the second applicant was informed by the “MRT Military Prosecutor” that the MSS Officers had not committed any crime and that the MSS investigator was responsible for deciding whether to allow her to meet with her son. According to the applicant, she had previously asked the MSS investigator to be allowed to see her son, but had received no reply.

12.  On 6 April 2010 the Moldovan Ministry of Foreign Affairs informed the second applicant that efforts were being made to ensure access to the first applicant by his relatives.

13.  On 19 April 2010 the lawyer hired by the second applicant to represent her son asked the “MRT authorities” for permission to see her client, but received no reply. Thereafter the first applicant appointed a lawyer (K.) from the “MRT”. According to him, he was forced to accept representation by K., whom he did not trust, under threats of further ill‑treatment. K. was present during all his meetings with representatives of the Organization for Security and Co-operation in Europe (“OSCE”) that took place thereafter and the applicant was warned not to complain about anything under threat of ill-treatment.

14.  On 18 June 2010 the first applicant was seen by OSCE representatives. It was the first time he had contact with anyone other than individuals representing the “MRT authorities”. K. was present at the meeting, although the first applicant asked for a meeting without any witnesses.

15.  On 21 June 2010 the “MRT Prosecutor’s Office” informed the second applicant that while “MRT law” allowed the investigator to authorise meetings with a detainee’s relatives, this was not an obligation.

16.  On 22 June 2010 the “MRT” press published a letter from the first applicant and addressed to the Head of the OSCE mission in Moldova. In the letter the first applicant declared that he had been recruited as a spy by the Moldovan security agencies and had collaborated with them.

17.  On 9 August 2010 the applicants saw each other for the first time since the arrest over four months earlier, in the presence of OSCE representatives.

18.  The first applicant’s detention pending trial was extended on an unknown date in mid-August and again on 17 September 2010. Each time the applicant was not given the opportunity to address the court.

19.  On 18 October 2010 the applicants were again allowed to see each other. During this meeting the first applicant told his mother that he was ill (the second applicant did not specify which illness) and was not receiving medical assistance. He was being questioned for ten to fifteen hours in a row with few breaks by multiple investigators, without being given food and water or allowed to go to the toilet.

20.  On 10 December 2010 the second applicant found out that her son’s case had been submitted to the “MRT Supreme Court” for trial. She asked the judge in charge of the case to allow her to meet with the first applicant, but she received no reply.

21.  The lawyer hired by the second applicant to represent her son was never given copies of any documents concerning his detention, including court decisions ordering the extension of such detention. On 18 July 2011 the second applicant again requested copies of court decisions concerning her son’s detention, as well as those concerning the searches of the two apartments. In reply she was told that “MRT law” did not give her such a right, since she was not a party to the proceedings.

* + 1. The first applicant’s trial, conviction and release

22.  On 5 November 2010 the first applicant declared that he no longer wished to be represented by K. He was then allegedly severely ill-treated by other detainees. When he subsequently asked the court to replace K. with his chosen lawyer, this was refused.

23.  On 19 November 2010 he was shown the final charges submitted to the trial court by the prosecution. However, he was not allowed to read them, because they contained secret material.

24.  During the trial hearings the first applicant asked for a translator in order to translate documents confirming his innocence (correspondence in Romanian with his cousin in Chișinău). This was refused. The only people present at the *in camera* hearings were the judge and her assistant, the prosecutor, K. and the first applicant.

25.  On 9 February 2011 the first applicant was convicted by the “MRT Supreme Court” of treason and sentenced to fourteen years’ imprisonment. He did not submit a copy of the court’s decision to the Court. On the same date the Moldovan Government made a statement, declaring the first applicant’s conviction to be an unlawful act and a human rights violation. Similar reactions came from international organisations and foreign countries such as the Council of Europe, the European Union, the OSCE, and the American Embassy in Moldova.

26.  The first applicant appealed against his conviction. On 21 March 2011 his appeal was rejected and his conviction upheld by the appellate chamber of the “MRT Supreme Court”.

27.  On 1 August 2011 the first applicant asked the “President of the MRT” for a pardon. He asked again for a pardon on 19 September 2011.

28.  On 31 October 2011 the first applicant was pardoned by the “President of the MRT” and was released from prison.

* + 1. The conditions of the first applicant’s detention, lack of medical assistance and ill-treatment

29.  Upon his release the first applicant gave a detailed description of the conditions of his detention. Initially he was detained in a cell without any furniture except for a table and a chair. He slept on the table with no bed linen and in a very uncomfortable position. There was no window in the cell and it was very cold.

30.  He was then moved to a cell for three people, in which he was detained together with seven other persons. There were not enough beds and the detainees had to take turns to sleep. Everyone else in the cell smoked, which subjected the first applicant to passive smoking. The ventilation system did not work. There was constant noise from water dripping in the broken lavatory; the tap water was so rusty he could not drink it. When he started receiving parcels from relatives, he asked them to send him cigarettes, which he then exchanged with the guards for normal drinking water.

31.  On 7 April 2010 the first applicant was moved to another cell with three other detainees, two of whom were convicted persons.

32.  On 15 April 2010 he was moved to prison no. 1 in Hlinaia, where he was detained until 29 November 2010. He was placed in a cell with a person sentenced to life imprisonment for multiple murders. That detainee cooperated with the “MRT” authorities and was used to physically and psychologically coerce the first applicant. That detainee “persuaded” him to give up the services of the *pro bono* lawyer representing him and to hire K., a lawyer he did not trust. He also threatened the first applicant with violence and to infect him with HIV. There was no toilet in the cell, the first applicant had to use plastic bags instead. He was often ill, but received no medical assistance.

33.  During his detention the first applicant initially refused to make confessions and to talk to the media, as he was coerced to do. He was then moved for twenty days to a cell for detainees ill with tuberculosis. He often asked for permission to see his relatives, but the investigator told him that this would only be possible after he made a self-incriminating statement.

34.  Several times during questioning sessions the first applicant was allegedly sedated with an unknown substance. On one of these occasions he was forced to sign letters to the Moldovan security agency and to the head of the OSCE mission in Moldova, acknowledging that he had been recruited as a spy for Moldova. He signed those letters after being told that if he refused to sign, he would be returned to the cell for detainees ill with tuberculosis on a permanent basis.

35.  Before the visit by OSCE officials on 18 June 2010, the first applicant was “instructed” for thirteen hours on what to say and what not to say, under threat of severe ill-treatment.

36.  On 5 July 2010 the first applicant declared a hunger strike in protest against the unfair proceedings and the inhuman conditions of his detention. He was then ill-treated. On an unknown date he discontinued his hunger strike. However, on 30 July 2010 he restarted it because of the absence of medical assistance and the constant psychological and physical ill-treatment inflicted on him by his convicted cellmate. After his transfer to another cell, he stopped his hunger strike. On 11 August 2010 he again started a hunger strike, asking to have an expert report commissioned and to be informed of the exact charges against him. This was refused, and he was then ill-treated by his cellmates, who eventually forced him to start eating.

37.  During his detention the first applicant started having dental problems. As there was no dentist in the prison, he kept taking pills sent by his mother in order to ease the pain. However, from February 2011 onwards the pain was too strong for the pills to have an effect. On 26 April 2011 he was finally taken to a dentist in prison no. 3. The dentist allegedly told him that he could not treat him due to the absence of specialised equipment, save for extracting all the teeth on one side of his jaw. He refused to undergo this treatment.

38.  On 21 April 2011 the World Organisation Against Torture (OMCT) called for specialised medical treatment to be given to the first applicant. It repeated its request on 17 and 23 May 2011.

* + 1. The actions undertaken by the Moldovan authorities

39.  The Moldovan Government undertook numerous actions of a diplomatic and political nature aimed at the first applicant’s release. In particular, they addressed the issue of the applicant’s detention and trial by the MRT authorities at the OSCE and in their contacts with the Russian and Ukrainian authorities. Criminal investigations were also initiated into the circumstances of the applicant’s detention and alleged ill-treatment.

* 1. RELEVANT NON-CONVENTION MATERIAL

40.  Reports by inter-governmental and non-governmental organisations, the relevant domestic law and practice of the Republic of Moldova, and other pertinent documents were summarised in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 61-77, 23 February 2016).

1. THE LAW
	1. JURISDICTION

41.  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.

* + 1. The parties’ submissions

42.  The applicants and the Moldovan Government submitted that both respondent Governments had jurisdiction.

43.  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. As they did in *Mozer* (cited above, §§ 92-94), the Russian Government expressed the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others* *v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004‑VII); *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012; and *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011) was wrong and at variance with public international law.

* + 1. The Court’s assessment

44.  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).

45.  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).

46.  The Court sees no reason to distinguish the present cases 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).

47.  In so far as the Russian Federation is concerned, the Court notes that in *Ilașcu 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 *Ilașcu 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 applicants fell within that State’s jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-11).

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

49.  It follows that the applicants in the present cases 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*.

50.  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).

* 1. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1, 3 AND 4 OF THE CONVENTION and of Article 6 § 1 of the convention

51.  The first applicant complained that his arrest and detention had been unlawful and contrary to Article 5 § 1 of the Convention. He also submitted that his rights, as guaranteed by Article 5 §§ 3 and 4 of the Convention, had been breached. He further complained that there had been a violation of Article 6 § 1 since he had been convicted by a court that could not qualify as an “independent tribunal established by law” and that moreover it had not afforded him a fair trial. The relevant parts of Articles 5 and 6 of the Convention read as follows:

Article 5

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

...

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

...”

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

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

Article 6

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

* + 1. Admissibility

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

* + 1. Merits

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

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

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

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

57.  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. Moreover, in the light of the above findings in *Mozer*, the Court considers that not only could the “MRT” courts not order the applicant’s lawful detention for the purposes of Article 5 § 1 of the Convention, but also, by implication, they could not qualify as an “independent tribunal established by law” for the purposes of Article 6 § 1 of the Convention. The Court therefore considers that there has been a breach of both Articles 5 § 1 and 6 § 1 of the Convention in the present case.

58.  The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the first applicant’s rights under Article 5 § 1 of the Convention (see paragraph 45 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).

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

60.  Turning to the second part of the positive obligations, namely to ensure respect for the first applicant’s rights, the Court notes that the Moldovan authorities made efforts to secure his rights. In particular, a criminal investigation was initiated in respect of the applicants’ detention by the “MRT” authorities and the Government made efforts of a political and diplomatic nature with a view to the first applicant’s release (see paragraph 39 above).

61.  In the light of the foregoing, the Court concludes that the Republic of Moldova fulfilled its positive obligations in respect of the first applicant and finds that there has been no violation of Articles 5 § 1 and 6 § 1 of the Convention provisions by the Republic of Moldova. For the same reasons, the Court finds that there has been no violation of Article 5 §§ 3 and 4 of the Convention by the Republic of Moldova.

62.  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 47-48 above). In the light of this conclusion, and in accordance with its case-law, it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the “MRT”, without which the latter could not otherwise survive, Russia’s responsibility under the Convention is engaged as regards the violation of the applicants’ rights (*ibid.*).

63.  In conclusion, and after having found that the first applicant’s rights guaranteed by Articles 5 § 1 and 6 § 1 have been breached (see paragraph 57 above), the Court holds that there has been a violation of those provisions by the Russian Federation.

64.  In the light of the above, the Court does not consider it necessary to examine separately the first applicant’s respective complaints under Article 5 §§ 3 and 4 of the Convention in respect of the Russian Federation and whether other aspects of the criminal proceedings against the first applicant complied with Article 6 § 1 of the Convention.

* 1. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65.  The first applicant complained that he had been held in inhuman conditions of detention and had not been given the requisite medical assistance. He also complained of being subjected to ill-treatment at the hands of the “MRT” authorities. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

* + 1. Admissibility

66.  The first applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment while in detention. However, he failed to adduce any evidence, such as medical documents or witness statements, in support of his allegations. The Court therefore considers that this part of the complaint under Article 3 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible, in accordance with Article 35 § 4 of the Convention.

67.  The first applicant further complained that he had not received adequate medical care while in detention. However, the Court notes that he adduced no evidence that he had been in need of any urgent medical care during detention. The Court therefore considers that this part of the complaint under Article 3 of the Convention, is also manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

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

* + 1. Merits

69.  The first applicant complained about overcrowding, poor material conditions, presence of cigarette smoke, lack of ventilation and lack of clean drinking water (see paragraphs 29-30 above).

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

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

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

73.  On the basis of the material before it and in the absence of any material contradicting the first applicant’s submissions, the Court finds it established that the conditions of his detention amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

74.  For the same reasons as those given in respect of the complaint under Articles 5 and 6 of the Convention (see paragraph 61 above), the Court finds that there has been no violation of Article 3 of the Convention by the Republic of Moldova.

75.  For the same reasons as those given in the same context (see paragraph 63 above), the Court finds that there has been a violation of Article 3 of the Convention by the Russian Federation.

* 1. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

76.  The second applicant complained that the search of her apartment in Tiraspol constituted a breach of her right to respect for her home. The applicants also complained about the restrictions on the visiting rights while the first applicant was in detention. The relevant parts of Article 8 read as follows:

Article 8

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

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

* + 1. Admissibility

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

* + 1. Merits

78.  The second applicant argued that the search of her apartment had been ordered and carried out by the authorities of the “MRT”, an unrecognised state. Such a search could not be considered “in accordance with the law”. The applicants also argued that the visits by the second applicant to the first applicant, while he was in detention, was authorised only after several months, without any legal basis for delaying that visit.

79.  The Moldovan Government submitted that the interference with the applicants’ rights had not been lawful because it had not been provided for by the domestic laws of the Republic of Moldova.

80.  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.

81.  It is undisputed that the search of the second applicant’s apartment constituted an interference with her right to respect for home. The Court considers, moreover, that the temporary restriction of the second applicant’s visiting right constituted an interference with the applicants’ right to respect for their family life. An interference will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2, and furthermore is “necessary in a democratic society” in order to achieve the aim or aims (see *Labita v. Italy* [GC], no. 26772/95, § 179, ECHR 2000‑IV; and *Idalov v. Russia* [GC], no. 5826/03, § 200, 22 May 2012).

82.  In so far as the lawfulness of the first interference is concerned, no elements in the present case allow the Court to consider that there was a legal basis for searching the second applicant’s apartment. Given the circumstances, the Court concludes that the interference was not lawful under domestic law. Accordingly, there has been a violation of Article 8 of the Convention.

83.  Likewise, the Court considers that it has not been shown that the restriction of the applicants’ visiting right had a legal basis. Accordingly, there has been a violation of Article 8 in this respect too.

84.  For the same reasons as those given in respect of the complaints under Articles 5 § 1 and 6 § 1 of the Convention (see paragraph 61 above), the Court finds that there has been no violation of Article 8 of the Convention by the Republic of Moldova.

85.  For the same reasons as those given in the same context (see paragraph 63), the Court finds that there has been a double violation of Article 8 of the Convention by the Russian Federation.

* 1. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 3 and 8 of THE CONVENTION

86.  The applicants furthermore complained that they had no effective remedy in respect of their complaints under Article 3 and Article 8 of the Convention. They relied on Article 13 of the Convention, which reads as follows:

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

* + 1. Admissibility

87.  The Court notes that the complaint under Article 13 of the Convention, taken in conjunction with Articles 3 and 8 of the Convention, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

* + 1. Merits

88.  The applicants submitted that they had had no means of asserting their rights in the face of the actions of the “MRT” authorities.

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

90.  The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy by which to complain of a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 of the Convention varies depending on the nature of the applicant’s complaint under the Convention, but the remedy must in any event be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State (*Mozer*, cited above, § 207; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, 15 December 2016; and *De Tommaso v. Italy* [GC], no. 43395/09, § 179, 23 February 2017). However, Article 13 of the Convention requires that a remedy be available in domestic law only in respect of grievances which can be regarded as “arguable” in terms of the Convention (*Mozer*, cited above, § 207; and *De Tommaso*, cited above, § 180).

91.  The Court observes that the applicants’ complaints under Articles 3 and 8 of the Convention were arguable.

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

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

94.  The Court therefore concludes that the applicants did not have an effective remedy in respect of their complaints under Articles 3 and 8 of the Convention. Consequently, the Court must decide whether any violation of Article 13 of the Convention can be attributed to either of the respondent States.

95.  In so far as the responsibility of Moldova is concerned, the Court recalls that it found that the “remedies” which this State must offer to applicants consisted of enabling them to inform the Moldovan authorities of the details of their situation and to be kept informed of the various legal and diplomatic actions taken by these authorities (*Mozer*, cited above, § 214). In *Mozer*, it concluded among other things that Moldova had made procedures available to the applicant commensurate with its limited ability to protect the applicant’s rights and that it had thus fulfilled its positive obligations (*ibid.*, § 216). In the present case, the Court sees no reason to reach a different conclusion (see *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, § 71, 17 July 2018). Accordingly, it finds that there has been no violation of Article 13 of the Convention by Moldova.

96.  In so far as the responsibility of the Russian Federation is concerned, for the same reasons as those given in respect of the complaint under Articles 5 and 6 of the Convention and in the absence of any submission by the Russian Government as to any remedies available to the applicants, the Court concludes that there has been a violation by the Russian Federation of Article 13 of the Convention, taken in conjunction with Articles 3 and 8 of the Convention (see *Mozer*, cited above, § 218; and *Mangîr and Others*, cited above, § 72).

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97.  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.”

* + 1. Damage

98.  The first applicant claimed 50,000 euros (EUR) in respect of non‑pecuniary damage and the second applicant claimed EUR 7,000.

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

100.  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 is to be made with regard to this respondent State.

101.  Having regard to the violations by the Russian Federation found above, the Court considers that an award in respect of non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 35,000 to the first applicant and EUR 7,000 to the second applicant, to be paid by the Russian Federation.

* + 1. Costs and expenses

102.  The applicants also claimed EUR 4,000 for costs and expenses.

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

104.  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.

105.  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.

* + 1. Default interest

106.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the complaint concerning Article 3 of the Convention, in so far as it concerns the poor conditions of detention of the first applicant, as well as the complaints under Article 5 §§ 1, 3 and 4, and under Articles 6 § 1, 8 and 13 admissible in respect of both respondent Governments;
3. *Declares* the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 3 of the Convention by the Republic of Moldova;
5. *Holds* that there has been a violation of Article 3 of the Convention by the Russian Federation;
6. *Holds* that there has been no violation of Article 5 § 1 of the Convention by the Republic of Moldova;
7. *Holds* that there has been a violation of Article 5 § 1 of the Convention by the Russian Federation;
8. *Holds* that there has been no violation of Article 5 §§ 3 and 4 of the Convention by the Republic of Moldova;
9. *Holds* that it is not necessary to examine separately the complaints under Article 5 §§ 3 and 4 of the Convention in respect of the Russian Federation;
10. *Holds* that there has been no violation of Article 6 § 1 of the Convention by the Republic of Moldova;
11. *Holds* that there has been a violation of Article 6 § 1 of the Convention by the Russian Federation;
12. *Holds* that there has been no violation of Article 8 of the Convention by the Republic of Moldova;
13. *Holds* that there has been a violation of Article 8 of the Convention by the Russian Federation, both with respect to the search of the applicants’ apartment and the restriction of the second applicant’s right to visit the first applicant while in detention;
14. *Holds* that there has been no violation of Article 13 in conjunction with Articles 3 and 8 of the Convention by the Republic of Moldova;
15. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention by the Russian Federation;
16. *Holds*
	1. that the Russian Federation is to pay the applicants, within three months, the following amounts:
		1. EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the first applicant;
		2. EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
		3. EUR 4,000 (four thousand euros), plus any tax that may be chargeable, to both applicants, in respect of costs and expenses.
	2. 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;
17. *Dismisses* the remainder of the applicants claim for just satisfaction.

Done in English, and notified in writing on 7 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Hasan Bakırcı Julia Laffranque
 Deputy Registrar President