



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

CASE OF ILASCU AND OTHERS v. MOLDOVA AND RUSSIA

(Application no. 48787/99)

JUDGMENT

STRASBOURG

8 July 2004

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

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In the case of Ilascu and Others v. Moldova and Russia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr G. RESS,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr I. CABRAL BARRETO,
Mrs F. TULKENS,
Mr C. BÎRSAN,
Mr J. CASADEVALL,
Mr B. ZUPANCIC,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mr T. PANTÎRU,
Mr E. LEVITS,
Mr A. KOVLER,
Mrs E. FURA-SANDSTRÖM, *Judges*,

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

Having deliberated in private on 23 January, 26 February and 11 September 2002, 8 October 2003 and 7 May 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case originated in an application (no. 48787/99) 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 four Moldovan nationals, Mr Ilie Ilascu, Mr Alexandru Lesco, Mr Andrei Ivantoc and Mr Tudor Petrov-Popa (“the applicants”), on 5 April 1999.

2. The application mainly concerns acts committed by the authorities of the “Moldavian Republic of Transdnistria” (“the MRT”), a region of Moldova which proclaimed its independence in 1991 but is not recognised by the international community.

3. The applicants submitted that they had been convicted by a Transdnistrian court which was not competent for the purposes of Article 6 of the Convention, that they had not had a fair trial, contrary to the same provision, and that following their trial they had been deprived of their

possessions in breach of Article 1 of Protocol No. 1. They further contended that their detention in Transdniestria was not lawful, in breach of Article 5, and that their conditions of detention contravened Articles 3 and 8 of the Convention. In addition, Mr Ilascu alleged of a violation of Article 2 of the Convention on account of the fact that he had been sentenced to death. The applicants argued that the Moldovan authorities were responsible under the Convention for the alleged infringements of the rights secured to them thereunder, since they had not taken any appropriate steps to put an end to them. They further asserted that the Russian Federation shared responsibility since the territory of Transdniestria was and is under *de facto* Russian control on account of the Russian troops and military equipment stationed there and the support allegedly given to the separatist regime by the Russian Federation.

Lastly, the applicants alleged that Moldova and the Russian Federation had obstructed the exercise of their right of individual application to the Court, thus breaching Article 34.

PROCEDURE

1. *The admissibility proceedings*

4. The application was allocated to the former First Section of the Court (Rule 52 § 1 of the Rules of Court). The First Section gave notice of the application to the respondent Governments on 4 July 2000. Written observations on its admissibility were filed on 24 October 2000 by the Moldovan Government, on 14 November 2000 by the Russian Government and on 2 January 2001 by the applicants.

5. On the 20 March 2001 the Chamber of the First Section relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72 of the Rules of Court).

6. The composition of the Grand Chamber was determined in accordance with Article 27 §§ 2 and 3 of the Convention and Rule 24. At the final deliberations Mr I. Cabral Barreto and Mr B. Zupancic, substitute judges, replaced Mr L. Ferrari Bravo and Mr J. Makarczyk, who were unable to take part in the further consideration of the case (Rule 24 § 3).

7. By a decision of 4 July 2001 the Grand Chamber declared the application admissible, after a hearing on the admissibility and merits (Rule 54 § 4) held on 6 June 2001. At the hearing the Moldovan Government declared that they wished to withdraw their memorial of 24 October 2000, or at least that part of it which related to the responsibility of the Russian Federation.

In its decision on admissibility the Court held that the questions whether the responsibility and jurisdiction of Moldova and the Russian Federation might be engaged under the Convention, and whether the Court had jurisdiction *ratione temporis* to examine the applicants' complaints, were closely linked to the merits of the case, to which it accordingly joined them.

2. *The proceedings on the merits*

(a) **Written observations of the parties**

8. After the application had been declared admissible both the applicants and the Moldovan and Russian Governments filed written observations on the merits of the case: the Moldovan Government on 12 November 2001 and 28 January 2002, the Russian Government on 8 December 2001, and the applicants on 27 September and 2, 4, 12 and 16 November 2001.

Observations were also submitted by the Romanian Government, whom the President had invited to intervene in the proceedings in the interests of the proper administration of justice (Article 36 of the Convention and Rule 61 §§ 2 and 3). The parties replied (Rule 61 § 5). A request to intervene was also submitted by Mrs Ludmila Gusar, a civil party in the proceedings which led to the applicants' conviction by the "Supreme Court of the MRT". The President of the Grand Chamber refused her request.

9. After the witness hearings (see paragraphs 12 to 15 below), the parties were invited by the President to file their final observations by 1 September 2003 at the latest. The President having refused a request by the Russian Government for an extension of the time allowed, the parties' final written submissions were received by the Court on that date.

10. On 12 January 2004 the President of the Grand Chamber decided to invite the respondent Governments under Rule 39 to take all necessary steps to ensure that Mr Ivantoc, who had been on hunger strike since 28 December 2003, was detained in conditions which were consistent with respect for his rights under the Convention. The parties were invited, in accordance with Rule 24 § 2 (a), to provide information about the implementation of the interim measures requested. Mr Ivantoc's representative, Mr Gribincea, and the Moldovan Government provided the Court with the information requested in letters dated 24 and 26 January 2004 respectively.

11. On 15 January 2004 the President decided to urge Mr Ivantoc under Rule 39 to call off his hunger strike. On 24 January 2004 Mr Ivantoc's representative informed the Court that his client had ended his hunger strike on 15 January 2004.

(b) The witness hearings

12. In order to clarify certain disputed points and, in particular, the question whether Moldova and/or the Russian Federation were responsible for the alleged violations, the Court carried out an on-the-spot investigation, in accordance with Article 38 § 1 (a) of the Convention and Rule 42 § 2 (in the version then in force). The Court's enquiries were directed towards ascertaining the relevant facts in order to be able to determine whether Moldova and the Russian Federation had jurisdiction, particularly over the situation in Transdniestria, relations between Transdniestria, Moldova and the Russian Federation and the applicants' conditions of detention.

The Court appointed four delegates, Mr G. Ress, Sir Nicolas Bratza, Mr J. Casadevall and Mr E. Levits, who heard witness evidence in Chisinau and Tiraspol from 10 to 15 March 2003. In Chisinau the witness evidence was taken at the headquarters of the OSCE mission in Moldova, which greatly assisted in the organisation of the hearings. In Tiraspol the Court's delegates took evidence from the applicants and other witnesses resident in Transdniestria at Tiraspol no. 3 Prison, and from the witnesses belonging to the armed forces of the Russian Federation at the headquarters of the Russian Operational Group in the Transdniestrian region of Moldova ("the ROG").

13. In all, the delegates took evidence from 43 witnesses called by the parties and the Court. The head of the delegation allowed an application by three of the witnesses to remain anonymous and they were accordingly designated by the letters X., Y. and Z.

14. Seven other witnesses summoned to give evidence to the delegates did not appear. After the end of the hearings, at the delegates' request, the parties submitted written explanations of the reasons for these witnesses' failure to appear and the steps taken to transmit the Court's summonses to them.

The following witnesses did not appear: Olga Capatina, who had been admitted to hospital just before the hearings, after being assaulted; Vladimir Gorbov and Mikhaïl Bergman, whom the respondent Governments said they had been unable to contact; Petru Godiac, whose absence has not been explained; Valeriu Pasat, who was not present in Moldovan territory; and lastly Valeriu Muravschi and Petru Tabuica, who have not given reasons for their absence.

15. A list of the witnesses who appeared before the delegates and a summary of their statements are to be found in the annex to the present judgment. A verbatim record of the witnesses' statements to the delegates was also produced by the Registry and included in the case-file.

(c) **The documentary evidence**

16. In addition to the observations of the parties and the witnesses' statements, the Court took account of the numerous documents submitted by the parties and the Transdniestrian authorities throughout the proceedings: letters from Mr Ilie Ilascu; statements and letters from Mr Andrei Ivantoc; documents from the Moldovan authorities concerning the investigations into the applicants' arrest and detention; written statements by witnesses, including Olga Capatina and Petru Godiac; documents concerning the applicants' trial in the "Supreme Court of the MRT" and the "pardon" granted to Mr Ilascu; documents and statements about Transdniestria and the present application from various administrative authorities in Moldova and the Russian Federation; press cuttings about statements made by politicians and other officials of the Russian Federation; official documents concerning the military presence of the Russian Federation in Transdniestria and resolution of the Transdniestrian conflict, including treaties and agreements between Moldova and Transdniestria and between the Russian Federation and Transdniestria, and video cassettes about the fighting in 1992 and the situation in Transdniestria.

17. The Court also consulted certain documents filed by the "Ministry of Justice of the MRT" through the OSCE mission in Chisinau, particularly extracts from the applicants' medical files and the registers recording the visits and parcels they had received in their places of detention. The respondent Governments also filed documents from the Commission responsible for supervising implementation of the agreement of 21 July 1992 ("the Joint Control Commission").

18. Lastly, the Court had access to a number of public documents about Transdniestria and the situation of the applicants from international organisations and bodies such as the OSCE, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), the Parliamentary Assembly of the Council of Europe, the Council of Europe's Commissioner for Human Rights and the Governing Council of the Inter-Parliamentary Union.

THE FACTS

I. THE APPLICANTS

19. The applicants, who were Moldovan nationals when the application was lodged, were born in 1952, 1955, 1961 and 1963 respectively. At the time when they lodged their application the applicants were detained in the Transdniestrian part of Moldova.

20. Although detained, Mr Ilascu was twice elected to the Moldovan Parliament, from 1994 to 2000. As a member of parliament, he was appointed to form part of the Moldovan delegation to the Parliamentary Assembly of the Council of Europe. On 4 October 2000 Mr Ilascu acquired Romanian nationality. In December 2000 he was elected to the Senate of the Romanian Parliament and appointed as a member of the Romanian delegation to the Parliamentary Assembly of the Council of Europe.

21. Mr Lesco and Mr Ivantoc acquired Romanian nationality in 2001.

22. Mr Ilascu was released on 5 May 2001; since then he has lived in Bucharest (Romania). The second and third applicants' homes are in Chisinau (Moldova), whereas the fourth applicant lives in Tiraspol (Transnistria, Moldova). At present all three of them are detained in Tiraspol.

23. 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 wives, Mrs Nina Ilascu, Mrs Tatiana Lesco and Mrs Eudochia Ivantoc, and by the fourth applicant's sister, Mrs Raisa Petrov-Popa.

24. The second applicant was represented before the Court by Mr Alexandru Tanase, of the Chisinau Bar. The other applicants were represented by Mr Corneliu Dinu, of the Bucharest Bar, until his death in December 2002. Since January 2003 they have been represented by Mr Vladislav Gribincea, of the Chisinau Bar.

II. ESTABLISHMENT OF THE FACTS

25. In order to establish the facts the Court based itself on documentary evidence, the observations of the parties and the statements of the witnesses who gave evidence on the spot, in Chisinau and Tiraspol.

26. In assessing the evidence for the purpose of establishing the facts, the Court considers that the following elements are relevant.

(i) In assessing both written and oral evidence the Court has hitherto generally applied "beyond a reasonable doubt" as the standard of proof required. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact; in addition, the conduct of the parties in relation to the Court's efforts to obtain evidence may constitute an element to be taken into account (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(ii) As regards the statements taken down by the delegates, the Court is aware of the difficulties that may arise in assessing such depositions obtained through interpreters: it has therefore paid particular attention to the meaning and weight to be given to the witnesses' statements to the

delegates. The Court is likewise aware that a large number of relevant facts concern events which took place more than ten years ago in an obscure and particularly complex context, which makes some degree of imprecision about dates and other details inevitable. It does not consider that that in itself can cast doubt on the credibility of the witness evidence.

(iii) In a case where there are contradictory and opposing accounts of the facts the Court is inevitably confronted with difficulties which any court of first instance is bound to meet when seeking to establish the facts, regard being had, for example, to the fact that it does not have direct and detailed knowledge of the conditions obtaining in the region. Moreover, the Court has no powers to compel witnesses to appear. In the present case, out of 51 witnesses called, seven did not appear before the delegates. Consequently, the Court found itself having to deal with the difficult task of establishing the facts in the absence of potentially important depositions.

27. With the assistance of the parties, the Court conducted an on-the-spot investigation, in the course of which it took evidence from the following forty-three witnesses:

(a) on the particular circumstances of the applicants' arrest, conviction and detention: the applicants; Mrs Tatiana Lesco and Mrs Eudochia Ivantoc, the wives of the second and third applicants; Mrs Raisa Petrov-Popa, the sister of the fourth applicant; Mr Stefan Urîtu, detained in 1992 with the applicants; Mr Constantin Tîbîrna, a doctor who examined the applicants in 1995-1998 while they were detained in Tiraspol and Hlinaia; Mr Nicolae Lesanu, a doctor who examined the applicants in 1995-1997 while they were detained in Tiraspol and Hlinaia; Mr Vladimir Golovachey, the governor of Tiraspol no. 2 Prison; Mr Stepan Tcherbebechi, the governor of Hlinaia Prison from 1992 to 2001; Mr Sergey Kotovoy, the governor of Hlinaia Prison; Mr Yefim Samsonov, "Director of the Prison Medical Service of the MRT"; and Mr Vasiliy Semenchuk, a doctor at Hlinaia Prison since 1995;

(b) on the measures taken by Moldova to secure the applicants' release and on relations between Moldova, the Russian Federation and Transdnistria, various Moldovan officials and politicians: Mr Dumitru Postovan, Attorney-General of Moldova from 1990 until July 1998; Mr Valeriu Catana, Attorney-General of Moldova from 31 July 1998 to 29 July 1999; Mr Vasile Rusu, Attorney-General of Moldova since 18 May 2001; Mr Vasile Sturza, Deputy Attorney-General of Moldova from 1990 to 1994 and Minister of Justice from 1994 to 1998; Z., a former Moldovan Government Minister; Mr Victor Vieru, Deputy Minister of Justice since 2001; X., a former Moldovan senior official; Mr Mircea Snegur, President of Moldova from 1990 to 1996; Mr Alexandru Mosanu, President of the Moldovan Parliament from 1990 to 1992; Y., a former Moldovan diplomat; Mr Andrei Sangheli, Prime Minister of Moldova from 1992 to 1997; Mr Anatol Plugaru, Moldova's Minister of Security in 1991-

1992; Mr Nicolai Petrica, General in the Moldovan army from 1992 to 1993; Mr Andrei Stratan, former director of Customs; Mr Vladimir Molojen, director of the Information Technology Department; Mr Ion Costas, Minister of Defence in 1991-1992; Mr Valentin Sereda, Director of the Moldovan Prisons Service; Mr Victor Berlinschi, member of the Moldovan Parliament from 1990 to 1994; Mr Constantin Obroc, Deputy Prime Minister in 1991-1992 and adviser to the President of Moldova from 1993 to 1996; Mr Mikhail Sidorov, member of the Moldovan Parliament; and Mr Pavel Creanga, Moldovan Minister of Defence from 1992 to 1997;

(c) on the presence of the ROG and the Russian Federation's peacekeeping troops in the Transdnistrian region of Moldova, soldiers from those units: General Boris Sergeyev, commander of the ROG; Colonel Alexander Verguz, officer commanding the ROG; Lieutenant-Colonel Vitalius Radzaevichus, former member of the command structure of the ROG; Colonel Anatoliy Zverev, commander of the Russian Federation's peacekeeping troops in the Transdnistrian region of Moldova; Lieutenant-Colonel Boris Levitskiy, president of the military tribunal attached to the ROG; Lieutenant-Colonel Valeriy Shamayev, military prosecutor attached to the ROG; and Vasiliy Timoshenko, former military prosecutor attached to the Fourteenth Army and the ROG.

III. THE GENERAL BACKGROUND TO THE CASE

A. The dissolution of the USSR and the Moldovan-Transdnistrian conflict over the break-away of Transdnistria

1. The dissolution of the USSR, the break-away of Transdnistria and Moldovan independence

28. The Moldavian Soviet Socialist Republic, which was set up by a decision of the Supreme Soviet of the USSR on 2 August 1940, was formed from a part of Bessarabia taken from Romania on 28 June 1940 following the Molotov-Ribbentrop pact between the USSR and Germany, where the majority of the population were Romanian speakers, and a strip of land on the left bank of the Dniester in Ukraine (USSR), Transdnistria, which was transferred to it in 1940 and is inhabited by a population whose linguistic composition in 1989, according to publicly available information, was 40% Moldavian, 28% Ukrainian, 24% Russian and 8% others. Russian became the new Soviet republic's official language. In public life the Soviet

authorities imposed the use of Cyrillic script for written Romanian, which thus became “Moldavian” and took second place after Russian¹.

29. In August and September 1989 the Moldavian Supreme Soviet enacted two laws introducing the Latin alphabet for written Romanian (Moldavian) and making that language the country’s first official language, in place of Russian.

On 27 April 1990 the Supreme Soviet adopted a new tricolour flag (red, yellow and blue) with the Moldavian heraldic device and a national anthem which, at that time, was the same as Romania’s. In June 1990, against a background of autonomist and independence movements within the Soviet Union, the Moldavian Soviet Socialist Republic took as its new name the Moldovan Soviet Socialist Republic. It proclaimed its sovereignty on 23 June 1990 (extracts from the OSCE document of 10 June 1994, see note to paragraph 28 above).

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

30. On 2 September 1990 the “Moldavian Republic of Transdnistria” (“the MRT”) was proclaimed. On 25 August 1991 the “Supreme Council of the MRT” adopted the declaration of independence of the “MRT”.

To date, the “MRT” has not been recognised by the international community.

31. On 27 August 1991 the Moldovan Parliament adopted the Declaration of Independence of the Republic of Moldova, whose territory included Transdnistria. At that time the Republic of Moldova did not have its own army and the first attempts to create one took place a few months later. The Moldovan Parliament asked the Government of the USSR “to begin negotiations with the Moldovan Government in order to put an end to the illegal occupation of the Republic of Moldova and withdraw Soviet troops from Moldovan territory”.

32. After the declaration of independence of the Republic of Moldova the Fourteenth Army of the military district of Odessa of the Ministry of Defence of the USSR (“the Fourteenth Army”), whose headquarters had been in Chisinau since 1956, remained in Moldovan territory. Large-scale movements of equipment were nevertheless reported from 1990 onwards: among other transfers, large quantities of equipment began to be withdrawn from Moldovan territory.

33. During 1991 the Fourteenth Army was composed of several thousand soldiers, infantry units, artillery (notably an anti-aircraft missile system), armoured vehicles and aircraft (including ‘planes and strike

¹ Extracts from an information document of 10 June 1994 produced by the OSCE Conflict Prevention Centre on the subject of the Transdnistrian conflict. The document concerned, published in English on the Internet portal of the OSCE mission to Moldova, is entitled “Transdnistrian conflict: origins and main issues”.

helicopters), and had a number of ammunition stores, including one of the largest in Europe at Kolbasna in Transdniestria.

34. In addition to the weaponry of the Fourteenth Army, DOSAAF, “The Voluntary Association for Assistance to the Army, Air Force and Navy” (????? – ????????????? ????????? ????????????? ????????? ? ? ???), situated in Moldovan territory, a State organisation set up in 1951 to prepare the civilian population for war, had a stock of ammunition.

After the proclamation of Moldova’s independence the DOSAAF equipment situated in that part of the national territory controlled by the Moldovan Government passed into their hands and the remainder – located in Transdniestria – passed into those of the Transdniestrian separatists.

35. On 6 September 1991 the “Supreme Soviet of the Moldavian Republic of Transdniestria” issued an order placing all establishments, enterprises, organisations, militia units, public prosecutors’ offices, judicial bodies, KGB units and other services in Transdniestria, with the exception of military units belonging to the Soviet armed forces, under the jurisdiction of the “Republic of Transdniestria”. Officers, non-commissioned officers, and other ranks of military units stationed in Transdniestria were urged to “show civic solidarity and mobilise to defend the Republic of Transdniestria alongside workers’ representatives in the event of invasion from Moldova.”

36. On 18 September 1991 the “President of the Supreme Soviet of the Moldavian Soviet Socialist Republic of Transdniestria” decided to place the units of the Soviet armed forces deployed in Transdniestria under the jurisdiction of the “Republic”.

37. By Decree no. 234 of 14 November 1991 the President of Moldova, Mr Snegur, declared that ammunition, weapons, military transport, military bases and other property belonging to the military units of the Soviet armed forces stationed in Moldovan territory were the property of the Republic of Moldova.

38. On 8 December 1991 Belarus, the Russian Federation and Ukraine signed the Minsk Agreement, noting the end of the Soviet Union’s existence and setting up the Commonwealth of Independent States (“the CIS” – see paragraph 290 below).

39. On 21 December 1991 eleven member States of the USSR, including Moldova and Ukraine, signed the Alma-Ata Declaration, which confirmed and extended the Minsk Agreement setting up the CIS. The Alma-Ata Declaration also confirmed that, through the establishment of the CIS, the USSR had ceased to exist and that the CIS was neither a State nor a supra-State entity. A Council of the Heads of Government of the CIS was also set up and decided to support Russia as the successor to the USSR at the United Nations, including the USSR’s place on the Security Council, and in other international organisations.

40. On 30 January 1992 the Republic of Moldova became a member of the Conference on Security and Co-operation in Europe (CSCE). On 2 March 1992 it was admitted to the United Nations.

41. On 8 April 1994 the Moldovan Parliament ratified, with certain reservations, the treaty providing for Moldova's accession to the CIS, signed by the Moldovan President at Alma-Ata on 21 December 1991 (see paragraph 293).

2. *The armed conflict (1991 to 1992)*

42. The statements made to the Court's delegates during the on-the-spot investigation have confirmed that military operations took place during the conflict (see Annex, Mr Urîtu, §§ 64-66 and 69-71, X., §§ 218 and 220, Mr Snegur, §§ 230 and 238, Mr Mosanu, §§ 243-245, Y., § 254, Z., §§ 271 and 277-281, General Petrica, §§ 296-297 and 299, Mr Costas, §§ 401, 405-407 and 409, and Mr Creanga, §§ 457-460); these military operations are also attested to by other documents in the file.

The respondent Governments did not contest the veracity of the detailed information set out below, although they gave different interpretations of the facts (see paragraphs 50, 57, 60, 62 and 63 below).

43. From 1989 onwards movements of resistance to Moldovan independence began to organise in southern Moldova (Gagauzia) and the east of the country (Transdnistria).

44. Armed clashes on a limited scale broke out between the Transdnistrian separatists and the Moldovan police as early as November 1990 in eastern Moldova, at Dubasari, on the left bank of the Dniester.

45. During the following months the Transdnistrian authorities created paramilitary units called "workers' detachments", on the basis of which a professional and fully-equipped "Republican Guard" was formed in 1991 (see the previously cited OSCE document of 10 June 1994, note to paragraph 28 above).

46. The applicants alleged that on 19 May 1991 the USSR's Minister of Defence had ordered the commander of the Fourteenth Army, General Netkachev, to call up reservists to make up the complement of the Fourteenth Army troops deployed in Transdnistria and to put these troops and their military equipment on a combat footing. He allegedly justified that order in the following terms: "*Given that Transdnistria is Russian territory and that the situation there has deteriorated, we must defend it by all means possible*".

47. On 1 December 1991 a presidential election – declared illegal by the Moldovan authorities – was organised in the provinces (*raioane*) on the left bank of the Dniester (Transdnistria). Mr Igor Smirnov was elected "President of the MRT".

48. By a decree of 5 December 1991 Mr Smirnov decided "[to place] the military units, attached for the most part to the Odessa military district,

deployed in the Moldavian Republic of Transdniestria under the command of the Head of the National Defence and Security Department of the Republic of Transdniestria". The Head of that Department, Mr Gennady I. Iakovlev, who was also the commander of the Fourteenth Army (see paragraph 53 below), was requested to take all necessary measures to put an end to transfers and handovers of weaponry, equipment and other property of the Soviet Army in the possession of the military units deployed in Transdniestria. The declared aim of that measure was to preserve, for the benefit of the Transdniestrian separatist regime, the weapons, equipment and assets of the Soviet army in Transdniestria.

49. In December 1991 the Moldovan authorities arrested Lieutenant-General Iakovlev in Ukrainian territory, accusing him of helping the Transdniestrian separatists to arm themselves by using the weapons stocks of the Fourteenth Army. He was taken to Moldovan territory for the purposes of the investigation.

50. According to the applicants, Lieutenant-General Iakovlev was arrested by the Moldovan authorities and accused of arming the separatists. After his arrest he had allegedly made statements confirming the Russian Federation's intervention in the conflict and its support for Transdniestria and these had been recorded on about ten cassettes. However, they contended that Lieutenant-General Iakovlev had been released as a result of the intercession with the Moldovan authorities of a Russian general, Nicolai Stolearov, who had travelled from Moscow to Chisinau for that precise purpose.

The Moldovan Government did not comment on this point.

Although several witnesses made the assertion (see Annex, Mr Urîtu, § 66, Mr Postovan, § 182, Z., § 272, and Mr Plugaru, § 286), the Court cannot accept that it has been established beyond a reasonable doubt that General Iakovlev was released in exchange for a number of a Moldovan police officers held prisoner by the Transdniestrian forces. It has heard different accounts of the exact reasons for General Iakovlev's release and, in the absence of any documentary evidence about what took place during the investigation or about his release, it can neither dismiss nor accept the accounts of the witnesses, most of whom, in the delegates' opinion, were generally credible.

On the other hand, the Court notes that all the witnesses questioned on the subject agreed that a Russian general had travelled from Moscow to Chisinau to obtain General Iakovlev's release.

The Court accordingly considers it to be established beyond a reasonable doubt that the authorities of the Russian Federation interceded with the Moldovan authorities to obtain the release of General Iakovlev.

51. At the end of 1991 and the beginning of 1992 violent clashes broke out between the Transdniestrian separatist forces and the Moldovan security forces, claiming the lives of several hundred people.

52. The applicants referred to a number of facts which gave a precise indication of the course of the fighting. These facts were not contested by the respondent Governments or rebutted by the witness evidence taken by the delegates during the on-the-spot investigation.

53. On 6 December 1991, in an appeal to the international community and the United Nations Security Council, the President of the Republic of Moldova, Mircea Snegur, the President of the Moldovan Parliament, Alexandru Mosanu, and the Prime Minister, Valeriu Muravschi, protested against the occupation, on 3 December 1991, of the Moldovan towns of Grigoriopol, Dubasari, Slobozia, Tiraspol and Ribnita, situated on the left bank of the Dniester, by the Fourteenth Army, which had been under the command of Lieutenant-General Iakovlev since a date which has not been specified. They accused the authorities of the USSR, particularly the Ministry of Defence, of having prompted these acts. The soldiers of the Fourteenth Army were accused of distributing military equipment to the Transdnestrian separatists and organising the separatists into military detachments which were terrorising the civilian population.

54. By a decree of 26 December 1991, Mr Smirnov, the “President of the MRT”, created the “armed forces of the MRT” from troops and formations stationed in the territory of the “MRT”, with the exception of the armed forces making up the “Strategic Peacekeeping Forces”.

55. In January 1992 Lieutenant-General Iakovlev was relieved of command of the Fourteenth Army by the command of the combined armed forces of the CIS. By a decision of 29 January 1992 of the commander-in-chief of the joint armed forces of the CIS, Lieutenant-General Iakovlev was placed at the disposal of the Military Registration Bureau of the Primorski district of the city of Odessa (Ukraine).

56. In 1991-92, during clashes with the Moldovan security forces, a number of military units of the USSR, and later of the Russian Federation, went over with their ammunition to the side of the Transdnestrian separatists, and numerous items of the Fourteenth Army’s military equipment fell into separatist hands.

The parties disagreed about how these weapons came to be in the possession of the Transdnestrians.

57. The applicants submitted that the Fourteenth Army had armed the separatists in two ways: firstly, ammunition stores belonging to the Fourteenth Army had been opened up to the separatists; secondly, Fourteenth Army personnel had offered no resistance when separatist militiamen and civilians tried to seize military equipment and ammunition. For example, no force had been used against the Committee of Transdnestrian women, led by Galina Andreeva.

The Court notes the explanation given by an ROG officer (see Annex, Colonel Verguz, § 359) about the forcible seizure of weapons by women

and children and observes that this account was contested by all the Moldovan witnesses questioned on the subject.

The Court considers it highly improbable that women and children could have seized weapons and ammunition guarded by armed military personnel in locked stores without the guards' agreement.

In short, the Court considers it to have been established beyond a reasonable doubt that Transdnestrian separatists were able to arm themselves with weapons taken from the stores of the former Fourteenth Army stationed in Transdnestria. The Fourteenth Army troops chose not to oppose the separatists who had come to help themselves from the Army's stores; on the contrary, in many cases they helped the separatists equip themselves by handing over weapons and by opening up the ammunition stores to them (see Annex, Mr Urîtu, § 65, Mr Petrov-Popa, § 130, Mr Postovan, §§ 182 and 201, Mr Costas, § 407 and Mr Creanga, § 457).

58. The applicants asserted that Fourteenth Army troops had joined the separatist side with the evident approval of their superiors.

59. The Fourteenth Army's Parcani sapper battalion, under the orders of General Butkevich, had gone over to the separatist side. That information had been confirmed by the Russian Government. The applicants went on to say that at the time of this "transfer" the sappers were in possession of a considerable number of Kalashnikov rifles, cartridges, TT and Makarov pistols, grenades and grenade-launchers and air-to-ground rocket-launchers. It was the Parcani battalion which had destroyed the bridges at Dubasari, Gura Bâcului-Bâcioc and Cosnita.

The applicants further asserted that on 20 July 1992 armoured combat vehicles, mine-throwers, battle tanks and armoured transport vehicles were transferred from Fourteenth Army units to the separatists. In addition, during the fighting, eight Fourteenth Army helicopters had taken part in transporting ammunition and wounded on the separatist side.

In a written statement sent to the Court by Mr Lesco's representative on 19 November 2001, Mrs Olga Capatîna, a former volunteer attached to the Moldovan Ministry of National Security from 15 March to 15 August 1992, said that during that period, as evidenced by a certificate issued by the Ministry, she had worked for the general staff of the Russian Army, at the Fourteenth Army's command and espionage centre, under the name of Olga Suslina. While working there she had sent the Moldovan Ministry of National Security hundreds of documents confirming the participation of Russian troops in the armed operations and the massive contribution of weapons they had made. She had also gathered information proving that the separatists' military operations were directed by the Fourteenth Army, which coordinated all its actions with the Ministry of Defence of the Russian Federation.

60. The applicants asserted that thousands of Russian Cossacks had come from Russia to fight alongside the separatists; the Union of Cossacks,

a Russian association, had been recognised by the Russian authorities. They alleged that the arrival of the Cossacks from Russia had not been hindered in any way by the Russian authorities, in spite of the appeal to them made by the Moldovan President, Mr Snegur. On the contrary, Fourteenth Army officers had welcomed nearly 800 Cossacks at the beginning of March 1992 and armed them. The applicants asserted in that connection that whereas in 1988 there had been no Cossacks in Moldovan territory, nearly 10,000 Cossacks who had come from the Russian Federation were now living in Transdnestrian territory.

The Russian Government submitted that Cossacks could be found in other parts of the world and that everyone had the right to freedom of movement.

The Court notes that several documents in the file and statements taken down by the delegates show that large numbers of Cossacks and other Russian nationals went to Transdnestria to fight alongside the separatists. It further notes that the Russian Government have not denied this.

The Court accordingly considers it to be established beyond a reasonable doubt that large numbers of Russian nationals went to Transdnestria to fight in the ranks of the Transdnestrian separatists against the Moldovan forces.

61. In a book published in 1996 by the publishing house *Vneshtorgizdat* and entitled “General Lebed – Russian Enigma” the author, Vladimir Polushin, supplies plentiful evidence, backed up by documentary sources, of the support given by the Russian Federation to the Transdnestrian separatists. The book mentions, for example, the creation by General Lebed of the Russo-Transdnestrian joint defence headquarters and the participation by the Fourteenth Army in the military operations conducted by the Transdnestrian forces against the Moldovan “enemy”.

Referring to this book, the applicants mentioned by way of example the destruction of a Moldovan unit by the Fourteenth Army at Chitcani on 30 June 1992 and the shelling by the Fourteenth Army of several Moldovan positions at Cosnita, Dubasari, Slobozia and Hârbovat between 1 June and 3 July 1992.

The other parties did not comment on the information given in the book.

62. The applicants further submitted that the bridge abutments on the left bank of the Dniester had been mined by Fourteenth Army personnel.

The Court notes that one witness, directly involved at the highest level in the military operations during the conflict, asserted that part of the territory on the left bank of the Dniester had been mined, that this work had been done by specialists and that after the end of the conflict the Moldovan Army had had to have recourse to foreign specialists in order to demine the area (see Annex, Mr Costas, § 406). That information was not disputed by the other parties.

Taking account of the witness's credibility also, the Court can take it to be established that part of Moldovan territory situated on the left bank of the Dniester was mined by the forces opposing the Moldovan Army. On the other hand, it notes that this witness was unable to assert categorically that the mines had been laid by Fourteenth Army personnel, but merely contended that logically work of such a technical level could only have been carried out by professionals, that is by Fourteenth Army troops. It likewise notes that this witness asserted that the separatists had seized possession of anti-personnel mines previously held in the Fourteenth Army's stores. In the circumstances, the Court considers that this assertion is not certain "beyond a reasonable doubt" and therefore cannot take it as established that it was Fourteenth Army or ROG personnel who laid mines on the left bank of the Dniester.

63. The Moldovan Government asserted that they had never claimed that the army of the Russian Federation had been legally stationed in Moldovan territory, or that the Fourteenth Army had not intervened in the Transdnistrian conflict.

On the contrary, they asserted, as appeared from the witness evidence taken by the Court's delegates, that the Fourteenth Army had intervened actively, both directly and indirectly, in the Transdnistrian conflict, against the armed forces of Moldova. The Transdnistrian separatists had been able to arm themselves with weapons belonging to the Fourteenth Army and with the Fourteenth Army's complicity. The Moldovan Government considered that no faith could be placed in assertions that women had forcibly seized weapons and ammunition from the Fourteenth Army's stores. Moreover, not a single Russian soldier had subsequently been disciplined for negligence or complicity in the seizure of equipment from the Fourteenth Army's stores.

64. The Russian Government argued that the former Fourteenth Army had been in Moldova when the Transdnistrian conflict broke out. The Russian military forces as such had taken no part whatsoever in the fighting and had not been involved in the acts complained of. However, where illegal armed operations had been carried out against soldiers of the former Fourteenth Army appropriate measures had been taken in accordance with international law. In general, the Russian Government were prepared to accept as a hypothesis that individuals claiming allegiance to the former Fourteenth Army might have taken part in the acts in issue, but emphasised that if that had been the case such conduct would have constituted a gross breach of Russian legislation, for which the individuals responsible would have been punished.

The Russian Government went on to say that the Russian Federation had remained neutral in the conflict. In particular, it had not supported the combatants in any way, whether militarily or financially.

65. The Court notes that all the Moldovan witnesses questioned categorically confirmed the active involvement, whether direct or indirect, of the Fourteenth Army, and later of the ROG, in the transfer of weapons to the Transdniestrian separatists. They also confirmed the participation of Russian troops in the conflict, particularly the involvement of tanks bearing the flag of the Russian Federation, shots fired towards the Moldovan positions from units of the Fourteenth Army and the transfer of a large number of Fourteenth Army troops to the reserve so that they could fight alongside the Transdniestrians or train them (see Annex, Mr Costas, § 406, Mr Creanga, § 457).

These assertions are corroborated by the information contained in OSCE report no. 7 of 29 July 1993, added to the file by the Romanian Government, and by other sources (see Annex, Mr Mosanu, § 244). In that connection, the Court notes both the abundance and the detailed nature of the information in its possession on this subject.

It sees no reason to doubt the credibility of the Moldovan witnesses heard and notes that their assertions are corroborated by the Moldovan Government, who confirmed these facts in all of the observations they submitted throughout the proceedings.

As to the Russian Government's allegation that the witnesses belonged to political circles opposed to the Russian Federation, the Court notes that this has not been substantiated.

Moreover, it is not possible for the Court to determine precisely on the basis of the statements taken what the relative strengths of the combatants were. However, regard being had to the support given by the troops of the Fourteenth Army to the separatist forces and the massive transfer of arms and ammunition from the Fourteenth Army's stores to the separatists, it is certain that the Moldovan army was in a position of inferiority which prevented it from regaining control of Transdniestria (see Annex, Z., § 271, Mr Costas, § 401).

66. On 5 March 1992 the Moldovan Parliament protested against the silence of the Russian authorities, amounting to complicity in Parliament's view, about the support allegedly given to the Transdniestrian separatists by armed groups of Cossacks from Russia, belonging to the Union of Cossacks, an association recognised by the Russian authorities. The Moldovan Parliament asked the Supreme Soviet of the Russian Federation to intervene with a view to securing the immediate withdrawal of the Russian Cossacks from Moldovan territory.

67. On 23 March 1992 the Ministers of Foreign Affairs of Moldova, the Russian Federation, Romania and Ukraine met in Helsinki, where they adopted a declaration laying down a number of principles for the peaceful settlement of the conflict. At further meetings held in April and May 1992 in Chisinau the four Ministers decided to set up a Quadripartite Commission and a group of military observers to supervise observance of any ceasefire.

68. On 24 March 1992 the Moldovan Parliament protested about interference by the Russian Federation in Moldovan affairs after the Presidium of the Supreme Soviet of the Russian Federation had issued a declaration on 20 March 1992 recommending to Moldova solutions for the settlement of the Transdniestrian conflict consistent with respect for the rights of the “Transdniestrian people”.

69. On 28 March 1992 the President of the Republic of Moldova, Mr Snegur, decreed a state of emergency. He noted that “adventurers” had created on the left bank of the Dniester, “not without outside help”, a “pseudo-State”, and that, “armed to the teeth with the most up-to-date equipment of the Soviet army”, they had unleashed armed conflict, doing everything they could to bring about the intervention in the conflict of the Fourteenth Army of the combined armed forces of the CIS. Under the state of emergency the Moldovan Ministries of National Security and of the Interior and other relevant bodies, acting in concert with the units of the Moldovan army, were ordered by the President to take all necessary measures to break up and disarm illegally armed formations and seek out and bring to justice all those who had committed crimes against the organs of the State and the population of the Republic. The founders of the “so-called Moldavian Republic of Transdniestria” and their accomplices were enjoined to dissolve illegal armed formations and surrender to the organs of the Republic.

70. By Decree no. 320 of 1 April 1992 the President of the Russian Federation placed the military formations of the former USSR stationed in Moldovan territory, including those on the left bank of the Dniester, under the jurisdiction of the Russian Federation, so that the Fourteenth Army became the Russian Operational Group in the Transdniestrian region of the Republic of Moldova (“the ROG” or “the former Fourteenth Army”).

71. By Decree no. 84 of 1 April 1992 the “President of the MRT”, Mr Smirnov, relieved Lieutenant-General Iakovlev of command of the “Defence and Security Department of the MRT”.

72. On 2 April 1992 General Netkachev, the commander of the ROG (the former Fourteenth Army), ordered the Moldovan forces which had encircled the town of Tighina (Bender), held by the separatists, to withdraw immediately, failing which the Russian army would take counter-measures.

73. The applicants alleged that after that ultimatum from General Netkachev joint military exercises between the Fourteenth Army and the separatists began on the former’s shooting range in Tiraspol.

74. On 4 April 1992 the Moldovan President, Mr Snegur, sent a telegram to the heads of State of the member countries of the CIS, to the commander of the combined armed forces of the CIS and the commander of the Fourteenth Army, drawing their attention to the fact that the Fourteenth Army was failing to remain neutral.

75. On 5 April 1992 Alexander Rutskoy, the Vice-President of the Russian Federation, went to Tiraspol. As evidenced by the press articles the applicants submitted to the Court, which have not been contested by the other parties, Mr Rutskoy first visited a military unit of the Fourteenth Army and then went to Tiraspol's central square, in the company of Mr Smirnov. In a speech to the five thousand people present Mr Rutskoy declared that Mr Snegur did not wish to engage in dialogue and that the best solution would be a confederation in which Moldovans and Russians would live together on an equal footing. Lastly, he said that the Fourteenth Army should act as a buffer between the combatants so that the Transdniestrian people could obtain their independence and their sovereignty and work in peace.

76. By Order no. 026 of 8 April 1992 from the commander-in-chief of the combined armed forces of the CIS it was decided that only troops and units of the former Fourteenth Army stationed in the territory of the former Moldovan Soviet Socialist Republic could form the basis for the creation of the armed forces of the Republic of Moldova.

Three military units which had been part of the Fourteenth Army decided to join the new army of the Republic of Moldova. These were a unit at Floresti (ammunition store no. 5381), the 4th artillery regiment at Ungheni and the 803rd rocket artillery regiment at Ungheni.

The soldiers of the 115th independent battalion of sappers and firemen of the former Fourteenth Army refused to enlist in the armed forces of Moldova and "placed themselves under the jurisdiction of the Transdniestrian region", according to the terms used by the Russian Government.

77. In a message sent in April 1992 to the commander-in-chief of the combined armed forces of the CIS the President of Moldova, Mr Snegur, declared that the events in Transdniestria were prompted and supported by "the imperial and pro-communist structures of the former USSR and their legal successors" and that the former Fourteenth Army had not been neutral in the conflict. In that connection he emphasised that the Transdniestrian military formations were equipped with modern weapons which had belonged to the former Soviet army and that large numbers of Russian citizens had taken part in the conflict on the separatist side as mercenaries.

78. In a letter sent in April 1992 to the leaders of the member countries of the United Nations Security Council, the OSCE and the CIS, Mr Snegur accused the commander of the Fourteenth Army of arming the Transdniestrian units in December 1991 and complained of the attitude of the 6th Congress of Deputies of the Russian Federation, which had called for the continuing presence in Moldova of units of the army of the Russian Federation as "pacification forces". Lastly, Mr Snegur observed that one essential condition for the peaceful settlement of the Transdniestrian conflict was the rapid withdrawal of the army of the Russian Federation

from Moldovan territory, and asked the international community to support the young Moldovan State in its struggle for freedom and democracy.

79. On 20 May 1992 the President of the Moldovan Parliament protested against the occupation of further parts of Transdniestria on 19 May 1992 by the forces of the former Fourteenth Army, backed up by Cossack and Russian mercenaries and by Transdniestrian paramilitary forces. His statement pointed out that this military aggression on the part of the Russian Federation violated Moldova's sovereignty and all the rules of international law, making the negotiations then in progress to find a solution to the conflict in Transdniestria a sham. The President accused the Russian Federation of arming the Transdniestrian separatists and asked the Supreme Soviet of the Russian Federation to call a halt to the aggression and withdraw Russian military forces from Moldovan territory.

80. This protest was also directed against speeches deemed to be "full of aggression" towards Moldova made in Tiraspol and Moscow by Mr Ruskoy, the Vice-President of the Russian Federation, and against a statement made on 19 May 1992 by the Military Council of the ROG.

81. On 26 May 1992 the Moldovan Parliament sent a letter to the Supreme Soviet of Ukraine expressing its gratitude to the Ukrainian authorities, who had declined to join in the occupation of 19 May 1992.

82. On 22 June 1992 the Moldovan Parliament appealed to the international community, opposing the "new aggression perpetrated in Transdniestria on 21 June 1992 by the forces of the former Fourteenth Army" and complaining that its actions of destruction and pillage had driven large numbers of civilians to flee their homes. The international community was urged to send experts to Transdniestria to halt the "genocide" of the local population which had been set in motion.

83. On 23 June 1992 the President of Moldova, Mr Snegur, asked the Secretary-General of the United Nations, Mr Boutros Boutros-Ghali, to inform the members of the UN Security Council of the "assault on the town [of Tighina] by the Fourteenth Army", which he viewed as "direct and brutal" interference in the Republic of Moldova's internal affairs. He also expressed his concern about the statements of the President of the Russian Federation, Mr Yeltsin, and its Vice-President, Mr Ruskoy, "which clearly show[ed] that the Russian Federation [was] not prepared to abandon the 'rights' it no longer possess[ed], either *de jure* or *de facto*, over a territory that no longer belong[ed] to it after the dismemberment of the Soviet empire". Mr Snegur concluded: "The threats recently repeated against the legal leaders of the Republic of Moldova, an independent and sovereign State, by the Russian authorities are a cause for concern to the Moldovan public, since they seem to prefigure other means of interference in our internal affairs, that is means and methods specific to the Soviet communist imperialist system..."

84. In the first half of July 1992 intense discussions took place within the CIS about the possibility of deploying a CIS peacekeeping force in Moldova. Mention was made in that connection of an agreement signed in Minsk in March 1992 concerning groups of military observers and joint CIS peacekeeping forces.

85. At a CIS meeting held in Moscow on 6 July 1992 it was decided to deploy in Moldova, as a preliminary step, a CIS peacekeeping force made up of Russian, Ukrainian, Belarusian, Romanian and Bulgarian troops, on condition that Moldova requested this. Although the Moldovan Parliament made such a request the next day, the force was never deployed since some countries had had second thoughts about their agreement to join a CIS force.

86. On 10 July 1992, at the Helsinki Summit of the CSCE, the President of Moldova, Mr Snegur, asked for consideration to be given to the possibility of applying the CSCE peacekeeping mechanism to the Moldovan situation. That was not done because there was not an effective and lasting ceasefire (see the previously cited OSCE document of 10 June 1994, note to paragraph 28 above).

87. On 21 July 1992 the President of the Republic of Moldova, Mr Snegur, and the President of the Russian Federation, Mr Yeltsin, signed an agreement on the principles for the friendly settlement of the armed conflict in the Transdnistrian region of the Republic of Moldova (“the ceasefire agreement” – see paragraph 292 below).

The copy submitted to the Court by the Moldovan Government bears the signatures of Mr Snegur and Mr Yeltsin only. The Russian Government supplied the Court with a copy bearing the signatures of Mr Snegur and Mr Yeltsin, as the Presidents of Moldova and the Russian Federation respectively. Underneath the signature of Mr Snegur that copy also bears the signature of Mr Smirnov, without any indication of his status.

Mr Smirnov’s signature is not on the copy submitted by the Moldovan Government. In his statement to the Court’s delegates, Mr Snegur confirmed that the official document in two copies was signed by him and Mr Yeltsin only (see Annex, Mr Snegur, § 228).

As appears from the witness evidence given to the Court, the broad lines of the agreement were drafted by the Russian side, which presented it for signature to the Moldovans (see Annex, Z., § 281).

88. The Russian Government argued that under the terms of Article 4 of the agreement of 21 July 1992 the Russian Federation signed the agreement not as a party to the conflict but as a peace-broker.

89. The agreement introduced the principle of a security zone to be created by the withdrawal of the armies of the “parties to the conflict” (Article 1 § 2).

90. Under Article 2 of the agreement a Joint Control Commission (“the JCC”) was set up, composed of representatives of Moldova, the Russian Federation and Transdnistria, with its headquarters in Tighina (Bender).

The agreement also provided for peacekeeping forces charged with ensuring observance of the ceasefire and security arrangements, composed of five Russian battalions, three Moldovan battalions and two Transdnestrian battalions under the orders of a joint military command structure which was itself subordinate to the JCC.

91. Under Article 3 of the agreement the town of Tighina was declared a region subject to a security regime and its administration was put in the hands of “local organs of self-government, if necessary acting together with the Control Commission”. The JCC was given the task of maintaining order in Tighina, together with the police.

Article 4 required the former Fourteenth Army of the Russian Federation, stationed in the territory of the Republic of Moldova, to remain strictly neutral; Article 5 prohibited sanctions or blockades and laid down the objective of removing all obstacles to the free movement of goods, services and persons.

Lastly, the measures provided for in the agreement were defined as “a very important part of the settlement of the conflict by political means” (Article 7).

3. Events after the armed conflict

92. On 29 July 1994 Moldova adopted a new Constitution. Among its other provisions it states that Moldova is neutral, prohibits the stationing in its territory of troops belonging to other States and holds out the possibility of a form of autonomy for regions which include some areas on the left bank of the Dniester (see paragraph 294 below).

93. On 21 October 1994 Moldova and the Russian Federation signed an agreement concerning the legal status of the military formations of the Russian Federation temporarily present in the territory of the Republic of Moldova and the arrangements and time-limits for their withdrawal (see paragraph 296 below).

Article 2 of the agreement provided that the withdrawal of the Russian army from Moldovan territory was to be synchronised with the political settlement of the Transdnestrian conflict and the establishment of special status for the “Transdnestrian region of the Republic of Moldova”.

This agreement was not ratified by the authorities of the Russian Federation and so never came into force (see paragraph 115 below).

94. The applicants submitted that the Russian peacekeeping forces did not maintain strict neutrality but had favoured the Transdnestrians by allowing them to change the balance of forces which had obtained between the parties at the time of the ceasefire of 21 July 1992.

95. On 28 December 1995 the Moldovan delegation to the JCC sent a letter to the head of the Russian delegation to the JCC protesting about a proposal by the deputy commander of the Russian Federation’s land forces to transfer the powers of the Russian peacekeeping units to the units of the

ROG, which the Moldovan delegation considered to be contrary to Article 4 of the agreement of 21 July 1992. The proposal was also deemed unacceptable in view of “a certain level of politicisation of the men of the ROG and their lack of impartiality vis-à-vis the parties to the conflict”. The Moldovan delegation referred to a number of infringements of the principle of neutrality set forth in the agreement of 21 July 1992, which included: the transfer of certain military equipment and ammunition by the Fourteenth Army to the unconstitutional authorities in Tiraspol; training of “MRT” troops by the Russian army; and transfers of military units from the Fourteenth Army to the “MRT” side – for example, the Parcani sapper battalion, converted into an “MRT” artillery unit - the transfer of the fortress of Tighina/Bender to the 2nd “MRT” infantry brigade or the transfer to the “MRT” of the Slobozia depot, occupied by a Fourteenth Army signals battalion.

The Moldovan delegation drew attention to the fact that “MRT” military units had been brought into the security zone with the connivance of the JCC’s Russian troops, that new paramilitary units had been formed in the town of Tighina/Bender, which had been declared a security zone and was under the responsibility of the Russian peacekeeping forces, and that firms in Tighina/Bender and Tiraspol were manufacturing weapons and ammunition.

The Moldovan delegation asked their Government to consider the possibility of replacing the Russian peacekeeping forces in Transdniestria by a multinational force under the auspices of the United Nations or the OSCE. Lastly, the Moldovan delegation expressed their hope for rapid implementation of the agreement of 21 October 1994 on the withdrawal of the armed forces of the Russian Federation from Moldovan territory.

96. In a letter dated 17 January 1996 the head of the Russian delegation to the JCC said that the examples of an alleged lack of impartiality on the part of Fourteenth Army personnel given by the Moldovan delegation in their letter of 28 December 1995 were “distortions” and untrue. The Russian delegation considered that the agreement of 21 July 1992 undoubtedly permitted the Russian Federation to transfer to the ROG duties which had been given to the peacekeeping forces and asked the Moldovan delegation to review their position and reconsider the proposals to that effect made by the Russian Minister of Defence.

97. On 8 May 1997 in Moscow Mr Lucinschi, the President of Moldova, and Mr Smirnov, the “President of the MRT”, signed a memorandum laying down the basis for the normalisation of relations between the Republic of Moldova and Transdniestria, in which they undertook to settle any conflict they might have through negotiations, with the assistance, where necessary, of the Russian Federation and Ukraine, as guarantors of compliance with the agreements reached, and of the OSCE and CIS. The memorandum was countersigned by the representatives of the guarantor States, namely

Mr Yeltsin for the Russian Federation and Mr Kuchma for Ukraine. It was also signed by Mr H. Petersen, the OSCE President, who was present at the signing by the parties and the guarantor States.

Under the terms of the memorandum, the status of Transdniestria is to be based on the following principles: decisions must be agreed by both sides, powers must be shared out and delegated and guarantees must be secured reciprocally. Transdniestria must participate in the conduct of the foreign policy of the Republic of Moldova on questions concerning its own interests to be defined by mutual agreement. Transdniestria would have the right to establish and maintain unilaterally international contacts in the economic, scientific, technical, cultural and other fields, to be determined by mutual agreement.

The memorandum welcomes the willingness of the Russian Federation and Ukraine to act as guarantors of compliance with the provisions contained in the documents defining the status of Transdniestria and in the memorandum. The parties also confirmed the need to pursue the joint peacekeeping forces' joint activities in the security zone, in accordance with the agreement of 21 July 1992. In the event of a breach of the agreements, the memorandum also entitles the parties to seek consultations with the guarantor States with a view to measures being taken to normalise the situation. Lastly the two parties undertook to establish relations between themselves in the context of a shared State within the borders of the Moldavian SSR as it existed on 1 January 1990.

98. On 20 March 1998 representatives of Moldova, Transdniestria, the Russian Federation and Ukraine signed in Odessa (Ukraine) a number of documents intended to secure the settlement of the Transdniestrian conflict (see paragraph 123 below).

99. In observations submitted in 1999 about a draft report on Moldova by the Parliamentary Assembly's Committee on the honouring of obligations and commitments by member states of the Council of Europe, the Moldovan Government indicated that the separatist authorities were illegally removing weapons from the ROG's stores "with the tacit agreement of the authorities of the Russian Federation, whose peacekeeping forces are deployed in the security zone of the Transdniestrian Region of Moldova".

100. In a letter of 6 February 2001 the Moldovan delegation to the JCC sent a letter to the heads of the Russian and Transdniestrian delegations to the JCC protesting about the partiality of the commanders of the peacekeeping forces. These were accused of permitting the introduction of military equipment and ammunition into the security zone and the enlistment of Transdniestrian armed military units. The Moldovan delegation emphasised that these facts had been noted by the military observers on the ground and complained of the attitude of the commander of the Russian peacekeeping forces, who had neither monitored nor prevented

the militarisation of the security zone, thus failing to respect the status of the peacekeeping forces. Lastly, the Moldovan delegation pointed out that such an attitude on the part of the Russian peacekeeping forces was an encouragement for the Transdnistrians.

The Russian Government asserted that the peacekeeping forces respected the neutrality required by the agreement of 21 July 1992.

The Court notes the witness evidence given by the commander of the Russian peacekeeping forces, Colonel Zverev (see Annex, § 368), to the effect that the Russian peacekeeping forces complied with the agreement. The witness further declared that he was not aware of illegal acts by Transdnistrians in the zone controlled by the Russian forces.

The Court observes however that the evidence in question is contradicted by the JCC's official documents, which show, with an abundance of details, that in various areas of Transdnistria under the control of the Russian peacekeeping forces, such as the area of Benderi/Tighina, Transdnistrian separatist forces were breaching the ceasefire agreement.

Having regard to the official nature of the JCC documents and the consistency of the information they contain, the Court considers it to be established with a sufficient degree of certainty that, in the area under the responsibility of the Russian peacekeeping forces, the Transdnistrians have not discharged the obligations arising for them from the agreement of 21 July 1992.

101. On 16 April 2001 the Presidents of the Republic of Moldova and the Russian Federation, Mr Voronin and Mr Putin, signed a joint declaration, point 5 of which states:

“The Presidents advocated the rapid and fair settlement of the Transdnistrian conflict by exclusively peaceful means based on respect for the principle of the Republic of Moldova's sovereignty and territorial integrity, and for international human rights standards.”

102. In a document dated 4 September 2001 analysing implementation of the Moldovan-Russian agreement of 20 March 1998 on the principles for a peaceful settlement of the armed conflict in the Transdnistria region of the Republic of Moldova, the Moldovan delegation to the JCC pointed to the failure of the Transdnistrian side to fulfil their obligations, in that they had created new military units, introduced weapons into the security zone and set up customs posts. The Moldovan delegation expressed its concern about the fact that the joint military command had not taken any suitable steps to put an end to the situation but had merely noted the facts. The Moldovan delegation proposed that concrete measures to ensure that parties' undertakings were honoured be discussed by the Ministries of Foreign Affairs of Moldova and the Russian Federation. Lastly, the Moldovan delegation proposed that the function of military observer in the security zone be placed under the patronage of the OSCE.

103. In March 2003 the Russian peacekeeping forces in Transdniestria comprised 294 soldiers, 17 armoured vehicles, 29 other vehicles and 264 firearms.

To date, according to the witness evidence given to the Court (see Annex, Colonel Anatoliy Zverev, § 367), no soldier of the former Fourteenth Army or the ROG has been employed in the Russian peacekeeping forces.

104. Contacts with the Transdniestrian side continue to take place to discuss various aspects of a possible solution to the situation in Transdniestria.

105. At these negotiations the Moldovan side persuaded the Transdniestrians to set up a commission to examine the possibility of pardoning all persons convicted and detained in Transdniestria as a result of judgments pronounced by the Transdniestrian courts (see Annex, Mr Vasile Sturza, §§ 309, 312 and 318).

106. One of the subjects regularly placed on the negotiations agenda is the immunity from prosecution requested by the Transdniestrian side for civil servants and officials of the Transdniestrian administration (see Annex, Mr Sturza, § 314, and Mr Sidorov, § 446).

107. Since 2002 a number of plans to give Moldova a federal structure have been proposed by the OSCE, the President of Moldova and the Russian Federation.

108. The most recent negotiations, conducted with the help of the OSCE, were based on proposals aimed at setting up a federal State in which Transdniestria would be autonomous.

109. On 4 April 2003, in the context of negotiations with Transdniestria, the Moldovan Parliament adopted a Protocol concerning the creation of a mechanism for drafting a federal Constitution for the Republic of Moldova.

110. According to a press release put out by the OSCE mission in Moldova, the first meeting of the joint commission took place on 24 April 2003 at OSCE headquarters in Moldova. At that meeting it was decided that a final text should be made ready by October 2003 so that the new Constitution could be presented to all of the Moldovan people for adoption at a referendum to be organised in February 2004.

B. The presence of the army of the Russian Federation and its personnel in Transdnistria after the agreement of 21 July 1992

1. ROG troops and equipment in Transdnistria

(a) Before ratification of the Convention by the Russian Federation

111. As provided for in Article 4 of the ceasefire agreement of 21 July 1992, Moldova and the Russian Federation began negotiations over the withdrawal of the ROG from Moldovan territory and its status pending such withdrawal.

Russia proposed in 1994 that the ROG's withdrawal from Moldovan territory should be timed to coincide with settlement of the Transdnistrian conflict (see paragraph 93 above), and Moldova accepted that proposal, which it considered counterproductive, on Russia's insistence and only after persuading Russia to declare itself in favour of the speedy release of the members of the Ilascu group (see Annex, Y., § 254).

In a press release of 12 February 2004 the Moldovan Ministry of Foreign Affairs said that the Moldovan authorities were categorically opposed to any synchronisation between the political settlement of the Transdnistrian conflict and the withdrawal of the Russian armed forces from Moldovan territory, and that they sought the complete and unconditional withdrawal of the Russian armed forces, in accordance with the OSCE's decisions (see paragraph 124 below), especially as the OSCE member States had set up a voluntary fund to finance the withdrawal in question.

112. Article 2 of the agreement of 21 October 1994 ("the first agreement") provided for the withdrawal by Russia of its military formations within three years from the entry into force of the agreement, with implementation of the withdrawal within the time-limit to take place simultaneously with a political settlement of the Transdnistrian conflict and the establishment of a special status for the "Transdnistrian region of the Republic of Moldova" (see paragraph 296 below). As regards the stages and dates for the final withdrawal of Russian troops, Article 2 provided that these were to be determined in a separate protocol to be concluded between the parties' Ministries of Defence.

113. Under Article 5 of the agreement, the sale of any type of military technology, weapon or ammunition belonging to the military forces of the Russian Federation stationed in the territory of the Republic of Moldova could take place only by way of a special agreement between the Governments of the two countries.

114. According to Article 7 of the agreement, Tiraspol military airport was to be used in common by the aircraft of the ROG and the "civil aviation of the Transdnistrian region of the Republic of Moldova." A second agreement also reached on 21 October 1994 between the Moldovan and

Russian Ministers of Defence (“the second agreement”) governed the use of Tiraspol airport. It provided, for example, that flights to Tiraspol airport were to be made in accordance with the “Provisional rules on the joint dispersed aviation of the military formations of the Russian Federation and the civil aviation of the Transdniestrian region of Moldova”, in coordination with Moldova’s State civil aviation authority and the Ministry of Defence of the Russian Federation (see paragraph 297 below).

115. On 9 November 1994 the Moldovan Government adopted the decision to implement the agreement concerning the withdrawal of the Russian army from Moldovan territory. On a date which has not been specified the Government of the Russian Federation decided to submit this agreement to ratification by the Duma. On 17 November 1998, as the first agreement of 21 October 1994 had still not been ratified by the Duma, the Minister of Foreign Affairs of the Russian Federation asked the Duma to remove the matter from its order of business, on the ground that “any decision by the Ministry to reconsider this issue will depend on the evolution of relations with the Republic of Moldova and the Transdniestrian region and on a political settlement in the area”. In January 1999 the agreement was removed from the Duma’s order of business. To date, it has still not entered into force.

The second agreement was approved only by the Moldovan Government, on 9 November 1994.

116. The Moldovan Government emphasised that the words “civil aviation of the Transdniestrian region of the Republic of Moldova”, contained in the agreements with the Russian Federation, must be interpreted as a reference to the constitutional local authorities of Moldova answerable to the central authorities, which did not apply to the Transdniestrian separatist regime.

The Russian Government submitted that these words meant the present local authorities, which were seen as a mere business partner. They maintained that this did not amount in any way to official or political recognition of the “MRT”.

117. The Court notes, firstly, that neither of the agreements of 21 October 1994 has entered into force, not having been ratified by Russia.

It further notes that, according to the witness evidence of Mr Sergeev, the commander of the ROG, Tiraspol airport is used as a free space by both the Russian military forces and the Transdniestrian separatists. The airspace is monitored by Moldovan or Ukrainian air-traffic controllers, depending on whether the territory over which the flight path crosses is Ukrainian or Moldovan. It also appears that Russian aircraft cannot take off from or land at Tiraspol airport without the authorisation of the relevant Moldovan authorities.

Flight security at Tiraspol airport is controlled by the Russian forces as regards Russian aircraft taking off, landing or parked on the ground, and by

the Transdnistrian separatists as regards their aircraft. Neither the ROG authorities nor the Russian peacekeeping forces interfere with the way in which the Transdnistrians use Tiraspol airport. For their part, the Transdnistrian separatists do not interfere with the way in which the Russian forces use it (see Annex, General Sergeyev, § 340).

118. It appears from a study by Mr Iurie Pinteă, “The military aspect of a settlement of the conflict in the eastern region of the Republic of Moldova” (published by the Moldovan Public Policy Institute in August 2001 and submitted to the Court by the applicants), “MRT” military formations have taken over the control tower and the technical installations of Tiraspol airport, in breach of the agreement of 21 October 1994, while the ROG part of the airport is allegedly used for purposes other than those mentioned in the agreement, for example for visits to Transdnistria by Russian politicians and for arms sales transactions.

The other parties did not comment on the above information.

119. Article 13 of the first agreement provides that all accommodation, barracks, vehicle parks, shooting ranges and fixed machine tools, stores and the tools they contain left unused after the withdrawal of the military formations of the Russian Federation are to be transferred for management “to the organs of the local public administrative authorities of the Republic of Moldova” in the quantity existing *de facto*. It also provides that the arrangements for the transfer or sale of the immovable property assets of the Russian military are to be determined in an agreement to be reached for that purpose between the parties’ Governments.

120. According to Article 17 of the agreement, with a view to ensuring the withdrawal of the military formations of the Russian Federation from the territory of the Republic of Moldova within the time-limit and their effective deployment in their new stations in the territory of the Russian Federation, the Republic of Moldova is required to contribute a portion of the costs for the construction inside the territory of the Russian Federation of the premises needed for their installation.

121. In its Opinion No. 193 of 1996 on the accession of the Russian Federation to the Council of Europe, the Parliamentary Assembly of the Council of Europe noted the intention expressed by the Russian Federation “to ratify, within six months from the time of accession, the agreement of 21 October 1994 between the Russian and Moldovan Governments, and to continue the withdrawal of the Fourteenth Army and its equipment from the territory of Moldova within a time-limit of three years from the date of signature of the agreement”.

122. In a report dated 30 August 1996 the principal military prosecutor of the Procurator General’s Office of the Russian Federation, Lieutenant-General G.N. Nosov, noted that irregularities and illegal acts had been committed within the ROG in relation to the management of military equipment. In particular, he noted the lack of supervision, which

encouraged abuses and theft, failure to comply with decisions concerning the transfer free of charge to the Transdniestrian leaders of a number of motor vehicles taken out of service, the communication to those leaders of an inventory of military engineers' equipment in the ROG's stores, which had prompted them to demand an increase in the quantities of goods transferred, and the unauthorised transfer to the "MRT" of several hundred pieces of technical equipment and several thousand tons of other equipment.

Consequently, the principal military prosecutor asked the Minister of Defence of the Russian Federation to take additional measures to put an end to the breaches of the law noted within the ROG, to consider whether to bring disciplinary proceedings against Lieutenant-General E. and Major-General D. for failure to maintain effective control and dereliction of duty, and to inform him of the results.

123. On 20 March 1998, among other documents concerning a settlement of the situation in Transdniestria, an agreement on questions concerning the military assets of the former Fourteenth Army (see paragraph 299 below) was signed in Odessa (Ukraine). The signatories were Mr Chernomyrdin, on behalf of the Russian Federation, and Mr Smirnov, "President of the MRT".

According to the timetable annexed to the agreement, the withdrawal and decommissioning of certain stocks, to be disposed of by explosions or some other mechanical process, was to be completed by 31 December 2001, subject, among other conditions, to authorisation by the authorities of the Republic of Moldova, "particularly of the region of Transdniestria".

The withdrawal (transfer and decommissioning) of surplus ammunition and other ROG equipment was planned to take place by 31 December 2002 at the latest. The withdrawal of the ROG's standard issue equipment and personnel not forming part of the peacekeeping forces was to be completed by 31 December 2002 on condition that the process of withdrawing ammunition and other equipment to Russia had been completed by then, that other equipment was transferred or decommissioned, and that Moldova discharged its obligations arising under Article 17 of the agreement of 21 October 1994.

(b) After ratification of the Convention by the Russian Federation

124. In their declaration at the Istanbul summit of 19 November 1999 the Heads of State and Government of the OSCE States indicated that they were expecting "an early, orderly and complete withdrawal of Russian troops from Moldova" and welcomed the commitment by the Russian Federation to complete withdrawal of its forces from Moldovan territory by the end of 2002. Lastly, they pointed out that an international assessment mission was ready to be dispatched without delay to explore removal and destruction of Russian ammunition and armaments.

125. In observations submitted in 1999 to the Parliamentary Assembly of the Council of Europe the Moldovan Government asserted that on that date the official figure put forward by the Russian authorities for the quantity of ROG arms and ammunition stocked in Transdniestria was 42,000 tonnes, but that it had not been possible to verify that figure, since both the Russian authorities and the Transdniestrian separatists had refused to countenance an international assessment mission.

The Moldovan authorities drew attention to the fact that any withdrawal of ROG personnel not accompanied by removal of the ROG's enormous weapons stocks would increase the risk that Transdniestrian separatists would get their hands on these weapons.

126. A number of trainloads of equipment belonging to the ROG were moved out between 1999 and 2002.

127. On 15 June 2001 the Russian Federation and Transdniestria signed a protocol concerning joint work with a view to using the weapons, military technology and ammunition.

128. On 19 November 2001 the Russian Government submitted to the Court a document showing that in October 2001 the Russian Federation and the "MRT" signed an agreement on the withdrawal of the Russian forces. Under that agreement, in compensation for the withdrawal of part of the Russian military equipment stationed in Transdniestria, the "MRT" was granted a reduction of 100 million US dollars in its debt for gas imported from the Russian Federation and the transfer to it by the ROG, in the course of their withdrawal, of part of their equipment capable of being put to civilian use.

129. According to a document submitted to the Court in November 2002 by the Moldovan Government, the volume of high-tech weaponry, ammunition and military equipment belonging to the ROG which had been withdrawn by November 2002 from the territory of the Republic of Moldova by virtue of the agreement of 21 October 1994 represented only 15% of the total volume declared in 1994 as being stationed in Moldovan territory.

130. According to an OSCE press release, 29 railway wagons carrying bridge-building equipment and field kitchens were moved out on 24 December 2002.

The same press release quoted a declaration by the commander-in-chief of the ROG, General Boris Sergeyev, to the effect that the latest withdrawals had been made possible by an agreement with the Transdniestrians under which the Transdniestrian authorities were to receive half of the non-military equipment and supplies withdrawn. General Sergeyev cited the example of the withdrawal, on 16 December 2002, of 77 lorries, which had been followed by the transfer of 77 ROG lorries to the Transdniestrians.

131. In June 2001, according to information supplied to the Court by the Russian Government, the ROG still had some 2,200 troops in Transdniestria. In his witness evidence General Sergeyev asserted that in 2002 the ROG's numbers had shrunk to just under 1,500 troops (see Annex, § 338). The Court has not received any precise information about the quantity of arms and ammunition stocked by the ROG in Transdniestria. According to the applicants and the witness evidence taken by the Court's delegates (see Annex, Mr Snegur, § 235), in 2003 the ROG had at least 200,000 tonnes of military equipment and ammunition there, mainly stored at Kolbasna.

According to information supplied by the Russian Government in June 2001 and not contested by the other parties, the ROG had in addition the following equipment: 106 battle tanks, 42 armoured cars, 109 armoured personnel carriers, 54 armoured reconnaissance vehicles, 123 cannons and mortars, 206 anti-tank weapons, 226 anti-aircraft guns, 9 helicopters and 1,648 vehicles of various kinds. In his witness evidence General Sergeyev asserted that 108 battle tanks had been destroyed during 2002 and that the destruction of anti-aircraft defence systems was in progress (see Annex, § 341).

2. Relations between the ROG and the "MRT"

132. ROG personnel, and the military prosecutors and judges attached to the ROG, did not receive any specific instructions regarding their relations with the Transdniestrian authorities (see Annex, Lieutenant-Colonel Shamayev, § 374).

133. ROG personnel can travel freely in Transdniestrian territory. Before moving troops or equipment, the ROG informs the Transdniestrian authorities. Occasionally these movements occasion incidents such as the seizure by the Transdniestrians of three ROG vehicles (see Annex, Lieutenant-Colonel Radzaevichus, § 363, and Lieutenant-Colonel Shamayev, § 376). In such cases, and in the absence of instructions, the ROG authorities try to negotiate directly with the Transdniestrian authorities. According to the legal provisions in force in the Russian Federation, the ROG's prosecuting authorities are not empowered to refer cases directly to the Moldovan authorities, which have jurisdiction in Transdniestrian territory. Any theft or other criminal act committed by a Transdniestrian civilian against the ROG must be reported by the ROG authorities to the relevant authorities of the Russian Federation, since only they can refer the matter to the Moldovan authorities.

In practice, criminal acts of this type are investigated by Transdniestrian investigators.

134. ROG investigators are empowered to investigate criminal acts committed by ROG personnel or with their participation, but only in relation to the individual soldiers implicated. However, to date, no case of

this type has been reported (see Annex, Lieutenant-Colonel Levitskiy, § 371, and Mr Timoshenko, § 379).

135. According to the documents submitted to the Court by the Russian Government, ROG equipment and installations lending themselves to civilian use have been transferred to the ‘MRT’. For example, the building in which the applicants were detained in the 1992 by the Fourteenth Army was transferred in 1998 to the Transdnistrian separatists. According to the witness evidence given by Mr Timoshenko, the building is now used by the ‘MRT prosecution service’ (see Annex, § 380).

136. According to the study by Mr Iurie Pinteia (see paragraph 118 above), the Kolbasna military store was divided in 1994 into two parts, one of which was assigned to the ‘MRT’, which installed an ammunition store there for its army. He reported that security at the ‘MRT’ store was provided, at the time when his study was published in 2001, by a 300-strong motorised infantry brigade of the ‘MRT’ army equipped with armoured transport vehicles, anti-tank weapons and mine-throwers, plus an anti-aircraft battery, which also controlled movement into and out of the stores as a whole. Security at the ROG store was provided by ROG personnel. For movement out of the part of the stores which belong to the ROG, a Transdnistrian customs post has been specially installed. Security and movement within the stores as a whole could not be monitored from the outside.

C. Economic, political and other relations between the Russian Federation and Transdnistria

1. Before ratification of the Convention by the Russian Federation, on 5 May 1998

137. From undated statements to the press, submitted to the Court by the applicants and not contested by the other parties, it appears that the Vice-President of the Russian Federation at the time, Mr Ruskoy, recognised the ‘legitimacy of the entity created on the left bank of the Dniester.’

138. In an undated television appearance reported by the press, as submitted to the Court by the applicants and not contested by the other parties, the President of the Russian Federation, Mr Yeltsin, said: ‘Russia has lent, is lending and will continue to lend its economic and political support to the Transdnistrian region.’

139. After the end of the conflict senior officers of the former Fourteenth Army participated in public life in Transdnistria. In particular, soldiers of the former Fourteenth Army took part in the elections in Transdnistria, military parades of the Transdnistrian forces and other public events. The documents in the file, and the evidence of several witnesses who agreed on this point and were not contradicted by the other

parties, show that on 11 September 1993 General Lebed, the ROG's commander, was elected a member of the "Supreme Soviet of the MRT" (see Annex, Mr Ilascu, § 26, Mr Urîtu, § 72, and X., § 220).

140. The applicants alleged that a consulate of the Russian Federation had been opened in Transdniestrian territory, in the territory of the ROG, without the agreement of the Moldovan authorities and that various activities including polling took place there.

The Russian Government denied the existence of a Russian consulate in Transdniestrian territory.

On 27 February 2004 the Moldovan Ministry of Foreign Affairs sent a note to the Embassy of the Russian Federation in Chisinau in which the Moldovan authorities expressed their regret about the fact that the authorities of the Russian Federation had opened 17 fixed polling stations in Transdniestrian territory for the presidential elections of 17 March 2004 without the agreement of the Moldovan authorities and that in acting thus the Russian authorities had placed them before a *fait accompli*, creating an undesirable precedent. The note went on to say that the only places where the opening of polling stations was desirable were the ROG headquarters in Tiraspol, the headquarters of the peacekeeping forces in Bender/Tighina, the Russian Embassy in Chisinau and mobile polling stations.

141. The Court notes that apart from the applicants' assertions, there is no evidence of the existence of a Russian consulate in Tiraspol carrying out ordinary consular functions and open to all Transdniestrians who have or wish to acquire Russian nationality. In addition, none of the witnesses who gave evidence in Moldova was able to confirm such allegations. In the absence of corroboration, the Court cannot consider it to have been established beyond a reasonable doubt that a Russian consulate is permanently open in Tiraspol for all Transdniestrians who have or wish to acquire Russian nationality.

On the other hand, the Court takes it as established that fixed consular posts, operating as polling stations, were opened by the Russian authorities in Transdniestrian territory without the agreement of the Moldovan authorities.

With regard to the press articles submitted by the applicants mentioning the existence of a consular office of the Russian Federation in the territory of the ROG, the Court notes that these too are uncorroborated. However, the Russian Government have not denied the existence of such an office. The Court considers that in view of the special situation of the ROG, stationed in Transdniestrian territory, it is plausible that for practical reasons a consular office should be opened in the territory of the ROG to enable Russian soldiers to settle various problems normally dealt with by consulates.

142. The applicants asserted that on 12 March 1992 the Russian central bank opened a number of accounts for the Transdniestrian Bank. The other parties did not challenge the veracity of that information.

143. In Resolution no. 1334 IGD of 17 November 1995 the Duma of the Russian Federation declared Transdniestria a “zone of special strategic interest for Russia.”

144. Eminent politicians and representatives of the Russian Federation have confirmed on various occasions the support it has lent to Transdniestria. Representatives of the Duma and other eminent figures of the Russian Federation have travelled to Transdniestria and taken part in official events there.

For their part, representatives of the ‘MRT’ regime have travelled to Moscow on official visits, notably to the Duma.

145. The applicants also submitted that, several years after the conflict, the support given by the Russian authorities to the creation of the Transdniestrian regime was publicly confirmed in a television programme broadcast on an unspecified date on the Russian channel “TV-CENTRE” in which Mr Voronin, Mr Smirnov and Mr Khasbulatov were interviewed. During the programme Mr Khasbulatov, who was President of the Russian Parliament from 1991 to 1993, said that when it became clear that Moldova was going to leave the sphere of Russian influence an “administrative territorial enclave” was created there. During the same programme Mr Voronin, the President of Moldova, said that the former Russian President, Mr Yeltsin, had supported Mr Smirnov in order to use him against the democratic regime in Chisinau.

The other parties did not contest these facts.

146. On 19 May 1994 Lieutenant-General Iakovlev, the former commander of the Fourteenth Army and former head of the “Defence and Security Department of the MRT”, became a citizen of the Russian Federation.

147. In 1997 Mr Maracuta, the “President of the Supreme Soviet of the MRT”, was granted Russian nationality.

2. After ratification of the Convention by the Russian Federation

148. In 1999 Mr Caraman, one of the ‘MRT’ leaders, also acquired Russian nationality.

149. Mr Smirnov was granted Russian nationality, in 1997 according to the Russian Government and in 1999 according to the applicants.

150. According to the applicants, not contradicted on this point by the other parties, the arms industry is one of the pillars of the Transdniestrian economy, which is directly supported by Russian firms involved in arms manufacture in Transdniestria.

According to the study by Iurie Pinteă (see paragraph 118 above), from 1993 onwards Transdniestrian arms firms began to specialise in the production of high-tech weapons, using funds and orders from various Russian companies, including the Russian arms producer and trader “POCBOOP?? EH?E”. Russian companies provide Transdniestrian firms

with the technology and equipment they need to manufacture modern weaponry and military equipment. Transdniestrian firms also produce components for Russian arms manufacturers. For example, the Elektrommash company receives from the Russian Federation the components for the silenced pistols it produces and delivers components for various weapons systems assembled in the Russian Federation.

151. Citing Mr Pintea's study, the applicants submitted that, under the cover of "withdrawal", the ROG was supplying Transdniestrian firms with parts and tools for military use. They alleged that the Râbnita engineering works, which produces 82 mm mortars, regularly received truckloads of mortars and howitzers from the ROG stores at Kolbasna, passed off as "destruction of untransportable ammunition."

152. In addition, there was interdependence between Transdniestrian economic and other interests and the ROG on account of the fact that the ROG employs huge numbers of the inhabitants of Transdniestria.

According to the same study by Mr Pintea, nearly 70% of the command structure of the ROG unit stationed in Kolbasna (including the ammunition store) was made up of inhabitants of Râbnita and Kolbasna, while 100% of the technical staff of the Kolbasna stores (head storekeepers, technicians and mechanics) were inhabitants of the region.

In all, 50% of the ROG's officers and 80% of its non-commissioned officers were inhabitants of the "MRT".

The other parties did not contest this information.

153. There is judicial cooperation for the transfer of prisoners between the Russian Federation and Transdniestria, without going through the Moldovan authorities. Russian prisoners detained in Transdniestria have been transferred thanks to such cooperation to a prison in the Russian Federation (see Annex, Mr Golovachev, § 136, and Mr Sereda, § 423).

154. The applicants asserted, citing press articles, that visits between officials of the Russian Federation and the "MRT" continued to take place. On 16 February 1999 the newspaper "Transdniestria" reported a visit by a delegation of the "Supreme Soviet of the MRT", including Mr Maracuta, Mr Caraman and Mr Antiufeyev, to the Duma of the Russian Federation.

In addition, between 28 August and 2 September 2001, members of the Duma took part in the celebrations to mark the 10th anniversary of the "MRT"'s declaration of independence.

155. "MRT" leaders have been awarded official distinctions by various institutions of the Russian Federation and are received by its State organs with every honour. It appears from the documents filed by the applicants that Mr Smirnov was invited to Moscow by Moscow State University.

156. The Russian Federation has direct relations with the "MRT" in relation to its gas exports.

As shown by a telegram sent on 17 February 2000 by the chairman of the Russian group "Gazprom" to the Deputy Prime Minister of Moldova,

contracts for supplying gas to Moldova do not concern Transdniestria, to which gas is delivered separately on more favourable financial terms than those granted to the rest of the Republic of Moldova (see Annex, Y., § 261, and Mr Sangheli, § 268).

157. Transdniestria receives electricity directly from the Russian Federation.

158. Products manufactured in Transdniestria are exported to the Russian market, some of them being passed off as Russian products (see Annex, Mr Stratan, § 333).

159. The ROG buys certain products which it needs to supply its troops directly from the Transdniestrian market (see Annex, General Sergeyev, § 347).

160. Russian companies have taken part in privatisations in Transdniestria. The documents submitted by the applicants show that the Russian firm "ITERRA" bought the largest undertaking in Transdniestria, the Râbnita engineering works, despite the opposition of the Moldovan authorities.

161. Moreover, in January 2002 the Moldovan Government submitted to the Court a video cassette containing a recording of a Russian television programme about Russo-Moldovan relations and the Transdniestrian regime. The Russian commentator mentioned in the first place the treaty of friendship recently signed by the Russian Federation and the Republic of Moldova, in which Moscow and Chisinau condemned "separatism in all its forms" and undertook "not to lend any support to separatist movements". According to the journalist, the treaty unambiguously confirmed the Russian Federation's support for Moldova in the Transdniestrian conflict. The rest of the item looked at various aspects of the Transdniestrian economy, presented as being wholly under the control of the Smirnov family, stating that its main source of income was the manufacture and export of arms to destinations such as Afghanistan, Pakistan, Iraq or Chechnya. The programme closed with the information that the Transdniestrian authorities had shut down the broadcast over the territory of the "MRT", citing poor weather conditions as the excuse.

D. Moldovan-Transdniestrian relations

1. Before ratification of the Convention by Moldova, on 12 September 1997

162. The Moldovan authorities have never officially recognised the organs of the "MRT", as a State entity.

163. After the agreement of 21 July 1992 the two parties established relations with a view to settling the conflict.

These contacts were established and maintained mainly through the negotiation committees and concerned the political question of Transdniestria's status and settlement of various aspects of everyday life (economic, social, etc).

164. According to the concordant statements of several witnesses (see Annex, Mr Urîtu, § 66, Mr Postovan, § 182, Z., § 272, Mr Plugaru, § 286, and Mr Obroc, § 430), the first contacts between Moldova and Transdniestria related to exchanges of prisoners captured on either side during the 1992 fighting. These exchanges generally concerned groups of prisoners.

165. According to the concordant statements of several witnesses (see Annex, Mr Urîtu, § 67, Mr Snegur, § 239, and Mr Sturza, § 311), after the ceasefire of 21 July 1992 private individuals and official delegations involved in the negotiations were able to travel to Transdniestria. There were sometimes incidents, when Transdniestrian guards refused access to Transdniestria.

166. As private individuals, doctors have fairly free access to Transdniestria, whether for consultations or for professional conferences (see Annex, Mr Tîbîrna, § 84, and Mr Lesanu, § 85).

167. From 1993 onwards the Moldovan authorities began to bring criminal proceedings against certain Transdniestrian officials accused of falsely claiming the status of State officers (see paragraphs 221 and 230 below).

168. Nevertheless, persons who had acted as senior officials of the "MRT" were able to return to Moldova and subsequently take high office. For example, Mr Sidorov, who had been "Minister of Justice of the MRT" in 1991, held a number of senior State offices after his return from Transdniestria; he was a member of the Moldovan Parliament from 1994 to 1998, Moldovan Ombudsman from 1998 to 2001 and member of the Moldovan Parliament and Chairman of the Human Rights And Minorities Committee from 2001 (see Annex, Mr Sidorov, §§ 437-438).

169. On 7 February 1996, in the presence of OSCE mediators, Russia and Ukraine, the Moldovan authorities adopted a protocol providing for the removal of the customs posts belonging to Transdniestria.

2. After ratification of the Convention by Moldova

170. Movement of persons between Transdniestria and the rest of Moldova after 1997 took place under the same conditions as before, with the Transdniestrian authorities deciding whether to permit passage in a totally discretionary way. When official delegations or Moldovan dignitaries wish to enter Transdniestria, prior contact for the purpose of seeking authorisation is necessary, even though such authorisation may be revoked at any time (see Annex, Mr Sereda, § 418). For example, the Moldovan Government said that in 2003, as a reprisal against a decision

taken in February 2003 by the Council of the European Union excluding Igor Smirnov and 16 other Transdniestrian leaders from the European Union for one year, the Transdniestrian authorities declared certain senior Moldovan leaders, including the President of Moldova, the President of the Moldovan Parliament, the Prime Minister, the Minister of Justice and the Minister of Foreign Affairs, *personae non gratae*.

171. The applicants alleged that Transdniestrian leaders, including Mr Smirnov, Mr Maracuta and Mr Caraman, also had Moldovan nationality and were in possession of Moldovan diplomatic passports. In addition, they asserted that the Moldovan Government had awarded them official honours.

The Moldovan Government said that the Transdniestrian leaders did not possess Moldovan nationality as they had never requested Moldovan identity papers.

The Court notes that the witness questioned by the delegates on this subject denied that any Moldovan identity documents whatsoever had been issued to Mr Smirnov, Mr Maracuta and Mr Caraman (see Annex, Mr Molojen, § 396). In the absence of corroboration of the applicants' allegations, the Court considers that it has not been established beyond a reasonable doubt that the Moldovan authorities issued passports to Transdniestrian leaders.

172. A number of senior Moldovan officials, including Mr Sturza, the Minister of Justice, Deputy Attorney-General and, since 2000, chairman of the Committee for negotiations with Transdniestria, have continued to visit Tiraspol to meet Transdniestrian politicians, including Mr Smirnov, Mr Maracuta, the "Attorney-General of the MRT" and the "President of the Supreme Court of the MRT". The main subjects discussed at these meetings have been the applicants' situation, their release and negotiations about the future status of Transdniestria, including official decisions taken by Transdniestrian local authorities (see Annex, Mr Sturza, § 312).

173. On 16 May 2000 the President of the Moldovan Parliament, Mr Diacov, visited Mr Ilascu in his prison cell in Tiraspol. On the same day the Moldovan President, Mr Lucinschi, visited Tiraspol.

174. On 16 May 2001 the President of Moldova, Mr Voronin, and the Transdniestrian leader, Mr Smirnov, signed two agreements – one about mutual recognition of documents issued by the Moldovan and Transdniestrian authorities, the other concerning measures to attract and protect foreign investment.

175. In the field of economic cooperation, the applicants asserted that the Moldovan authorities issued certificates of origin for products from Transdniestria.

The Moldovan Government did not comment on this allegation.

176. As regards the alleged practice of the Moldovan authorities of issuing certificates of origin to goods exported from Transdniestria, as submitted by the applicants and by the Russian Government, the Court

notes that this allegation was not confirmed by any witness. On the contrary, Mr Stratan, the Director of Customs, denied the existence of such a practice (see Annex, § 327).

In these circumstances, in the absence of corroboration of the applicants' assertions, the Court cannot regard it as established beyond a reasonable doubt that the Moldovan authorities are conducting a policy of supporting the Transdniestrian economy through such export certificates.

177. In addition to the cooperation introduced as a result of the agreement reached by the President of Moldova and the "President of the MRT", as established by the witness evidence taken by the Court's delegates, there are more or less *de facto* relations between the Moldovan and Transdniestrian authorities in other fields. For example, there are contacts between the Transdniestrian Ministry of Justice, particularly the prisons service, and the Moldovan Ministry of Justice (see Annex, Lieutenant-Colonel Samsonov, § 172). There are also unofficial relations between the Moldovan and Transdniestrian authorities on judicial and security matters, in the interests of crime prevention. Although there is no cooperation agreement, Moldovan prosecutors or officers investigating criminal cases sometimes ring their "colleagues" in Transnistria, particularly to obtain information and summon witnesses (see Annex, Mr Postovan, § 190, and Mr Catana, § 206).

178. There is a single telephone system for the whole of Moldova, including Transnistria. A telephone call between Chisinau and Tiraspol is considered a national call (see Annex, Mr Molojen, § 398, and Mr Sidorov, § 454).

179. The Moldovan Government's information department issues identity documents (identity cards) to all persons resident in Moldova, including those in Transnistria (see Annex, Mr Molojen, § 399).

180. In 2001, under agreements with the World Trade Organisation, the Moldovan authorities set up a chain of mixed Moldovan-Ukrainian customs posts along the border with Ukraine and introduced new customs stamps not available to the Transdniestrian authorities. The Court has not been informed whether the Moldovan-Ukrainian customs posts are still operational.

181. In response to the measures mentioned in the previous paragraph, the Transdniestrian authorities informed the Moldovan authorities, in a letter of 18 September 2001, of the unilateral suspension of negotiations on the status of Transnistria, threatening to cut off gas and electricity supplies to Moldova passing through Transnistria.

182. The Moldovan Government asserted that during an incident in 2001 at the railway junction of Tighina (Bender) the Transdniestrian authorities had blocked 500 wagons containing humanitarian gifts for Moldovan children and elderly persons and shipments of petroleum and other goods from the European Union on their way to Moldovan firms.

183. In a declaration made public on 6 February 2002 the OSCE mission in Moldova criticised the actions of the Transdniestrian authorities, who on 16 January 2002 had started to prevent the OSCE representatives from entering the territory controlled by the ‘MRT’, in breach of the agreement of 26 August 1993 between the OSCE and Mr Smirnov.

184. It appears from a document submitted to the Court by the Moldovan Government on 15 March 2002 that by Order no. 40 of 7 March 2002 the ‘Minister of Security of the MRT’ refused access to the territory of the ‘MRT’ to the representatives of the Ministries of Defence and Internal Affairs, the information and security service and other Moldovan military bodies.

185. Lastly, the national football championship also includes Transdniestrian teams, and matches played by the Moldovan football team, including international games, are often staged in Tiraspol, as was the case for a match against the Netherlands in April 2003 (see Annex, Mr Sidorov, § 454).

IV. THE PARTICULAR CIRCUMSTANCES OF THE CASE

186. The Court summarises below the facts connected with the applicants’ arrest, pre-trial detention, conviction and conditions of detention, as alleged by the applicants and confirmed by the documentary evidence and the witnesses’ statements.

It further notes that, in their written observations of 24 October 2000, the Moldovan Government endorsed the applicants’ account of the circumstances in which they had been arrested, convicted and detained. In the same observations they indicated that the applicants had certainly been arrested without a warrant, that they had remained for two months on premises belonging to the former Fourteenth Army and that the searches and seizures had also been carried out without a warrant.

The Moldovan Government submitted that the applicants’ allegations about their conditions of detention were very plausible.

187. The Russian Government indicated that they had had no knowledge of the circumstances of the applicants’ arrest, conviction and conditions of detention.

A. The applicants’ arrest, pre-trial detention and conviction

1. The applicants’ arrest

188. It appears from the evidence given by the applicants, their wives and Mr Urîtu, corroborated in general by the statement of Mr Timoshenko, that the applicants were arrested at their homes in Tiraspol between 2 and

4 June 1992, in the early hours of the morning. They were arrested by a number of persons, some of whom wore uniforms bearing the insignia of the Fourteenth Army of the former USSR, while others wore camouflage suits without distinguishing marks.

The details of their arrest were as follows.

189. The second applicant, Alexandru Lesco, was arrested on 2 June 1992 at 2.45 a.m. The next day his home was searched in the presence of his neighbours.

190. The first applicant, Ilie Ilascu, who at the material time was the local leader of the Popular Front (a party represented in the Moldovan Parliament) and was campaigning for the unification of Moldova with Romania, was arrested on 2 June 1992, at about 4.30 a.m., when 10 to 12 persons armed with automatic pistols forcibly entered his home in Tiraspol, where they carried out a search and seized certain objects. These included a pistol which, according to the applicant, had been placed in his house by the persons searching the premises. The applicant alleged that his arrest and the search were carried out without a warrant. He had been informed that he was being arrested because as a member of the Popular Front he was dangerous for the stability of the "MRT", which was at war with Moldova.

191. The third applicant, Andrei Ivantoc, was arrested at his home on 2 June 1992 at 8 a.m. by several armed persons who struck him with the butts of their weapons and kicked him. According to the applicant, during the search which followed several carpets, 50,000 roubles and a "handsome" watch were confiscated.

192. The fourth applicant, Tudor Petrov-Popa, was arrested on 4 June 1992 at 6.45 a.m. by two persons, one of whom was a police officer, Victor Gusan. At about 11 a.m. two public prosecutors, Mr Starojuk and Mr Glazyrin, searched the applicant's home in his absence.

193. In a 140-page indictment drawn up by Public Prosecutor Starojuk, among others, the applicants were accused of anti-Soviet activities and of fighting by illegal means against the legitimate State of Transdniestria, under the direction of the Popular Front of Moldova and Romania. They were also accused of committing a number of offences punishable, according to the indictment, in some cases by the Criminal Code of the Republic of Moldova and in others by that of the Moldovan Soviet Socialist Republic. The offences of which the applicants were accused included the murder of two Transdnistrians named Gusan and Ostapenko (see also paragraph 225 and below).

194. As evidenced by the concordant statements of the applicants and other witnesses (see Annex, Mr Urâtu, §§ 55-56 and 60-61, Mrs Lesco, §§ 30-31, and Mrs Ivantoc, §§ 38 and 41), the applicants were first taken to Tiraspol police headquarters, which were probably also the premises of the "Ministry of Security of the MRT", where they were interrogated and subjected to ill-treatment for several days. Their interrogators included

Vladimir Gorbov, “Deputy Minister of Security”, Vladimir Antiufeyev (or Chevtsov), the “Minister”, and a person named Gushan. Some of the guards and investigators wore uniforms which were similar, if not identical, to those used by the Soviet personnel of the Fourteenth Army. During the first days of their detention at police headquarters the applicants were beaten regularly and severely, and received practically nothing to eat or drink. The interrogations often took place at night and during the daytime they were not permitted to rest.

195. The first applicant said that he had been taken immediately after his arrest into the office of the Minister of Security of the “MRT”, where there were five other persons, introduced to him as colonels in the Russian counter-espionage service. They asked him, in exchange for his release, to place at the service of Transdnistria the skills he had acquired during his military service with the USSR special troops and pass himself off as an agent working for the Romanian secret service. The applicant alleged that, when he refused to go along with that proposal, he was told that his only alternative was the cemetery.

2. Detention of the first three applicants on the premises of the former Fourteenth Army

196. A few days after their arrest the first three applicants were taken separately to the Fourteenth Army garrison headquarters (*komendatura*) in Suvorov Street, Tiraspol, in vehicles bearing Russian markings.

The applicants submitted that during their detention in the territory of the Fourteenth Army they were guarded by soldiers of that army and that while they were there Transdnestrian police officers came to see them in their cells. They also alleged that during this period they were tortured by Fourteenth Army personnel.

The Moldovan Government said that in the light of the statements made by the Moldovan witnesses and Mr Timoshenko to the delegates of the Court it was apparent that Fourteenth Army personnel had taken part in the applicants’ arrest and interrogation.

In their observations of 1 September 2003 the Russian Government repeated their initial position, namely that the Court did not have jurisdiction *ratione temporis* to examine events which had taken place in 1992.

On the merits, they nevertheless acknowledged that the applicants had been detained on the premises of the Fourteenth Army, but asserted that this detention had been of very short duration and that in any event it had been illegal. The Government said that Military Prosecutor Timoshenko had put a stop to this illegal detention as soon as he had been informed of it. They did not comment on the question whether Russian soldiers had taken part in the applicants’ initial arrest.

They submitted that, apart from providing cells for the applicants' detention, the Fourteenth Army personnel had done nothing illegal. In particular, they had not guarded the cells in which the applicants were detained. In that connection, the Government said that the applicants could not have seen Russian insignia on the warders' uniforms because the new Russian insignia, which replaced those of the USSR, had only been introduced by Order no. 2555, issued on 28 July 1994 by the Minister of Defence of the Russian Federation.

The Russian Government further submitted that Colonel Gusarov (see paragraph 270 below) had not served in the Russian military formations stationed in Transdnistrian territory but had performed his service at the "Ministry of the Interior of the MRT".

197. The Court notes that the first three applicants alleged that they had been detained for two months at Fourteenth Army garrison headquarters. (see Annex, Mr Ilascu, §§ 2, 4 and 11, Mr Urîtu, §§ 55-56, Mr Ivantoc, §§ 94-95, Mr Lesco, §§ 114 and 117, Mr Petrov-Popa, § 124, Mrs Lesco, §§ 33-34, Mrs Ivantoc, § 39, and Mrs Petrov-Popa, § 48).

On that subject, the Court notes that Mr Timoshenko asserted in his witness evidence (see Annex, § 381) that the applicants had stayed on the premises of the Fourteenth Army for a very short space of time, although he was unable to say exactly how long.

Without casting a general doubt on the testimony of Mr Timoshenko, which it considers to be credible, the Court considers that it contains a number of details, including those concerning the length of time the applicants spent on the premises of the Fourteenth Army, which are confused, and moreover refuted by other testimony.

198. The Tiraspol garrison headquarters were commanded by Mikhail Bergman. The applicants were detained there one to a cell. A Mr Godiac, arrested at the same time as the applicants, was detained in the same building. While being interrogated or when visited in their cells the applicants saw Mr Gorbov and officers of whom some wore the uniform of the Fourteenth Army. They were interrogated especially at night, the interrogations being accompanied by ill-treatment. They were also beaten at other times. The applicants were struck regularly and severely by soldiers in Fourteenth Army uniforms. Transdnistrian police officers sometimes participated in inflicting ill-treatment on the applicants.

Ilie Ilascu was subjected to four mock executions. The first time, his death warrant was read out to him, whereas on the other occasions he was taken out blindfolded into a field where the warders fired at him with blank cartridges until he fainted.

The second applicant was threatened with rape. After a month, as a result of the blows he had received, the third applicant was admitted to a psychiatric hospital, where he remained for a month (see Annex, Mr Ivantoc § 97).

199. The cells had no toilets, no water and no natural light. A light bulb in each cell was lit permanently. The fold-away beds fixed to the wall were lowered at midnight and put back up at five in the morning.

The applicants had only 15 minutes per day for outdoor exercise, in an enclosed area. During their detention at the Fourteenth Army's garrison headquarters they were not able to wash themselves or change their clothes.

The toilets were along the corridor and the prisoners were taken there only once a day by guards accompanied by an Alsatian dog. They had only 45 seconds in which to relieve themselves, knowing that the dog would be set on them if they took longer. Since they were taken to the lavatory only once a day under the conditions described above, the applicants had to relieve themselves in their cells (see Annex, Mr Ivantoc, § 95, Mr Lesco, § 115, Mrs Lesco, § 33, and Mrs Ivantoc, § 40).

They were cut off from the outside world. Their families were not permitted to contact them or send them parcels. They were not able to send or receive mail and had no access to lawyers.

200. On 23 August 1992, when General Lebed took command of the Fourteenth Army, the persons detained at the headquarters of the army's Tiraspol garrison, including the three applicants, were transferred to the Tiraspol police headquarters. The transfer was carried out by soldiers of the Fourteenth Army in Fourteenth Army vehicles (see Annex, Mr Ilascu, § 11, Mr Urîtu, § 55, and Mrs Ivantoc, § 39).

3. Detention in the remand centre of Tiraspol police headquarters and transfer to prison during the trial

201. The circumstances of the applicants' detention, as described in their written depositions and witness evidence, and in the corroborating evidence given by other witnesses (see Annex, Mr Urîtu, §§ 56 and 60-61, Mrs Ivantoc, § 41, and Mrs Lesco, §§ 30-31), are summarised below.

202. The first applicant remained in a cell at Tiraspol police headquarters for nearly six months, until April 1993, when his trial began.

203. The second applicant was transferred from the Fourteenth Army's garrison headquarters to Tiraspol police headquarters, where he remained until April 1993, when his trial began.

204. The third applicant remained for one month at the Fourteenth Army's garrison headquarters. He was then confined in a psychiatric hospital, where he remained for nearly a month. On his return from hospital he was taken back to the Fourteenth Army's garrison headquarters and immediately transferred to Tiraspol police headquarters, where he was detained until April 1993.

205. The fourth applicant was detained until the beginning of the trial at Tiraspol police headquarters.

206. In the remand centre at Tiraspol police headquarters the interrogations took place at night. The applicants were regularly beaten

there, especially during the month which followed their return from the Fourteenth Army garrison headquarters.

207. The cells had no natural light. During the first few weeks they were not permitted to receive visits from their families or lawyers. Later permission was granted on a discretionary basis for visits by their families and they began to receive parcels, albeit at irregular intervals. They were often unable to eat the food sent by their families because it had become spoiled during the searches carried out for security reasons. They were not permitted to receive or send mail, and were unable to speak to their lawyers.

208. During this period the applicants were only rarely able to see a doctor, and when they had been subjected to ill-treatment the doctor's visit took place long afterwards.

Hallucinogenic drugs administered to Mr Ivantoc gave him chronic migraines. During this period he was not treated for his headaches and his wife was not given permission to send him medicines.

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

210. On a date which has not been specified the applicants were transferred to Tiraspol Prison with a view to their trial. While detained pending trial they were subjected to various forms of inhuman and degrading treatment: they were savagely beaten, Alsatian dogs were set on them, they were held in solitary confinement and fed false information about the political situation and their families' health as bait to induce them to accept a promise of their release if they signed confessions; lastly, they were threatened with execution.

211. Mr Ivantoc and Mr Petrov-Popa were treated with psychotropic substances and as a result Mr Ivantoc experienced mental disorders.

4. The applicants' trial and conviction

212. The applicants were taken before the "Supreme Court of the Moldavian Republic of Transdnistria", which sat first in the functions room of the Kirov State company and later in the concert hall of the Tiraspol cultural centre. During the trial, which began on 21 April 1993 and ended on 9 December 1993, the only persons authorised to enter the courtroom were Moldovan nationals with proof of residence in Transdnistria. Armed police and soldiers were present in the hall and on the stage where the judges sat. The applicants appeared at their trial locked inside metal cages. Witnesses were able to attend the trial as they wished, without being required to leave the courtroom while the other witnesses were giving evidence. On numerous occasions during the trial the applicants were permitted to speak to their lawyers only in the presence of armed police officers. The hearings took place in a tense atmosphere, with placards hostile to the accused displayed by the public. As evidenced by a photograph submitted to the Registry by the applicants, taken in the

courtroom and published in a Moldovan newspaper, one of these placards was inscribed with the words “Bring the terrorists to account!” (Te?pop?c?o? – ? o??e?? !).

213. The applicants were tried by a three-judge bench composed as follows: Mrs Ivanova, a former judge of the Supreme Court of Moldova, presiding; Mr Myazin, aged 28 at the time of the trial, who had worked for one year at the Moldovan Procurator General’s Office before being appointed to the “Supreme Court of the MRT”, and Mr Zenin.

214. The judgment records that Commandant Mikhail Bergman, an ROG officer, appeared as a witness. He told the court that the applicants had not been ill-treated by his subordinates while they were detained on the premises of the Fourteenth Army and that they had not made any complaints.

215. The court gave judgment on 9 December 1993.

216. It found the first applicant guilty of a number of offences defined in the Criminal Code of the Moldovan Soviet Socialist Republic, including incitement to commit an offence against national security (Article 67), organisation of activities with the aim of committing extremely dangerous offences against the State (Article 69), murdering a representative of the State with the aim of spreading terror (Article 63), premeditated murder (Article 88), unlawfully requisitioning means of transport (Article 182), deliberate destruction of another’s property (Article 127) and illegal or unauthorised use of ammunition or explosive substances (Article 227). The court sentenced him to death and ordered the confiscation of his property.

217. The court found the second applicant guilty of murdering a representative of the State with the aim of spreading terror (Article 63), deliberate destruction of another’s property (Article 127) and unauthorised use of ammunition or explosive substances (Article 227 § 2) ; it sentenced him to 12 years’ imprisonment in a hard labour camp and confiscation of his property.

218. The third applicant was found guilty of murdering a representative of the State with the aim of spreading terror (Article 63), unauthorised use and theft of ammunition or explosive substances (Articles 227 et 227-1 § 2), unlawfully requisitioning horse-drawn transport (Article 182 § 3), deliberate destruction of another’s property (Article 127) and assault (Article 96 § 2). He was sentenced to 15 years’ imprisonment in a hard labour camp and confiscation of his property.

219. The fourth applicant was found guilty of murdering a representative of the State with the aim of spreading terror (Article 63), assault (Article 96 § 2), illegal use of horse-drawn transport (Article 182 § 3), deliberate destruction of another’s property (Article 127), and unauthorised use and theft of ammunition or explosive substances (Articles 227 and 227-1 § 2). He was sentenced to 15 years’ imprisonment and confiscation of his property.

B. Events subsequent to the applicants' conviction; Mr Ilascu's release

220. On 9 December 1993 the President of the Republic of Moldova declared that the applicants' conviction was unlawful, on the ground that it had been pronounced by an unconstitutional court.

221. On 28 December 1993 the Deputy Attorney General of Moldova ordered a criminal investigation in respect of the "judges", "prosecutors" and other persons involved in the prosecution and conviction of the applicants in Transdnistria, accusing them under Articles 190 and 192 of the Criminal Code of the Republic of Moldova of unlawful arrest.

222. On 3 February 1994 the Supreme Court of the Republic of Moldova examined of its own motion the judgment of 9 December 1993 of the "Supreme Court of the MRT", quashed it on the ground that the court which had rendered it was unconstitutional and ordered the file to be referred to the Moldovan public prosecutor for a new investigation in accordance with Article 93 of the Code of Criminal Procedure. It appears from the written depositions, the information supplied by the Moldovan Government and the evidence given by the witnesses heard by the Court in Chisinau in March 2003 that the investigation ordered in the judgment of 3 February 1994 came to nothing (see Annex, Mr Postovan, § 184, and Mr Rusu, § 302).

223. In addition, the Supreme Court of the Republic of Moldova set aside the warrant for the applicants' detention pending trial, ordered their release and asked the public prosecutor to look into the possibility of prosecuting the judges of the "so-called" Supreme Court of Transdnistria for deliberately rendering an illegal decision, an offence punishable under Articles 190 to 192 of the Criminal Code.

224. The authorities of the "MRT" did not respond to the judgment of 3 February 1994.

225. The Moldovan authorities had opened an investigation into the deaths of Mr Gusar and Mr Ostapenko in April and May 1992 respectively, but the public prosecution service suspended this on 6 June 1994, under Article 172 § 3 of the Moldovan Code of Criminal Procedure, in the absence of any cooperation from the Transdnistrian judicial and police authorities. The investigation was reopened on 9 September 2000. As a result, a number of requests for cooperation (the transmission of documents) were sent to the "Public Prosecutor of the MRT", Mr V.P. Zaharov. Not receiving any reply, the Moldovan public prosecution service once again suspended the investigation on 9 December 2000. Since then it has not been reopened.

226. By a decree of 4 August 1995 the President of the Republic of Moldova promulgated an amnesty law on the occasion of the first anniversary of the adoption of the Moldovan Constitution. The amnesty

applied in particular to convictions for offences defined in Articles 227, 227-1 and 227-2 of the Criminal Code committed after 1 January 1990 in several provinces of the left bank of the Dniester.

227. On 3 October 1995 the Moldovan Parliament asked the Moldovan Government to give priority to the problem of the applicants' detention as political prisoners and keep it regularly informed of developments in the situation and remedial action undertaken, and requested the Ministry of Foreign Affairs to seek firm support from the countries where Moldova had diplomatic missions with a view to securing the release of the applicants ("the Ilascu group").

228. The first applicant, although imprisoned, was elected a member of the Moldovan Parliament on 25 February 1994 and again on 22 March 1998, but having been deprived of his liberty he never took his seat.

229. On 16 August 2000 the public prosecutor declared void the order of 28 December 1993 against the "RMT" "judges" and "prosecutors" (see paragraph 221 above) on the ground that there could only be unlawful arrest within the meaning of Articles 190 and 192 of the Criminal Code when the relevant measure was taken by judges or prosecutors appointed in accordance with the legislation of the Republic of Moldova, which was not the position in the present case. He also stated that in his view it was not appropriate to begin an investigation in respect of false imprisonment or usurpation of the powers or title corresponding to an official office, offences defined in Articles 116 and 207 of the Criminal Code respectively, on the grounds that prosecution was time-barred and that the suspected offenders were refusing to assist the authorities with their enquiries.

230. On the same day the public prosecutor ordered a criminal investigation in respect of the governor of Hlinaia Prison on suspicion of false imprisonment and usurpation of the powers or title corresponding to an official office, as defined in Articles 116 and 207 of the Criminal Code. It appears from the information supplied by the Moldovan Government and the statements of the witnesses heard by the Court at Chisinau in March 2003 that this criminal investigation came to nothing (see Annex, Mr Rusu, § 302, and Mr Sturza, § 314).

231. On 4 October 2000, at Mr Ilascu's request, the Romanian authorities granted him Romanian nationality by virtue of Law no. 21/1991.

232. On 26 November 2000 Mr Ilascu was elected to the second chamber of the Romanian Parliament. Having renounced Moldovan nationality and his seat in the Moldovan Parliament, he ceased to be a member of parliament on 4 December 2000.

233. In 2001, at their request, Mr Ivantoc and Mr Lesco were likewise granted Romanian nationality.

234. On 5 May 2001 Mr Ilascu was released. The circumstances of his release, which are disputed, are summarised below (see paragraphs 279 to 282).

C. The applicants' detention after conviction

235. The first applicant was detained in Tiraspol no. 2 Prison until his conviction, on 9 December 1993. He was then transferred to Hlinaia Prison, to the wing for prisoners condemned to death, remaining there until July 1998, when he was again transferred to Tiraspol no. 2 Prison. He stayed there until his release in May 2001.

236. Mr Lesco was transferred after his trial to Tiraspol no. 2 Prison, where he is still detained.

237. Mr Ivantoc was transferred after conviction to Hlinaia Prison, where he probably remained for only a few weeks. Because of his illness he was first admitted to hospital and then transferred to Tiraspol no. 2 Prison, where he still is.

238. Mr Petrov-Popa was transferred shortly before the beginning of his trial to Tiraspol no. 2 Prison. At some time after Mr Ilascu's release in May 2001 Mr Petrov-Popa was transferred to Hlinaia Prison, where he stayed until 4 June 2003, on which date he was transferred to Tiraspol no. 3 Prison "in order to facilitate his contacts with his lawyer", according to the prison service.

239. From the first few months after the applicants' arrest the Moldovan Government granted financial assistance to their families. In addition, the authorities found accommodation for those of the applicants' families who had been obliged to leave Transdniestria and occasionally gave them help, firstly to visit the applicants, by placing transport at their disposal, and secondly to improve the applicants' conditions of detention, by sending doctors and supplying them with newspapers (see Annex, Mr Snegur, § 240, Mr Mosanu, § 248, and Mr Sangheli, § 267).

1. The conditions of detention

240. The applicants were detained, except during a few very short periods, alone, each in his own cell, except for Mr Lesco, who was held in solitary confinement only during the first few years.

Mr Ilascu was always held in solitary confinement. He was not allowed correspondence, but nevertheless managed to send a few letters out of prison.

241. In Hlinaia Prison Mr Ilascu was detained in the wing for prisoners condemned to death. His conditions of detention were harsher than those of the other applicants. Inside his cell a metal cage of the same dimensions as the cell had been fitted. Inside the cage was the bed and table, also made of metal.

Mr Ilascu was not permitted to speak to the other prisoners or the warders. He was therefore taken alone for his daily walk, which took place in the evening, indoors.

Mr Ilascu's food was 100 grams of rye bread three times a day and a glass of tea without sugar twice a day. In the evening he also received a concoction called "*balanda*" whose main ingredient is kibbled maize.

242. The applicants' cells had no natural light: the only light – from an electric bulb in the corridor – entered each cell through an opening cut out of the door.

243. The applicants could only rarely take showers and had to go several months without washing.

244. None of the cells occupied by Mr Ilascu during his detention was heated, even in winter.

245. Both in Hlinaia and in Tiraspol the applicants had cold water in their cells, which were equipped with toilets not separated off from the rest of the cell.

246. The applicants were able to receive parcels and visits from their families, although the relevant authorisation was not systematically given by the prison governors.

At times authorisation to receive visits or parcels was refused on the orders of Igor Smirnov or Vladimir Antiufeyev/Chevtsov.

247. As parcels were searched, any food in them sometimes became unfit for consumption. To protest about the insufficient quantity of food served to them in prison, the authorities' occasional refusal to distribute to them the food brought by their families and the fact that this food was being spoiled in the checking process, the applicants went on several hunger strikes.

248. In 1999 Mr Ilascu was allowed visits by Mrs Josette Durrieu of the Parliamentary Assembly of the Council of Europe and by Mr Vasile Sturza, the chairman of the commission for negotiations with the Transdniestrians.

249. In a letter sent in March 1999 to the Moldovan Parliament about the governmental crisis facing Moldova, Mr Ilascu declared his support for Mr Ion Sturza as candidate for the post of Prime Minister. His letter was read out from the rostrum by the President and enabled Parliament to put together the majority required in order to appoint Mr Sturza as Prime Minister.

In 1999, following his vote for the Sturza Government and during the nine months that Government lasted, Mr Ilascu was not allowed any visits from his family or any parcels. The other applicants, particularly Mr Ivantoc, suffered similar restrictions.

250. In a letter to the Court dated 14 May 1999 Mr Ivantoc wrote that since Mr Ilascu's letter to the Moldovan Parliament the applicants' conditions of detention, and those of Mr Ilascu in particular, had deteriorated.

251. In a letter of 17 July 1999 Mr Ivantoc informed the public that he had begun a hunger strike to protest about the harsh conditions in which he and his companions were detained. He pointed out, for example, that he could not contact a lawyer and that he was not permitted to receive visits from doctors or Red Cross representatives. He argued that the passivity of the Moldovan authorities in the face of the situation in Transdniestria, and particularly that of the ‘Ilascu group’, amounted to tacit support for the Transdniestrian authorities.

252. In a written statement of 29 July 1999 Mr Ivantoc, who was on the 77th day of his hunger strike, accused the leaders in Chisinau of doing nothing to protect human rights in Moldova and of “having a good time” with the separatist leaders of Transdniestria. He also complained of the Tiraspol Prison authorities’ refusal to allow himself and Mr Ilascu access to a doctor and said that Mr Ilascu, who had been held in solitary confinement for a lengthy period, was being ill-treated. All the furniture had been taken out of his cell, his clothes had been taken away from him except for a vest and he was repeatedly beaten by members of the “special forces”, who kept suggesting that he should kill himself.

253. In a letter to the Court of 10 May 2000 Mr Ilascu pointed out that he had not been able to consult a doctor since 1997. Doctors who had made the journey from Chisinau at that time had examined him and written a report on his state of health, which they described as serious. In the same letter he accused the authorities of the Republic of Moldova of hypocrisy, alleging that in spite of their calls for the applicants’ release they were doing everything they could to prevent them from regaining their liberty.

254. On 14 January 2002 the applicants’ representative, Mr Dinu, informed the Court that the conditions of detention of the three applicants still incarcerated had deteriorated since June 2001. Mr Ivantoc had been refused a visit by his wife, without any explanation.

Mr Ivantoc and Mr Lesco began to receive only bread for food. Mr Petrov-Popa was transferred to Hlinaia Prison where, in conditions of total isolation, he was told that he would not be permitted any visits for six months.

255. With the exception of Mr Ilascu, the applicants were permitted correspondence in Russian; letters in Romanian were forbidden. Their mail was censored. They could not as a general rule receive newspapers in Romanian.

256. Mr Ivantoc was refused a visit from his wife on 15 February 2003. The visit was allowed to go ahead one week later.

257. At the witness hearings before the delegates of the Court in Tiraspol in March 2003 the Transdniestrian prison service undertook to allow the applicants’ lawyers to meet their clients detained in Transdniestria. Mr Tanase was able to see his client, Mr Lesco, for the first time on a date which has not been specified, in May or June 2003.

Mr Gribincea was able to meet his clients for the first time since their incarceration on 20 June 2003.

258. The Court has established the conditions under which the applicants' medical examinations were conducted on the basis of the witness evidence and other documents in its possession, including the registers of medical consultations kept in the places of the applicants' detention.

259. In general, the Court notes that, during their detention the applicants' health deteriorated.

They were able to see, at their request, the prison doctor, who in most cases restricted his examination to palpation and auscultation.

260. Mr Ilascu, although suffering from acute arthritis, pancreatitis and a dental abscess, was refused permission to see a doctor. His eyesight also deteriorated.

261. In 1995 Mr Lesco was nevertheless taken to hospital in Tiraspol and operated on for his pancreatitis.

262. With few exceptions, the applicants' illnesses were not treated. The only medicines they were given were the medicines sent by their families. The prison "authorities" cited security grounds as the reason for not allowing the applicants to receive the pharmaceutical information notes accompanying these medicines.

263. After negotiations with the Moldovan authorities, and above all after the intervention of President Snegur, the Transdnestrian prison authorities allowed specialists from Chisinau to examine the applicants. Thus, on several occasions between 1995 and 1999, the applicants were examined by a medical commission from Moldova, which included Mr Lesan and Mr Tîbîrna. In 1999 the visits took place from January to March, and again in November.

On one occasion Mr Ilascu was able to have an electrocardiogram; Mr Ivantoc was operated on for liver disease; Mr Petrov-Popa had an injection for his tuberculosis and was prescribed treatment.

The examinations took place in the presence of prison doctors and warders. The medicines prescribed by the Moldovan doctors, as recorded in the prison medical registers, were not supplied, the only medicines received by the applicants being those brought by their families.

On two occasions Mr Ilascu was allowed to be examined by International Red Cross doctors.

264. Mr Petrov-Popa, who was suffering from tuberculosis, was treated for approximately six months, until March 1999. However, most of the medicines were provided by his family.

265. None of the applicants was able to obtain dietetically appropriate meals, although these had been prescribed by doctors, in Mr Ilascu's case for his disorder of the digestive tract, in Mr Ivantoc's case for his liver

disease, in Mr Lesco's case for the consequences of his pancreatitis and in Mr Petrov-Popa's case for his tuberculosis.

Mr Lesco, Mr Ivantoc and Mr Petrov-Popa said they suffered from pancreatitis, liver disease and tuberculosis respectively and were not receiving the appropriate treatment.

266. Mr Petrov-Popa now occupies in Hlinaia Prison the same cell Mr Ilascu was in before his release, although there is a special wing there for prisoners with tuberculosis. Since the entry into force in 2002 of the new Transdnestrian Code of Criminal Procedure, Mr Petrov-Popa's conditions of detention in Hlinaia have improved, since he can receive three extra parcels and three extra visits per year. The improvement was ordered by the governor of Hlinaia Prison in the light of the applicant's good conduct.

2. Ill-treatment

267. During the first few months of his detention in Hlinaia Mr Ilascu was ill-treated several times.

On the slightest pretext Mr Ilascu was removed to a disciplinary cell.

268. After his transfer to Tiraspol no. 2 Prison Mr Ilascu's situation improved slightly in that he was not punished so frequently as at Hlinaia and was ill-treated only after certain events.

For example, after the appearance in the press of an article about the applicants prison warders entered the cells of Mr Ilascu and Mr Ivantoc and confiscated or destroyed all the objects they found there. They beat the applicants severely and placed them in disciplinary cells for 24 hours.

269. The cells of Mr Ilascu and Mr Ivantoc were smashed up after Mr Ilascu had voted for the Sturza Government, in 1999, and after the lodging of their application to the Court. The objects destroyed included personal effects such as photographs of the applicants' children and icons. They were also savagely beaten.

After lodging his application with the Court Mr Ilascu was beaten by soldiers who kicked him and hit him with rifle butts. He then had a pistol placed in his mouth and was threatened with death if he ever tried to send letters out of the prison again. On that occasion he lost a tooth.

270. In the above-mentioned letter of 14 May 1999 Mr Ivantoc said that on the previous day hooded civilians had entered his cell, struck him with a stick on his head, his back and over his liver and rained punches on him over his heart. They had then dragged him into the corridor, where he saw a Colonel Gusarov in the act of banging Mr Ilascu's head against a wall and kicking him. Mr Gusarov had then put a pistol into Mr Ilascu's mouth and threatened to kill him. Colonel Gusarov had told the applicants that this assault had been prompted by their application to the European Court of Human Rights. In the same letter Mr Ivantoc urged the Moldovan Parliament and Government, the international media and human rights

protection organisations to intervene in order to halt the torture to which he and the other three applicants were being subjected.

271. Following these events, as appears from a letter of 1 September 1999 sent to the Court by Mr Lesco's representative, the applicants were denied food for two days and light for three days.

272. Mr Ivantoc's cell in Tiraspol Prison was smashed up on other occasions, in November 2002 and on or about 15 February 2003.

D. Steps taken up to May 2001 to secure the applicants' release

273. The negotiations between the Republic of Moldova and the Russian Federation about the withdrawal of Russian forces from Transnistria, during which the settlement of the Transnistrian question was also mentioned, never covered the applicants' situation. However, in discussions between the Moldovan President and the President of the Russian Federation, the Moldovan side regularly raised the question of the applicants' release (see Annex, Y., § 254).

274. In the context of the creation by the Transnistrian side of a commission to examine the possibility of pardoning all persons convicted and detained in Transnistria as a result of judgments delivered by the Transnistrian courts (see Annex, Mr Sturza, §§ 309 and 311), the Moldovan authorities obtained a promise of the applicants' release. In that context, the Moldovan Deputy Attorney General, Mr Vasile Sturza, went to Tiraspol several times to negotiate the applicants' release, in 1996 even meeting Mr Ilascu in Hlinaia Prison.

Mr Sturza went one last time to Tiraspol on 16 April 2001 in order to bring the applicants back to Chisinau, but without success. It was only on 5 May 2001 that Mr Ilascu was released (see paragraph 279 below).

275. In a letter of 23 February 2001 the President of Moldova, Mr Lucinschi, and the head of the OSCE mission in Moldova, Mr Hill, asked Mr Smirnov to release the applicants for humanitarian reasons.

276. On 12 April 2001 the new President of Moldova, Mr Voronin, again asked Mr Smirnov to release the applicants on humanitarian grounds.

277. From the beginning of the negotiations with the Transnistrians the applicants' situation was regularly raised by the Moldovan authorities. In particular, discussions on this point took place with representatives of the "prosecution service of the MRT", the "Supreme Court of the MRT" and the "Minister of Justice of the MRT", and with Igor Smirnov.

278. The applicants submitted to the Court a note verbale dated 19 April 2001 to the Moldovan embassy in Moscow in which the Ministry of Foreign Affairs of the Russian Federation drew the Moldovan Government's attention to the fact that the memorial they had filed with the European Court of Human Rights in October 2000 gave a subjective assessment of Russia's role in the case of the 'Ilascu group' and in no way

reflected “ the friendly character of relations between the Republic of Moldova and the Russian Federation”. The note continued:

“Examination of the memorial by the Grand Chamber of the European Court, due to take place on 1 May of this year, may cause serious prejudice to the interests of the Russian Federation and Moldova.

In that context, the Russian side, relying on the agreement reached by the heads of the diplomatic services of the two countries with regard to the need to withdraw the memorial concerned, urges the Government of Moldova to take all the necessary steps to ensure the withdrawal of this document before 30 April and to inform the European Court and Russia’s representative to that organ of the fact officially.”

E. Mr Ilascu’s release on 5 May 2001

279. Mr Ilascu said that at about 5.30 a.m. on 5 May 2001, Vladimir Chevtsov, also known as Antiufeyev, the Transdniestrian “Minister of Security”, entered his cell and told him to get dressed quickly because he was to be presented to the “President of the MRT”. The applicant left all his personal effects in the cell and was placed in a car attached by handcuffs to two soldiers. Vladimir Chevtsov also got in the car. The applicant was driven to Chisinau and there, about 100 metres away from the presidential palace, he was handed over to the head of the Moldovan secret service, Mr Pasat. The applicant asserted that Mr Chevtsov had read out in front of Mr Pasat his instrument of transfer, worded as follows: “The prisoner Ilascu, who has been sentenced to death, is transferred to the competent organs of the Republic of Moldova.” After handing over this document Mr Chevtsov allegedly declared that the sentence remained valid and would be enforced if Mr Ilascu returned to Transnistria.

Moldovan special forces then took the applicant to the Ministry of Security, where he was questioned briefly before being released.

280. On 22 June 2001 the Moldovan Government informed the Court that the President of the Republic of Moldova, Mr Voronin, had learned of Mr Ilascu’s release from a letter sent to him by Mr Smirnov on 5 May 2001. In that letter, Mr Smirnov requested that in consideration for the favourable gesture of the Transdniestrian authorities the Republic of Moldova should condemn “its 1992 aggression against the Transdniestrian people”, make full reparation for the pecuniary damage sustained by the “MRT” as a result of the aggression and present “apologies to the Transdniestrian people for the pain and suffering caused.”

281. In a letter of 16 November 2001 the Moldovan Government submitted to the Court copies of several decrees signed by Mr Smirnov, the “President of the MRT”.

Decree no. 263, signed on 6 July 1999, provided for a moratorium on enforcement of the death penalty within the territory of the “MRT” from

1 September 1999. This moratorium was apparently also applicable to judgments rendered before that date, but not enforced by the time of the decree's entry into force, which was to coincide with its signature and publication in the Official Gazette. Decree no. 198, signed by Mr Smirnov on 5 May 2001, granted a pardon to Mr Ilascu and ordered his release. The decree came into force on the day of its signature.

The Moldovan Government made no comment on the subject of Mr Ilascu's alleged transfer, but merely submitted to the Court Mr Smirnov's decree concerning the applicant. Nor did they comment on the decree's authenticity. They added nevertheless that they had heard rumours to the effect that before signing the decree in question Mr Smirnov had commuted the death sentence imposed on Mr Ilascu to one of life imprisonment.

Mr Ilascu asserted that Mr Smirnov's decree was a forgery created after his release. He maintained that, in spite of his release, his conviction remained valid and that if he returned to Transdniestria he would be liable to the death sentence.

282. The Court has only the allegations of Mr Ilascu, a copy of Mr Smirnov's "decree" of 5 May 2001 and the Moldovan Government's assertions of a commutation of the sentence. None of these different accounts is corroborated by other evidence and the Court can see no objective element capable of persuading it to accept one version rather than another. Consequently, the Court considers that as the evidence before it stands at present it is not able to reach a conclusion as to the reasons and legal basis for Mr Ilascu's release.

F. Steps taken after May 2001 to secure the other applicants' release

283. After Mr Ilascu's release the representative of Mr Lesco submitted in a letter received by the Court on 1 June 2001 that this release had been prompted by the Russian authorities' intercession with the Transdniestrian authorities. He asserted that in an interview given to the Moldovan public radio station "Radio Moldova", the Moldovan Minister of Foreign Affairs, Mr Nicolae Chernomaz, had stated: "Ilie Ilascu was released following the intervention of the Russian Minister of Foreign Affairs, Igor Ivanov, who, at the request of Moldova's President Voronin, spoke to the Tiraspol authorities about this subject on the telephone. He explained to them that this is an international problem affecting the honour of the Russian Federation and Moldova." Mr Chernomaz apparently went on to say that he had met Mr Ivanov to try to convince him that "the application to the European Court of Human Rights could not be withdrawn because Mr Ilascu was a prisoner of conscience, a hostage of the 1992 conflict".

284. At the hearing on 6 June 2001 the Moldovan Government thanked those who had contributed to Mr Ilascu's release, in particular the Russian

Federation, and stated that they wished to modify the position they had previously adopted in the observations of 24 October 2000, particularly as regards the responsibility of the Russian Federation. They explained this decision by their desire to avoid undesirable consequences, such as tension or the end of the process aimed at finding a peaceful solution to the Transdnestrian dispute and securing the release of the other applicants.

285. After Mr Ilascu's release meetings between him and the Moldovan authorities took place to discuss the prospects for the release of the other applicants.

At a press conference which he gave on 31 July 2001 the President of Moldova, Mr Voronin, declared: "Mr Ilascu is the person who is keeping his comrades detained in Tiraspol." He pointed out in that connection that he had suggested to Mr Ilascu that he should withdraw his application to the Court against the Russian Federation and Moldova, in exchange for which the other applicants would be released before 19 June 2001, but that Mr Ilascu had refused to do so. According to the Moldovan press agency Basa-press, Mr Voronin also suggested that if Mr Ilascu won his case before the Court that would make the release of the other applicants more difficult.

G. International reactions to the applicants' conviction and detention

286. In a report of 20 February 1994 written at the request of the OSCE's Office for Democratic Institutions and Human Rights by Mr Andrzej Rzeplinski, Professor of criminal law and human rights at the University of Warsaw, and Mr Frederick Quinn, of the OSCE, following a fact-finding visit to Transdnestria, the applicants' trial before the "Supreme Court of the MRT" was analysed from the point of view of respect for fundamental rights. The authors noted serious infringements of the defendants' rights which included the lack of any contact with a lawyer during the first two months after their arrest, very limited access thereafter, infringement of the right to be tried by an impartial tribunal, in that the court had refused to examine the applicants' allegations that their confessions had been wrung from them by inhuman treatment, and infringement of the right enshrined in Article 14.5 of the International Covenant on Civil and Political Rights, in that the applicants' trial had been conducted according to an exceptional procedure which denied them any right to an appeal.

Lastly, the authors described the trial as "a political event from beginning to end". They concluded that some of the terrorism charges preferred against the applicants on the basis of the Criminal Code of the Soviet era would be considered merely free speech issues in modern democracies.

287. On 28 September 1999 the President of the Parliamentary Assembly and the Secretary General of the Council of Europe appealed to the separatist authorities in Transdnestria to permit the International

Committee of the Red Cross (ICRC) to visit the applicants and called for an immediate improvement in their conditions of detention.

288. While in Transnistria on 18 and 19 October 2000, during a visit to Moldova from 16 to 20 October 2000, the Council of Europe's Commissioner for Human Rights asked the Transnistrian authorities for permission to see Mr Ilascu in order to check his conditions of detention. Permission was refused on the ground that, for lack of time, it had not been possible to obtain the necessary authorisations.

289. In November 2000, following its visit to Moldova, including the region of Transnistria, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") produced its report. On the question of the situation in Transnistria's prisons, the CPT drew attention to severe overcrowding and expressed its concern about the practice of keeping certain prisoners in solitary confinement for long periods and about the inadequate level of treatment for sick prisoners, indeed the total absence of treatment for tuberculosis patients, including the possibility of receiving dietetically appropriate meals.

The CPT pointed out that the situation in Transnistrian penitentiary establishments in 2000 left a great deal to be desired, especially at Hlinaia Prison, where the conditions of detention were deplorable: poor ventilation, insufficient natural light, inadequate sanitary facilities and overcrowding.

On the situation of the applicants in particular, the CPT said that three members of the Ilascu group had been detained for eight years under conditions of solitary confinement which were having harmful psychological consequences for at least one of them. The CPT went on to say that solitary confinement could, in certain circumstances, amount to inhuman and degrading treatment and that in any event solitary confinement for so many years was unjustifiable. The CPT asked the Transnistrian authorities to attenuate the conditions of detention of the three members of the Ilascu group held in solitary confinement by allowing them access to the newspapers of their choice and by ensuring that they could receive visits from their families and lawyers.

The doctors in the CPT delegation were able to examine three of the four applicants, including Mr Ilascu. They recommended that he be given appropriate medical treatment for his illness.

The CPT reported accounts of beatings in May 1999, allegedly inflicted on members of the Ilascu group imprisoned in Tiraspol by masked individuals.

V. INTERNATIONAL LAW, DOMESTIC LAW AND OTHER RELEVANT AGREEMENTS

290. The relevant provisions of the Minsk Agreement of 8 December 1991 read as follows:

“We, the Republic of Belarus, the Russian Federation (RSFSR) and Ukraine, as founder States of the Union of Soviet Socialist Republics and signatories of the Union Treaty of 1922, hereinafter referred to as the High Contracting Parties, hereby declare that the USSR as a subject of international law and a geopolitical reality no longer exists.

On the basis of the historical commonality of our peoples and the ties that have developed between them, and bearing in mind the bilateral agreements concluded between High Contracting Parties,

Desirous of setting up lawfully constituted democratic States,

Intending to develop our relations on the basis of mutual recognition of and respect for State sovereignty, the inalienable right to self-determination, the principles of equality and non-intervention in internal affairs, of abstention from the use of force and from economic or other means of applying pressure and of settling controversial issues through agreement, and other universally recognised principles and norms of international law,

...

Confirming our adherence to the purposes and principles of the Charter of the United Nations, the Helsinki Final Act and the other documents of the Conference on Security and Cooperation in Europe;

Undertaking to abide by the universally recognised international norms relating to human and peoples' rights,

We have agreed as follows:

Article 1

The High Contracting Parties hereby establish the Commonwealth of Independent States.

...

Article 6

1. The States members of the Commonwealth will cooperate in safeguarding international peace and security and implementing effective measures for the reduction of armaments and military expenditures...

2. The Parties will respect each other's efforts to achieve the status of a nuclear-free zone and a neutral State.

3. The States members of the Commonwealth will maintain, and retain under joint command, a common military and strategic space, including joint control over nuclear weapons, the procedure for implementing which will be regulated by a special agreement.

4. They also jointly guarantee the necessary conditions for the deployment and functioning and the material and social security of the strategic armed forces...

Article 12

The High Contracting Parties undertake to discharge the international obligations incumbent on them under treaties and agreements entered into by the former USSR.”

291. On 24 December 1991 the USSR’s permanent representative to the United Nations, Ambassador Y. Vorontsov, communicated to the Secretary General of the United Nations a letter from the President of the Russian Federation, Boris Yeltsin, worded as follows:

“The USSR’s membership of the United Nations, including the Security Council and all the other organs and organisations of the United Nations system, is continued by the Russian Federation (RSFSR) with the support of the countries of the Commonwealth of Independent States. In that connection, I request that the name “Russian Federation” be used at the United Nations in place of the “Union of Soviet Socialist Republics”. The Russian Federation assumes full responsibility for all the USSR’s rights and obligations under the United Nations Charter, including financial undertakings. Please consider this letter confirmation of the right of all persons currently holding the status of USSR representatives to the United Nations to represent the Russian Federation in the organs of the United Nations.”

292. On 21 July 1992 the President of Moldova, Mr Mircea Snegur, and the President of the Russian Federation, Mr Boris Yeltsin, signed in Moscow an agreement concerning principles for a friendly resolution of the armed conflict in the Transdnistrian region of the Republic of Moldova, which provided:

“The Republic of Moldova and the Russian Federation,

Desiring to bring about as rapidly as possible a final ceasefire and settlement of the armed conflict in the Transdnistrian regions;

Endorsing the principles enshrined in the Charter of the United Nations and those of the Conference for Security and Cooperation in Europe;

Whereas on 3 July 1992 the President of the Republic of Moldova and the President of the Russian Federation reached agreement on principles,

Have agreed upon what follows:

Article 1

1. The parties to the conflict undertake, on signature of the present agreement, to take all necessary steps to implement the ceasefire, and a cessation of any other armed action against the other party.

2. As soon as the ceasefire has taken effect the parties will withdraw their armies, weapons and military equipment within seven days. Withdrawal of the two armies will permit the establishment of a security zone between the parties to the conflict. The exact boundaries of the security zone will be determined in a special protocol agreed between the parties on implementation of the present agreement.

Article 2

1. A specially created commission, composed of representatives of the three parties to the settlement of the conflict, will have responsibility for verifying implementation of the measures provided for in Article 1 above and ensure that a security regime is enforced within the security zone. To that end, the commission will have recourse to the groups of military observers brought in under previous agreements, including quadripartite agreements. The control commission will complete its work within seven days of signature of the present agreement.

2. Each party will appoint its representatives to the commission. The control commission will sit in Bender.

3. With a view to implementing the measures mentioned above, the control commission will take under its orders the military contingents of volunteers representing the parties participating in the implementation of the present agreement. The positions to be occupied by these contingents and their interventions to maintain the ceasefire and ensure security in the conflict in the region will be determined by the control commission, which must reach a consensus in this regard. The size of the military contingents, their status and the conditions for their intervention in and withdrawal from the security zone will be laid down in a separate protocol.

4. In the event of breaches of the provisions of the present agreement, the control commission will carry out inquiries and take without delay the necessary steps to re-establish peace and order, and appropriate measures to prevent future breaches.

Article 3

As the seat of the control commission, and in view of the seriousness of the situation, Bender is hereby declared a region subject to a security regime, enforcement of security being the task of the military contingents of the parties to implementation of the present agreement. The control commission will ensure the maintenance of public order in Bender, acting together with the police.

Bender will be administered by the organs of local self-government, where necessary acting together with the control commission.

Article 4

The Russian Federation's Fourteenth Army, stationed in the territory of the Republic of Moldova, will observe strict neutrality. Both parties to the conflict undertake to observe neutrality and not to engage in any action against the Fourteenth Army's property, its personnel or their families.

All questions relating to the Fourteenth Army's status or the stages and timetable for its withdrawal will be settled by negotiations between the Russian Federation and the Republic of Moldova.

Article 5

1. The parties to the conflict consider sanctions or blockades of any kind unacceptable. Accordingly, all obstacles to the free movement of goods, services and persons shall be removed, and all necessary measures will be taken to put an end to the state of emergency in the territory of the Republic of Moldova.

2. The parties to the conflict will enter without delay into negotiations to solve problems relating to the return of refugees to their homes, aid to the population of the conflict-struck region and reconstruction of housing and public buildings. The Russian Federation will lend its full support to that end.

3. The parties to the conflict will take all necessary steps to ensure the free movement of humanitarian aid intended for the conflict-struck region.

Article 6

A common press centre will be created with the task of providing the control commission with correct information about developments in the situation in the region.

Article 7

The parties consider that the measures provided for in the present agreement form a very important part of the settlement of the conflict by political means.

Article 8

The present agreement will enter into force on the day of its signature.

The present agreement shall cease to have effect by a joint decision of the parties or in the event of denunciation by one of the parties, which will entail cessation of the activities of the control commission and the military contingents under its orders."

293. On 8 April 1994 the Moldovan Parliament ratified with the following reservations the Alma-Ata Agreement of 21 December 1991 by which Moldova had joined the CIS:

"... 2. Article 6, with the exception of paragraphs 3 and 4 ...

The Parliament of the Republic of Moldova considers that within the CIS the Republic of Moldova will make economic cooperation its priority, excluding cooperation in the political and military sphere, which it considers incompatible with the principles of sovereignty and independence.”

294. The relevant provisions of the Moldovan Constitution of 29 July 1994 provide:

Article 11

“1. The Republic of Moldova proclaims its permanent neutrality.

2. The Republic of Moldova shall not authorise the stationing in its territory of troops belonging to other States.”

Article 111

“1. A form of autonomy under special conditions may be granted to areas on the left bank of the Dniester and in the south of the Republic of Moldova by virtue of a special status authorised by means of an institutional act...”

295. The relevant provisions of the Moldovan Criminal Code provide:

Article 116

“False imprisonment shall be punished by imprisonment for up to one year.

False imprisonment which has endangered the life or health of the victim or caused him or her physical suffering shall be punished by imprisonment for 1 to 5 years.”

Article 207

“Usurpation of the powers or title corresponding to an official office, if perpetrated in order to further the commission of an offence, shall be punished by a fine of up to 30 times the minimum monthly salary or up to 2 years’ labour or up to 2 years’ imprisonment.”

296. On 21 October 1994 Moldova and the Russian Federation signed an “Agreement concerning the legal status of the military formations of the Russian Federation temporarily present in the territory of the Republic of Moldova and the arrangements and time-limits for their withdrawal”, whose main provisions are worded as follows:

“The Republic of Moldova and the Russian Federation, hereinafter designated ‘the Parties’, with the participation of the region of Transdniestria,

having regard to the new political relations established in Europe and throughout the world;

confirming that the Republic of Moldova and the Russian Federation are sovereign and independent States;

convinced that they must ground their relations on principles of friendship, mutual understanding and cooperation;

proceeding from agreements the Parties have already reached in the military sphere;

acting in accordance with the documents adopted at the Conference for Security and Cooperation in Europe,

have agreed upon what follows: ...

Article 2

The status of the military formations of the Russian Federation in the territory of the Republic of Moldova is determined by the present Agreement.

The stationing of military formations of the Russian Federation within the territory of the Republic of Moldova is an interim measure.

Subject to technical constraints and the time required to station troops elsewhere, the Russian side will effect the withdrawal of the above-mentioned military formations within three years from the entry into force of the present Agreement.

The practical steps taken with a view to withdrawal of the military formations of the Russian Federation from Moldovan territory within the time stated will be synchronised with the political settlement of the Transdniestrian conflict and the establishment of a special status for the Transdniestrian region of the Republic of Moldova.

The stages and timetable for the final withdrawal of the military formations of the Russian Federation will be laid down in a separate protocol, to be agreed between the Parties' Ministries of Defence.

Article 5

For as long as Russian military formations remain in the territory of the Republic of Moldova, no recourse may be had to them with a view to the solution of an internal conflict within the Republic of Moldova, or for other military actions against third countries.

The sale of any type of military technology, armaments and ammunition belonging to the military formations of the Russian Federation in the territory of the Republic of Moldova may take place only after a special agreement between the Governments of the two countries.

Article 6

Movements and military investigations by the military formations of the Russian Federation in the territory of the Republic of Moldova outside their bases will take place in accordance with a plan drawn up by agreement with the relevant organs of the Republic of Moldova.

It is the responsibility of military formations to ensure, both inside their bases and during movements outside, that military objects and property are guarded in the manner prescribed within the Russian Army .

Article 7

Tiraspol military airport will be used as the joint base of the aviation of the military formations of the Russian Federation and the civil aviation of the Transdnestrian region of the Republic of Moldova.

Movement of military aircraft inside the airspace of the Republic of Moldova is to take place on the basis of a special agreement concluded between the Parties' Ministries of the Interior.

Article 13

Accommodation and barracks, service buildings, vehicle parks, firing ranges and fixed machine tools, stores and the tools they contain, buildings and other premises left unoccupied as a result of the withdrawal of the military formations of the Russian Federation will be transferred for management to the organs of the local public administrative authorities of the Republic of Moldova in the quantity existing *de facto* and in the condition they are in.

The manner of the transfer or sale of the immovable property of the military formations of the Russian Federation will be determined in a special agreement to be concluded between the Governments of the Parties.

Article 17

With a view to ensuring the withdrawal of the military formations of the Russian Federation from the territory of the Republic of Moldova within the time stated, and their effective operation in their bases within the territory of the Russian Federation, the premises needed for the installation of the military formations will be moved. The amount of money to be paid, the list of premises to be reconstructed and the place where they are to be installed will be determined in a special agreement.

Article 23

The present Agreement will enter into force on the day of the last notification by the Parties concerning implementation of the necessary internal procedures, and will remain in force until the total withdrawal of Russian military formations from the territory of the Republic of Moldova.

The present Agreement will be registered with the United Nations Organisation in accordance with Article 102 of the UN Charter.”

297. On 21 October 1994 an agreement was reached in Moscow between the Ministries of Defence of the Republic of Moldova and the Russian Federation on flights by the aviation of Russian military units temporarily located in the territory of the Republic of Moldova; this

provided for use of Tiraspol airport by transport planes of the armed forces of the Russian Federation. The relevant parts of that agreement provide:

Article 1

“Tiraspol military airport will be used by the military units of the Russian Federation until their definitive withdrawal from the territory of the Republic of Moldova.

Movement and joint flights at Tiraspol airport by the civil aviation of the region of Transdnistria belonging to the Republic of Moldova and Russian aircraft will take place in accordance with the ‘Provisional rules on the joint dispersed aviation of the military formations of the Russian Federation and the civil aviation of the region of Transdnistria of the Republic of Moldova’, and in coordination with the State civil aviation authority of the Republic of Moldova, the Ministry of Defence of the Republic of Moldova and the the Ministry of Defence of the Russian Federation.

Other aircraft may take off from Tiraspol airport only after coordination with the State aviation authorities of the Republic of Moldova and the Ministry of Defence of the Russian Federation.

Article 3

The postal aircraft belonging to the Russian units may take off from Tiraspol airport twice a week at most (on Tuesdays and Thursdays, or on other days of the week after prior coordination between the Parties).

Article 5

Requests by the aviation of the armed forces of the Russian Federation to carry out flying tuition, training flights and flyovers are to be presented before 3 p.m. (local time) through the air traffic ordination bodies (control centres).

Confirmation of such requests and the authorisations needed for use of the Republic of Moldova’s airspace will be issued by the anti-aircraft defence and aviation control centre of the Republic of Moldova. The decision concerning the use of the Republic of Moldova’s airspace, in accordance with the flight request, in the areas where the Russian units are temporarily stationed will be taken by the Chief of the General Staff of the armed forces of the Republic of Moldova.

Article 7

Monitoring of the implementation of the present agreement will be carried out by the representatives of the Ministries of Defence of the Republic of Moldova and the Russian Federation, in accordance with the special rules drawn up jointly by them.

Article 8

The present agreement will enter into force on the date of its signature and will remain valid until the definitive withdrawal of the military units of the Russian Federation from the territory of the Republic of Moldova.

The present agreement may be amended with the mutual consent of the Parties.”

298. The instrument of ratification of the Convention deposited by the Republic of Moldova with the Council of Europe on 12 September 1997 contains a number of declarations and reservations, the relevant part being worded as follows:

“1. The Republic of Moldova declares that it will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally settled.

...”

299. On 20 March 1998 the representative of the Russian Federation, Mr V. Chernomyrdin, and the representative of the “MRT”, Mr I. Smirnov, signed in Odessa (Ukraine) an agreement on questions relating to military property, worded as follows:

“At the close of negotiations on questions relating to military property linked to the presence of the Russian forces in Transdnestria, agreement has been reached on the following points:

all the property concerned is divided into three categories:

- the first category includes the standard-issue weapons of the United Group of Russian forces, its ammunition and its property;

- the second includes weapons, ammunition and surplus movable military property which must imperatively be returned to Russia;

- the third includes weapons, ammunition and military and other equipment which can be sold (decommissioned) directly on the spot or outside the places where they are stored.

Revenue from the sale of property in the third category will be divided between the parties in the following proportions:

Russian Federation: 50%

Transdnestria: 50%, after deducting the expenses arising from the sale of military property in the third category.

Conditions for the use and transfer of property in the third category shall be laid down by Russia with the participation of Transdnestria.

2. The parties have agreed to pay their debts to each other on 20 March 1998 in full by offsetting them against the income from sale of military property or from other sources.

3. Russia will continue to withdraw from Transdniestria the military property essential to the requirements of the Russian armed forces as defined in the annex to the present agreement. The Transdniestrian authorities will not oppose the removal of this property.

4. In agreement with Transdniestria, Russia will continue to destroy the unusable and untransportable ammunition near to the village of Kolbasna with due regard for safety requirements, including ecological safety.

5. To ensure the rapid transfer of the immovable property, the representatives of the Russian Federation and Transdniestria have agreed that the premises vacated by the Russian forces may be handed over to the local authorities in Transdniestria in accordance with an official deed indicating their real value.

6. It is again emphasised that the gradual withdrawal of Russian armed forces stationed in Transdniestria and the removal of their property will be effected transparently. Transparent implementation of the withdrawal measures can be ensured on a bilateral basis in accordance with the agreements signed between Moldavia and Russia. The essential information on the presence of the Russian forces in Transdniestria will be transmitted in accordance with the current practice to the OSCE, through the OSCE mission in Chisinau.”

THE LAW

I. WHETHER THE APPLICANTS COME WITHIN THE JURISDICTION OF THE REPUBLIC OF MOLDOVA

A. Arguments submitted to the Court

1. The Moldovan Government

300. The Moldovan Government submitted that the applicants did not at the material time and still do not come within the *de facto* jurisdiction of Moldova; the application was therefore incompatible *ratione personae* with the provisions of the Convention.

Under Article 1 of the Convention the High Contracting Parties had agreed to secure to everyone within their jurisdiction the rights and freedoms set forth therein. In international law a State’s territorial jurisdiction, which had to be exclusive and total, was called territorial

sovereignty. That sovereignty enabled it to exercise in a circumscribed area its State functions, made up of legislative, administrative and judicial acts. But a State not in effective control of part of its territory could not really exercise territorial jurisdiction and sovereignty. In such a case the concepts of “jurisdiction” and “territory” were not interchangeable. For the Convention to be applicable it had to be possible for the State to confer and secure the rights set forth in the Convention. Accordingly, the question whether a person came within the jurisdiction of a State was a question of fact; it was necessary to determine whether, at the time of the conduct complained of, the State authorities did or did not exercise effective control over the alleged victims.

301. In the present case, the areas on the left bank of the Dniester had not been under the control of the constitutional organs of the Republic of Moldova since at least the end of 1991. The “Moldavian Republic of Transdniestria” had been set up in that territory and had its own institutions, including armed forces, a police force and customs officers. That was why, when Moldova ratified the Convention, it had made a declaration seeking to exclude its responsibility with regard to acts committed in Transdniestrian territory, which it did not control.

The Moldovan Government pointed out that Moldova’s lack of control over the territory under the authority of the Transdniestrian regime had been confirmed by all the witnesses heard by the Court.

302. They submitted that the situation arising from the fact that it was impossible for them to exercise effective control over Transdniestrian territory was similar to that described by the Court in its *Cyprus v. Turkey* judgment ([GC], no. 25781/94, ECHR 2001-IV, § 78), in which it had held that the Cypriot Government were unable to exercise effective control over the territory of the “TRNC”, which the latter controlled *de facto*.

303. They rejected any allegation of cooperation on their part with the Transdniestrian authorities and asserted that certain measures had been taken in the context of negotiations to calm the Transdniestrian conflict, some of these with the approval and in the presence of OSCE mediators, and others in the interests of the Moldovan population inside the territory controlled by the Transdniestrian regime.

304. The Moldovan Government considered that they had discharged their positive obligations, both general, in terms of finding a solution to the conflict and re-establishing their control over Transdniestrian territory, and specific, in terms of securing the applicants’ Convention rights.

In that connection they referred to the numerous attempts made to settle the conflict, confirmed by the evidence of the witnesses heard in Chisinau, to the declarations and interventions of Moldovan political leaders – including those made during negotiations to settle the conflict – and other condemnations of the illegality of the applicants’ detention and conviction, chief among which was the Moldovan Supreme Court’s judgment of

3 February 1994, to the judicial measures taken against the persons responsible for their detention and conviction and to the economic and other measures taken to reaffirm Moldovan sovereignty throughout Moldovan territory, including the Transdnistrian part.

However, these measures had come to nothing, given that the “MRT” was an entity capable of functioning autonomously in relation to Moldova and that the Transdnistrian authorities had had recourse to reprisals in response to some of the measures concerned.

Consequently, the Moldovan Government submitted that they had no other means at their disposal to enforce respect for the applicants’ rights under the Convention without at the same time endangering Moldova’s economic and political situation.

2. The Government of the Russian Federation

305. The Russian Government merely observed that the Moldovan Government was the only legitimate government of Moldova. As Transdnistrian territory was an integral part of the Republic of Moldova, only the latter could be held responsible for acts committed in that territory.

3. The applicants

306. The applicants submitted that Moldova had to be held responsible for the violations of the Convention they alleged to have been committed in Transdnistrian territory in that, since Transdnistria was part of its national territory, and notwithstanding its lack of effective control, the Moldovan Government were under an obligation to take sufficient measures to ensure respect for the rights guaranteed by the Convention throughout its territory. However, they had not done so. The applicants contended that the positive steps taken by the Moldovan authorities had been limited and insufficient, regard being had to the political and economic means at their disposal.

Not only had the Moldovan Government not discharged their positive obligations under the Convention, they had even gone so far as to take measures amounting to *de facto* recognition of the Tiraspol regime or at least tacit acceptance of the situation such as the release of General Iakovlev (see paragraph 50 above), the transfer of Mr Ilascu to the Moldovan authorities on 5 May 2001 (see paragraph 279 above), the agreements of 16 May 2001 (see paragraph 174 above) and cooperation, particularly in customs and police matters (see paragraphs 176 and 177 above).

The applicants asserted that the speech in which President Voronin accused Mr Ilascu, after his release, of being responsible for the detention of the other applicants, had been an act capable of engaging Moldova’s responsibility under the Convention.

307. Lastly, the applicants submitted that the Moldovan authorities should have entered into long-term negotiations with the Russian

authorities, the only ones capable of controlling the Transdniestrian regime, with a view to securing their release.

4. The Romanian Government, third-party intervener

308. In their third-party intervention the Romanian Government observed at the outset that they did not wish to express a view on Moldova's responsibility in the case. Their intention was to supply clarifications of the facts and legal reasoning in support of the case of the applicants who were its nationals.

309. They considered that a State party to the Convention could not limit the scope of the undertakings it had given when ratifying the Convention by pleading that it did not have jurisdiction within the meaning of Article 1. Contracting States had to secure the rights guaranteed by the Convention to the persons resident in their territory and were required to take the steps which the positive obligations established by the Court's case-law made necessary.

Although the existence of such positive obligations should not be interpreted in such a way as to impose on the authorities an unbearable or excessive burden, States were nevertheless required to display reasonable diligence.

The Romanian Government submitted that in the present case the Moldovan authorities had failed to prove that they had made every effort to secure their sovereignty over Transdniestrian territory. In particular, they criticised the Moldovan authorities for not taking any effective steps to enforce the Supreme Court of Moldova's judgment of 3 February 1994 and authorising the customs services of the "MRT" to use the stamps and seals of the Republic of Moldova so that goods from the Transdniestrian region could be exported.

B. The Court's assessment

1. General principles

(a) The concept of jurisdiction

310. Article 1 of the Convention provides:

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

311. It follows from Article 1 that member States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their "jurisdiction".

The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it

which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.

312. The Court refers to its case-law to the effect that the concept of “jurisdiction” for the purposes of Article 1 of the Convention must be considered to reflect the term’s meaning in public international law (see *Gentilhomme, Schaff-Benhadj and Zerouki v. France*, judgment of 14 May 2002, § 20; *Bankovic and Others v. Belgium and 16 other Contracting States* (dec.), no. 52207/99, §§ 59-61, ECHR 2001-XII; and *Assanidze v. Georgia*, ECHR 2004 -..., § 137).

From the standpoint of public international law, the words “within their jurisdiction” in Article 1 of the Convention must be understood to mean that a State’s jurisdictional competence is primarily territorial (see the *Bankovic* decision, cited above, § 59), but also that jurisdiction is presumed to be exercised normally throughout the State’s territory.

This presumption may be limited in exceptional circumstances, particularly where a State is prevented from exercising its authority in part of its territory. That may be as a result of military occupation by the armed forces of another State which effectively controls the territory concerned (see *Loizidou v. Turkey (Preliminary Objections)* judgment of 23 March 1995, Series A no. 310, and *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV, §§ 76-80, as cited in the above-mentioned *Bankovic* decision, §§ 70-71), acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned.

313. In order to be able to conclude that such an exceptional situation exists, the Court must examine on the one hand all the objective facts capable of limiting the effective exercise of a State’s authority over its territory, and on the other the State’s own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory (see, among other authorities, *Z. v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V).

Those obligations remain even where the exercise of the State’s authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take.

314. Moreover, the Court observes that, although in the *Bankovic* case it emphasised the preponderance of the territorial principle in the application of the Convention (decision cited above, § 80), it also acknowledged that the concept of “jurisdiction” within the meaning of Article 1 of the Convention is not necessarily restricted to the national territory of the High Contracting Parties (see *Loizidou v. Turkey (Merits)*, judgment of

18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2234-2235, § 52).

The Court has accepted that in exceptional circumstances the acts of Contracting States performed outside their territory or which produce effects there may amount to exercise by them of their jurisdiction within the meaning of Article 1 of the Convention.

According to the relevant principles of international law, a State's responsibility may be engaged where, as a consequence of military action – whether lawful or unlawful – it in practice exercises effective control of an area situated outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control, whether it be exercised directly, through its armed forces, or through a subordinate local administration (*ibid.*).

315. It is not necessary to determine whether a Contracting Party actually exercises detailed control over the policies and actions of the authorities in the area situated outside its national territory, since even overall control of the area may engage the responsibility of the Contracting Party concerned (*ibid.*, pp. 2235-2236, § 56).

316. Where a Contracting State exercises overall control over an area outside its national territory its responsibility is not confined to the acts of its soldiers or officials in that area but also extends to acts of the local administration which survives there by virtue of its military and other support (see *Cyprus v. Turkey* [GC], cited above, § 77).

317. A State's responsibility may also be engaged on account of acts which have sufficiently proximate repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction. Thus, with reference to extradition to a non-Contracting State, the Court has held that a Contracting State would be acting in a manner incompatible with the underlying values of the Convention, "that common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, if it were knowingly to hand over a fugitive to another State where there are substantial grounds for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 35, §§ 88-91).

318. In addition, the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (see *Cyprus v. Turkey*, cited above, § 81). That is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community.

319. A State may also be held responsible even where its agents are acting *ultra vires* or contrary to instructions. Under the Convention a State's

authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will and cannot shelter behind their inability to ensure that it is respected (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64, § 159; see also Article 7 of the International Law Commission's Draft Articles on the responsibility of States for internationally wrongful acts, p. 104, and the *Cairo* case heard by the General Claims Commission, (1929) Reports of International Arbitral Awards 5 (RIAA), p. 516).

(b) State responsibility for a wrongful act

320. Another recognised principle of international law is that of State responsibility for the breach of an international obligation, as evidenced by the work of the International Law Commission on the Draft Articles on the responsibility of States for internationally wrongful acts (2001) ("the work of the ILC").

321. A wrongful act may be described as continuing if it extends over the entire period during which the relevant conduct continues and remains at variance with the international obligation (see the commentary on draft Article 14 § 2, p. 139 of the work of the ILC).

In addition, the Court considers that, in the case of a series of wrongful acts or omissions, the breach extends over the entire period starting with the first of the acts and continuing for as long as the acts or omissions are repeated and remain at variance with the international obligation concerned (see also draft Article 15 § 2 of the work of the ILC).

2. Application of the above principles

322. The Court must therefore ascertain whether Moldova's responsibility is engaged on account of either its duty to refrain from wrongful conduct or its positive obligations under the Convention.

323. The Court notes in the first place that Moldova asserted that it was not in control of part of its national territory, namely the region of Transnistria.

324. The Court observes that in its decision on admissibility it held that the declaration made by Moldova in its instrument of ratification of the Convention concerning the legitimate Moldovan authorities' lack of control over Transnistrian territory was not a valid reservation within the meaning of Article 57 of the Convention.

The question which arises is therefore whether, despite the above-mentioned finding, the factual situation to which Moldova's declaration and the subsequent observations submitted by the Moldovan Government refer affects the legal position as regards Moldova's responsibility under the Convention.

325. In the present case the Court notes that, having been proclaimed sovereign by its Parliament on 23 June 1990, and having become

independent on 27 August 1991 and been subsequently recognised as such by the international community, the Republic of Moldova was immediately confronted with a secessionist movement in the region of Transdniestria. That movement grew stronger in December 1991, with the organisation of local elections, which were declared illegal by the Moldovan authorities (see paragraph 47 above). At the end of 1991 a civil war broke out between the forces of the Republic of Moldova and the Transdniestrian separatists, actively supported by at least some of the soldiers of the Fourteenth Army. In March 1992, in view of the seriousness of the situation, a State of emergency was declared (see paragraph 69 above).

During the armed conflict the Moldovan authorities made a series of appeals to the international community, including one to the United Nations Security Council on 23 June 1992 (see paragraph 83 above), asking the Security Council to support them in their struggle for independence. Accusing the Russian Federation of supporting the Transdniestrian separatists, they repeatedly asked Russia to halt the “aggression” against them (see paragraphs 78-79 and 82-83 above).

326. On 21 July 1992 a ceasefire agreement was signed on the basis of the status quo and providing for the establishment of a security zone to preserve it (see paragraphs 87 to 89 above).

On 29 July 1994 the new Constitution of the Republic of Moldova was adopted. Article 111 provided for the possibility of granting a form of autonomy to areas which included places on the left bank of the Dniester. Article 11 prohibited the stationing of foreign troops in its territory (see paragraph 294 above).

327. Subsequently, when it ratified the Convention on 12 September 1997, Moldova deposited with its instrument of ratification a declaration stating that it was unable to ensure compliance with the Convention’s provisions in that part of its territory under the effective control of the organs of the “self-proclaimed Trans-Dniester republic” until the conflict was finally settled (see paragraph 298 above).

328. The ceasefire agreement of 21 July 1992 ended the first phase of Moldova’s efforts to exercise its authority throughout its territory.

329. The Court notes that after this period Moldova tended to adopt an acquiescent attitude, maintaining over the region of Transdniestria a control limited to such matters as the issue of identity cards and customs stamps (see paragraphs 179 and 180 above).

The Court accordingly sees in the declaration attached to the instrument of Moldova’s ratification of the Convention a reference to this *de facto* situation.

330. On the basis of all the material in its possession the Court considers that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority

over part of its territory, namely that part which is under the effective control of the “MRT”.

Moreover, that point is not disputed by any of the parties or by the Romanian Government.

331. However, even in the absence of effective control over the Transdnestrian region, Moldova still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention.

3. The concept of positive obligations

332. In determining the scope of a State’s positive obligations, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, the diversity of situations obtaining in Contracting States and the choices which must be made in terms of priorities and resources. Nor must these obligations be interpreted in such a way as to impose an impossible or disproportionate burden (see *Özgür Gündem v. Turkey*, judgment of 16 March 2000, no. 23144/93, § 43, ECHR 2000-III).

333. The Court considers that where a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up, whether or not this is accompanied by military occupation by another State, it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State.

Nevertheless such a factual situation reduces the scope of that jurisdiction in that the undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State’s positive obligations towards persons within its territory. The State in question must endeavour, with all the legal and diplomatic means available to it vis-à-vis foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms guaranteed by the Convention.

334. Although it is not for the Court to indicate which measures the authorities should take in order to comply with their obligations most effectively, it must verify that the measures actually taken were appropriate and sufficient in the present case. When faced with a partial or total failure to act, the Court’s task is to determine to what extent a minimum effort was nevertheless possible and whether it should have been made. Determining that question is especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Articles 2 and 3 of the Convention.

335. Consequently, the Court concludes that the applicants are within the jurisdiction of the Republic of Moldova for the purposes of Article 1 of the Convention but that its responsibility for the acts complained of, committed in the territory of the “MRT”, over which it exercises no effective authority, is to be assessed in the light of its positive obligations under the Convention.

4. Whether Moldova discharged its positive obligations

336. The Court must determine whether the Moldovan authorities discharged their positive obligations to secure the rights guaranteed by the Convention, or whether, as the applicants and the Romanian Government submitted, the Moldovan Government did not take enough measures to secure those rights.

337. In the present case, in view of the complexity of the factual situation, the Court considers in the first place that the question whether Moldova discharged its positive obligations is closely bound up both with relations between Moldova and the Russian Federation and with relations between Transdnistria and the Russian Federation. In addition, account has to be taken of the influence Moldova could exert through the Russian authorities to improve the applicants’ situation in the Moldovan territory in Transdnistria.

338. The Court observes that it does not have jurisdiction to consider whether events prior to Moldova’s ratification of the Convention were compatible with its provisions. It can however have regard to acts committed before the date of ratification when considering Moldova’s positive obligations and use them for comparative purposes when assessing the efforts made by Moldova after 12 September 1997.

339. Moldova’s positive obligations relate both to the measures needed to re-establish its control over Transdnistrian territory, as an expression of its jurisdiction, and to measures to ensure respect for the applicants’ rights, including attempts to secure their release.

340. The obligation to re-establish control over Transdnistria required Moldova, firstly, to refrain from supporting the separatist regime of the “MRT”, and secondly to act by taking all the political, judicial and other measures at its disposal to re-establish its control over that territory.

It is not for the Court to indicate the most appropriate measures Moldova should have taken or should take to that end, or whether such measures were sufficient. It must only verify Moldova’s will, expressed through specific acts or measures, to re-establish its control over the territory of the “MRT”.

341. In the present case, from the onset of hostilities in 1991-92, the Moldovan authorities never ceased complaining of the aggression they considered they had suffered and rejected the “MRT”’s declaration of independence.

In the Court's opinion, when confronted with a regime sustained militarily, politically and economically by a power such as the Russian Federation (see paragraphs 111 to 161 above), there was little Moldova could do to re-establish its authority over Transdniestrian territory. That was evidenced by the outcome of the military conflict, which showed that the Moldovan authorities did not have the means to gain the upper hand in Transdniestrian territory against the rebel forces supported by Fourteenth Army personnel.

342. The Moldovan authorities continued after the end of the hostilities in July 1992 to take steps to re-establish their control over Transdniestria. From 1993 onwards, for example, they began to bring criminal proceedings against certain Transdniestrian officials accused of usurping titles corresponding to State offices (see paragraphs 167 and 229 to 230 above).

343. Moldova's efforts to re-establish its authority over the Transdniestrian region continued after 1994, its authorities having continued to assert their sovereignty over the territory controlled by the "MRT", both internally and internationally (see paragraphs 31, 53, 66, 68, 69 and 77 to 83 above). In 1994 it adopted a new Constitution which provided, *inter alia*, for the possibility of granting a certain amount of autonomy to Transdniestria. In the same year it signed with the Russian Federation an agreement for the withdrawal of Russian troops from Transdniestria within three years.

On 12 September 1997 it ratified the Convention and confirmed in its reservations to the Convention its intention to re-establish control over the region of Transdniestria.

344. These efforts continued after 1997, despite a reduction in the number of judicial measures intended to assert Moldovan authority in Transdniestria. The prosecutions of Transdniestrian officials were not followed up and were even discontinued in 2000, and a former dignitary of the Transdniestrian regime was permitted, after his return to Moldova, to hold high State office (see paragraph 168 above).

On the other hand the efforts of the Moldovan authorities were directed more towards diplomatic activity. In March 1998 Moldova, the Russian Federation, Ukraine and the region of Transdniestria signed a number of instruments with a view to settling the Transdniestrian conflict. Contacts and negotiations took place between representatives of Moldova and the Transdniestrian regime. Lastly, from 2002 to the present a number of proposals for the settlement of the conflict have been put forward and discussed by the President of Moldova, the OSCE and the Russian Federation (see paragraphs 107 to 110 above).

The Court does not see in the reduction of the number of measures taken a renunciation on Moldova's part of attempts to exercise its jurisdiction in the region, regard being had to the fact that several of the measures

previously tried by the Moldovan authorities had been blocked by ‘MRT’ reprisals (see paragraphs 181 to 184 above).

The Court further notes that the Moldovan Government argued that their change of negotiating strategy towards diplomatic approaches aimed at preparing Transdniestria’s return within the Moldovan legal order had been a response to demands expressed by the separatists during discussions on the settlement of the situation in Transdniestria and the applicants’ release. They had accordingly abandoned the measures they had previously adopted, particularly in the legal sphere. The Court notes the witness evidence to that effect given by Mr Sturza (see Annex, §§ 309-313) and Mr Sidorov (see Annex, § 446).

345. In parallel with that change of strategy, relations were established between the Moldovan authorities and the Transdniestrian separatists. Economic cooperation agreements were concluded, relations were established between the Moldovan Parliament and the ‘Parliament of the MRT’, for several years there has been cooperation in police and security matters and there are forms of cooperation in other fields such as air traffic control, telephone links and sport (see paragraphs 114, 178 and 185 above).

The Moldovan Government explained that these cooperation measures had been taken by the Moldovan authorities out of a concern to improve the everyday lives of the people of Transdniestria and allow them to lead as nearly normal lives as possible. The Court, like the Moldovan Government, takes the view that, given their nature and limited character, these acts cannot be regarded as support for the Transdniestrian regime. On the contrary, they represent affirmation by Moldova of its desire to re-establish control over the region of Transdniestria.

346. As regards the applicants’ situation, the Court notes that before ratification of the Convention in 1997 the Moldovan authorities took a number of judicial, political and administrative measures. These included:

- The Supreme Court’s judgment of 3 February 1994 quashing the applicants’ conviction of 9 December 1993 and setting aside the warrant for their detention (see paragraphs 222 and 223 above);
- the criminal proceedings brought on 28 December 1993 against the “judges” of the “Supreme Court of Transdniestria” (see paragraph 223 above);
- the amnesty declared by the President of Moldova on 4 August 1995 (see paragraph 226 above) and the Moldovan parliament’s request of 3 October 1995 (see paragraph 227 above);
- the sending of doctors from Moldova to examine the applicants detained in Transdniestria (see paragraphs 239 and 263 above); and
- the financial assistance given to the applicants’ families and the help they were given in arranging visits to the applicants (see paragraph 239 above).

During that period, as appears from the witness evidence, in discussions with the Transdnestrian leaders the Moldovan authorities also systematically raised the question of the applicants' release and respect for their Convention rights (see paragraphs 172 and 274 to 277 above). In particular, the Court notes the efforts made by the judicial authorities; for example, the Deputy Minister of Justice, Mr V. Sturza, made numerous visits to Transdnestria to negotiate with the Transdnestrian authorities for the applicants' release.

347. Even after 1997 measures were taken by Moldova to secure the applicants' rights: doctors were sent to Transdnestria to examine them (the last examination by doctors from Chisinau took place in 1999), their families continued to receive financial assistance from the authorities and Mr Sturza, the former Minister of Justice and chairman of the Commission for negotiations with Transdnestria, continued to raise the question of the applicants' release with the Transdnestrian authorities. In that connection, the Court notes that, according to the evidence of certain witnesses, Mr Ilascu's release was the result of lengthy negotiations with the 'MRT' authorities. Moreover, it was following those negotiations that Mr Sturza went to Transdnestria in April 2001 with the expectation of bringing the four applicants back to Chisinau (see paragraph 274 above and Annex, Mr Sturza, §§ 310-312).

It is true that the Moldovan authorities did not pursue certain measures taken previously, particularly investigations in respect of persons involved in the applicants' conviction and detention. However, the Court considers that in the absence of control over Transdnestrian territory by the Moldovan authorities any judicial investigation in respect of persons living in Transdnestria or linked to offences committed in Transdnestria would be ineffectual. That is confirmed by the witness evidence on that point (see Annex, Mr Postovan, § 184, Mr Catana, § 208, and Mr Rusu, § 302).

Lastly, the Moldovan authorities have applied not only to the 'MRT' regime but also to other States and international organisations for their assistance in obtaining the applicants' release (see Annex, Mr Mosanu, § 249).

348. The Court does not have any evidence that since Mr Ilascu's release in May 2001 effective measures have been taken by the authorities to put an end to the continuing infringements of their Convention rights complained of by the other three applicants. At least, apart from Mr Sturza's evidence to the effect that the applicants' situation continues to be raised regularly by the Moldovan authorities in their dealings with the 'MRT' regime, the Court has no other information capable of justifying the conclusion that the Moldova Government have been diligent with regard to the applicants.

In their negotiations with the separatists the Moldovan authorities have restricted themselves to raising the question of the applicants' situation

orally, without trying to reach an agreement guaranteeing respect for their Convention rights (see Annex, Mr Sturza, §§ 310-313).

Similarly, although the applicants have been deprived of their liberty for nearly twelve years, no overall plan for the settlement of the Transdniestrian conflict brought to the Court's attention deals with their situation and the Moldovan Government did not claim that such a document existed or that negotiations on the subject were in progress.

349. Nor have the Moldovan authorities been any more attentive to the applicants' fate in their bilateral relations with the Russian Federation.

In the Court's opinion, the fact that at the hearing on 6 July 2001 the Moldovan Government refrained from arguing that the Russian Federation was responsible for the alleged violations on account of the presence of its army in Transdniestria, so as not to hinder the process intended to "put an end to ... the applicants' detention" (see paragraph 360 below), amounted to an admission on their part of the influence the Russian authorities might have over the Transdniestrian regime if they were to urge it to release the applicants. Contrary to the position in the period 1992-94, when the Moldovan authorities raised the question of the applicants' release with the Russian authorities, after 1994 interventions to that end also seem to have ceased.

In any event, the Court has not been informed of any approach by the Moldovan authorities to the Russian authorities after May 2001 aimed at obtaining the remaining applicants' release.

350. In short, the Court notes that the negotiations for a settlement of the situation in Transdniestria, in which the Russian Federation is acting as a guarantor State, have been going on since 2001 without any mention of the applicants and without any measure being taken or considered by the Moldovan authorities to secure to the applicants their Convention rights.

351. Having regard to all the material in its possession, the Court considers that, even after Mr Ilascu's release in May 2001, it was within the power of the Moldovan Government to take measures to secure to the applicants their rights under the Convention.

352. The Court accordingly concludes that Moldova's responsibility is capable of being engaged under the Convention on account of its failure to discharge its positive obligations with regard to the acts complained of which occurred after May 2001.

In order to determine whether Moldova's responsibility is indeed engaged under the Convention, the Court must therefore examine each of the complaints raised by the applicants.

II. WHETHER THE APPLICANTS COME WITHIN THE JURISDICTION OF THE RUSSIAN FEDERATION

A. Arguments submitted to the Court

1. *The Government of the Russian Federation*

353. The Russian Government submitted that the acts complained of did not come within the “jurisdiction” of the Russian Federation within the meaning of Article 1 of the Convention.

354. The Russian Federation had not exercised and did not exercise jurisdiction over the region of Transdnistria, which was a territory belonging to the Republic of Moldova. In particular, the Russian Federation had never occupied part of the Republic of Moldova and the armed forces stationed there were there with Moldova’s agreement. The units of the former Fourteenth Army had not interfered in the armed conflict between Moldova and Transdnistria, but by virtue of agreements between Moldova and the Russian Federation they had taken on peacekeeping duties and had thus prevented an aggravation of the conflict and an increase in the number of victims among the civilian population. Of course, when illegal armed actions, both by Transdnistria and by Moldova, had been committed against soldiers of the former Fourteenth Army they had been obliged to defend themselves.

It had not been possible to honour the undertaking given by the Russian Federation in 1994 to withdraw its military forces from the territory of the Republic of Moldova within three years from signature of the agreement, since this withdrawal did not depend on the Russian Federation alone. Firstly, the authorities of the “MRT” were opposed to it; secondly, technical considerations relating to the removal of military stores had to be taken into account. At the OSCE summit in Istanbul the deadline had been put back to 31 December 2002, and the Russian Federation intended to honour the agreements reached at the summit.

355. The Russian Government submitted that the stationing of Russian troops in Transdnistria was not comparable with the presence of Turkish troops in the northern part of Cyprus, which the Court had dealt with in the *Loizidou v. Turkey* and *Cyprus v. Turkey* judgments (both cited above). The main difference lay in the number of troops, as the ROG had only 2,000 soldiers, whereas the Turkish forces had more than 30,000 soldiers in northern Cyprus.

The ROG troops did not act together with or on behalf of the “MRT” but had a peacekeeping mission, the objective of its commander being to preserve peace and stability in the region and guard the enormous quantity

of weapons still stockpiled there. The peacekeeping forces observed the neutrality required by the agreement of 21 July 1992.

In short, the Russian military presence in the territory of the Republic of Moldova, with Moldova's consent, with the aim of preserving the peace there, could not engage the Russian Federation's responsibility for the purposes of Article 1 of the Convention.

356. The Russian Government categorically denied that they exercised, or had exercised in the past, any control whatsoever over Transdniestrian territory and pointed out that the "MRT" had set up its own power structures, including a parliament and a judiciary.

The Russian Federation did not exercise any economic control over the region of Transdniestria, which conducted its own independent economic policy within the Republic of Moldova, for example by exporting foodstuffs and alcohol, with its own labels, but as products of the Republic of Moldova and following the rules applicable to each field of activity. Consequently, unlike the situation in northern Cyprus, the Transdniestrian regime was far from owing its survival to the Russian Federation. In the event of the total withdrawal of Russian troops, the Transdniestrian local authorities would have no difficulty in continuing to carry on their activities freely.

357. The Russian Federation had never given the authorities of Transdniestria the slightest military, financial or other support. It had never recognised and still did not recognise the "MRT", as the region called itself. The Transdniestrian region was an integral part of the territory of the Republic of Moldova, just like Gagauzia.

The Government rejected the applicants' allegation that the Russian Federation had opened a consulate in Transdniestrian territory, but admitted that the subject had been on the agenda of discussions with the Republic of Moldova for a long time.

The agreement of 20 March 1998 on questions relating to the property of the former Fourteenth Army (see paragraph 299 above) and other agreements on economic cooperation with the "MRT" were private-law contracts between two private parties and were not governed by international law. It could not be concluded on the strength of those agreements that the Russian Federation recognised the "MRT".

Similarly, no conclusion could be drawn from Articles 7 and 13 of the agreement of 21 October 1994 between Moldova and the Russian Federation (see paragraph 296 above), which provided for joint use of Tiraspol military airport by the military aviation of the Russian Federation and the "civil aviation of the Transdniestrian region of the 'Republic of Moldova'", and the transfer "to the organs of the local public administrative authorities of the Republic of Moldova" of premises vacated or machine tools left behind as a result of the withdrawal of the Russian Federation's military formations. According to the Russian Government, the "Dniestrian

Region” was regarded in that case as a “business entity” carrying on its own activities inside a specific territory.

358. In the light of the statements made by the witnesses in Moldova, in particular the evidence of the former military prosecutor, Mr Timoshenko, the Russian Government admitted that the applicants had been detained in the premises of the Fourteenth Army but asserted that this detention had been in breach of the ROG’s disciplinary regulations and that it had been of very short duration, since Mr Timoshenko had immediately put a stop to the illegal situation. Consequently, in any event, a possible breach of legal provisions had been remedied and the applicants could not consider themselves victims.

As to the remaining allegations, the Russian Government asserted that there was no causal link between the presence of Russian military forces in the region of Transdnistria and the applicants’ situation.

2. *The Moldovan Government*

359. In their written observations of 24 October 2000 the Moldovan Government submitted that the responsibility of the Russian Federation could be engaged in the present case under Article 1 of the Convention, regard being had to the stationing of troops and equipment belonging to the Russian Federation in Transdnistrian territory. They relied in that connection on the Commission’s decision of 10 July 1978 in the above-mentioned *Cyprus v. Turkey* case and the Court’s judgment on the preliminary objections in the above-mentioned *Loizidou v. Turkey* case.

360. At the hearing on 6 June 2001 the Moldovan Government stated that they wished to modify the position they had previously adopted in their written observations of 24 October 2000 as regards the question whether the Russian Federation was responsible. They justified their new position with the claim that it was intended to “avert undesirable consequences, namely the halting of the process aimed at ending the Transdnistrian dispute and the detention of the other applicants”.

361. In their written observations of 1 October 2003 the Moldovan Government emphasised that the Fourteenth Army had taken an active part, both directly and indirectly, in the conflict of 1991-92 on the separatists’ side and had given them logistical and military support. The Moldovan Government considered that the Russian Federation was the successor State, in an international context, of the former USSR and that it was therefore responsible for acts committed by organs of the former USSR, in this case the Fourteenth Army, which had become the ROG, particularly the installation of the Transdnistrian separatist regime, and the consequences of those acts.

In addition, the Moldovan Government asserted that the responsibility of the Russian Federation had to be engaged on account of the participation of Fourteenth Army personnel in the arrest and interrogation of the applicants,

their detention on Fourteenth Army premises and their transfer into the charge of the Transdnistrian separatists.

362. Consequently, the Moldovan Government considered that, in general, under Article 1 of the Convention, acts committed in the territory of Transdnistria came within the jurisdiction of the Russian Federation until the final settlement of the Transdnistrian dispute.

363. The Moldovan government asserted that, while they were not opposed to the transfer to Transdnistria of some of the civilian equipment belonging to the ROG, they had always categorically opposed the transfer to the region of any type of armaments and military or dual-use technology (with both military and civilian applications).

As regards the meaning of the term “local public administrative authorities of the Transdnistrian region of the Republic of Moldova” found in certain agreements with the Russian Federation in which specific rights were conferred on those authorities, the Moldovan Government said that it referred to administrative bodies set up in accordance with the constitutional rules of the Republic of Moldova and subordinate to the central authorities. They categorically rejected the interpretation to the effect that the local authorities concerned in those agreements were those subordinate to the Tiraspol authorities.

3. The applicants

364. The applicants submitted that the responsibility of the Russian Federation was engaged on account of a number of factors. These included the contribution made by the former USSR and the Russian Federation to the creation of the “MRT”, the participation of Russian armed forces and Russian Cossacks in the armed conflict of 1991-92 between Moldova and the “MRT” and the economic and political support given by the Russian Federation to the “MRT”.

365. In the first place, the Russian authorities had supported the Transdnistrian separatists both politically and by taking part in the armed conflict. In that connection, the applicants referred to the factual evidence that had been produced of the Russian Federation’s support (see paragraphs 111 to 136 above) and the numerous appeals made in 1992 by the Moldovan authorities complaining of the former Fourteenth Army’s aggression against Moldovan territory. They also complained of public statements made by commanders of the former Fourteenth Army and Russian leaders in the separatists’ favour and of participation by those commanders in elections in Transdnistria, military parades by the Transdnistrian forces and other public events.

366. The applicants alleged that the Russian Federation had done nothing to prevent the Cossacks and other Russian mercenaries from travelling to Transdnistria to fight alongside the separatists. On the contrary, the Russian Federation had encouraged the mercenaries to do that,

while the former Fourteenth Army had armed and trained the Transdniestrian separatists.

367. The applicants submitted that the so-called organs of power of the “MRT” were in fact puppets of the Russian Government.

368. Moreover, they asserted that the “MRT” was recognised by the Russian Government. They referred in that connection to the agreement on the property of the former Fourteenth Army concluded on 20 March 1998 between the Russian Federation and Transdnistria (see paragraph 299 above) and to the allegations that political parties of the Russian Federation had branches in Tiraspol, that the Ministry of Foreign Affairs of the Russian Federation had opened a consular office without the agreement of the Moldovan authorities and that the Transdniestrian leaders, including Mr Smirnov, Mr Maracuta and Mr Caraman, held Russian passports.

369. Apart from its *de facto* recognition of the “MRT”, the Russian Federation supported the Tiraspol regime economically and financially, as evidenced by the above-mentioned agreement of 20 March 1998, which granted the “MRT” part of the income from the sale of the ROG’s equipment, a reduction by the Russian authorities of Transdnistria’s debt to them, economic relations between the Russian armaments manufacturer “Rosvoorujenye” and the Transdniestrian authorities, and the opening of accounts by the Bank of Transdnistria with the Russian central bank.

370. According to the applicants, such acts, combined with the *de facto* control exercised by the Russian Federation over Transdnistrian territory, engaged the responsibility of the Russian Federation with regard to the human rights violations committed there.

They relied on the Court’s case-law in the above-mentioned *Loizidou v. Turkey (preliminary objections)* judgment in support of their opinion that the Russian Federation could be held responsible for acts committed outside its territory, but in a region which it controlled.

They further relied on the case-law of the International Court of Justice, which had pointed out in its advisory opinion on the South African presence in Namibia that States were under an obligation to ensure that the acts of private individuals did not affect the inhabitants of the territory in question. They also referred to the *Kling* case, in which the General Claims Commission, set up by the United States and Mexico in 1923, had ruled that the State was responsible for rebellious conduct by its soldiers.

4. *The Romanian Government, third-party intervener*

371. The Romanian Government observed at the outset that the purpose of its intervention was to supply clarifications of the facts and legal reasoning in support of the case of the applicants who were its nationals.

372. While accepting that the acts complained of had taken place, and were continuing, in the “MRT”, a part of Moldovan territory under the *de facto* authority of the separatist administration in Tiraspol, the Romanian

Government emphasised the influence of Russian troops in the creation and continued existence of the Transdnestrian region outside the control of the Chisinau government.

They submitted that the former Fourteenth Army had contributed to the creation of the separatist military forces. After the end of the conflict the personnel of the former Fourteenth Army had remained inside Moldovan territory.

373. The Romanian Government referred to the Convention institutions' case-law to the effect that a Contracting Party's responsibility can also be engaged when, as the result of military action, it exercises control in practice over an area outside its national territory (*Cyprus v. Turkey*, application no. 8007/77, Commission decision of 10 July 1978, cited above; *Loizidou v. Turkey (preliminary objections)*, cited above; and *Cyprus v. Turkey*, application no. 25781/94, Commission's report of 4 June 1999).

They submitted that the case-law concerned was wholly applicable to the facts of the present case, firstly on account of the participation of the forces of the former Fourteenth Army in the military conflict during which Moldova had tried to re-establish its sovereign jurisdiction over the territory in question, and secondly because of the stationing of those troops in the "MRT". It was of little consequence that the real number of Russian troops had been gradually reduced in proportion to the local authorities' progress in forming their own armed forces, since the element of dissuasion represented by the former Fourteenth Army's continued presence in Moldovan territory remained.

374. Moreover, the organs of the Russian Federation exerted political influence over the secessionist authorities in Tiraspol.

375. The Romanian Government argued that a State was responsible for the acts committed by its organs, including abuses of authority, and referred on that point to certain declarations made by the Russian authorities, including President Yeltsin, and to the case of the Russian soldiers who had gone over to the separatists. In addition, they submitted that a State should also be held responsible for wrongful acts committed by private individuals where those acts were the result of a shortcoming on the part of the State's organs, whether in the form of a failure to prevent them, lack of control or negligence.

B. The Court's assessment

1. General principles

376. The Court considers that the general principles summarised above (see paragraphs 310 to 321) are relevant to examination of the question whether the applicants come within the jurisdiction of the Russian Federation.

2. Application of the above-mentioned principles

377. In the present case the Court's task is to determine whether, regard being had to the principles set forth above (see, in particular, paragraphs 314 to 316), the Russian Federation can be held responsible for the alleged violations.

378. The Court notes at the outset that the Russian Federation is the successor State to the USSR under international law (see paragraph 290 above). It further notes that, when the CIS was set up, Moldova did not join in exercises by the CIS armed forces and later confirmed that it did not wish to take part in the military aspect of cooperation within the CIS (see paragraphs 293 and 294 above).

(a) Before ratification of the Convention by the Russian Federation

379. The Court notes that on 14 November 1991, when the USSR was being broken up, the young Republic of Moldova asserted a right to the equipment and weapons stocks of the USSR's Fourteenth Army which was stationed in its territory (see paragraph 37 above).

It also entered into negotiations with the Russian Federation with a view to the withdrawal of that army from its territory.

380. The Court observes that during the Moldovan conflict in 1991-92 forces of the former Fourteenth Army (which owed allegiance to the USSR, the CIS and the Russian Federation in turn) stationed in Transdnistria, an integral part of the territory of the Republic of Moldova, fought with and on behalf of the Transdnistrian separatist forces. Moreover, large quantities of weapons from the stores of the Fourteenth Army (which later became the ROG) were voluntarily transferred to the separatists, who were also able to seize possession of other weapons unopposed by Russian soldiers (see paragraphs 48 to 136 above).

The Court notes that from December 1991 onwards the Moldovan authorities systematically complained, to international bodies among others, of what they called "the acts of aggression" of the former Fourteenth Army against the Republic of Moldova and accused the Russian Federation of supporting the Transdnistrian separatists.

Regard being had to the principle of States' responsibility for abuses of authority, it is of no consequence that, as the Russian Government submitted, the former Fourteenth Army did not participate as such in the military operations between the Moldovan forces and the Transdnistrian insurgents.

381. Throughout the clashes between the Moldovan authorities and the Transdnistrian separatists the leaders of the Russian Federation supported the separatist authorities by their political declarations (see paragraphs 46, 75, 137 and 138 above). The Russian Federation drafted the main lines of the ceasefire agreement of 21 July 1992, and moreover signed it as a party.

382. In the light of all these circumstances the Court considers that the Russian Federation's responsibility is engaged in respect of the unlawful acts committed by the Transdniestrian separatists, regard being had to the military and political support it gave them to help them set up the separatist regime and the participation of its military personnel in the fighting. In acting thus the authorities of the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria, which is part of the territory of the Republic of Moldova.

The Court next notes that even after the ceasefire agreement of 21 July 1992 the Russian Federation continued to provide military, political and economic support to the separatist regime (see paragraphs 111 to 161 above), thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy vis-à-vis Moldova.

383. The Court further notes that in the context of the events mentioned above the applicants were arrested in June 1992 with the participation of soldiers of the Fourteenth Army (subsequently the ROG). The first three applicants were then detained on Fourteenth Army premises and guarded by Fourteenth Army troops. During their detention these three applicants were interrogated and subjected to treatment which could be considered contrary to Article 3 of the Convention. They were then handed over into the charge of the Transdniestrian police.

Similarly, after his arrest by soldiers of the Fourteenth Army, the fourth applicant was handed over to the Transdniestrian separatist police, then detained, interrogated and subjected on police premises to treatment which could be considered contrary to Article 3 of the Convention.

384. The Court considers that on account of the above events the applicants came within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention, although at the time when they occurred the Convention was not in force with regard to the Russian Federation.

This is because the events which gave rise to the responsibility of the Russian Federation must be considered to include not only the acts in which the agents of that State participated, like the applicants' arrest and detention, but also their transfer into the hands of the Transdniestrian police and regime, and the subsequent ill-treatment inflicted on them by those police, since in acting in that way the agents of the Russian Federation were fully aware that they were handing them over to an illegal and unconstitutional regime.

In addition, regard being had to the acts the applicants were accused of, the agents of the Russian Government knew, or at least should have known, the fate which awaited them.

385. In the Court's opinion, all of the acts committed by Russian soldiers with regard to the applicants, including their transfer into the charge of the separatist regime, in the context of the Russian authorities'

collaboration with that illegal regime, are capable of engaging responsibility for the acts of that regime.

It remains to be determined whether that responsibility remained engaged and whether it was still engaged at the time of the ratification of the Convention by the Russian Federation.

(b) After ratification of the Convention by the Russian Federation

386. With regard to the period after ratification of the Convention, on 5 May 1998, the Court notes the following.

387. The Russian army is still stationed in Moldovan territory in breach of the undertakings to withdraw them completely given by the Russian Federation at the OSCE summits in Istanbul (1999) and Porto (2001). Although the number of Russian troops stationed in Transdniestria has in fact fallen significantly since 1992 (see paragraph 131 above), the Court notes that the ROG's weapons stocks are still there.

Consequently, in view of the weight of this arsenal (see paragraph 131 above), the ROG's military importance in the region and its dissuasive influence persist.

388. The Court further observes that by virtue of the agreements between the Russian Federation, on the one hand, and the Moldovan and Transdniestrian authorities respectively, on the other (see paragraphs 112 to 120 and 123 above), the "MRT" authorities were supposed to acquire the infrastructure and arsenal of the ROG at the time of its total withdrawal. It should be noted in that connection that the interpretation given by the Russian Government of the term "local administrative authorities" of the region of Transdniestria, to be found, among other places, in the agreement of 21 October 1994 (see paragraph 116 above) is different from that put forward by the Moldovan Government, a fact which enabled the "MRT" regime to acquire that infrastructure.

389. As regards military relations, the Court notes that the Moldovan delegation to the Joint Control Commission constantly raised allegations of collusion between the ROG personnel and the Transdniestrian authorities regarding transfers of weapons to the latter. It notes that the ROG personnel denied those allegations in the presence of the delegates, declaring that some equipment could have found its way into the separatists' hands as a result of thefts.

Taking into account the accusations made against the ROG and the dangerous nature of its weapons stocks, the Court finds it hard to understand why the ROG troops do not have effective legal resources to prevent such transfers or thefts, as is apparent from their witness evidence to the delegates.

390. The Court attaches particular importance to the financial support enjoyed by the "MRT" by virtue of the following agreements it has concluded with the Russian Federation:

- the agreement signed on 20 March 1998 between the Russian Federation and the representative of the "MRT", which provided for the division between the "MRT" and the Russian Federation of part of the income from the sale of the ROG's equipment;
- the agreement of 15 June 2001, which concerned joint work with a view to using armaments, military technology and ammunition;
- the Russian Federation's reduction by 100 million US dollars of the debt owed to it by the "MRT"; and
- the supply of Russian gas to Transdnistria on more advantageous financial terms than those given to the rest of Moldova (see paragraph 156 above).

The Court further notes the information supplied by the applicants and not denied by the Russian Government to the effect that companies and institutions of the Russian Federation normally controlled by the State, or whose policy is subject to State authorisation, operating particularly in the military field, have been able to enter into commercial relations with similar firms in the "MRT" (see paragraphs 150 and 151 above).

391. The Court next notes that, both before and after 5 May 1998, in the security zone controlled by the Russian peacekeeping forces, the "MRT" regime continued to deploy its troops illegally and to manufacture and sell weapons in breach of the agreement of 21 July 1992 (see paragraphs 99, 100, 150 and 151 above).

392. All of the above proves that the "MRT", set up in 1991-1992 with the support of the Russian Federation, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation.

393. That being so, the Court considers that there is a continuous and uninterrupted link of responsibility on the part of the Russian Federation for the applicants' fate, as the Russian Federation's policy of support for the regime and collaboration with it continued beyond 5 May 1998, and after that date the Russian Federation made no attempt to put an end to the applicants' situation brought about by its agents, and did not act to prevent the violations allegedly committed after 5 May 1998.

Regard being had to the foregoing, it is of little consequence that since 5 May 1998 the agents of the Russian Federation have not participated directly in the events complained of in the present application.

394. In conclusion, the applicants therefore come within the "jurisdiction" of the Russian Federation for the purposes of Article 1 of the Convention and its responsibility is engaged with regard to the acts complained of.

III. THE COURT'S JURISDICTION *RATIONE TEMPORIS*

395. In their observations of 24 October 2000, the Moldovan Government submitted that the violations alleged by the applicants were continuous in nature and that the Court consequently had jurisdiction to examine them.

396. The Russian Government asserted that the acts complained of by the applicants had occurred before the Convention's entry into force with regard to Russia, on 5 May 1998, and that they therefore fell outside the Court's jurisdiction *ratione temporis*.

397. The applicants submitted that the violations complained of were continuous in nature and that the Court accordingly had jurisdiction to examine them.

398. The Romanian Government presented no argument on the point.

399. The Court observes that the Convention entered into force with regard to Moldova on 12 September 1997 and with regard to the Russian Federation on 5 May 1998. It points out that in respect of each Contracting Party the Convention applies only to events subsequent to its entry into force with regard to that Party.

A. The complaint under Article 6 of the Convention

400. The Court notes that the applicants asserted that they had not had a fair trial before the "Supreme Court of the MRT".

However, the proceedings before that court ended with the judgment of 9 December 1993 (see paragraph 215 above), before the dates on which the Convention was ratified by Moldova and the Russian Federation, and that the trial is not a continuing situation.

Consequently, the Court does not have jurisdiction *ratione temporis* to examine the complaint under Article 6.

B. The complaints under Articles 3, 5 and 8 of the Convention

401. The applicants submitted that their detention was not lawful, since the judgment pursuant to which they had been detained, and in three cases still were detained, had not been given by a competent court. They alleged that while in Tiraspol prison they had not been able to correspond freely or receive visits from their families. They also complained of their conditions of detention.

402. The Court notes that the alleged violations concern events which began with the applicants' incarceration in 1992, and are still going on.

403. The Court therefore has jurisdiction *ratione temporis* to examine the complaints made in so far as they concern events subsequent to

12 September 1997 as regards the Republic of Moldova and 5 May 1998 as regards the Russian Federation.

C. The complaint under Article 1 of Protocol No. 1 to the Convention

404. The applicants complained that they had been deprived of their possessions in breach of Article 1 of Protocol No. 1, since the judgment pursuant to which they had been thus deprived had been unlawful. They considered themselves victims of a continuing violation.

405. The Court notes that the applicants have not provided any details about enforcement of the confiscation decision which might enable it to determine whether the alleged violation is a continuing one. However, in view of its conclusion below (see paragraph 474), it does not consider it necessary to determine whether it has jurisdiction *ratione temporis* to entertain this complaint.

D. Mr Ilascu's complaint under Article 2 of the Convention

406. Relying on Article 2, Mr Ilascu complained of the death penalty imposed on him, asserting that the sentence had not been set aside by the authorities which had imposed it and that it could be enforced at any time if he went to Transdnistria.

407. The Court observes that on 9 December 1993 the applicant was condemned to death by a court established by the Transdnistrian separatist authorities, which are not recognised by the international community. At the time when the Convention was ratified by the respondent States the sentence had not been set aside by the authority which had passed it; it is therefore still operative.

408. Consequently, the Court has jurisdiction *ratione temporis* to examine this complaint.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

409. Mr Ilascu complained that he had been condemned to death by an unlawful court and alleged that he ran the risk of being executed at any time. The first paragraph of Article 2 of the Convention provides:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

A. Arguments submitted to the Court

410. The applicant submitted that the pardon decree signed by the “President of the MRT” on 5 May 2001 was a forgery created with the sole purpose of deceiving the Court and that in fact the order by the “MRT” authorities condemning him to death remained in force.

He asserted in that connection that on 22 June 2001, after his release, the Moldovan authorities had declared that they were not in possession of any document recording the fact that he had been pardoned. It was only on 16 November 2001, in response to the additional questions raised by the Court, that the Government had supplied the Court with a copy of the pardon. The applicant said that on 5 May 2001 he had been “handed over” to the authorities of the Republic of Moldova by virtue of a transfer document given to the head of Moldovan intelligence by Mr Chevtsov, “the MRT’s Minister of Security”, a document which he had seen with his own eyes. In addition, Mr Chevtsov had said that the sentence remained valid and would be executed if Mr Ilascu returned to Transdniestria.

411. The Russian Government made no observations on the merits of the complaint.

412. The Moldovan Government did not deny that there had been a violation of the Article relied on by the applicant.

413. The Romanian Government submitted that since the Supreme Court of Moldova’s judgment of 3 February 1994 setting the sentence aside had not yet been complied with, there remained a risk that Mr Ilascu would be executed if he went to Transdniestria.

B. The Court’s assessment

414. The Court notes that Moldova ratified Protocol No. 6 to the Convention, abolishing the death penalty in peacetime, on 1 October 1997 and that it signed Protocol No. 13 to the Convention concerning the abolition of the death penalty in all circumstances on 3 May 2002. The Russian Federation has ratified neither Protocol No. 6 nor Protocol No. 13, but has declared a moratorium on enforcement of the death penalty.

415. The death penalty imposed on Mr Ilascu on 9 December 1993 by the “Supreme Court of the MRT” was set aside by the Supreme Court of the Republic of Moldova on 3 February 1994, but to date that decision has had no effect (see paragraph 222 above).

It was only in November 2001 that the Moldovan Government submitted to the Court a copy of the decree of 5 May 2001 by the “President of the MRT” pardoning the applicant (see paragraph 281 above). On the same occasion the Moldovan Government informed the Court of rumours to the effect that Mr Smirnov had commuted the death penalty against Mr Ilascu to life imprisonment. The Court notes that the authenticity of the pardon

granted by Mr Smirnov has been questioned by the applicant, who alleged that he had been simply handed over to the Moldovan authorities, that the sentence against him remained valid and that he would therefore run the risk of being executed if he returned to Transnistria.

416. Regard being had to the evidence adduced before it, the Court is not in a position to establish either the exact circumstances of Mr Ilascu's release or whether the death penalty imposed on him has been commuted to life imprisonment (see paragraph 282 above).

Since Mr Ilascu has been released and is now living with his family in Romania, a country whose nationality he possesses and where he holds high office as a member of the Senate (see paragraph 20 above), the Court considers that the risk of enforcement of the death penalty imposed on him on 9 December 1993 is more hypothetical than real.

417. On the other hand, it is not disputed that after ratification of the Convention by the two respondent States, Mr Ilascu must have suffered as a consequence both of the death sentence imposed on him and of his conditions of detention while under the threat of execution of that sentence.

418. That being so, the Court considers that the facts complained of by Mr Ilascu do not call for a separate examination under Article 2 of the Convention, but would be more appropriately examined under Article 3 instead.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

419. The applicants complained of their conditions of detention and of the treatment that had been inflicted on them while they were detained. In addition, Mr Ilascu complained of his conditions of detention while under the threat of execution. They relied on Article 3 of the Convention, which provides:

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

A. Arguments submitted to the Court

420. The applicants asserted that the particularly severe treatment to which they had been subjected during their detention had belittled and degraded them and had had disastrous effects on their physical and mental condition. In Mr Ilascu's case, account also had to be taken of the uncertainty he had had to live with regarding the possibility that the death penalty imposed on him would be enforced.

421. The Russian Government argued that the applicants' allegations had nothing to do with the Russian Federation and were in any event without foundation.

422. The Moldovan Government submitted in their observations of 24 October 2000 that the applicants' allegations about their conditions of detention were plausible.

423. In their third-party intervention the Romanian Government submitted that the treatment undergone by the applicants during their detention could be classified as "torture" within the meaning of Article 3, in view of their deliberateness, their particularly vile nature and the fact that they had caused the applicants severe and cruel suffering.

B. The Court's assessment

1. General principles

424. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

425. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI).

426. In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction embodied in Article 3 between this notion and that of inhuman or degrading treatment. As it has previously found, it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering; the same distinction is drawn in Article 1 of the United Nations Convention (see the previously cited *Selmouni* judgment, § 96):

"For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or

for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...”

427. The Court has also held that the term “severe” is, like the “minimum severity” required for the application of Article 3, in the nature of things, relative (*ibid.*, § 100): it too depends on all the circumstances of the case, such as the duration of treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and the previously cited *Labita* judgment, § 120). Furthermore, in considering whether treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (*Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

428. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty are usually accompanied by such suffering and humiliation. Article 3 requires the State to ensure that every prisoner is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him 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 health and well-being are adequately secured (see *Kudla v. Poland*, cited above, §§ 92-94).

429. The Court has previously held that, regard being had to developments in the criminal policy of the member States of the Council of Europe and the commonly accepted standards in that sphere, the death penalty might raise an issue under Article 3 of the Convention. Where a death sentence is passed the personal circumstances of the condemned person, the proportionality to the gravity of the crime committed and the conditions of detention pending execution of the sentence are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 41, § 104; and *Poltoratskiy v. Ukraine*, no. 38812/97, § 133).

430. For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable (see *Soering v. the United Kingdom*, cited above, § 111). Nevertheless, in certain circumstances, the imposition of such a sentence might entail

treatment going beyond the threshold set by Article 3, when for example a long period of time must be spent on death row in extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty (see *Soering v. the United Kingdom*, cited above, p. 44, § 111).

431. Furthermore, the anxiety and suffering engendered by such a sentence can only be aggravated by the arbitrary nature of the proceedings which led to it, so that, considering that a human life is at stake, the sentence thus becomes a violation of the Convention.

432. Prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment. On the other hand, complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (see, among other authorities, *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V).

433. Moreover, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions and of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

2. Application of the above principles in the present case

(a) Mr Ilascu

434. The applicant was sentenced to death on 9 December 1993 and detained until his release on 5 May 2001 (see paragraphs 215 and 234 above).

The Court reiterates that the Convention is not binding on Contracting States save in respect of events that have occurred since its entry into force, the relevant dates being 12 September 1997 for Moldova and 5 May 1998 for the Russian Federation. However, in order to assess the effect on the applicant of his conditions of detention, which remained more or less identical throughout the time he spent in prison, the Court may also take into consideration the whole of the period in question, including that part of it which preceded the Convention's entry into force with regard to each of the respondent States.

435. During the very long period he spent on death row the applicant lived in the constant shadow of death, in fear of execution. Unable to exercise any remedy, he lived for many years, including the time after the Convention's entry into force, in conditions of detention apt to remind him of the prospect of his sentence being enforced (see paragraphs 196 to 210 and 240 to 253 above).

In particular, the Court notes that after sending a letter to the Moldovan Parliament in March 1999 Mr Ilascu was savagely beaten by the warders at Tiraspol Prison, who threatened to kill him (see paragraphs 249, 250, 269

and 270 above). After that incident he was denied food for two days and light for three (see paragraph 271 above).

As to the mock executions which took place before the Convention's entry into force (see paragraph 198 above), there is no doubt that the effect of such barbaric acts was to increase the anxiety felt by the applicant throughout his detention about the prospect of his execution.

436. The anguish and suffering he felt were aggravated by the fact that the sentence had no legal basis or legitimacy for Convention purposes. The "Supreme Court of the MRT" which passed sentence on Mr Ilascu was set up by an entity which is illegal under international law and has not been recognised by the international community. That "court" belongs to a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That is evidenced by the patently arbitrary nature of the circumstances in which the applicants were tried and convicted, as they described them in an account which has not been disputed by the other parties (see paragraphs 212 to 216 above), and as described and analysed by the institutions of the OSCE (see paragraph 286 above).

437. The judgment of the Supreme Court of Moldova setting aside the applicant's conviction (see paragraph 222 above) confirmed the unlawful and arbitrary nature of the judgment of 9 December 1993.

438. As regards the applicant's conditions of detention while on death row, the Court notes that Mr Ilascu was detained for eight years, from 1993 until his release in May 2001, in very strict isolation: he had no contact with other prisoners, no news from the outside - since he was not permitted to send or receive mail - and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, even in severe winter conditions, and had no natural light source or ventilation. The evidence shows that Mr Ilascu was also deprived of food as a punishment and that in any event, given the restrictions on receiving parcels, even the food he received from outside was often unfit for consumption. The applicant could take showers only very rarely, often having to wait several months between one and the next. On this subject the Court refers to the conclusions in the report produced by the CPT following its visit to Transdnistria in 2000 (see paragraph 289 above), in which it described isolation for so many years as indefensible.

The applicant's conditions of detention had deleterious effects on his health, which deteriorated in the course of the many years he spent in prison. Thus, he did not receive proper care, having been deprived of regular medical examinations and treatment (see paragraphs 258 to 260, 262, 263, and 265 above) and dietetically appropriate meals. In addition, owing to the restrictions on receiving parcels, he could not be sent medicines and food to improve his health.

439. The Court notes with concern the existence of rules granting a discretionary power in relation to correspondence and prison visits, exercisable by both prison warders and other authorities, and emphasises that such rules are arbitrary and incompatible with the appropriate and effective safeguards against abuses which any prison system in a democratic society must put in place. Moreover, in the present case, such rules made the applicant's conditions of detention even harsher.

440. The Court concludes that the death sentence imposed on the applicant coupled with the conditions he was living in and the treatment he suffered during his detention after ratification, account being taken of the state he was in after spending several years in those conditions before ratification, were particularly serious and cruel and must accordingly be considered acts of torture within the meaning of Article 3 of the Convention.

There has therefore been a failure to observe the requirements of Article 3.

441. As Mr Ilascu was detained at the time when the Convention came into force with regard to the Russian Federation, on 5 May 1998, the latter is responsible, for the reasons set out above (see paragraph 411 above) on account of his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison.

Mr Ilascu was released in May 2001 and it is only from that date on that Moldova's responsibility is engaged on account of the acts complained of for failure to discharge its positive obligations (see paragraph 352 above). Consequently, there has been no violation of Article 3 of the Convention by Moldova with regard to Mr Ilascu.

442. In conclusion, the violation of Article 3 of the Convention with regard to Mr Ilascu is imputable only to the Russian Federation.

(b) The other three applicants: conditions of detention and treatment during detention

(i) Mr Ivantoc

443. The Court notes at the outset that at no time in the proceedings before it have the respondent Governments denied that the alleged incidents took place.

It further considers that the descriptions given by Mr Ivantoc are sufficiently precise and are corroborated by identical assertions repeatedly made by him to his wife and by the evidence given by other witnesses to the Court's delegates.

In the light of all the information at its disposal, the Court considers that it can take it as established that during the applicant's detention, including that part of it which followed the Convention's entry into force with regard to the respondent States, the applicant received a large number of blows and

other ill-treatment, and that at times he was denied food and all forms of medical assistance in spite of his state of health, which had been weakened by these conditions of detention. In particular, the Court draws attention to the persecution and ill-treatment to which Mr Ivantoc was subjected in May 1999 after lodging his application to the Court (see paragraphs 251 and 252 above), and in 2001, November 2002 and February 2003 (see paragraphs 254, 256 and 269 to 272 above).

444. In addition, Mr Ivantoc has been detained since his conviction in 1993 in solitary confinement, without contact with other prisoners and without access to newspapers. He is not permitted to see a lawyer, his only contacts with the outside world taking the form of visits and parcels from his wife, subject to authorisation by the prison authorities when they see fit to give it.

All these restrictions, which have no legal basis and are left to the authorities' discretion, are incompatible with a prison regime in a democratic society. They have played their part in increasing the applicant's distress and mental suffering.

445. The applicant is detained in an unheated, badly ventilated cell without natural light, and has not received the treatment required by his state of health, despite a few medical examinations authorised by the prison authorities. On that subject, the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 (see paragraph 289 above).

446. In the Court's opinion, such treatment was apt to engender pain or suffering, both physical and mental, which could only be exacerbated by the applicant's total isolation and were calculated to arouse in him feelings of fear, anxiety and vulnerability likely to humiliate and debase him and break his resistance and will.

In the Court's opinion, this treatment was inflicted on Mr Ivantoc intentionally by persons belonging to the administrative authorities of the "MRT" with the aim of punishing him for the acts he had allegedly committed.

447. That being so, the Court considers that, taken as a whole and regard being had to its seriousness, its repetitive nature and its purpose, the treatment inflicted on Mr Ivantoc has caused "severe" pain and suffering and was particularly serious and cruel. All these acts must be considered acts of torture within the meaning of Article 3 of the Convention.

448. As Mr Ivantoc was detained at the time when the Convention came into force with regard to the Russian Federation, the latter is responsible, for the reasons set out above (see paragraph 393) on account of his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison.

Regard being had to the conclusions the Court reached on the question of Moldova's responsibility for the acts complained of on account of its failure

to discharge its positive obligations after May 2001 (see paragraph 352 above), Moldova is responsible for a violation of Article 3 of the Convention with regard to Mr Ivantoc from that date onwards.

449. In conclusion, as regards Mr Ivantoc, there has been a violation of Article 3 of the Convention by the Russian Federation from the time of its ratification of the Convention on 5 May 1998 and by Moldova from May 2001 onwards.

(ii) Mr Lesco and Mr Petrov-Popa

450. The Court notes at the outset that at no time in the proceedings before it have the respondent Governments denied that the alleged incidents took place.

It further considers that the descriptions given by the witnesses heard, including the applicants and their wives, are sufficiently precise and are corroborated by other evidence in its possession.

451. Consequently, the Court considers that it can take it as established that during their detention, including that part of it which followed the Convention's entry into force with regard to the two respondent States, Mr Lesco and Mr Petrov-Popa experienced extremely harsh conditions of detention:

- visits and parcels from their families were subject to the discretionary authorisation of the prison administration;
- at times they were denied food, or given food unfit for consumption, and most of the time they were denied all forms of appropriate medical assistance despite their state of health, which had been weakened by these conditions of detention; and
- they were not given the dietetically appropriate meals prescribed by their doctors (see paragraph 265 above).

The Court emphasises also that these conditions have deteriorated since 2001 (see paragraph 254 above).

In addition, Mr Petrov-Popa has been held in solitary confinement since 1993, having no contact with other prisoners or access to newspapers in his own language (see paragraphs 240, 254 and 255 above).

Both Mr Petrov-Popa and Mr Lesco were denied access to a lawyer until June 2003 (see paragraph 257 above).

452. In the Court's opinion, such treatment is apt to engender pain or suffering, both physical and mental. Taken as a whole and regard being had to its seriousness, the treatment inflicted on Mr Lesco and Mr Petrov-Popa can be qualified as inhuman and degrading treatment within the meaning of Article 3 of the Convention.

453. As Mr Lesco and Mr Petrov-Popa were detained at the time when the Convention came into force with regard to the Russian Federation, the latter is responsible, for the reasons set out above (see paragraph 393) on

account of their conditions of detention, the treatment inflicted on them and the suffering caused to them in prison.

Regard being had to the conclusions the Court reached on the question of Moldova's responsibility for the acts complained of on account of its failure to discharge its positive obligations after May 2001 (see paragraph 352 above), Moldova is responsible for the violation of Article 3 of the Convention with regard to Mr Lesco and Mr Petrov-Popa from May 2001 onwards.

454. In conclusion, as regards Mr Lesco and Mr Petrov-Popa, there has been a violation of Article 3 of the Convention by the Russian Federation from the time of its ratification of the Convention on 5 May 1998 and by Moldova from May 2001 onwards.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

455. The applicants alleged that their detention had not been lawful and that the court which had convicted them was not a competent court. They relied on Article 5 § 1 of the Convention, the relevant part of which provides:

“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:

(a) the lawful detention of a person after conviction by a competent court;

...”

456. The Russian Government submitted that the applicants' allegations had nothing to do with the Russian Federation and were in any event without foundation.

457. In their observations of 24 October 2000 the Moldovan Government emphasised that the applicants had been arrested without a warrant and that they had remained for two months in the cells of the Fourteenth Army's headquarters building. At the hearing on 6 June 2001 they stated that they wished to modify the position they had previously adopted, but did not express an opinion on the alleged violations.

458. In their third-party intervention the Romanian Government submitted that the applicants' detention had no legal basis, since they had been sentenced by an unlawfully constituted court. Although certain acts of the separatist authorities, such as acts relating to the registration of births, deaths and marriages, had to be recognised so as not to worsen the situation of the inhabitants (see the ICJ's advisory opinion of 21 June 1971 on the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council Resolution 276), that should not

apply to all the acts of authorities not recognised by the international community, otherwise those authorities would be legitimised.

In the present case, the applicants' conviction had been the result of a flagrant denial of justice, since they had not had a fair trial before the "Supreme Court of the MRT".

459. The Court does not have jurisdiction *ratione temporis* to rule on the question whether the criminal proceedings in the course of which the applicants were convicted by the "Supreme Court of the MRT" breached Article 6 of the Convention. In so far as the applicants' detention continued after the dates on which the Convention was ratified by the two respondent States, the Court nevertheless has jurisdiction to determine whether, thereafter, each of the applicants was detained "lawfully", "in accordance with a procedure prescribed by law" and "after conviction by a competent court" within the meaning of Article 5 § 1 (a) of the Convention.

460. As is well established in the Court's case-law, the word "*tribunal*" used in the French text of Article 5 (court) and other Articles of the Convention, in particular Article 6 (tribunal), refers in the first place to a body "established by law" satisfying a number of conditions which include independence, particularly vis-à-vis the executive, impartiality, the duration of its members' terms of office and guarantees of a judicial procedure (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 28 May 1970, Series A no. 12, p. 41, § 78).

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 to the Convention, in order to enable individuals to enjoy the Convention guarantees (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, §§ 231 and 236-237).

461. The requirement of lawfulness laid down by Article 5 § 1 (a) ("lawful detention" ordered "in accordance with a procedure prescribed by law") is not satisfied merely by compliance with the relevant domestic law; domestic law must itself be in conformity with the Convention, including the general principles expressed or implied in it, particularly the principle of the rule of law, which is expressly mentioned in the Preamble to the Convention. The notion underlying the expression "in accordance with a procedure prescribed by law" is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see, among other authorities, *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 45).

In addition, as the purpose of Article 5 is to protect the individual from arbitrariness (see, among other authorities, *Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV), a "conviction" cannot be the

result of a flagrant denial of justice (see, *mutatis mutandis*, *Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240, § 110).

The Court also refers to its conclusions under Article 3 of the Convention regarding the nature of the proceedings in the “Supreme Court of the MRT” (see paragraph 436 above).

462. The Court accordingly finds that none of the applicants was convicted by a “court”, and that a sentence of imprisonment passed by a judicial body such as the “Supreme Court of the MRT” at the close of proceedings like those conducted in the present case cannot be regarded as “lawful detention” ordered “in accordance with a procedure prescribed by law”.

463. That being so, the deprivation of liberty suffered by the applicants during the period covered by the Court’s jurisdiction *ratione temporis* in respect of the respondent States (namely, as regards Mr Ilascu, from 12 September 1997 to 5 May 2001 for Moldova, and from 5 May 1998 to 5 May 2001 for Russia and, as regards the other applicants, from the date of ratification by each of the respondent States to the present date) cannot satisfy the conditions laid down in paragraph 1 (a) of Article 5 of the Convention.

It follows that there was a violation of Article 5 § 1 of the Convention until May 2001 as regards Mr Ilascu, and that there has been and continues to be a violation of that provision as regards the three applicants still detained.

464. Having regard to the fact that the applicants were detained at the time of the Convention’s entry into force with regard to the Russian Federation, and taking into account its findings above (see paragraph 393), the Court concludes that the conduct constituting a violation of Article 5 is imputable to the Russian Federation as regards all the applicants.

Taking into account its conclusion above (see paragraph 352) that the responsibility of the Republic of Moldova by virtue of its positive obligations is engaged from May 2001, the Court concludes that there has been no violation of Article 5 by Moldova as regards Mr Ilascu. On the other hand, there has been a violation of that provision by Moldova as regards the other three applicants.

VII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

465. The applicants complained that they could not correspond freely with their families and with the Court. In particular, they asserted that they had not been able to apply to the Court freely, and that in order to do so they had had to call on the assistance of their wives. They further complained that they could not receive visits from their families except with the prior

agreement of the “President of the MRT”. They relied on Article 8 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to respect for his private and family life, ... and his correspondence.

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 ..., 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.”

466. The Russian Government confined their observations to the assertion that the applicants’ allegations had nothing to do with the Russian Federation and were in any event without foundation.

467. In their observations of 24 October 2000 the Moldovan Government said that the applicants had not had access to a lawyer, that the representatives of international organisations had been refused permission to see them and that they could not correspond freely from prison. At the hearing on 6 June 2001 they stated that they wished to modify the position they had previously adopted, but did not express an opinion on the alleged violations.

468. The Romanian Government submitted that the interference with the applicants’ right to respect for their correspondence and family life was not in accordance with the law within the meaning of Article 8 § 2, firstly because the Soviet law applied in the “MRT” was not a valid law in Moldovan territory, and secondly because the prior agreement of the “President of the MRT” could not be equated with a law, for lack of any safeguard against arbitrariness.

469. The Court considers that this complaint is limited to the fact that it was impossible for the applicants to write freely to their families and the Court from prison and to the difficulties they encountered in receiving visits from their families. As to the complaint relating to the impossibility of applying to the Court from prison, this falls more naturally under Article 34, which the Court will examine separately.

470. However, having taken these allegations into account in the context of Article 3 (see paragraphs 438, 439, 444 and 451 above), the Court considers that it is not necessary to examine them separately from the standpoint of Article 8.

VIII. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

471. The applicants complained, under Article 1 of Protocol No. 1 to the Convention, of the confiscation of their possessions following a trial which breached Article 6 of the Convention.

472. The Russian Government submitted that the applicants' allegations had nothing to do with the Russian Federation and were in any event without foundation.

473. The Moldovan and Romanian Governments did not express an opinion.

474. Even on the supposition that it has jurisdiction *ratione temporis* to rule on this complaint, the Court notes that its factual basis is insufficient.

As the complaint has not been substantiated, the Court therefore considers that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

IX. ALLEGED BREACH OF ARTICLE 34 OF THE CONVENTION

475. The applicants complained of interference with their exercise of the right of individual application to the Court and relied on Article 34 of the Convention, which provides:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

476. The applicants submitted in the first place that they had not been permitted to apply to the Court from prison so that their wives had had to do that on their behalf. They also alleged that they had been persecuted in prison because they had tried to apply to the Court.

They further submitted that the statement by the President of Moldova, Mr Voronin, that Mr Ilascu's refusal to withdraw his application had been the cause of the remaining applicants' continued detention (see paragraph 285 above), had been a flagrant interference with their right of individual petition.

Lastly, they submitted that the note from the Russian Ministry of Foreign Affairs (see paragraph 278 above) had been a serious interference with their right of individual petition.

477. The Moldovan Government confirmed Mr Voronin's observations, but asserted that these had been prompted when Mr Ilascu remarked during a discussion with Mr Voronin that he would be prepared to withdraw the part of his application directed against Moldova provided that the Moldovan authorities proved through their actions their desire to see the other three applicants released. The Moldovan Government argued that in those circumstances the accusations against Mr Voronin were intended to tarnish Moldova's image rather than to complain of interference with the applicants' right of individual petition.

478. The Russian Government said that the applicants had obtained the above-mentioned note fraudulently and that it could therefore not be relied on before the Court.

479. The Romanian Government submitted that the acts of intimidation directed against Mr Ilascu to punish him for lodging the present application constituted interference with the right of individual petition guaranteed by Article 34.

480. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 of the Convention that applicants and potential applicants are able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1219, § 105; and *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2288, § 105).

The expression “any form of pressure” must be taken to cover not only direct coercion and flagrant acts of intimidation but also improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1192, § 160).

Moreover, the question whether contacts between the authorities and an applicant constitute unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In that connection, the Court must assess the vulnerability of the complainant and the risk of his being influenced by the authorities (see *Akdivar and Others*, p. 1219, § 105, and *Kurt*, pp. 1192-1193, § 160, both previously cited).

481. In the present case, the applicants have asserted that they had not been able to apply to the Court from their place of detention, that their application had in fact been lodged by the only lawyer who was representing them at the beginning of the proceedings, Mr Tanase, and that it had been signed by their wives.

The Court has also had regard to the threats made against the applicants by the Transdnistrian prison authorities and the deterioration in their conditions of detention after their application was lodged. It takes the view that such acts constitute an improper and unacceptable form of pressure which hindered their exercise of the right of individual petition.

In addition, the Court notes with concern the content of the diplomatic note of 19 April 2001 sent by the Russian Federation to the Moldovan authorities (see paragraph 278 above). It appears from that note that the Russian authorities requested the Republic of Moldova to withdraw the observations they had submitted to the Court on 24 October 2000 in so far as these implied responsibility for the alleged violations on the part of the

Russian Federation on account of the fact that its troops were stationed in Moldovan territory, in Transdnistria.

Subsequently, at the hearing on 6 June 2001, the Moldovan Government did indeed declare that it wished to withdraw the part of its observations of 24 October 2000 concerning the Russian Federation (see paragraph 360 above).

The Court considers that such conduct on the part of the Government of the Russian Federation represented a negation of the common heritage of political traditions, ideals, freedom and the rule of law mentioned in the Preamble to the Convention and were capable of seriously hindering its examination of an application lodged in exercise of the right of individual petition and thereby interfering with the right guaranteed by Article 34 of the Convention itself.

There has therefore been a breach by the Russian Federation of Article 34 of the Convention.

482. The Court further notes that after Mr Ilascu's release he spoke to the Moldovan authorities about the possibility of obtaining the release of the other applicants, and that in that context Mr Voronin publicly accused Mr Ilascu of being the cause of his comrades' continued detention, through his refusal to withdraw his application against Moldova and the Russian Federation.

In the Court's opinion, such remarks by the highest authority of a Contracting State, making an improvement in the applicants' situation depend on withdrawal of the application lodged against that State or another Contracting State, represent direct pressure intended to hinder exercise of the right of individual petition. That conclusion holds good whatever the real or theoretical influence that authority might have on the applicants' situation.

Consequently, Mr Voronin's remarks amount to an interference by the Republic of Moldova with the applicants' exercise of their right of individual petition, in breach of Article 34.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

483. 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

484. The applicants submitted their claims for just satisfaction in November 2001.

In a letter received by the Court on 12 February 2004, Mr Tanase submitted the new claims of his client, Mr Lesco, updated in order to take account of the period since 2001.

Mr Gribincea did likewise for the other applicants in a letter received by the Court on 24 February 2004.

485. The applicants contended that their conviction and detention had caused them to lose their jobs. Similarly, on account of the persecution to which their husbands had been subjected, Mrs Ilascu and Mrs Ivantoc had had to resign from their jobs in Tiraspol and move to Chisinau. In addition, Mr Lesco's family had had to leave their home in Tiraspol and look for new accommodation. The applicants claimed reimbursement of all the sums their wives and families had spent in order to visit them in prison and send them parcels. Lastly, in view of the deterioration of their physical health, the applicants had had large medical bills.

In particular, the applicants claimed the following sums.

Mr Ilascu claimed 1,861 euros (EUR) for loss of salary and other allowances on account of his detention from June 1992 until 28 February 1994, the date on which he was elected to the Moldovan parliament. He said that the allowances he was entitled to as a member of parliament had been paid to his family by the Moldovan Government. Mr Ivantoc claimed EUR 9,560 for loss of earnings and allowances from his arrest to date. Mr Petrov-Popa claimed EUR 21,510 for loss of income from his arrest to date. Mr Lesco claimed EUR 30,000, that being the value of the flat he had owned in Tiraspol which he had lost following his conviction and his family's departure from Transdniestria.

Mr Ilascu, Mr Ivantoc and Mr Petrov-Popa argued that, as only the Russian Federation controlled Transdniestrian territory, the Russian Federation alone should compensate them for pecuniary damage.

Taking into account the seriousness of the violations complained of, the circumstances of the case, the attitude of the respondent Governments, the lasting effects on their health and the trauma they had suffered, the applicants claimed the following sums for non-pecuniary damage: Mr Ilascu, EUR 7,395,000; Mr Ivantoc, EUR 7,842,000; Mr Petrov-Popa, EUR 7,441,000; and Mr Lesco, EUR 7,800,000.

With regard to the sums claimed for non-pecuniary damage, Mr Ilascu, Mr Ivantoc and Mr Petrov-Popa said that they would be satisfied if the Moldovan Government paid each of them EUR 1,000 and the Russian Federation paid them the remainder.

In short, taking all the heads of pecuniary and non-pecuniary damage together, the applicants claimed the following sums: Mr Ilascu,

EUR 7,396,861; Mr Ivantoc, EUR 7,851,560; Mr Petrov-Popa, EUR 7,462,510; and Mr Lesco, EUR 7,830,000.

486. The Moldovan Government said that they were not opposed to the claims made by the applicants Ilascu, Ivantoc, and Petrov-Popa, in so far as it appeared therefrom that they would have to pay EUR 1,000 to each of the them. On the other hand, it found the sums claimed by Mr Lesco excessive and unsubstantiated.

The Russian Government said that they could not be held responsible for the alleged violations. Moreover, they contended that the facts the applicants complained of fell outside the Court's jurisdiction *ratione temporis*.

In any event, they considered the sums claimed excessive and unsubstantiated.

487. The Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Assanidze v. Georgia* [GC], no. 71503/01, § 198, 8 April 2004; *Maestri v. Italy* [GC], no. 39748/98, § 47, 17 February 2004; *Mentes and Others v. Turkey* (Article 50), judgment of 24 July 1998, *Reports* 1998-IV, p. 1695, § 24; and *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

488. The Court reiterates that it has found violations of several Convention provisions by the Russian Federation and Moldova, the latter only since May 2001.

It has found that Mr Ilascu and Mr Ivantoc were subjected to treatment which it qualified as torture within the meaning of Article 3 of the Convention, that the other two applicants were subjected to inhuman and degrading treatment contrary to Article 3, that all the applicants were detained arbitrarily contrary to Article 5 and that Mr Ivantoc, Mr Lesco and Mr Petrov-Popa are still detained in breach of Article 5.

The Court has also found that Article 34 of the Convention was breached by both the Russian Federation and Moldova.

489. The Court does not consider the alleged pecuniary damage to have been substantiated, but it does not find it unreasonable to suppose that the applicants suffered a loss of income and certainly incurred costs which were directly due to the violations found. It also takes the view that as a result of the violations found the applicants undeniably suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

Consequently, regard being had to the extreme seriousness of the violations of the Convention of which the applicants were victims, and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards them the following sums, plus any amount that may be chargeable in tax:

(a) to each applicant, EUR 180,000 for pecuniary and non-pecuniary damage arising from the violations of Articles 3 and 5 of the Convention;

(b) to each applicant, EUR 10,000 for non-pecuniary damage arising from the breach of Article 34 by the Russian Federation and Moldova.

490. The Court further considers that any continuation of the unlawful and arbitrary detention of the three applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent States' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment.

Regard being had to the grounds on which they have been found by the Court to be in violation of the Convention (see paragraphs 352 and 393 above), the respondent States must take every measure to put an end to the arbitrary detention of the applicants still detained and to secure their immediate release.

B. Costs and expenses

491. For their lawyers' fees Mr Ilascu claimed EUR 8,000 and Mr Ivantoc and Mr Petrov-Popa EUR 8,500 each. They also asked for EUR 2,500 in respect of various costs.

As appears from the contract between Mr Lesco's wife and his lawyer, Mr Lesco claimed in addition EUR 200 per month for work by his counsel, making a total of EUR 11,800. That sum represents his counsel's work and expenses since June 1999, when the application was lodged, a period of 59 months, the main items being drafting the application, documentary searches, drafting observations requested by the Court, preparation for the Court's fact-finding mission, studying the records of the hearings before the Court's delegates, communication costs (faxes, telephone bills, normal and urgent mail), translation costs and expenses for visits to the applicants in prison.

492. The Moldovan Government opposed the award of the sums claimed for costs and expenses on the ground that they had not been substantiated.

493. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI, § 146).

The Court notes that the present case gave rise to several series of written observations, an adversarial hearing and the hearing to take witness evidence on the spot, which lasted seven days.

The evidence submitted to the Court shows that the applicants' representatives, Mr Dinu, Mr Tanase and Mr Gribincea, incurred costs and expenses relating to the matters found to constitute the violations.

Ruling on an equitable basis and taking account of the work reasonably necessary to produce the large volume of documents and observations filed on the applicants' behalf, the Court awards the applicants the overall sum of EUR 21,000, less the EUR 3,964 already paid in legal aid by the Council of Europe. This amounts to EUR 4,363 for Mr Dinu's fees and secretarial costs, EUR 3,960 for Mr Gribincea's fees and costs, and EUR 8,713 for Mr Tanase's fees and costs.

C. Default interest

494. The Court considers it appropriate that the default interest 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. *Holds* by eleven votes to six that the applicants come within the jurisdiction of the Republic of Moldova within the meaning of Article 1 of the Convention as regards its positive obligations;
2. *Holds* by sixteen votes to one that the applicants come within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention;
3. *Holds* unanimously that the Court does not have jurisdiction *ratione temporis* to examine the complaint under Article 6 of the Convention;
4. *Holds* by sixteen votes to one that the Court has jurisdiction *ratione temporis* to examine the complaints under Articles 2, 3, 5 and 8 of the Convention in so far as they concern events subsequent to 12 September 1997 in the case of the Republic of Moldova and 5 May 1998 in the case of the Russian Federation;
5. *Holds* by fifteen votes to two that the Court is not required to determine whether it has jurisdiction *ratione temporis* to examine the complaint under Article 1 of Protocol No. 1 to the Convention;
6. *Holds* unanimously that the complaint of a violation of Article 2 of the Convention on account of the fact that Mr Ilascu was sentenced to death by the “Supreme Court of the MRT” does not call for a separate examination;
7. *Holds* by eleven votes to six that there has been no violation of Article 3 of the Convention by Moldova on account of the ill-treatment inflicted on Mr Ilascu and the conditions in which he was detained while under the threat of execution;
8. *Holds* by sixteen votes to one that there has been a violation of Article 3 of the Convention by the Russian Federation on account of the ill-treatment inflicted on Mr Ilascu and the conditions in which he was detained while under the threat of execution, and that these must be termed torture within the meaning of that provision;
9. *Holds* by eleven votes to six that there has been a violation of Article 3 of the Convention by Moldova since May 2001 on account of the ill-treatment inflicted on Mr Ivantoc and the conditions in which he has been detained, and that these must be termed torture within the meaning of that provision;

10. *Holds* by sixteen votes to one that there has been a violation of Article 3 of the Convention by the Russian Federation on account of the ill-treatment inflicted on Mr Ivantoc and the conditions in which he has been detained, and that these must be termed torture within the meaning of that provision;
11. *Holds* by eleven votes to six that there has been a violation of Article 3 of the Convention by Moldova since May 2001 on account of the ill-treatment inflicted on Mr Lesco and Mr Petrov-Popa and the conditions in which they have been detained, and that these must be termed inhuman and degrading treatment within the meaning of that provision;
12. *Holds* by sixteen votes to one that there has been a violation of Article 3 of the Convention by the Russian Federation on account of the ill-treatment inflicted on Mr Lesco and Mr Petrov-Popa and the conditions in which they have been detained, and that these must be termed inhuman and degrading treatment within the meaning of that provision;
13. *Holds* by eleven votes to six that there has been no violation of Article 5 of the Convention by Moldova on account of the detention of Mr Ilascu;
14. *Holds* by eleven votes to six that there has been and continues to be a violation of Article 5 of the Convention by Moldova on account of the detention of Mr Ivantoc, Mr Lesco and Mr Petrov-Popa after May 2001;
15. *Holds* by sixteen votes to one that there was a violation of Article 5 of the Convention by the Russian Federation as regards Mr Ilascu until May 2001, and that there has been and continues to be a violation of that provision as regards Mr Ivantoc, Mr Lesco and Mr Petrov-Popa;
16. *Holds* unanimously that there is no cause to examine separately the applicants' complaint under Article 8 of the Convention;
17. *Holds* by fifteen votes to two that there has been no violation of Article 1 of Protocol No. 1 to the Convention;
18. *Holds* by sixteen votes to one that Moldova has failed to discharge its obligations under Article 34 of the Convention;
19. *Holds* by sixteen votes to one that the Russian Federation has failed to discharge its obligations under Article 34 of the Convention;

20. *Holds* by ten votes to seven that Moldova is to pay the applicants, within three months, the following sums, plus any tax that may be chargeable:
- (a) to Mr Ivantoc, Mr Lesco and Mr Petrov-Popa, EUR 60,000 (sixty thousand euros) each in respect of pecuniary and non-pecuniary damage;
 - (b) to each applicant, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage sustained on account of the breach of Article 34;
 - (c) to the applicants, the overall sum of EUR 7,000 (seven thousand euros), less EUR 1,321.34 (one thousand three hundred and twenty-one euros and thirty-four cents) already received in legal aid, in respect of costs and expenses, made up of EUR 1,454.33 (one thousand four hundred and fifty-four euros and thirty-three cents) for Mr Dinu, EUR 1,320 (one thousand three hundred and twenty euros) for Mr Gribincea and EUR 2,904.33 (two thousand nine hundred and four euros and thirty-three cents) for Mr Tanase;
21. *Holds* by sixteen votes to one that the Russian Federation is to pay the applicants, within three months, the following sums, plus any tax that may be chargeable:
- (a) to Mr Ilascu, EUR 180,000 (one hundred and eighty thousand euros) in respect of pecuniary and non-pecuniary damage;
 - (b) to each of the other applicants, EUR 120,000 (one hundred and twenty thousand euros) in respect of pecuniary and non-pecuniary damage;
 - (c) to each applicant, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage sustained on account of the breach of Article 34;
 - (d) to the applicants, the overall sum of EUR 14,000 (fourteen thousand euros), less EUR 2,642.66 (two thousand six hundred and forty-two euros and sixty-six cents) already received in legal aid, in respect of costs and expenses, made up of EUR 2,908.67 (two thousand nine hundred and eight euros and sixty-seven cents) for Mr Dinu, EUR 2,640 (two thousand six hundred and forty euros) for Mr Gribincea and EUR 5,808.67 (five thousand eight hundred and eight euros and sixty-seven cents) for Mr Tanase;
22. *Holds* unanimously that the respondent States are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release;
23. *Holds* unanimously that the amounts indicated in points 20 and 21 above are to be converted into the national currency of the country of

residence of each applicant, at the rate applicable on the date of settlement, and that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on them at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

24. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 July 2004.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr Casadevall joined by Mr Ress, Mr Bîrsan, Mrs Tulkens and Mrs Fura-Sandström;
- (b) partly dissenting opinion of Mr Ress;
- (c) partly dissenting opinion of Sir Nicolas Bratza, joined by Mr Rozakis, Mr Hedigan, Mrs Thomassen and Mr Pantîru;
- (d) partly dissenting opinion of Mr Loucaides;
- (e) dissenting opinion of Mr Kovler.

L.W.
P.J.M.

PARTLY DISSENTING OPINION OF
JUDGE CASADEVALL, JOINED BY JUDGES RESS,
BÎRSAN, TULKENS AND FURA-SANDSTRÖM

(Translation)

1. I did not follow the majority of the Grand Chamber in their conclusion that Moldova's responsibility on account of its failure to discharge its positive obligations under the Convention was engaged only from May 2001 onwards.

That view led to the finding, a paradoxical and incoherent one in my opinion, that Moldova breached Articles 3 and 5 of the Convention on account of the ill-treatment, detention and conditions of detention suffered by Mr Ivantoc, Mr Lesco and Mr Petrov-Popa (only after May 2001) but bore no responsibility for the same facts and above all for the death sentence imposed by the "Supreme Court of the MRT" and the risk of execution as regards Mr Ilascu.

As the applicants come within the jurisdiction of Moldova (paragraph 335 of the judgment), its responsibility is engaged, in my opinion, from the date of its ratification of the Convention to the present and with regard to all the applicants, there being no justification, quite the reverse in fact, for taking the view that its positive obligations did not exist during the period from 12 September 1997 to May 2001, as the majority did. I have set out the reasons why I disagree below.

2. The ceasefire agreement of 21 July 1992 marked the end of an initial phase of real efforts by Moldova to exercise its authority over the whole of its territory. After that date it tended to adopt a rather acquiescent attitude, channelling its efforts into negotiation with a view to re-establishing its control over Transdnestrian territory instead of trying to secure the rights of the applicants, who had been tried unlawfully and unlawfully detained for ten years in Mr Ilascu's case and nearly twelve years in the case of the other three.

3. As the Court said, in view of the complexity of the factual situation, the question whether Moldova discharged its positive obligations is closely bound up both with relations between Moldova and the Russian Federation and with relations between Transdnestria and the Russian Federation. In addition, account has to be taken of the influence Moldova could have exerted through the Russian authorities to improve the applicants' situation; lastly, it is also important to take into account certain acts dating from before ratification and use them for comparative purposes when assessing the efforts made by Moldova after 12 September 1997 (paragraphs 337 and 338 of the judgment). Consequently, it is necessary to make an overall assessment of the situation as it developed in the course of time, and of acts

and omissions.

4. It is true that, from the onset of the hostilities, the Moldovan authorities never ceased complaining of the aggression they considered they had suffered and rejected the secessionists' declaration of independence. After the end of the hostilities, in July 1992, the Moldovan authorities continued to take steps to re-establish control, by bringing criminal proceedings in 1993. Subsequently, after 1994, they continued to assert their sovereignty over the territory controlled by the "MRT", both internally and internationally (paragraphs 341 to 343 of the judgment).

5. However, from 1997 onwards, the conclusion is inescapable that there was a reduction in the number of attempts by the Moldovan authorities to exercise control in Transdnistria, and that these attempts were limited to diplomatic activity. Moreover, Moldova had just been accepted as a member of the Council of Europe, yet, paradoxically, did not take advantage of the opportunities afforded it in that political forum.

On the other hand, express or *de facto* measures of cooperation were taken between the Moldovan authorities and the Transdnistrian separatists: administrative, economic and political agreements were reached, relations were established between the Moldovan parliament and the "parliament of the MRT", cooperation was introduced for several years in the police, prison and security fields, and other forms of participation were developed in fields such as the issuing of identity papers, air traffic control, telephone links and sport (paragraphs 114, 174, 175, 177, 178, 179 and 185 of the judgment).

6. As regards the applicants' situation, before ratification of the Convention in 1997 the Moldovan authorities took certain measures, such as the Supreme Court's judgment of 3 February 1994 quashing the applicants' conviction and setting aside the warrant for their detention; the prosecution beginning on 28 December 1993 of the "judges" of the "Supreme Court of the MRT" and other Transdnistrian officials accused of usurping official functions; the amnesty decreed by the President of Moldova on 4 August 1995; the Moldovan parliament's request of 3 October 1995; the sending of doctors to examine the applicants detained in Transdnistria; and the assistance provided to the families (paragraphs 222, 223, 226, 227, 239 of the judgment).

7. But once again, after 1997, the measures taken to secure the applicants' rights were limited to the sending of doctors (the last visit taking place in 1999), the provision of financial support to their families, and interventions by Mr Sturza to secure their release (the last of these interventions recorded in the file came in April 2001). The Moldovan Government acknowledged that in response to the demands made by the separatists during discussions on a settlement of the conflict and the applicants' release they had changed their negotiating strategy, giving more priority to diplomatic exchanges with a view to preparing the return of

Transdnistria to the Moldovan legal order, while simultaneously abandoning the judicial measures previously taken (paragraph 344 *in fine* of the judgment). It is understandable that certain cooperation measures were taken by the Moldovan authorities with the laudable aim of improving the daily lives of the Transdnistrian population and enabling them to lead as nearly normal lives as possible.

8. I do not wish to pass judgment on the pertinence or effectiveness of the political strategy adopted by Moldova in order to settle such a crucial question as that of its territorial integrity. Nevertheless, even in the absence of effective control over the Transdnistrian region, the Moldovan authorities remain under an obligation to take all the measures in their power, whether political, diplomatic, economic, judicial or other measures (paragraph 331 of the judgment), to secure the rights set forth in the Convention to persons formally within their jurisdiction, and therefore to all those within Moldova's internationally recognised borders.

As regards the nature and effectiveness of the measures taken or those which could have been taken, certain facts may be more significant than others on account of their consequences. In that connection, having regard to Mr Ilascu's release in May 2001, it may be presumed that not all the measures envisaged to obtain the applicants' release could be considered doomed to failure, as the majority seem to admit in the second part of paragraph 347 of the judgment.

9. I consider that the efforts made by the Moldovan authorities with a view to securing the rights set forth in the Convention after its ratification in 1997 were not pursued with the firmness, determination and conviction required by the serious situation the applicants found themselves in. For example, the following instances of manifest inaction, and sometimes counter-action, must be noted.

– On 28 December 1993 an investigation was opened in connection with the persons involved in the applicants' prosecution and conviction, but the absence of information on the measures taken by the authorities to bring this investigation to a satisfactory conclusion, could give rise to serious doubts about its effectiveness (paragraph 221 of the judgment).

– The Moldovan Supreme Court's judgment of 3 February 1994 quashing the judgment of the "Supreme Court of the MRT" of 9 December 1993 and ordering the return of the case file to the prosecution service for a new investigation was never acted upon (paragraph 222 of the judgment).

– No steps were taken after the amnesty declared on 4 August 1995 by the Moldovan President. Similarly, the Court has not been informed of any action undertaken by the Moldovan Government or the Ministry of Foreign Affairs on the applicants' behalf, notwithstanding parliament's request to that effect on 3 October 1995 (paragraph 227 of the judgment).

– On 16 August 2000 the order of 28 December 1993 was declared void by the public prosecutor on the ground that the offences had not been given the correct legal classification. The same decision framed new charges but it was held to be inadvisable to open an investigation on the basis of those charges because prosecution was time-barred. One can only express doubts about the seriousness of proceedings in which the authorities waited for seven years before reclassifying the offences under investigation only to decide in the end that prosecution on the new charges was subject to limitation. Without being able to form a view on the question whether Moldovan law authorises limitation in respect of offences which are the subject of a pending criminal investigation, I must point out that in the present case limitation became possible precisely because of the length of an investigation which had in addition proved to be ineffectual (paragraph 229 of the judgment).

– The opening by the public prosecutor on 16 August 2000 of a criminal investigation in respect of the governor of Hlinaia Prison was not followed up and in any case the governor told the Court’s delegates that he had not been informed of it (paragraph 230 of the judgment and § 137 of the Annex).

– As a result of the staying or discontinuance of the above-mentioned investigations, it is now possible for certain senior officials of the ‘MRT’ regime, including Mr Chevtsov, to enter Moldova without being called to account in any real sense for their activities in the regime’s service (see Annex, Mr Ilascu, § 21, and Mr Rusu, § 304). Moreover, I note, with no small surprise, that since his return to Moldova a former “Minister of Justice of the MRT”, Mr Sidorov, has held high State office in several capacities and has been the President of the Moldovan Parliament’s Human Rights and Minorities Committee since 2001 (paragraph 168 of the judgment).

10. It should be noted that, while taking steps to promote cooperation with the secessionist regime with the avowed aim of making life easier for the population of Transdnistria, the Moldovan authorities have not displayed the same diligence with regard to the fate of the applicants. In their negotiations with the separatists, whether before or after May 2001, the Moldovan authorities have restricted themselves to raising the question orally, without trying to reach a written agreement providing for their release (paragraphs 172 and 348 of the judgment). Similarly, although three of the applicants have been unlawfully deprived of their liberty for nearly twelve years, no overall plan for the settlement of the Transdnistrian situation deals with their situation (paragraph 348 *in fine*).

11. The Court accepts that the Moldovan authorities have not shown themselves any more attentive to the applicants’ fate in their bilateral relations with the Russian Federation, and that the fact that the Moldovan Government refrained at the hearing on 6 June 2001 from arguing that the Russian Federation might be responsible, with the aim of averting

“undesirable consequences, namely the halting of the process aimed at ending ... the detention of the other applicants” (paragraph 360 of the judgment), amounted to an admission on their part of the influence the Russian authorities might have over the Transdniestrian regime (paragraph 349 of the judgment). However, it would seem that the Moldovan authorities, both before and after 2001, did not use all the opportunities available to them to bring that influence into play on the applicants’ behalf.

12. In conclusion, one may well disagree with the minority, who consider that the applicants are not within the jurisdiction of Moldova for the purposes of Article 1 of the Convention, that Moldova has not failed to discharge its positive obligations and that its responsibility is not engaged in respect of the violations complained of, but that approach is perfectly coherent. On the other hand, the conclusion that the applicants are within the jurisdiction of Moldova and that Moldova is bound by its positive obligations leads unavoidably to acceptance that its responsibility is fully engaged from the date of its ratification of the Convention, on 12 September 1997.

The fateful date “May 2001” seems wholly artificial and nonsensical.

DISSENTING OPINION OF JUDGE RESS

1. I have joined the dissenting opinion of Judge Casadevall but I would like to make some additional remarks on the positive obligations of Moldova. The Court has reached the conclusion that the applicants come within the jurisdiction of the Republic of Moldova (paragraphs 300-331 of the judgment) and that the declaration attached to the instrument of Moldova's ratification of the Convention is a reference to the *de facto* situation of control. Even in the absence of effective control over the Transdnestrian region, Moldova has a positive obligation under Article 1 of the Convention to take measures that it has the power to take in accordance with international law to secure to the applicants the rights guaranteed by the Convention. The Court has rightly stated that there is still *jurisdiction* under these circumstances even if a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separate regime is set up. The sovereignty of Moldova over the whole territory was and is not disputed by the international community, not even by the Russian Federation, which itself, through the presence of its troops, exercises control over the Transdnestrian region and thus also has jurisdiction and to that extent shares responsibility, though of a different kind, with Moldova. I would not conclude as the Court did in paragraph 333 that "the factual situation reduces the scope of the jurisdiction". The "scope" of the jurisdiction is always the same but the responsibility of the Contracting State, arising from the undertaking given by the State under Article 1, can be considered to relate only to the positive obligations towards persons within its territory and not to all acts done by the local authority sustained by rebel forces in Transdnestria. As to the issues of jurisdiction and of responsibility, the State in question must endeavour with all legal and diplomatic means available to it vis-à-vis foreign States and international organisations to continue to guarantee the protection of the rights and freedoms guaranteed by the Convention.

2. I agree with the statement in paragraph 335 that the applicants are within the jurisdiction of the Republic of Moldova for the purposes of Article 1 of the Convention but that its *responsibility* for acts complained of and committed in the territory of the "MRT", over which it exercises no effective authority, is to be assessed in the light of its positive obligations. It is difficult to see how Moldova could be held responsible directly for all the acts of the Transdnestrian regime in that part of its territory. The Court concluded, in view of the complexity of the factual situation and the difficulty in indicating which measures the authorities should take in order to comply with the positive obligations most effectively, that there were intensive measures taken in the years after 1991/1992 to re-establish Moldova's control over the Transdnestrian territory. But these measures

became less intensive and forceful after the ratification of the Convention by Moldova on 12 September 1997 and practically ceased to exist by the time Mr Ilascu was released.

As the Court has rightly stated, this obligation to re-establish control over Transdnistria required Moldova, firstly, to refrain from supporting the separate regime of the ‘MRT’ in particular after 1997 and, secondly, to act by taking all the political, judicial and other measures at its disposal, especially regarding the applicants’ situation and any further violations of the Convention in relation to them. The Court itself notes that there was a “reduction in the number of judicial measures intended to assert Moldovan authority in Transdnistria” (paragraph 344). I fully agree with the analysis of Judge Casadevall that there is nothing to justify the conclusion that Moldova discharged its positive obligations before Mr Ilascu’s release in May 2001 but that since this release there have been fewer significant signs, if any, of effective measures which the Moldovan Government could have taken to secure to the applicants their rights under the Convention.

It is obvious that there were different “phases” of more or less effective political and judicial efforts to re-establish Moldova’s authority over the Transdnistrian territory and to bring an end to the situation of violations of Convention rights in relation to the applicants. After the ‘MRT’ was set up in 1991-1992 with the support of the Russian Federation it remained all the time under the effective authority or at least under the decisive influence of the Russian Federation and survived thanks to the military, economic, financial and political support given to it by the Russian Federation (paragraph 392 of the judgment). Under these circumstances, it was an elementary duty of the Moldovan authorities to discharge their positive obligations by addressing the applicants’ fate continuously and specifically in their bilateral relations with the Russian Federation. This lack of diplomatic efforts and arguments regarding the Russian Federation’s alleged violations was obvious after May 2001, but also in my view - as the Court has stated itself – after 1997 (see paragraph 349). The Russian Federation, acting as a guarantor State, was the one to which Moldova, in the framework of its positive obligations, should have addressed itself intensively, by invoking the responsibility of Russia under the Convention. I cannot see any dividing line between the time of ratification in 1997 and the present whether in May 2001 or at any other time.

3. The situation in Moldova is different from that described in the *Cyprus v. Turkey* judgment (10 May 2001, § 78, *Reports of Judgments and Decisions* 2001-IV) where the Court referred to the continuing inability of the Republic of Cyprus to exercise its Convention obligations in Northern Cyprus as there was a full military occupation of Northern Cyprus by Turkey. In the present case there is no occupation of the Transdnistrian territory even though there is a rebel regime and the Russian Federation

exercises a decisive influence and even control in that territory. But Moldova had and still has important means of influence to fulfil its positive obligations which it did not exercise with determination and effect. It even adopted an attitude of cooperation in different fields of administration and concluded administrative agreements with the rebel regime which made Judge Casadevall speak of a rather acquiescent attitude. However, where a State is prevented by circumstances from exercising its authority over parts of its territory because of a rebel regime, its responsibility may be engaged even if it does not show such a lack of commitment or effort as to amount to tacit acquiescence in the activities of the illegal administration. If one has to conclude that there is tacit acquiescence, then it would be difficult to attach responsibility to the rebel regime for the breach of international law. Such acquiescence would also make it difficult for the State in question to accept the support of third States in its struggle with the rebel regime. For the assisting State this could easily amount to an unjustified intervention. Consequently, a breach of a positive obligation can therefore already be found where there is evidence before the Court which does not show clear collusion or acquiescence in the exercise of authority by a rebel regime within the territory but nevertheless discloses an intermediate situation, as in the present case, where the State has not acted with all the required determination and effort which would have been possible.

4. It is not for the Court to exclude any tacit agreement or acquiescence between States on the exercise of authority and control. But under the Convention in all these cases the State is under the positive obligation to ensure that the Convention rights and freedoms continue to be observed.

The most crucial question is what measures the Court should indicate as being absolutely necessary for the fulfilment of that positive obligation. In my view, in order not to be held tacitly to acquiesce in the acts of the rebel authority the State has to

(a) continue its firm protests at bilateral and international levels against the illegal exercise of authority on its territory;

(b) continue to take all possible and legally acceptable measures to regain full control on its territory;

(c) continue to seek support, bilaterally and internationally, in particular through international organisations, for all measures taken against the illegal regime, since the Contracting States are required to secure human rights protection throughout their territory; and

(d) not lend such support to the rebel regime as could be interpreted as clear acquiescence in its exercise of authority.

Questions about the efficacy of stricter measures like an economic blockade etc. to ensure the protection of human rights in the short term, or the usefulness of economic, cultural and other cooperation to resolve the situation, are matters of political evaluation and diplomacy, to which the Court has cautiously tried to avoid giving an answer.

5. In contrast to the situation in Cyprus, relations between the Moldovan constitutional authorities and the authorities of the illegal Transdniestrian regime have never been *completely* interrupted. As the Court has emphasised, there were relations concerning the administration of Tiraspol airport, a common telephone system and understandings and cooperation on many levels. Since the issue is whether Moldova continues to exercise jurisdiction over parts of the territory, all these elements of economic relations, political security and other cooperation between the Moldovan and Transdniestrian authorities make it difficult to rebut the responsibility of Moldova in the present case. The situation is therefore closer to that in the case of *Assanidze v. Georgia* ([GC] no. 71503/01, ECHR 2004-...) than to that of the aforementioned *Cyprus v. Turkey* case. In the former case concerning the Ajarian region, the constitutional authorities of Georgia encountered difficulties in securing compliance with the rights guaranteed by the Convention throughout this territory. In the present case the positive obligation to re-establish full authority and control would demand a continued and firm *assertion* of the illegality of the Transdniestrian regime and of the rights of the Moldovan Government over the whole country. This must be done using all State powers, be they judicial, executive or legislative. I cannot see in the maintaining of judicial measures only a symbolic effect. However, there was also a clear reduction in the number of attempts by Moldova at international level to assert its authority in Transdniestria as of September 1997, and a definite diminution in their efforts to secure the applicants' rights, even if account is taken of the extensive efforts made by Mr Sturza.

6. It will always be difficult to assess such a mosaic of measures, but if one recognises that the Russian Federation had jurisdiction over Transdniestria at the material time, and continues to exercise control, then one realises that there was an obvious lack of formal protests, declarations or other measures towards the Russian Federation, third countries, the United Nations and other international organisations, in an attempt to influence them to bring the illegal situation in Transdniestria and the applicants' unacceptable situation to an end.

**PARTLY DISSENTING OPINION OF JUDGE SIR NICOLAS
BRATZA, JOINED BY JUDGES ROZAKIS, HEDIGAN,
THOMASSEN AND PANTÎRU**

1. While I am in agreement with the conclusion of the majority of the Court that the responsibility of the Russian Federation was engaged in respect of the breaches of the Convention alleged by the applicants and found to be established, I am unable to share the view of the majority that the responsibility of Moldova was similarly engaged.

2. Central to the case against both respondent States is the question whether the applicants are to be regarded as “within their jurisdiction” for the purposes of Article 1 of the Convention. If they are to be so regarded, State responsibility will in principle attach for breaches of the Convention which are shown to have occurred or to have continued after the coming into effect of the Convention – in the case of Moldova, 12 September 1997 and in the case of Russia, 5 May 1998.

3. It is established in the *Bankovic* decision (*Bankovic & Others v. Belgium and 16 Other Contracting States*, no. 52207/99, § 59-61, ECHR 2001-XII) that the notion of “jurisdiction” in Article 1 of the Convention is essentially territorial in nature and that it is only in exceptional cases that acts performed or producing effects outside the territory of a Contracting State can constitute an exercise of “jurisdiction” for this purpose. Conversely, the presumption that persons within the territory of a State are within its “jurisdiction” for Convention purposes is a rebuttable one and, exceptionally, the responsibility of a State will not be engaged in respect of acts in breach of the Convention which occur within its territory. This is apparent from the *Cyprus v. Turkey* judgment ([GC], no. 25781/94, § 78, ECHR 2001-IV) where the Court referred to “the continuing inability [of the Republic of Cyprus] to exercise its Convention obligations in northern Cyprus” and thus to “the regrettable vacuum in the system of human rights protection” which would follow from a finding that the applicants were not within the jurisdiction of Turkey.

4. The principal questions which fall to be determined are (i) whether this is an exceptional case in which the applicants are to be regarded as within the “jurisdiction” of the Russian Federation despite being at all material times outside the territory of that State and (ii) whether, being within the territory of Moldova, the applicants are to be regarded as within its “jurisdiction” so as to engage the responsibility of that State or whether, exceptionally, the presumption that they were and are within Moldova’s jurisdiction is rebutted. The two questions are closely linked and depend, as the Court’s judgment makes clear, on a close analysis of the factual situation existing in, and relating to, the Transdniestrian region from 1991 until the present day.

A. Applicable principles

5. The circumstances in which a State may be held responsible for acts in breach of the Convention occurring outside its territory were addressed and defined in the Court's judgments in *Loizidou v. Turkey (Preliminary Objections)* (judgment of 23 March 1995, Series A no. 310), *Loizidou v. Turkey (Merits)* (judgment of 18 December 1996, Reports 1996-VI, 2216) and *Cyprus v. Turkey* (cited above) and in its *Bankovic* decision (cited above). Such responsibility may, so far as relevant, attach:

(i) where as a consequence of military action – whether lawful or unlawful – a State exercises effective control of an area outside its national territory. Such control may be exercised directly, through its own armed forces or (indirectly) through a subordinate local administration (*Loizidou, (Preliminary Objections)* § 62). Where a State exercises effective overall control of a territory, its responsibility cannot be confined to the acts of its own soldiers or officials – whether or not those acts are authorised by the high authorities of the State – “but must also be engaged by virtue of the acts of the local administration which survives by virtue of [the] military and other support” (*Cyprus v. Turkey*, § 77). Further, when such effective control is found to exist, responsibility attaches even if no detailed control is exercised over the policies and actions of the local administration (*Loizidou, (Merits)* § 56).

(ii) where a State, through the consent, invitation or acquiescence of the Government of the territory, exercises all or some of the public powers normally to be exercised by that Government (*Bankovic*, § 71).

6. There is less direct authority as to the converse case – the responsibility of a State within whose territory violations of the Convention occur but which is prevented from exercising any effective control within the territory in question, whether due to military occupation by the armed forces of another State, or to acts of war or rebellion within the territory or to the occupation and control of the territory by a separatist administration sustained by rebel forces or by another State. It is clear that an individual remains “within the jurisdiction” of the State and that the presumption of State responsibility is not rebutted where the State concerned is shown to collude with the local administration in the exercise of authority by that administration within the territory concerned. Further, even if a State does not exercise effective control within a part of its territory, an individual will be treated as within that State's “jurisdiction” in respect of acts in violation of the Convention occurring within that part, if its servants or agents can be shown to have participated directly or indirectly in the particular acts in question or to have acquiesced in the commission of those acts.

7. The majority of the Court go further, holding that where a Contracting State is prevented from exercising its authority over the whole of its

territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up, it does not thereby cease to have “jurisdiction” for the purposes of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State; rather, such a factual situation “reduces the scope of that jurisdiction in that the undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State’s positive obligations towards persons within its territory.” (paragraph 333 of the judgment). The nature of the positive obligation thereby incurred is variously described in the judgment as a “duty to take all the appropriate measures which it is still within its power to take” to ensure respect for the Convention rights and freedoms (paragraph 313); an “obligation ... to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention” (paragraph 331); and a duty to “endeavour, with all the legal and diplomatic means available to it vis-à-vis foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms guaranteed by the Convention” (paragraph 333). In the opinion of the majority, the Court’s role is not to indicate what measures the authorities should take in order to comply with their obligations most effectively but rather to verify that the measures actually taken were appropriate and sufficient in the present case, the Court’s task being “to determine to what extent a minimum effort was nevertheless possible and whether it should have been made” (paragraph 334 of the judgment). Applying these principles in the concrete case, the majority of the Court find that “the applicants are within the jurisdiction of the Republic of Moldova for the purpose of Article 1 of the Convention but that its responsibility for the acts complained of, committed in the territory of the “MRT”, over which it exercises no effective authority, is to be assessed in the light of its positive obligations under the Convention” (paragraph 335).

8. I am unable to agree with this analysis. In the first place, I have difficulty in accepting the proposition that those within a part of the territory of a State over which, as a result of its unlawful occupation by a separatist administration, the State is prevented from exercising any authority or control may nevertheless be said to be within the “jurisdiction” of that State according to the autonomous meaning of that term in Article 1 of the Convention, which term presupposes that the State has the power “to secure to everyone...the rights and freedoms” defined therein. I find it equally difficult to accept the conclusion of the majority of the Court that in such a factual situation those within the territory remain “within [the] jurisdiction” of the State but that the scope of that “jurisdiction” is reduced, the State continuing to owe positive obligations with regard to the Convention rights of everyone in the territory. The very use of the term “the positive

obligations of the State” and the reliance placed in the judgment on the case-law of the Court under Article 1 concerning such obligations appears to me to be both misleading and unhelpful in the present context. That case-law – with its references to the fair balance to be struck between the general interest and the interests of the individual and the choices to be made in terms of priorities and resources – was developed in a factual context where the respondent State exercised full and effective control over all parts of its territory and where individuals within that territory were indisputably within the “jurisdiction” of the State for Convention purposes. The Court’s reasoning cannot in my view be readily adapted to the fundamentally different context in which a State is prevented by circumstances outside its control from exercising any authority within the territory and where the very issue is whether individuals within the territory are to be regarded as within the “jurisdiction” of the State for Convention purposes.

I am unable to accept that in such a situation responsibility for a violation of the Convention rights of individuals within the territory may attach to the State merely because of a failure on its part to establish that it had made sufficient efforts on the legal or diplomatic plane to guarantee those rights. In the specific context of the present case, the responsibility of a State in respect of the wrongful detention of persons detained within territory outside its effective control cannot in my view depend on whether at any particular point of time the State is, in the estimation of the Court, making sufficiently concerted efforts to secure their release. Nor can I accept an interpretation of the Convention which would require the Court to make an assessment, in a complex and fluctuating international situation, as to whether particular legal or diplomatic measures would be effective to restore constitutional rule within the territory, whether such measures were in practice possible and whether they were adequately implemented by the State concerned.

9. I can agree that, where a State is prevented from exercising any authority or control over territory within its borders, the inaction of the State concerned may nevertheless be held to engage its responsibility under the Convention in respect of those within the territory. However, such responsibility could in my view only attach in exceptional circumstances where the evidence before the Court clearly demonstrates such a lack of commitment or effort on the part of the State concerned to reassert its authority or to reinstitute constitutional order within the territory as to amount to a tacit acquiescence in the continued exercise of authority or “jurisdiction” within the territory by the unlawful administration.

B. Application of the principles in the present case

1. The Russian Federation

10. Applying these principles to the facts of the present case, I am in full agreement with the reasoning of the majority of the Court in holding that, at all material times, the applicants were, and in the case of three of the applicants continue to be, within the “jurisdiction” of the Russian Federation for the purposes of Article 1 of the Convention and that responsibility accordingly attaches for the violations of the Convention which have been found by the Court. In particular, I find the following facts to be established on the evidence before the Court:

(i) During the conflict in 1991-92, forces of the Fourteenth Army (after 1 April 1992, the Russian Operational Group – ROG) stationed in Transdnistria fought with and on behalf of the separatist forces within the territory and voluntarily transferred to them, or allowed to be seized by them, large quantities of armaments.

(ii) Throughout the conflict, the leaders of the Russian Federation provided political support to the Transdnistrian separatists, *inter alia*, through their public declarations.

(iii) The applicants were arrested in June 1992 with the direct participation of soldiers of the former Fourteenth Army/ROG; the first three applicants were detained in the garrison headquarters of the former Fourteenth Army/ROG where they were severely ill-treated; and the applicants were subsequently surrendered by the Army authorities into the charge of the separatist police in the knowledge of the offences of which they were suspected and the likely consequences for the applicants of their surrender to the illegal and unconstitutional regime.

(iv) Following the ceasefire agreement of 21 July 1992, the Russian Federation continued to provide military, political and economic support to the separatist regime within the territory and thereby ensured its continued survival.

(v) In the period after ratification of the Convention, the Russian Federation, through its continued stationing of troops on Moldovan territory in breach of its undertaking to withdraw, combined with its economic, financial and political support for the illegal Transdnistrian regime which it had helped to establish, has continued to enable the regime to survive and to exercise authority and control within the territory.

2. Moldova

11. I would note at the outset that, unlike the situation examined by the Court in its recent *Assanidze v. Georgia* judgment ([GC] no. 71503/01, ECHR 2004-...), the present case is not one in which the Moldovan authorities are merely “[encountering] difficulties in securing compliance

with the rights guaranteed by the Convention in all parts of their territory” (judgment, paragraph 146). As noted in the present judgment (paragraph 330), it is common ground that, from the beginning of the conflict in 1991 until the present day, Moldova has been, and continues to be, prevented from exercising any authority or control within the territory of Transdniestria as a result of the occupation of the territory by the unlawful separatist regime. Moreover, the majority of the Court acknowledge in the judgment that, in the period from 1991 until the date of ratification of the Convention by Moldova in September 1997, not only did Moldova bear no responsibility for the acts in violation of the Convention of which the applicants complain but no criticism can be made of a lack of commitment or effort on the part of Moldova to reassert its control within the territory or to secure the applicants’ rights. This is, in my view, plainly correct.

During the course of the hostilities themselves, the constitutional authorities of Moldova, faced as they were by forces which were superior in numbers, weaponry and fighting strength, were incapable of re-establishing control over the Transdniestrian territory. Moreover, as is noted in the judgment, from the outset of hostilities the Moldovan authorities not only rejected the separatists’ unilateral declaration of independence but publicly complained of the aggression against Moldova, calling for international support. Even after armed hostilities had ceased, the Moldovan authorities had no practical possibility of re-establishing constitutional rule within the territory, being confronted by a regime which was supported militarily, politically and economically by the Russian Federation. There is nothing to suggest any acquiescence on the part of those authorities in the control exercised within the territory by the unlawful separatist administration; on the contrary, as the evidence shows and as the judgment points out, the authorities continued to denounce the regime and to assert their sovereignty over the territory both internally and internationally. Thus, for example, in 1994 Moldova adopted a new Constitution which provided, *inter alia*, for the possibility of granting a certain degree of autonomy to Transdniestria; in the same year, Moldova signed with the Russian Federation an agreement for the total withdrawal of Russian troops from the territory within a three-year period.

12. As regards the position of the individual applicants, not only was their arrest, detention and treatment while in custody not imputable in any sense to the Moldovan authorities, but, as emphasised in the judgment, there is nothing to suggest any collusion or acquiescence on their part in any of the acts in violation of the Convention of which complaint is made. The evidence shows that, on the contrary, the executive and judicial authorities of the State took a number of steps to emphasise the unlawfulness of what had occurred and to secure the release of the applicants, in particular by quashing the applicants’ convictions, by instituting criminal proceedings against those responsible for their prosecution and conviction and by

systematically raising the question of the applicants' release in discussions with both the separatist leaders and the authorities of the Russian Federation.

13. In a declaration made by Moldova and contained in the instrument of ratification of the Convention deposited on 12 September 1997 it was stated that Moldova would be "unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally settled". While the Court in its decision on the admissibility of the application held that the declaration was not a valid reservation for the purposes of Article 57 of the Convention, there is no reason to doubt that the declaration represented an accurate statement of the factual situation at the date of ratification.

14. It is in the period after September 1997 that the majority of the Court have found the Moldovan authorities to be open to criticism. Since it is accepted that Moldova exercised no control within the territory of Transdniestria, it is not suggested that the State bears direct responsibility for the Convention violations of which complaint is made; rather, the majority have found that the responsibility of Moldova for such violations is engaged on the grounds of its failure to discharge its positive obligations to take sufficient, effective and appropriate measures to secure the applicants' Convention rights. However, the judges making up the majority are divided as to the relevant date from which Moldova may be said to have failed to fulfil such obligations and thus as to the responsibility of Moldova for the acts in breach of the Convention which are found to have occurred. One group ("the first group"), whose views are reflected in the Partly Dissenting Opinion of Judge Casadevall, considers that Moldova failed in its positive obligations from the date of entry into force of the Convention in September 1997 and that accordingly Moldova is responsible for violations of the Convention occurring after that date; the other group ("the second group"), whose views are represented in the judgment itself, considers that such a failure occurred only after May 2001 and that Moldova's responsibility is not engaged in respect of violations occurring before that date, including those complained of by Mr. Ilascu who was released from detention in that month. It is necessary to deal with the reasoning of both groups and I consider first the opinion favouring a more extensive responsibility on the part of Moldova.

(a) Responsibility from September 1997

15. The conclusion of the first group that Moldova was in breach of its positive obligations from the date of the coming into effect of the Convention appears to be based on three principal factors:

- an alleged reduction in the number of attempts by Moldova to assert control in Transdnistria and the limiting of those attempts to diplomatic activity;
- the development of administrative, economic, political, security and other cooperation between the Moldovan and Transdnistrian authorities; and
- a diminution in the measures taken and efforts made by Moldova to secure the applicants' rights.

It is convenient to address in turn each of these factors, none of which in my view, seen either individually or collectively, is such as to justify a finding of State responsibility on the part of Moldova.

16. As to the first of the factors relied on, it is true that there appears to have been a diminution in the judicial measures in Moldova designed to assert authority over the Transdnistrian territory. In particular, it would seem that the investigation into the offences alleged against the applicants which had been ordered by the Supreme Court did not take place and that the criminal investigation opened in respect of the Governor of Hlinaia Prison on 16 August 2000 was not followed up. In addition, on the same date the order of 28 December 1993 opening an investigation in connection with the persons involved in the applicants' prosecution and conviction was declared void.

17. I do not attach great significance to the failure to pursue these measures, which had not over the years proved effective in bringing to an end or undermining the illegal regime within the territory and the effect of which appears to have been at most symbolic. Special emphasis is laid by the first group on the fact that, having reclassified the charges against those responsible for prosecuting and convicting the applicants on 16 August 2000, the Moldovan authorities failed to pursue an investigation on the grounds that the proceedings were time-barred and that the persons under suspicion were refusing to assist the authorities with their inquiries. While, as observed in the opinion of the first group, doubt may be expressed about the seriousness of a criminal investigation in which the authorities waited for seven years before reclassifying the offence, there is no evidence to show that the decision to reclassify the offences or the decision that the charges were time-barred under domestic law were decisions taken otherwise than in good faith and on justifiable legal grounds. Moreover, the stance taken by the judicial authorities affords in my view no support for the contention that the authorities had renounced any efforts to reassert control over their territory.

18. More importantly, as the judgment recognises, in and from 1998, the efforts of the Moldovan authorities were directed more towards diplomatic activity designed to bring about an overall settlement of the situation in the region and the restoration of constitutional rule in the Transdnistrian territory. In particular, in March 1998, the authorities of Moldova, the

Russian Federation, Ukraine and the region of Transdniestria signed a number of instruments with a view to settling the Transdniestrian conflict (judgment, paragraph 97); numerous contacts and negotiations took place between representatives of Moldova and the separatist regime with the same purpose (judgment, paragraphs 103-4 and 171); and from 2002 to the present day a number of proposals for resolution of the situation have been put forward and discussed between the authorities of Moldova, the Russian Federation and the OSCE (judgments, paragraphs 106-109). I see no reason to doubt the assertion of the Moldovan Government, which was supported by the evidence of Mr Sturza (Annex, §§ 309-313) and Mr Sidorov (Annex, § 446), that this change of strategy towards diplomatic approaches was aimed at laying the ground for the return of the Transdniestrian territory within the Moldovan legal order and thereby restoring the constitutional rights of those living within the territory, including the applicants. I can find nothing in the efforts which have been made and continue to be made by the Moldovan authorities to negotiate an overall settlement to suggest support for the separatist regime or acquiescence in its continued unlawful exercise of authority within the territory.

19. The reliance placed on the measures of cooperation with the separatist authorities is, I consider, to be viewed in the same light. Special attention is drawn in the opinion of the first group to economic cooperation agreements, the establishment of relations between the Moldovan Parliament and the so-called “Parliament of the MRT”, cooperation in police and security matters and forms of cooperation in other fields such as air traffic control, telephone links and sport. The Moldovan Government explained that these cooperative measures had been taken out of a concern to improve the every day conditions of those living in Transdniestria and to allow them to live as normal lives as possible. No convincing grounds have been advanced for doubting that this was the underlying aim – an aim which is accepted in the opinion of the first group to be a laudable one - and, given their nature and limited character, the measures cannot, in my view, be seen as affording any support for the Transdniestrian regime. On the contrary, they represent a confirmation by Moldova of its desire to re-establish control over the entirety of its territory.

20. The first group criticise the fact that, in taking steps to improve the conditions of life of those within the territory, the Moldovan authorities have not displayed the same diligence with regard to the fate of the applicants. While asserting that it is not for the Court to assess the pertinence or effectiveness of the political strategy adopted by Moldova in order to settle as crucial a question as that of its territorial integrity, the first group nevertheless go on to observe that the Moldovan authorities remain under an obligation “to take all the measures in their power, whether political, diplomatic, economic, judicial or other measures..., to secure the rights guaranteed by the Convention to those formally within their

jurisdiction, and therefore to all those within Moldova's internationally recognised borders". However, quite apart from my disagreement with the suggestion that those in territory of Transdniestria are to be regarded as within the "jurisdiction" of Moldova for Convention purposes, these criticisms overlook, in my view, that the very purpose of the political strategy was and is to restore constitutional rule to the separatist territory, which remains an essential pre-condition for securing the Convention rights of all those within the territory, including the applicants themselves.

21. The alleged lack of effort on the part of the Moldovan authorities since 1997 specifically directed to securing the Convention rights of the applicants is the third of the principal factors relied on by the first group. Complaint is made that, after the date of ratification, the efforts to secure the applicants' rights "were not pursued with the firmness, determination and conviction required by the serious situation which the applicants found themselves in." It is said that, since that date, the measures taken by Moldova to secure the applicants' rights have been confined to sending doctors to Transdniestria to examine them in prison, providing financial assistance to their families and intervening through Mr Sturza, with a view to securing their release.

22. I find it difficult to understand this criticism insofar as it relates to the period from 1997 until 2001. Mr Mosanu gave evidence that the issue of the applicants was raised at OSCE meetings, at meetings with foreign States and at a meeting of the Inter-Parliamentary Union (Annex, § 249). The unchallenged evidence of Mr Sturza, the former Minister of Justice and Chairman of the committee for negotiations with Transdniestria, was that he had continued after 1997 to raise the question of the applicants' release with the separatist authorities. It was following those negotiations that Mr Sturza went to Transdniestria in April 2001 to bring back to Chisinau the four applicants, whom he was deceived into believing would all be released (Annex, § 312) and, according to the evidence before the Court, it was at least in part as a result of these negotiations that Mr Ilascu was in fact released in the following month. Having regard to the fact that the Moldovan authorities still hoped at the time to secure the release of the other three applicants, unlike the first group, I do not find it in the least surprising that Mr Chevtsov was permitted to enter Moldova bringing Mr Ilascu with him "without being called to account in any real sense for [his] activities in the regime's service".

23. I can accordingly agree with the view of the second group of judges forming part of the majority that the responsibility of Moldova was not engaged in respect of any of the violations of the Convention found to have occurred prior to May 2001. The question remains whether such responsibility was engaged after that date.

(b) Responsibility after May 2001

24. The conclusion of the second group that the responsibility of Moldova was engaged after May 2001 is not founded on any reduction since that date in the number of judicial measures intended to assert Moldovan authority in Transdnistria; on the contrary, according to the second group, the reduction in the number of measures is not to be seen as a renunciation on Moldova's part of attempts to exercise its jurisdiction in the region, regard being had to the fact that several of the measures tried by Moldova had been blocked by "MRT" reprisals in 2001 and 2002 (judgment, paragraph 344). Instead, the reasoning of the second group is founded essentially on a claimed lack of evidence that since Mr. Ilascu's release effective measures have been taken by the Moldovan authorities to put an end to the continuing infringements of the applicants' Convention rights. It is said that, apart from Mr. Sturza's evidence that the applicants' situation continued to be raised regularly by the Moldovan authorities in their dealings with the "MRT" regime, "the Court has no other information capable of justifying the conclusion that the Moldovan Government have been diligent with regard to the applicants" (judgment, paragraph 348).

25. It is true that after May 2001 the negotiations with the representatives of the Transdnistrian administration and of the Russian Federation appear to have focused on reaching an overall settlement of the conflict rather than on the particular situation of the three applicants who remained in detention. Moreover, according to the evidence of Mr Sturza, after that date Mr Smirnov had refused any further meetings to discuss the issue of the remaining applicants (Annex, § 313). However, according to the uncontradicted evidence of the same witness, not only did the negotiations include the question of what was to be done about criminal sentences imposed by the Transdnistrian authorities in the previous ten years, but, as conceded in the judgment, he continued regularly to raise the issue of the release of the three applicants with his Tiraspol counterpart in the committee for negotiations on Transdnistria (Annex, § 309).

26. While acknowledging that these efforts were made, reliance is placed in the judgment on the fact that the question of the applicants' situation was only raised orally (paragraph 348) and that the Court has not been informed of any overall plan for the settlement of the Transdnistrian conflict which deals with their situation (paragraph 348). It is also stated that there is no evidence before the Court of any approach by the Moldovan authorities to the Russian authorities aimed at obtaining the release of the remaining applicants (paragraph 349). While both points are true, I am wholly unpersuaded that the absence of such material serves to support the majority's conclusion that Moldova has failed to take sufficient, effective or appropriate measures to secure to the applicants their Convention rights. Still less am I able to accept that the evidence before the Court establishes

any acquiescence on the part of the Moldovan authorities in the continued detention of three of the applicants.

27. For these reasons, I have concluded that the applicants were at no material time within the “jurisdiction” of Moldova for the purposes of Article 1 of the Convention, that Moldova has not failed to discharge any obligation in respect of the applicants imposed by that Article and that the responsibility of Moldova is accordingly not engaged in respect of the violations of the Convention complained of by the applicants, whether before or after May 2001.

28. It follows that I have not only voted against the finding that there has been a violation by Moldova of the Convention rights of any of the applicants but also against the finding that Moldova should make payments to the applicants by way of just satisfaction. I have voted with the majority in respect of all other paragraphs of the operative part of the judgment (including the finding that Moldova failed to discharge its obligations under Article 34 of the Convention), save as to the award of compensation in paragraph 21(c) in respect of non-pecuniary damage on account of the Russian Federation’s failure to discharge its obligations under Article 34. In my view, even if such a failure is to be seen as “a violation of the Convention” for the purpose of Article 41 of the Convention so as to permit the award of just satisfaction, which I consider doubtful, I do not regard it as appropriate to make such an award in the present case.

PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES

I would first like to reiterate the view which I expressed in the case of *Assanidze v. Georgia* ([GC] no. 71503/01, ECHR 2004-...) as regards the notion of “jurisdiction” within the meaning of Article 1 of the Convention, dealt with in paragraphs 310 to 314 and 319 of the judgment in the present case.

“To my mind ‘jurisdiction’ means actual authority, that is to say the possibility of imposing the will of the State on any person, whether exercised within the territory of the High Contracting Parties or outside that territory. Therefore, a High Contracting Party is accountable under the Convention to everyone directly affected by any exercise of authority by such Party in any part of the world. Such authority may take different forms and may be legal or illegal. The usual form is governmental authority within a High Party’s own territory, but it may extend to authority in the form of overall control of another territory even though that control is illegal (*Loizidou v. Turkey (Preliminary Objection)* judgment of 23 March 1995, Series A no. 310), notably occupied territories (*Cyprus v. Turkey* [GC], no. 25781/94, ECHR-2001-IV). It may also extend to authority in the form of the exercise of domination or effective influence through political, financial, military or other substantial support of a government of another State. And it may, in my opinion, take the form of any kind of military or other State action on the part of the High Party concerned in any part of the world (see, by way of contrast *Bankovic*, cited in the judgment).

The test should always be whether the person who claims to be within the ‘jurisdiction’ of a State, High Contracting Party to the Convention, in respect of a particular act can show that the act in question was the result of the exercise of authority by the State concerned. Any other interpretation excluding responsibility of a High Contracting Party for acts resulting from the exercise of its State authority would lead to the absurd proposition that the Convention lays down obligations to respect human rights only within the territory under the lawful or unlawful physical control of such Party and that outside that context, leaving aside certain exceptional circumstances (the existence of which would be decided on a case-by-case basis), the State Party concerned may act with impunity contrary to the standards of behaviour set out in the Convention. I believe that a reasonable interpretation of the provisions of the Convention in the light of its object must lead to the conclusion that the Convention provides a code of behaviour for every High Contracting Party whenever they act in exercise of their State authority with resulting consequences to individuals.”

I wish to expand my aforesaid position by adding that a State may also be accountable under the Convention for failure to discharge its positive obligations in respect of any person if it was in a position to exercise

its authority directly or even indirectly over that person or over the territory where such person is.

In the light of the above and the facts and circumstances of the case as set out in the judgment, I agree with the majority that applicants come within the “jurisdiction” of the Russian Federation for the purposes of Article 1 and that its responsibility is engaged with regard to the acts complained of. As rightly pointed out in the judgment it has been proved “that the ‘MRT’, set up in 1991-1992 with the support of the Russian Federation, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives thanks to the military, economic, financial and political support given to it by the Russian Federation” (paragraph 409 of the judgment).

However I disagree with the majority that the applicants come under the “jurisdiction” of the Moldovan Government and that Moldova is responsible for failure to discharge its positive obligations to take sufficient effective and appropriate measures to secure the applicants’ Convention rights. There is nothing to show that the Moldovan Government actually had any direct or indirect authority over the territory where the applicants were detained or over the applicants themselves. The Moldovan Government were in no way responsible for the illegal detention of the applicants or for the continuation of such detention. There is nothing to show that the Moldovan Government acquiesced in or encouraged the existence of the illegal regime which at all material times (with the support of Russia as already explained) exercised actual authority in the area where the violations occurred and where the applicants were detained.

None of the factors set out by the majority in support of their conclusion that Moldova had jurisdiction over the applicants could possibly, in my opinion, be considered as tantamount to an exercise or avoidance of exercising effective authority in respect of the applicants. In this respect I also associate myself with the approach of Sir Nicolas Bratza as set out in paragraphs 15 to 26 of his partly dissenting opinion.

In any case, to conclude that there is “jurisdiction” over certain persons for the purposes of the Convention simply because the Government concerned have failed to take judicial, political, diplomatic and economic measures or any other of the measures invoked by the majority, with the object of securing the Convention rights of the applicants even though actual authority over these persons on the part of the Government was lacking, would be stretching the concept of “jurisdiction” to an unrealistic and absurd extent. In other words it would, in my opinion, be a fallacy to accept that a High Contracting Party to the Convention has “jurisdiction” over any person outside its authority simply because it does not take the political or other measures mentioned in general terms by the majority. Such a position would lead, for instance, in my view to the illogical conclusion

that all High Contracting Parties to the Convention, would have jurisdiction and responsibility for violations of the human rights of persons in any territory of a High Contracting Party, including their own but outside their actual authority (either *de facto* or *de jure* or both depending on the territory), merely by virtue of not pressing to secure the Convention rights in that territory through action against the State which does in reality exercise such authority over these persons.

I believe that the interpretation of a treaty should avoid a meaning which leads to a result which is manifestly absurd.

In the *Bankovic* decision (with which I personally disagree) the Grand Chamber of the Court found that the bombing of buildings in Belgrade resulting in the killing of 16 civilians was an extraterritorial act outside the “jurisdiction” of the High Contracting Parties to the Convention responsible for such bombing and for that reason the relevant complaint of the relatives of the deceased was dismissed as inadmissible. It seems to me incomprehensible and certainly very odd for a High Contracting Party to escape responsibility under the Convention on the ground that the throwing of bombs from its aeroplanes over an inhabited area in any part of the world does not bring the victims of such bombing within its “jurisdiction” (i.e. authority) but a failure on the part of such Party “to take all the measures in [its] power whether political diplomatic, economic, judicial or other measures ... to secure the rights guaranteed by the Convention to those formally [*de jure*] within its jurisdiction” but in actual fact outside its effective authority ascribes jurisdiction to that State and imposes on it positive duties towards them.

At all events I believe that the authorities of Moldova have in fact done everything that could reasonably be expected from them in the particular circumstances of this case. It would be unrealistic and unfair to attribute to them any responsibility for the situation complained of by the applicants.

DISSENTING OPINION OF JUDGE KOVLER

(Translation)

“The frontier between the judicial and the political is not what it was. Nor are the foundations of legitimacy, still less normativeness, which is becoming plural and increasingly diffuse” (Lajoie A., Jugements de valeurs, Paris PUF, 1997, p. 207)

I regret that I do not find myself among the majority and that, while I respect my colleagues’ opinions, I have to express publicly, by virtue of Article 45 § 2 of the Convention, my deep disagreement with the Grand Chamber’s judgment in the present case.

My disagreement concerns the methodology of the analysis, the way the facts are presented, the analysis of the concepts of “jurisdiction” and “responsibility, and lastly the conclusions the Court has reached. I am therefore obliged to spend some time on each of those points.

I. Methodology of the analysis

This case provides an example of a situation in which “human rights become a policy” (*Gauchet M*, La démocratie contre elle-même, Paris, 2002, p. 326). In view of the particular nature of the case, in which the applicants’ situation is indissociable from an extremely complex geopolitical context, the Court finds itself in new territory, given the lack of applicable case-law. The Court’s judgment in this case could have set a precedent for similar situations in other zones of conflict within the member States of the Council of Europe, including those which have joined recently. The historical roots of the conflict in which the countries of the region were involved and the “fragmenting-empire” effect are features which bring to mind conflicts such as the not-so-very distant Balkans or Caucasus have seen.

However, the Court (wrongly in my opinion) preferred to see the situation in terms of a Cyprus-type conflict, following its corresponding case-law and falling into the trap that that case-law represented. To my mind that was a methodological error. The superficial similarities between the present case and the *Loizidou* case are deceptive. The only point in common (to which I will return) is the source of the conflict, namely the prospect for a sizeable community of being attached to another country from which it is radically differentiated by its historical, economic and cultural ties. Hence the reactions and counter-reactions of the participants in the conflict, which took violent forms and led to human tragedies.

However, even this *Loizidou* case-law has many lessons to teach us in that it can help us avoid hasty and simplistic conclusions. In his dissenting opinion in the *Loizidou* case Judge Bernhardt, joined by Judge Lopes Rocha, pointed out: “[In] the present case ... it is impossible to separate the situation of the individual from a complex historical development and a no less complex current situation” (*Loizidou v. Turkey, (Merits)* judgment of 18 December 1996, *Reports* 1996-VI, p. 2242). Noting the failure of the negotiations aimed at the reunification of Cyprus, which had caused the applicant’s situation to drag on, he asked: “Who is responsible for this failure? Only one side? Is it possible to give a clear answer to this and several other questions and to draw a clear legal conclusion?” (*ibid.*).

In another dissenting opinion in the same case Judge Pettiti observed: “[...] however hesitant the international community has been in attempting to solve the international problems over Cyprus since 1974 ... those responsibilities being of various origins and types, the whole problem of the two communities (which are not national minorities as that term is understood in international law) has more to do with politics and diplomacy than with European judicial scrutiny based on the isolated case of Mrs Loizidou and her rights under Protocol No. 1” (*ibid.*, pp. 2253-2254). The caution and wisdom of those words is entirely justified.

Unfortunately, in the present case the Court took the risk of examining on the basis of the isolated situation of the four applicants (since, unlike the position in Cyprus, no system for the reproduction of similar cases has come to light) a nexus of different problems: military (the judgment contains an analysis of the military aspects of the Transdniestrian conflict and a detailed calculation of weapons stocks worthy of a headquarters staff), economic (assessment of the relations between partners who have been operating for decades in the same economic space), political (hard-to-verify quotations from “undated” statements by political leaders and military personnel). Admittedly, the Court was overwhelmed by the huge volume of contradictory information from the applicants, the three States who were involved in the proceedings and its own on-the-spot fact-finding mission; it performed an enormous and highly creditable task of selection. But the strictly legal questions (for example, what legal classification to give to the right of peoples to self-determination, within limits, or the first applicant’s repeated calls to violence before he was arrested) have gone unanswered. In my opinion, that was a second methodological error, which led to a series of further errors.

II. Presentation of the facts

In such a complex and “sensitive” case as this the detailed and objective presentation of the circumstances of the case plays a crucial role, since it determines how the case is to be prejudged, in the positive sense of that

term. In my view the general context of the case is presented summarily in a way that distorts the facts considerably. It is the point of view imposed by the applicants, for purposes that can be readily understood, which dominates. I can only single out a few facts, and the way they have been interpreted, which give false images of the true position.

The crucial difficulty in establishing the general context of the case is identification of the origins and main problems of the Moldovan-Transdnestrian conflict. In fairly complicated and tricky cases such as *Gorzelik v. Poland* (no. 44158/98, judgment of 17 February 2004) and *Assanidze v. Georgia* ([GC] no. 71503/01, ECHR 2004-...), the Grand Chamber went back as far as the 14th century in order to analyse the Silesian problem (see § 13 of the *Gorzelik* judgment) and even the 11th century to shed light on the status of Ajaria within Georgia (see paragraphs 100-107 of the *Assanidze* judgment). In the present case what is left unsaid is more eloquent than what is said: a snapshot of the removal of part of Bessarabia from Romania on 28 June 1940 as a result of the Molotov-Ribbentrop pact and the transfer from Ukraine of “a strip of land on the left bank of the Dniester” in order to form Soviet Moldavia gives the impression that the history of this multi-ethnic region begins there (paragraph 28) – all of this being in the form of a reference (and a very selective one, it has to be said) to an OSCE document. But the document cited, like any other historical overview, gives a more complete idea of the history of the region, which I recapitulate briefly below.

The Principality of Moldavia, which was created in 1360 after being detached from Hungary, fell in 1456 under the domination of the Ottoman Empire, which lasted for several centuries. In 1711 Prince (*gospodar*) Dmitri Kantemir (whose son, Antiokh, incidentally, was to become an eminent Russian writer and serve as Russian ambassador in London and Paris) came to an agreement with Peter the Great concerning the protection of Moldavia, and it was in 1791 through the treaty signed following the war between Turkey and the Russo-Austrian coalition (whose forces were led by A. Suvorov) that Russia obtained control of the left bank of the Dniester, where a high proportion of the population were Slavs. In 1812, following a renewed outbreak of war between Russia and Turkey, the Treaty of Bucharest incorporated in the Russian Empire the eastern part of Moldavia between the Prut and the Dniester under the name of Bessarabia. The southern part of Bessarabia is inhabited by Bulgarians and Gagauz (a Turkish-speaking Christian people). After the Crimean War (1854-1856) Russia, in accordance with the Treaty of Paris (1856), ceded part of Bessarabia to the victor States. This territory was included in the Kingdom of Romania (created in 1859), but by the Treaty of Berlin (1878) Bessarabia was returned to Russia and Romania obtained Dobruja in compensation. In January 1918 Romania occupied Bessarabia and secured a vote from the local assembly in favour of its attachment to the Kingdom. At the same time

the Directory of Ukraine (at that time independent) proclaimed its sovereignty over the left bank of the Dniester (48% of the population at that time being Ukrainians, 30% Moldavians, 9% Russians and 8.5% Jews), and in 1924 a Moldavian autonomous republic was created there. After 1924 the USSR compelled Romania to hold a plebiscite in Bessarabia (negotiations in Vienna) before occupying Bessarabia on 28 June 1940. That is the controversial history of the region which since 1940 has formed a Moldavian entity whose two halves each have their own historical, economic, cultural and linguistic particularities. Those particularities have not escaped the attention of informed observers: “Transdnistria, the majority of whose population is made up of Russians and Ukrainians, has always felt close to Russia, which it was part of for two centuries. When the USSR broke up, Transdnistria rejected the first independent Moldovan Government’s policy of union with Romania” (*Libération*, Paris, 1 August 2002).

As regards language and script, I do not wish to speculate on a very delicate problem and regret that the Court gives a rather simplistic account of the subject (paragraph 28 of the judgment), and that brings me to two quotations. “The first known text in Romanian dates from 1521: it is a letter written by the boyar Neascu to the mayor of Brasov... These texts, translated from Slavonic (the liturgical language of Orthodox Slavs but also of Romanians), were written in Cyrillic script. ... It was not until the 19th century however that the modern Romanian language was finally established, strongly influenced by French – a process some have referred to as ‘re-latinisation’. It was also at that time that use of the Latin alphabet took the place of Cyrillic” (Source: *Atlas des peuples de l’Europe Centrale*, Paris, La Découverte, 2002, p. 137). As for the languages used, the 1978 Constitution of Soviet Moldavia enshrined “equal rights, including the right to use the national language” (Article 34) and “schooling in the national language” (Article 43) and provided: “statutes and other legislation ... shall be published in Moldavian and Russian” (Article 103) and “justice shall be administered either in Moldavian and Russian, or in the language of the majority of the population of the region” (Article 158).

I have added these historical digressions in order to reiterate the Court’s position as expressed in the following dictum: “The Court considers that it should as far as possible refrain from expressing a view on purely historical questions, which it has no jurisdiction to adjudicate; however, it can accept certain historical facts which are a matter of common knowledge and base its reasoning on them” (see *Zdanoka v. Latvia*, judgment of 17 June 2004, § 77; see also *Marais v. France*, Commission decision of 24 June 1996, DR 86, p. 184, and *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX). But it turns out that the “historical facts” are considerably distorted in our judgment, and as a result, to my great regret, some of the reasoning is too.

Paragraphs 30 to 41 mention in no particular order the build-up to and development of the Moldovan-Transdnestrian conflict, stressing the military aspects, as if the major problem was the Fourteenth Army and the equipment of DOSAAF (which, incidentally, was not a State body under the legislation in force). As a national judge I wish to point out that the break-up of the USSR in 1988-1991 affected not only the 15 Soviet Republics which proclaimed their sovereignty one after another (often referred to as the “parade of sovereignties”), but also territories within certain multinational republics such as Nagorno Karabakh, Abkhazia, Chechnya and so on. Moldova did not avoid this general movement, especially as the Moldovan Popular Front had proclaimed as its aim the union of Moldova in its entirety with Romania, the laws on language and the new flag mentioned in paragraph 29 being only the first step. Gagauzia, a Turkish-speaking region, proclaimed its sovereignty first, on 18 August 1990, followed by Transdnestria on 2 September 1990. This was not, in my opinion, the result of “resistance to Moldovan independence” (paragraph 43 of the judgment), but rather resistance to the policy of refusing the right to self-determination. Let us not forget (and this is another of the things left unsaid in the judgment) that the first operation by the special forces of the Moldovan police, launched against “separatists” in Dubasari on 12 June 1990, preceded the above proclamations, and therefore prompted them.

It is in that situation, in my opinion, that the Court should have sought the roots of the conflict, which had direct repercussions on the fate of the four applicants, rather than just in the declaration of 2 September 1990 concerning the creation of the “Moldavian Republic of Transdnestria”, as paragraphs 30 to 34 of the judgment suggest.

Legally speaking, the declarations mentioned did not mean at that tumultuous time a declaration of separation (as evidenced by the presence of the word “Moldavian” in the title of the “MRT”), but a declaration of the desire to obtain greater autonomy, including the right to a referendum on continued allegiance to the State entity in the event of that entity proclaiming its union with a foreign State, a prospect which was perceived as a real danger. “The emergence in 1990 of the first autonomist movements, followed in August 1991 by the proclamation of independence, encouraged the adoption between Kishinev (Chisinau) and Bucharest of a plan for the integration of Moldova into Romania or its annexation. But that plan, which the Moldovans initially found attractive, was abandoned when, on 6 March 1994, in a referendum, to Bucharest’s great displeasure, 95.4% of Moldovan electors voted against attachment to Romania. But, hostile to the idea of the Republic’s independence, and even more so to the possibility of its attachment to Romania, the Slav populations living for the most part in Transdnestria, a 5000 square kilometre territory to the east of the Dniester, proclaimed their autonomy”, wrote Jean-Christophe Romer, a professor at the Institut des Hautes Etudes européennes and the Ecole

Spéciale militaire de Saint-Cyr (*Romer J.-Ch.*, Géopolitique de la Russie, Paris, Economica, 1999, p. 63).

I would add to the above analysis that in February 1992 the 2nd Congress of the Moldovan Popular Front proclaimed Moldova, including the region of Transdnistria, an integral part of Romania, and that it was in March 1992 that the hostilities between the special police forces and the “separatists” began. On 19 June 1992 – a black day – came the beginning of the operation of the Moldovan special forces in Benderi. The result: 416 deaths among the civilian population. It was only on 29 July 1992 that the first detachments of the Russian peacekeeping forces entered Tiraspol in accordance with the Russo-Moldovan agreement of 21 July 1992. I could continue to reconstruct the course of events, but I will stop there. I merely observe that the section on the “general background to the case” in the text of the judgment makes up for the absence of certain important facts by abundant quotations from political declarations reflecting a single approach to interpretation of the events. It is therefore not easy to find out where the truth lies. Once again, I deplore that fact.

I further regret that the Court did not take into consideration the fact that the events of 1992 (“pacification” operation by the central authorities, armed resistance by the rebels, transitional period just after the break-up of the USSR, etc.) constituted in reality a case of *force majeure* in which all the parties involved directly or indirectly in the conflict, including the Fourteenth Army, took part.

I am also tempted to give my more finely shaded version of the armed conflict in 1991-1992, as I think that the really abnormal size of this part of the judgement (paragraphs 42 to 110), the sole aim of which is manifestly to demonstrate Russia’s participation in the conflict and its military support to the separatists, is the result of the methodological error mentioned above. Even in the inter-state case of *Cyprus v. Turkey* the Court was much more “economical” with this type of analysis, concentrating on the legal problems.

However, although I do not wish to load down the text, I cannot ignore the “Cossack question”. The judgment repeats an assertion made by the applicants that “in 1988 there [were] no Cossacks in Moldovan territory” (paragraph 60). I would just like to point out that as early as 1571-1574 the Ukrainian Cossacks took part in a war of liberation to free the Moldavians from Ottoman domination and that free Cossacks had been living in Moldavia, Podolia and Zaporozhia for centuries (see among other sources *Longworth Ph.*, *The Cossacks*, London, 1969). The Cossacks were victims of Stalinist terror but were rehabilitated by the Russian Parliament’s decree of 16 June 1992 as part of the rehabilitation of the peoples which had fallen victim to repression. It was only on 9 August 1995 that the President of the Russian Federation signed the Ordinance on the Register of Cossack associations and on 16 April 1996 the Ordinance on civil and military

service by Cossacks. Freedom of movement and the paramilitary nature of their organisation are well-known features of Cossack life. It may be said that these are merely details, but the devil is in the detail.

There are quite a few of these details in the text, including “undated” statements by the Russian Vice-President (§ 137 of the judgment), an “undated” television appearance by the Russian President (paragraph 138), a television interview broadcast “on an unspecified date” (paragraph 145), and so on, notwithstanding the position stated by the Court in the following terms in paragraph 26: “In assessing both written and oral evidence the Court has hitherto generally applied ‘beyond a reasonable doubt’ as the standard of proof required”. I am astonished that, contrary to the clarifying information supplied to the Court, paragraph 141 of the judgment reproduces (“takes as established”!) false information to the effect that Russia organised the election of 17 March 2004 “without the agreement of the Moldovan authorities”. The Russian Federation’s electoral legislation provides for polling by Russian citizens abroad in *ad hoc* polling stations (and therefore not always in “fixed consular posts, operating as polling stations”) only with the agreement of the authorities of the State in question. I regret that the Court, whose judgments are studied everywhere in the minutest detail, has in many places failed to apply the criterion formulated in paragraph 26.

It is also a pity that in setting out the general background to the case the Court has not always followed the principle it established itself in the *Ireland v. the United Kingdom* case as follows: “In the cases referred to it, the Court examines all the material before it, whether originating from the Commission, the Parties or other sources, and, if necessary, obtains material *proprio motu* (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64, § 160).

For example, I regret that the Court has carefully avoided making any mention in its judgment of the activities of the “Bujor” group and the applicants before their arrest (except in paragraph 216, referring to the judgment of 9 December 1993). But the documents supplied to the Court are eloquent on that point. In the interview with Mr Ilascu which appeared in the Leningrad periodical *Smena* on 6 December 1990, he gave details of the notorious “Directive No. 6”. “We have two blacklists”, he said. “In the first there are 23 names, the whole of the leadership of the so-called Republic of Transdnistria. In the second there are 480, the members of their Second Congress. Serious preparations have been made for their physical liquidation.” The conclusion was: “We have politicians who must always remain clean, but someone has to do the dirty work.” From statements of the type “we are capable of organising a huge bloodbath” to concrete acts was only a short step. The names of the victims of those acts are known, as are the names of their widows and orphans. It is not by chance that the eminent specialists mentioned in paragraph 286 of the

judgment proposed that the applicants should be retried in a neutral country, as did the Secretary General of the Council of Europe, in fact, who did not exclude “a possible new trial of M. Ilascu in a neutral place” (SG/Inf.(2000)53, 19 January 2001). What is the point of all the United Nations resolutions on the prevention of terrorism? Unfortunately the Court has given no reply to these questions, but it refused the request of one of the widows, Mrs Ludmila Goussar, to give evidence to the Court (see paragraph 8).

III. Analysis of the concepts of “jurisdiction” and “responsibility”

But I regret even more deeply the fact that an opportunity has been missed to apply to a situation not hitherto considered a finer analysis of the concepts of “jurisdiction” and “responsibility”. Not claiming to be entitled to the last word as custodian of the truth, I would nevertheless like to explain how I see the problem.

My initial position, which I expressed in the vote on admissibility on 4 July 2001 (and which I still hold), was that the Court should declare the application inadmissible *ratione loci* and *ratione personae* as regards Russia, while recognising Moldova’s jurisdiction over Transdnistria but at the same time noting that it did not have *de facto* control over the region, at least at the time when the applicants were arrested.

The Court could have gone on from such findings to reach the finding of a “legal vacuum” or “lawless area” to which the Convention provisions are inapplicable *de facto*. That idea is neither absurd nor new. The “motion for a recommendation” entitled “Lawless areas within the territory of Council of Europe member states” presented by Mr Magnusson, a Swedish member of the Parliamentary Assembly (backed by a number of his colleagues), included the following passage:

“The Assembly feels compelled to admit, however, that there are a number of areas within the territory of certain member states where the European Convention on Human Rights and other human-rights protection instruments do not apply in practice.

This has become clear firstly from the case-law of the European Court on Human Rights, some of whose judgments have not been executed; examples are the *Loizidou v. Turkey* case, concerning the northern part of Cyprus, and the *Matthews v. United Kingdom* case, concerning Gibraltar.

In addition, ‘lawless’ areas have developed in separatist regions such as Chechnya, Transnistria, Abkhazia or Nagorno-Karabakh.”

In a sense, the territorial reservation made by Moldova on ratifying the Convention pleads in favour of recognising the existence of a “legal vacuum” in the region, a kind of “black hole” in the European legal area, especially as such a finding could be accompanied by recognition that Moldova does not have *de facto* control over the territory concerned. I am

pleased to be a member of the majority on that point at least, namely that Moldova has jurisdiction, even if only in the limited terms of “jurisdiction ... as regards its positive obligations” (point 1 of the operative provisions).

Nevertheless, I consider that the preponderance of the territorial principle where “jurisdiction” within the meaning of Article 1 of the Convention is concerned applies fully to Moldova, its responsibility and its obligations towards the applicants, even if these are limited *de facto* (see paragraph 313 of the judgment). In any case, Transdniestria is not a no man’s land or *terra nullius* in international-law terms: the international community continues to regard Transdniestria as an integral part of Moldova. The very fact that Moldova made a reservation in respect of Transdniestria when it ratified the Convention proves that in the long term it has not discharged its obligations towards that territory. To accept the opposite would be to present a priceless gift to all the separatists in the world by enabling them to say that for the first time an international court had recognised that part of a State’s territory was outside the jurisdiction of the central authorities. I only regret that the majority held Moldova responsible only from 2001 onwards, in spite of the established fact that after 1994, and especially after it joined the Council of Europe in 1997, Moldova did not take any steps whatsoever to secure the applicants’ retrial or release. In that respect I agree with most of the arguments in the partly dissenting opinion of Judge Casadevall and the colleagues who joined him.

The problem of “extraterritorial” jurisdiction is much more complex. I firmly believe that the Court should follow the traditions of the “case-law of concepts”, in other words start from the idea that the essential concepts of contemporary positive law have been established by generations of jurists and should not be called into question except in exceptional cases. That was the Court’s unanimous position in the *Bankovic* case: “The Court is of the view, therefore, that Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case” (*Bankovic and Others v. Belgium and 16 other Contracting States* (dec.), no. 52207/99, paragraph 61, ECHR 2001-XII). The Court went on to say that it needed to be “satisfied that ... exceptional circumstances exist in the present case which could amount to the extraterritorial exercise of jurisdiction by a Contracting State” (*ibid.*, paragraph 74).

What exceptional circumstances could justify such a conclusion in the present case?

The Court, in my humble opinion, has chosen the easy way out by applying in its judgment criteria laid down in another exceptional case, the difficult-to-ignore *Loizidou* case, and drawing from that precedent the following, too vague, conclusion: “The Court has accepted that in exceptional circumstances the acts of Contracting States performed outside

their territory or which produce effects there may amount to exercise by them of their jurisdiction within the meaning of Article 1 of the Convention” (§ 314 of the present judgment). The first criterion for identifying such “acts” to be found in the *Loizidou* judgment is the occupation through targeted military action of the territory of the other State. But that was not the case here, where the Soviet military forces had been stationed in the region for decades.

Even supposing that there was a “military action” such as there was in Cyprus, Judges Gölcüklü and Pettiti were absolutely right in seeking to separate “responsibility” from “jurisdiction”: “While the responsibility of a Contracting Party may be engaged as a consequence of military action outside its territory, this does not imply exercise of its jurisdiction” (*Loizidou (Preliminary Objections)* judgment, Series A no. 310, p. 35). The two concepts are to an extent autonomous in relation to each other, though it might be objected that the distinction is academic.

Why has the Court neglected this very important difference of meaning in the present case, and not filled in a gap in its case-law, given the lack of a valid criterion applicable to extraterritorial jurisdiction? In my view it was in order to reach more direct conclusions via the concept of responsibility (see paragraphs 314 to 317 of the judgment). It is jurisdiction (territorial or extraterritorial) which is a primary concept, responsibility being derived from jurisdiction rather than the contrary. The Court has indirectly confirmed this subordination by holding that Moldova has jurisdiction but excluding its responsibility before 2001! But in seeking to determine whether the Russian Federation has jurisdiction it preferred the opposite logic in holding that there is “jurisdiction” because there is “responsibility”.

Even if it is accepted that the question is whether responsibility attaches to a respondent foreign State, it would be necessary to prove that the respondent State (a) continues to exercise its responsibility, the latter having been engaged through a subordinate local administration; and (b) continues to control the whole of the territory in question through a large number of troops engaged in active duties and exercising “effective overall control over that part of the island” , as noted in the preliminary objections in the *Loizidou* case. These two aspects were discussed in particular in paragraph 70 of the admissibility decision in the *Bankovic* case, in which the Court emphasised this territorial aspect throughout the decision before concluding: “The Court is not persuaded that there was any jurisdictional link between the persons who were victims of the act complained of and the respondent States” (*Bankovic*, cited above, paragraph 82).

In determining whether the Russian Federation was responsible for the acts complained of, the Court, referring to the *Cyprus v. Turkey* judgment, uses the notion of “overall control over an area outside its national territory” (paragraph 316). I refer in that connection to the Court’s assessment in the *Loizidou* case: “Turkey actually exercises detailed control over the policies

and actions of the authorities of the ‘TRNC’. It is obvious from the large number of troops engaged in active duties in northern Cyprus ... that her army exercises effective overall control over that part of the island” (paragraph 56 of the above-mentioned judgment). If my memory serves me right, I learned during my initial military training that the term “active duty” presupposes control of roads and railways, surveillance of strategic points (telegraph-telephone posts), and control of stations, airports, frontiers etc. Even without being a military strategist, anyone can compare the two situations: in one case 30,000 troops in a small territory inhabited by between 120,000 and 150,000 people, and in the other 2,500 officers and other ranks in a territory of 4,163 square kilometres with an 852 kilometre-long border and a population of more than 750,000! Lastly, I come to the major difference, which is that there was no military invasion from outside the territory with the aim of establishing such control: the Russian troops, who had only just ceased to be Soviet troops (two-thirds of them originally hailing from the region), were caught out by events in the place where they had been stationed for many years without interfering in administrative matters. Those troops are not engaged in any “active duties” except guarding the weapons stocks and equipment due to be moved out.

As regards subordination of the local administrative authorities to the Russian authorities, the mere fact that those authorities have frequently prevented evacuation of the military equipment is revealing. After releasing one of the applicants under international pressure the authorities of the “MRT” continue to hold the others in spite of the obvious interest of their presumed “guardian” in disposing of the embarrassing problem – if this is an example of an administration “subject to the authority of a foreign power”, it is a rather strange one.

The other argument pleading in favour of the Russian Federation’s responsibility is that the “MRT” was set up in 1991-1992 with the Russian Federation’s support. I am obliged to point out that the birth of the “MRT” was proclaimed on 2 September 1990, more than a year before the USSR broke up and Russia attained independence as a sovereign State. Here I am reminded of La Fontaine: “If it wasn’t you, it must have been your brother. – I have no brother! – Well, it must have been one of your family anyway...”. The Moldovan Government’s argument that Russia, as the successor State to the USSR, assumes full responsibility for the acts of that State is invalidated by the international-law rule that where the responsibility of a subject of law is engaged on account of the conduct of another subject of law its responsibility can only be *indirect* (*Dictionnaire de droit international public*, Brussels, 2001, pp. 996-997).

For that reason alone, unlike the position regarding the proclamation of the TRNC, Russia could not be responsible for that act. In addition, it has never recognised the “MRT” as an independent State. The Treaty of friendship and cooperation between the Russian Federation and the

Republic of Moldova signed on 19 November 2001 is clear on that point: “The parties condemn separatism in all its forms and undertake not to lend any support to separatist movements” (Article 5 § 2). But the Court prefers to reproduce “undated” irresponsible statements by certain members of parliament and former politicians as “evidence” of political support.

The “evidence” of alleged economic support (paragraphs 156 to 160 of the judgment) does not withstand verification. I compare below the findings in the judgment with the observations of an NGO, the British Helsinki Human Rights Group (BHHRG), which has analysed the situation in the region.

Exports of gas “on favourable financial terms” (paragraph 156). According to the BHHRG, the cost of 1,000 cubic metres of gas supplied by Russia to Transnistria in 2003 was USD 89, the same price as gas supplied to Estonia (USD 36 for Belarus, USD 50 for Georgia).

“Transnistria receives electricity directly from the Russian Federation” (paragraph 157). According to the BHHRG, the electricity market is controlled by the Spanish company “Union Fenosa”, which produces electricity using the gas bought from Russia.

“The Russian firm ‘ITERRA’ bought the Râbnita engineering works”. (paragraph 160). In August 2003 alone, a single Liechtenstein company bought 15.6% of the shares in the factory.

It is the American company Lucent Technologies which controls all telecommunications, it is in Germany that banknotes are printed, it is the European Union which awarded the “Arc of Europe” prize to textile production by the “Intercentre Llux” company, and so on. (Source: British Helsinki Human Rights Group, Transnistria 2003: Eye in the Gathering Storm, – www.bhhrg.org).

Next argument: supplying arms to the separatists. The applicants assert (without giving any concrete evidence) that the Fourteenth Army supplied weapons to the separatists, a fact which, in their opinion, engages even more the responsibility of the Russian Federation. Not being a specialist in the subject, I refer to a reliable source: “The organised looting of weapons began after the proclamation of Moldova’s sovereignty on 23 June 1990 and had become a serious problem by the time of the break-up of the USSR in 1991 (there was a similar situation in Chechnya, Abkhazia and other places); 21,800 rifles, ammunition and even tanks were ‘expropriated’. It was thanks to the efforts of the commanding officer of the Fourteenth Army, General Lebed, that some of these weapons were seized and returned to the stores. An investigation was opened by the military prosecutor” (*Commersant* (a Russian newspaper), 21 July 2001). The region’s industrial potential makes it capable of producing practically all types of conventional weapons; even today arms sales account for a large part of the region’s income, as the Court mentions (paragraph 161 of the judgment).

In the final analysis, I have not found in the factual material concerning the military, political and economic aspects any valid evidence capable of establishing a limited or continuing intervention by Russia in favour of Transdnistria, or proof of the “MRT”’s military, political or economic dependence on Russia.

In my heart of hearts, I regret that there is no evidence of what is now called “humanitarian intervention”, a more noble form of the military interventions of the past. I wish to be absolutely honest about Russia’s responsibility in this respect. I am convinced that it was responsible for not intervening more energetically in 1992 to protect the civilian population and prevent the loss of more than 850 lives (including the use of political and diplomatic means to dissuade the Moldovan authorities from conducting a punitive military expedition against their own population). Where other powers do not hesitate to hoist the flag of humanitarian intervention in order to establish what has been called “the new military humanism” (see: *Chomsky N.*, *The New Military Humanism, Lessons from Kosovo*. L, 1999), the Russian authorities of the time preferred a wait-and-see approach, leaving some of their soldiers and officers (mostly originating from the region concerned) to decide alone what was the right thing to do, which meant whether or not to defend their families.

I therefore propose to answer an obvious question: as a subject of international law, was Russia really capable in practice of assuming its responsibilities in the “MRT”, that is to say the task of solving problems or dealing with a systematic situation? To assist in finding the reply, I refer to the *Ireland v. the United Kingdom* judgment: “A practice incompatible with the Convention consists of an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system; a practice does not of itself constitute a violation separate from such breaches” (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, paragraph 159). It is only where, behind a personal situation, systematic violations can be perceived that a foreign State’s objective responsibility can be engaged; that is my reading of the judgment cited, especially as the applicants did not submit evidence of systematic violations of the same kind.

The other rule of international law confirmed by our case-law is that a State’s extraterritorial responsibility is engaged to the extent that its agents exercise their authority over supposed victims or their property (*Cyprus v. Turkey*, Commission decision, DR 2, p. 125, at p. 137). Did that really apply to the four applicants outside the brief period of their arrest in 1992?

Apart from the factual aspects, account has to be taken of the legal aspect of the question of a State’s international responsibility.

I refer to a document of capital importance: Resolution 56/83 adopted on 12 December 2001 by the UN General Assembly entitled “Responsibility of

States for internationally wrongful acts”, the result of a number of years work by the International Law Commission (“the ILC”). In referring to the work of the ILC, paragraph 320 of the judgment raises the problem of a State’s responsibility on account of a violation of an international obligation, emphasising in paragraph 321 “continuing violations” in the light of Article 14 § 2 of the Resolution. But Article 13 of the same document states: “An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.”

That rule quite obviously confirms the *ratione temporis* rule in our own case-law. In other words, before establishing the continuing nature of a violation (in our case, the arrest and pre-trial detention of the applicants), it is advisable to ascertain whether the alleged violation does not fall outside the Court’s jurisdiction *ratione temporis*.

On the subject of the *ratione temporis* rule, one of the pillars of the European Court’s case-law, I very much fear that it will be shattered by the construction put upon the term “jurisdiction” in the present judgment in the following passage: “The Court considers that on account of the above events the applicants came within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention, although at the time when they occurred the Convention was not in force with regard to the Russian Federation” (paragraph 384).

Indeed, as neither Moldova, nor still less Russia, had ratified the Convention at the material time (1992), they cannot be accused of breaching an international obligation by which they were not yet bound. Consequently, neither Article 14 (Extension in time of the breach of an international obligation) nor Article 15 (Breach consisting of a composite act) of the Resolution mentioned are applicable, contrary to what the Court says in its judgment (paragraph 321).

On the other hand, a different provision of the work of the ILC is to my mind entirely applicable to consideration of alleged Russian responsibility, as it confirms the *force majeure* hypothesis:

“The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to *force majeure*, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.” (Article 23 § 1).

My question is: did the very height of a civil war constitute a situation of *force majeure* within the meaning of Article 23 as cited above, given that the respondent State, the Russian Federation, did not provoke the situation for the simple reason that it did not yet exist as a subject of international law?

In my opinion, the Court cannot derogate from the rule confirmed by the Commission’s opinion in the case of *Ribitsch v. Austria*: in determining

whether the responsibility of a respondent State is engaged, the Court applies the provisions of the Convention on the basis of the objectives of the Convention and in the light of the principles of international law. The Commission went on to say: “The responsibility of a State under the Convention, arising for acts of all its organs, agents and servants, does not necessarily require any ‘guilt’ on behalf of the State, either in a moral, legal or political meaning” (*Ribitsch v. Austria*, Commission’s opinion, 4 July 1994, Series A no. 336, paragraph 110).

IV. Violation of Article 34 of the Convention

As regards the finding of a violation of Article 34 by Moldova and Russia, I just wish to say that I am shocked by the use of a stolen document (or a bought one – it makes little difference) – a diplomatic note. I am embarrassed to have to point out that it is an elementary principle in all judicial proceedings that evidence obtained unlawfully cannot be taken into consideration. Encouraging breaches of the confidentiality of diplomatic correspondence, contrary to the Vienna Convention of 18 April 1961 on diplomatic relations, and especially Article 24 thereof which states that the archives and documents of diplomatic missions “shall be inviolable at any time and wherever they may be”, by a complicit quotation (paragraph 278 of the judgment) and by taking the content into consideration (paragraph 481 of the judgment) seems to me to be unworthy of a European judicial body.

Confidential consultations are a normal practice in international relations – indeed, a practice endorsed by the Russo-Moldovan treaty of 19 November 2001, Article 3 § 1 of which provides: “Being firmly committed to ensuring peace and security, the High Contracting Parties will hold regular consultations on major international problems and on questions of bilateral relations. Such consultations and exchanges of views will embrace ... questions of interaction within the OSCE, the Council of Europe and other European structures”. In addition, by producing a leaked diplomatic note the applicants were breaking the rule against abuse of the right of petition (Article 35 § 3 of the Convention) and thus making themselves liable to the known consequences in the Court’s practice. Unfortunately, they suffered no such fate. As the immortal La Fontaine put it: “Someone told me. I must have my revenge.”

V. On application of Article 41 of the Convention

As regards the sums awarded to the applicants, especially the first applicant, who has been free since 2001, the Court in my opinion has gone beyond the previous limits for sums awarded in the event of the finding of violations of Articles 3 and 5 of the Convention, even in the most horrifying

cases. Having already crossed the established threshold in the recent *Assanidze v. Georgia* judgment (cited above), in which it generously awarded the applicant 150,000 euros “in respect of all the damage sustained”, the Court has now gone further in the present case, perhaps on account of the length of the applicants’ detention. Be that as it may, what I object to is that while holding that there had been no violation of Article 1 of Protocol No. 1 the Court thought it necessary to mention the subject of pecuniary and non-pecuniary damage, observing in paragraph 510 of the judgment: “The Court does not consider the alleged pecuniary damage to have been substantiated, but it does not find it unreasonable to suppose that the applicants suffered a loss of income and certainly incurred costs which were directly due to the violations found.” That argument is unconvincing in my opinion and even dangerous for the future case-law, as it imprudently opens Pandora’s box.

VI. Is the judgment enforceable

Lastly, I realise the objective impossibility for the second respondent State of enforcing the Court’s judgment to the letter, going over the head of sovereign Moldova, particularly in order to put an end to the applicants’ detention. (I voted “for” on point 22 of the operative provisions in the light of all the possible approaches). It will be still more difficult to take general measures, as required by the Committee of Ministers of the Council of Europe. In the *Drozd and Janousek* judgment the Court said: “[...] the Convention does not require the Contracting Parties to impose its standards on third States or territories” (*Drozd and Janousek v. France and Spain*, no. 12747/87, judgment of 26 June 1992, Series A no. 240, paragraph 110). When that is translated into the language of international law, it surely means that neither the Convention nor any other text requires signatory States to take counter-measures to end the detention of an alien in a foreign country – the United Nations Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (Res. 26/113 of 9 December 1981) is still in force. Unless, on reading our judgment, people welcome the appearance right in the heart of old Europe of a new condominium like the New Hebrides. But I very much doubt that that would be a desirable development.



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

CASE OF ILASCU AND OTHERS v. MOLDOVA AND RUSSIA

(Application no. 48787/99)

JUDGMENT
ANNEX

SUMMARY OF STATEMENTS BY THE WITNESSES BEFORE THE
COURT'S DELEGATES

STRASBOURG

8 July 2004

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

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1. Ilie ILASCU

1. Until his arrest in June 1992 the applicant was living in Tiraspol. He had been living there for ten years. In 1992 the applicant was chief economist in an enterprise based in Tiraspol. He was also the leader of the Tiraspol branch of the Democratic Christian Popular Front of Moldova, a position he had held since October 1989, when this party was created. On account of his political activity, pressure was put on him, grenades and stones were thrown into his house and he was finally fired from the position he held as chief economist. In February his family had had to take refuge in Chisinau. However, the applicant remained in Tiraspol.

2. On the morning of 2 June 1992, around 4.30 a.m., as his dog in the courtyard started to bark, the applicant looked out of the window and saw armed soldiers dressed in camouflage and bullet-proof vests, jumping over the fence and taking up combat positions. The soldiers were wearing uniforms of the Fourteenth Army with the emblems of the Soviet Union.

The applicant's family, who were in Tiraspol for a few days, were sleeping. The applicant went to lock the door of the house, which was unlocked. The door then suddenly opened and five or six soldiers broke in and hit him in the face with the butt of a gun and tied his arms behind his back. He was then taken out and put in a Volga car. When taken out, he saw that in the courtyard and around it there were two armoured vehicles at the end of the street and around 50-60 soldiers led by a colonel accompanied by a lieutenant-colonel, whose name was, the applicant learned later, Vladimir Gorbov. The applicant also recognised among the people who started to search his house a certain Victor Gushan from the Transnistrian secret services. The applicant claims that he had no arms or explosives in his house. When the applicant's wife asked them why they had arrested the applicant, Mr Gushan said it was because the applicant was the leader of the Popular Front of Moldova, and as they were at war with Moldova the applicant was considered to be dangerous and had to be detained.

3. The applicant was taken to the building of the Ministry of Security in Tiraspol and put into a cell in the basement. When first arrested the applicant was told that arms had been found in his house or that he was suspected of having arms in his house.

4. Some time later the applicant was taken to a room where he was interrogated by Vadim Shevtsov, "Minister of Security of the MRT" and three other colonels who were dressed in Fourteenth Army uniforms. On the third day interrogations started to take place during the night, one interrogation led by Vladimir Gorbov, another one by the three colonels. The applicant heard from the guards that the three colonels were from the secret services of the Fourteenth Army counter-intelligence division. During

the interrogation led by Mr Gorbov relating to his political activity the applicant was accused of committing terrorist acts in Slobozia district. During the second interrogation a bargain was proposed to him, under the terms of which he, as leader of the Popular Front, would co-operate and say that he had been trained in Romania by special troops, somewhere near Brasov, that he had been armed by Romanians and sent to Transdnistria to carry out terrorist acts against the Russian civil population in Transdnistria. The applicant denied all these accusations and refused to accept such a bargain. Consequently, he was repeatedly beaten and subjected to psychological torture.

5. During his first week of detention he had had no food at all. On many occasions during the initial investigation he was not allowed to sleep. The guards would come into the cell at 5 a.m., the bed would be stood up against the wall and he would then not be allowed to sleep until they had taken the bed down again.

6. After five or six days, maybe more, the applicant was blindfolded and was taken to another place. When food was brought to him he saw soldiers of Fourteenth Army and was told that he was in the military garrison of the Fourteenth Army. The applicant realised the next day that he knew the building, as he had been there before, when he was arrested in 1989 also by the Fourteenth Army, after founding the Popular Front.

7. At the time when he was detained at the military garrison of the Fourteenth Army in 1992, the commander was Colonel Mikhail Bergman, whom the applicant remembers as having been the only one who treated him humanely. Mr Bergman never took part in the interrogations.

During his detention there, the applicant saw only Mr Godiac and Mr Ivantoc. One day, the door of his cell opened and Ivantoc was asked by Gorbov, Bergman and the other investigators to identify him, which he did. The applicant did not know Mr Ivantoc at that time, but Mr Ivantoc certainly knew him as he was the leader of the Popular Front.

8. During his detention at the military garrison of the Fourteenth Army, the applicant was taken out to be interrogated in various offices probably on the second floor, certainly on a floor above the cells. He was not very badly ill-treated, as the offices had walls painted in white and there was a risk of traces being left. However, interrogations also took place during the night, in his own cell, whose walls were painted in black. There, he would be very badly beaten. During one of the beatings some of his teeth were broken. As a result of the beatings the applicant was left with a disabled kidney.

9. The applicant was also subjected to psychological torture. He was told that Cossacks had come to his flat and kidnapped his wife and two daughters, and then raped them, that his wife and one of the daughters had been found and taken to the psychiatric hospital, but that the second daughter had not been found. He was then asked to give in and sign a confession. Three days later Mr. Gorbov came back and told him that his

second daughter had been found dead and urged the applicant to sign so that he could go home and give his daughter a Christian burial. The applicant lost control of himself and hit Gorbov. As a result, he was seriously ill-treated.

10. During his detention in the charge of the Fourteenth Army, the applicant was subjected to four mock executions.

11. In all, the applicant was detained at the military garrison of the Fourteenth Army for two months. On 23 August Mr Bergman introduced the applicant to the new commander of the Fourteenth Army, Alexandr Lebed. After a couple of minutes of discussions between the applicant and Mr Lebed the new commander of the Fourteenth Army gave Mr Bergman two hours to remove the applicants from there. On the same day Mr Bergman, accompanied by five or six officers and four soldiers of the Fourteenth Army with automatic weapons and a dog called Ceank, took the applicant in a truck to the Tiraspol City Police headquarters. The applicant was left in a corridor. Mr Bergman told Mr Shevtsov in an angry tone that he did not want to keep the applicants in the territory of the Fourteenth Army any more and went away.

12. The applicant was detained in the basement of the Tiraspol City Police headquarters for about half a year, and was then transferred to Tiraspol Prison no. 2 until his conviction. During the investigation he was with other detainees in a cell.

13. A week after his conviction, on 9 December 1993 the applicant was transferred to Hlinaia Prison in a cell specially prepared for death penalty convicts. He stayed nine years alone in a cell.

There he was subjected to very harsh treatment. He was beaten many times. He was given bread and tea to eat, with cornmeal at lunch. He was also frequently put in a punishment cell. The applicant weighed 95 kilos when arrested and only 57 kilos six months later. He was not allowed to see his family on a regular basis or to receive parcels. Food parcels sent to the applicant were sometimes destroyed. Every visit had to be approved. Sometimes approvals were not granted, sometimes they were granted but when his wife reached the gates of the prison she was not allowed to see him. He was not allowed to write, so that he had to use other means to send messages out of prison. As he wanted his mother to come and visit him, he was told that he should write a special request to Mr Smirnov. The applicant refused, because he did not recognise the "MRT", and so he was not allowed to see his mother, who died while he was in prison.

14. After the applicant had cast his vote in the Moldovan Parliament for the formation of the Sturza Government, there was an immediate effect on his visits: from April 1999 until January 2000 he was not allowed to see his family. From then on he was punished constantly on all sorts of pretexts – for example, his radio was taken away.

15. There was no heating in winter because there was no technical possibility for this. The temperature went down to -10° Celsius. The applicant did not have a shower for six months and had to wash in cold water. There was no toilet, no decent conditions.

He had no access to information. He was alone. No one else was present when he exercised in the evening. He ate on his own in the cell. He was even forbidden to talk to the guards. He could only speak to the secret service people and to Mr Golovachev. He had no access to daylight or even to an electric lamp.

16. When the applicant asked for treatment from the prison doctor he was told that there were no medicines. The only medicines were brought by the applicant's wife. The doctors who examined the applicant came from Chisinau.

17. The applicant never complained to the Tiraspol authorities because he refused to recognise them; he addressed his complaints only to the legal authorities in Chisinau.

18. In July 1998, after the applicant had made several attempts to escape, he was transferred to Tiraspol Prison no. 2, which was better guarded.

The treatment in the Tiraspol Prison was sometimes better, sometimes worse than in the Hlinaia Prison.

19. There was a toilet in the cell, and cold water. Not all the prison guards were hostile to the applicant, but the people from the security brigade under Mr Shevtsov ill-treated him. The Prison Governor and the guards were relatively correct with him. Colonel Golovachev, the Governor of the Prison, said, "I cannot stop the secret services ill-treating you."

20. In April 1999 the applicant lodged his application with the European Court of Human Rights. Initially, when the Tiraspol authorities got to hear of the application, he was treated much more harshly. There was no beating as such, but he was denied visits by his wife, books addressed to him in prison were seized, he was not allowed out of his cell for exercise, there were frequent searches of his cell, and so on. This also occurred after he had been visited in prison by the French Parliamentarian Josette Durrieux, who had advised the applicant to submit an application in the first place.

During the same period there was also an incident in which he was ill-treated by Mr Gusarov and some people from the secret services. He asked why he was subjected to such rigorous searches, but was dragged out of his cell and hit with the butt of a gun. One of the secret service men stuck a gun in his mouth, broke his teeth, and threatened him that there would be more of the same if he pursued his application with the European Court. Mr Ivantoc was subjected to the same treatment by Mr Gusarov.

21. The secret services came from time to time to ask him to withdraw the application. Then, on the morning of 5 May 2001, his cell door was opened. He was given five minutes to get his things together. He was naked

while two Transdniestrian television stations were shooting the whole sequence of events in his cell, although he had asked them not to do this. He was being taken to see Mr Smirnov, he was told, because representatives from the West wanted to see him. There were five or six civilians in the corridor, some of them members of the Supreme Soviet of Transnistria, others with guns.

He was put into a car with Mr Shevtsov. When they came to territory controlled by Chisinau the applicant was handcuffed to two soldiers. He was taken to the presidential palace in Chisinau, and then to the Ministry of Security. Mr Shevtsov took out a paper declaring that the detainee Ilascu had been transferred to the authorities of Moldova. He told the applicant that the sentence of death was still valid and that he did not want to see him again. The applicant was then taken to the office of the Minister of Security of Moldova and questioned.

22. As regards the so-called pardon, Mr Balala came to see the applicant two days before his release in order to speak of it. However, the applicant refused the offer of a pardon because the Transdnistrians wanted an acknowledgement of guilt on his part.

23. After his release the applicant spoke to the secret services of Moldova and Romania about his colleagues who remained behind in prison in Transnistria. They told him that there had been pressure from the Council of Europe and its Parliamentary Assembly on the Russian President, Mr. Putin.

24. The applicant was under the impression that the Russians were behind his release, as they had said that they would ask the Transdnistrians to release him. The Romanian President Mr Iliescu even called Mr Putin. The applicant claims that Shevtsov is a Russian citizen, a representative of the Russian secret service.

25. As regards the attitude of the Moldovan authorities concerning his release, the applicant claims that thirty-three persons arrested by the Transdnistrians were exchanged for Cossacks arrested by Moldova. In June 1992 he was about to be exchanged as a result of an agreement with President Yeltsin. Negotiations were going on, about customs stamps, economic relations and exchanges of prisoners, especially sick prisoners. However, the applicant claims that in his case the Moldovan authorities did not really do all that they could have done.

26. The authorities of the Russian Federation are responsible for what happens in Transnistria. The Russian Federation is the successor of the Soviet Union. In 1992 there was no Soviet Union. The war was between Russia and Moldova.

The Fourteenth Army participated in the aggression against Moldova, it supplied arms to the Transdnistriean forces – machine guns, tanks, armoured vehicles, guided rocket systems. There is only one armed headquarters force in Transnistria, and that is the headquarters of the

Fourteenth Army. Shots were fired from there towards the battlefields. General Lebed fought against Moldova, but he saved the applicant's life, as he refused to deliver the applicant to the Transdnistrians who came to get him, after losing lives on the battlefield.

The Supreme Soviet of Transdnistria had taken the whole Fourteenth Army under its authority. General Lebed was even elected as a Member of the Transdnistriean Parliament. Russian staff from the Fourteenth Army were leading the military operations and members of the Transdnistriean armed forces were involved only symbolically. When General Iakovlev was arrested before the conflict and taken to Chisinau, it was on suspicion of having armed units in Transdnistria with weapons from the Fourteenth Army. The applicant was told by Mr. Lesco, who worked in a factory, that arms had been brought to the factory by the Fourteenth Army to arm the workers there.

All along the Russian Federation has been maintaining Transdnistria. It supports the Transdnistriean regime militarily, politically and economically. It supplies natural gas free of charge to Transdnistria, it has given Transdnistria 70 to 80 million US dollars of credit, it has kept its markets open for Transdnistria. Mr Smirnov has received military medals from Russia. The Russian Federation protects this illegal regime, even in the proceedings in Strasbourg. The applicant considers that this is not an ethnic conflict, but a political conflict. The territory of Transdnistria is under the control of the Russian Federation.

27. As regards the Moldovan authorities, it is true that the Transdnistriean authorities were hostile to them. According to the applicant, the Transdnistrians are Fascists, imperialists. The applicant was prepared to withdraw his application to the European Court of Human Rights against Moldova on condition that the Moldovan authorities produced to him documents describing the participation of the Russian authorities in the events of 1991 to 1992. The applicant knows that they have such material – documents, video tapes of interviews of Russian officers captured, and so on. The applicant claims that Mr Morei, the Minister of Justice, told him that the Moldovan Government could not agree to this because the Russian Federation was supplying natural gas to Moldova.

28. The applicant complains that one of the witnesses that he wished to call, Mrs. Olga Capatina, was beaten up and had to be hospitalised.

29. The Moldovan authorities did allow the applicant to act as a Member of Parliament although he had been sentenced and was in prison. However, the secret services of the Government that came to power after 1992 abandoned the applicant and his colleagues. It did nothing to secure their release. When the applicant was released Mr Valeriu Pasat said, jokingly, "Some politicians are now trying to emigrate." President Snegur said that the applicant was too much in favour of integration with Romania. The Moldovan Parliament did adopt several resolutions in the applicants'

favour, including one calling for Mr. Ilascu to be released. But the Executive did nothing to act on this. The Parliament did ask for international bodies to intervene, but it could not oblige the Executive to act. Moldova has not exercised any control over the territory of Transdniestria from 1992 to the present day.

2. Tatiana LESCO

30. In June 1992 she was living in Tiraspol. She was not at home when her husband was arrested. She heard on the radio on 3 June that a terrorist group headed by Ilie Ilascu had been arrested. On 4 June she went to the militia where she was told that the name of Lesco did not appear in their ledger. For three days she had no news. On 6 June Starojouk, a public prosecutor, said to her, "I cannot tell you anything." She went to see another prosecutor, but she was not allowed into his office; she was physically thrown out. She went back to the militia office where Starojouk confirmed that her husband had been arrested but gave no reason. On 8 June Starojouk received the witness in his office. He said that her husband had been arrested for committing terrorist offences. Although the witness had been married for twelve years, there had never been a word about terrorism during all those twelve years. On 9 June she was not allowed to see her husband. On 10 June she was taken to the basement; there was a terrible stench. She did not recognise him; his hair was unkempt; he resembled a skeleton.

31. As to the arrest, the neighbours told her that it had occurred at 3.30 a.m. in the morning. A search of the apartment was carried out on 3 June. Her husband told her that people in uniform had come to arrest him. Four people. He could not see who did it. The janitor of the apartment building had called him. He had been told to get dressed and leave with them. He was arrested by a police officer, a Mr Gusan. He was taken in a Volga car and jeep with Mr Gusan and six other people. He was interrogated by Mr Gorbov and Mr Antiufeev, who is now a member of the Transdniestrian Government. He was held at the militia building where arrested civilians are taken. For six days there was nothing in the register about him.

When the witness saw her husband in the militia building, Starojouk was also there, in a separate office. The witness did not know if Ilascu was there as well. She did not know Ilascu personally. When she saw her husband for the first time he had done nothing but eat, wolfing down half a chicken, and he had drunk a lot of water. He said that they had not given him anything to eat or drink.

32. The witness had a second meeting with him after a month or so. In the meantime she had not been allowed to see him or to give him any food. She had taken his dirty clothes away with her; they were full of vermin. His

shirt was stained in the area of the kidneys. He had obviously been beaten up. The next meeting, after a month or so, was in the same building, in the basement again. And then there was another meeting after a further two months in Starojouk's office.

33. The witness's husband told her that he had spent about a month at the headquarters of the Russian Fourteenth Army, at the *Commandatura*. He said it had been horrible. Three soldiers had kicked him in the chest and groin; he had passed blood in his urine; one of the soldiers had made a lewd suggestion. He had been taken to the lavatory once a day, allowed only 45 seconds to relieve himself, and then a dog was sent in and he was pushed back to his cell. He was not allowed to wash there was no water to wash with. There was no food or water. He did not know the names of the people who had ill-treated him. They had not introduced themselves. They were wearing the military uniform of the Russian Special Troops. They were heavily muscled men from the Fourteenth Army.

The witness's husband told her that when he was in the *Commandatura* of the Fourteenth Army it was the militia men who had the keys to the cell. The attack on him had occurred when the guards got drunk with three soldiers. The guards gave the soldiers the keys for some reason. It was then that the soldiers broke into his cell, assaulted him and tried to rape him.

34. At the *Commandatura* he saw Ilie Ilascu being subjected to what turned out to be a mock execution. He saw Ilie Ilascu being led out, blindfolded; he heard the guns firing and then saw traces of bullets on the wall. But he then learnt that Ilie Ilascu was alive. The witness's husband mentioned to her two names: Gorbov and Antiufeev. He said that, after the *Commandatura*, they came to interrogate him every night back at the militia centre. Colonel Bergman was the commandant at the *Commandatura*. They saw one another at the *Commandatura*.

35. After his conviction in 1993 the witness's husband was taken to Tiraspol Prison No. 2. That was the only prison where he had been detained. The first time that the witness was able to visit her husband there was after three months. She was allowed to leave food for him. After the trial she had regular meetings with him once a month, as laid down in the Criminal Code, through a glass screen. Letters were opened, but they did not correspond too often. Twice a year a long meeting was granted. Parcels were not always allowed. He was kept in an individual cell. There was no beating up, but he was subjected to moral pressure. The witness herself was called a Romanian prostitute. The guards would ask her, "Why did you sell out to Romania when you are a Russian?" There was ill-treatment of her husband in the militia building, but not in prison. The food in prison often had worms in it. She was sometimes allowed to bring in large food parcels.

Her husband has never said anything much about medical treatment in prison. He had a pancreatic crisis when the witness was there once. He was foaming at the mouth. She had to wait all day for any kind of treatment to

arrive. In the end a doctor came and said that he needed an operation, otherwise he would die. He was made to walk with handcuffs and manacles on, despite his condition. The doctor gave the witness a list of medicines to get. The operation had been a success. He was manacled to the bed in hospital, despite being on an intravenous drip. The witness was allowed to visit him in hospital once a day but there were four armed guards present all the time. His stay in hospital had lasted two weeks.

36. The witness claims that her husband did not receive any orders or instructions from the Moldovan authorities before he was arrested in 1992. She was with him all the time. He was a member of the Popular Front. After her husband's arrest they had to leave their residence. She went to plead with the factory-owner, but he said, "You must leave the flat, you are a terrorist's wife." After ten days a woman with a child came to occupy the flat. The witness was chased away and went to Chisinau. Six months after the event she was given a hotel room by the Popular Front. Whenever she went to Tiraspol to visit her husband she stayed with a friend. Then eventually she was given a room as a refugee.

3. Eudochia IVANTOC

37. The witness was living in Tiraspol on 2 June 1992. She had not heard anything at all about a so-called Ilascu group before her husband was detained. They lived in Tiraspol and felt at home there.

38. Her husband was arrested there when he was on his own. He told her that many armed people had entered the apartment, smashed their belongings, and beaten him unconscious. The persons who burst in were wearing black uniforms. Her husband was taken to the basement of the militia building in Tiraspol. The witness met him two days after his arrest. He was bruised on the forehead, the nail on one of his fingers was missing, and he was very dirty. They were forbidden to speak to one another in Romanian, but had to use Russian.

The witness met him in the office of the investigating offices, in the presence of three or four other people. It was a short meeting and it had been impossible for them to communicate properly. It was many weeks before the witness could send him a food parcel.

39. From the militia building the prisoners were transferred to the Fourteenth Army *Commandatura* and then back to the militia building. Before their trial they were in either one or the other of these places. The witness had one short meeting with her husband during the period when he was being held at the *Commandatura*. She did not know that he was being held there. When she was in the militia building she saw him being brought into the building from a Volga car and it was then that Andrei told her, "We're being held at the *Commandatura*." At that particular time they were refused any meetings. Before meetings he was prepared and cleaned up, so

that the family would not see all the damage. “Boxers” were used in the basement to beat the detainees up. They had to speak in the Russian language and always in their presence.

40. The conditions in the *Commandatura* were terrible. It was painful for the applicant to talk about it. He was kept alone in a cell; at midnight a bed was brought down from the wall for them to sleep on, but they were kept up during the whole day and so were not able to sleep properly. They were taken out to the toilet once a day, for a very short period; if they had not managed to relieve themselves in this very short period, dogs were let loose on them. They were not given much food. Ilascu and the others were detained there at the same time but in separate cells; the witness’s husband was blindfolded when he was let out of the cell. The applicant told the witness that he had been kept in the *Commandatura* for two months, from July until August 1992. He was interrogated day and night; sometimes he was not allowed to sleep because the interrogations went on all night. He did not specifically tell the witness who interrogated him. The guards were from the Fourteenth Army. Gorbov, Starojouk and one other took part in the interrogation. He also mentioned the name of Bergman, but the witness could not remember exactly what he said in this connection.

41. When he was held in police custody in Tiraspol the witness’s husband was threatened with a sentence of death. The order was read out to him; he was taken out to be shot, and told, “Why do you want to bother about visits by your family if you are to be shot tomorrow?” There were times when he could not recognise the witness. Before his trial he was treated with psychotropic substances, so that his nervous system broke down. As a result, even today he suffers with constant headaches. His chronic diseases have got worse. He was in hospital for ten days before his trial. While detained in the militia building he was sent to Odessa for a psychiatric examination. He had not had any psychiatric examination until then. The findings of the Odessa examination had been destroyed. She knows from hearsay that he was kept naked on a concrete surface, but she cannot personally confirm that he tried to hang himself.

42. Following the trial in 1993, the witness next saw her husband after a month as soon as she received the permission to meet him. Whenever events got worse, that affected visits. She was not able to visit her husband freely; she had to write to Mr Shevtsov to get approval. For a long time she was not allowed to give him newspapers in Romanian, but only in Russian. She could not correspond with him. He was kept in solitary confinement, in the toughest wing of the prison. It was very damp; there was a leaking roof and no daylight. There was permanent psychological pressure on him. In 1999 he was the victim of a physical attack when masked persons entered his cell, hit him with sticks and beat him up. Everything in his cell was broken and his personal effects were taken away. This is the time when he went on hunger strike. The 1999 incident occurred when the applicant’s husband

lodged his application with the European Court of Human Rights, or even before – when the Sturza Government was elected. He was not allowed to stay quietly in his cell, as there was a period of time when everyday someone tried to exert psychological pressure on him.

43. The witness complained to various Moldovan authorities. She did not approach the Ministry of Justice directly. Together with the other wives, she approached the President of the Republic and the Ministry dealing with the Transdnistria issues. In reply, they were assured that negotiations were under way and things would be back to normal soon. This was so even when they applied to the Prosecutor General. But nothing ever came of these representations. The applicants' wives also applied to the Ombudsman, but they were told that he could not go deeper into the case because he did not have sufficient power. The other side was not subject to his authority, and everything depended on higher authorities – in other words, the President's Office and the State authorities.

The OSCE mission visited her husband in prison after these representations in 1999.

44. There was no proper access to medical assistance in the prison. The witness insisted that a doctor from Chisinau go to see him in the prison in Tiraspol. He had a liver condition, high blood pressure and a kidney condition. The witness brought all the medicine from home, as no medical care was dispensed in prison.

45. On 15 February 2003 the witness was refused permission to see her husband, but she managed to see him one week later. He told her that again people had burst into his cell and broken all his personal effects.

46. Although Andrei Ivantoc needs a special diet, he does not receive what he needs. He cooks food for himself, from the parcels delivered to him by his family. The prison authorities in Tiraspol refused him access to a psychiatrist. Recently, however, a group of doctors from Chisinau had visited him, but they were then barred from presenting their written report to him. The prison doctor was present during this examination, together with three or four persons from the security service.

47. The witness is not aware of her husband ever having received any instructions from the Republic of Moldova. There were no persons from the Republic of Moldova present during his interrogation, just persons from Tiraspol. Her feeling is that the Moldovan authorities could have been more insistent, and in particular could have involved international organisations.

4. Raisa PETROV-POPA

48. In June 1992 the witness was living in Moldova in her parents' village. Her brother was living in Tiraspol. He had been there for six years with his wife and family (his son). The witness was not in Tiraspol when he was arrested; she heard of his arrest one week after the event when his wife

telephoned her. The applicant's wife told the witness that people had come at night and arrested him. She further told her that he had been taken to the premises of the Fourteenth Army. The witness saw him for the first time during his trial. She had no opportunity to talk to him, but only spoke to his wife, who told her that he had been ill-treated in custody. After the trial the witness occasionally visited him in prison. She very rarely wrote to him or received letters from him. When the family did send him letters, he frequently said that he had not received anything.

49. The witness's brother was detained in Tiraspol Prison until last year. He did not speak about his treatment in prison. There were always persons present who prevented him during the visits from speaking about matters other than family matters. He sometimes said that he had been taken out of his cell at night or verbally abused. The applicant never spoke about any medical treatment.

50. The witness had not approached the Moldovan authorities on behalf of her brother in order to seek his release; his wife had, but the witness did not know what authorities she had approached. Nor did she know whether the Moldovan authorities had tried to do anything following her brother's arrest and conviction.

51. She brought the application on behalf of her brother. Before the trial she did not know Ilascu, Lesco or Ivantoc.

5. Stefan URÎTU

52. The witness was formerly a permanent resident of Tiraspol. He now lives in Chisinau. He is the Chairman of the Helsinki Human Rights Committee and a Professor at the Tiraspol State University with its headquarters in Chisinau.

53. By June 1992 he had been living in Tiraspol for nineteen years. He knew Ilascu and Ivantoc but not Lesco or Petrov-Popa. He had been a member of the Popular Front. But in 1992 Ilascu had published a statement saying that the witness was excluded from the Popular Front for expressing pro-Snegur views.

54. He was arrested on 2 June 1992, twelve hours after Ilascu. He did not know who the people arresting him were. He later came to understand that the public prosecutor Luchik and Colonel Bergman, the Fourteenth Army commander, were behind it. Luchik had been the Moldovan Prosecutor of the city of Tiraspol. Then the separatists had converted him into the Prosecutor of the "Transdniestrian Moldovan Republic".

55. The people arresting the witness were not in uniform. When he was arrested, there were some vehicles from the Russian Army surrounding his house. He was taken to the militia building in Tiraspol. He did not see Bergman himself, but he saw the army vehicles and was told by those arresting him that Bergman was involved.

56. The witness was held in the militia building from 2 June until 21 August 1992. He saw Ilascu there through a crack in the door, but for most of the time Ilascu was kept at the Fourteenth Army building for security reasons. Opposite the witness's cell were Lesco, Ilascu, Ivantoc and the others, except for the time when the applicants were taken to the Fourteenth Army. The main six detainees were kept there until September 1992. Over 30 people had been arrested in the operation. At one point the witness heard the scream of a crazy person. It was Ivantoc, because they had told him that he was to be shot that day.

57. The witness talked to Lesco, who said that the conditions in the militia building were quite good compared to those at the Fourteenth Army. The other prisoner who was sharing the witness's cell also told him that his colleagues had been taken to the Fourteenth Army because the security was much stricter there. All this was done when the fighting was going on in Bender.

58. He was told by those who were detained at the *Commandatura* that their beds were raised against the wall at 5 or 6 a.m., that they were given no food, that there was no light in their cell, and so on. Lesco also told him that they were subjected to mock executions.

59. The witness received a letter from a potential witness at the trial saying that he had been warned that if he kept to his testimony that Ilascu had been beaten, he would lose his job. He is now in detention. A person who gave evidence at the 1993 trial in Tiraspol was summoned by the Tiraspol authorities and asked if he would give the same evidence now.

60. During his detention in the militia building, the witness was interrogated by Shevtsov, or Antiufeev as he now calls himself. The witness was Chairman of the Committee for Human Rights created in 1990 and had access to information concerning the situation in Transdnistria. Many people came to see them for information. The constitutional Moldovan authorities avoided responsibility for what the separatists were doing. Shevtsov, whom the witness did not know at the time, was a better-trained professional than any Moldovan would have been. The witness told him that he gave the impression of being from Russia – because of his Moscow accent and because of his being so professional at his job. When he saw Shevtsov later on the television, he realised who he was. He was the person who had organised the attack on the Riga television tower in 1991. He and the eleven colleagues who accompanied him to Tiraspol had created a network in the Baltic Republics, but they were then ordered by Moscow to Tiraspol. He used to be called by the name of Antiufeev, but in his fourth passport he had the name Shevtsov. He does not conceal now that Antiufeev and Shevtsov are one and the same person.

61. The witness was interrogated only once in the presence of a lawyer. Another time he was interrogated at night by Mr Gorbov and another. They ill-treated him and tried to get him to sign a document, but he refused.

62. The witness was not tried. He was released after 82 days of detention. He does not know why he was released, although he was subject to the same charges of terrorism. During the applicants' trial the witness sent a telegram to the President of the so-called Supreme Court of Transdnistria, Mrs Ivanova, asking to be heard by the court. He was refused. The answer given was that he was a criminal who deserved to be in the cage with Ilascu, and he could not be heard as a witness. Prosecutor Lukiç, whom the witness contacted, told him he could not protect him a second time.

63. He had been released on signing an undertaking that he would not leave Tiraspol. Starojouk drove him to his home in Tiraspol. No personal belongings had been taken from his apartment. The witness promised not to make statements to the press. He was contacted by the Memorial group in Odessa, who invited him to Odessa. When he asked for permission to go to Ukraine, he was first refused, but in the end he obtained that permission. However, the witness fled to Chisinau instead of going to Ukraine.

64. The witness stated that Ivantoc's house had been surrounded by military vehicles and he had concluded that the Fourteenth Army and Colonel Bergman took part in the arrest.

65. General Iakovlev had previously been arrested by the Moldovan authorities for providing arms to the separatists. The witness had seen the register, detailing how much weaponry had been given and to whom. It was given to people in their homes so that they could resist the constitutional forces of Moldova. As regards the arrest of General Iakovlev, the witness had heard that Mr. Ilascu was there to confirm to the arresting officers that they had the right person. Iakovlev was in plain clothes and about to flee to Odessa because he suspected that he was about to be arrested.

66. General Iakovlev was subsequently exchanged for 28 Moldovans. On another occasion, 23 Moldovan policemen were exchanged for 23 paramilitary soldiers. Groups of 25 to 35 people were regularly sent from Transdnistria to Moscow to be trained in military and security matters, in order to create battalions. The witness knew about this from the soldiers.

67. After his release, the witness had visited Tiraspol several times. Once he was part of a delegation of the Helsinki Committee. Another time he went there without warning the Transdnistrian guards.

68. The witness considers that Moldova did not and does not do all that it can to ensure compliance with Moldovan legislation for the 600,000 hostages that are being held in Transdnistria by the separatist regime.

69. Concerning the Russian involvement in the events, the witness stated the following. High-placed Russian personalities had visited Tiraspol as early as 1989 when the first law on languages in Moldova was adopted. Russian officials had also come to Chisinau. The Moscow Institute of International Relations had developed the idea of Transdnistria in case Moldova did not accept some degree of cultural autonomy. The creation of

a tribunal to prosecute Moldova for violating humanitarian law had been mooted. The KGB forces were at this time out of control in Moscow; they were seeking to keep the Soviet empire in existence. It was Nikolai Midveev, member of a Russian Federation Parliamentary Committee, who requested the release of Smirnov when he was being held in detention. He offered certain guarantees for Smirnov's release, for instance, Smirnov would not continue to destroy the Moldovan State structures, he would not contravene the legislation of Moldova, and the Russian Federation would ratify the Moldovan-Russian Agreement. However, this agreement was not ratified until 2001, when the Communist Party regime came to power in Moldova. Behind these manoeuvres were the FSB, the Cossacks and other structures created by Russia whenever it was a question of a territory where they wanted to keep control.

70. On the day of the witness's arrest, when he was taken to the security service, he saw an important person coming out of the building. It was Makashov. He had visited the separatist republic and said that with such weaponry they would not be able to fight the Romanian fascists, that he was going to send them better arms and that Russia would help. Material was sent later from Russia, around one hundred units of Radio-Guided Anti-Tank Missiles, but only fifteen of them reached Tiraspol. Then there were the declarations of Mr Dakov, the Tiraspol Minister of Light Industries. He had admitted that the Fourteenth Army used to wear the uniform of the separatists or civilian clothing when fighting on the side of the separatists. Soldiers of the Fourteenth Army had been killed in the fighting. For instance, in about April 1992 an officer and four soldiers of the Fourteenth Army had been killed in the war. Their bodies had been brought from the front to be sent to the Russian Federation, and the witness and his students had seen them, as they had participated in the farewell ceremony.

71. The Cossack troops who had taken part in the fighting were mobilised by the Russian Federation when it realised that the territorial integrity of the Soviet Union could not be maintained. The Cossacks had arrived in 1990. Russia said that this was a private initiative, not linked to the authorities. They lived in hotels. In 1992, on 1 or 2 March when the war started, their objective had been to prevent Moldova joining the United Nations. In Bender and Dubasari, where there remained the last constitutional police station, the last place in Transdnistria where Moldova was maintaining a law-enforcement presence, there was an assault organised by Rateyev, one of the Cossacks. He was a member of the Alpha Group, which was one of the leading Russian security groups.

72. In 1993 the separatist regime set up a parliament. General Lebed was elected to the Supreme Soviet. General Lebed himself declared that he was the one who guaranteed the independence of the Transdnistrian Republic, and that he had caused a few shots to be fired on a number of occasions from "Grad" launching pads in the direction of Moldovan territory. After

that, Lebed said, President Snegur had agreed to sit at the negotiation table with Smirnov.

73. During the war, the Transdniestrian side had tanks and armoured vehicles bearing the emblem of the Russian army – the witness had seen that himself – in addition to the Cossack troops. The witness went to Bender once. When he crossed the bridge on foot he saw many tanks carrying the Russian three-coloured flag. On other tanks the separatist flag was flying. He asked why Russian troops and separatist troops were there and he was told that both had taken part in the shooting. At a meeting held at the Ministry of Defence in Chisinau, where the negotiations took place, the witness made a statement in front of the ministers of foreign affairs present, including Mr Kozyrev and Mr Netkachiov, who was the Commander of the Fourteenth Army at that time. The witness told them he would lodge a protest because the Fourteenth Army was directly involved in the war. The participants in the negotiations replied that they would leave for Bender and try to gain evidence of that themselves.

74. After his release the witness did all that he could to get the remaining six freed. They represented a symbol for the Transdniestrian regime, to discourage others from expressing political views. He was told by Prosecutor Irtenev that Moscow was interested in securing the release of people held by the Moldovan authorities. Prosecutor Irtenev told the witness that Moldova had been cheated, in that other, less important people had been released, but not the witness's six colleagues. Moldova released everyone, whether Russian or from Tiraspol, who had taken part in the fighting, whereas the Tiraspol regime had not released everyone, had not responded in kind.

75. The witness did not know why he was arrested or why he was released. There was a letter from the Moldovan Ministry of Education asking for his release, the Ministry undertaking to ensure that the witness would be present for the purposes of the investigation. The witness possessed much information about the separatists, and for that reason he was not a convenient witness for the trial. Alex Kokotkin, a journalist for a Russian newspaper, had tried, before his arrest, to convince him of the benefits of collaborating with the separatist regime. The witness had seen him later in the office of the investigators, acting as if he was a boss. Kokotkin told him that additional Russian troops had been brought in to secure Transdniestrian independence; they were called peace-keeping troops. This journalist might have played a significant role in obtaining the witness's release.

76. The witness also stated that he could name the persons who had gone to Moscow for military training for membership of a Dniester battalion. He knew who did the recruitment and where they went. He also knew the Russian secret services who installed special telephone devices for tapping official Moldovan telephone calls.

6. Constantin TÎBÎRNA

77. The witness is the Director of the Surgical Clinic at the State University, Chisinau. He has been in Transdnistria lecturing and teaching; he also had professional relations there.

78. He was requested by the Ministry of Health of Moldova to examine the Ilascu group in prison in Tiraspol. The Moldovan authorities in Chisinau even provided him with a car to go to the prison in Transdnistria. He would not have gone to examine these prisoners if he had not been invited to do so by the Moldovan Ministry of Health. There he carried out the examination, together with doctors from Tiraspol, and then he discussed with them the diagnosis and the treatment.

79. When he examined the applicants, Ilascu was in Hlinaia, the others were in Tiraspol Prison. The prisoners made no complaints about the Russian Federation. They only discussed medical matters in fact. The witness did not see any signs of beatings, bruises or ill-treatment when he examined the prisoners. The level of medical assistance in prisons was very simple; there was no equipment, but Chisinau prisons looked very much like the prisons in Transdnistria.

80. He saw Mr Ilascu himself only once. He looked like an ordinary prisoner, but he did have a disorder of the digestive tract. However, his condition did not necessitate any intervention by a surgeon; no surgery was necessary, and so he was treated by a gastro-enterologist.

81. The witness examined Mr Lesco when he was in hospital recovering from pancreatitis, after he had undergone a surgical operation. He was invited to examine Mr Lesco because he was recognised as an expert on this condition. Mr Lesco was introduced to him by the doctor who had operated on him earlier. He had seen the applicant in hospital, when he was suffering from acute pancreatitis. This is a severe condition, with a mortality of 20 to 30%. He also saw him later, when he was suffering from chronic pancreatitis, which often follows acute pancreatitis. He could have acquired pancreatitis during his childhood, although acute pancreatitis could also be the result of stressful conditions. The witness and a team of doctors, led by Dr. S. Lesanu, examined the applicant and recommended further treatment.

82. The witness saw Mr Ivantoc in prison. He detected changes in his liver by means of an ultrasound examination and liquid in the abdominal cavity, which is a sign of high blood pressure.

83. The witness made his notes on the applicants' cases on sheets of paper provided by the prison doctors. They kept these notes for their archives. The witness then made his own report for his own personal purposes. He last went there over a year ago.

84. There is freedom of movement of doctors from Moldova to Transdnistria and vice-versa.

7. Nicolae LESANU

85. The witness is the chief doctor on curative issues at the State Hospital of the Republic of Moldova. Until seven years ago he was working as adviser to the President of Moldova and was his personal physician. At his request he was sent to Tiraspol to see the three applicants detained there and to Hlinaia Prison to see Mr. Ilascu. The wife of Mr Ilascu had made representations to the President who, as a result, had done what he could to help. As part of his help he sent the witness to examine the applicants in prison in Transdnistria. As adviser to the President, the witness could talk to the local authorities in Transdnistria.

86. The witness went to Transdnistria six times in all. The President and the relatives of the applicants were worried about their medical state in prison. The witness had to keep the President informed of their medical condition. He usually took other doctors with him, for example, Professor Tîbîrna and a gastro-enterologist.

87. The applicants did not complain about ill-treatment.

88. The medical notes made on the applicants were left behind with the prison authorities there. The team of doctors insisted that the prison medical service should follow their recommendations, which concerned the applicants' medical treatment, medication and diet.

89. Mr. Ilascu said that he did not trust the prison authorities or the prison medical service, as he was afraid of having drugs administered to him by the prison authorities. He accepted medicine supplied by the family or by the doctors coming from Chisinau.

90. The examinations that the witness's team had carried out in Transdnistria were joint examinations with the doctors there. The applicants detained in Tiraspol Prison were subject to a freer regime than in Hlinaia Prison. In Tiraspol Prison there was a medical unit and only doctors were present during medical examinations.

91. At Hlinaia Prison the regime was stricter. There was always someone from the prison service standing by, as well as the doctors.

92. The witness and his team found no evidence either of physical ill-treatment or of the administration of psychotropic drugs.

93. The witness visited the applicants for the last time in 1997 or thereabouts. He refused to go after that, despite a request from the Ministry of Justice, because he no longer had the powers that he used to have when he was the President's adviser.

8. Andrei IVANTOC

94. On the morning of 2 June 1992, nine or ten members of the special forces came in cars and arrested him. They were military people in plain clothes, wearing masks. In the group that arrested him he saw a lieutenant from the Russian special forces. They beat him up and took him to a basement at the pre-trial detention centre, which was a militia building. The applicant had never been there before – that is to say, the building where the basement was. He cannot say how long he spent there. He was blindfolded; there was no light. It may have been one hour, one day, but no more. He did not see Lesco or Ilascu in the militia building. He saw them later at the *Commandatura*.

95. He was then taken to the *Commandatura* of the Fourteenth Army. There he was interrogated by military people. Upstairs there were special elite troops and Alpha troops. Colonel Bergman was the commander of the Fourteenth Army. The applicant saw him personally, but Colonel Bergman did not interrogate him.

96. The conditions at the *Commandatura* were inhuman. Detainees were beaten up day and night by the marines and by Special Forces, who used batons and boots. They would throw green gas capsules into the cells. The applicants were detained in different cells. There were also other people detained there, including Mr Godiac. The conditions of detention there were very bad. They were taken to the toilet once every 24 hours and chased out by a dog if they did not finish in the time allotted to them. At that point the applicant wanted to hang himself.

Then he was administered drugs. He was delirious; he imagined things. His psychiatric problems resulted from his beatings.

The guards at the *Commandatura*, like everything there, were under the control of the Fourteenth Army. The special forces and marines all had Russian insignia on their uniforms. It was the Russian special forces and marines who beat them up saying that they were Romanian peasants. They had Russian emblems on their uniforms. The applicant thought that they were Russian marines because they had the berets and shirts of marines with Russian emblems on them.

The worst ill-treatment he suffered was at the *Commandatura*. It was total savagery.

97. From the *Commandatura* of the Fourteenth Army he was taken to a psychiatric hospital in Tiraspol, where he spent one month. They then took him from the hospital back to the *Commandatura*, but as Colonel Bergman told the guardsmen that he did not want him there, he was taken back to the pre-trial detention centre. The applicant does not know how long Ilascu and Lesco were held at the *Commandatura* after he left. He next saw them at the trial in the autumn.

98. After September 1992, when he and the others were transferred to the basement of the pre-trial centre, they were also beaten up. They were taken out day and night. This was done in a special room, an investigation room. The applicant was beaten up until he lost consciousness, he was drugged, and his head was banged against the wall, or squeezed between the door and the wall. That was done by people from the Transdnestrian side.

99. After the trial they were only occasionally beaten up. The applicants complained to the OSCE. Mr Antiufeev was the head of all that. At one point a Ministerial Commission came to investigate. The applicants were not examined by doctors. In any event, the prison authorities isolated them until the bruises were gone. The OSCE Commission came one month later, after the beatings, but there were not many traces left by then.

100. The worst period of ill-treatment was in 1992, when they came to the applicant's cell and to Ilascu's. It was Antiufeev and Gusarov who were the prime movers.

101. Currently the applicant is in solitary confinement: He sees no daylight, and only exercises for two hours a day.

102. The doctors in the prison service were little better than veterinary surgeons. The prison doctor in the applicant's prison was in fact a dentist by profession. Professor Tîbîrna had visited the applicant. He had also been visited by other doctors from Tiraspol, including the surgeon who performed an operation on him. These doctors came only because he was ill; they did not come when he was beaten up. The applicant went on hunger strike on one occasion, but couldn't remember if he was examined by doctors then. Two of these medical examinations had taken place in special cells set aside for that purpose.

103. In January 2003 he was in a room where prisoners are allowed long-term meetings. He had never been examined by a doctor in his own cell. During the examinations there was always someone from the prison administration there to check and control.

104. Only relatives are allowed for family visits. Sometimes parcels are allowed, but on occasions there are problems with parcels. The applicants are not permitted to write or receive letters in Romanian or to receive Romanian newspapers. Two weeks before the hearings in February 2003, he had been seen by the Red Cross and, before that, by doctors from the European Committee for the Prevention of Torture.

105. The most recent visit he had had was two weeks before the hearings in February 2003, when he was visited by a lady judge in connection with the Torture Committee.

106. He has no right to correspond with persons outside the prison, whether lawyers or not.

107. In May 1999, while he was in Tiraspol Prison no. 2, after he lodged his application with the European Court of Human Rights, he was subjected to ill-treatment there as well. Military forces came into his cell and beat him

up. These were military people under the command of Gusarov and Captain Matrovski and people under Antiufeev/Shevtsov. He was told that if he did not withdraw his application he would be eliminated. Afterwards he went on hunger strike and wrote a complaint; and then a commission of investigation came.

108. The only medical visits he had had were from doctors coming from Chisinau. The prison doctor Lieutenant-Colonel Samsonov was a dentist. The applicant claims that he has not received any services from the prison doctors.

109. His cell and his belongings in it have been damaged. The first time this happened was on 16 November 2002, and the last time was on 22 February 2003 or thereabouts.

110. The applicant considers that everything that has been done to him, and that is now being done to him, has been done at Russian instigation.

111. Lieutenant-Colonel Gorbov had been present at the arrest of Ilascu. Moldova did not and does not control the territory of Transdnistria, but the Moldovan authorities could have done more at the time to help them. They did nothing. The militia of Dubasari were handed over to the Cossacks and beaten up. Russia had played games with Moldova. If this had not happened, Transdnistria would not have existed. So Moldova was responsible. The Chairman of the Russian State Duma, Mr. Seleznirov, had come to the Moldovan Parliament and said that, if it had not been for Russia, Moldova would have been part of Romania.

112. After May 1998 the applicant did not see any Russian officials.

9. Alexandru LESCO

113. At the time of the events, in 1992, the applicant had been living in Tiraspol since 1973. On 2 June 1992 he was awakened at 2 a.m. when four armed persons entered his house and arrested him. Among them was a person called Gusan. He was in plain clothes and not armed. He showed the applicant his documents. The others were wearing khaki; they were military personnel and armed. He was taken by car to the detention centre. He was not beaten then; that came later. He had a three-hour interrogation with Shevtsov, also known as Antiufeev, with Gorbov and with a third person whom the applicant did not know. He was then taken to the basement, where he stayed for six days. On the second day he was put in a solitary cell. The interrogations started in earnest. They went on from 2 June until 1 or 2 July. He did not see Ivantoc or Ilascu during that month. During this period he was interrogated and ill-treated.

114. On 1 or 2 July he was taken to the *Commandatura* building. He was taken there in a car with the Russian emblem on the side and the Russian three-coloured flag on it. The applicant was taken there twice on the same day. The first time it was Delta people, Dniester people. The second time it

was different people, Fourteenth Army personnel. They entered the base from a different entrance. He stayed there until 7 or 8 August in solitary confinement. The cells were on the ground floor. The applicant could not see the others – that is, Ilascu, Ivantoc, Godiac. He didn't see Mr Petrov-Popa. And the guards there ill-treated him a few times. He was not interrogated in the *Commandatura*, just beaten up three times. He knew that Colonel Bergman was the commandant, but he did not have any meetings with him or see him. Starojouk, who was leading the investigation in his case, was at the *Commandatura* twice. He showed the applicant newspaper reports that Plugaru [the Minister of National Security of Moldova during the 1991-1992 events] had been dismissed, and that a peace agreement with Russia had been signed.

115. The conditions were very harsh in the *Commandatura*. The food was good because they ate from the soldiers' rations. But sometimes there was no access to a toilet for two or three days. They would then be taken out into the corridor and to the toilet by a guard who had an Alsatian dog called Chan. They were only given 45 seconds, which was not enough time, and then the dog was let loose on them. This is why the applicants refused food, in order to get more time to go to the toilet. The applicant had to relieve himself into plastic bags because he was not sure whether the next day he would be taken to the toilet. This went on for a whole month or so. At the weekends, when there were few commanders present in the buildings, the guards would come into their cells and assault them. They would say that they were acting against Russia and Russian citizens and they would beat them up.

116. At the *Commandatura* he saw through a hole in the window of his cell Ilascu being taken out of the building. The guards stopped him and said, "You're next." He saw that Ilascu refused to be blindfolded and he was put up against a wall. Ilascu said that he had been subjected to mock executions four times. The applicant saw it only once.

117. He was only once beaten with batons, but he was scared all the time. At the weekend there were people who entered his cell. They had Russian insignia on their sleeves.

He stayed at the *Commandatura* until the beginning of August and then he was taken back to the basement at the pre-trial detention centre.

118. In the pre-trial centre he was interrogated three or four times by civilian investigators, and beaten with a stick, but less than the other applicants. As for the conditions of detention there, he had a bath once every ten days. There was no toilet in the cell, so he was taken out of the cell each morning to go to the toilet. The applicant had no visits from his family or a lawyer for the first five or six months of his detention.

119. After the trial he was taken to Tiraspol Prison No. 2. There were no sheets or blankets, and he slept on bare benches. He was not personally ill-

treated in prison. He was not allowed to see his wife or his lawyer for six weeks.

He received no medical visits from local doctors. When the applicants met their wives, they would ask for Chisinau doctors to come; and then they were visited a few times. Professor Tîbîrna saw the applicant in 1996 when he had chronic pancreatitis. Doctor Lesanu also came to see him. He complained to these doctors about the prison conditions but not about any ill-treatment after the trial. His colleagues were held in separate cells, so he cannot confirm or deny that they were ill-treated. It was in 1992 and 1993 that all the applicants were ill-treated.

He had have received regular visits from his family. Lately he has been receiving parcels; in the beginning there were many more restrictions. It depended on how the prison administration felt.

120. The Moldovan Government authorities could do much more. Although the applicant's wife told him that the Moldovan authorities have been trying to assist her during his detention, he considers that they could have done more after the conflict ended.

121. The applicant heard about the so-called "Ilascu group" for the first time when he was arrested. He has never belonged to the military or secret services of Moldova.

122. Since the events of 2 March 1992, the constitutional forces of Moldova had ceased to exercise control over the Eastern side of the Dniester River; there was a state of curfew in force in the town, with no authorisation to leave the house after 10 p.m.

10. Tudor PETROV-POPA

123. On 2 June 1992 he lived in Tiraspol. Victor Gusan arrested him, together with a group of other persons all in civilian clothing. He was at home; it was 6 a.m.

124. He was taken to the militia building. He was not immediately interrogated there. He stayed there until 12 noon. Then he was taken to the basement and put in a cell. He was kept there seven months. He was beaten up and ill-treated at the militia building.

The guards at the militia building told him that they came from various cities in Russia. They had uniforms, but with no insignia on them.

The applicant saw Starojouk and Gorbov. They interrogated him. They did not wear masks when interrogating him. They did not interrogate him about any links with Ilascu and the Popular Front. They simply wanted him to admit that he was part of the so-called Ilascu group and to confirm what they said. He was not a member of any political party, but he did not want to fight on the Transdnestrian side. He had been a soldier in Afghanistan. He had never met Ilascu. There were no Transdnestrian military forces in Transdnestria then, the only ones there being Russian. They were the ones

who had beaten him. He was beaten by military men who wore masks, so he did not know who they were.

125. Then he was taken to Tiraspol Prison. Before the trial, he was kept at the militia station for several months, and then in solitary confinement at Tiraspol Prison. He was never taken to the Fourteenth Army Headquarters. He was interrogated during his detention by persons who were wearing masks.

126. The applicant did not know Gorbov. He had met Bergman at the trial. He did not really see Ilascu or Ivantoc during his detention. He did not know any of them before the trial.

He was not visited by a lawyer at all during the investigation, only after.

127. After the trial he suffered no ill-treatment. At the time of the hearing the applicant was detained alone in a cell in Hlinaia Prison, where Ilascu was.

In 1995 the applicant was visited by Professor Tîbîrna accompanied by Doctor Lesanu, in Tiraspol. In 1999 he was transferred to Hlinaia Prison, where the regime was harsher. He had no medical treatment there. He contracted tuberculosis in 1999. He had been offered medical treatment provided that he asked for a pardon. If he had done so he would have been transferred to a medical unit, but he refused.

128. He has received family visits, but guards are always present. He has corresponded with his family, but they are not permitted to write to him in Latin script. He receives about six parcels per year.

129. The Moldovan Government had not done all that it could. In fact it had done nothing; otherwise the applicants would already have been released. However, his family had been given material and financial assistance by the Moldovan Government.

130. The applicant saw ammunition being given to the population in 1992. This ammunition was taken from the Fourteenth Army. The Transdnestrian army came from the Fourteenth Army, which had been the only one there before the Transdnestrian regime suddenly seemed to have armed forces of its own.

11. Colonel Vladimir GOLOVACHEV

131. The witness previously worked in Moscow and had come to Tiraspol in 1985. He had started working in the prison service in Transdnestria before the conflict began. He had simply remained at his post when he received the order to do so.

He was born in the territory of Soviet Moldova and has a Soviet passport, with a paper in it saying that he is a citizen of the “Moldavian Republic of Transdnestria”.

132. Since July 1993 he has been the Governor of Prison No. 2 where is a harsher regime than in Prison No. 3, which has women prisoners. All the

various conditions governing visits, whether long or short, parcels and so on are to be found in the Prison Rules. Prisoners who do not break the Rules benefit from all such entitlements. The strict regime includes all the common-use facilities, such as the small factory, the sporting facilities and so on, but also solitary confinement and a wing where dangerous prisoners are kept together. Exercise walks are not available for persons in special cells.

133. Mr Ivantoc is kept in a cell on his own, a cell designed for six prisoners, because he refused to go on to the ordinary regime. Mr Lesco is kept in the ordinary part of the prison and enjoys all the normal rights. This entails four short visits and two long visits per year. There has never been any problem about visits by lawyers. Persons detained under the strict regime however do not often ask to see lawyers.

134. There was no deterioration in the applicants' conditions as from 1999. Mr Ilascu never made a complaint about this.

135. Mr Ivantoc received medical visits from doctors coming from Chisinau.

136. As to the existence of any agreements or rules regarding the transfer of prisoners to or from Moldova or elsewhere, the witness stated that this is a high-level matter. For example, there has recently been such an arrangement agreed with Russia. But such things are done at government level; it was not for the witness to decide.

137. The witness was not aware that the Prosecutor General of Moldova had started criminal proceedings against him for unlawful imprisonment.

138. Mr Ilascu was released in May 2001. He was freed by virtue of a decree by the President of Transdnistria and an order of the Minister of Justice, Mr Balala. He did not know how this happened, nor did he know who had accompanied Ilascu to Chisinau.

139. Concerning the treatment of sick prisoners, they were previously transferred to Benderi hospital. Lately, however, this practice had been discontinued because of problems. Therefore, for ordinary illnesses the treatment took place in prison. Prisoners were taken to Tiraspol hospital for surgical operations and other delicate matters because they had no sophisticated surgical facilities in the prison.

140. Prisoners do not often ask for a visit from a lawyer. If the lawyer has a proper permit, then the Governor will give authorisation for the visit to take place. It is the Minister of Justice who issues the permits. In Prison No. 2 there are only convicted prisoners, no remand prisoners. Pre-trial detention takes place in this part of the building, in Prison No. 3.

141. Mr. Ilascu was kept in Prison No. 2 on his own from 1997 until he was freed. He was kept in cell no. 13. He was held in a cell on his own because they had never had such a category of prisoner before. There was therefore no point in putting him together with ordinary criminals. Mr Ilascu was not asked whether he wanted this. The witness knew nothing about

Ilascu's allegation that on 13 May 1999 civilians wearing balaclavas came into his cell and assaulted him, and then took him out into the corridor. He never received such a complaint from him about this. The prison service does carry out periodic searches of the cells and the prisoners, but no one ever wears a balaclava helmet. When the Council of Europe Committee for the Prevention of Torture carried out a visit, the witness was asked about members of the Ilascu group being beaten in May 1999, and he stated that as Governor he had never received any complaints from the applicants in this connection.

142. Prisoners can complain about alleged assault by prison staff, interference with parcels and so on from 7.30 to 9.30 a.m. The witness stated that he was available to meet the prisoners and, if necessary, to hear their complaints.

143. The prisons in Transdnistria are run in accordance with the new Prison Code. The Moldovan Code is not applicable there. Prison No. 2, like all the other prisons there, has been under the control of the "Moldavian Republic of Transdnistria" since December 1992. Since that date the prison service in Transdnistria has not taken orders from the Government of Moldova. The Moldovan Government cannot take any decisions about these prisons. In 1992 there were in the Transdnistrian prisons some prisoners convicted by Moldovan courts, but gradually from then on there was a transfer of prisoners. Before 1991 transfers of prisoners were carried out all over the Soviet Union.

144. Mr Ivantoc was a victim of his own actions, because he had refused to leave his cell. As a consequence he had lost all his entitlements. He was in a cell by himself because he did not wish to share a cell with others.

145. The possibility of early release is decided after reviewing the prisoner's file. But the applicants in this case have never asked for any such review. They addressed all their requests to the Moldovan Government.

146. As Governor the witness has never had to discipline prison officers for ill-treatment – just for transmitting messages illegally outside the prison and that sort of thing.

147. The uniform of the prison guards is similar to the Russian uniform. The insignia are different. The Transdnistrian officials do not take orders from the prison authorities in Russia but they do cooperate with them. Russian soldiers have never participated in guarding prisoners in Transdnistria, since these prisons are not within the jurisdiction of the Russian Federation.

148. The applicants' lawyers had never asked for a meeting with their clients. Had they done so, such a request would have been properly considered.

149. There is no law or official rule that prohibits prisoners' correspondence in Romanian, but the prison administration uses the language which is common in Transdnistria, namely Russian. They must

be able to have censors who are capable of reading the prisoners' correspondence. But the prisoners are allowed to receive newspapers in Romanian.

12. Stepan Konstantinovich CHERBESHI

150. The witness was born in Russia. From 1989 to 1991 he worked in the militia office and from 1984 to 1989 in the prison service. He was the Governor of Prison No. 1 from 1992 until 2001, and Deputy Governor before 1992. At the time of the hearing, the witness was retired. His pension is paid by the Ministry of Justice of the "Moldavian Republic of Transdnistria".

151. In Hlinaia Prison, prisoners are held alone in their cell which measures 16 square metres. As regards the rules on visitors, correspondence and parcels, convicted detainees were entitled to receive visits but they had to get permission first according to the Prison Rules. However, prisoners in pre-trial detention had no right at all to correspond.

152. The witness was not aware of the rules as to visits from lawyers.

153. There was a medical department in the prison, with a pharmacy, but there was no clinic with beds. For that civil facilities were used. Medical visits occurred upon request from the prisoner. The applicants had been examined by outside doctors from Moldova.

154. After their trial the applicants were sent to Hlinaia Prison. Ilascu was held separately and the other three were in one cell together. They had the right to leave the cell and to have an exercise walk for one hour per day. Those who were ill had one additional hour of exercise.

155. Hlinaia Prison had a special wing for tuberculosis sufferers, but Petrov-Popa was not a prisoner when the witness was Governor of Hlinaia Prison.

156. Ilascu had been subject to special conditions in prison because he had been sentenced to death. He was not allowed to share his cell with other prisoners. The window of Ilascu's cell had shutters which closed from the outside. The light still came through, but the prisoner could not look through the shutter. For Ilascu special permission from the Ministry of Justice was needed before anyone could visit him.

157. The witness never received any official complaints from Ilascu about his treatment when in Hlinaia Prison. He never heard that Ilascu's sentence had been quashed by the Moldovan Supreme Court. Ilascu was not the only death-penalty prisoner: there was one other, who was kept in the same conditions.

158. Hlinaia Prison was not subordinate to the Supreme Court of Moldova and the organs of the Moldovan State and the Moldovan Government had no authority over the prison service in Transdnistria.

159. The witness never received any orders either from Russia or from the Russian military authorities stationed here. There were no Russians guarding the prisons in Transdniestria. The uniform of the prison service in Transdniestria was similar to the Russian military uniform, during his professional service.

160. A prison governor has no power, without a superior order, to make a decision on the transfer of a prisoner. During the time the witness was Prison Governor, he never had a prisoner transferred from another country, for example Russia. For a transfer from the penitentiary system of one country to another there must be a special order.

13. Sergey KUTOVOY

161. The witness has been the Governor of Prison No. 1 since 2001. He entered the penitentiary system in 1993 and has spent his professional career in prison administration. He is also studying for an Open University degree.

162. In 2000 a new Criminal Code and new internal Prison Rules of the "MRT" had been introduced. The position was significantly different before, when the legislation and rules of the Moldovan Republic applied. Under the new regime prisoners' conditions have been improved. More visits are allowed and, with good behaviour, the entitlements can be increased, for example with three additional visits. As regards visits by lawyers, convicted prisoners can receive visits without restriction. The Hlinaia Prison has round-the-clock medical care.

163. No complaint was ever received from the prisoners about their conditions of detention. None were made to the Council of Europe's Committee for the Prevention of Torture. But it was true that a very recent report by this Committee made certain criticisms concerning the covering of the windows in the cells and the regime of isolation. The investigation of a member of the prison staff after a complaint by a prisoner was rather an exception. There had been no more than twelve since the witness had taken up his duties.

164. The right of a convicted prisoner to receive a visit from his lawyer depends on the seriousness of the crime for which the prisoner is detained, on whether he has previous convictions and so on. There are three categories of prison regime. The prison authorities apply the courts' decision as to what regime is to be applied to a prisoner. The prison administration can subsequently change the regime – for example, if the prisoner has committed a breach of the prison regulations.

165. Neither the Prison Administration in Moscow, nor the Russian Operational Group in Tiraspol can give orders to the Prison Administration in Transdniestria.

166. The transfer of a prisoner from one institution to another can only be decided by a court. The Government decide on an extradition case.

167. At the time of the hearing, the only one of the applicants detained there was Petrov-Popa. Cell no. 31 used to be occupied by Ilascu. The cell had a standard window with shutters. These shutters are the same as those used in Chisinau prisons. Recently, in Hlinaia Prison the shutters had been dismantled in six cells, but for lack of financial and technical means it had not been possible to remove them in all cells, as the shutters needed to be replaced with bars.

168. Prisoners suffering from tuberculosis are detained in all zones of the prison; there are no specialised units for such patients. Mr Petrov-Popa, who had tuberculosis, had moved into the cell previously occupied by Mr Ilascu. He was allowed to go for exercise walks just like the other prisoners. In 2002 Mr Petrov-Popa's regime had been improved on the witness's orders. He was the only prisoner to have benefited from a new regime in that year. Mr Petrov-Popa now has the right to receive six parcels and six short-term visits per year, instead of three.

No restrictions on language are applied. Thus, Mr. Petrov-Popa could receive letters or newspapers in Romanian. Mr Petrov-Popa has never complained about the conditions in his cell. He was the one who asked to go back into his present cell. Petrov-Popa has never asked for a visit by a lawyer.

14. Lieutenant-Colonel Yefim SAMSONOV

169. The witness was head of the medical department in the Transdnestrian prison service.

170. The witness examined the applicants during the trial, in Tiraspol Prison No. 2. There were prison officers present. The applicants never trusted prison medical services and categorically refused medical services from the medical staff of Prison No. 2. They never asked the witness to examine them in relation to alleged ill-treatment. The witness never saw any signs of ill-treatment on them. On several occasions, doctors from outside the prison service, from Chisinau, came to examine the applicants and brought the appropriate medicine with them. These were Professor Tîbîrna and Dr Lesanu.

171. The applicants were not suffering from any special illnesses. In 2002 Mr Petrov-Popa was treated for tuberculosis. He had a damaged lung from which liquid was drained. Some time ago Ivantoc had had a liver operation. Professor Tîbîrna came as a specialist from Chisinau to treat him. The recommendations of Professor Tîbîrna's team in relation to the applicants were not implemented, because the applicants refused, as they did not trust the prison doctors.

172. The Prison Administration in Transdnestria did not take instructions from the Russian Federation. There was no organic link with

the Moldovan Ministry of Health or Ministry of Justice, but there was sometimes a contact with the Moldovan Ministry of Justice.

15. Vasily SEMENCHUK

173. The witness, the holder of a Moldovan passport obtained before he was working in the prison service, has been the prison doctor in Hlinaia Prison No. 1 since 1995. He never worked in Tiraspol Prison No. 2. As the prison doctor in Hlinaia Prison, he was responsible for all sanitary and hygiene conditions in the prison. The witness was a dentist, but he could also carry out blood tests. Moreover, he was assisted by a surgeon and other specialists on his staff.

174. The witness had only met the applicant Ilascu, none of the other applicants. Mr. Ilascu never asked to see the witness; he wanted an outside medical delegation from Moldova or Tiraspol to see him. Lieutenant-Colonel Samsonov accompanied the external doctors when they examined Ilascu. Professor Tîbîrna and Dr. Lesanu came and took samples of blood and urine to analyse. The examination took place, not in Ilascu's cell but in an office. Ilascu did not make any complaint about ill-treatment, he just complained about his problem of digestion.

175. There are no regular medical visits for prisoners, but only if the prisoner asks. There is a permanent medical unit in the prison.

176. The witness did not meet the applicant Petrov-Popa. The applicant was detained in a cell on his own. Mr Petrov-Popa never asked for medical assistance. He was currently on level 3 of his illness, that is, the illness was not active. Treatment was needed every nine months, not at shorter intervals, as was confirmed by the Medical Department.

177. There was a visit to the prison in 2003 by the Council of Europe's Committee for the Prevention of Torture. The witness did not remember the visit by this Committee in the year 2000. He did not remember that after the 2000 visit, the CPT was concerned about the applicant's access to treatment for tuberculosis, in that he was dependent on his family and their resources for purchasing medicine, and that it was up to his family to provide food for his special diet. The witness recalled that in the past the prison administration did not have the appropriate medicine to dispense to Mr Petrov-Popa, but stated that the situation had changed.

178. Mr. Ilascu never complained about his teeth. He had all his teeth when the witness saw him. After the visit by Professor Tîbîrna's team, Ilascu's wife brought him medicine from Chisinau. The witness was always present during Mrs Ilascu's visits and he encouraged her to bring Ilascu the necessary medicines. Mr Ilascu complained about his stomach, but his pain was not the result of any act by the prison administration. The witness last saw Ilascu in 1999.

16. Dumitru POSTOVAN

179. Mr Postovan worked as a prosecutor from 1990 till 1994 and as Prosecutor General from 1994 till 1998. He had been appointed prosecutor in 1990 by the Parliament of Soviet Moldova. At the time of the hearings, he was working for the Chamber of Trade and Industry, and advised its President on international law.

180. There was never an official split between Moldova and Transdnistria. As a result of the military conflict in 1992, the constitutional authorities of Moldova had to pull out of Transdnistria as they lost control over this region.

181. The applicants were not “arrested”; they were just captured. There was no custody order of an official court of Moldova. A number of people were captured. The Prosecutors’ Office wrote to Smirnov, in his capacity as head of the Tiraspol City Council (he had been appointed in 1990) asking him to hand these people over to the prosecuting authorities of the Republic of Moldova, but there was no answer to this request. It was Mr Sturza who headed the negotiations.

182. General Iakovlev was detained around February-March 1992 upon an order issued by the Prosecutor General’s Office. The order to arrest him was indeed discussed with the top leadership in Moldova, but it could not be said that it was the Government who ordered his arrest. This General, who, at the time of his arrest, was no longer in Command of the Fourteenth Army, had been instrumental in arming the paramilitary forces in Transdnistria. The Moldovan intelligence services arrested him in Ukrainian territory and took him to Chisinau. The investigation was carried out on behalf of the Prosecutor General’s Office by Ministry of Security investigators. The Prosecutor General’s Office monitored the evidence gathered. He was detained only 72 hours since, according to Moldovan legislation, suspects could not be detained for more than 72 hours. He was released because of a lack of evidence, as the Moldovan authorities simply did not have the opportunity to carry out a proper investigation in relation to the facts alleged against him. There must be in his file at the Prosecutor General’s Office a written order for his release. As there was no access to Transdnistria to obtain further evidence, he had been released since the evidence that the prosecuting authorities had against him was insufficient.

The witness had heard about the rumours that Iakovlev had been released in exchange for the release of 23 Moldovans detained by the Transdnistrians. Indeed, the Moldovan authorities were detaining about 40 Transdnistrians and an exchange had taken place. But this had nothing to do with Iakovlev. The witness was not aware of any pressure from the Russian Government to release him. He knew that General Stolyarov came from Moscow to Chisinau to seek his release, as he had received the report concerning Iakovlev.

183. The Prosecutor General's Office had warned the President of the so-called Supreme Court of the "Moldavian Republic of Transdnistria" that she and her court had no jurisdiction and that the applicants should be transferred to the Moldovan authorities for trial. At the time the "Moldavian Republic of Transdnistria" was governed by the Criminal Code of Moldova. On 9 December 1993, on the second day after the trial, the Moldovan Supreme Court quashed the decision of the Supreme Court of the "Moldavian Republic of Transdnistria" as being unconstitutional.

184. For every case where a crime was suspected of having occurred in Transdnistria, the Prosecutor General's Office opened a case file. It did so also as regards Ilascu and his fellow prisoners, after the decision of the "MRT Supreme Court" had been quashed by the Moldovan Supreme Court, but it was impossible to carry out an investigation and proceed to all necessary acts for that purpose. In August 1995 an amnesty was granted by the President of Moldova, followed up by a decision of the Parliament. The effect of this on investigations was that any case covered by the amnesty was stopped.

185. The witness's deputy opened a criminal investigation in December 1993 in relation to the prosecutors and judges who had been involved in conducting the Ilascu trial, on suspicion of committing an abuse of power. A number of investigations concerning persons occupying posts of power in Transdnistria were opened. But it proved impossible, not just difficult, to carry out any investigation. The Prosecutor General's Office interviewed the families of the Ilascu group, but they could not provide much information.

186. Apart from the Ilascu group, there were other people who were detained for short periods in Transdnistria, but no one was prosecuted.

187. Following the motion of October 1995 by the Moldovan Parliament calling on the Moldovan Government to deal as a matter of priority with the problem of the detention of the Ilascu group, the Prosecutor General's Office requested that the file be sent to them by the people in Transdnistria for the purpose of an investigation, and that the persons they were detaining be transferred to Moldova. But these requests were simply ignored. One could see no way of resolving the issue satisfactorily other than by diplomacy.

188. The witness was not in office in the year 2000 and was therefore unable to answer any questions about the order annulling the prosecution of the judges and prosecutors in Transdnistria who had been involved in the trial against the applicants. Likewise, the only information he had about the release of Ilascu was what he had read in the newspapers: that this release was the result of negotiations between President Voronin and the Russian President.

189. Between 1992 and 1998, apart from the dispatch of numerous letters, the witness's deputy, Vasile Sturza, was specifically charged with the responsibility of working to secure their release. He went to Tiraspol, he

had meetings with the Parliament, and so on. It was not so easy for him to go to Tiraspol, but he managed to obtain the authorisation of the Tiraspol regime. However, when he got there, he did not meet anyone. No positive results were achieved. The Prosecutor General's Office also requested that prosecutors be permitted to travel to Tiraspol in order to investigate whether the members of the so-called Ilascu group had committed the murders of which they were accused, but these requests were ignored. They also requested that a joint investigation be carried out. This second request was again ignored. The witness and his office reported to the new Parliament in Moldova. His Deputy, Mr Sturza, was later assigned to negotiate with the Transdniestrian authorities.

The Prosecutor General's Office did not contact the Russian prosecution authorities directly, although there was an agreement to that effect between the Moldovan and Russian authorities.

190. The witness stated that, officially, there were never any recognised or implemented agreements between the judicial authorities of Moldova and Transdniestria. He admitted that, unofficially, there were, with a view to combating serious crime. The Moldovan authorities would call the authorities in Transdniestria. There were sometimes exchanges of prisoners. However, practically all prisoners had been exchanged by the time the Ilascu group were arrested, so that there was no one else left to exchange. As regards serious crime, information would be exchanged or witnesses called from the other side, but no prisoners were exchanged. If a person had deserted the Transdniestrian military forces, the Moldovan authorities would not extradite or hand them over to the Transdniestrian authorities. There was no agreement for extraditing or handing over suspects. The witness admitted that there might on occasions have been some special operations by the security services, but there was never any official extradition agreement.

191. The witness was not aware of the order issued by his successor, Mr Iuga, in August 2000, dropping the charges against the judges and prosecutors who had taken part in the Ilascu trial, but thought that the Prosecutor General should have invoked other Articles of the Criminal Code, for example the one on abuse of public power, so that they would not be free of any criminal charge.

192. According to the witness, the effect of initiating a criminal investigation against the governor of the prison where the members of the Ilascu group are held, is that he would run the risk of being arrested in Moldova.

193. The witness considered that the State authorities of Moldova had done all in their power to secure the applicants' release. On the diplomatic level, all the initiatives had been met with the response that these issues would be determined when the status of Transdniestria was resolved and not before. Finally, the witness was of the opinion that only political action, not

legal action, would secure the release of the members of the Ilascu group freed.

194. The witness stated that there were other instances apart from the Ilascu case in which a criminal prosecution had been started against judges and prosecutors in Transdnistria. He did not know for certain the outcome of those investigations, but he presumed that they were stopped for the same reasons.

195. The witness did not feel any pressure at all when he was working in the Prosecutor General's Office. The Prosecutor General was independent of the Government. The Minister of Justice could not give him instructions, though the Government could address requests or proposals for the opening of an investigation.

196. The witness considered that the constitutional Moldovan authorities exercised no power or authority over the eastern part of the country.

197. Smirnov was arrested in 1992 and then released. It is true that Antiufeev and others visited Moldova several times but were not arrested. This is because there was a truce on 21 July 1992. After that truce the Moldovan authorities had to move in a different direction, they had to find points of agreement. Investigations were suspended; no retaliatory actions were carried out. Prisoners detained in the battle area, for example, Cossacks, were handed back; no investigations were started against General Lebed, and so on.

198. The witness was not aware that officers of the Fourteenth Army had been detained by the constitutional Moldovan authorities during the conflict in 1992. Indeed, he had written to the Russian prosecuting authorities in relation to the presence of the Cossacks in Transdnistria in order to learn about the position of Russia on this. In reply, the Russian prosecuting authorities informed him that they did not officially recognise the authorities of the Transdnistrian separatist regime.

199. There were official relations between the Prosecutor General's Office in Moldova and the prosecutor of the Fourteenth Army whenever that was required. As far as the Ilascu case was concerned, officially the Fourteenth Army denied that they were in any way involved and the Moldovan authorities had no official data enabling them to make a request to them in connection with the Ilascu case. The Fourteenth Army denied their involvement in the conflict in 1992.

200. The witness had seen a film on Russian television about the participation in the elections there of a "Colonel Gusev" who was in fact General Lebed, but the Moldovan authorities had no official information on that, however.

201. President Snegur went before Parliament to say that the Fourteenth Army had intervened in Transdnistria with their tanks. The witness thought that this information must have been true since he could not see otherwise where the Transdnistrian separatists had got their tanks from. The witness

also acknowledged that in June 1992 official information was presented to Parliament by the Ministry of the Interior about the participation of tanks and armoured vehicles in the conflict. But it was not easy to say whom to prosecute. In the beginning, the Fourteenth Army was supposed to belong to Moldova, then it was decided that it belonged to Russia. There was in fact no close collaboration with the Fourteenth Army in prosecution matters because none was needed. There were no incidents.

17. Valeriu CATANA

202. The witness was the Prosecutor General of Moldova from 1998 to 1999. Before that, from 1996 to 1998, he was the prosecutor for Chisinau. He worked in the Prosecutor General's Office from 1990 to 1996 and for the prosecuting authorities from 1973 to 1990.

203. The constitutional prosecuting authorities of Moldova had no access to Transdnestrian territory from 1992 onwards in the absence of any official contact with the regime. In that period the witness never visited Tiraspol, although measures were undertaken by the Moldovan authorities in an endeavour to secure the release of the members of the Ilascu group. After ceasing to be Prosecutor General, the witness also ceased to follow the case.

204. The witness had not heard about the order of 16 August 2000 by the Prosecutor General to stop the investigation against the judges and prosecutors in Transdnestria under Articles 90 to 192 of the Criminal Code on the ground that the persons concerned had never held official office in Moldova. The witness thought that the decision to stop the investigation was incorrect.

205. The witness had read in the newspapers that President Voronin and the President of Russia, and even Romania, had assisted with the release of Mr Ilascu.

206. There was no cooperation, whether official or unofficial, between the prosecuting authorities of Moldova and Transdnestria. The witness had personally never talked to a Transdnestrian prosecutor.

The witness knew that the Ministry of the Interior had orders to cooperate with the Ministry of the Interior of Transdnestria in order to improve the fight against crime - to return to the other side of the river persons suspected of serious crimes. But there was no formal extradition as such, since it concerned persons on the territory of the same State. But unofficially it did go on. As regards extradition in general, previously it was done by decision of a prosecutor. Now the legislation had changed and what was required was a decision by a court.

There was no official agreement between Moldova and Transdnestria to exchange people when the witness was Prosecutor General in 1998 and 1999. To his knowledge, no such agreement had ever been made. The

transfer of persons between Moldova and Transdniestria was organised by the Ministry of the Interior. There were some cases of persons committing crimes in Transdniestria being transferred from Moldova to Transdniestria. Officially this was not done, but unofficially the two police forces would cooperate and would transfer these people. For example, in 1995 there was a case brought against the police commissioner in Dubasari, and he was extradited to Transdniestria.

207. During his period of office the witness received no requests from Mr Ilascu or the other applicants and had no contact with the Transdniestrian authorities about the Ilascu case. In that period no one in his office worked on the case brought against the judges and prosecutors in Transdniestria. The case was suspended. In the period 1998 to 1999 no investigation was pursued in that connection, although the formal decision stopping the case was taken in 2000.

208. The Supreme Court of Moldova had received a copy of the judgment delivered by the so-called Supreme Court of the separatist entity, but not the case file. There was cooperation only at the level of the Ministry of the Interior. Prosecutors at a lower level may have made telephone calls to colleagues whom they knew in Transdniestria, but that would have been a purely personal affair. Up until 1998 there was no special prosecutor who dealt with Transdniestria. The witness created such a division in 1998, with responsibility for international relations, not specifically for Transdniestria; but if a problem concerning Transdniestria cropped up, then this department would deal with it. This department however was not competent to carry out investigations in relation to crimes allegedly committed by Transdniestrian officials; the competent one was the investigations department. But, in any event, Moldovan authorities had no access to information concerning events in Transdniestria, so they would not have opened any investigations even if they had received a request from a private person.

209. No complaint was sent by Mr. Ilascu to the Prosecutor General's Office. The letter which Mr Ilascu sent in 1999 to the Moldovan Parliament was not forwarded by Parliament to the prosecuting authorities. The witness had never heard before of such a petition by Mr. Ilascu.

210. The witness stated that he had been forced to resign for political reasons because persons from the Communist Party objected to his work, as he insisted on taking his decisions on the basis of the law and not according to the way the political wind was blowing. When a dismissal is judged to be desirable, one can always find a reason, and that is what happened to the witness. The post of Prosecutor General was a political position in a sense. The witness tried not to get involved in political activities and just to stick to the law. But unfortunately some cases touch on politics.

211. The witness was of the opinion that the release of the Ilascu group would have been possible only by the use of force. The constitutional

Moldovan authorities could not have done more than they did. Even in terms of international pressure, they did all that they could.

18. Witness X.

212. The witness was a former senior official involved in negotiations with Transdniestria. At the time of the hearings, he was working in a non-governmental organisation.

213. The Fourteenth Army was involved in the events of 1991 to 1992. Retired Fourteenth Army officers were hired by the separatists. The Fourteenth Army then intervened directly, which led to a military victory for the separatists. Thereafter Russia intervened, and imposed negotiations and “peace-keeping”.

There was a meeting of the Moldovan, Russian and Ukrainian Ministers in which the witness participated. There was a possibility of a resolution of the situation in 1992. Romania supported the position of Moldova. But the formula proposed for the resolution was torpedoed when the Russian secret services provoked the incidents in the town of Bender, which wrecked the negotiations and ended the role of the observers. The military defeat of Moldova was sealed in July 1992 when the Russian President Yeltsin and the Moldovan President Snegur signed an agreement in order to stop the conflict. The agreement was only signed by these two Presidents. The conclusion to be drawn was that the Russian Federation was the other party in the conflict; it controlled the region, and it had the resources to stop the conflict after the military defeat of Moldova. The formula of “peace-keeping” was imposed by Russia. The conflict also saw the participation of the illegal troops of the Transdniestrian regime. As a result of the conclusions reached in the Control Commission set up under the Yeltsin/Snegur Agreement, the separatist regime was strengthened.

214. Smirnov was hidden by the Command of the Fourteenth Army, by Guennadi Iakovlev, in August 1991 when he feared arrest by the Moldovan authorities. Iakovlev was then placed under the orders of Smirnov, with instructions to protect the unconstitutional regime in Transdniestria.

The witness was present in person in the spring of 1992 at the interrogation of a young man from Rostov on Don, who had been taken prisoner by the constitutional Moldovan military forces. He admitted that he had been sent to Moldova to protect the Russian land in Transdniestria. The witness had interviewed a former KGB official who was serving in Tiraspol in 1991. This officer told the witness that a Russian counter-intelligence division (GRU) had arrived in Tiraspol and that he intended to leave Tiraspol because he knew that trouble and bloodshed were coming. The Fourteenth Army was left under Russian control, so that Russia would have a reason to intervene.

215. The witness carried out an interview with Igor Smirnov. He had been elected, together with 64 other representatives, to the United Council of Labour in Transdnistria in February/March 1990. He had voted for Mircea Druc as Prime Minister and so had every possibility to prove himself a democrat. The witness interviewed him with regard to the purpose of holding the so-called second Congress in 1990 (this being the Congress which led to the proclamation of the Transdnistrian Soviet Socialist Republic). Igor Smirnov said that it was the languages legislation in Moldova which had turned him and his fellow Transdnistrians into second-class citizens. But he had been unable to show the witness one single provision in the languages legislation that had such an effect. This proved that his separatism did not have at its basis a problem that could not be resolved in a democratic way.

The scenario used in Transdnistria had been used before in Abkhazia and South Ossetia, but had failed in the Baltic States. The political process in Moldova on the break-up of the Soviet Union, with a delay of one year, followed that of the Baltic States. The result was a situation where public organisms were no longer controlled by the Communist Party. But the end story was different here. The Baltic States had managed to avoid separatism. In the Baltic States there were the same attempts by the Antiufeev group to undermine constitutional authority. Antiufeev, who was now a Minister in the Transdnistrian separatist Government had escaped from Latvia. In an interview he said that he had been sent to Moldova by the Soyuz Group in the Soviet Parliament, headed by Mr Lukyanov. He was offered Abkhazia or Transdnistria. He chose Transdnistria because there was no language problem. He was sent to another State to fight the established constitutional order, as he had done in Latvia. He and Oleg Gudymo, his deputy, are Russian citizens. He is included in the Duma electoral lists as a supporter of Stalin "black" candidates. These candidates were not elected, but it is informative that Antiufeev is part of that tendency.

216. On 25 or 26 March 1992 the witness went to the Fourteenth Army Headquarters, together with several Moldovan MPs and General Netkachev, Commander of the Fourteenth Army. A majority of the officers were disoriented. They were in an informants' environment where they could easily be manipulated. This is why some troops went over to be under the jurisdiction of the Transdnistrian separatists. An ethnic Moldovan officer of the Fourteenth Army came to Chisinau – he was a major – to tell the witness about the plans for the participation of the Fourteenth Army in the coming conflict. The so-called Transdnistrian Army, including a number of tanks belonging to the Fourteenth Army, was organised by officers of the Fourteenth Army. The separatists had at their disposal heavy artillery, which allowed them to take over the territory of Transdnistria. They had well trained tank drivers, helicopters and eighteen tanks. None of this was available on the private market.

217. Igor Smirnov was a citizen of the Russian Federation.

218. The witness thought that the Russian troops would stay in Moldova until a political solution convenient to the Russian Federation was found. If the Fourteenth Army had not been withdrawn in eleven years, that was because the Russian Federation had not wanted it. They kept the Russian military presence there in order to put pressure on Moldova and to protect the illegal separatist regime. An agreement was signed in Odessa in March 1998 between Mr Chernomyrdin, the Russian Prime Minister, and Mr Smirnov concerning the division of the military property of the former Fourteenth Army. Transdnistria had become the centre of illegal commercial activity, with sales and exports of arms from the equipment of the former Fourteenth Army.

If the Fourteenth Army withdrew, this would lead eventually to a solution of the problem. No military equipment had been withdrawn recently. The date for the complete withdrawal had not been respected, and the new one would not be either. There was a statement on the web site of the Russian Duma to the effect that members of the Duma were requested to refrain from making declarations on Transdnistria because of the case pending before the European Court of Human Rights, since such declarations could damage the situation in the case.

219. Mr Ilascu represented the Popular Front in Tiraspol. He had been released under pressure from the Russian Federation. He was in a sense released conditionally – that is on condition that he withdrew his application. The other applicants remained hostage. This had been confirmed by President Voronin, who said that Ilascu was himself to blame for their continued detention because, if he withdrew his application to the European Court, they would be immediately released.

220. General Lebed, Commander of the Fourteenth Army like Iakovlev before him, had allowed himself to be elected to the unconstitutional legislative body in Transdnistria. He had openly described how he had armed the Cossacks to fight the constitutional Moldovan authorities.

221. One of the questions asked at the public hearing before the Court in Strasbourg was: does Russia provide economic support to Transdnistria? The answer given by the Representative of the Russian Federation was that the Russian Ambassador to Moldova had simply visited Tiraspol and declared the interest of the Russian Federation in participating in the privatisation process in Transdnistria. This was recognition of legitimacy as regards the separate economy of Transdnistria, quite apart from the agreement on cooperation, providing for a list of goods which would benefit from preferential treatment, for free movement of goods and tax exemption for goods from the eastern part of Moldova.

There was also a debt of seven hundred million dollars owed by Transdnistria to Russia for gas consumed, according to the representative of the company supplying gas, *Gazprom*. The Russian State had supplied

gas free of charge to Transdniestria for eleven years. It had done this in order to support the illegal regime there, indeed to permit its economic survival.

As regards political support, one could cite the declarations of the Russian Vice-President, Mr Rutskoi, in Moscow in 1992 and on visiting Tiraspol. A committee of the Russian Duma had been set up to help solve the problems in the Transdniestrian Region – with no mention whatsoever of the fact that this was an illegal regime in Transdniestria. One could also cite the memorandum signed in Moscow in 1997 by President Lucinschi of Moldova and Smirnov for the “Moldavian Republic of Transdniestria”, and countersigned by President Yeltsin for the Russian Federation and President Kuchma for Ukraine, which recognised the legal validity of the Transdniestrian authorities in the negotiation process.

222. The budget of Moldova at the time was three hundred million US dollars. The aid to the Transdniestrian region by Russia was twice the size of the annual Moldovan budget. The steel factory in Râbnita, in Transdniestria, contributed 60% towards the Transdniestrian budget. Because it operated free of charge and free of taxes, it was essential for the survival of the illegal regime. There was also considerable smuggling activity, but that was another matter.

223. If the Fourteenth Army had not participated in the conflict in 1991 and 1992, the illegal regime would not have survived. The participation of the Fourteenth Army was decisive for the military, political and moral defeat of the constitutional Moldovan authorities. And it was essential for ensuring the survival of the illegal, separatist regime.

224. The witness first heard of the Ilascu group after their arrest. He did not know whether this group were members of the secret services of Moldova. Their trial was necessary for political reasons in order to strengthen the illegal regime.

19. Mircea SNEGUR

225. The witness was President of Moldova from 1990 until 1996. At the time of giving evidence, he was honorary President of the Liberal Party.

226. In 1989 Russian troops arrived in large numbers in Moldova. In that period, intellectuals in Moldova were fighting for their rights and, in particular, for the right to speak the Romanian language. The witness’s statements for the attention of the United Nations, the Community of Independent States and the Government of the Russian Federation were based on the fact that the Fourteenth Army was still on the left bank of the Dniester, albeit perhaps in reduced numbers. This Army armed the separatist rebels. Because of this military support, the conflict broke out. The institutions of the Moldovan State began to be destroyed – the police, the courts and so on. A parallel army appeared, better equipped than the

regular forces of Moldova. The witness made not only statements but also visits to Moscow to inform the Russian Government. Ammunition stores were broken into and arms distributed to the rebels. The constitutional forces were not so well equipped.

President Yeltsin possibly did not give any direct orders. But it could not be denied that there had been military, economic and intellectual support. The rebels in Transdnistria had at their disposal a very well-equipped army.

227. The document ending the conflict, signed by Yeltsin and the witness, attested to the fact that the parties in the conflict were Russia and Moldova.

Before the presidential declaration was signed, it was the task of Alexander Rutskoi, the Russian Vice-President, to come to Chisinau to negotiate a settlement. The draft agreement he negotiated was then signed in Moscow. On the Moldovan side the main negotiators were the Prime Minister, namely Valeriu Muravschi, the Speaker of the Parliament and the witness himself.

228. The July 1992 cease-fire agreement in Moscow was not signed by Smirnov, though he was present. When the agreement was signed between Russia and Moldova, the parties exchanged texts. There were only two signatures to the agreement as such: Yeltsin's and Snegur's. The witness did not know where the signature of Smirnov came from when it appeared subsequently. It could be that Mr Rutskoi let him sign it afterwards.

229. The reason why the agreement in 1992 was signed was that there was a risk of seeing the Fourteenth Army in the streets of Chisinau. People were dying. One particular State was supplying arms to the rebels in order to make this possible. There was a risk of tanks arriving in Chisinau. No tanks are produced in Transdnistria. Forty per cent of the industry in Moldova in Soviet times was in the Transdnistrian region – steel works, factories for the production of domestic electrical appliances such as refrigerators, the manufacture of trucks, and so on. The Transdnistrian army had tanks, the Moldovan army did not. The tanks drove into Bender and then back. This constituted enormous psychological pressure; it was broadcast on all television stations. This was not simply a display on an exercise field.

What the Moldovan side wanted was an end to the conflict, a cease-fire, and that they obtained. They also supported, in the drafting of the document, the introduction of peace-keeping forces in Transdnistria from Russia, as they wanted them to influence Smirnov in Tiraspol.

230. Tanks of the Fourteenth Army took part in the conflict. For example, in the Bender operation, tanks crossed the bridge and then went back.

231. No negotiations took place directly with the Fourteenth Army. But there were telephone conversations with the Fourteenth Army in order to try

to persuade them not to arm the separatist rebels, for example with General Lebed. The witness heard statements by General Lebed on television saying, “Our tanks are going to Bucharest if necessary”, and so on. But at that time the witness did not meet Lebed. He subsequently met him in Moscow at the Kremlin for a reception to commemorate the Second World War.

232. In the agreement of 21 July 1992 Russia, acknowledged that it had influence over Tiraspol and that it did actually exercise that influence – for example in imposing a cease-fire - which was very important. Every day of continued fighting produced more corpses. It was therefore extremely important to bring about a cease-fire as soon as possible. Only later other matters such as the role of the Fourteenth Army were discussed.

233. The witness thought that the political and economic support to Transdniestria from the Russian Federation still counted. Since this illegal separatist regime was still operational and accepted with all honours in the Russian Duma and had been visited by other personalities, there was plenty of evidence of support. There was a frank acknowledgment by the Deputy Speaker of the Duma, Guennadi Seleznev, on an official visit to Chisinau in 1992, when he said, “We Russians have to support Transdniestria. If we had not supported the Transdnistrians in the conflict, Moldova would have been integrated into Romania.” That was a perfectly clear acknowledgment. The regime could not have survived without Russian economic and political support. For example, in relation to energy resources – Transdniestria had huge debts to Russia for the supply of gas. Because of the fact that they were continuing to receive gas and electricity free of charge, the people in Transdniestria were living very well. They had been granted preferential access to the Russian and Ukrainian markets because they had no access to European markets, whereas Russia had stopped the gas supply to Moldova.

234. As to relations with Transdniestria, since 1992, after the situation calmed down, there had been no more shooting. The next stage was to try to seek a final settlement of the conflict. The first productive meeting took place on 29 April 1994 near Tiraspol. A declaration of intent was signed to resolve the conflict by peaceful means and to provide a special status for Transdniestria within a unitary Moldova. When the witness was President, there was a schedule of meetings, with the Moldovans going to see the Transdnistrians and vice-versa, on currency issues, customs controls and so on. The intention was to rebuild not only commercial links but also political relations. There were many negotiations. Transdniestria was to be an entity where there were three State languages – Russian, Ukrainian and Moldovan. After 1996 these concrete, specific steps towards reconciliation stopped. There was a ray of light when Mr Voronin came to power.

During the witness’s time as President, there had been contacts with Transdniestria, sometimes good, sometimes bad. The Moldovan view was that negotiations were better than conflict. The participants were the witness himself, Mr Smirnov, the Speaker of the Moldovan Parliament, Mr Diacov,

and Mr Lucinschi. On the Transdniestrian side, there was also their so-called Prime Minister and other Ministers and Departments when particular items came up on the agenda – for example post, customs and media. Most of the time, the Moldovans met their demands, especially on economic issues, because otherwise ordinary commercial enterprises, the working people and the peasants would have suffered. There were no representatives from the Fourteenth Army there as a party. There were mediators present at all meetings – from Russia, Ukraine and the OSCE.

235. As to the presence of Russian troops in Moldova, the witness stated that the presence of military personnel was not the only measure of an army's effectiveness. There were still more than two hundred thousand tons of armaments and missiles in Transdniestria. The Russian side should implement all the agreements into which it had entered, then Moldova would not be in the present situation.

If the withdrawal of the Russian troops from Transdniestria had taken so long despite previous agreements, it was because this must have been the wish of the Russian Federation. The withdrawal of their troops had been stipulated in various documents. On the entry of the Russian Federation to the Council of Europe, this was one of the conditions. At the Istanbul summit the withdrawal was to be terminated at the latest by the end of 2002. Now it was to be the end of 2003. This delay was probably the result of influence by politicians who were dragging their feet at the request of the Transdniestrian side until a final settlement had been reached.

236. A number of efforts were made after the cease-fire to secure the applicants' release. For example, there was the decree in 1995 declaring an amnesty for all those who had taken part in the conflict. For anyone detained in Moldova, amnesty was granted. The Transdniestrian side did not keep their part of the bargain. The sentencing of Ilascu and his colleagues was a farce, the result of bad faith. The witness immediately issued an order in 1993 declaring their trial illegal. The Ilascu question was on the agenda of every meeting with the other side. They just kept providing promises: "We will come back to this", and statements to that effect. The witness met President Yeltsin personally and spoke to him about the issue. Moldova raised it at the CIS meetings. But the Moldovans were not listened to by the Russians. The Communist President of Moldova was listened to by the Russians two days after he entered into office, with the result that Ilascu was released.

237. Mr Yeltsin's reaction every time was one of understanding and compassion and promises to influence Smirnov. But this did not happen. President Yeltsin never said that he had no influence. He was forever making promises that he would try to influence Smirnov, but his promises would stay without effect until the next meeting. The release of Ilascu was not the result of any action by Smirnov himself. It was only done because of pressure from the outside.

238. The signing by President Lucinschi of the memorandum of May 1997 in Moscow was a mistake. This amounted to recognition of Transdniestria as a separate State. Thus a document was signed whereby Transdniestria was recognised as a separate country. One element of that memorandum was the synchronisation of the withdrawal of the Fourteenth Army and the final resolution of the conflict. This was done on the initiative of the Transdniestrian regime and the Russian Federation.

239. In the Joint Control Commission, under the aegis of the Ministry of Integration, there were always problems because of interventions by the Transdniestrian side, especially in connection with Bender and their attempts to get the Moldovan police to withdraw.

The witness had signed documents giving greater local authority to Transdniestrian authorities within the territory of Moldova but these did not imply recognition of the regime. For example, documents concerning customs stamps did not involve official recognition of the illegal regime. Solutions to practical problems were sought, as the Moldovan authorities did not want to create an economic blockage. They recognised Transdniestria as an “area” and needed to coordinate services.

The witness had no problems in going to or from Transdniestria, he was never stopped or humiliated.

240. The constitutional Moldovan authorities provided support to the families of the Ilascu group.

As to Mr Ilascu, the witness met him when he went into politics. After Mr Ilascu was released they met once, in Chisinau. He once telephoned to the party’s headquarters and left his telephone number, but he had no more contact with him.

241. Smirnov was released for a number of reasons, in particular good intentions prompted by good faith, by a desire to obtain what the Moldovan authorities wanted through negotiations.

20. Alexandru MOSANU

242. From 1990 until February 1993 he was the President of the Moldovan Parliament, and from 1993 until 2001 he was a Member of Parliament.

243. The Parliament had evidence that the separatist forces on the left bank of the Dniester were equipped with various kinds of weapons and trained by officers of the former Fourteenth Army. The television showed film on 19 May 1992 of tanks of the former Fourteenth Army flying the flag of the Russian Federation and taking an open part in the conflict. Following this direct and open intervention by the Fourteenth Army, the Parliament adopted a Resolution characterising these actions as open military aggression against Moldova by the Russian Army. This Resolution was addressed to all Parliaments and peoples in the world. It described the

former Fourteenth Army as an occupying army in a free, sovereign country. The decision to adopt this Resolution was taken at a full session of the Parliament of Moldova.

Guennadi Iakovlev, who was the ideologist of the separatist movement, said in a newspaper article on 18 June 1992 that the Fourteenth Army and the Transdnistrian people were united. In the *Tiraspolkaya Pravda*, on 2 September 1992, Smirnov said that the Transdnistrian Republic survived only thanks to Russia and the Fourteenth Army.

244. Without the support of the Russian Federation, the Transdnistrian regime would never have survived. The United States Senator Larry Pressler came to Moldova in the period May to June. He studied the problem on the ground and concluded, in a report of 24 June 1992 to the United States Congress, that the problems then were due to the involvement of the Fourteenth Army.

245. Towards the end of June 1992 General Lebed, as Commander of the Fourteenth Army, called the witness on the telephone, when the President of the State was away, and ordered him not to allow the transfer of certain military formations of the Moldovan Army from one zone of the country to another. When the witness replied that he did not know who Mr Lebed was and that he had to come and explain the purpose of his visit to Moldova, General Lebed said he would come with tanks to Chisinau.

246. At about the same time, at the end of June 1992, the supply of electricity to Chisinau from the power station in Cuciurgani, in Transdnistria, was disconnected. As Moldova had no other alternative source of energy, the witness went to Minsk to ask the President of the Supreme Soviet in Belarus for help. Mr Shuskevich, President of the Supreme Soviet of the Republic of Belarus, telephoned President Yeltsin in front of the witness and asked him to intervene. By the time the witness arrived home the electricity had been reconnected.

247. In 1992 the witness did not know about the Ilascu group; he learned about it later. At that time many people were being killed, arrested and buried. Mr Ilascu was not an MP then. He was first elected in 1994 on the list of the Popular Front, and re-elected in 1998.

248. The authorities in Moldova provided transport for Mrs Ilascu to travel to Tiraspol. Mrs Ilascu was also able to draw the salary due to Mr Ilascu in his capacity as a member of Parliament.

The witness heard of Mr Ilascu on 5 May 1993, when the so-called trial opened in Tiraspol. The witness organised a meeting on 6 May in Chisinau to support his group. He knew from the newspapers of Mr Ilascu's activities in Tiraspol, but never discussed with him Order No. 6 or his activities in Tiraspol.

249. A committee was set up in Parliament to deal with the problem of the Ilascu group. The authorities in Tiraspol were contacted and the Moldovans were told that nothing could be done. In fact more effective

action was taken outside Parliament. The Moldovan Parliament raised the issue at the OSCE meetings and at meetings with foreign States, for example the United States of America. Mr Snegur also raised this issue in 1999 at a meeting in Berlin of the Inter-parliamentary Union, and as a result a special resolution concerning Mr Ilascu was adopted.

250. There was no reaction on the part of the Russian authorities when appeals seeking withdrawal of the Cossacks were made. The witness telephoned Mr Hasbulatov, the Speaker of the Russian Parliament, but he showed no interest. The Moldovan Parliament also sent representatives to the Russian and Ukrainian Parliaments to explain their position. There was no official response to the Moldovan appeals.

In October 1994 Moldova signed an Agreement with the Russian Federation on the withdrawal of Russian military units from Moldovan territory. The Moldovan Parliament ratified that Agreement. The Russian Parliament has never ratified it; moreover it has been taken off the agenda of the Russian Parliament.

The Moldovan Parliament supported Yeltsin during the coup in Moscow. In September 1991 Yeltsin sent Mr Nikolay Medvedev, together with a group of colleagues, to act as mediators. The Moldovan authorities rejected this initiative because they considered that the problem was an internal issue and that it was not up to the Russians to intervene. But Mr Medvedev went to see the witness and told him that the treaty between Moldova and Russia would not be ratified until the demands of the MRT were accepted by Moldova.

251. The reason behind the cease-fire agreement of 21 July 1992 was that if Moldova had not signed that humiliating agreement, the tanks of the Fourteenth Army would have come to Chisinau. Moldova only had a volunteer army, a weak army with no trained troops. Many were killed during the skirmishes. Moldova had no choice but to sign.

252. Moldova did not exercise any control over the Eastern part of the country. All political actors did what could be done to make representations in favour of the Ilascu group. But the pressures – political and economic – from outside, from the Russian Federation, were too strong. The attitude of the Moldovan authorities at the time was: if Moldova does not grant passports or customs stamps to the Transdnistrians, it cannot know how they will behave. Now that the leaders in Tiraspol had been deprived of their right to travel to the West, their attitude had changed. The Moldova leadership should have accepted in 1992 the United States proposal to take part in the peace commission.

21. Witness Y.

253. At the time of giving evidence, the witness was a senior member of the Liberal Party of Moldova. He was a former member of the Moldovan Parliament and a former diplomat.

254. The Dniester war started in March 1992. The Parliamentary Committee had no chairman then and was not therefore involved in debating events concerning the Dniester River. At the time of the Bender events, the witness was outside the country. On becoming Chairman of the Committee, he demanded that the three responsible Ministries submit to the Parliament information concerning the cause of the events in Bender and the actions of the Moldovan authorities. The relevant documents were transmitted to Parliament. According to the information in those documents, there were good grounds for suspecting that the Fourteenth Army had taken the side of the separatists during those events. On 20 and 21 June, when the first detachments of the Moldovan Army arrived in Bender, a platoon of soldiers being transported in a bus in plain clothes and carrying light arms was attacked; it was machine-gunned from two sides. The area where the firing came from belonged to the Fourteenth Army. Twenty Moldovan soldiers were killed.

When President Snegur and the Prime Minister, Andrei Sangheli, were in Moscow, they raised the issue of the Ilascu group many times. There were personal meetings between Yeltsin and Snegur, one to one, in which the issue was raised by Mr Snegur. The witness was the person responsible for preparing the press releases relating to these meetings. For example, on 15 May 1993 the issue of the Ilascu group was raised; it was said that, for both sides, action would be taken to secure the release of this group as soon as possible.

However, the talks between Moldova and the Russian Federation regarding the withdrawal of Russian troops from Moldova did not include the issue of the Ilascu group. The main problem for the Moldovan side in the negotiations concerning the withdrawal of Russian troops was that the Russian side was insisting on a synchronisation of the withdrawal of the Russian Army with the final resolution of the Transdniestrian problem. For Moldova, these were two distinct processes, with no link between them. The Moldovan party was aware that, theoretically speaking, if there were such a link, there was a risk that the Transdniestrian conflict would not be solved: any party which might have had an interest in keeping a Russian military presence in Moldova would then have worked to ensure that the Transdniestrian issue was never settled. This point of view was conveyed to the Russian counterpart in the negotiations. However, the Russians insisted on the synchronisation formula and, unfortunately, this went into the final document.

Failure to solve the overall problem gave the Russians the excuse to keep their Army there. And it was they who controlled the possibility of settling the dispute.

The synchronisation formula was proposed by the representative of the Russian Ministry of Foreign Affairs. It was expressly included in the press release at their request. When Moldova proposed that the press release include mention of both sides being interested in the release of the Ilascu group, the Russians agreed on condition that the synchronisation formula also be put in. Subsequently, the Moldovan authorities realised that they had made a big blunder in accepting the synchronisation formula.

255. The witness was not aware of any cases of the peace-keeping forces breaching their terms of reference. His main dossier was the Russian Organisational Group, and the peace-keeping troops were not part of his brief. The witness learned later that the peace-keeping forces were used several times by the Russian military without the consent of Chisinau.

256. The Ilascu issue was raised many times by the Moldovan authorities. In December 1992 negotiations were commenced with the Transdnestrian side, at a venue outside Tiraspol, and the Ilascu issue was raised by the Moldovans. Up until March 1993 there were four rounds of negotiations. Moldova never obtained the permission of the separatist authorities to meet representatives of the Ilascu group. The issue of medical assistance was also raised. The question of medical doctors going to Tiraspol from Chisinau to provide medical treatment for the group was discussed. The issue was taken up by the Parliamentary Committee. The witness received instructions from President Snegur to raise the issue in meetings with Russian officials. In September 1993 the witness therefore raised the issue with the President of the Supreme Soviet of the Russian Federation (the Speaker of the Russian Parliament), Mr Husbalatov, who had promised that Russian Members of Parliament going to Tiraspol would try to obtain information about the Ilascu group.

257. There were indications of the Russian policy towards Transdnestria on the Internet sites of various research and other institutions in Russia. Konstantin Zatulin was the head of one such institution, namely the Law Academy. On the Internet site of that institution there was a report outlining different scenarios and plans on how things were to be organised in Transdnestria. There were other examples, such as the site of the legal section of the Academy of Sciences where there was a theoretical model for building Transdnestria into a state. The witness could not tell whether that model had been developed with the authority of the Academy of Sciences.

258. The witness recalled an ultimatum from the Russian side, given in 1994 at the United Nations General Assembly when the Moldovan Representative, for the first time at such a level, alluded to the participation of the Russian side in the Transdnestrian conflict. The Deputy Foreign Minister of the Russian Federation had a meeting with the witness and told

him that the Russian side was not happy about this initiative taken by Chisinau at the United Nations. Russia, he said, would find an “adequate opportunity” to reject this initiative.

259. The treaty drafted in 1990 was much better for Moldova than the treaty signed with the Russian Federation in 2001. In 1990 it was a question of a treaty between two Soviet Republics who were members of the USSR. The desire of Moldova to obtain its independence was reflected in that treaty. The later treaty, between two independent countries, contains some provisions which should have been unacceptable for the Moldovan side.

260. From 1997 to 1998 the witness was adviser on Transdniestrian issues, including the question of the release of the Ilascu group. This problem was raised many times. In the witness’s view, much more could have been done, more efficiently, than the efforts that were actually made. The witness’s plan for the settlement of the Transdniestrian problem was rejected by the then Moldovan authorities, and he was dismissed as the principal adviser in charge of Transdniestria because his plan was disclosed.

261. The Russian authorities were unfortunately providing support to the illegal Transdniestrian regime in Tiraspol. This included economic support. For a number of years natural gas had been available to the public in Transdniestria for half the price charged to people living in other parts of the Moldovan Republic. As from 1 February 2003, the price had doubled in Transdniestria. Before that, many people in Transdniestria said they did not wish to rejoin the Moldovan Republic because, if they did so, they would be paying much more for gas. Transdniestria has a 750-million-dollar debt to Russia for natural gas. This debt will be cancelled if Russia receives shares in national enterprises in Transdniestria. Consequently, part of the population of Moldova is indebted to Russia.

262. On 1 April 1992 President Yeltsin issued a decree ordering the transfer of the Fourteenth Army under Russian jurisdiction. In so doing, he breached the national jurisdiction of Moldova and Moldovan sovereignty. This is because earlier, in January, President Snegur had issued a decree that all units of the Fourteenth Army stationed on Moldovan Territory were to be transferred to Moldovan jurisdiction. President Yeltsin issued his decree without any consultation whatsoever of the Moldovan Government. This was a problem still to be settled.

263. The 200,000 tons of Fourteenth Army military equipment remaining in Transdniestria should belong to Moldova because of the decree of President Snegur. Or perhaps it should be administered and controlled by the OSCE. There would be no problem if this military equipment were to pass under international control. The problem had been that, to date, Russia had exercised control unilaterally.

264. Smirnov was a citizen of the Russian Federation. This was therefore a problem for Russia to solve, as he was one of their citizens. President Voronin had said to the Russians that he, as President of Moldova,

would be happy if Russia were to take Smirnov and place him in a Moscow suburb.

22. Andrei SANGHELI

265. The witness became Prime Minister in July 1992. The armed conflict occurred before then. At the time of giving evidence, he was working for a French firm as Director General. The witness had held no political office after 1997.

266. Although there was no proof that the Fourteenth Army was involved in the fighting in 1992, arms, ammunition and equipment of the Fourteenth Army were used by the separatist forces. The ammunition and armoured vehicles that the Tiraspol rebels used in all their battles and clashes with the constitutional Moldovan forces came from the reserves of the Fourteenth Army.

267. The problem of the Ilascu group was on the agenda at every meeting that Moldova had on Transdnistria. Moldova tried to do all that it could, morally and materially. The success of the present Government was due to what had been done before. But the circumstances at the time meant that Moldova had no other option but negotiations. The conflict in 1992 was a tragedy for the country.

The release of the Ilascu group was a political problem. The Transdnistrian regime was keeping the remaining applicants in prison as a bargaining chip. They wanted to derive benefit from any decision to release the prisoners. Moldova had done all that it could. The constitutional authorities of Moldova were not responsible for what had happened to the Ilascu group. The families of the applicants approached the authorities regularly, and they obtained from the Moldovan authorities political, medical and other support.

268. Concerning the financial support allegedly accorded to the rebel regime in Tiraspol by Russia, there were no official documents, but there was information that could be gleaned from speeches by Russians visiting Tiraspol. Then there were the energy debts. The gas had been given to the Transdnistrians free of charge by Russia. This could be considered economic assistance. In the negotiations with Russia in 1992, the witness participated on economic issues. The main discussion centred on energy supply and Russian markets for Moldovan products such as wood and coal, as well as credit facilities. Gas was to be supplied at a lower price to Transdnistria than to Moldova. When the witness was Prime Minister the company supplying gas was a State entity. After it was privatised, the situation became worse for the Moldovan people. Today it was a joint-stock company, but the State had the largest shareholding. Neither the Moldovan nor the Transdnistrian economy could function without Russian gas.

269. In 1993 the witness discussed this debt issue with the Russian Government and also with the Transdniestrian authorities. They agreed to divide the debt in two. The witness did not know whether the Transdniestrians paid their part, but thought that they did not.

23. Witness Z.

270. The witness was a former minister of Moldova.

271. The witness participated in all the relevant negotiations. He therefore had information about the transfer of military equipment from the Fourteenth Army and the ROG to the separatist forces. Before the war broke out there had been a massive transfer of munitions to the separatists. This started with a decision of the Supreme Soviet to set up a paramilitary force to ensure order.

At the time of the referendum about joining the Soviet Union in 1991, and continuing until March 1992, General Iakovlev, former Commander of the Fourteenth Army, started to transfer weapons and munitions, and this coincided with the arrival of the Cossacks. This transfer of munitions was made in particular to the Transdniestrian Guard, which became the Ministry of Defence of Transdniestria. All units, including the Cossacks, were equipped with automatic weapons, machine guns, armoured cars, and so on. An engineer's battalion from Parcani openly joined the Transdniestrian side. Eighteen T-74 tanks were given as a gift to the Transdniestrian side.

The witness stated that he was in possession of a great deal of information on the quantity of arms actually transferred. After the war the process continued. This was done through resolutions of the Russian and Transdniestrian Governments. The Russian Prosecutor General inspected the Russian Army.

The witness pointed out that there was archive evidence, in the form of television film, which showed clearly that the main tanks that took part in the assaults were flying Russian flags. Some of these tanks were indeed flying two flags, the Transdniestrian as well as the Russian flag.

272. After the armed conflict, there was an exchange of prisoners. The Dubasari hostages, i.e. 30 policemen captured by the Transdniestrian forces, were kept for about a month. Moldova exchanged them for General Iakovlev. Such exchanges often took place. Moldova exchanged those who had disturbed order and the Transdnistrians exchanged those whom they had taken prisoner. The witness had tried to discuss the possibility of exchanging the Ilascu group. The Transdniestrians responded that the members of the Ilascu group were not simple participants in the conflict but were terrorists and that, therefore, they could not be exchanged. Moldova had no one comparable to exchange with them. Ilascu was seen as a fighter against separatism. Transdniestria needed to justify its existence. This was

perhaps the reason for their not wishing to exchange him or the other applicants.

It was never intended to include the Ilascu group in an operation involving the exchange of Iakovlev for the 30 policemen, since Iakovlev's release had occurred before Mr Ilascu's arrest.

The issue of the Ilascu group was nevertheless raised by the Moldovan authorities in the context of an exchange of prisoners. During the armed conflict Moldova captured a number of prisoners. But the Moldovan proposal for an exchange was rejected point blank when the issue of the Ilascu group was raised. This was so at all levels. Moldova was unable to secure their release despite all efforts. The separatist regime needed a justification for the accusation that Moldova was involved in terrorist acts, and the Ilascu trial provided a smokescreen for their own terrorist acts committed through mercenaries.

273. The direct negotiations with Mr Smirnov were aimed at the implementation of various decisions taken by Parliament and the Government regarding the settlement of the conflict. These negotiations took place with General Creanga and concerned, for example the withdrawal of military formations. That was in March 1992. Then, on 21 July 1992, there was the Moldovan/Russian Agreement on the settlement of the Transdnistrian conflict. The witness was included in the discussions leading to the solution of conflict at the local level.

274. The relations between Moldova and Transdnistria were governed by the Moldovan/Russian treaty of 21 July 1992.

The Control Commission was initially composed of a Russian delegation, a Moldovan delegation and a Transdnistrian delegation. Later they were joined by delegations from the OSCE and the Ukraine. The Control Commission was intended to deal with all the problems arising from the conflict – for example compensation for damage, withdrawal of troops and so on. Some problems were solved. Later, because of Russia's inertia and different strategy, the Russian military forces stayed on. Where there used to be a Russian peace-keeping force, now there were Russian military forces. And, as the OSCE had confirmed, the Transdnistrians now produced missiles and military equipment.

275. The separatist regime could not exist without Russian support. It was not ethnic, religious or even internal political reasons that prompted this conflict. It was dictated by external reasons. It was designed to split Moldova because Moldova was not willing to sign a treaty to join the Soviet Union. Within a few months, the Transdnistrian separatists liquidated the constitutional prosecution and law-enforcement bodies – the prosecutors' offices, the police and the rest. They could not have done this without the support of the Fourteenth Army. Previously the left and right banks of the Dniester lived in peace. This conflict, this splitting of the left and right banks, was provoked by Russia for political reasons of its own.

276. This was not an ethnic conflict. Guslyakov was the General in command of the Bender police station. He ensured law and order there on behalf of the constitutional Moldovan order. He was Russian-speaking. He did all that he could to maintain order, for as long as he could. He subsequently became a Deputy Minister in Moldova.

277. Moldova was naïve when signing documents with the Transdnistrians. Moldova was not ready for the war that broke out on 19 June when the police station in Bender was surrounded. Kostenko attacked Dubasari on 16 June. A decision was taken on the Moldovan side to send Special Forces to aid the police. After the town of Bender was free of Kostenko's gangs, the Moldovan soldiers, who did not know where to disperse, came to the citadel where they were taken prisoner and some of them shot. The Russian Army, which was occupying the citadel and controlling that area, was involved in this. When they freed the bridge, the Moldovans did not fire on the Russian forces, but Russian tanks flying the Russian flag fired on them.

278. Iakovlev was arrested by the Moldovan security service. There was enough evidence of his having helped to arm the separatists. It is not true that he was freed because there was not enough evidence against him.

279. General Lebed, who was the Commander of the Russian Operational Group, was elected to the Transdnistriean Parliament in 1993. Moldova was indignant about his political support for the separatists. But the Russian Duma had quite clearly stated its position on this. Only later did General Lebed himself come to understand what kind of regime he stood for. He said that it was a criminal regime.

280. Paramilitary forces from Transdnistria took part in the war in Abkhazia. A Dolphin force detachment belonging to the Transdnistrians took an active part in the operations in Abkhazia. This was confirmed by Antiufeev's colleague from OMON, Goncharenko Matveev, Deputy Minister of Security of the Tiraspol regime. Goncharenko was one of the commanders of the Russian Special Forces operating in the Baltic countries. He took part in the operation in Riga. He then came to Transdnistria with Shevtsov/Antiufeev, and was responsible for the formation of the Transdnistriean forces.

Goncharenko requested that people who had fought against the legal, constitutional forces of Georgia be decorated. These were similar conflicts involving separatist, Russian-speaking rebels, supported by Soviet and later Russian troops. Russia had a record of being responsible for providing military support to these illegal paramilitary forces.

281. Moldova had no regular forces when the conflict broke out. The police force bore the brunt, together with volunteer units. The forces in the conflict were unequal. There was a well-equipped army on one side, police and armed citizens on the other. Moldova could not survive.

Russia provided peace-keeping troops but imposed certain conditions. The Russian/Moldovan Agreement was drafted in Moscow and Moldova was not able to introduce anything important, as it had wished, for instance, on the notion of state independence, sovereignty, etc. This Agreement was only a military tool for a certain time, but three months later, in September 1992, Moldova stated that this Agreement had been implemented and that there was a need to organise further negotiations leading to other conventions that would ensure peace.

24. Anatol PLUGARU

282. The witness was the Minister of National Security between August 1991 and July 1992. Before that, he was a colonel and was appointed head of the KGB in Moldova at the time when the Soviet Union was breaking up in August 1991. Before that, he was a parliamentarian, a member of the Supreme Soviet. From July 1992 to September 1993 he served as Deputy Minister of Foreign Affairs. Thereafter he did not work in Government. At the time of giving evidence he was a free-lance legal expert and journalist.

283. The witness knew Mr Ilascu because of his job. He came into contact with him when Moldova was forced to mobilise its citizens because of the emergence of the illegal regime in Transdnistria. This was in March 1991. A resistance movement, initially uncontrolled, sprang up in Transdnistria. Tens of thousands of citizens were asking for arms in order to defend their country. Moldova did not have an army. The Ministries of Defence, the Interior and Security were meant to mobilise people who had received some military training. Mr Ilascu fell into that category.

284. The witness did not know whether the Russian special services, the Alpha Group, were involved in the interrogation of Ilascu.

285. The witness considered that Mr Ilascu was a prisoner of war falling under the Geneva Conventions of 1949 and their Protocols. A number of attempts had been made to exchange Mr Ilascu and his colleagues but Moldova had no prisoners they could offer in exchange.

286. Moreover, Moldova knew who was behind all that. The Fourteenth Army wanted to cross the river. "A Cossack is a Cossack even in Bucharest," is what could be heard at the time. Moldova could not afford to use force, although it did carry out some operations, for example the one relating to Iakovlev. General Iakovlev was arrested by the secret service of Moldova. Mr Ilascu was not involved in this. Iakovlev was detained because he had supplied arms to the separatist rebels. He could only be kept in custody for a limited period, but the investigators could not collect enough evidence to bring him to trial. General Stolyrov, the deputy to Marshal Shaposhnikov, Commander in Chief of the CIS Forces, came from Moscow – he was the Deputy Head of the Russian secret service – to ask for

Iakovlev's release. As soon as it was clear that there was insufficient evidence to prosecute him, the Moldovan authorities came up with the idea of exchanging him and the witness discussed the matter with Stolyrov. In the end, General Iakovlev was exchanged for 30 police officers detained in Dubasari.

287. The Ministry of the Interior did talk to the Transdniestrian authorities. Many attempts were made to have Mr Ilascu and the other applicants released. But all proposals were rejected because the Ilascu case represented a means of effective leverage for the Transdniestrians, a tool which they could use to humiliate Moldova. The regime was supported by Russia and the Ukraine. More energetic efforts to get Mr Ilascu and his colleagues released would have led to greater tension. The Transdniestrian regime was able to exercise pressure on the constitutional Moldovan authorities through the Ilascu case, in order to obtain recognition.

288. The separatist regime *de facto*, was outside the legal control of the constitutional Moldovan authorities. The Moldovan legal authorities had been effectively destroyed in Transdniestria. The Transdniestrian regime was armed with weapons from the stocks of the Fourteenth Army. Iakovlev had armed these paramilitary forces. Lebed had pursued a policy of "active neutrality". Moldova had no access there. On taking up his command, General Lebed should have reported to President Snegur, as the official Head of the State where the Fourteenth Army was stationed. But General Lebed had ignored these elementary rules. When he arrived, he did not notify the President of Moldova; and there was no notification either from the Kremlin.

289. There was the "Balkan Arch Plan" with the following scenario :if Moldova had not stopped the armed conflict, it would have spilled over into Romania. Presidents Yeltsin and Putin had made statements in favour of Moldovan sovereignty, but many members of the State Duma, including Mr Rutskoi, had gone to Transdniestria and supported the Transdniestrian separatists. They had interfered in Moldova's internal affairs in a brazen manner. If a section of the Russian Government, the official Government, had cooperated, the armed conflict could have been avoided.

290. Russia had at the time great problems with the huge army that it had stationed in Moldova. Many soldiers did not want to go back to Russia. No preparations had been made to receive them there. The Russian military in Transdniestria were providing military support to the Transdniestrian regime. Tanks of the Russian Army took part in the armed conflict; this was broadcast on the television. Other than those of the Fourteenth Army, there was not a single tank in Moldova at the time.

291. The cease-fire agreement with the Russians was signed in July 1992. The witness was dismissed five days before that, under pressure from the Russians.

292. The witness stated that he had never met Mr Gorbov. Earlier, before the armed conflict, he was dismissed from the Moldovan Ministry of the Interior. When the conflict broke out, he offered his services to the Tiraspol regime because he could not agree with the Chisinau authorities. He was given responsibility for dealing with the Ilascu group. He prepared the investigation, together with the Commander of the Fourteenth Army and Colonel Bergman. Then the relations between him and the Tiraspol regime soured. He might have gone to Moscow.

The witness knew Olga Capațina, he knew that she was a civil activist. She was involved in the League of Wives and Mothers of Soldiers who died in Afghanistan. The witness had no information about her involvement as an intelligence agent during the conflict. But anyway he did not know who were the individual agents working in the field.

293. The witness met Mr Ilascu in his capacity as head of the ex-Soviet Union's KGB. Mr Ilascu was mobilised by order of the KGB of Moldova. He was not an agent of the KGB as such. He was mobilised because he had experience of gathering information. After the KGB structure was changed, three Ministries were involved: Defence, the Interior and Security. Moldova was fighting enemies who had penetrated the country, groups who had infiltrated the country, that is, in Tiraspol, which was part of the Republic of Moldova.

294. The Moldovan Ministry of Security did not receive any support from outside. It is true that Romania provided Moldova with some arms, but these were very old weapons which did not work.

But support was given by Russia to ethnic Russians in Transdnistria. The Cossacks came to Transdnistria because they had been let out of prison. There were long convoys of weapons being transported to Transdnistria. The Moldovan Ministry of Security sent agents to work in Transdnistria and the Fourteenth Army. That was quite normal, having regard to the situation. At the time, Moldova had documentary evidence, received through agents, to show that after April 1992 the Fourteenth Army was helping the rebels with arms and in other ways. General Netkachev admitted that Transdnistrians were using lorries to get access to the armament stores through minefields.

25. Nicolai PETRICA

295. The witness was a graduate of a tank academy. On 17 April 1992 he left the Soviet Army and joined the Moldovan Army until June 1993. Before that, in Afghanistan, he was Deputy Head of the Military School. From 1964 until 1974 he had served in Chisinau, and after that, he left the Fourteenth Army and went to Moscow to serve in the Soviet Army. At the time of giving evidence, he was the holder of the Military Chair in the Technical University of Moldova.

296. He commanded the Moldovan forces in the Dubasari fighting. It was Russian Army soldiers that shot at the Moldovans. They were using 152 mm shells, which the separatists did not have at that time. They were shooting from the Cocieri-Dubasari line. Negotiations took place on 24 May 1992 with the Colonel who was commanding the Transdnestrian paramilitary forces. There were no representatives of the Fourteenth Army present. But, had it not been for the presence of Russian forces in Transdnestria, the separatist forces could not have been armed. On 19 May the separatists had received thirteen T-64 tanks from the Fourteenth Army. They used other military equipment, such as artillery, which must have come from the same source. The witness did not actually see the Fourteenth Army or their soldiers.

297. The church in Golicanii was destroyed by a 152 mm shell; shells of that calibre also fell in the village of Cruglic. In later discussions that the witness had with commanders from the Fourteenth Army, they had confirmed that there had been cases when artillery equipment was used against the right-bank forces.

General Lebed openly said that he was pursuing a policy of “active defence”. They, the Russian soldiers, fired shots towards the town of Tighina (Bender).

298. Between 21 July and 16 October 1992, when the witness was the commander of the Moldovan peace-keeping forces, he was not informed about Russian peace-keeping forces being involved on the rebel side. On the contrary, Moldova and Russia together were able to secure peace in that zone. The witness collaborated very well with the Russian General, and they kept full control of the situation.

299. In May 1992 sixteen tanks were handed over to the Transdnestrian Guards. Of them, thirteen tanks went to the Kacheevskii bridge-head. But on 24 May the witness met his opposite number, whom he knew as a comrade from the Far East. They agreed to maintain their positions, but without engaging in any fire. But on 19 June the tragedy happened. Lebed was using his troops and tanks. Presumably he had his orders, because no General would act in that way without instructions from his political superiors. Bender was destroyed by the artillery and the tanks of the Fourteenth Army, not by the Moldovan side. The tanks used were tanks of the Fourteenth Army, of the 59th Division. But Lebed had also disarmed the Kostenko brigade, a brigade of Transdnestrian rebels. In other words, he took the decision to stop the fighting.

It was not possible for the Transdnestrians to seize tanks. Lebed was permanently there. The order came from Moscow and Lebed had to implement it.

300. On 21 July 1992 Russia took a decision to settle the Transdnestrian problem and that decision included something about the release of Ilascu and his group. But perhaps Moldova was not persistent enough. Moldova

took up the issue in the Joint Control Commission set up under the Moldovan/Russian Agreement of July 1992. Mr Catana was there.

26. Vasile RUSU

301. At the time of giving evidence, the witness was the Prosecutor General of Moldova. Before that he was a lawyer and a Member of Parliament, on the Communist Party list.

302. The criminal investigation opened in December 1993 against the judges and prosecutors involved in the Ilascu trial was not taken far because the necessary inquiries would have had to have been undertaken on the eastern, left bank of the Dniester, and that was under the control of the separatist regime. The legitimate authorities of Moldova had no access to the eastern part of the Republic. Likewise, in relation to the complaints filed in 1992 under Article 82 of the Criminal Code of Moldova in connection with the murder of the citizen Gusar, the Moldovan authorities were regrettably not in a position to carry out any investigation in the territory of Transdnistria.

In December 2002 the investigation was suspended. A criminal investigation was also opened in 2000 in respect of the governor of Hlinaia Prison for unlawful deprivation of liberty, but that investigation had also been suspended because it was impossible to carry out any real investigatory work.

The witness was of the opinion that the proceedings instituted against the judges and prosecutors under Articles 190 and 192 of the Criminal Code were incorrect. It would have been more appropriate to investigate under Articles 116 § 2 and 207 for usurpation of the identity of an official person and unlawful imprisonment, as was done in regard to the investigation launched against the governor of Hlinaia Prison.

303. An exchange of prisoners involving the Ilascu group was proposed to the Transdnistrian authorities, but the proposal was rejected. In the witness's period of office there had been no exchange of convicted prisoners between Moldova and the regime in Tiraspol.

The witness did not know the Prosecutor General of Transdnistria, he had never had any telephone contact with him.

304. If the judges and prosecutors involved in the Ilascu trial or the governor of Hlinaia Prison chose to come to Chisinau, as they could, they would be questioned and the required procedure would be carried out. It would not be necessary to detain them and it could not be known whether, as a result of any interrogation, they would actually be charged with deliberate usurpation of public office - that would be prejudging the investigation.

The witness was not aware that the offences with which the prosecutors and judges were charged (under Articles 116 and 207 of the Criminal Code)

were considered to be time-barred according to the Public Prosecutor Iuga's decision of August 2000.

The witness was of the opinion that if the Tiraspol prosecutors or judges involved in the Ilascu trial travelled to the right bank of the Dniester, a criminal investigation under Article 207 of the Criminal Code could be launched against them despite possible problems of prescription.

Persons can be convicted *in absentia* if there is sufficient evidence to confirm their guilt. If these persons went abroad, for example, to Russia, then it would be possible to ask the Russian authorities to extradite them to Moldova. Colonel Golovachev, the Governor of Hlinaia Prison, was informed of the opening of the investigation against him and summoned to Chisinau through the Prosecutor's Office in Tiraspol.

305. As Prosecutor General, the witness was not allowed to travel to the left bank. At the time of giving evidence, his Office had no control over events on the other side of the river. The witness preferred not to answer the question as to whether he was able to work with his colleagues on the other side of the Dniester River.

306. The witness stated that if the file came before him as Prosecutor General of Moldova, he would initiate an investigation into the death of the two victims of the alleged terrorist acts of the Ilascu group – Gusar and Strapenko – despite the fact that they were citizens of the Russian Federation.

The witness had not had the opportunity to question Mr Ilascu when he came to Chisinau after his release, on 5 May 2001, since he had taken up his duties as Prosecutor General only on 18 May and, on 10 May 2001, Mr Ilascu had received the highest order of Romania, "The Star of Romania".

27. Vasile STURZA

307. From 2000 until 1 January 2003 he was Chairman of the Commission for negotiations with Transdniestria. As its name suggested, this Commission had the task of negotiating the status of Transdniestria and related matters. During the period 1991 to 1992 he was the First Deputy of the Prosecutor General of Moldova, having taken up that office in September 1990 and remaining in it until April 1994. From April 1994 until May 1998 he was Minister of Justice. From May 1998 until January 2001 he was again the First Deputy of the Prosecutor General.

308. The Commission of which the witness was Chairman was dealing essentially with the political problems relating to the status of Transdniestria and its main goal was to settle the latter's legal status. There was another Commission dealing with the social and economic problems arising from the Transdniestrian situation. The economic, cultural and social aspects were handled in parallel in another commission.

309. In the context of the negotiations on the status of Transdniestria there were discussions about the legality of official acts accomplished by the Transdniestrian authorities, but the Moldovan side had always insisted on the unconstitutionality of acts carried out by the Transdniestrian authorities. Between 2001 and 2003 many draft texts for the status of Transdniestria were discussed during the negotiations, some of which contained provisions concerning what was to be done about decisions of the Transdniestrian authorities, for example criminal sentences imposed and civil court judgments delivered in the previous ten years.

310. Concerning the possible release of Ilascu and his group, the Prosecutor General's Office asked the Prosecutor's Office in Transdniestria for them to allow the Ilascu case to be investigated by the constitutional authorities of Moldova. The witness discussed the matter several times with Prosecutor Lukiç, who was supervising this investigation in the period 1992 to 1993. The problem was that whatever the prosecuting authorities in Transdniestria did about the Ilascu case was unconstitutional and could not be executed in Moldova. Moldova proposed therefore that prosecutors from other countries be invited to investigate the case, for example representatives of the former USSR such as the Ukraine, Belarus and the Russian Federation. The witness personally went to Minsk to discuss the matter with the Prosecutor General of Belarus, who agreed to investigate the case. But the Transdniestrians refused. He also had a meeting with Mrs Ivanova, who was in charge of the trial and tried to convince the Transdniestrians that investigation by an unconstitutional body would cause problems for everybody. Again they refused.

311. In 1994, while the witness was in the Prosecutor General's Office, he was sent by President Snegur to Transdniestria to seek the release of Mr Ilascu and the other applicants. Later, in 1996, he was allowed by Mr Smirnov to have a first meeting in person with Ilascu in Hlinaia Prison. The witness was the first to meet him in this way. The witness had a personal discussion with Smirnov, on the instructions of President Snegur, to request the release of Ilascu and the others. It was a complex and sensitive matter. A lot of politics were involved in the case. He had many discussions with Mrs Ivanova, the judge who tried the case as President of the so-called Supreme Court of Transdniestria, with Mr Lukiç, the prosecutor in the case, with the Minister of the Interior of the Transdniestrian regime, and with the President of the Supreme Soviet of Transdniestria. At the beginning they agreed to examine the case with a view to the release of all the prisoners who had been tried, but they required that the procedure laid down in Transdniestria be followed.

312. There was a Decree issued by Smirnov in March 1993 whereby a Commission on Pardons was created. A Regulation on the activity of this Commission was brought out. In order to observe the proper procedure, therefore, one had to convince the members of this Commission to release

the detainees in question. The witness therefore had meetings with the Chairman of the Commission. Throughout 1996, from April until the autumn, the witness had many discussions with the Commission, which had the power to grant pardons to all persons tried in Transdniestria. It was complicated, because one had to convince each individual member of the Commission. The last meeting that the witness had was with the representatives of all the services, that is to say, the Prosecutor's Office, the Supreme Court and the Supreme Soviet. All attended. Their conclusion was that the release of the Ilascu group could go ahead if confirmed by the decision of Mr Smirnov, who refused however.

The discussions concerning release continued after 1996. Smirnov would say "yes", and then "no". The final decision was taken in spring 2001. Previously, on 16 May 2000 at one meeting between President Lucinschi and Smirnov, the Moldovans again asked Smirnov about Mr Ilascu. Smirnov said he could not agree on a release, pure and simple, but could agree to the re-examination of the case by a court of a different State. That led to a number of subsequent initiatives. For example, Moldova asked Ambassador Hill, Head of the OSCE Mission, to use the good offices of the OSCE to raise the possibility of referring the Ilascu case to a court of a different State. Following an address made by Ambassador Hill in Vienna, Switzerland, Poland and Hungary agreed to the possibility of the Ilascu case being tried in one of their courts. Ambassador Hill discussed the possibility with the representatives of Switzerland. Discussions were initiated by the witness himself with the Ambassadors of Poland and Hungary in Chisinau. They even went into discussing the technical details, such as the number of judges who should sit, which code of criminal procedure should be applied, who should be the prosecutor, who should support the Moldovan participants, and so on.

The Moldovan authorities continued at the same time to discuss with the Transdniestrian authorities the unconditional release of Ilascu and his group. Mr Voronin and Mr Hill made separate appeals. There was a request for a trial of the case by the Polish courts. These appeals were sent by the witness to the Transdniestrian authorities. Finally, on 12 April 2001, the Transdniestrian authorities agreed to proceed with an unconditional release, and not one mediated through a foreign court. Discussions took place as to the technical details of the release. On 16 April the witness went to Tiraspol by car in order to bring back the detainees to Chisinau, but the Transdniestrians refused even though there was an agreement. The witness met all the members of the group in the prison in Tiraspol, together with a representative of the OSCE. On this occasion the Transdniestrians were saying that they were ready to release all the detainees.

When, on 5 May 2001, only Mr Ilascu was released, and not all the applicants, this was a big surprise for the Moldovans. They received a letter from Smirnov informing them of the release.

As to why the Transdnistrians refused to release them all, Moldova had to negotiate to settle the problem of the Transdnistriean region. The Moldovan authorities could not refuse to talk to unconstitutional bodies. At the same time a criminal investigation was opened against the judicial officials who had taken part in the illegal trial in Transdnistria against the Ilascu group. But at that time, the Moldovans were convinced that all the applicants would be released.

Following the failure to release the others, this issue was raised at all meetings with the Transdnistrians when the witness headed this Commission. There was another appeal signed by the witness and by the then Minister of Justice, Mr Morei.

313. After May 2001 there was no further meeting with Smirnov on this topic. They avoided any such meetings. The witness discussed the issue of the applicants' release with his Tiraspol counterpart in the Commission for negotiations on Transdnistria.

314. As to the order for the investigation of judicial officials who had taken part in the illegal trial in Transdnistria, this was quashed on 16 August 2000 by Mr Didic, Deputy to the Prosecutor General.

The witness had a discussion with President Snegur at the relevant time on this issue, and then a lunch with the Transdnistriean authorities who were constantly asking for this criminal investigation to be annulled. It was discussed at the level of the leadership of the prosecuting authorities on both sides. It was stipulated as one of the conditions for the settlement of the status issue in general. But the legal and political considerations were different and separate. The witness was of the opinion that what the Transdnistriean prosecutors and judges had done was unconstitutional and that they should be brought to justice. The status of Transdnistria is still the subject of discussion on the basis of a draft instrument. This discussion embraced the general question of criminal liability not just that of the persons involved in the Ilascu case.

The Moldovan authorities were aware of the request to resolve the problematic situation of the people involved in creating the conflict. The witness therefore found it difficult to say whether the decision of 16 August 2000 was a legal decision or one linked to a political decision. The draft instrument on status covered precisely this issue.

315. The withdrawal from Transdnistria of Russian troops was never raised in the status-negotiation Commission. This issue was addressed in a different context. In the list of guarantees on the status of Transdnistria, one related to military issues. The Ministries of Foreign Affairs and Defence discussed the question of the withdrawal of Russian troops within the framework of the bilateral relations between Moldova and Russia. Although the link between the resolution of the status of Transdnistria and the withdrawal of Russian troops was raised by the Transdnistriean side, the

issue was discussed in a separate context – namely the chapter in the draft instrument which dealt with guarantees for the status of Transdniestria.

In Transdniestria thousands of criminal cases had been tried. There was a lot of politics bound up with the Ilascu case. The Transdniestrians had always said it was not a political case but an ordinary case of citizens who had committed murders and must therefore serve their sentences. Moldova has a different angle: if these people have committed illegal acts, then the case should be investigated and they should be tried by constitutional bodies. After the trial, the proceedings in the Ilascu case were examined by Professor Rzeplinski from Poland. In the light of his report, the Transdniestrians must have realised that they had made many procedural mistakes in conducting the prosecution and trial. But it was important for them to show that they exist as a State.

316. The witness met the applicants, and also their families on many occasions, in connection with various issues such as medical care, material support, conditions of detention. All their requests had been satisfied in so far as they came within the competence of the constitutional Moldovan authorities. Family visits to the prison had been facilitated by the Moldovan authorities with the provision of transport. Health care had been provided through the Moldovan Ministry of Health. Mr Sturza's Commission saw to it that they were sent what they requested, such as newspapers and financial support for the family.

317. The Ministry of Justice carried out preparatory work for Moldova's entry as a member of the Council of Europe. The main problem was the question of the observance of human rights. It was clear that the legal Moldovan authorities could not ensure observance of human rights in this region of Transdniestria. This led to the controversial reservation to the European Convention on Human Rights, which was approved by the Parliament of Moldova in September 1997. The text of this reservation was discussed and coordinated, word by word, with the Council of Europe. Moldova liaised with officials from Strasbourg. The witness considered the fact that the other detainees in the Ilascu group had not yet been released to be proof that the legal Moldovan authorities were not able to ensure observance of human rights in the region.

318. The Moldovan authorities have never recognised the judicial decisions and official acts of the Transdniestrian region; they consider them unconstitutional. In order to prevent the Transdniestrian people from suffering from this situation after the events of 1990, Moldovan courts for areas in the Transdniestrian region have been established on the right bank of the river. In the instances mentioned in the question (of measures in family-law matters adopted by Transdniestrian courts and authorities), citizens are forced to go to the constitutional (i.e. legal) courts of Moldova to have their case re-examined after a decision by the Transdniestrian courts or authorities. The witness had many discussions in order to resolve this

problem. The Transdnistrians think that the problem should be settled in a different way, so that the policy adopted in relation to such decisions does not adversely affect the Transdnistriean population. The problem concerns not only registry offices for marriage but also police matters, notaries' offices, and so on. For example, if Transdnistriean people wish to go to the Ukraine or Russia, they have to go the right bank of the river in order to get travel documents.

This whole problem is the subject of on-going discussions. Ten thousand civil cases have already been decided by the Transdnistriean courts. It is necessary to settle what will happen in those cases. It would be an unrealistic solution for them all to be reviewed afterwards. However, if a citizen living in Transdnistria does not agree with the decision taken by the Transdnistriean court, he or she should have the right to appeal to the constitutional Moldovan authorities in order to have the case reviewed.

319. In any instance where a citizen whose case has been decided in Transdnistria goes to the Supreme Court of Moldova, he or she will obtain a review. And the Supreme Court will declare the Transdnistriean decision unconstitutional. There have been many such cases over the years. Civil cases are reviewed, so as to ensure that the rights of the individual are preserved.

320. When the Moldovan authorities heard of the deaths of Gusar and Ostapenko, they were ready to investigate and to find out who were the culprits. They entered into contact with the Tiraspol Prosecutor's Office in order to find out who was to blame for the murders. But the Moldovan authorities were met with a blank wall.

321. The negotiations about the technical details of the Ilascu group's release started on 12 April 2001. On 16 April 2001 the witness personally went to Tiraspol in order to bring them all back to Chisinau. When he met with the refusal of the Transdnistriean authorities, he had to start work all over again. On 5 May members of the Transdnistriean secret services brought Ilascu to the secret services in Chisinau, not to the prosecution authorities. It is difficult to say whether Mr Ilascu could have been interrogated by the prosecuting authorities upon his release. The criminal investigation was still open but Ilascu was a free man, he left Moldova of his own accord.

Immediately after May 2000 when Smirnov said that he could agree to the review of the Ilascu case by another country, the Moldovan authorities contacted Hungary, Poland and Switzerland. Technical discussions with these countries took place. However, the release of Ilascu in 2001 put an end to the possibility of having the case as a whole examined by another court in another country.

322. Every thing done in the Ilascu case and in relation to the Transdnistriean problem in general, was done in earnest, with the utmost seriousness, regardless of when the events occurred. The witness himself

studied the case-file several times. Some important studies were carried out at the instigation of the OSCE. Any preliminary criminal investigation would be complicated today, eleven years later, but the Moldovan prosecuting authorities would try their best.

28. Victor VIERU

323. The witness has been the Vice-Minister of Justice since 2001. Before that he was a lawyer. The witness never dealt with the Ilascu case. It was never raised in any meeting that he attended.

The witness was indeed a member of the Commission on the negotiation of status headed by Mr Sturza. However, in meetings in which he participated, release of the remaining members of the Ilascu group was never raised as an issue.

324. The witness found, as a lawyer, that the decision taken by the Prosecutor General's Office in August 2000 to quash the order of 1993 opening a criminal investigation against the persons responsible for the trial of Ilascu and his colleagues was incorrect.

325. The Moldovan authorities have never recognised documents issued by the unconstitutional authorities of Transdniestria. The witness was of the view that the protocol of May 2001, signed by Mr Voronin and Mr Smirnov, was not legally binding. Firstly, the supreme law of the Republic of Moldova, as laid down by the Constitution, does not include in the category of legal acts an act such as this political decision. Secondly, it cannot be deemed to be an international instrument under the terms of the Vienna Convention on the Law of Treaties of 1969: the right to sign treaties is available only to States and Transdniestria cannot be so recognised. Thirdly, any legal act must be published in the Official Gazette. In any event, documents issued by the constitutional Moldovan authorities are not recognised in the Eastern part of the country.

29. Andrei STRATAN

326. The witness was the Director of Customs Control from 1999 until 2001. At the time of giving evidence, he was Ambassador, Head of the Office for the Pact for Stability in South-East Europe at the Ministry of Foreign Affairs. Prior to 1999, he was Deputy Director at the Customs Department, attached firstly to the Ministry of Finance and then directly to the Government.

327. The Moldovan customs authorities have no authority *de facto* regarding the transport of goods in the territory of Transdniestria up to the border of Ukraine, because they have no access to this territory.

Most of the corporate entities in Transdniestria prepare their customs documents in Tiraspol. When they want export permits, for example for

textiles, they approach the authorities in Chisinau who will issue the appropriate documents. There are no constraints on corporate entities in Transdniestria coming to Chisinau for appropriate documents for exports to third countries. In Transdniestria, however, exports and imports are carried out without the authorisation of the constitutional Moldovan authorities. They frequently receive goods imported directly to Tiraspol. Some goods, such as textiles, can be exported to the European Union only after they have received a permit from the Moldovan Ministry of the Economy. This is because there are export quotas. This is not a customs procedure as such. It is a procedure for obtaining a permit from the Ministry of the Economy. The Customs Department has no control over this procedure.

Arms exports from Moldova come under the jurisdiction of the constitutional authorities of Moldova. A Government decision is needed. In fact, an inter-departmental Committee takes decisions as regards the export of, or other transactions in regard to, arms. The witness did not know what the procedure used by the authorities in Tiraspol was.

Arms were exported from Tiraspol via Ukraine directly to other countries, because Chisinau was unable to exercise control at the Ukrainian border.

328. The Customs Department was not responsible for the issue of certificates of origin. That came under the responsibility of the Chamber of Commerce.

329. Some goods were manufactured partly in Moldova and partly in Transdniestria, in which case they were transported to and from Transdniestria. It was natural for left-bank corporate entities to deal with those on the right bank. The Moldovan authorities had no statistics on this, as this was considered to be domestic trade.

330. No joint customs posts were ever set up between the right and left banks of the river. Since 1995 Moldova has been part of the International Customs Union. Transdniestria is an integral part of Moldova, but customs control has never been exercised by Moldovan authorities over services and goods emanating from the left bank region. There has therefore never been any smuggling, formally speaking.

331. Energy supplies from Russia to Moldova are organised in accordance with the agreements that were signed before the conflict. The Customs Department knows the volume of energy imported from Russia to Moldova. There is a unit in the Customs Department which supervises the importation of energy supplies. The Customs Department receives official papers concerning the supply of gas and electricity. But the Moldovan authorities cannot control what happens on the border between Moldova and Ukraine in order to record the import volumes for the Transdniestrian segment. There is an exchange of information between Russian and Moldovan Customs Departments about gas exports from Russia to Moldova. Moldovagas also supplies a declaration, which the Department

has to verify as correct. There is no customs duty as such imposed in relation to the importation of natural gas to Moldova from Russia, only payment for customs procedures and value added tax.

332. The witness did not know whether the transport of goods, destined for export from Transdniestria direct to another country, would be registered. The witness never had any such documentation before him, which suggested, to his mind, that other ways of exporting such goods had been found and that there was uncontrolled trade between Transdniestria and third countries, apart from weapons. The Moldovan Customs Department has a brigade for the investigation of illegal exports. But this brigade can only operate in territory that is accessible to them and open to their control. Cross-border trade between Transdniestria and the Ukraine is therefore not controlled by the Moldovan Customs Department.

333. The witness did not know how it was possible that on bottles of brandy made in Tiraspol available for sale in Russia the country bar code on the bottle was that of Russia and not Moldova. He considered that the question should be put to the custom authorities of the Russian Federation.

334. The Moldovan Customs Department does not operate any customs control on the right bank of the Dniester because this is not an international border. Consequently, the Moldovan authorities do not carry out any investigations on the matter. It is not a crime to transport goods from the right to the left bank of the river.

30. General Boris SERGEYEV

335. The witness was born on 17 January 1950 in Orenburg, Russia. He has been the commander of the ROG since 18 January 2002. Before that, from 1996, he was Deputy Chief of Staff of the ROG.

336. The mission of the ROG is twofold: Peace-keeping force (PKF) and units responsible for guarding, and gradually repatriating to the Russian Federation, the ammunition and property of the former Fourteenth Army.

337. As to the PKF, there are about 360 persons: two battalions and an aviation group. The battalions alternate on duty and, when on duty, they are subordinate only to the Joint Command of the PKF. The Russian PKF battalions are organisationally dependent on the ROG. These battalions are located separately from the ROG troops, and have their own command centre. Other units of the ROG are not involved in the PKF and never were. The Russian PKF has no tanks. The aviation group is responsible for Tiraspol airport.

338. The present headquarters of the ROG were formerly the headquarters of the Fourteenth Army. The overall number of staff in the ROG was at the time of his giving evidence less than 1,500 persons, comprising all military units.

339. There is a military airport in Tiraspol. During Soviet times there was an air division based there. After the collapse of the Soviet Union in 1991 aviation equipment was divided between Moldova, the Ukraine and Russia. The Fourteenth Army had only a helicopter squadron based in Tiraspol. This squadron became a part of the PKF. Today it has nine helicopters and a logistics back-up service comprising about 180 servicemen. They are not a part of the ROG, but are subordinate directly to the Russian Air Force. They are used only for the PKF inspections: they monitor the security zone.

340. There is very little traffic at Tiraspol airport. Air space is controlled by Ukrainian and Moldovan air traffic controls: when an aircraft flies over the territory of Ukraine, air traffic control is provided by the air traffic control services of Ukraine, and when an aircraft approaches the territory of Moldova, it is directed by the air traffic control services of Chisinau. Therefore, without the permission of the Moldovan air traffic controllers in Chisinau, the Russian aircrafts and helicopters could not land and take-off.

As to the security of the airport, the ground used for the landing and take-off of heavy aircraft and helicopters of the Russian forces is protected by the Russian forces. The territory of the aerodrome is nevertheless open, so the Transdnistrians, if they wanted, could interfere. However, they do not interfere and similarly the Russian forces do not interfere with the way the Transdnistrians use their part of the airport.

341. The withdrawal of the ROG should have been completed by the end of 2002. It has now been put back to the end of 2003. At present, equipment from the warehouses in Kolbasnoye was being transported. 69 trips were required for the supplies and ammunition, and another 15 for military equipment. This would take until the end of 2003. The witness stated that he preferred not to say why the withdrawal had taken so long, as making a statement on this issue would be beyond his call of duty. The timetable was fixed by the President and the Ministry of Defence. The witness only had to implement their decisions.

Withdrawal to Russia was usually done by train and only in exceptional cases by air. The last time equipment was taken away by air was in 1996 for anti-tank ammunition. Some items were destroyed on the spot, like armoured vehicles and air-defence complexes. A prototype destruction method for a given type of combat material is agreed with the OSCE experts, and thereafter OSCE closely monitors this process. The destruction is performed in a way that excludes any possible future use or reconstruction. 108 tanks were destroyed in 2002 and currently air-defence systems were being destroyed.

342. The witness stated that he would contact the Transdnistriian authorities regarding the withdrawal only if he was directed to do so in each individual case by his superior authorities. The process is often hindered by the Transdnistriian authorities, but at present they have undertaken to

cooperate and to let the transport pass. The ROG offered compensation to the “MRT” for the withdrawal, either by writing off debts or by transferring non-military assets to them.

343. The OCSE performs inspections both at the places where the equipment is loaded for transportation, and in Russia where it arrives. The Moldovan authorities also supervise the process: first through the OSCE, then when the transport (train) is ordered from Moldova, the Russian authorities specify the items and quantity to be loaded, and a list of the load is forwarded to the Moldovan authorities for the crossing of the Moldovan - Ukrainian border.

344. ROG personnel can only move around if authorisation is given by the Transdnistrians. The same authorisation is needed for importing goods and supplies. Express authorisation is also needed from the Transdnistrian authorities to use railroad and road transportation, both in and out. The ROG is required to submit notice of every proposed movement, with details about the vehicle. Otherwise the Transdnistrian authorities detain or block cars and transport vehicles.

The witness stated that at the time of giving evidence, there were three vehicles detained illegally by the Transdnistrian authorities.

345. The ROG held no joint exercises with the Transdnistrian armed forces.

346. Whenever the need arose to contact the Transdnistrian authorities, the hierarchy in Moscow specifically authorised the witness to contact someone in the Transdnistrian administration, specifying the persons and the subjects for discussion.

347. The ROG does not lack military supplies and ammunition and does not need to bring in any fresh material of that kind. Other supplies for maintenance purposes (e.g. fuel) come from various places - from the Ukraine, Poland or directly from Russia. Heavy equipment (such as aircraft engines) needing repair are sent back to Russia. For this sort of thing a request is sent to the local authorities, not to the central Moldovan authorities. The ROG buys some food locally, in Transdnistria. Whatever is brought in by air, the Moldovan officers from the peace-keeping forces are invited since, under the terms of the 1992 Agreement, they are responsible for customs and border control.

348. The Transdnistrian authorities consider that, following the break-up of the Soviet Union, a part of the property of the former Fourteenth Army in Transdnistria belongs to them. The ROG only transfers to them non-military equipment. It does not include any arms, ammunition or armoured vehicles, only catering equipment, cars, certain types of engineering equipment, shovels, fuel-transportation equipment, tents, power equipment and the like. Before the transfer, the list is authorised by the Ministry of Defence and the Ministry of State Property in Moscow. Tanks were never transferred to the Transdnistrian authorities.

349. In 1992 Mikhail Bergman was the military commander in Tiraspol, the head of the *Commandatura*. At that time, the headquarters of the Army was a closed compound, entrusted with specific military tasks. The *Commandatura* was situated separately from the ROG headquarters and dealt with various administrative tasks, like the registration of newly arriving servicemen, registration of leave and missions, etc. It had a 24-hour military presence and military communications. At the *Commandatura* there were also military police and detention cells. The building of the *Commandatura* was situated about one kilometer away from the HQ. About three years ago the building was transferred to the Transdniestrian authorities.

350. The Fourteenth Army was created in 1956, as part of the Odessa military circuit. The headquarters were in Chisinau, but in 1986 or 1988 the command centre moved to Tiraspol. The Army was situated in the territories of both the Ukrainian SSR and the Moldovan SSR. No units were ever stationed on Russian territory. The Fourteenth Army did not include any aircraft division. In Moldovan territory there were air-defence, engineering, communications and logistics units, and paratroopers. In the Ukrainian SSR there were airborne troops. The Army was divided in the following way: everything that was on Moldovan territory went to Moldova, with the exception of the equipment on the left bank of the Dniestr, which went to Russia. After December 1991, the Army briefly belonged to the CIS armed forces. On 1 April 1992 Russia took over the Army. Mr Lebed was the first commander of the Fourteenth Army after 1991. After that the Fourteenth Army was renamed ROG; then General Yevnevich took it over. At the time of giving evidence, the witness was the commander of the ROG. Generals Yakovlev and Netkachev used to serve in the Soviet Army, but were never members of the new Russian armed forces.

The witness did not know anything about General Lebed's election to the Transdniestrian parliament in 1993. After Tiraspol he was appointed Secretary of the Security Council in Moscow.

351. The uniform of the ROG has a chevron on the sleeve saying *Russia* which was introduced by the Ministry of Defence in 1994. Before that, from 1988, the uniform had chevrons and shoulder straps saying *SA* for Soviet Army. The witness stated that although the two chevrons were different, he could not tell whether they could be distinguished by an onlooker.

352. The ROG holds joint exercises with the Moldovan armed forces, in central Moldova, but there was never a case of joint exercises with the Transdniestrian forces.

The cooperation with Moldova is done within the CIS framework, under the military cooperation agreements. The witness declared that he had regular meetings and telephone contacts with the Moldovan authorities - the Ministry of Defence, the Chief of Staff and the President. He had never met Smirnov, however.

353. The witness was subordinate to the commander of the Moscow military circuit, the Chief of Staff and the Ministry of Defence. Russian male citizens aged over 18 years may be drafted into the armed forces even if they do not reside permanently in Russia. The ROG has recruits from the Moscow military circuit. The witness stated that he did not know of 400 persons apparently drafted in Transdnistria in February 2000.

354. Soldiers guarding ammunition stores are issued with a manual explaining when they can open fire. There has never been any question of opening fire on Moldovan troops.

31. Colonel Alexander VERGUZ

355. The witness was born on 24 November 1960, in Tiraspol. He was Deputy Commander of the ROG in charge of educational work since April 1999.

356. There had been three instances in 2002 of Transdnistrian authorities seizing ROG vehicles with supplies and holding them illegally.

357. The ROG's main function in Transdnistria was to maintain order within the ROG forces; it was not involved in political issues. The ROG was stationed outside Russian territory, and dealt only with things that arose within the ROG. The main tasks of the ROG were guarding the arms and ammunition stores and training military personnel. The PKF's task, to keep order in the security zone, was directed towards the "outside world", but the PKF troops were not a part of the ROG; they were a separate force.

358. The witness has been serving in Tiraspol since 1992. In June 1992 there was fighting in the towns of Bender and Dubassari, but not in Tiraspol, so he did not witness any fighting. The witness further stated that the Russian military remained strictly neutral and took no part in the fighting. He was not aware of tanks taking part in the conflict.

359. There was no transfer of weapons, but weapons were forcibly seized because the people were in revolt. It was unforeseeable. Women and children came and, under cover of their intervention, the seizure of weapons took place. The soldiers who were under a duty to guard the weapons could not possibly shoot at women and children. The situation was truly exceptional. The people who did it were desperate: there was a war; they needed to defend their homes. Lorries were also used to break into stores that were protected by mines. It would have been impossible to recover the seized weaponry without provoking a combat situation. There were no seizures of weapons before the armed conflict broke out.

360. The loss of weapons was categorised as robbery or theft, and proceedings were started to investigate each and every incident. The witness stated that he was not aware of the outcome of these criminal proceedings.

361. Mikhail Bergman was the *Commandant* in 1992. The building of the *Commandatura* was situated in the Kirpichny proezd, about one

kilometre away from the HQ. It was under full control of the Russian military at that time; it could not be shared with any Transdniestrian authorities.

32. Lieutenant-Colonel Vitalius RADZAEVICHUS

362. The witness was born in Vitebsk, Belarus. He was discharged from service in December 2002; before that he was senior officer in the military intelligence of the ROG. He had served in the region since February 1993. His duties were collecting data and training intelligence groups.

363. The movement of transport in Transdniestria was difficult. Recently three transport vehicles being sent to Russia were detained. The ROG had no contacts with either the Transdniestrian authorities or their intelligence service. Meeting the Moldova intelligence service was not part of the witness's duties either.

364. Olga Capatina served in the ROG under the name of Olga Suslina. The witness thought she was an agent of Smirnov.

365. The witness denied that the marines or the Alpha Group of the FSB were ever deployed in Transdniestria.

33. Colonel Anatoli ZVEREV

366. The witness was born in 1953 in the Kaluga region of Russia. He has been in service in Tiraspol since January 2002; before that he served in the Moscow military circuit.

367. The joint peace-keeping forces were established by virtue of the Agreement of 1992 between the Moldovan and Russian Presidents. The Russian part of the peace-keeping forces was made up of 294 personnel, 29 vehicles, and 264 rifles. It also had 17 armoured vehicles, stationed at the posts of the PKF and used for communication. The guns were Kalashnikov machine-guns and Makarov pistols; there were no heavier weapons, like grenade-launchers, flame-throwers, anti-tank missiles, etc. All vehicles and servicemen of the PKF bore special insignia. They were allowed to travel around freely - as stipulated by the 1992 Agreement. The Russian Peace-keeping forces and the ROG were entirely separate. The senior positions in the PKF were occupied by officers from Russia. From 1992 to date, the post of Senior Commander of the Russian PKF had never been held by someone from the ROG; the Commander had always been someone from Moscow. The PKF did not cooperate with the ROG in the performance of their duties.

368. The PKF's duties were to prevent the transport of arms, explosives and drugs, and to ensure law and order in the security zone.

The Moldovan and Transdniestrian forces were responsible for monitoring and preventing actions by destructive forces from their respective sides. In 1992-1993 the tasks of the PKF were different: to stop

the armed conflict, to separate the combatants, to take away the arms and help to restore order. At present they were maintaining peace and monitoring the implementation of the agreements.

369. The witness's immediate superior was the Joint Control Commission (JCC), which was set up by the same 1992 Agreement. The JCC was composed of three delegations: one from the Russian Federation, one from the Republic of Moldova and one from the Region of Transdnistria. Each party had six representatives from the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of the Interior and the Ministry of State Security. There was also the Joint Military Command, responsible for the PKF. Since 1996 a group of military observers from the Ukraine had participated in the JCC. All decisions were taken by consensus between the three parties and the Ukraine. The PKF was based on the principle of the equal division of tasks and responsibilities between members. The JCC cooperated with the OSCE.

34. Lieutenant-Colonel Boris LEVITSKIY

370. The witness was born on 31 May 1961 in the Novgorod Region of Russia. He was President of the 80th Military Garrison Court. At the time of giving evidence, he had been serving in this position since 2000.

The witness was the President of the court, and the only judge. The place of the second garrison judge remains vacant. The witness was dealing with administrative, civil and criminal cases as well as military disciplinary offences. As a military judge, he was subordinate to the Judicial Department of the Supreme Court - not to the ROG or their commanders, or to the Ministry of Defence or Ministry of Justice.

The military court which existed in Transdnistria in the days of the Fourteenth Army was transferred to the jurisdiction of the Russian Federation at the same time as the Army. Such courts are part of the legal system of the Russian Federation. As a Russian military court it has jurisdiction only over Russian citizens - servicemen of the ROG and non-military personnel. The court does not have jurisdiction over anybody else such as the local population, the Transdnistrian militia, etc. In case of theft of military property, for example, the court would have jurisdiction over a Russian citizen in service in Transdnistria, but if the suspected thief were a Transdnistrian person, that would be a matter for the local courts. In any event, the ROG's military court in Tiraspol would not have the means of dealing with such a situation. The witness stated that he had not come across any cases related to the theft or illegal transfer of ammunition or arms.

371. The ROG had no direct contacts with either the Moldovan or the Transdnistrian judicial authorities. If anyone were to escape to Moldovan territory, the ROG would have to seek that person's extradition through the

Ministry of Defence and the Ministry of Foreign Affairs in Moscow, who would address themselves to the authorities in Chisinau.

The witness stated that the Transdniestrian authorities prevented the free movement of the ROG's military personnel. For instance, he was himself one day stopped in his car when travelling to Kolbasnoye, and was prevented from getting there.

35. Lieutenant-Colonel Valery SHAMAYEV

372. The witness was born on 9 June 1966 in Yaroslavl, Russia. He was appointed to his present position as Prosecutor of Military Unit 14101 in April 2002; before that he was the Deputy Military Prosecutor of the Moscow Region. At the time of giving evidence, he was being transferred to another position in the Moscow Region.

373. As Prosecutor of Military Unit 14101 the witness was directly responsible to the Military Prosecutor of the Moscow military circuit. The Chief Prosecutor of the Moscow District could not however tell the witness to take a particular line in a prosecution, although he could point out that he was not following the correct procedure. Military prosecutors were not subordinate to the ROG command; they had no responsibility to it. The ROG commander could not give them instructions.

The witness's duties were to oversee compliance with the law in the ROG, and to investigate criminal offences committed by ROG military personnel, not those committed by local civilians. The witness had had no cases of theft, robbery or the illegal transfer of arms or equipment.

374. The ROG's military prosecutors did not generally have direct contacts with either the Moldovan or the Transdniestrian judicial authorities. The witness did not have any special instruction on how to deal with the Transdniestrian authorities.

The only case involving any co-operation had occurred in 2002. A ROG soldier and some under-age civilians were suspected of beating up an elderly person, who had died. The law enforcement bodies in Tiraspol gave the witness some documents from which it appeared that one of the ROG's servicemen might indeed have participated. The witness carried out an investigation against that soldier and summoned some civilians as witnesses. So the ROG did have some minimal form of cooperation with the Transdniestrian law-enforcement bodies, which involved exchanging telephone calls and helping to locate witnesses.

As the witness did not lay any charges against those civilians, he did not institute proceedings against them, but the local prosecuting authorities did bring a case against the local suspects before the Transdniestrian courts. The witness was not aware of any other such instances of cooperation.

375. The witness stated that the ROG's personnel had no problems moving around in Transdniestria; he himself could move around freely in

his car. They could also travel freely to the other side of the river, with the permission of their superior officer.

376. The witness was aware of the three vehicles detained illegally by the Transdniestrian authorities. No investigation had been conducted into the case, because the military prosecutor only has jurisdiction over Russian military personnel. The witness knew that the Command was trying to negotiate their return. Likewise the theft of arms from the Russian Army by Transdniestrian militia would not fall within the witness's powers. He would investigate if it were uncertain who had committed the theft but, once the evidence established that it was Transdniestrian people he could not take the matter further. He would send the file to Moscow, who would have to contact the official Moldovan prosecuting authorities to take over the investigation. Connivance or negligence by Russian military personnel in facilitating the theft would be within the witness's jurisdiction, but the witness had never experienced such a situation and had no information about what had occurred before he was there.

377. The witness could not contact the Moldovan authorities directly, unless he had special permission.

36. Vasily TIMOSHENKO

378. The witness was born on 3 September 1941 in Kirovograd, Ukraine. At the time of giving evidence he was retired. From September 1982 until April 2002 he had occupied the position of Military Prosecutor of the Fourteenth Army, then of the ROG.

379. The Fourteenth Army headquarters moved to Tiraspol from Chisinau in 1984.

The witness's job was to oversee the law and order in the Fourteenth Army. The jurisdiction extended only to the military - previously of the Fourteenth Army, now of the ROG - not to civilians or the Transdniestrian militia. If there were an assault on a Russian serviceman by a Transdniestrian civilian, that would be investigated by the Transdniestrian prosecuting authorities. In practice the Transdniestrian authorities always acted on their own, and did not ask for Russian participation. The ROG's military prosecutors would normally investigate suspected connivance by military personnel, including circumstances where the actual theft had been carried out by civilians and, if there were sufficient evidence of connivance by military personnel, they would go ahead with a prosecution. In the event of theft of army property by the Transdniestrian militia with the connivance of Russian military personnel, the ROG military prosecutor could thus prosecute the latter but not the former. But no such facts had occurred in normal times. The ROG's military prosecutors investigated cases against servicemen when arms and equipment were taken from the Russian military, but only during a conflict. And during the 1991-1992 conflict there

was in fact no supply of military equipment to outsiders by Fourteenth Army military personnel.

380. The *Commandatura* building had detention facilities. It was under the supervision of the prosecutor's office and also subject to the garrison head of the Fourteenth Army. No civilians would be detained there. The *Commandatura* was disbanded in 1996, and now the Transdniestrian prosecutor's office was situated there.

381. The witness gave the following account of the applicants' arrest and detention. When the conflict broke out, a group of terrorists began operating in the region, the Bujor group. Some prominent persons, like Gusar, a member of the Transdniestrian militia, Ostapenko and others were killed, and their funerals turned into massive demonstrations. These people were killed by the Chairman of the Popular Front Ilascu and the circumstances in which these people had been shot and burned were known to the whole town.

Therefore, Mr Chariev, the Transdniestrian prosecutor, made a request to the commander, General Lebed, to place the terrorists in the military premises for a while, in order to prevent public revenge. General Lebed refused permission. The witness, as prosecutor, inspected the guard-house (date not recalled). He noticed that in one wing there were three or four cells partitioned off and, instead of a ROG escort and guard, there were Transdniestrian police. There was also a separate entrance for access to the wing where the applicants were held. Mikhail Bergman told the witness that he had given permission for the terrorists to be held temporarily at the ROG guard-house, to protect their lives and health from the mob. The witness drew his attention to the fact that he had broken disciplinary regulations and directed that the guard-house be vacated immediately, which Mikhail Bergman refused to order. The witness then informed General Lebed about this, who became very angry with Mr Bergman. The witness went the next day to see Mr Bergman in order to use his powers to deal with the breach. But the cells had already been emptied. Therefore, the applicants were only kept there one or two days.

Bergman was wrong to allow the detention of these civilians in the *Commandatura* and their supervision and interrogation by the Transdniestrian militia. No disciplinary proceedings were instituted against Bergman, because this was a minor disciplinary infringement which was corrected almost immediately.

382. The applicants were not transferred to the Moldovan authorities for trial, as this was a time of war. These people had blood on their hands and had to face justice for what they had done. If the applicants had been released, it was not certain they would have been punished. Emotions in the population were running high.

383. After the collapse of the Soviet Union, the Fourteenth Army was divided between the Ukraine, Moldova and Russia. Moldova and the

Ukraine received tank regiments. Immediately after the collapse of the Soviet Union, many officers who did not want to serve in the Moldovan or Ukrainian army or take the oath there, were laid off and came to Transdniestria. The situation was very volatile. Naturally, every soldier was tending to think of himself. Two battalions changed their allegiance and switched to the Transdniestrian authorities. This was during the period of the CIS command. No legislation on this kind of defection existed. Those were very difficult times - for Russia as well.

On 1 April 1992 President Yeltsin declared the Fourteenth Army in Moldova to be under Russian jurisdiction. After that the situation calmed down, and there were no more defections, or transfers of military personnel from Russia to Transdniestria. However, those servicemen who wanted to return to Moldova were free to do so.

384. The Russian Army sleeve chevrons and shoulder flashes were introduced in 1994; before that the insignia were those of the Soviet Army. The Transdniestrians had been using their flag and symbols since 1992.

385. There had been no occupation of Moldova by Russia. The main reason for the tragedy there was the chaotic circumstances surrounding the collapse of the Soviet Union. The armed conflict was ignited in 1990, when a new language law was adopted in Moldova. The situation in Transdniestria became very tense. "Moldova belongs to the Moldovans," was the slogan one could hear. Mr Ilascu issued Order No. 6, which was published in September 1990 and immediately incited fear in the Transdniestrian population. People started to leave the region after it. And it was immediately after the issue of that "order" that these tragic events started. The Ilascu group did a lot of damage, stirring up ethnic troubles. The "*Bujor*" group was preparing to blow up the building of the local parliament; for this purpose, they brought in large quantities of explosives. Because of the unrest and the activities of this terrorist group at that time, many officers sent their families away, including the witness, who evacuated his family to the Ukraine.

386. When the conflict started in 1992, the ROG continued to maintain good communications with the Moldovan military. When the premises of the Fourteenth Army near Bender were hit by shells from the Moldovan side, the witness called them on the telephone to tell them that they had hit the ROG. After that, the Russian troops opened an investigation into the bombardment. The file was sent to Moldova for further investigation, but there had been no reply since.

387. Neither the Fourteenth Army nor its tanks were involved in the armed conflict. There was an incident when two tanks were hijacked by the Transdniestrians and driven onto the bridge. The Russian forces tried to stop them, and one of them was hit from the Moldovan side and set on fire.

388. The witness had never heard about 40 unarmed Moldovans being killed in a bus in Bender near the fortress. But he did hear about an

ambulance being shot at by the Moldovan armed forces, an attack in which a pregnant woman and a nurse had died. He also heard about other atrocities committed by the Moldovan forces - for example, the incident about one month later when the Moldovan forces bombed inhabited settlements. The Moldovan planes bombed the town of Parcani, which is on the Transdnistrian side. There was no Russian aviation present in the region, only helicopters.

389. The witness was not aware of incidents when the Fourteenth Army supplied arms to the Transdnistrian authorities or armed civilians. The Fourteenth Army retained all its military hardware; nothing was handed over. No theft of Fourteenth Army military property occurred during the 1991-1992 period. There were four cases of seizure of military property at the beginning of the armed conflict. The witness sent these cases to the Transdnistrian prosecutor, as it was not possible to send the file on to the Moldovan authorities.

390. The witness knew General Costas, former head of the Moldovan DOSAAF (Voluntary Society to Support the Army, Air Force and Navy). The DOSAAF of Moldova had a lot of military equipment for training - planes, tanks, armoured vehicles, etc. It had a military range where it would give people training in how to drive tanks, make parachute jumps, fire and reload cannons, and so on. The Moldovan DOSAAF left their equipment to Moldova, and the part in Transdnistria went to the local authorities.

391. The witness knew personally Mr Nosov, the first deputy to the Chief Military Prosecutor, but was not aware that Mr Nosov had come to Tiraspol in 1996. He thought that had there been any investigation carried out by Mr Nosov he would have been informed or would have been involved in it. The witness disputed the existence of the report of 30 August 1996 and the authenticity of the document.

37. Vladimir MOLOJEN

392. The witness was the General Director of the Department of Information Technology (DIT) of the Government of Moldova. He had held this post for two and a half years. Before that he was the Head of the Department responsible for citizenship documents in the Ministry of the Interior. In 1991 and 1992 he was the Deputy Minister of the Interior.

393. The witness's Department delivers passports and part of its work is drawing up the register of Moldovan citizens. As far as people living in Transdnistria are concerned, documents are delivered confirming that they are Moldovan citizens. The register of Moldovan citizens does not yet include all citizens because the establishment of the register is a ten-year programme, continuing until 2005. Citizens wanting a passport will apply to passport offices which exist in various places in the country. This applies to citizens living in Transdnistria as well. Officially there is no such thing as

a Transdniestrian passport. There are rumours to the effect that one is being planned. The Moldovan DIT has no contacts with the Transdniestrian authorities as regards the issue of passports.

394. The DIT of Moldova has no lists concerning the number of Russian citizens living in Transdnistria, although foreign citizens residing in Moldova should comply with Moldovan legislation and register. The DIT has no official data as to whether Smirnov possesses a Russian passport, though this is what is said in the newspapers. The DIT only has the data received from the regional offices and from the Russian consular authorities.

Any person who wants the establishment or renewal of a Russian passport would have to go to the Russian Embassy. According to the Moldovan statistics there are more than a thousand Russian citizens residing in Moldova. But, those statistics do not cover Transdnistria. The DIT has never asked the Russian Embassy to give them such information, although the DIT enjoys good cooperation with the Russian Embassy and, whenever they want information, they send the Russian Embassy an official request.

The witness pointed out that at the time of giving evidence, according to Moldovan law, a person could only hold one citizenship. Consequently, if a Moldovan citizen took out the citizenship of another country, then they would be expected to send a request to the DIT for cancellation of their Moldovan citizenship. In exceptional cases, by virtue of a presidential decree, a Moldovan citizen could have dual citizenship. Only Moldovan citizens could work in the public service and be a civil servant.

395. Telephones, both land and mobile, come under the Department that deals with communications, not the Information Technology Department. The DIT has no contact with the telephone people. The witness did not know whether there was a common telephone system for Moldova, including the Transdniestrian region, or whether there were separate systems.

396. Mr Smirnov does not hold Moldovan citizenship and has never asked for it. There was a protocol of 6 May 2001 between the Moldovan President and the leader of the Transdniestrian regime in this connection. The Moldovan President was trying to ease the relations with the Transdniestrian leadership, but this protocol remains merely a statement of intent with no official value. In order to make this protocol effective, Moldova would have to change the law. When cancelling Moldovan citizenship, the DIT acts on request, but does not impose it. The drawing-up of the national register of citizens is an exercise being carried out within a ten to twelve year framework. This exercise does lead the DIT to a certain extent to verify whether persons have a second citizenship. The DIT is also discussing the possibility of exchanging information with various other States, such as Romania, the Ukraine, Bulgaria and Russia, but this is not operational yet. There is no sanction for non-compliance with the obligation

to renounce Moldovan citizenship on acquiring another citizenship. The DIT believes that a significant number of Moldovan citizens do have second passports. This is not a problem that concerns only Russia (as the country of second citizenship) but all the countries of South-Eastern Europe.

397. In 1992 the majority of the population in Moldova still had a Soviet passport. It was only in 1993 that the Moldovan President signed a decree on a unified passport system for Moldova. The first passports were issued in 1995 and 1996. What showed that a person was a Moldovan citizen before that date was an entry in the Soviet passport from 1974. Moldova introduced legislation involving a zero option. Persons living in the territory were accorded a certain status, but a timetable was established within which that status had to be confirmed. Persons who did not have the special entry in their Soviet passport had to apply for citizenship. All those who lived in the territory of Moldova had the right to obtain Moldovan citizenship if they wanted to.

A person possessing two passports would be offered a choice. But he or she would remain a Moldovan citizen until the choice had been made, despite having two passports at the same time.

398. A telephone call from Chisinau to Tiraspol is an internal call.

399. The question whether a residence permit could be refused to someone who has committed a crime was not a matter for the DIT, but for the Immigration Department. The witness knew however that Moldovan legislation provided for the refusal of a residence permit to a foreign applicant who had committed a crime.

Concerning the issue of a Moldovan identity document to Mr Ordin, a member of the Supreme Soviet of Transdnistria regarded as a danger to the national security of Moldova, the witness stated that the DIT issues documents without asking questions. An identity card as a citizen of Moldova is issued to any person who is permanently resident in Moldova.

38. Ion COSTAS

400. The witness was the Minister of Defence of Moldova from February 1992 until 30 July 1992.

The witness became a General in the Soviet Army in 1984. He is a graduate of the Air Officers' Institute. He was a military pilot. He graduated from the Gagarin Military Academy in Moscow and served in the Far East and the Balkans.

From 24 May 1990 until 20 February 1992, he was the Minister of the Interior. Before that he was the Chairman of the Parliamentary Committee on Defence. After his period as Minister of Defence, he served as military attaché in Bucharest, from July 1992 until October 1993. Thereafter he withdrew completely from politics and never entered the public arena again. He was now a retired person living on his pension, and a reserve General.

401. In 1992 the Moldovan side started recruiting people for the defence of the realm against the forces of Smirnov. Moldova had some troops under the Ministry of the Interior. In March 1992 they started recruiting troops for the Ministry of Defence. At that time many Moldovan military personnel were coming back to the country. Fifty-one officers returned from the army of the former Soviet Union. At the Ministry of the Interior the witness realised that they had to create a Ministry of Defence as soon as possible. Moldova had no national army when the conflict broke out, when war was imposed on them by the Transdnestrian side. The Ministry of Defence therefore joined forces with the Ministry of the Interior. There were eight, ten, perhaps twelve battalions, that is all Moldova had to oppose the Cossacks, militia and military forces on the other side. This was confirmed by Mr Seleznev when he addressed the Moldovan Parliament in 2002. On the Moldovan side there must have been twenty-five to thirty-five thousand people altogether. This figure included reservists and non-military personnel such as construction engineers and so on. At the same time the Russian Army in Moldovan territory numbered about 14,000 professional soldiers.

The Transdnestrians had nine thousand militiamen trained and armed by officers of the Fourteenth Army. These officers were moved to the reserves and appointed commanders of platoons and battalions of the OSTK police. In addition, there were five to six thousand volunteers who came forward after an appeal was made on Russian television for fighters to go to Transdnestria to support the cause. These volunteers came from all over the Russian Federation. On top of this there were fifteen to twenty thousand soldiers. There were, therefore, at least thirty-five to forty thousand troops from the left bank who were opposed to the legal forces of the Republic of Moldova.

This is without talking about the arms and ammunition which were available on both sides. There were no tanks at all on the right side of the river - no artillery of the Grad-type, mobile missile launchers or heavy shells. On the left side of the river they had three battalions of Grad-type artillery, missile launchers and grenade launchers. They had aircraft from the DOSAAF Organisation and helicopters and tanks of the Fourteenth Army. Moldova had no tanks. General Lebed made available to the volunteers (the Cossacks, OSTK) whole stockpiles of ammunition situated on the perimeter of the East bank of the river.

402. At a meeting that President Snegur had with Mr Gorbachev in 1990, the latter made it clear that, unless Moldova signed the Federative State Agreement, three Republics would be created in Moldovan territory, namely a Gagauzian Republic, a Transdnestrian Republic and a Moldovan Republic. And that is what had happened.

403. As to the presence of Russian troops in Moldova in 1991 to 1992, this was covered by a decision signed by Marshal Shapashnikov, former Commander-in-Chief of the CIS forces, countersigned by a number of

Generals and Colonels, i.e. Document No. 314/1 of 23 March 1992. The arms and ammunition of the Fourteenth Army were divided up. This document specified which arms and ammunition were to remain with the Fourteenth Army, and which were to go to the Republic of Moldova.

404. The witness stated that he held information from the General Staff that in 1990 to 1991, when the Soviet Union still existed, the Moscow leadership took a secret decision to withdraw the Army from Republics over which a question mark hung, including the Baltic States and Moldova. Tank regiments were withdrawn *en masse* from Moldova. For example 120 tanks, together with a missile brigade, were withdrawn from Balti. Munitions were stockpiled in Kolbasna. All tanks were withdrawn from the right bank of the Dniester, as well as missile launchers. Nothing remained on the right side, even the mortar units and grenade launchers held by certain units in Moldova were completely withdrawn and transferred to the left bank. The 300th airborne regiment should have remained with the Moldovan Army, but instead it was withdrawn to the territory of Russia.

405. DOSAAF was a civic organisation composed of all persons fit for combat, from the age of fourteen to the age of sixty. It included therefore the whole society and was an immense organisation, with a permanent structure. In the Soviet Union it was a paramilitary organisation headed by active servicemen, and their deputies were all military people. The rest were civilians. The object of the organisation was to train people, particularly young people. It was a monster, comprising 102 million people in the Soviet Union. In Moldova it had 2 million members. It had sports aircraft, delta planes, radar systems, marine schools for training people to use submarines, and so on.

There were no tanks, helicopters, missile launchers and the like available to DOSAAF in Soviet times. There was not much weaponry made available to that organisation; it was mainly for training.

The CIS, after it was set up, had armed forces, with a command led by representatives of the Russian Army. Marshal Shapashnikov was the Commander and also the Minister of Defence of the CIS. This Minister was appointed in accordance with a proposal made by the President of the Russian Federation, Mr Yeltsin. But there was also a Russian Minister of Defence at the same time, namely Pavel Gratchev.

All the top commanders of CIS troops were from Moscow, the others were Ukrainian and Russian Slavs.

Moldova did not ratify the military part of the CIS Treaty. Moreover, Moldova had no influence on the acts of the Minister of Defence of the CIS, Marshal Shapashnikov. It was during the conflict that the Fourteenth Army was transferred from the CIS to the Russian Federation.

406. Marshal Shapashnikov, Commander-in-Chief of the united armed forces of the CIS, did not respond to the letter sent to him in April 1992 by

the President of Moldova, drawing his attention to the fact that CIS military forces were participating in the transfer of arms to the separatists.

The policy which he was pursuing was designed to keep Moldova and other republics within the Soviet Union, or at least within the sphere of direct influence of the former Soviet Union.

When Lebed took over the Fourteenth Army, a substantial transfer of weapons occurred, including a lot of anti-personnel mines, to the separatists by the Fourteenth Army. Stockpiles of arms were moved from Kolbasna. In 1990, when he was the Minister of the Interior, the witness took part in a meeting with General Iakovlev, Commander of the Fourteenth Army and the Moldovan Prime Minister Muravschi. As regards the separatists, Iakovlev said that he had received specific instructions from the Russian Ministry of Defence to provide arms to the militia in Transdnistria. In reply to Mr Muravschi, who wanted to know if that was a warning, General Iakovlev said: "No, it is just a fact that 10,000 Kalashnikovs have been transferred to the militia for the defence of the Transdnistrian region." General Iakovlev added that he had been given instructions to resist attempts by Moldova to bring the region under its control and not to allow Moldova to establish any such control.

The transfer of weaponry was therefore inevitable. Everything was well organised. Moldova had authoritative factual evidence, for example, from prisoners taken by the Moldovan forces, who admitted that this had happened. Moldova had also obtained documents from the Fourteenth Army showing that weaponry had been transferred to the separatists. At a certain moment, in May 1991, the then Commander of the Fourteenth Army, Netkachev, received instructions from the Minister of Defence in Moscow to call up reservists and to put the troops and military equipment into a state of combat readiness because Transdnistria was "Russian territory and ... we [Russians] must defend it by every means." The witness had a meeting with General Netkachev who told him that reserve officers were leaving the Fourteenth Army to train the separatists.

The witness pointed out that civilians cannot lay mines; this specific task can only be performed by professionals with military training. After the conflict, Moldova asked for the help of specialists from the United States to clear mines from the territory of Transdnistria. Americans also trained Moldovan specialists to demine the minefields.

407. The Ministry of Defence of Moldova was not able to put up any meaningful resistance to the Transdnistrian forces. When the conflict broke out the separatists had 30 tanks, 50 artillery pieces, mortars of 6 and 120 mm and tactical groups well trained in the use of artillery. Their military actions were well organised by active military officers. Shells of 120 mm cannot be bought on the open market; only the Fourteenth Army had shells like that in the region. DOSAAF did not have any shells of that calibre. There was quite a powerful group of the Fourteenth Army in

Bender, along with the Transdniestrian Popular Guard. The buses in which unarmed Moldovan soldiers were being transported were fired at from the fortress in Bender/Tighina. Following investigations by the Moldovan authorities, the conclusion was that it was Russian soldiers who had done this. Twenty-three persons died.

408. The witness had not wanted to retire; it was the decision of Parliament and President Snegur, who were saying that his departure was required by Moscow.

409. There was an incident in which Moldovan aircraft dropped bombs on a village in Transnistria. There were two air missions, involving four units, with two aircraft taking part on each occasion. When the order came through to stop the separatists crossing the bridge, the order was given to bomb the bridge. The aircraft used were not properly equipped for bombing missions. The bombs were dropped but did not fall on the bridge. There were tanks on the bridge. It was not necessary to be a military officer to identify whose tanks they were; it was clear that the tanks and the soldiers were from the Fourteenth Army. They had deliberately put the soldiers on reserve, and then called on them to man the tanks. The people manning those tanks were not amateur cyclists. Only a professional could manoeuvre a tank. They fired on the Moldovan forces. It was all filmed and recorded.

410. The military action could have been avoided had the Russian side not provoked and supported this invasion. The conflict was the deliberate decision of the Russian leadership at the time.

411. When the Soviet Union broke up, a small country like Moldova found enormous difficulties in co-existing with a great country like Russia. The first step for Moldova was to create an army, a Ministry of Defence. Neither the Ministry of the Interior nor the Ministry of Defence proved able to maintain the territorial integrity of the country. In the first few months of its existence, Moldova could not act effectively; it had no arms, ammunition or weapons, because most of this material had been withdrawn to Russia or Transnistria in 1990 to 1991. It had no artillery units able to resist, or to attack, the units on the other bank of the river. Moldova had no other military equipment. In order to obtain military equipment, Moldova asked its neighbour, Romania. Moldova bought light arms from Romania. No Romanians, however, took part in the fighting, despite what the newspapers said. No military personnel from foreign States were enrolled in the forces of the Moldovan Ministry of Defence.

412. General Lebed said many times that his Fourteenth Army was able to reach Bucharest in two hours, although it never had this in mind as an objective. The object of the Russian aggression was to retain power over the territory of Transnistria and to maintain pressure on the small country of Moldova.

413. The separatists in Transnistria in 1991 to 1992 did not have much difficulty in restructuring their manufacturing lines in the existing factories

there in order to produce arms. Probably by 1992 they were already able to manufacture arms of their own.

The Moldovan air force had Mig-29 aircraft combat. The Commander-in-Chief of the Armed Forces was the President, President Snegur, and the General Staff was under General Creanga. The witness denied having spoken to Mr Plugaru on the telephone in relation to the use of combat aircraft, since Mr Plugaru was not on that level.

414. The witness stated that he had never received any reports alleging ill-treatment by Moldovan soldiers of the civilian population and that he had no power anyway to investigate such matters.

415. After the bloodshed had stopped, Russia followed the same policy, protecting its own strategic interests, in trying to maintain its influence in Moldova.

39. Valentin SEREDA

416. At the time of giving evidence, the witness had been the Director General of Prisons in Moldova since August 2001. He had been working in the penitentiary system since 1978/1979.

417. There are no agreements for judicial cooperation in the penitentiary field between Moldova and Transdnistria. There are no practical arrangements for the transfer of detainees. There has never been a transfer of prisoners from one side to the other. One attempt was made to have people in Tighina/Bender transferred to a hospital in Moldova. But the Moldovan authorities refused because no agreement had been reached. Moldovan doctors do not have access to the prisons in Tiraspol, and vice versa. There are no telephone conversations between prison doctors in Moldova and Transdnistria. The witness had no information about doctors outside the prison service treating prisoners. Transfer of prisoners to other States does occur, by means of extradition procedures. This is handled by the Office of the Prosecutor General.

418. The institution which treats patients for tuberculosis in Tighina had its water and electricity supplies cut off by the Transdnistrian authorities. Moldovans sent a diesel energy plant and water tanks there. Cars visiting from Moldova were detained at the border for one to three days. The local authorities in Tighina prohibited the transfer of tuberculosis patients from Moldova to this medical centre. The Tighina militia posts checked every car in and out.

419. There is not one single prisoner detained in Moldovan prisons on the basis of a decision by a Transdnistrian court. This is so even in Moldovan institutions in Tighina. Similarly, no person is detained in a Transdnistrian prison on the basis of a Moldovan court decision.

420. The witness came from Tighina, but he had never visited any prisons there during the last fifteen years. However, he thought that there

were no major differences as regards the conditions of detention, prison food, medical assistance, and so on, between Moldova and Transdniestria.

421. If a prisoner from Moldova escaped and fled into Transdniestria, Moldova would probably seek assistance from the Transdniestrian authorities.

422. In 2002 Moldova began removing the shutters (“eyelashes”) on the windows of prison cells; this operation should be finished by the end of 2003. These shutters prevent ventilation and natural light penetrating into the cells. Moldova tries to improve cells generally, but as there are not sufficient funds, they have begun with juvenile detainees. They, for example, have wash basins and a shower in every single cell. It is possible for prisoners to receive television sets and so on from their relatives.

423. During the cross-examination by the applicants’ lawyers, the witness was informed that a transfer of detainees occurred between the Russian Federation and the “MRT”.

In particular, the applicants’ lawyers put forward the case of V.C., who was born in 1968, arrested in the “MRT” in 1992 and transferred in 1993 to Astrakhan (Russian Federation) where he was sentenced by a Russian Federation court to fifteen years’ imprisonment. The same year he was brought back to Transdniestria. Then in 1999 he was transferred again to a Russian Federation prison and he was finally transferred back to a Transdniestrian prison in 2002. A second example put forward was that of one R.C., born in 1973, who was arrested on 20 October 1992 in Astrakhan and transferred on 2 July 1993 to Tiraspol, Transdniestria, where he was convicted on 14 March 1996 by the “Supreme Court of the MRT”. On 27 November 1999 he was transferred to Moscow and on 8 December 1999 to Astrakhan. There he was convicted by a court of the Russian Federation and sentenced to ten years’ imprisonment. On 21 October 2002 he was transferred to a prison in Tiraspol.

In response to this information, the witness stated that he was not aware of that, and that he could not be, as he was only aware of transfers from or to the territory controlled by the Moldovan authorities. He was certain that those transfers were not effected through or with the authorisation of Moldovan institutions and assumed that they were arranged directly between the authorities of Transdniestria and those of the Russian Federation.

40. Victor BERLINSCHI

424. The witness was a Member of Parliament from 1990 until 1994 and Chairman of the Parliamentary Committee on fighting crime. At the time of giving evidence, he was a practicing lawyer and no longer a Member of Parliament.

425. The Parliamentary Committee had no involvement with the Transdniestrian conflict. The witness himself had no direct knowledge of the Ilascu case. He withdrew completely from politics in 1994.

He was however involved in the discussions in 1991 until 1992 with the Transdniestrian leadership to resolve the conflict. But they said that they had their own armed forces and would do their own job, and the discussions came to nothing.

41. Constantin OBROC

426. The witness was Deputy to the Moldovan Prime Minister from May 1990 till June 1992. From 1993 until 1996 he was an adviser to President Snegur on local administration. From 2002 onwards he had been an independent consultant. As Deputy to the Prime Minister, he was dealing mainly with problems of local administration. There were three Deputies to the Prime Minister in the Muravschi Government. The witness was appointed head of the Parliamentary Committee dealing with the negotiations with the Transdniestrian regime. As one of its last acts, this Committee managed in 1992 to bring Transdniestrian parliamentarians to the Moldovan Parliament. Then the armed conflict broke out.

427. The witness did not resign of his own accord in June 1992. The whole Muravschi Government was dismissed; there was a crisis between Parliament and the Government because of the Transdniestrian situation.

The relation between Russia and Transdnistria was very clear. According to the last statements by the President of the State Duma, Mr Seleznirov, when he was in Chisinau, whatever happens in Transdnistria is intrinsically tied up with the Russian Federation.

428. The witness did not have any information about the distribution of arms by the Fourteenth Army to the Transdnestrian population.

However, the participation of the Fourteenth Army in the conflict was a well known fact. It was fully documented in the press. The tanks of the Fourteenth Army, in particular, were involved. The witness was not in the field, he did not see the military operations himself, so that he could not describe directly to what extent the Fourteenth Army participated, how many soldiers and so on. But it was quite clear that it happened; everyone knew about it.

429. The witness did not take part in any negotiations with the Russians, but with the Transdnestrian people. The Parliamentary Committee he headed brought together elected parliamentarians from Transdnistria, the Ukraine, Moldova and Romania. No representatives of the Russian Parliament were contacted in the context of the negotiations carried out by the Committee.

430. The witness's opinion was that the Ilascu trial was the consequence of a political game on a large scale. There were no clear reasons for their

trial. There had been an exchange of prisoners on both sides, but this group had been excluded.

If the Russian side had wanted the release of the Ilascu group, this would have happened.

431. The interests in Moldovan territory went back more than two centuries, to the time of the Russian-Turkish war. There had been so many Slavs, i.e. Russians and Ukrainians, living in Moldova. These big countries took the presence of their people as an excuse for wanting to control what went on in Moldova.

The activities on the left bank were promoted and coordinated by the Soviet authorities. President Gorbachev sent his representative, Marshal Achrameyev.

432. The witness came up with a proposal to resolve the Transdnistrian problem: give the Transdnistrians a degree of power to govern themselves, so as to allay their fears and to satisfy them. The witness suggested that the area be called the Transdnistrian "Region" (whereas they now call themselves a Republic), that there be a common currency and a common responsibility for foreign relations for the whole country of Moldova, that the Transdnistrians be allowed to have some symbol of their own, such as a flag, and that they have some military forces under their authority. A similar scheme was proposed for Gagauzia. The plan also involved dividing the Regions into counties but preserving Moldova as a single entity. The idea was to leave more autonomy to the people of the Transdnistrian region and counties because of their particular history. But this proposal was rejected.

Originally, the point of view of the Transdnistrian authorities was the same as that of the Moldovan authorities. When the Moldovan Republic was being created, no one talked of the infringement of the rights of these Russian-speaking people. But there were in this region other people who had separatist and other objectives. At the same time the Popular Front was creating conditions for Moldova to reunite with Romania. Moldova had to deal with this situation. Before the local administration of the illegal Transdnistrian regime was formed, of course the local authorities there were recognised. The central authorities worked with them; they participated in all the normal activities. After the separate regime in Tiraspol was created, the right bank ceased to recognise the local authorities on the left bank. However, in reality, the Moldovans were in contact with real people on the other side. The *de facto* situation was that they were the leaders of the region.

Concerning the recognition issue, it was difficult to adopt a strictly legal, formalistic approach, to the effect that since the lawfulness of the Transdnistrian regime is not recognised by the Moldovan Government or the international community, Moldova should not have any working contact

whatsoever with them. This would mean that the conflict could never be resolved, but Moldova was concerned with helping real people.

433. The witness did not know anything about the applicants being allegedly Moldovan intelligence agents in Transdniestria.

434. No one in the Government was in favour of the use of force in order to solve the Transdniestrian conflict. But when the militia premises and other buildings were occupied in the beginning, Moldova had to react with force.

Romania has interests in Moldova. Moldovans and Romanians are people of the same ethnic origin. Romania was involved in the Tighina/Bender negotiations. The Romanian side always acted in an objective way, beyond reproach. The negotiations achieved a compromise. They brought back the local representatives to act as one State.

435. Assistance was provided by the central Moldovan Government and local authorities to the families of the Ilascu group. In his position as presidential adviser, the witness had received Mrs Ilascu on several occasions and taken her to see the President of Moldova.

436. One objective of the Yeltsin/Snegur Agreement of 21 July 1992 was to stop the military conflict, the battles and the killing. This did not mean that the Moldovan Government had abandoned its sovereignty over this territory.

42. Mihail SIDOROV

437. At the time of giving evidence, the witness was a Member of Parliament and Chairman of the Committee for Human Rights and National Minorities.

The witness started his career as a professional judge. For fifteen years he worked in the judicial system of Moldova. He was appointed as a judge 30 years ago. He was a member of the Praesidium of the Supreme Criminal Court. From 1981, following his judicial career, he went to work at the former Supreme Soviet. He was Deputy Head of the Legal Department of the Secretariat of the Supreme Soviet. In 1991 he was dismissed from his office in Chisinau only because he was of Russian origin and he took the decision to go to Transdniestria. He was appointed Head of the Justice Directorate in Transdniestria. He worked less than a month there. Until December 1993 he worked in private business. From February 1994 until 1998 he was a Member of Parliament. From 1998 until 2001 he was the Ombudsman.

438. When he was elected Member of Parliament in 1994, the chapter in his life concerning his position as former Head of the Justice Directorate in Transdniestria was closed. No one on the Central Election Committee raised any objections. There the witness did not hear anything of the Ilascu case.

The fact that for a short while he was at the service of the separatist regime in Transdniestria has not been an obstacle for the witness in his subsequent career in Moldova, as Ombudsman, for example.

439. In May or June 1998, when the witness was Ombudsman, the wives of the Ilascu group came to see him. The witness and his colleagues advised them that they had no real means of solving the problem and that they would be better served in going to see the OSCE Mission. The witness then worked with the OSCE. Other citizens from Transdniestria came to see the witness with problems, but the Ombudsman's office was not capable of solving these problems without the OSCE.

440. The Moldovan Government had no power to influence the Transdniestrian regime in order to secure the release of the Ilascu group. After the illegal regime created its own administration, including courts, there was no contact, no official channel through which the Moldovan authorities could influence them. Four years after the trial, there were attempts to do something. Before that it would have been pointless, because Moldova had no means of tackling the problem. The witness realised that even the meetings involving the OSCE did not change the situation.

The witness took part in international meetings of Ombudsmen because he took the view that Moldova could not solve the problem internally. Moldova acceded to the Framework Convention on Minorities in 1996. In 1997 Moldova enacted the Law on the Status of National Minorities. The human rights situation in Moldova was discussed by the Committee of Ministers of the Council of Europe, where it was said that a lot was being done in Moldova to ensure observance of human rights. The Government has a department on inter-ethnic relations. The minorities in Moldova are made up of 13% Ukrainian, 13 % Russian, 5% Gagauz, 4% Bulgarian and 3% Jewish. Over 35% of the population in Moldova is made up of ethnic minorities. In Transdniestria 40% are Moldovan, 28% are Ukrainian and 22% are Russian.

441. In March 1994, just after Mr Ilascu had been elected as a Member of Parliament for the first time, the Parliament prepared the conditions for him to serve as Member of Parliament. At that time the Ilascu file had a political dimension. If one viewed the case only from a strictly legal point of view, perhaps one could have acted in a quicker and more constructive way.

Mr Ilascu's release was the result of a political move; it did not follow from any measure by the legal authorities.

The Government did not have any realistic possibility of doing anything about the Ilascu case. It could not deal with it as a matter of priority. In 1997 the witness was nominated to act with the Deputy Minister of Justice, Mr Sturza, to deal with the Ilascu problem. There was a meeting between Mr Sturza and the so-called Minister of Justice of Transdniestria. This was a purely protocol meeting. It did not change anything. There were no relations

afterwards. If the meetings had continued, the Ilascu problem would have been raised, but things did not happen that way.

442. The witness could not remember which of the three Ombudsmen dealt with the Ilascu case. It was during the first months of the Ombudsman's office. The witness had meetings with the OSCE at which he raised the issue of the Ilascu case. As a parliamentarian he did not approach any international organisations about the Ilascu case. His opinion was that they were not in a position in Moldova to resolve this specific problem.

443. The witness was not aware that a judgment of 3 February 1994 by the Moldovan Supreme Court had ordered the Ilascu case to be sent to the Moldovan Public Prosecutor for a fresh criminal investigation. He was only aware of Sturza's proposal that the charges against the Ilascu group be the subject of a new trial in a foreign country.

444. The witness had never seen the Ilascu file. From the information he had, it seemed to him that the main provisions of criminal procedure were fulfilled – that is to say, the accused were charged and indicted, the defence had access to the court file, evidence was taken from witnesses, proof of the alleged conduct was adduced, and there was a hearing before a court at which the defendants were present. From the procedural point of view, it appeared to the witness that all the standards of criminal procedure were fulfilled. The witness admitted that the judgment of the trial court was quashed as being unconstitutional and agreed that that decision itself needed to be implemented. He thought that an appeal or review court should study the whole file.

As regards the victims of the alleged crimes, the witness's opinion was that the decision in this case would be linked to the settlement of the whole Transdnestrian problem.

445. In so far as further action should be considered in terms of criminal procedure, the witness saw two possible scenarios. Firstly, the Supreme Court of Moldova, as the highest court in the land, would review the case. Secondly, one could start from the premise that the facts did indeed prove that a criminal prosecution should have been brought: there was a criminal investigation, evidence was assembled, and so on. On that basis, the case should be referred to the Supreme Court for further study. There should be a re-consideration of impartial evidence, outside the political context. The witness was of the opinion that the Code of Criminal Procedure did not include any provision for what was done by the Supreme Court in the Ilascu case. In any event, he did not know of any other such cases in Transdnestria and Moldova. Finally, he found it obvious that international standards were not complied with by the Moldovan Supreme Court.

446. The witness was aware of the decision of August 2000 by the Prosecutor General to quash the criminal investigation against the Transdnestrian prosecutors and judges who had taken part in the Ilascu trial. In 1995 or 1996 the Moldovan Parliament had a meeting with

colleagues from Tiraspol during which the witness asked them why they would not come to Chisinau. The parliamentarians from Transdniestria replied that they could not come to Chisinau because a criminal investigation had been opened against them by the Moldovan Prosecutor General. The witness thought that the launching of this criminal investigation against the Transdniestrian prosecutors and judges was a political rather than a legal act. Likewise it was a political issue whether to cancel the decision to launch a criminal prosecution.

447. The witness stated that at the time when he was Ombudsman there were three Ombudsmen. He could not remember which one of them was specifically dealing with the Ilascu case. If they had directly approached the Transdniestrian administration, they would not have achieved anything. This was illustrated by their efforts regarding the problems encountered by the institution which existed for the treatment of prison inmates with tuberculosis in Bender. The Transdniestrian local authorities had cut off the electrical and gas supplies and the sewers. One of the Ombudsmen approached Mr Smirnov. But there was no response at all. The Ombudsman's office approached the OSCE, an international organisation – the only entity with some influence in the region.

448. Courts had been functioning in Transdniestrian towns for more than ten years; they had ruled on more than 4,000 criminal cases and more than 10,000 civil cases. The question therefore arose whether every such judgment should be annulled or not. Either all these cases would be re-heard or there would be a simple review of these cases on request, if necessary with a decision by the Supreme Court.

449. The crisis of 1991 to 1992 was not the result of spontaneous acts. In 1989 a new languages law was enacted in Moldova. This was not a welcome decision. It led to part of the population organising protests as from June/July 1989, with the left bank, Tiraspol, taking an active part. This constituted the first push towards the break-up. In 1990 the situation worsened in Chisinau when certain political forces began organising activities against parliamentarians from the left bank. There are 360 seats in the Parliament. Some left-bank parliamentarians were beaten up, the law-enforcement bodies did not take any action and, as a result, about 60 parliamentarians from the left bank left Parliament. From then on the situation worsened.

Similar events occurred in the Gagauzian region. Parliament was summoned in order to settle the problem through peaceful means, but the Gagauzians and the Transdniestrians decided to set up their own power structures. Parliament thereupon declared these power structures unconstitutional. Consequently, as from August 1990 there were three regions in Moldova. After the Gagauzian situation was resolved, it was only Transdniestria which *de facto* was not under Parliament's authority.

The events in 1990 developed very fast. In October 1990 there was a march by volunteers to southern Moldova. This march was provoked by the proclamation of the Gagauz Republic in August of that year. It was all part of an attempt to instil fear in the country. Luckily, in the South there was no fighting or loss of life. The armed conflict was provoked by what happened in Dubasari on 2 November 1990, and from then onwards it was practically impossible to stop developments.

In March 1992 the armed conflict flared up, first in Dubasari and then in Bender. After that all the links of the negotiating process broke down. Parliament had no access to the left bank. There were no relations between official structures from 1992 onwards. It was only in 1994 that Parliament established a Committee for re-establishing contact between the official structures of Moldova and Transdniestria. The witness was a member of the Parliamentary Committee for the resolution of the Transdniestrian problem. This committee set up an investigative team to investigate what had occurred in 1992. In 1995 a few meetings were held with parliamentarians from Transdniestria. In 2000 yet again a special Committee for dealing with the Transdniestrian problem was created. A few meetings were held in 2001, but none in 2002 unfortunately. The witness stated that he had high hopes for the success of the initiative taken by the OSCE Mission, with the participation of the Ukraine and Russia. He welcomed the statement by President Voronin and the draft settlement that had been worked out.

450. The witness took part in drafting the law on Gagauzia, which conferred an autonomous status on this region in 1994. There was no military conflict between Gagauzia and Moldova, and Moldova hoped that it would be possible to solve the conflict with Transdniestria in the same way. But the war in 1992 in Transdniestria caused hundreds of deaths on both sides and time was needed to heal such deep wounds. The witness thought that if politicians on both sides were now willing to take a step forward, this problem could be solved within a short time.

451. Since the end of 1990 there had been a separate judicial system in Transdniestria. None of the judgments delivered by the courts in Transdniestria was recognised by the judiciary in Moldova. The conviction of Mr Ilascu and his group was quashed but their case has never been examined by the courts in Moldova.

452. The witness underlined that Transdniestria exists *de facto* as a sovereign State, with its own legislation, its own judiciary and its own processes for the execution of judgments. It had recently created a Constitutional Court. He pointed out that Russia had always insisted on preserving the territorial integrity of Moldova as it existed in 1997, which was confirmed by the Agreements with Russia.

The witness was of the opinion that there was no responsibility on the part of the Russian Federation for the events being considered by the Court. The relations between Russia and Transdniestria were tense. The

administration of Transdniestria had never met the President or Prime Minister of the Russian Federation, whereas the Moldovan President and Moldovan Ministers had gone to Transdniestria.

453. Referring to the influence other countries have over Transdniestria, the witness emphasised that Transdniestria was a free market place. Its most stable source of investment was German capital but that there was also some Belgian investment in local enterprises. According to the Transdniestrians, their currency was printed in Germany.

454. Moldova provides the telecommunications system for Transdniestria. There is one single “space” for telecommunications in Moldova. But in Transdniestria they have their own telecommunications company, and it is to this company that Transdniestrian people pay their telephone bill. It is only cellular telephones that do not work in Tiraspol. The Moldovan football championship includes Transdniestria. Indeed, the current football champion of Moldova is Tiraspol and they have a fine football stadium in Tiraspol. The Moldovan national football team was going to play the Netherlands on 1 April 2003 in the Tiraspol stadium. Transdniestria is therefore essentially a political problem.

455. In November 1990 Parliament adopted a decision as regards the taking of measures to stabilise the social and economic situation in Moldova. This decision condemned any attempts to resolve inter-ethnic disputes by force. The witness worked for the department preparing the relevant bills. An inter-ethnic department was created in the Government. Its brief was to protect national minorities. A Law was adopted in 2001. But, previously, a grave problem had existed in Moldova as regards ethnic minorities.

43. Pavel CREANGA

456. The witness was Deputy Minister of Defence in May/June 1992. He was then Minister of Defence from 1992 until 1997. At the time of giving evidence he was retired. Before his service as Deputy Minister of Defence in 1992 he had returned to Moldova in 1990 from Belarus, where he had been an army commander. After serving as an adviser on Cuba, the witness retired from the Soviet Army and came back home. He then took an oath of allegiance on taking up new duties in Moldova.

From 1990 until 1992 he worked at the Military Department. From 1997 onwards he had not held any official posts.

457. After the declaration of Moldovan independence, some people in Moldova wanted to stay part of the Soviet Union. They pursued this objective by the creation of paramilitary troops, the so-called Popular Guards, which became the separatist forces. Moldova could not accept this and tried to solve the problem by peaceful means. But in 1990 it was obliged to create battalions from reservist forces. Armed groups started to

make their appearance then. The Ministry of Defence, for its part, started doing something in May 1992, when the witness began as Deputy Minister. He was Deputy Minister of Defence and a member of the President's Private Office. He was told to open a command centre in Transdniestria in May 1992.

It was no secret that the separatists received support from Odessa and Moscow. Moldova ceased to have control over the eastern part of the country from the end of 1991 and the beginning of 1992.

The Moldovan armed forces in 1992 comprised approximately ten battalions, that is, six thousand active troops on a permanent basis and that was the position until the end of the conflict. They were made up of troops from the Ministry of the Interior and the police, and there were three detachments of volunteer forces. That made a total of up to six thousand active troops. The Transdniestrian forces also numbered about six thousand. The Russian Fourteenth Army had about twelve to fourteen thousand troops.

The Moldovan armed forces did not have the kind of equipment that the separatists had. The Moldovan forces had one automatic weapon for every ten people in the beginning. They did not have proper units.

The Fourteenth Army provided the separatists with equipment and support. The officers of the Popular Guards came from the Fourteenth Army and the Fourteenth Army was supplying them with weapons.

The witness went to see Iakovlev who told him that the Transdniestrians had thousands of rifles. Under the guise of seizure, using children and women, large numbers of weapons were handed over. About 30 tanks were transferred, 32 armoured personnel carriers, 24 artillery weapons, mortars, anti-tank grenade launchers, anti-tank artillery and air defence units. The Commander of the Fourteenth Army, General Lebed, declared on television that he had personally called up and armed twelve thousand soldiers for the Transdniestrians and that he personally had made the existence of their armed forces possible. The operations of the Transdniestrian armed forces were carried out under the control of officers of the Fourteenth Army.

The tanks that appeared on the Dniester Bridge belonged to the Fourteenth Army. Tanks have numbers on them.

The witness stated that he had documents on the handing over of weapons to the separatists by the Fourteenth Army and added that perhaps the documents were still in the Ministry of Defence. One thing is a physical handover, a transfer. A formalised transfer on the basis of official documents is quite another thing. The separatists "seized" weapons from the Fourteenth Army by the use of women and children. The tanks which had been seized with the help of human shields were from the 183rd motorised infantry regiment and other units of the Fourteenth Army. Under the disguise of a seizure using a human shield of women and children, it was in reality a handover.

The weaponry and equipment in question could not have been part of DOSAAF property. DOSAAF did indeed have one million bullets, but only very light weapons. DOSAAF did not have any combat weapons at all.

458. The armed units of the Transdnistrians were better equipped than the Moldovan units. They had tanks, whereas the Moldovans did not have one single tank. They had more armoured cars than the Moldovans did. The Moldovans had powerful artillery, for example the *Uragan* system which is capable of travelling up to 27 km, but that was not used. Moldova only used artillery when the Transdnistrians used tanks. The Moldovans warned the Transdnistrians that if they used tanks, Moldova would use artillery in response. The Moldovans also had howitzers and cannons.

459. Moldova never opened fire on villages or inhabited areas. Not one single building was destroyed by Moldovan forces. But this was not the sort of war the witness was prepared for in military college.

460. As to the shooting in the Tighina/Bender fortress, when the Moldovan forces entered the city of Bender, some of the so-called Popular Guards retreated into the fortress, in the past occupied by the chemical defence battalion of the Fourteenth Army. Subsequently they fired, possibly together with the chemical battalion.

461. Moldova had 122 mm ammunition and used it. The *Uragan* artillery system that the Moldovans had was much more efficient than the *Grad* system that the Transdnistrians had. But the Moldovans never used the *Uragan* system because they knew its destructive power. If Moldova had wanted victory at any price, it would have used the powerful *Uragan* system.

The Moldovan troops did have an air defence, but there was no collective defence with the Ukraine and Romania. The Moldovan forces had to use Mig 29 airplanes for bombing. There were armed groups on the other side using artillery; it was not a police operation. There was only one solution - to bomb the bridge but not the residential quarters. The intention was to destroy the bridge in order to prevent tanks crossing it, and thereby to prevent heavy losses on the Moldovan side. This was in Bender (Tighina).

462. The volunteer groups fighting for Moldova did not kill other people. They were defending their country against separatists. The Moldovan armed forces never shot at inhabited settlements.

463. Moldova did not send intelligence groups into Transnistria. The Moldovan forces used people they knew. They did not send anyone specifically there to act as an intelligence agent. But they had people voluntarily sending them information.

464. During the conflict, the Fourteenth Army was stationed at the Tiraspol military airport. It was used by one of their squadrons. Planes were flying in from Moscow. After the conflict, there was an agreement which defined the rules according to which the airport was to be used.

465. At the time when the witness was Minister of Defence, there were agreements signed between Moldova and the Russian Federation on the withdrawal of certain units of the Fourteenth Army. The 300th parachute regiment was withdrawn, as were a communications battalion and some other units. These agreements also concerned the regime of the military airport in Tiraspol and the legal status of the Russian soldiers on Moldovan territory.