

INTRODUCTORY NOTE TO THE EUROPEAN COURT OF HUMAN RIGHTS:  
CATAN AND OTHERS V. MOLDOVA AND RUSSIA  
BY JAN ARNO HESSBRUEGGE\*  
[October 19, 2012]  
+Cite as 52 ILM 217 (2013)+

## Introduction

On October 19, 2012, the Grand Chamber of the European Court of Human Rights (the Court) ruled that policies pursued by *de facto* authorities in the Transdniestrian region of the Republic of Moldova aimed at suppressing Moldovan-language education violated the right to education of the affected children and their parents. The Court held Russia responsible for these violations by virtue of the continued vital support Russia provides to the *de facto* authorities. Meanwhile, the Court found Moldova to have complied with residual human rights obligations it retained, despite lacking effective control over Transdniestria. This important judgment develops the jurisprudence of the Court in relation to human rights violations arising from conduct of *de facto* authorities. However, it does not fully clarify the standards the Court applies in attributing their conduct to third states.

## Background

The present judgment arises out of human rights violations committed by the *de facto* authorities of the ‘‘Moldovan Republic of Transdniestria’’ (MRT), a separatist entity whose self-proclaimed independence from Moldova is not recognized by the international community.<sup>1</sup> The applicants, a group of Moldovan-speaking students and their parents, complained that the MRT authorities had required Moldovan-language schools in Transdniestria to teach Moldovan using the Cyrillic alphabet, although the language is written in Latin script in the rest of Moldova. The *de facto* authorities enforced this policy through the forced closure of Moldovan-language schools, intimidation and harassment.<sup>2</sup>

The Court found that this violated the applicants’ right to education under Article 2 of the First Protocol to the European Convention on Human Rights.<sup>3</sup> It held Russia responsible for the violation ‘‘[b]y virtue of its continued military, economic and political support for the ‘MRT’, which could not otherwise survive.’’<sup>4</sup> Conversely, Moldova incurs no responsibility because it had expended ‘‘considerable efforts to support the applicants’’ so that the students could continue their Moldovan-language education.<sup>5</sup> In characterizing the respective relationships of Moldova and Russia vis-à-vis the MRT authorities and the territory they control, the judgment relies heavily on the factual and legal findings that the Grand Chamber made in the 2004 judgment *Ilascu and others v. Moldova and Russia*.<sup>6</sup>

## The Court’s Approach to Jurisdiction and Responsibility

Having long established that the right to education implies the right to be educated in one’s national language, the Court easily determined a violation in this case, because students in Moldova were prohibited from pursuing an education in Moldovan using the Latin alphabet.<sup>7</sup> Furthermore, the Court found that the prohibition served no legitimate aim, but was apparently ‘‘intended to enforce the Russification of the language and culture of the Moldovan community living in Transdniestria in accordance with the ‘MRT’’s overall political objectives of uniting with Russia and separating from Moldova.’’<sup>8</sup> The judgment gains complexity and relevance for general international law from the fact that the immediate perpetrators of the violations are *de facto* authorities, which operate beyond the effective control of the territorial State (Moldova) but are under the influence, if not outright control, of a third State (Russia).

The judgment indicates that two conditions were required in order for the conduct of the MRT *de facto* authorities to result in a finding that either Moldova or Russia violated their respective obligations under Article 1 of the European Convention ‘‘to secure to everyone within their jurisdiction the [Convention’s] rights and freedoms.’’ First, the facts complained of by the applicants must fall within the State’s *jurisdiction* within the meaning of Article 1 of the Convention, i.e. they must occur in a geographic area to which the State’s obligations under the Convention extend.<sup>9</sup> Second, the violations must be the *responsibility* of the State.<sup>10</sup> This would be the case if the

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conduct of the *de facto* authorities would be directly attributable to the State concerned, because they acted under the State's instruction, direction or control (*de facto* agency),<sup>11</sup> or the State failed to "secure" the Convention's rights by not exercising due diligence to protect persons present in its jurisdiction against such conduct.<sup>12</sup>

#### *Moldova's Limited Due Diligence Obligation*

The Court considered the fact that the violations occurred on Moldova's State territory sufficient to engage Moldova's jurisdiction within the meaning of Article 1 of the Convention. However, in light of Moldova's lack of effective control over Transdniestria, Moldova's resulting obligations were "limited in the circumstances." Thus, Moldova would only incur responsibility if it failed "to use all legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living [in Transdniestria]." <sup>13</sup> The Court considered that Moldova complied with this limited due diligence obligation, because it not only maintained its political, judicial and other efforts to reassert control over Transdniestria, but also provided extensive financial and logistical support to keep the Moldovan-language schools targeted by the "MRT" authorities' policies open.<sup>14</sup>

#### *Russia's Responsibility and the Effective Control Standard*

With regard to Russia's jurisdiction, the Court reiterated its long-standing position that jurisdiction under Article 1 of the Convention can exceptionally extend beyond a State's territory "when, as a consequence of lawful or unlawful military action, a Contracting State exercises *effective control* of an area outside that national territory."<sup>15</sup> Such effective control can also be exercised through "a subordinate local administration" whose policies and actions do not have to be under the detailed control of the State concerned, as long as "the local administration survives as a result of [that State's] military and other support."<sup>16</sup>

In the *Ilascu* case, the Court already determined that Russia's jurisdiction was engaged in Transdniestria because the MRT survived "by virtue of the military, economic, financial and political support given to it by the Russian Federation and that it remained under the *effective authority, or at the very least under the decisive influence, of Russia.*"<sup>17</sup> In light of this precedent, the Court in *Catan* placed the burden on Russia to show that these conditions were no longer in place.<sup>18</sup> The Court found that Russia did not meet this burden, and held that Russia continued to exercise jurisdiction in Transdniestria during the relevant period of 2002 to 2004.<sup>19</sup>

Russia argued that the Court should apply the stricter effective control test employed by the International Court of Justice (ICJ). Whereas the *Ilascu* standard sets "decisive influence" as the minimum threshold, the ICJ requires a relationship of such "complete dependence" between *de facto* agent and State that the former is ultimately merely an instrument of the latter.<sup>20</sup> The European Court dismissed Russia's argument, finding that the two tests apply to distinct issues. The Court distinguished the ICJ Standard because it is used to determine attribution under the law of state responsibility. In contrast, the test used by the European Court is to determine whether the facts complained of by an applicant fall within the jurisdiction of a state within the meaning of Article 1 of the Convention.<sup>21</sup> For this reason, the Court found the higher ICJ standard was not applicable.

However, despite distinguishing the effective control standard of the ICJ on this basis, the Court proceeded to use its effective control standard to also determine Russia's *responsibility* for violations committed by the MRT *de facto* authorities.<sup>22</sup> In the absence of any direct involvement of Russia in formulating and implementing the MRT educational policy, the Court found Russia responsible solely "by virtue of its continued military, economic and political support for the 'MRT', which could not otherwise survive."<sup>23</sup>

This raises the question of whether the Court implicitly maintains a *sui generis* standard of attribution for human rights violations, one that is more lenient than the effective control standard for state responsibility set out by the ICJ.<sup>24</sup> Another way to read the judgment, although somewhat less convincing, is that the Court implicitly placed an extraterritorial due diligence obligation on Russia, requiring it to use its decisive influence on the MRT authorities to prevent them from committing human rights violations.<sup>25</sup> Either way, this aspect of the decision would break new doctrinal ground for the Court.

#### **Conclusion**

In its traditional, state-centric interpretation, international human rights law leaves protection gaps where *de facto* authorities that operate beyond the reach of the territorial State commit human rights violations. However, it is

now widely accepted, including by United Nations human rights mechanisms, that customary international law has evolved towards recognizing that *de facto* authorities have certain human rights obligations.<sup>26</sup> A recent United Nations report on human rights in Transdniestria, for instance, states that customary international law obligates the MRT *de facto* authorities to uphold fundamental human rights norms.<sup>27</sup>

Yet, international human rights treaties like the European Convention are generally considered to bind only States parties.<sup>28</sup> In addition, the European Court lacks the jurisdiction *ratione personae* to hear complaints directed against *de facto* authorities. As such, it can only indirectly address them by adjudicating cases against States with influence over *de facto* authorities. In doing so, the Court must operate within the confines of general international law, in particular the rules of attribution regarding conduct of *de facto* agents. In this regard, the present judgment raises the questions of whether the Court overstretched the confines of attribution by way of *de facto* agency, or whether perhaps the ICJ insists on an unduly onerous “effective control” standard in respect to this modality of attribution.

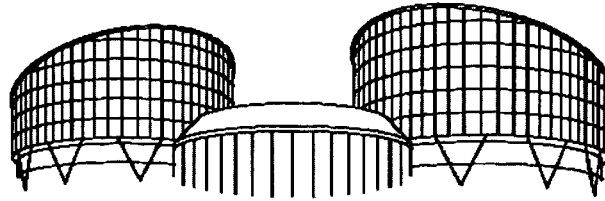
## ENDNOTES

- 1 The MRT emerged in the political convulsions triggered by the dissolution of the Soviet Union and consolidated its status in the course of a brief armed conflict. Most of Moldova’s Russian-speaking minority lives in the Transdniestrian region, which is also home to Moldovan and Ukrainian speaking populations as well as smaller minority groups.
- 2 Catan and others v. Moldova and Russia, App. Nos. 43370/04, 8252/05 & 18454/06, Eur. Ct. H.R. paras. 43-63 (2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114082> [hereinafter Catan].
- 3 *Id.* paras. 141-144. Although a number of judges dissented on this point, the Court considered it not necessary to rule on the alleged additional violations of Article 8 of the European Convention (the right to private and family life) and the non-discrimination clause of Article 14, read in conjunction with Article 8 of the Convention and Article 2 of its First Protocol. *See Id.* paras. 151-160 and the Jointly Partly Dissenting Opinion of Judges Tulkens, Vajic, Berro-Lefèvre, Bianku, Poalelungi and Keller.
- 4 *Id.* para. 150.
- 5 *Id.* para. 147.
- 6 Appl. No. 48787/99 Eur. Ct. H.R. (2004), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61886> [hereinafter Ilascu]. In *Ilascu*, the Grand Chamber found that both Russia and Moldova had violated the Convention in relation to the detention, torture, inhuman and degrading treatment and criminal conviction of four Moldovan nationals by MRT *de facto* authorities. The same context also gave rise to a judgment of the Court’s Fourth Section. *See Ivantoc and others v. Moldova and Russia*, App. No. 23687/05, Eur. Ct. H.R. (2011), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107480>.
- 7 *See Catan, supra* note 1, paras. 135-144.
- 8 *See id.* para. 141.
- 9 *See id.* paras. 102-123.
- 10 *See id.* paras. 145-149.
- 11 See in this regard Article 8 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts, contained in Report of the Int’l Law Comm’n on the work of its fifty-third session, April 23–June 1, July 2–August 10, 2001, 43-59, U.N. Doc. A/56/10, GAOR, 56th Sess., Supp. No. 10 (2001).
- 12 The European Court has long held that the obligation to “secure” the Convention rights also places obligations on the State to protect individuals against conduct from other individuals or non-state actors. *See e.g.* Young, James & Webster v. U.K., 44 Eur. Ct. H.R. (ser. A) at 20 (1981); X and Y v. Neth., 91 Eur. Ct. H.R. (ser. A) at 11 (1985); Plattform “Ärzte für das Leben” v. Austria, 139 Eur. Ct. H.R. (ser. A) (1988). For a detailed discussion of the operation of the principles of attribution and due diligence in International Human Rights Law, *see* Jan Arno Hessbrügge, *Human Rights Violations arising from Conduct of Non-state actors*, 11 Buffalo Hum. R. L. Rev. 21 (2005).
- 13 Catan, *supra* note 1, paras. 109-110. These findings build on *Ilascu, supra* note 5, paras. 331-333, 351-352.
- 14 *Id.* paras. 146-148.
- 15 *Id.* para. 106 [emphasis added]. The Court developed this doctrine when considering whether Turkey can be held responsible for violations committed in the “Turkish Republic of Northern Cyprus.” *See Loizidou v. Turkey* 310 Eur. Ct. H.R. (ser. A) (1995); *Cyprus v. Turkey*, App. No. 25781/94, Eur. Ct. H.R. (2001), <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=001-59454>.
- 16 Catan, *supra* note 1, para. 106.
- 17 *Ilascu, supra* note 5, para. 392 [emphasis added].
- 18 Catan, *supra* note 1, para. 112.
- 19 *Id.* paras. 116-122.
- 20 For the ICJ standard, *see* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. and Herz. v. Serb. and Mont.), 2007 I.C.J. 43, ¶ 392 (Feb. 26); Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 62 (June 27). The ICJ’s position has been challenged. The Appeals Chamber of the International Criminal for the Former Yugoslavia has held that a more lenient standard of “overall control” was sufficient to attribute conduct of a *de facto* agent to a State. *See Prosecutor v. Tadic*, Case No. IT-94-1-A, Judgment, ¶¶ 80-162 (Int’l Crim. Trib. for the Former Yugoslavia July 15,

- 1999). A more lenient standard has also been called for so as to attribute conduct of terrorist groups to states. *See e.g.* Christian J. Tams, *The Use of Force against Terrorists*, 20 *Eur. J. Int'l L.* 359, 384-386 (2009).
- 21 *Catan*, *supra* note 1, para. 115.
- 22 *Id.* paras. 149-150.
- 23 *Id.* para. 150.
- 24 *See* Marko Milanovic, *Grand Chamber Judgment in Catan and Others*, BLOG OF THE EUR. J. OF INT'L L. (Oct. 21, 2012), <http://www.ejiltalk.org/grand-chamber-judgment-in-catan-and-others>.
- 25 *Id.*
- 26 *See, e.g.*, Report of the United Nations High Commissioner for Human Rights on Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, U.N. Doc. A/HRC/8/17 (2008), para. 9; Report of the High Commissioner under Human Rights Council resolution S-15/1, U.N. Doc. A/HRC/17/45 (2011), para. 20; Report of the SR on extrajudicial, summary or arbitrary executions, Philip Alston; the SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the SG on human rights of internally displaced persons, Walter Kälin; and the SR on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari - Mission to Lebanon and Israel, A/HRC/2/7 (2006), para. 19; Combined report of nine Special Procedures mandate holders on the human rights of the Palestinian people, U.N. Doc. A/HRC/10/22 (2009), para. 22; Report of the Independent Expert on the Human Rights Situation in the Democratic Republic of the Congo, U.N. Doc. A/57/437 (2002), para. 83. *Cf.* Security Council, Resolution 1417 (2002) on the situation in the Democratic Republic of the Congo, 14 June 2002, U.N. Doc. S/RES/1417 (2002), para. 4.
- 27 Senior Expert, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova 4*, (Feb. 14, 2013) (Thomas Hammarberg), *available at* [http://www.un.md/key\\_doc\\_pub/Senior\\_Expert\\_Hammarberg\\_Report\\_TN\\_Human\\_Rights.pdf](http://www.un.md/key_doc_pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf).
- 28 Support for the position that human rights treaties could apply also to de facto authorities or armed groups with effective control over territory could be derived from the fact that, for purposes of state succession, human rights treaties are considered to be as "localized treaties." Their protection evolves with the territory of the state party and continues to protect the people living therein, "notwithstanding change in Government of the State party, including dismemberment in more than one State or State succession." *See* Hum. Rts. Comm., General Comment No. 26, para. 4, UN Doc. CCPR/C/21/Rev.1/Add.8 (1997), *available at* <http://www.unhchr.ch/tbs/doc.nsf>. In the same vein, it could be argued that a de facto authority assumes the effective control of a territory it also assumes the human rights treaty obligations resting on that territory. *See* Hessbruegge, *supra* note 7, at 40.

[October 19, 2012]

+Cite as 52 ILM 221 (2013)+



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

GRAND CHAMBER

**CASE OF CATAN AND OTHERS v. MOLDOVA AND RUSSIA**  
*(Applications nos. 43370/04, 8252/05 and 18454/06)*

JUDGMENT

STRASBOURG  
19 October 2012

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

**In the case of Catan and Others v. Moldova and Russia,**

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

Nicolas Bratza, *President*,  
Françoise Tulkens,  
Josep Casadevall,  
Nina Vajić,  
Dean Spielmann,  
Lech Garlicki,  
Karel Jungwiert,  
Anatoly Kovler,  
Egbert Myjer,  
David Thór Björgvinsson,  
Ján Šikuta,  
Mark Villiger,  
Isabelle Berro-Lefèvre,  
Mirjana Lazarova Trajkovska,  
Ledi Bianku,  
Mihai Poalelungi,  
Helen Keller, *judges*,  
and Michael O'Boyle, *Registrar*,

Having deliberated in private on 25 January and 5 September 2012,

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

#### PROCEDURE

1. The case originated in three applications (nos. 43370/04, 8252/05 and 18454/06) 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 a number of Moldovan nationals (“the applicants”), on 25 October 2004.
2. The applicants, one of whom was granted legal aid, were represented by Mr Alexandru Postică and Mr Ion Manole, lawyers practising in Chişinău and Mr Pdraig Hughes and Ms Helen Duffy, lawyers with Interights, a human rights organisation based in London. The Government of the Republic of Moldova were represented by their Agents, Mr Vladimir Grosu and Mr Lilian Apostol and the Government of the Russian Federation were represented by Mr Georgy Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.
3. The applicants, Moldovans who lived in Transnistria and who were at the time of lodging the application pupils at three Moldovan-language schools and their parents: (see the attached annex), complained under Article 2 of Protocol No. 1 to the Convention and Article 8 of the Convention, taken alone and in conjunction with Article 14 about the closure of their schools and their harassment by the separatist Transnistrian authorities.
4. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 15 June 2010, following a hearing on admissibility and the merits (Rule 54 § 3), they were joined and declared partly admissible by a Chamber of that Section composed of the following judges: N. Bratza, L. Garlicki, A. Kovler, L. Mijović, D. Björgvinsson, J. Šikuta, M. Poalelungi, and also of T.L. Early, Section Registrar. On 14 December 2010 the Chamber relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).
5. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.
6. The applicants and each respondent Government filed further written observations (Rule 59 § 1) on the merits.
7. A hearing took place in public in the Human Rights Building, Strasbourg, on 25 January 2012 (Rule 59 § 3).

There appeared before the Court:

- (a) *for the Government of the Republic of Moldova*  
 Mr V. GROSU,  
 Mr L. APOSTOL,  
Agent,  
Adviser;
- (b) *for the Government of the Russian Federation*  
 Mr G. MATYUSHKIN,  
 Ms O. SIROTKINA,  
 Ms I. KORIEVA,  
 Ms A. DZUTSEVA,  
 Mr N. FOMIN,  
 Ms M. MOLODTSOVA,  
 Ms V. UTKINA,  
 Mr A. MAKHNEV,  
Agent,  
Advisers;
- (c) *for the applicants*  
 Mr P. HUGHES,  
 Ms H. DUFFY,  
 Mr A. POSTICA,  
Counsel,

Mr I. MANOLE,  
Mr P. POSTICA,

*Advisers.*

The Court heard addresses by Mr Hughes, Mr A. Postica, Mr Grosu and Mr Matyushkin.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. The historical background

8. The country which subsequently became the Republic of Moldova was created as the Moldavian Soviet Socialist Republic on 2 August 1940 from a part of Bessarabia and a strip of land on the eastern bank of the Dniester (see further *Tănase v. Moldova* [GC], no. 7/08, §§ 11-17, ECHR 2010-...). This eastern region, now known as Transdnistria, had since 1924, together with a number of territories which are now part of Ukraine, been part of the Moldavian Autonomous Soviet Socialist Republic. The population of Transdnistria was originally composed principally of Ukrainians and Moldovans/Romanians, but from the 1920s onwards it was subject to significant immigration by industrial workers from elsewhere in the Soviet Union, particularly Russians and Ukrainians. In a census organised by the Soviet Union in 1989, the population of Transdnistria was assessed at 679,000, composed ethnically and linguistically of 40% Moldovan, 28% Ukrainian, 24% Russian and 8% others.

9. According to the 1978 Constitution of the Moldavian Soviet Socialist Republic, there were two official languages: Russian and “Moldavian” (Moldovan/Romanian written with the Cyrillic alphabet).

10. In August and September 1989 the Latin alphabet was reintroduced in Moldova for written Moldovan/Romanian, which became the first official language.

11. On 23 June 1990 Moldova proclaimed its sovereignty; on 23 May 1991 it changed its name to the Republic of Moldova; and on 27 August 1991 the Moldovan parliament adopted the Declaration of Independence of the Republic of Moldova, whose territory included Transdnistria.

#### B. The Transdnistrian conflict

12. The facts concerning the armed conflict of 1991-1992 and the period up to late 2003 are set out in more detail in *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 28-183, ECHR 2004-VII and only a summary of the key events is provided here for ease of reference. The Court notes that in their observations the Russian Government submitted that the facts concerning the armed conflict were not relevant to the issues arising in present case.

13. From 1989 onwards, a movement of resistance to Moldovan independence had been forming in Transdnistria. On 2 September 1990 Transdnistrian separatists announced the creation of the “Moldavian Republic of Transdnistria” (the “MRT”). On 25 August 1991 the “Supreme Council of the MRT” adopted the “declaration of independence” of the “MRT”. On 1 December 1991 a “presidential election”, declared illegal by the Moldovan authorities, was organised in the Transdnistrian provinces and Mr Igor Smirnov claimed to have been elected “President of the MRT”. To date, the “MRT” has not been recognised by the international community.

14. At the time of Moldova’s declaration of independence, it did not have its own army. The USSR’s 14th Army, whose headquarters had been in Chişinău since 1956, remained on Moldovan territory, although from 1990 onwards equipment and personnel began to be withdrawn. In 1991 the 14<sup>th</sup> Army in Moldova was composed of several thousand soldiers, infantry units, artillery (notably an anti-aircraft missile system), armoured vehicles and aircraft (including planes and strike helicopters). It had a number of ammunition stores, including one of the largest in Europe at Colbaşna in Transdnistria.

15. By Decree no. 234 of 14 November 1991 the President of Moldova 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. This decree was not given effect within Transdnistria.

16. By a decree dated 5 December 1991, Mr Smirnov decided to place the military units of the 14th Army deployed in Transdnistria under the command of “the National Defence and Security Department of the Moldavian

Republic of Transdniestria'. Mr Smirnov appointed the Commander of the 14th Army, Lieutenant-General Iakovlev, as head of the "TRM" "National Defence and Security Department". In December 1991 Lieutenant-General Iakovlev was arrested by the Moldovan authorities, who accused him of helping the Transdniestrian separatists to arm themselves by using the weapon stocks of the 14th Army. However, he was subsequently released following the intercession of the Government of the Russian Federation.

17. 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.

18. On 6 December 1991, in an appeal to the international community and the United Nations Security Council, the Moldovan Government protested against the occupation, on 3 December 1991, of the Moldovan towns of Grigoriopol, Dubăsari, Slobozia, Tiraspol and Ribnița, situated on the left bank of the Dniester, by the 14th Army under the command of Lieutenant-General Iakovlev. They accused the authorities of the USSR, particularly the Ministry of Defence, of having prompted these acts. The soldiers of the 14th Army were accused of distributing military equipment to the Transdniestrian separatists and organising the separatists into military detachments which were terrorising the civilian population.

19. In 1991-92 a number of 14th Army military units joined the Transdniestrian separatists. In the *Ilașcu* judgment the Court found it established beyond reasonable doubt that Transdniestrian separatists were able, with the assistance of 14th Army personnel, to arm themselves with weapons taken from the stores of the 14th Army stationed in Transdniestria. In addition, large numbers of Russian nationals from outside the region, particularly Cossacks, went to Transdniestria to fight with the separatists against the Moldovan forces. Given the support provided to the separatists by the troops of the 14th Army and the massive transfer to them of arms and ammunition from the 14th Army's stores, the Moldovan army was in a position of inferiority that prevented it from regaining control of Transdniestria. On 1 April 1992 the President of the Russian Federation, Mr Boris Yeltsin, officially transferred the 14th Army to Russian command, and it thereafter became the "Russian Operational Group in the Transdniestrian region of Moldova" or "ROG". On 2 April 1992 General Netkachev, the new Commander of the ROG 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. In May the ROG launched attacks against the Moldovan forces, driving them out of some villages from the left bank of the Dniester. In June the ROG intervened officially in favour of the separatists who were losing the city of Tighina, driving out the Moldovan forces.

### C. The ceasefire agreement, the 1997 Memorandum and the Istanbul Commitments

20. On 21 July 1992 the President of the Republic of Moldova, Mr Mircea Snegur, and Mr Yeltsin signed an agreement on the principles for the friendly settlement of the armed conflict in the Transdniestrian region of the Republic of Moldova ("the ceasefire agreement").

21. 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). Under Article 2 of the agreement, a Joint Control Commission ("the JCC") was set up, composed of representatives of Moldova, the Russian Federation and Transdniestria, with its headquarters in Tighina. The agreement also provided for a peacekeeping force charged with ensuring observance of the ceasefire and security arrangements, composed of five Russian battalions, three Moldovan battalions and two Transdniestrian battalions under the orders of a joint military command structure which was itself subordinate to the JCC. 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 Russian troops 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. 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).

22. On 29 July 1994 Moldova adopted a new Constitution. It provided, *inter alia*, that Moldova was neutral, that it prohibited the stationing in its territory of troops belonging to other States and that a form of autonomy might be granted to regions which included some areas on the left bank of the Dniester. According to Article 13



of the Constitution, the national language was Moldovan, to be written using the Latin alphabet.

23. On a number of occasions from 1995 onwards the Moldovan authorities complained that ROG army personnel and the Russian contingent of the JCC's peace-keeping force had infringed the principle of neutrality set out in the ceasefire agreement and that, *inter alia*, Transdnistrians had been able to acquire further military equipment and assistance from the ROG. These allegations were firmly denied by the Russian authorities. In addition, the Moldovan delegation to the JCC alleged that the Transdnistrians had created new military posts and customs checkpoints within the security zone, in breach of the ceasefire agreement. In the *Ilaşcu* judgment the Court found it established, by the evidence contained in the JCC's official documents, that in various areas of Transdnistria under the control of the Russian peacekeeping forces, such as Tighina, the Transdnistrian separatist forces were breaching the ceasefire agreement.

24. On 8 May 1997 in Moscow, Mr Petru 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 Transdnistria ("the 1997 Memorandum"). Under the terms of the 1997 Memorandum, decisions concerning Transdnistria had to be agreed by both sides, powers had to be shared and delegated and guarantees had to be secured reciprocally. Transdnistria had to be allowed to 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. Transdnistria would have the right unilaterally to establish and maintain international contacts in economic, scientific, technical, cultural and other fields, to be determined by mutual agreement. The parties undertook to settle conflicts through negotiation, with the assistance where necessary of the Russian Federation and Ukraine, as guarantors of compliance with the agreements reached, and of the Organisation for Security and Cooperation in Europe (OSCE) and the Commonwealth of Independent States (CIS). The 1997 Memorandum was countersigned by the representatives of the guarantor States, namely Mr Yeltsin for the Russian Federation and Mr Leonid Kuchma for Ukraine, and by Mr Helveg Petersen, the President of the OSCE.

25. In November 1999 the OSCE held its sixth summit at Istanbul. During the summit, 54 Member States signed the Charter for European Security and the Istanbul Summit Declaration and 30 Member States, including Moldova and Russia, signed the Agreement on the Adaptation of the Treaty on Conventional Armed Forces in Europe ("the adapted CFE treaty"). The adapted CFE treaty set out, *inter alia*, the principle that foreign troops should not be stationed in Moldovan territory without Moldovan consent. Russia's agreement to withdraw from Transdnistria (one of the "Istanbul Commitments") was set out in an Annex to the adapted CFE Final Act. In addition, the Istanbul Summit Declaration, at paragraph 19, recorded *inter alia* the commitment of the Russian Federation to withdraw its forces from Transdnistria by the end of 2002:

"19. Recalling the decisions of the Budapest and Lisbon Summits and Oslo Ministerial Meeting, we reiterate our expectation of an early, orderly and complete withdrawal of Russian troops from Moldova. In this context, we welcome the recent progress achieved in the removal and destruction of the Russian military equipment stockpiled in the Trans-Dniestrian region of Moldova and the completion of the destruction of nontransportable ammunition.

We welcome the commitment by the Russian Federation to complete withdrawal of the Russian forces from the territory of Moldova by the end of 2002. We also welcome the willingness of the Republic of Moldova and of the OSCE to facilitate this process, within their respective abilities, by the agreed deadline.

We recall that an international assessment mission is ready to be dispatched without delay to explore removal and destruction of Russian ammunition and armaments. With the purpose of securing the process of withdrawal and destruction, we will instruct the Permanent Council to consider the expansion of the mandate of the OSCE Mission to Moldova in terms of ensuring transparency of this process and co-ordination of financial and technical assistance offered to facilitate withdrawal and destruction. Furthermore, we agree to consider the establishment of a fund for voluntary international financial assistance to be administered by the OSCE."

In 2002, during an OSCE Ministerial Conference in Lisbon, Russia was granted a one-year extension for the removal of troops, up until the end of December 2003.

26. Russia did not comply with the commitments given at the OSCE Istanbul Summit and Lisbon Ministerial Conference to withdraw militarily from Transdniestria before the end of 2003. At the OSCE Ministerial Council in December 2003, it was impossible to reach a common position on Transdniestria, and the published statement recorded that:

“Most Ministers noted the efforts made by the Russian Federation to fulfil the commitments undertaken at the OSCE Istanbul Summit in 1999 to complete the withdrawal of Russian forces from the territory of Moldova. They noted that concrete progress was achieved in 2003 on the withdrawal/disposal of some ammunition and other military equipment belonging to the Russian Federation. They appreciated the efforts of all participating States of the OSCE that have contributed to the Voluntary Fund established to support this effort. They were, however, deeply concerned that the withdrawal of the Russian forces will not be completed by 31 December 2003. They stressed the need for the fulfilment of this commitment without further delay.”

The Member States of the North Atlantic Treaty Organisation (NATO) have refused to ratify the adapted CFE until Russia has complied with the Istanbul Commitments.

#### **D. The “Kozak Memorandum”**

27. In 2001, the Communist Party were successful in elections and became the governing Party in Moldova. The new President of Moldova, Mr Vladimir Voronin, entered into direct negotiation with Russia over the future of Transdniestria. In November 2003, the Russian Federation put forward a settlement proposal, the “Memorandum on the Basic Principles of the State Structure of the United State” (referred to as the “Kozak Memorandum”, after the Russian politician, Mr Dimitry Kozak, who worked on it). The Kozak Memorandum proposed a new federal structure for Moldova, under which the authorities of the “MRT” would have had a substantial degree of autonomy and guaranteed representation in the new “federal legislature”. The Kozak Memorandum included transitional provisions under which, until 2015, a three-quarters majority in a newly created legislative second chamber, composed of four representatives from Gagauzia, nine from Transdniestria and 13 from the new federal legislature’s first chamber, would have been required to confirm federal organic laws. This would have given the “MRT” representatives in the second chamber an effective veto over any legislation affecting all of Moldova until 2015. On 25 November 2003, having previously indicated his willingness to accept these proposals, Mr Voronin decided not to sign the Kozak Memorandum.

#### **E. Enhanced border and customs controls**

28. In December 2005, a European Union Border Assistance Mission was established to help combat illegal trade between Ukraine and Moldova. In March 2006 Ukraine and Moldova began implementing a 2003 customs agreement under which Transdniestrian companies engaged in cross-border trade had to register in Chişinău in order to be issued documents indicating the goods’ country of origin, in accordance with World Trade Organisation protocols. Ukraine undertook to refuse to permit goods without such export documents to pass across its border.

29. In what was seen as a response to these new customs measures, Transdniestrian representatives refused to continue with the 5+2 talks. Furthermore, in February and March 2005, “in response to the course of action taken by the Moldovan Government aimed at worsening the situation around Transdniestria”, the Russian Duma adopted resolutions asking the Russian Government to introduce an import ban on Moldovan alcohol and tobacco products; to export energy to Moldova (except Transdniestria) at international rates; and to require visas for Moldovan nationals visiting Russia, except residents of Transdniestria.

30. In April 2005 the Russian authorities banned imports of meat products, fruits and vegetables from Moldova, on the ground that domestic hygiene standards had not been complied with in the production of these products. Between March 2006 and November 2007 a ban was placed on importation of Moldovan wine. The International Monetary Fund found that these measures had a combined negative effect on Moldova’s economic growth of 2–3% annually in 2006–2007.

31. In January 2005 Mr Viktor Yushchenko was elected President in Ukraine. In May 2005 the Ukrainian Government introduced a new proposal for the resolution of the Transdniestrian conflict, “Towards a Settlement through Democratization” (summarized in the report of the Parliamentary Assembly of the Council of Europe:

see paragraph 64 below). In July 2005, citing the Ukrainian plan, the Moldovan parliament adopted a law, “On the Basic Principles of a Special Legal Status of Transdnistria”. Formal negotiations resumed in October 2005, with the European Union (“EU”) and the United States of America participating as observers (referred to as “the 5+2 talks”).

#### **F. Russian military equipment and personnel in Transdnistria**

32. On 20 March 1998 an agreement concerning the military assets of the ROG was signed in Odessa by Mr Viktor Chernomyrdin, the Prime Minister 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 explosion or other mechanical process, was to be completed by 31 December 2001. The withdrawal (transfer and decommissioning) of surplus ammunition and other Russian military equipment and personnel not forming part of the peacekeeping forces was planned to take place by 31 December 2002 at the latest. A number of trainloads of Russian military equipment left Transdnistria between 1999 and 2002.

33. In October 2001 the Russian Federation and the “MRT” signed a further 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 Transdnistria, the “MRT” was granted a reduction of one hundred million United States dollars (USD) in its debt for gas imported from the Russian Federation, and the transfer to it by the Russian Army of part of its equipment capable of being put to civilian use.

34. According to an OSCE press release, 29 railway wagons carrying bridge-building equipment and field kitchens were removed from Colbaşna by the Russian authorities on 24 December 2002. The same press release quoted a declaration by the Commander of the ROG, General Boris Sergeev, to the effect that the latest withdrawals had been made possible by an agreement with the Transdnistrians under which the “MRT” was to receive half of the non-military equipment and supplies withdrawn. General Sergeev cited the example of the withdrawal, on 16 December 2002, of 77 lorries, which had been followed by the transfer of 77 Russian military lorries to the Transdnistrians.

35. According to the evidence heard by the Court in the *Ilaşcu* case, in 2003 at least 200,000 tonnes of Russian arms and ammunition remained in Transdnistria, mainly at Colbaşna, together with 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, nine helicopters and 1,648 vehicles of various kinds (see the *Ilaşcu* judgment, cited above, § 131). In 2003, the OSCE observed and verified the withdrawal from Transdnistria of 11 trains of Russian military equipment and 31 trains loaded with more than 15,000 tons of ammunition. However, the following year, in 2004, the OSCE reported that only one train containing approximately 1,000 tons of ammunition had been removed.

36. Since 2004 there have been no verified withdrawals of any Russian arms or equipment from Transdnistria. The Court found in *Ilaşcu* that, at the end of 2004, approximately 21,000 metric tons of ammunition remained, together with more than 40,000 small arms and light weapons and approximately ten trainloads of miscellaneous military equipment. In November 2006, a delegation from the OSCE were allowed access to the ammunition stores and reported that over 21,000 tons of ammunition remained stored there (see paragraph 68 below). The Commander of the ROG reported in May 2005 that surplus stocks of 40,000 small arms and light weapons had been destroyed, but no independent observer was allowed access in order to verify these claims. In their observations in the present case, the Russian Government submitted that most of the weapons, ammunition and military property were removed between 1991 and 2003 and that all that remained in the warehouses were shells, hand grenades, mortar bombs and small-arms ammunition.

37. The parties to the present case agreed that approximately 1,000 Russian servicemen were stationed in Transdnistria to guard the arms store. In addition, the parties agreed that there were approximately 1,125 Russian soldiers stationed in the Security Area as part of the internationally agreed peace-keeping force. The Security Area was 225 km long and 12-20 km wide.

#### **G. Alleged Russian economic and political support for the “MRT”**

38. Again, it should be noted that the Russian Government contended that events in Transdnistria prior to the schools crisis were not relevant to the issues in the present case.

39. In the *Ilaşcu* judgment the Court found it uncontested that the arms industry, which was one of the pillars of the Transdniestrian economy, was directly supported by Russian firms including the Rosvoorouzhenie (Росвооружение) and Elektrommash companies. The Russian firm Iterra had bought the largest undertaking in Transdniestria, the Râbnîța engineering works, despite the opposition of the Moldovan authorities. In addition, the Russian Army constituted a major employer and purchaser of supplies in Transdniestria.

40. According to the applicants in the present case, Russia accounted for 18% of the “MRT”’s exports and 43.7% of its imports, primarily energy. The “MRT” paid for less than 5% of the gas it had consumed. For example, in 2011 Transdniestria consumed USD 505 million worth of gas, but paid for only 4% (USD 20 million). The Russian Government explained that since the “MRT” was not recognised as a separate entity under international law, it could not have its own sovereign debts and Russia did not effect separate gas supplies for Moldova and Transdniestria. The bill for supplying gas to Transdniestria was, therefore, attributed to Moldova. The supply of gas to the region was organised through the Russian public corporation Gazprom and the joint stock company Moldovagaz, which was owned jointly by Moldova and the “MRT”. The debt owed by Moldovagaz to Russia exceeded USD 1.8 billion, of which USD 1.5 billion related to gas consumed in Transdniestria. Gazprom could not simply refuse to supply gas to the region, since it needed pipelines through Moldova to supply the Balkan States.

41. The applicants further alleged that Russia provided direct humanitarian aid to Transdniestria, mostly in the form of contributions to old-age pensions. The applicants claimed that official Russian sources stated that between 2007 and 2010 the total volume of financial assistance to Transdniestria was USD 55 million. The Moldovan Government submitted that in 2011 the “MRT” received financial aid from Russia totalling USD 20.64 million. The Russian Government submitted that the amount of aid given to Russian citizens living in the region for humanitarian purposes, such as the payment of pensions and assistance with catering in schools, prisons and hospitals, was fully transparent, and could be compared with humanitarian aid provided by the European Union. As well as providing aid to the population living in Transdniestria, Russia provided aid to those living in other parts of Moldova.

42. In addition, the applicants claimed that some 120,000 individuals living in Transdniestria had been granted Russian citizenship. These included many of the “MRT” leaders. The Court considers that this should be put in the context of the findings of a census carried out in 2004 by the “MRT Government”, which found, in the area under their control, a population of 555,347 people, approximately 32% of whom came from the Moldovan community, 30% of whom were Russian and 29% were Ukrainian, with small percentages of other national and ethnic groups.

#### **H. The schools crisis and the facts concerning the applicants’ cases**

43. According to Article 12 of the MRT “Constitution”, the official languages within the MRT are “Moldavian”, Russian and Ukrainian. Article 6 of the “MRT Law on languages”, which was adopted on 8 September 1992, states that, for all purposes, “Moldavian” must be written with the Cyrillic alphabet. The “law” provides further that use of the Latin alphabet may amount to an offence and Article 200-3 of the “MRT Code of Administrative Offences”, adopted on 19 July 2002, states that:

“Failure by persons holding public office and other persons in the executive and State administration, in public associations, as well as in other organisations, regardless of their legal status and form of ownership, and in other entities, situated on the territory of the MRT, to observe MRT’s legislation on the functioning of languages on the territory of MRT ... entails liability in the form of a fine which may amount to 50 (fifty) minimal salaries.”

44. On 18 August 1994 the “MRT” authorities forbade the use of the Latin script in schools. By a decision of 21 May 1999, the “MRT” ordered that all schools belonging to “foreign States” and functioning on “its” territory had to register with the “MRT” authorities, failing which they would not be recognised and would be deprived of their rights.

45. On 14 July 2004 the “MRT” authorities began taking steps to close down all schools using the Latin script. At the date of adoption of the admissibility decision, there remained only six schools in Transdniestria using the Moldovan/Romanian language and the Latin script.

1. *Catan and Others (application no. 43370/04)*

46. The applicants are 18 children who were studying at Evrica School in Rîbnița during the period in question and 13 parents (see the annex to this judgment).

47. From 1997 Evrica School used premises situated on Gagarin Street built with Moldovan public funds. The school was registered with the Moldovan Ministry of Education and was using the Latin script and a curriculum approved by that Ministry.

48. Following the “MRT decision” of 21 May 1999 (see paragraph 44 above), Evrika School refused to register, since registration would require it to use the Cyrillic script and the curriculum devised by the “MRT” regime. On 26 February 2004 the building used by the school was transferred by the “MRT” authorities to the “Rîbnița Department of Education”. In July 2004, following a number of closures of Latin-script schools within the “MRT”, the pupils, parents and teachers of Evrika School took it upon themselves to guard the school day and night. On 29 July 2004 Transdnestrian police stormed the school and evicted the women and children who were inside it. Over the following days local police and officials from the “Rîbnița Department of Education” visited the parents of children registered with the school, asking them to withdraw their children from the school and to put them in a school registered with the “MRT” regime. The parents were allegedly told that if they did not do so, they would be fired from their jobs and would even be deprived of their parental rights. As a result of this pressure, many parents withdrew their children and transferred them to another school.

49. On 29 September 2004, and following the intervention of the OSCE Mission to Moldova, the school was able to register with the “Tiraspol Chamber of Registration” as a foreign institution of private education, but could not resume its activity for lack of premises. On 2 October 2004 the “MRT” regime allowed the school to reopen in another building, which had previously housed a kindergarten. The building is rented from the “MRT” and the Moldovan Government has paid for it to be refurbished. The school’s repeated requests to be allowed to return to the building situated on Gagarin Street, which is bigger and more appropriate, were rejected on the ground that another school was now using that building. The applicants allege that the rented premises are inappropriate for a secondary school, in that the lighting, corridors and classrooms are not fully adapted and there are no laboratories or sports facilities. The school is administered by the Moldovan Ministry of Education, which pays the teachers’ salaries and provides educational material. It uses the Latin alphabet and a Moldovan curriculum.

50. The applicants filed a number of petitions and complaints with the authorities of the Russian Federation. The Ministry of Foreign Affairs of the Russian Federation replied by making public general statements about the escalation of the conflict around the Moldovan/Romanian-language schools in Transdnestria. Stating that the underlying problem was the ongoing conflict between Moldova and the “MRT”, the Russian Ministry of Foreign Affairs drew the attention of Moldova and the “MRT” to the fact that the use of force to solve the conflict could endanger security in the region and urged them to use various types of negotiations in order to solve the conflict. The applicants also complained about their situation to the Moldovan authorities.

51. The school became the target of a systematic campaign of vandalism, including broken windows. The applicants allege that this campaign started in 2004; the Moldovan Government claim that it started in the autumn of 2007. On 10 April 2008 the Moldovan Ministry of Reintegration asked the Special Representative of the Secretary General of the Council of Europe to intervene to try and bring an end to the attacks. The applicants also allege that the children were intimidated by the local Russian-speaking population and were afraid to speak Moldovan outside the school.

52. On 16 July 2008 the Moldovan Ministry of Reintegration sought the assistance of the OSCE Mission to Moldova in transporting educational and construction material and money for teachers’ salaries across the “border” with the “MRT”.

53. There were 683 pupils at the school during the academic year 2002-2003. During the year 2008-2009 that number had fallen to 345.

2. *Caldare and Others (application no. 8252/05)*

54. The applicants are 26 children who were studying at Alexandru cel Bun School in Tighina, Bender during the period in question and 17 parents, (see the annex). The school had been using premises situated on

Kosmodemianskaia Street built with Moldovan public funds and rented for it by the Moldovan authorities. The school was registered with the Moldovan Ministry of Education and was therefore using the Latin script and a curriculum approved by the Ministry of Education.

55. On 4 June 2004, the “MRT Ministry for Education” warned the school that it would be closed down if it did not register with them, and that disciplinary measures would be taken against the head teacher. On 18 July 2004 the school was disconnected from electricity and water supplies and on 19 July 2004 the school administration was notified that it could no longer use the premises on Kosmodemianskaia Street. However, teachers, pupils and parents occupied the building, refusing to leave. Transdnestrian police tried unsuccessfully to reoccupy the premises, and eventually surrendered the building. They withdrew on 28 July 2004. On 20 September 2004, and following various negotiations with international observers, including representatives of the Council of Europe, the school was reconnected to water and electricity.

56. The “MRT” regime allowed the school to reopen in September 2004, but in different premises, rented from the “MRT” authorities. The school is currently using three buildings, located in separate districts of the town. The main building has no cafeteria, science or sports facilities and cannot be reached by public transport. The Moldovan Government provided the school with a bus and computers. They also paid for the refurbishment of the sanitary facilities in one of the buildings.

57. The applicants have filed a number of petitions and complaints with the Russian and Moldovan authorities.

58. There were 1751 pupils at the school in 2002-2003 and 901 in 2008-2009.

### 3. *Cercavschi and Others (application no. 18454/06)*

59. The applicants are 46 children who were studying at the Ștefan cel Mare School in Grigoriopol during the relevant period and 50 parents (see the attached annex).

60. In 1996, at the request of the parents and their children, the school, which was using a Cyrillic alphabet curriculum, filed a number of petitions with the “MRT” regime requesting to be allowed to use the Latin script. As a result, between 1996 and 2002, the “MRT” orchestrated a campaign of hostile press reports, intimidation and threats by security forces. These measures reached a climax on 22 August 2002 when Transdnestrian police stormed the school and evicted the teachers, the pupils and their parents who were inside it. On 28 August 2002 the President of the Pupils Committee was arrested and subsequently sentenced to fifteen days’ administrative imprisonment. Following these incidents, 300 pupils left the school.

61. Faced with the occupation of the building by the “MRT” regime, the Moldovan Ministry of Education decided that the school should be transferred temporarily to a building in Doroțcaia, a village about 20 kilometres from Grigoriopol and which is under Moldovan control. Each day, pupils and teachers were taken to Doroțcaia in buses provided by the Moldovan Government. They were subjected to bag searches and identity checks by “MRT” officials and also, allegedly, acts of harassment such as spitting and verbal abuse.

62. Representatives of the school filed a number of petitions and complained about this situation to the OSCE, the United Nations Organisation, as well as to the Russian and Moldovan authorities. The Russian authorities replied by urging both Moldova and “MRT” to use various types of negotiations in order to solve the conflict. The Moldovan authorities informed the applicants that they could do nothing further to help.

63. There were 709 pupils at the school in 2000-2001 and 169 in 2008-2009.

## II. REPORTS OF INTER-GOVERNMENTAL AND NON-GOVERNMENTAL ORGANISATIONS

### A. **The Parliamentary Assembly of the Council of Europe**

64. On 16 September 2005 the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) of the Parliamentary Assembly of the Council of Europe (PACE) issued a report on “The functioning of the democratic Institutions in Moldova”. The section devoted to Transdnestria reads as follows:

“31. Major new developments have occurred during the last months which the Assembly has

to follow very closely and accompany in the best possible way.

32. Following intense diplomatic contacts between Moldova and Ukraine, at the GUAM Summit in Chisinau on 22 April the Ukrainian President Yushchenko announced a 7-point initiative to settle the Transnistrian issue. ...

The main thrust of this new plan is to achieve a long-lasting solution through the democratisation of Transnistria. This would entail:

- the creation of conditions for the development of democracy, civil society, and a multi-party system in Transnistria;

- holding of free and democratic elections to the Transnistrian Supreme Soviet, monitored by the European Union, the OSCE, the Council of Europe, Russia, United States, and other democratic countries including Ukraine;

- the transformation of the current format of peacekeeping operation into an international mission of military and civil observers under the aegis of the OSCE and the expansion of the number of Ukrainian military observers in the region;

- admission by Transnistrian authorities of an international monitoring mission, to include Ukrainian experts, to military-industrial enterprises in the Transnistrian region;

- a short-term OSCE monitoring mission in Ukraine to verify the movement of goods and persons through the Ukrainian-Moldovan border.

33. The full text of the Ukrainian plan was presented on 16-17 May at a meeting of the representatives of the mediators and Moldova and Transnistria in Vinnitsa, Ukraine after the Ukrainian Secretary of Security Council Pyotr Poroshenko and Moldavian presidential aide Mark Tkachuk spent almost a month doing ‘shuttle diplomacy’.

34. The reactions were varied but cautiously positive.

35. On 10 June the Moldovan Parliament adopted a ‘Declaration on the Ukrainian initiative of settlement of the Transnistrian conflict’ as well as two appeals, on demilitarisation and on promoting the criteria of democratisation of the Transnistrian region of the Republic of Moldova ....

36. The declaration welcomed the initiative of President Yushchenko, hoping that it would become ‘a major factor in the achievement by Moldova of its territorial and civil unity’. The parliament however regretted that the Ukrainian initiative did not reflect some important principles of settlement, in the first place the withdrawal of Russian troops; demilitarisation; the principles and conditions of the region’s democratisation and the establishing of a transparent and legal control over the Transnistrian segment of the Moldovan-Ukrainian border. It called for additional efforts by the international community and Ukraine in this respect.

37. The parliament also criticised a number of provisions which might ‘infringe upon the sovereignty of the Republic of Moldova,’ such as the co-participation of Transnistria in the conduct of foreign policy of the Republic of Moldova and the proposal to create the so-called conciliation committee. The Parliament insisted on resolving the conflict within the framework of the Moldovan Constitution through dialogue with a new, democratically elected, Transnistrian leadership. There are thus a number of divergences between the Ukrainian initiative and the approach to implementing it chosen by Moldova.

38. The mediators in the Transnistrian conflict (the OSCE, Russia and Ukraine) stated that the plan provided a concrete impetus toward achieving a settlement. At all of their latest meetings they called for resuming direct, continuing dialogue on resolution of the conflict.

39. More delicate is the position of Russia. It is clear that through its military and economic presence and thanks to the strong cultural and linguistic links with Transnistria, Russia would like

to retain its strong influence over the territory. The press recently reported the existence of an 'Action plan of retaining Russian influence in the Moldova Republic,' details of which are kept secret. Russia is still strongly attached to the so-called 'Kozak Memorandum' of 2003, which proposed to Moldova a federal solution. Moldova had nearly accepted the plan; it refused to sign it at the last moment, allegedly under Western influence.

40. Over the last months, there have been several signs of tension. For instance, on 18 February the Russian Federation State Duma adopted with a large majority a resolution requesting from the Russian government a number of economic and other sanctions against Moldova, with the exclusion of Transnistria, if the Moldovan authorities did not change their 'economic blockade of Transdnies-tria.' The sanctions included a ban on imports of Moldovan alcohol and tobacco, world market prices for exports of Russian natural gas to Moldova and visas for Moldovans entering Russia.

41. Both appeals adopted by the Moldovan parliament called on the Council of Europe for support and, concerning the democratisation of Transnistria, to engage actively in the process. During our visit in Chisinau our interlocutors repeatedly stressed the importance they attached to the expertise and experience of our organisation in this respect. The documents adopted by the Moldovan Parliament were officially submitted by its Speaker to the Monitoring Committee 'for examination in the framework of the Moldova's monitoring exercise' and for 'analysis, comments and recommendations, as well as ideas of the Parliamentary Assembly that could contribute to the democratisation of the Transnistrian region and final settlement of the conflict'.

42. At the first sight, the plan should be followed closely by the Council of Europe, as the leading organisation in the field of democracy, human rights and rule of law. The Committee has therefore entrusted us with the responsibility of visiting Kiev, Moscow, Bucharest and Brussels in order to meet the main figures responsible for the Ukrainian plan and get acquainted with all its details. On the basis of this information we will make specific proposals for the Assembly to play an effective part in the plan's progress.

43. A number of questions remain about the implementation of the Ukrainian plan and the conditions set by the Moldovan parliament. However, against the background of all the failed diplomatic attempts, it has one strong advantage. It combines diplomatic efforts with specific measures for democratisation, in Transnistria but also in Moldova, which must serve as an example. The initiative also comes at the right moment, as it coincides with a major strive for democratisation and European integration in the entire region.

44. Not only Moldova, whose territorial integrity and sovereignty have been violated, but Europe as a whole can no longer afford to have this 'black hole' on its territory. Transnistria is a centre of all kinds of illicit trade and, in the first place arms trafficking and all forms of smuggling. Political life continues to be dominated by the secret police; fundamental freedom and liberties are curtailed.

45. One of the most difficult elements appears to be the possibility to organise democratic elections in Transnistria. For this the region needs to have freely functioning political parties, media and civil society. The 27 March local elections in Transnistria (to elect village, settlement, city and district councils, as well as the chairmen of village and settlement councils) showed that real strong opposition is still missing. These elections by the way were considered as a test for the scheduled December 2005 elections for the Transnistrian Supreme Soviet.

46. However, there are some interesting developments, especially concerning a group of Supreme Soviet members led by the Deputy Speaker Evgeny Shevchuk.<sup>1</sup> On 29 April this group initiated ambitious draft changes to the Transnistrian 'constitution' aiming at reinforcing this 'parliament's' role vis-à-vis the 'president' and the executive – for instance by granting it the right to a no-confidence vote on 'ministers' and other officials appointed by the 'president,' or the right to control the work and the spending of the executive. Some more modest changes, as well as a draft law on local administration, stipulating that the chairmen of raion [district] and city councils have



to be elected by the councils by secret vote, were adopted on 18 May at first reading. Mr Shevchuk is also promoting a legislative initiative to transform the regional official 'TV PMR' into a public broadcasting institution.

47. On 22 June the Supreme Soviet recommended that 'president' Smirnov dismiss the 'minister' of justice Victor Balala. Balala, who is one of the closest allies of the 'president,' recently decided to transfer registration functions from his 'ministry' to a quasi-commercial 'chamber of experts.'

48. On 22 July the Moldovan parliament approved in two readings the Law on the Main Provisions of a Special Legal Status for Populated Areas on the Left Bank of Dniestr (Transnistria). The law established an autonomous territorial unit which is an inseparable part of Moldova and – within the plenary powers established under the Constitution and legislation of Moldova – decides on questions within its jurisdiction. The law stipulates that populated localities on the left bank of the Dniester may join Transnistria or secede from it on the basis of local referenda and in conformity with the Moldovan legislation.”

65. In the light of this report, PACE adopted a resolution in which it resolved, *inter alia*, that:

“10. The Assembly welcomes the resumption of negotiations following Ukraine’s optimistic initiative of settling the Transnistrian conflict by giving priority to democratisation. It hopes that the current five-member format, involving Moldova, the Transnistrian region, Russia, Ukraine and the OSCE, will be extended to include also the Council of Europe. It emphasises the need for effective supervision of the border between Moldova and Ukraine, arms stocks and the production of armaments factories. Given their accumulated expertise, the Assembly wishes its rapporteurs to be associated with all these developments.

11. Any settlement of the Transnistrian conflict must be based on the inviolable principle of full respect for Moldova’s territorial integrity and sovereignty. In accordance with the rule of law, any solution must accord with the popular will as expressed in fully free and democratic elections run by internationally recognised authorities.”

#### **B. The Organisation for Security and Co-operation in Europe (OSCE)**

66. In its Annual Report for 2004, the OSCE referred to events in Transdniestria as follows:

“...The most disruptive development, however, was the Transdniestrian decision in mid-July to close the Moldovan schools in Transdniestrian territory teaching in Latin script. In response, the Moldovan side suspended its participation in the five-sided political settlement negotiations.

Together with co-mediators from the Russian Federation and Ukraine, the Mission went to extraordinary lengths from mid-July well into autumn to ameliorate the school crisis and to find and implement a solution. The Mission also sought to defuse tensions between the sides concerning freedom of movement, farmlands, and railways.”

In 2004 the OSCE also observed that:

“Only one train containing approximately 1,000 tons of ammunition was removed from the Operative Group of Russian Forces depots in Transdniestria in 2004. Approximately 21,000 metric tons of ammunition remain to be removed, together with more than 40,000 small arms and light weapons and approximately ten trainloads of miscellaneous military equipment. The Mission continued to co-ordinate technical and financial assistance to the Russian Federation for these activities.”

67. The 2005 Annual Report stated:

“The Mission concentrated its efforts on restarting the political settlement negotiations, stalled since summer 2004. The mediators from the Russian Federation, Ukraine, and the OSCE held consultations with representatives from Chisinau and Tiraspol in January, May and September. At the May meeting, Ukraine introduced President Victor Yushchenko’s settlement plan, Toward

a Settlement through Democratization. This initiative envisages democratization of the Transdnestrian region through internationally conducted elections to the regional legislative body, along with steps to promote demilitarization, transparency and increased confidence.

In July, the Moldovan Parliament, citing the Ukrainian Plan, adopted a law On the Basic Principles of a Special Legal Status of Transdnestria. During consultations in September in Odessa, Chisinau and Tiraspol agreed to invite the EU and US to participate as observers in the negotiations. Formal negotiations resumed in an enlarged format in October after a 15-month break and continued in December following the OSCE Ministerial Council in Ljubljana. On 15 December, the Presidents of Ukraine and the Russian Federation, Victor Yushchenko and Vladimir Putin, issued a Joint Statement welcoming the resumption of negotiations on the settlement of the Transdnestrian conflict.

In September, Presidents Voronin and Yushchenko jointly requested the OSCE Chairman-in-Office to consider sending an International Assessment Mission (IAM) to analyse democratic conditions in Transdnestria and necessary steps for conducting democratic elections in the region. In parallel, the OSCE Mission conducted technical consultations and analyses on basic requirements for democratic elections in the Transdnestrian region, as proposed in the Yushchenko Plan. At the October negotiating round, the OSCE Chairmanship was asked to continue consultations on the possibility of organizing an IAM to the Transdnestrian region.

Together with military experts from the Russian Federation and Ukraine, the OSCE Mission completed development of a package of proposed confidence- and security-building measures, which were presented by the three mediators in July. The Mission subsequently began consultations on the package with representatives of Chisinau and Tiraspol. The October negotiating round welcomed possible progress on enhancing transparency through a mutual exchange of military data, as envisaged in elements of this package.”

On the question of Russian military withdrawal, the OSCE observed:

“There was no withdrawal of Russian arms and equipment from the Transnistrian region during 2005. Roughly 20,000 metric tons of ammunition remain to be removed. The commander of the Operative Group of Russian Forces reported in May that surplus stocks of 40,000 small arms and light weapons stored by Russian forces in the Transdnestrian region have been destroyed. The OSCE has not been allowed to verify these claims.”

68. In 2006, the OSCE reported as follows:

“The 17 September ‘independence’ referendum and the 10 December ‘presidential’ elections in Transnistria – neither one recognized nor monitored by the OSCE – shaped the political environment of this work ...

To spur on the settlement talks, the Mission drafted in early 2006 documents that suggested: a possible delimitation of competencies between central and regional authorities; a mechanism for monitoring factories in the Transnistrian military-industrial complex; a plan for the exchange of military data; and an assessment mission to evaluate conditions and make recommendations for democratic elections in Transnistria. The Transnistrian side, however, refused to continue negotiations after the March introduction of new customs rules for Transnistrian exports, and thus no progress could be made including on these projects. Attempts to unblock this stalemate through consultations among the mediators (OSCE, Russian Federation and Ukraine) and the observers (European Union and the United States of America) in April, May and November and consultations of the mediators and observers with each of the sides separately in October were to no avail. ...

On 13 November, a group of 30 OSCE Heads of Delegations, along with OSCE Mission members gained access for the first time since March 2004 to the Russian Federation ammunition depot in Colbaşna, near the Moldovan-Ukrainian border in northern Transnistria. There were no withdrawals, however, of Russian ammunition or equipment from Transnistria during 2006, and

more than 21,000 tons of ammunition remain stored in the region ...”

69. The Annual Report for 2007 stated:

“The mediators in the Transnistrian settlement process, the Russian Federation, Ukraine and the OSCE, and the observers, the European Union and the United States, met four times. The mediators and observers met informally with the Moldovan and Transnistrian sides once, in October. All meetings concentrated on finding ways to restart formal settlement negotiations, which have nonetheless failed to resume. ...

The Mission witnessed that there were no withdrawals of Russian ammunition or equipment during 2007. The Voluntary Fund retains sufficient resources to complete the withdrawal tasks.”

70. In 2008, the OSCE observed:

“Moldovan President Vladimir Voronin and Transnistrian leader Igor Smirnov met in April for the first time in seven years and followed up with another meeting on 24 December. Mediators from the OSCE, Russian Federation and Ukraine and observers from the European Union and the United States met five times. Informal meetings of the sides with mediators and observers took place five times. These and additional shuttle diplomacy efforts by the Mission notwithstanding, formal negotiations in the ‘5+2’ format were not resumed. ...

There were no withdrawals of Russian ammunition or equipment from the Transnistrian region during 2008. The Voluntary Fund retains sufficient resources to complete withdrawal tasks.”

### **C. International non-governmental organisations**

71. In its report dated 17 June 2004, ‘Moldova: Regional Tensions over Transdnistria’ (Europe Report no. 157), the International Crisis Group (ICG) found as follows (extract from the Executive Summary):

“Russia’s support for the self-proclaimed and unrecognised Dniestrian Moldovan Republic (DMR) has prevented resolution of the conflict and inhibited Moldova’s progress towards broader integration into European political and economic structures. In its recent and largely unilateral attempts to resolve the Transdnistrian conflict, Russia has demonstrated almost a Cold War mindset. Despite comforting rhetoric regarding Russian-European Union (EU) relations and Russian-U.S. cooperation on conflict resolution and peacekeeping within the Newly Independent States of the former Soviet Union (NIS), old habits appear to die hard. Russia remains reluctant to see the EU, U.S. or the Organisation for Security and Cooperation in Europe (OSCE) play an active role in resolving the conflict because Moldova is still viewed by many in Moscow as a sphere of exclusively Russian geopolitical interest.

It has not been difficult for Russia to exploit Moldova’s political and economic instability for its own interests. Despite having accepted concrete deadlines for withdrawing its troops, Russia has repeatedly back-pedalled while trying to force through a political settlement that would have ensured, through unbalanced constitutional arrangements, continued Russian influence on Moldovan policymaking and prolongation of its military presence in a peacekeeping guise. It has so far been unwilling to use its influence on the DMR [‘MRT’] leadership to promote an approach to conflict resolution that balances the legitimate interests of all parties.

Ukrainian and Moldovan business circles have become adept at using the parallel DMR economy to their own ends, regularly participating in re-export and other illegal practices. Some have used political influence to prevent, delay, and obstruct decisions which could have put pressure on the DMR leadership to compromise. These include abolition of tax and customs regulations favourable to the illegal re-export business, enforcement of effective border and customs control, and collection of customs and taxes at internal ‘borders’.

With backing from Russian, Ukrainian and Moldovan economic elites, the DMR leadership has become more assertive. Recognising that international recognition is unlikely, it has focused on

preserving *de facto* independence through a loose confederation with Moldova. Unfortunately, DMR leaders - taking advantage of contradictions in the tax and customs systems of Moldova and the DMR - continue to draw substantial profits from legal and illegal economic activities including re-exports, smuggling and arms production.

The DMR has become a self-aware actor with its own interests and strategies, possessing a limited scope for independent political manoeuvre but an extensive web of economic and other links across Russia, Moldova, and Ukraine. However, it remains heavily dependent on Russian political and economic support and does not like to put itself in a position where it must act counter to Russian policy. Russian and DMR interests often overlap but in some instances DMR leaders have been able to design and implement strategies to avoid Russian pressure, delay negotiations, obstruct Russian initiatives, and undermine Russian policies by playing up disagreements between the co-mediators and capitalising on alternative sources of external support.

Russia's most recent attempt to enforce a settlement – the Kozak Memorandum in October and November 2003 – has shown that its influence, while pervasive, has clear limits. Russia is unable to push through a settlement without the support of Moldova and the international community, especially key players such as the OSCE, EU, and the U.S. A comprehensive political settlement requires an approach that can bridge the differences between Russia and other key international actors while fairly considering the interests of both the Moldovan government and the DMR.

Despite an understanding that Russia should not be antagonised, the gravitational pull of European integration is strong in Moldova. Recently, even its communist leadership has stressed the need to do more to achieve that goal. The country has rarely been on Western radar screens during the last decade, however, and it will need more demonstrable EU and U.S. backing if it is to resist Russian political and material support for the DMR and Transdniestrian obstruction of the negotiation process. International actors must also help Moldova to secure its own borders against the illicit economic activities which keep Transdniestria afloat and affect its European neighbours as well.

The conflict can only be resolved if the international community uses its influence on Russia bilaterally and within the OSCE. Only then, and with a substantially more determined commitment to political, economic and administrative reform on its own part, will Moldova be able to realise its European aspirations. A comprehensive strategy towards Moldova, Ukraine and Russia within the EU's Wider Europe Policy would be a critical first step."

72. In its report of 17 August 2006, "Moldova's Uncertain Future" (Europe Report no. 175), the ICG observed (extract from the Executive Summary):

"With Romania's expected entry into the European Union in 2007, the EU will share a border with Moldova, a weak state divided by conflict and plagued by corruption and organised crime. Moldova's leadership has declared its desire to join the EU, but its commitment to European values is suspect, and efforts to resolve its dispute with the breakaway region of Transdniestria have failed to end a damaging stalemate that has persisted for fifteen years. Young people have little confidence in the country's future and are leaving at an alarming rate. If Moldova is to become a stable part of the EU's neighbourhood, there will need to be much greater international engagement, not only in conflict resolution but in spurring domestic reforms to help make the country more attractive to its citizens.

Two recent initiatives by the EU and Ukraine gave rise to hopes that the balance of forces in the separatist dispute had changed significantly. An EU Border Assistance Mission (EUBAM) launched in late 2005 has helped curb smuggling along the Transdniestrian segment of the Moldova-Ukraine frontier, a key source of revenue for the authorities in Tiraspol, the Transdniestrian capital. At the same time, Kiev's implementation of a landmark customs regime to assist Moldova in regulating Transdniestrian exports has reduced the ability of businesses in the breakaway region to operate without Moldovan oversight, striking a major psychological blow.

But optimism that these measures would ultimately force Transnistria to make diplomatic concessions appears to have been false. Although EUBAM has had significant success, particularly given its small size and budget, widespread smuggling continues. Nor has the Ukrainian customs regime had a decisive effect on Transnistrian businesses, which remain capable of profitable legal trade as they were in the past. Moreover, domestic political uncertainty has raised questions about whether Kiev will continue to enforce the new regulations.

Russia has increased its support for Transnistria, sending economic aid and taking punitive measures against Moldova, including a crippling ban on wine exports, one of its main revenue sources. Moscow refuses to withdraw troops based in Transnistria since Soviet times whose presence serves to preserve the status quo. With Russian support, the Transnistrian leader, Igor Smirnov, has little incentive to compromise in his drive toward independence. The internationally-mediated negotiations between the two parties are going nowhere, despite the presence since 2005 of the EU and U.S. as observers. Although some understanding had been reached about the level of autonomy in a settlement, Moldova has hardened its position to match Transnistria's intransigence."

73. In its report entitled "Freedom in the World 2009", Freedom House commented, *inter alia*:

"Moldova rejected a Russian-backed federalization plan in November 2003 after it drew public protests. The latest round of formal multilateral talks collapsed in early 2006, and Transnistrian referendum voters in September 2006 overwhelmingly backed a course of independence with the goal of eventually joining Russia, although the legitimacy of the vote was not recognized by Moldova or the international community.

In the absence of active 5+2 negotiations, Voronin pursued bilateral talks with Russia and took a number of steps to bring Moldova's foreign policy into line with the Kremlin's. For much of 2008, he urged Russia to accept a proposal whereby Transnistria would receive substantial autonomy within Moldova, a strong and unitary presence in the Moldovan Parliament, and the right to secede if Moldova were to unite with Romania in the future. Russian property rights would be respected, and Russian troops would be replaced by civilian observers. Voronin defended his separate 'consultations' with Russia by saying that any settlement would be finalized in the 5+2 format.

The Transnistria issue took on an added degree of urgency in August 2008, after Russia fought a brief conflict with Georgia and recognized the independence of two breakaway regions there. Russian officials said they had no plans to recognize the PMR ['MRT'], but warned Moldova not to adopt Georgia's confrontational stance. The Moldovan government in turn rejected any comparison and repeated its commitment to peaceful negotiations. Some experts expressed concerns that Russia could impose a harsh settlement on Moldova in the bilateral talks and then recognize the PMR if the plan were rejected.

Transnistrian president Igor Smirnov's relations with Voronin remained tense throughout the year, as the Moldovan leader effectively negotiated over Smirnov's head and expressed clear frustration with the PMR leadership. The two men met in April for the first time since 2001, then again in December. Days after the April meeting, Romanian president Traian Basescu indirectly raised the prospect of a partition in which Ukraine would absorb Transnistria and Romania would annex Moldova proper, prompting Voronin to accuse him of sabotaging the negotiations. Meanwhile, Russian president Dmitri Medvedev met with Voronin and Smirnov separately during the year ...

#### *Political Rights and Civil Liberties*

Residents of Transnistria cannot elect their leaders democratically, and they are unable to participate freely in Moldovan elections...

Corruption and organized crime are serious problems in Transnistria ...

The media environment is restrictive ...

Religious freedom is restricted ...

Although several thousand students study Moldovan using the Latin script, this practice is restricted. The Moldovan language and Latin alphabet are associated with support for unity with Moldova, while Russian and the Cyrillic alphabet are associated with separatist goals. Parents who send their children to schools using Latin script, and the schools themselves, have faced routine harassment from the security services.

The authorities severely restrict freedom of assembly and rarely issue required permits for public protests ...

The judiciary is subservient to the executive and generally implements the will of the authorities ...

Authorities discriminate against ethnic Moldovans, who make up about 40 percent of the population. It is believed that ethnic Russians and Ukrainians together comprise a slim majority, and as many as a third of the region's residents reportedly hold Russian passports."

### III. RELEVANT INTERNATIONAL LAW

#### A. International law materials concerning State responsibility for unlawful acts

##### 1. *The International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts*

74. The International Law Commission (ILC) adopted its Draft Articles on the Responsibility of States for Internationally Wrongful Acts ("Draft Articles") in August 2001. Articles 6 and 8 of Chapter II of the Draft Articles provide:

#### **"Article 6: Conduct of organs placed at the disposal of a State by another State**

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

#### **Article 8: Conduct directed or controlled by a State**

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct."

##### 2. *Case-law of the International Court of Justice (ICJ)*

75. In its advisory opinion "*Legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)*", the ICJ held, on the obligation under international law to put an end to an illegal situation:

"117. Having reached these conclusions, the Court will now address itself to the legal consequences arising for States from the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970). A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence. Once the Court is faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon Members of the United Nations, to bring that situation to an end. As this Court has held, referring to one of its decisions declaring a situation as contrary to a rule of international law: 'This decision entails a legal consequence, namely that of putting an end to an illegal situation' (I.C.J. Reports 1951, p. 82).

118. South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared illegal, has the obligation to put an end to it. It is therefore under obligation to withdraw its administration from the Territory of Namibia. By maintaining the present illegal situation, and occupying the Territory without title, South Africa

incurs international responsibilities arising from a continuing violation of an international obligation. It also remains accountable for any violations of its international obligations, or of the rights of the people of Namibia. The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this Territory. Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States.’’

76. In the *Case Concerning the Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment of 26 February 2007, the ICJ held, on the question of State responsibility:

“391. The first issue raised by this argument is whether it is possible in principle to attribute to a State conduct of persons—or groups of persons—who, while they do not have the legal status of State organs, in fact act under such strict control by the State that they must be treated as its organs for purposes of the necessary attribution leading to the State’s responsibility for an internationally wrongful act. The Court has in fact already addressed this question, and given an answer to it in principle, in its Judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits, Judgment, I.C.J. Reports 1986, pp. 62-64). In paragraph 109 of that Judgment the Court stated that it had to

‘determine . . . whether or not the relationship of the contras to the United States Government was so much one of dependence on the one side and control on the other that it would be right to equate the contras, for legal purposes, with an organ of the United States Government, or as acting on behalf of that Government’ (p. 62).

Then, examining the facts in the light of the information in its possession, the Court observed that ‘there is no clear evidence of the United States having actually exercised such a degree of control in all fields as to justify treating the contras as acting on its behalf’ (para. 109), and went on to conclude that ‘the evidence available to the Court . . . is insufficient to demonstrate [the contras’] complete dependence on United States aid,’ so that the Court was ‘unable to determine that the contra force may be equated for legal purposes with the forces of the United States’ (pp. 62-63, para. 110).

392. The passages quoted show that, according to the Court’s jurisprudence, persons, groups of persons or entities may, for purposes of international responsibility, be equated with State organs even if that status does not follow from internal law, provided that in fact the persons, groups or entities act in ‘complete dependence’ on the State, of which they are ultimately merely the instrument. In such a case, it is appropriate to look beyond legal status alone, in order to grasp the reality of the relationship between the person taking action, and the State to which he is so closely attached as to appear to be nothing more than its agent: any other solution would allow States to escape their international responsibility by choosing to act through persons or entities whose supposed independence would be purely fictitious.

393. However, so to equate persons or entities with State organs when they do not have that status under internal law must be exceptional, for it requires proof of a particularly great degree of State control over them, a relationship which the Court’s Judgment quoted above expressly described as ‘complete dependence’. . . .’’

The ICJ went on to find that Serbia was not directly responsible for genocide during the 1992-1995 Bosnian war. It held nonetheless that Serbia had violated its positive obligation to prevent genocide, under the Convention on the Prevention and Punishment of the Crime of Genocide, by failing to take all measures within its power to stop the genocide that occurred in Srebrenica in July 1995 and by having failed to transfer Ratko Mladić, indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia.

## B. Treaty provisions concerning the right to education

### 1. *The Universal Declaration of Human Rights 1948*

77. Article 26 of the Universal Declaration of Human Rights provides:

“(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.”

### 2. *The Convention against Discrimination in Education 1960*

78. The above Convention, which was adopted by the United Nations Educational, Scientific and Cultural Organization during its 11th session October-December 1960, provides in Articles 1, 3 and 5:

#### “Article 1

1. For the purposes of this Convention, the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are in-compatible with the dignity of man.

2. For the purposes of this Convention, the term ‘education’ refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

#### Article 3

In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

...

#### Article 5

1. The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the



strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace; ...”

3. *The International Covenant on Economic, Social and Cultural Rights 1966*

79. Article 13 of the International Covenant on Economic, Social and Cultural Rights provides:

“1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph (1) of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

4. *The International Convention on the Elimination of All Forms of Racial Discrimination 1966*

80. Article 5 of the above United Nations Convention provides (as relevant):

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(e) Economic, social and cultural rights, in particular:

...

(v) The right to education and training;”

5. *The Convention on the Rights of the Child 1989*

81. Articles 28 and 29 of the above United Nations Convention provide:

**“Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

**THE LAW**

82. The applicants complained about the forcible closure of their schools by the “MRT” authorities and measures taken by those authorities to harass and intimidate them because of their choice to pursue the children’s

education at Moldovan/Romanian-language schools. The Court must first determine whether, in respect of the matters complained of, the applicants fell within the jurisdiction of either or both of the respondent States, within the meaning of Article 1 of the Convention.

## I. JURISDICTION

### A. The parties' submissions

#### 1. The applicants

##### (a) The jurisdiction of the Republic of Moldova

83. The applicants submitted that, although Moldova lacked effective control over Transdnistria, the region clearly remained part of the national territory and the protection of human rights there remained the responsibility of Moldova.

84. The applicants considered that Moldova's positive obligations towards them operated on several inter-connected levels. Moldova had a responsibility to take all feasible measures to restore the rule of law and its sovereign authority in Transdnistria. It also had a positive obligation to take all feasible measures specifically to remedy the situation of the applicants and to protect their freedom to study and have their children study at schools using the Moldovan national language. The applicants alleged that, despite Moldovan lack of overall control of Transdnistria, it did have considerable means available to it in the political and economic sphere that were capable of affecting its ongoing relationship with the "MRT" authorities.

##### (b) The jurisdiction of the Russian Federation

85. The applicants pointed out that the closure of the schools took place in 2004, shortly after the Court delivered judgment in *Ilaşcu* (cited above). They submitted that the Court's findings of fact in *Ilaşcu*, which led it to conclude that Russia exercised decisive influence over the "MRT", applied equally in the present case.

86. The applicants emphasised that since 2004 there had been no verified withdrawals of Russian arms and equipment. They alleged that Russia had entered into secret deals with the "MRT" leaders in connection with the management of the arms store. In 2003 the Russian Government's own figures showed that there were 2,200 Russian troops stationed in the region and there was no evidence to show that that figure had diminished significantly. Their presence was justified by Russia as necessary to guard the arms store. The applicants submitted that the presence of both the arms and the troops was contrary to Russia's international commitments. The applicants further submitted that there was no indication of any clear commitment to the removal of troops and weapons. Instead, official Russian statements tended to indicate that withdrawal was conditional on a political settlement being reached. In the applicants' view, the continued Russian military presence represented a latent threat of future military intervention, which acted to intimidate the Moldovan Government and opponents to the separatist regime in Transdnistria.

87. The applicants alleged that Transdnistria depended on the importation of energy from Russia and on Russian investment, aid and trade. Russia accounted for 18% of the "MRT's" exports and 43.7% of its imports, primarily energy. The "MRT" had paid for less than 5% of the gas it had consumed, but Russia had taken no measures to recover the debt. Russia provided direct humanitarian aid to Transdnistria, mostly in the form of contributions to old-age pensions, in breach of Moldovan law. The applicants claimed that official Russian sources stated that between 2007 and 2010 the total volume of financial assistance to Transdnistria was USD 55 million.

88. The applicants submitted that the Russian political establishment regarded Transdnistria as an outpost of Russia. They provided examples of statements by members of the Duma in support of "MRT" independence from Moldova and referred to calls made by Igor Smirnov, the President of the "MRT" until January 2012, for Transdnistria to be incorporated into the Russian Federation. They also underlined that some 120,000 individuals living in Transdnistria had been granted Russian citizenship. In February and March 2005, "in response to the course of action taken by the Moldovan Government aimed at worsening the situation around Transdnistria", the Duma adopted resolutions asking the Russian Government to introduce an import ban on Moldovan alcohol and tobacco products; export energy to Moldova (except Transdnistria) at international rates; require visas for Moldovan nationals visiting Russia, except residents of Transdnistria. The applicants quoted the findings of the

International Monetary Fund, that these measures had a combined negative effect on Moldova's economic growth of 2-3% annually in 2006-2007.

## 2. *The Moldovan Government*

### (a) **The jurisdiction of the Republic of Moldova**

89. The Moldovan Government submitted that according to the rationale of the *Ilaşcu* judgment (cited above), the applicants fell within Moldova's jurisdiction because, by claiming the territory and by trying to secure the applicants' rights, the Moldovan authorities assumed positive obligations in respect of them. The Moldovan Government maintained that they still had no jurisdiction, in the sense of authority and control, over the Transdnestrian territory; nonetheless, they continued to fulfil the positive obligations instituted by *Ilaşcu*. For the Moldovan Government, the central issue in respect of Moldova was how far such a positive obligation might act to engage a State's jurisdiction. They relied, in this respect, on the Partly Dissenting Opinion of Judge Sir Nicolas Bratza joined by Judges Rozakis, Hedigan, Thomassen and Pañîru to the *Ilaşcu* judgment.

### (b) **The jurisdiction of the Russian Federation**

90. The Moldovan Government considered that, in the light of the principles set out in *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011, the facts of the present case fell within Russia's jurisdiction due to the continuous military presence which had prevented the settlement of the conflict.

91. The Moldovan Government emphasised that they had no access to the arms store at Colbaşna and thus no real knowledge as to the quantity of armaments still held by the Russian Federation in Transdnestria. They contended that it was difficult to draw a clear line between Russian soldiers making up the peacekeeping force under the terms of the ceasefire agreement and Russian soldiers within the Russian Operational Group ("ROG"), stationed in Transdnestria to guard the arms store. They submitted that, leaving aside the high level commanders who were probably recruited directly from Russia, many of the ordinary soldiers within both forces were Russian nationals from Transdnestria who supported the separatist regime. Finally, they underlined that Tiraspol military airport was under Russian control and that "MRT" officials were able to use it freely.

92. The Moldovan Government submitted that the Russian military and armaments presence in Transdnestria blocked efforts to resolve the conflict and helped to keep the separatist regime in power. The Moldovan Government were put at a disadvantage and could not negotiate freely without the threat that Russian military withdrawal would be suspended, as occurred when Moldova rejected the Kozak Memorandum (see paragraph 27 above). The opposition of the "MRT" to the removal of the arms did not, in their view, provide an acceptable excuse for not removing or destroying them and the Russian Government should not accept or rely on such opposition. The Moldovan Government was prepared to cooperate in any way, except where cooperation entailed unduly onerous conditions, such as those included in the "Kozak Memorandum". The active involvement of the other international partners in the negotiation process should also act to mitigate any excessive burden on Russia arising out of practical arrangements for the destruction of the arms store.

93. The Moldovan Government submitted that the "MRT" economy was geared towards the export of goods to Russia and Ukraine; there were no real trading links between the "MRT" and Moldova proper. However, only about 20% of the population was economically active and the region survived as a result of financial support from Russia, in the form of waiver of gas debts and aid donations. For example, in 2011 the "MRT" received financial aid from Russia totalling USD 20.64 million. In 2011 Transdnestria consumed USD 505 million worth of gas, but paid for only 4% (USD 20 million).

94. Finally, the Moldovan Government submitted that the politics of the "MRT" were entirely orientated towards Russia and away from Moldova. There were many high-level visits between Russia and Transdnestria and statements of support from senior Russian politicians. However, the political situation was constantly evolving and it was difficult to give a comprehensive assessment.

## 3. *The Russian Government*

### (a) **The jurisdiction of the Republic of Moldova**

95. The Russian Government did not comment on the jurisdictional position of the Republic of Moldova in this case.

**(b) The jurisdiction of the Russian Federation**

96. The Russian Government took issue with the Court's approach to jurisdiction in *Ilaşcu* and *Al-Skeini* (both cited above). They contended that it was the will of the Contracting States, as expressed in the text of Article 1 of the Convention, that in the absence of an express declaration under Article 56 each State's jurisdiction should be limited to its territorial borders. In the alternative, the approach followed by the Court in *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, ECHR 2001-XII was a more accurate interpretation, since it recognised that jurisdiction could be extended extra-territorially only in exceptional cases. For the Russian Government, jurisdiction could exceptionally be extended extra-territorially where a Contracting state exercised effective control over another territory, equivalent to the degree of control exercised over its own territory in peacetime. This might include cases where the State Party was in long-term settled occupation or where a territory was effectively controlled by a government which was properly regarded as an organ of the relevant State Party, in accordance with the test applied by the International Court of Justice in the *Case Concerning the Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (see paragraph 76 above). It could not be said that Russia exercised jurisdiction in the present case, where the territory was controlled by a *de facto* government which was not an organ or instrument of Russia.

97. In the further alternative, the Russian Government contended that the present case should be distinguished from previous cases because there was no evidence of any extra-territorial act by the Russian authorities. In contrast, in *Al-Skeini*, for example, the Court found that the applicants' relatives fell within United Kingdom jurisdiction because they had been killed by British soldiers. Even in *Ilaşcu* the Court based itself on two sets of arguments in order to find Russian jurisdiction: first, that the "MRT" was subject to Russia's dominant influence, but also that the applicants had been arrested and transferred to "MRT" custody by Russian soldiers. In *Ilaşcu* the Court's decision was based on the fact that Russia had directly been involved in the arrest and, following the ratification of the Convention, did not make sufficient efforts to secure their release. In the present case, the Russian Government emphasised that there was no causal link between the presence of the Russian forces in Transdnistria and the treatment of the applicants' schools. On the contrary, the Russian Government had tried to resolve the schools crisis by acting as a mediator. Moreover, the Russian Government contended that there was no evidence that Russia exercised effective military or political control in Transdnistria. If the Court were to find Russian jurisdiction in this case, this would effectively mean that Russia would be responsible under the Convention for any violations taking place in Transdnistria, notwithstanding the insignificant size of the Russian military presence there. The Court should, therefore, find that the facts complained of fell outside Russia's jurisdiction under Article 1 of the Convention.

98. The Russian Government did not provide any figures regarding the amount of weapons still stored at Colbaşna in Transdnistria. However, they insisted that most of the weapons, ammunition and military property was removed between 1991 and 2003. In 2003, when the Moldovan Government refused to sign the Memorandum on the Establishment of the United Moldovan State ("the Kozak Memorandum"), the "MRT" blocked the removal of any further items. According to the Russian Government, the cooperation of the Moldovan authorities was also needed, since they had blocked the use of the railway line from Transdnistria into Moldovan-controlled territory. At present, only shells, hand grenades, mortar bombs and small-arms ammunition were stored in the warehouses. Over 60% of this equipment was to be destroyed at the end of its warranty period, but the Russian Government did not specify when this would be. Moreover, its destruction would only be possible once agreement had been reached on environmental safety. The Russian Government emphasised that they had a responsibility to safeguard the arms store and protect against theft but nonetheless felt themselves under pressure to remove the 1,000 servicemen stationed in Transdnistria to guard it. In addition to this small contingent, there were approximately 1,125 Russian soldiers stationed in the Security Area as part of the internationally agreed peace-keeping force. The Security Area was 225 km long and 12-20 km wide. In the Russian Government's view, it was evident that the presence of a few hundred Russian soldiers guarding the military warehouses and executing their peacekeeping functions could not be the instrument of effective overall control in Transdnistria.

99. The Russian Government denied that they provided any economic support to the "MRT". As regards the supply of gas, they explained that since the "MRT" was not recognised as a separate entity under international law, it could not have its own sovereign debts and Russia did not effect separate gas supplies for Moldova and

Transnistria. The bill for supplying gas to Transnistria was, therefore, attributed to Moldova. The supply of gas to the region was organised through the Russian public corporation Gazprom and the joint stock company Moldovagaz, which was owned jointly by Moldova and the “MRT”. The debt owed by Moldovagaz to Russia exceeded USD 1.8 billion, of which USD 1.5 billion related to gas consumed in Transnistria. Gazprom could not simply refuse to supply gas to the region, since it needed pipelines through Moldova to supply the Balkan States. Complex negotiations were on-going between Gazprom and Moldovagaz concerning the repayment of the debt. In 2003-2004 a solution was proposed whereby the “MRT” would permit Russia to remove military equipment to the value of USD 1 million in return for Russia writing off an equivalent sum from the gas debt, but this scheme was never implemented because at that point relations between Moldova and the “MRT” deteriorated and neither was prepared to consent. The Russian Government denied that there were separate contracts for gas supply to Moldova and Transnistria and contended that it was impossible for Gazprom to fix different rates for consumers in each part of the country. From 2008 Moldova has been required to pay for gas at European prices, rather than on preferential internal rates.

100. With regard to financial aid, the Russian Government submitted that the amount of aid given to Russian citizens living in the region for humanitarian purposes, such as the payment of pensions and assistance with catering in schools, prisons and hospitals, was fully transparent, and could be compared with humanitarian aid provided by the European Union. As well as providing aid to the population living in Transnistria, Russia provided aid to those living in other parts of Moldova. In addition, the Russian Government denied that Moldova was ever subjected to economic sanctions because of its position as regards the “MRT” and underlined that the President and the Government, rather than the Duma, were in charge of economic policy. In March 2006 restrictions were placed on the importation of wine from Moldova because violations of sanitary norms were discovered. Importation of Moldovan wine resumed from 1 November 2007 following an expert report. The authorities of the Russian Federation considered the Republic of Moldova as a single State and had no separate trading and economic arrangements with Transnistria.

101. On the issue of political support, the Russian Government argued that, as a matter of international law, even if it could be established that Russia politically supported the “MRT” authorities in any relevant way, this would not establish that Russia was responsible for human rights violations committed by them. In their view, it was absurd to say that where a local government had a democratic mandate, any outside power that supported it became responsible for its human rights abuses.

## **B. The Court’s assessment**

### *1. General principles relevant to jurisdiction under Article 1 of the Convention*

102. Article 1 of the Convention reads as follows:

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

103. The Court has established a number of clear principles in its case-law under Article 1. Thus, as provided by this Article, the engagement undertaken by a Contracting State is confined to “securing” (“*reconnâtre*” in the French text) the listed rights and freedoms to persons within its own “jurisdiction” (see *Soering v. the United Kingdom*, 7 July 1989, § 86, Series A no. 161; *Banković and Others v. Belgium and Others* [GC] (dec.), no. 52207/99, § 66, ECHR 2001- XII). “Jurisdiction” under Article 1 is a threshold criterion. 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 (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII; *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 130, 7 July 2011).

104. A State’s jurisdictional competence under Article 1 is primarily territorial (see *Soering*, cited above, § 86; *Banković*, cited above, §§ 61; 67; *Ilaşcu*, cited above, § 312; *Al-Skeini*, cited above § 131). Jurisdiction is presumed to be exercised normally throughout the State’s territory (*Ilaşcu*, cited above, § 312; *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004-II). Conversely, acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases (*Banković*, cited above, § 67; *Al-Skeini*, cited above § 131).

105. To date, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extra-territorially must be determined with reference to the particular facts (*Al-Skeini*, cited above, § 132).

106. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that 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 the Contracting State's own armed forces, or through a subordinate local administration (*Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV, *Banković*, cited above, § 70; *Ilaşcu*, cited above, §§ 314-316; *Loizidou* (merits), cited above, § 52; *Al-Skeini*, cited above, § 138). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (*Cyprus v. Turkey*, cited above, §§ 76-77; *Al-Skeini*, cited above, § 138).

107. It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see *Loizidou* (merits), cited above, §§ 16 and 56; *Ilaşcu*, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Ilaşcu*, cited above, §§ 388-394; *Al-Skeini*, cited above, § 139).

## 2. Application of these principles to the facts of the case

108. It is convenient at this point to recall the central facts of the case. The applicants are children and parents from the Moldovan community in Transdniestria who complain about the effects on their and their children's education and family lives brought about by the language policy of the separatist authorities. The core of their complaints relate to actions taken by the "MRT" authorities in 2002 and 2004, to enforce decisions adopted some years previously, forbidding the use of the Latin alphabet in schools and requiring all schools to register and start using an "MRT"-approved curriculum and the Cyrillic script. Thus, on 22 August 2002 "MRT" police forcibly evicted the pupils and teachers from the Ștefan cel Mare School in Grigoriopol. The school was not allowed to reopen in the same building and subsequently transferred to premises some 20 kilometres away, in Moldovan-controlled territory. The children and staff were evicted from the Evrica School in Rîbnița in July 2004. The same month, the Alexandru cel Bun School in Tighina was threatened with closure and disconnected from electricity and water supplies. Both schools were required to move to less convenient and less well equipped premises in their home towns at the start of the following academic year.

### (a) The Republic of Moldova

109. The Court must first determine whether the case falls within the jurisdiction of the Republic of Moldova. In this connection, it notes that all three schools have at all times been situated within Moldovan territory. It is true, as all the parties accept, that Moldova has no authority over the part of its territory to the east of the River Dniester, which is controlled by the "MRT". Nonetheless, in the *Ilaşcu* judgment, cited above, the Court held that individuals detained in Transdniestria fell within Moldova's jurisdiction because Moldova was the territorial State, even though it did not have effective control over the Transdniestrian region. Moldova's obligation under Article 1 of the Convention, to "secure to everyone within their jurisdiction the [Convention] rights and freedoms", was, however, limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (see *Ilaşcu*, cited above, § 331). The Court reached a similar conclusion in *Ivanțoc and Others v. Moldova and Russia*, no. 23687/05, §§ 105-111, 15 November 2011.

110. The Court sees no ground on which to distinguish the present case. Although Moldova has no effective control over the acts of the “MRT” in Transdnistria, the fact that the region is recognised under public international law as part of Moldova’s territory gives rise to an obligation, under Article 1 of the Convention, to use all legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there (see *Ilaşcu*, cited above, § 333). The Court will consider below whether Moldova has satisfied this positive obligation.

**(b) The Russian Federation**

111. The Court must next determine whether or not the applicants also fall within the jurisdiction of the Russian Federation. It takes as its starting point the fact that the key events in this case, namely the forcible eviction of the schools, took place between August 2002 and July 2004. Those two years fell within the period of time considered by the Court in the *Ilaşcu* judgment (cited above), which was delivered in July 2004. It is true that in that case the Court considered it relevant to the question whether Russian jurisdiction was engaged that Mr Ilaşcu, Mr Leşco, Mr Ivanşoc and Mr Petrov-Popa had been arrested, detained and ill-treated by soldiers of the 14th Army in 1992, who then transferred them to “MRT” custody. The Court considered that these acts, although they took place before Russia ratified the Convention on 5 May 1998, formed part of a continuous and uninterrupted chain of responsibility on the part of the Russian Federation for the detainees’ fate. The Court also found, as part of that chain of responsibility, that during the uprising in Transdnistria in 1991-1992, the authorities of the Russian Federation contributed both militarily and politically to the establishment of the separatist regime (see *Ilaşcu*, cited above, § 382). Furthermore, during the period between May 1998, when Russia ratified the Convention, and May 2004, when the Court adopted the judgment, the Court found that the “MRT” survived by virtue of the military, economic, financial and political support given to it by the Russian Federation and that it remained under the effective authority, or at the very least under the decisive influence, of Russia (*Ilaşcu*, cited above, § 392). The Court therefore concluded that the applicants came within the “jurisdiction” of the Russian Federation for the purposes of Article 1 of the Convention (*Ilaşcu*, cited above, §§ 393-394).

112. In these circumstances, where the Court has already concluded that the Russian Federation had jurisdiction over certain events in Transdnistria during the relevant period, it considers that the burden now lies on the Russian Government to establish that Russia did not exercise jurisdiction in relation to the events complained of by the present applicants.

113. The Russian Government deny that Russia exercised jurisdiction in Transdnistria during the relevant period. They emphasise, first, that the present case is clearly distinguishable from *Ilaşcu*, cited above, where the Court found that Russian soldiers had carried out the initial arrest and imprisonment of the applicants, and *Al-Skeini*, also cited above, where the Court found that the United Kingdom had jurisdiction in respect of Iraqi civilians killed in the course of security operations carried out by British soldiers.

114. The Court recalls that it has held that a State can, in certain exceptional circumstances, exercise jurisdiction extra-territorially through the assertion of authority and control by that State’s agents over an individual or individuals, as for example occurred in *Al-Skeini* (cited above, § 149). However, the Court has also held that a State can exercise jurisdiction extra-territorially when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory (see paragraph 106 above). The Court accepts that there is no evidence of any direct involvement of Russian agents in the action taken against the applicants’ schools. However, it is the applicants’ submission that Russia had effective control over the “MRT” during the relevant period and the Court must establish whether or not this was the case.

115. The Government of the Russian Federation contend that the Court could only find that Russia was in effective control if it found that the “Government” of the “MRT” could be regarded as an organ of the Russian State in accordance with the approach of the International Court of Justice in the *Case Concerning the Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (see paragraph 76 above). The Court recalls that in the judgment relied upon by the Government of the Russian Federation, the International Court of Justice was concerned with determining when the conduct of a person or group of persons could be attributed to a State, so that the State could be held responsible under international law in respect of that conduct. In the instant case, however, the Court is concerned with a different question, namely whether facts complained of by an applicant fell within the jurisdiction of a respondent State within the meaning



of Article 1 of the Convention. As the summary of the Court's case-law set out above demonstrates, the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law.

116. In the circumstances of the present case, the Court must ascertain whether, as a matter of fact, Russia exercised effective control over the "MRT" during the period August 2002-July 2004. In making this assessment, the Court will take as its basis all the material placed before it or, if necessary, material obtained *proprio motu* (see, *mutatis mutandis*, *Saadi v. Italy* [GC], no. 37201/06, § 128, ECHR 2008).

117. The Russian Government emphasised that its military presence in Transdnistria during the relevant period was insignificant, comprising only approximately 1,000 ROG servicemen to guard the arms store at Colbaşna and a further 1,125 soldiers stationed in the Security Area as part of the internationally-agreed peace-keeping force. In the *Ilaşcu* judgment the Court found that there were approximately 1,500 ROG personnel guarding the arms store in 2002 (cited above, § 131). The numbers of Russian troops are not disputed by the other parties to the case (see paragraph 37 above). As for the at Colbaşna arms store, it is impossible accurately to establish its size and contents for the period 2002-2004, since the Russian Government did not provide the Court with the detailed information it had requested and since no independent observer was allowed access. However, in the *Ilaşcu* judgment (cited above, § 131) the Court referred to evidence to the effect that in 2003 the ROG had at least 200,000 tonnes of military equipment and ammunition there, and also 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, nine helicopters and 1,648 vehicles of various kinds.

118. The Court accepts that, by 2002-2004, the number of Russian military personnel stationed in Transdnistria had decreased significantly (see *Ilaşcu*, cited above, § 387) and was small in relation to the size of the territory. Nonetheless, as the Court found in *Ilaşcu* (cited above, § 387), in view of the size of the arsenal stored at Colbaşna, the Russian Army's military importance in the region and its dissuasive influence persisted. Moreover, in connection with both the arms store and the troops, the Court considers that the historical background has a significant bearing on the position during the period under examination in the present case. It cannot be forgotten that in the *Ilaşcu* judgment the Court held that the separatists were able to secure power in 1992 only as a result of the assistance of the Russian military. The Colbaşna arms store was originally the property of the USSR's 14th Army and the Court found it established beyond reasonable doubt that during the armed conflict the separatists were able, with the assistance of 14th Army personnel, to equip themselves from the arms store. The Court further found that the massive transfer to the separatists of arms and ammunition from the 14th Army's stores was pivotal in preventing the Moldovan army from regaining control of Transdnistria. In addition, the Court found that, from the start of the conflict, large numbers of Russian nationals from outside the region, particularly Cossacks, went to Transdnistria to fight with the separatists against the Moldovan forces. Finally, it found that in April 1992 the Russian Army stationed in Transdnistria (ROG) intervened in the conflict, allowing the separatists to gain possession of Tighina.

119. The Russian Government has not provided the Court with any evidence to show that these findings made in the *Ilaşcu* judgment were unreliable. In the Court's view, given its finding that the separatist regime was initially established only as a result of Russian military assistance, the fact that Russia maintained the arms store on Moldovan territory, in breach of its international commitments and shrouded in secrecy, together with 1,000 troops to defend it, sent a strong signal of continued support for the "MRT" regime.

120. As mentioned above, the Court in the *Ilaşcu* judgment also found that the "MRT" only survived during the period in question by virtue of Russia's economic support, *inter alia* (see paragraph 111 above). The Court does not consider that the Russian Government have discharged the burden of proof upon them and established that this finding was incorrect. In particular, it is not denied by the Russian Government that the Russian public corporation Gazprom supplied gas to the region and that the "MRT" paid for only a tiny fraction of the gas consumed, both by individual households and by the large industrial complexes established in Transdnistria, many of them found by the Court to be Russian-owned (see paragraphs 39-40 above). The Russian Government accepts that it spends USD millions every year in the form of humanitarian aid to the population of Transdnistria, including the payment of old age pensions and financial assistance to schools, hospitals and prisons. In the light of the statistic, supplied by the Moldovan Government and undisputed by the Russian Government, that only approximately 20% of the population of the "MRT" are economically active, the importance for the local economy of Russian pensions and other aid can be better appreciated. Finally, the Court notes that the Russian Government

do not take issue with the applicants' statistics regarding nationality, according to which almost one fifth of those living in the region controlled by the "MRT" have been granted Russian nationality (see paragraphs 41-42 above).

121. In summary, therefore, the Russian Government have not persuaded the Court that the conclusions it reached in 2004 in the *Ilaşcu* judgment (cited above) were inaccurate. The "MRT" was established as a result of Russian military assistance. The continued Russian military and armaments presence in the region sent a strong signal, to the "MRT" leaders, the Moldovan Government and international observers, of Russia's continued military support for the separatists. In addition, the population were dependent on free or highly subsidised gas supplies, pensions and other financial aid from Russia.

122. The Court, therefore, maintains its findings in the *Ilaşcu* judgment (cited above), that during the period 2002-2004 the "MRT" was able to continue in existence, resisting Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, only because of Russian military, economic and political support. In these circumstances, the "MRT"'s high level of dependency on Russian support provides a strong indication that Russia exercised effective control and decisive influence over the "MRT" administration during the period of the schools' crisis.

123. It follows that the applicants in the present case fall within Russia's jurisdiction under Article 1 of the Convention. The Court must now determine whether there has been any violation of their rights under the Convention such as to incur the responsibility of the respondent States.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION

124. Article 2 of Protocol No. 1 to the Convention provides:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

### A. The parties' submissions

#### 1. The applicants

125. The applicants submitted that the Court should take the opportunity to develop its jurisprudence under Article 2 of Protocol No. 1, having regard to international standards on the right to education. For example, Article 26 of the Universal Declaration of Human Rights, Article 13 § 1 of the International Covenant of Economic, Social and Cultural Rights and Article 29 § 1(a) of the Convention on the Rights of the Child all provided that education should be directed to the "full development of the human personality". The Court had already recognised the importance of education for a child's development, with reference to these instruments: *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 64, ECHR 2005-XII). In the applicants' submission, a further aim of education was to enable children to function and participate in society, as children and in the future as adults. Education which failed to achieve these aims could hinder a child's access to opportunities and his or her ability to escape poverty and enjoy other human rights. In the applicants' submission, the use of language was inherently linked to these educational priorities.

126. The applicants submitted that the main incidents on which they relied took place between 2002 and 2004, when the schools were forced to close down and reopen in different premises. They provided affidavits explaining how the "MRT" action against the schools had affected them individually. In the summer of 2004, the schools were closed and premises besieged and subsequently stormed by "MRT" police. Teachers were arrested and detained and Latin script materials were seized and destroyed. Some parents lost their jobs because of their decision to send their children to Moldovan language schools.

127. The applicants emphasised that there had been no significant change to their situations since then. The law banning the Latin script remained in force and teaching in Moldovan/Romanian carried a risk of harassment and criminal prosecution. Following the events of 2002 and 2004, many parents abandoned the struggle to have their children educated in Moldovan/Romanian. Those that persisted had to accept that the quality of the education would be affected by lack of adequate premises, long journeys to and from school, shortage of materials, no access to extracurricular activities and on-going harassment, vandalism of school premises, intimidation and verbal abuse.

The alternative offered by the “MRT” authorities to Moldovan/Romanian speakers was education in “Moldavian” (Moldovan/Romanian written with the Cyrillic script). However, since this language was not recognised anywhere outside Transdnistria, and was not even used by the “MRT” administration, the teaching materials dated back to Soviet times and the possibilities for further and higher education or employment were diminished.

128. The failure of the “MRT” authorities to provide on-going education in the dominant and official language of the territorial State clearly affected the substance of the right to education. In addition, there had been no attempt by the “MRT” to accommodate the ethnic Moldovan population by freely permitting access to private schools where the children could be educated in their own language. The applicants compared their position to that of the enclaved Greek population in *Cyprus v. Turkey*, cited above, § 278. In addition, the applicant parents complained of an interference with their right to respect for their philosophical convictions in the provision by the State of education; in particular, their conviction that the best interests of their children lay in an education in the Moldovan language.

129. The applicants submitted that Moldova was under a positive obligation to take all reasonable and appropriate measures necessary to maintain and protect teaching in the Moldovan language across its territory. As regards Moldova’s compliance with its positive obligation, the applicants submitted that the treatment of Latin script schools had not been made a condition of the settlement of the conflict during the multilateral negotiations and did not appear to have featured in representations to the “MRT” authorities and the Russian Government. “MRT” officials were permitted to travel through Moldova without hindrance, in contrast with the action taken by the EU to ban high-ranking members of the “MRT” establishment from EU territory, expressly because of the treatment of Latin script schools, *inter alia*. The applicants also claimed that the Moldovan Government had made insufficient efforts to ensure that the children were restored to adequate educational facilities and to protect them from harassment.

130. The applicants submitted that the violations in this case had a direct and uninterrupted link to the Russian Federation’s establishment and on-going support for the “MRT” administration. There was no indication of any measures having been taken by Russia to prevent the violations or to express opposition to them. Instead, Russia supported the “MRT” educational policy by providing teaching materials to Russian language schools within the region, recognising “MRT” Russian language schools’ qualifications and opening Russian institutes of higher education within Transdnistria, without consulting with the Moldovan Government.

## 2. *The Moldovan Government*

131. The Moldovan Government had no detailed information about the details of the applicants’ continuing situation. However, they were able to confirm that although the initial crisis phase appeared to have passed and the situation had “normalised”, the number of children at each of the three schools continued to decrease. For example, numbers of children at Alexandru cel Bun and Evrica Schools had virtually halved between 2007 and 2011, although the numbers at Ștefan cel Mare had remained relatively stable. Overall, the number studying in the Moldovan/Romanian language in Transdnistria had decreased from 2,545 in 2009 to 1,908 in 2011.

132. The Moldovan Government submitted that they had taken all reasonable steps to improve the situation, generally as regards the Transdnistrian conflict and particularly as regards their support for the schools. They declared that the Transdnistrian separatist regime had never been supported or sustained by Moldova. The Moldovan Government’s only objective was to settle the dispute, gain control over the territory and establish the rule of law and respect for human rights.

133. As regards the schools themselves, the Moldovan Government had paid for the rent and refurbishment of the buildings, the teachers’ salaries, educational materials, buses and computers. According to Moldovan law, these applicants, in common with all graduates from schools in Transdnistria, had special privileges in applying for places at Moldovan universities and institutes of higher education. Moreover, the Moldovan Government had raised the Transdnistrian schools’ issue at international level and sought international assistance and mediation, for example, at a conference held under the auspices of the EU and the OSCE in Germany in 2011. The Moldovan Government could not be expected to do more to fulfil its positive obligation in respect of the applicants, given that it exercised no actual authority or control over the territory in question.

134. The steps which Moldova had taken to ameliorate the applicants' position could be taken as an implicit acknowledgement that their rights had been violated. The Moldovan Government did not contend, therefore, that there had been no violation of the right to education in the present case. Instead, they asked the Court carefully to assess the respective responsibility of each of the respondent States in respect of any such breach of the applicants' rights.

### 3. *The Russian Government*

135. The Russian Government, which denied any responsibility for the acts of the "MRT", submitted only limited observations with respect to the merits of the case. However, they underlined that Russia could not be held accountable for the acts of the "MRT" police in storming the school buildings or the "MRT" local authorities for shutting off water and electricity supplies. They emphasised that Russia had been involved in the schools' crisis solely in the role of mediator. Together with Ukrainian and OSCE mediators, they had sought to help the parties to resolve the dispute. Moreover, they pointed out that from September-October 2004, following this international mediation, the problems had been resolved and the children at the three schools were able to resume their education.

## B. **The Court's assessment**

### 1. *General principles*

136. In interpreting and applying Article 2 of Protocol No. 1, the Court must have regard to the fact that its context is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (*Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X; *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 54, 15 March 2012). The two sentences of Article 2 of Protocol No. 1 must therefore be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention which proclaim the right of everyone, including parents and children, "to respect for his private and family life", to "freedom of thought, conscience and religion", and to "freedom ... to receive and impart information and ideas" (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, § 52; *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84, ECHR 2007-III; *Lautsi and Others v. Italy* [GC], no. 30814/06, § 60, ECHR 2011 (extracts); see also *Cyprus v. Turkey* [GC], no. 25781/94, § 278, ECHR 2001-IV). In interpreting and applying this provision, account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008; *Saadi v. the United Kingdom* [GC], no. 13229/03, § 62, ECHR 2008-...; *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 273-274, ECHR 2010 (extracts)). The provisions relating to the right to education set out in the Universal Declaration of Human Rights, the Convention against Discrimination in Education, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child are therefore of relevance (see paragraphs 77-81 above, and see also *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 64, ECHR 2005-XI). Finally, the Court emphasises that the object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, *inter alia*, *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

137. By binding themselves, in the first sentence of Article 2 of Protocol No. 1, not to "deny the right to education", the Contracting States guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time (see *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, judgment of 23 July 1968, Series A no. 6, §§ 3-4). This right of access constitutes only a part of the right to education set out in the first sentence. For the right to be effective, it is further necessary that, *inter alia*, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, cited above, § 4). Moreover, although the text of Article

2 of Protocol No. 1 does not specify the language in which education must be conducted, the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be (*Case “relating to certain aspects of the laws on the use of languages in education in Belgium”*, cited above, § 3).

138. The right set out in the second sentence of the Article is an adjunct of the fundamental right to education set out in the first sentence. Parents are primarily responsible for the education and teaching of their children and they may therefore require the State to respect their religious and philosophical convictions (see *Case “relating to certain aspects of the laws on the use of languages in education in Belgium”*, cited above, §§ 3-5 and *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, § 52). The second sentence aims at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the “democratic society” as conceived by the Convention. It implies that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions (*Kjeldsen, Busk Madsen and Pedersen*, cited above, §§ 50 and 53; *Folgerø*, cited above, § 84; *Lautsi*, cited above, § 62).

139. The rights set out in Article 2 of Protocol No. 1 apply with respect to both State and private institutions (*Kjeldsen, Busk Madsen and Pedersen*, cited above, § 50). In addition, the Court has held that the provision applies to primary, secondary and higher levels of education (see *Leyla {{ordfeminine}}ahin v. Turkey* [GC], no. 44774/98, §§ 134 and 136, ECHR 2005-XI).

140. The Court however recognises that, in spite of its importance, the right to education is not absolute, but may be subject to limitations. Provided that there is no injury to the substance of the right, these limitations are permitted by implication since the right of access “by its very nature calls for regulation by the State” (see *Case “relating to certain aspects of the laws on the use of languages in education in Belgium”*, cited above, § 3). In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of “legitimate aims” under Article 2 of Protocol No. 1 (see, *mutatis mutandis*, *Podkolzina v. Latvia*, no. 46726/99, § 36, ECHR 2002-II). Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Leyla {{ordfeminine}}ahin*, cited above, § 154). Although the final decision as to the observance of the Convention’s requirements rests with the Court, the Contracting States enjoy a certain margin of appreciation in this sphere. This margin of appreciation increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large (see *Ponomaryovi v. Bulgaria*, no. 5335/05, § 56, ECHR 2011).

## 2. *Whether there has been a violation of the applicants’ right to education in the present case*

141. The Court notes that neither of the respondent Governments have challenged the applicants’ allegations about the closure of the schools. Indeed, the core events of 2002 and 2004 were monitored and documented by a number of international organisations, including the OSCE (see paragraph 66 above). The applicants further complain that, although the schools were subsequently allowed to reopen, their buildings were commandeered by the “MRT” authorities and they had to move to new premises which were less well equipped and less conveniently situated. The applicants contend that they were subjected to a systematic campaign of harassment and intimidation by representatives of the “MRT” regime and private individuals. The children were verbally abused on their way to school and stopped and searched by the “MRT” police and border guards, who confiscated Latin script books when they found them. In addition, the two schools located in “MRT”-controlled territory were the target of repeated acts of vandalism. The applicants submitted that the alternative, for parents and children from the Moldovan community, was either to suffer this harassment or change to a school where teaching was carried out in Russian, Ukrainian or “Moldavian”, that is, Moldovan/Romanian written in the Cyrillic script. “Moldavian” was not a language used or recognised anywhere else in the world, although it had been one of the official languages in Moldova in Soviet times. This meant that the only teaching materials available to “Moldavian” schools in modern-day Transnistria dated back to Soviet times. There were no “Moldavian” language colleges or universities, so

children from such schools who wished to pursue higher education had to learn a new alphabet or language.

142. While it is difficult for the Court to establish in detail the facts relating to the applicants' experiences following the reopening of the schools, it nonetheless notes the following. First, Article 6 of the "MRT" Law on Languages" was in force and the use of the Latin alphabet constituted an offence in the "MRT" (see paragraph 43 above). Secondly, it is clear that the schools had to move to new buildings, with the Alexandru cel Bun School divided between three sites and pupils at the Ștefan cel Mare School having to travel 40 kilometres each day. Thirdly, according to figures provided by the Moldovan Government, the number of pupils enrolled in the two schools still in "MRT" controlled territory approximately halved between 2007 and 2011 and there has also been a significant reduction in children studying in Moldovan/Romanian throughout Transdniestria. Although it appears that Transdniestria has an ageing population and that Moldovans in particular are emigrating (see paragraphs 8 and 42 above), the Court considers that the 50% attendance drop at Evrica and Alexandru cel Bun Schools is too high to be explained by demographic factors alone. For the Court, these uncontested facts serve to corroborate the general thrust of the allegations contained in the 81 affidavits submitted by the applicant parents and pupils, describing the constant harassment they suffered.

143. The schools were at all times registered with the Moldovan Ministry of Education, using a curriculum set by that Ministry and providing teaching in the first official language of Moldova. The Court therefore considers that the forced closure of the schools, based on the "MRT" Law on languages" (see paragraphs 43-44 above), and the subsequent measures of harassment constituted interferences with the applicant pupils' rights of access to educational institutions existing at a given time and to be educated in their national language (see paragraph 137 above). In addition, the Court considers that these measures amounted to an interference with the applicant parents' rights to ensure their children's education and teaching in accordance with their philosophical convictions. As stated above, Article 2 of Protocol No. 1 must be read in the light of Article 8 of the Convention, which safeguards the right to respect for private and family life, *inter alia*. The applicant parents in this case wanted their children to be educated in the official language of their country, which was also their own mother tongue. Instead, they were placed in the invidious position of having to choose, on the one hand, between sending their children to schools where they would face the disadvantage of pursuing their entire secondary education in a combination of language and alphabet which they consider artificial and which is unrecognised anywhere else in the world, using teaching materials produced in Soviet times or, alternatively, subjecting their children to long journeys and/or substandard facilities, harassment and intimidation.

144. There is no evidence before the Court to suggest that the measures taken by the "MRT" authorities in respect of these schools pursued a legitimate aim. Indeed, it appears that the "MRT"'s language policy, as applied to these schools, was intended to enforce the Russification of the language and culture of the Moldovan community living in Transdniestria, in accordance with the "MRT"'s overall political objectives of uniting with Russia and separating from Moldova. Given the fundamental importance of primary and secondary education for each child's personal development and future success, it was impermissible to interrupt these children's schooling and force them and their parents to make such difficult choices with the sole purpose of entrenching the separatist ideology.

### 3. *The responsibility of the Respondent States*

#### (a) **The Republic of Moldova**

145. The Court must next determine whether the Republic of Moldova has fulfilled its obligation to take appropriate and sufficient measures to secure the applicants' rights under Article 2 of Protocol No. 1 (see paragraph 110 above). In the *Ilașcu* judgment (cited above, §§ 339-340) the Court held that Moldova's positive obligations related both to the measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for the individual applicants' rights. The obligation to re-establish control over Transdniestria required Moldova, first, to refrain from supporting the separatist regime and, secondly, to act by taking all the political, judicial and other measures at its disposal for re-establishing control over that territory.

146. As regards the fulfilment of these positive obligations, the Court in *Ilașcu* further found that from the onset of hostilities in 1991-92 until the date of the judgment, in July 2004, Moldova had taken all measures in its power to re-establish control over the Transdniestrian territory (cited above, §§ 341 to 345). There is no evidence

before the Court to suggest that it should reach any different conclusion in the present case.

147. In the *Ilașcu* judgment the Court found that Moldova had failed fully to comply with its positive obligation to the extent that it had failed to take all the measures available to it in the course of negotiations with the “MRT” and Russian authorities to bring about the end of the violation of the applicants’ rights (cited above, §§ 348-352). In the present case, in contrast, the Court considers that the Moldovan Government have made considerable efforts to support the applicants. In particular, following the requisitioning of the schools’ former buildings by the “MRT”, the Moldovan Government have paid for the rent and refurbishment of new premises and have also paid for all equipment, staff salaries and transport costs, thereby enabling the schools to continue operating and the children to continue learning in Moldovan, albeit in far from ideal conditions (see paragraphs 49-53, 56 and 61-63 above).

148. In the light of the foregoing, the Court considers that the Republic of Moldova has fulfilled its positive obligations in respect of these applicants. It does not, therefore, find that there has been a violation of Article 2 of Protocol No. 1 by the Republic of Moldova.

#### (b) The Russian Federation

149. The Court notes that there is no evidence of any direct participation by Russian agents in the measures taken against the applicants. Nor is there any evidence of Russian involvement in or approbation for the “MRT”’s language policy in general. Indeed, it was through efforts made by Russian mediators, acting together with mediators from Ukraine and the OSCE, that the “MRT” authorities permitted the schools to reopen as “foreign institutions of private education” (see paragraphs 49, 56 and 66 above).

150. Nonetheless, the Court has established that Russia exercised effective control over the “MRT” during the period in question. In the light of this conclusion, and in accordance with the Court’s case-law, it is not necessary to determine whether or not Russia exercised detailed control over the policies and actions of the subordinate local administration (see paragraph 106 above). By virtue of its continued military, economic and political support for the “MRT”, which could not otherwise survive, Russia incurs responsibility under the Convention for the violation of the applicants’ rights to education. In conclusion, the Court holds that there has been a violation of Article 2 of Protocol No. 1 to the Convention in respect of the Russian Federation.

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

151. Article 8 of the Convention provides:

“1. Everyone has the right to respect for his private and family life, his home 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 or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

152. The applicants submitted that the right to respect for private and family life under Article 8 included a right to recognition of language as part of ethnic or cultural identity. Language was an essential means of social interaction and for the development of personal identity. This was particularly so where, as in the present case, language was the defining, distinguishing characteristic of a particular ethnic or cultural group. In the present case, preventing the pupil applicants from studying in the script of their own language, an essential aspect of their linguistic and cultural identity, was a direct interference with their rights under Article 8. The interference was particularly serious where the imposition of the alien script was deliberately aimed at eliminating the linguistic heritage of the Moldovan population within the “MRT” territory and forcing them to adopt a new “Russophile” identity. In addition, the harassment and intimidation suffered by the pupils for attending the schools of their choice, resulted in humiliation and fear which had significantly impacted on their own private lives and also their family lives, due to the inordinate pressures placed upon them.

153. The Moldovan Government submitted that language is a part of ethnic and cultural identity, which in turn form part of private life within the meaning of Article 8. They considered that the “MRT” authorities had interfered

with the applicants' rights under Article 8, but submitted that Moldova had discharged its positive obligation in this respect.

154. The Government of the Russian Federation submitted that, since Russia had no jurisdiction in relation to the applicants, the question whether there had been a breach of their rights under Article 8 should not be addressed to Russia.

155. In the light of its conclusions under Article 2 of Protocol No. 1 to the Convention, the Court does not consider it necessary separately to examine the complaint under Article 8.

#### IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN ALONE OR IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL No. 1 OR ARTICLE 8 OF THE CONVENTION

156. Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

157. The applicants complained that they had been discriminated against on grounds of their ethnicity and language. Requiring Moldovans to study in an artificial language, unrecognised outside Transdnistria, caused them educational, private and family life disadvantages not experienced by the members of the other main communities in Transdnistria, namely Russians and Ukrainians.

158. The Moldovan Government did not express a view as to whether the applicants had suffered discrimination, but merely repeated that Moldova had complied with its positive obligations under the Convention.

159. As with Article 8, the Russian Government declined to comment on the issues under Article 14.

160. In the light of its conclusions under Article 2 of Protocol No. 1 to the Convention, the Court does not consider it necessary separately to examine the complaint under Article 14.

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

161. 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.”

162. The applicants claimed damages for non-pecuniary harm and legal costs and expenses.

##### A. Damage

163. The applicants sought compensation for the depression, anxiety, humiliation and post-traumatic stress disorder they had suffered as a direct result of the violation of their Convention rights. They submitted that such non-pecuniary harm could not be compensated solely by the finding of a violation. In *Sampanis and Others v. Greece*, no. 32526/05, 5 June 2008 the Court awarded EUR 6,000 to each applicant who had experienced anxiety, humiliation and depression as a result of his or her child being denied enrolment in school on ethnic grounds. The applicants submitted that, on this basis, they were each entitled to EUR 6,000 as a minimum in respect of the harm they had suffered as a direct result of the denial of an effective education due to their ethnicity and language. In addition, the applicants submitted that, when considering applications for damages from large numbers of victims, the Court should adopt an approach similar to that of the Inter-American Court of Human Rights, which used an approximate estimation of damage suffered based on the particular combinations of facts for each class of claimant (see, for example, *González et al (the “Cotton fields case”) v. Mexico*, judgment of 16 November 2009). Thus, the applicants claimed that each applicant who was a minor at the time of the violations was entitled to an additional EUR 3,000 in respect of non-pecuniary damage. The applicant parents who were arrested, intimidated, threatened with dismissal from their jobs and deprivation of parental rights each claimed an additional EUR 5,000. All the applicants who scored over the diagnostic threshold in the Hopkins Symptom Checklist-25 for severe depression and anxiety claimed an additional EUR 5,000 each.



164. The Russian Government submitted that the applicants' claims were unfounded and unsubstantiated. The Court should be guided by its own case-law rather than the approach of the Inter-American Court. The events complained of took place for the most part in 2002 and 2004 and were subsequently resolved. In any event, the applicants had not provided any documentary evidence to substantiate the claims that certain among them lost their jobs, were arrested and interrogated, suffered physical violence and received warnings and threats. The Hopkins Symptom Checklist-25, which measures symptoms of anxiety and depression, was designed to be administered by health care workers under the supervision of a psychiatrist or medical doctor. When self-administered, as by the applicants, it was unreliable and proved little. Finally, in the view of the Government of the Russian Federation, the present case was not comparable to *Sampanis*, cited above, which concerned discrimination suffered by Greek citizens living in Greece. The Russian Federation had consistently expressed the view that applicants living in Transnistria did not fall within Russian jurisdiction. In the event that the Court were to reach a contrary conclusion, the finding of violation would be adequate just satisfaction.

165. The Court recalls that it has not found it necessary or indeed possible in the present case to examine separately each applicant's claims regarding acts of harassment directed at him or her by the "MRT" authorities. Moreover, the applicants' claims under Article 3 of the Convention were declared inadmissible by the Chamber on 15 June 2010. The Chamber observed that the applicants did not "provide any objective medical evidence". It held that "the self-administered [Hopkins Symptom Checklist-25] tests are no substitute for an examination and assessment by a mental health professional" and concluded that the evidence before it did not support the view that the high threshold of Article 3 had been reached (*Catan and Others v. Moldova and Russia* (dec.), nos. 43370/04, 8252/05 and 18454/06, § 108, 15 June 2010).

166. It is clear, however, that the applicants, both parents and children, have sustained non-pecuniary damage as a consequence of the "MRT"'s language policy, for which the finding of a violation of the Convention does not afford sufficient redress. However, the amounts claimed by the applicants are excessive. Ruling on an equitable basis, the Court assesses the non-pecuniary damage sustained by each of the applicants at EUR 6,000.

#### **B. Costs and expenses**

167. The applicants did not submit a separate claim for the costs and expenses of the Grand Chamber proceedings. However, on 20 September 2010 they submitted a claim for the costs and expenses of the proceedings before the Chamber, including the Chamber hearing on admissibility. In that document, the applicants submitted that the complexity of the case justified their being represented by two lawyers and an advisor. The applicants' representatives had worked 879 hours on all three cases, for all 170 applicants, which in total amounted to EUR 105,480.

168. The Moldovan Government did not comment on the claim for costs.

169. The Russian Government contended that, since the applicants had not submitted any claim for costs before the Grand Chamber, none should be awarded. In respect of the claim dated 20 September 2010, the Russian Government submitted that there had been no need for so many legal representatives and that the amounts should be reduced to take account of the fact that all three applications raised identical legal issues.

170. Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court makes a joint award to all the applicants of EUR 50,000 for costs and expenses.

#### **C. Default interest**

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

#### **FOR THESE REASONS, THE COURT**

1. *Holds*, unanimously, that the facts complained of by the applicants fall within the jurisdiction of the Republic of Moldova;
2. *Holds*, by sixteen votes to one, that the facts complained of by the applicants fall within the jurisdiction of the Russian Federation, and *dismisses* the Russian Federation's preliminary objection;

3. *Holds*, unanimously, that there has been no violation of Article 2 of Protocol No. 1 to the Convention in respect of the Republic of Moldova;
4. *Holds*, by sixteen votes to one, that there has been a violation of Article 2 of Protocol No. 1 to the Convention in respect of the Russian Federation;
5. *Holds*, by twelve votes to five, that it is not necessary to examine separately the applicants' complaints under Article 8 of the Convention;
6. *Holds*, by eleven votes to six, that it is not necessary to examine separately the applicants' complaints under Article 14 of the Convention, taken in conjunction with either Article 2 of Protocol No. 1 or Article 8;
7. *Holds*, by sixteen votes to one,
  - (a) that the Russian Federation is to pay the applicants, within three months, the following amounts:
    - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to each applicant named in the Schedule attached hereto;
    - (ii) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to all the applicants jointly;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 October 2012.

Michael O'Boyle  
Registrar

Nicolas Bratza  
President

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 Judges Tulkens, Vajić, Berro-Lefèvre, Bianku, Poalelungi and Keller;
- (b) Partly dissenting opinion of Judge Kovler.

N.B.  
M.O.B.

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## ENDNOTES

- 1 Note by the Registry: Mr Shevchuk was elected "President" of the "MRT" in December 2011.

JOINT PARTLY DISSENTING OPINION OF JUDGES TULKENS, VAJIĆ,  
BERRO-LEFÈVRE, BIANKU, POALELUNGI AND KELLER

(Translation)

1. In the light of the findings made in relation to Article 2 of Protocol No. 1, the majority takes the view that there is no need to examine the complaint under Article 8 of the Convention or the complaint under Article 14 separately. We can certainly understand that in some cases, either where the judgment has dealt with the main legal issue or where the complaints coincide or overlap, the Court should take this approach, which could be described as procedural economy. In the instant case, however, it appears to us to be unduly reductive, giving an incomplete picture of the situation and the consequences it entails.

**Article 8**

2. We believe it is important to stress that the right under Article 8 of the Convention to respect for private and family life, in both its individual and social aspects, encompasses the right to the recognition of one's language as a component of cultural identity. Language is an essential factor in both personal development and social interaction.

3. The 1989 United Nations Convention on the Rights of the Child expressly provides that a child's education should be directed to respect for the identity, language and values of the country in which the child is living or from which he or she originates (Article 29 § 1 (c)).

4. From the standpoint of private and family life, the applicants' argument that the imposition of an alien script was aimed at undermining, and even eliminating, the linguistic heritage of the Moldovan population and in a sense forcing them to adopt a new "identity" unquestionably has some force and merited separate examination. This is particularly true since the issue at stake concerns the children's intellectual development – a matter which clearly comes within the scope of private life – in a society which *speaks* the same language but *writes* it in a different alphabet. The risk of impoverishment of this linguistic and cultural identity cannot be ruled out.

5. A further consideration arises, likewise linked to the lives of the families and the interaction within them using their common language. Let us take the example of a letter, email or text message written by the parents in Romanian, using Latin script, to their children, who learn Romanian using the Cyrillic script: being required to write the same language in a different alphabet could conceivably, in some circumstances, give rise to difficulties in communicating.

6. In the instant case one cannot disregard the repercussions, on both the private and the family lives of the applicants, of the intimidation and harassment to which the pupils and their parents were subjected. It is clear from the case file that the authorities in the "Moldavian Republic of Transnistria" created a climate of intimidation such that it had a "chilling effect" on the pupils, not just when it came to, say, using textbooks written in Latin script but also, more broadly, when it came to using their language within and outside school.

7. On 29 July 2004, for instance, the Transnistrian police stormed Evrica School in Rîbnița and evicted the women and children who were inside it. Over the following days police and officials from the Rîbnița Department of Education visited parents and threatened them with the loss of their jobs if they did not transfer their children to another school (see paragraph 48 of the judgment). In our view, these actions were disproportionate and amounted to threats against the families not just in school but also at home.

8. There was also a series of other incidents intended purely to harass, such as the cutting of water and electricity supplies to Alexandru cel Bun School in Tighina (see paragraph 55), the failure to protect Evrica School in Rîbnița against a systematic campaign of vandalism (see paragraph 51) and the transfer of Ștefan cel Mare School (Grigoriopol) to a village about twenty kilometres away which was under Moldovan control and to which the children had to travel by bus, being subjected to daily bag searches and identity checks at the border, sometimes accompanied by insults.

9. With more specific reference to the issue of checks and searches, the Court's judgment in *Gillan and Quinton v. the United Kingdom* (ECHR 2010) demonstrates very clearly, albeit in a different context, the dangers of arbitrariness in this sphere and the absolute necessity of putting safeguards in place (see §§ 85 and 86 of the

judgment in question).

10. Hence, it seems clear to us that this atmosphere of intimidation affected the day-to-day lives of the families, who lived in a permanently hostile environment.

11. These are the reasons why we believe that there has been a violation of Article 8 of the Convention in the present case.

12. Furthermore, all these measures were applied systematically against the Moldovan population which uses the Latin alphabet; this leads us to the question of Article 14 of the Convention.

#### Article 14

13. The applicants complained that they had been subjected to discrimination based on their language. More specifically, they maintained that the requirement to study in a language which they considered artificial caused them disadvantages in their private and family lives, and particularly in their education, not experienced by the members of the other communities in Transdnistria, namely Russians and Ukrainians. Again, this argument merited separate examination in our opinion.

14. We are all aware that language is the essential vehicle for education, the latter being the key to socialisation. This was aptly pointed out by the 1960 United Nations Convention against Discrimination in Education and by the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (Article 5 (e) (v)). Conversely, language barriers are liable to place pupils in a position of inferiority and hence, in some cases, of exclusion. The Council of Europe's 1982 report entitled: "Prevention of juvenile delinquency: the role of institutions of socialisation in a changing society"<sup>1</sup> highlights the fundamental role played by school, which can be a factor not only in promoting but also in hindering integration.

15. In the social and political context of this case, we therefore consider that there was no objective and reasonable justification, within the meaning of our Court's case-law, for the difference in treatment to which the pupils were subjected and its potential consequences. This leads us to conclude that there has been a violation of Article 14 of the Convention.

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#### ENDNOTES

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European Committee on Crime Problems, *Prevention of juvenile delinquency: the role of institutions of socialisation in a changing society*, Strasbourg, Council of Europe, 1982.

## PARTLY DISSENTING OPINION OF JUDGE KOVLER

(Translation)

I regret that, as in the earlier cases of *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII) and *Ivanțoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), I do not share the conclusions of the majority regarding a number of points. In those cases I expressed my disagreement with the methodology of the analysis (wrong parallels with a Cyprus-type conflict), the (somewhat selective) presentation of the facts, the analysis (both disputable and disputed by a number of specialists<sup>1</sup>) of the concepts of “jurisdiction” and “responsibility”, so there is no need for me to do so again here as the present case is part of a line of Transnistrian cases. I shall therefore concentrate on the aspects peculiar to this particular case.

In my view, the Court has sought to avoid at all costs “a legal vacuum” in the territorial application of the Convention. The Court should therefore establish first and foremost what the exceptional circumstances are that are capable of giving rise to the exercise of jurisdiction by the Contracting State (Russia here) outside its own territorial borders. This is the thrust of the assessment of the general principles relevant to jurisdiction, within the meaning of Article 1 of the Convention, expressed by the Court in paragraphs 104 and 105 of the judgment, supported by numerous examples from its own case-law including its most recent decisions. It appears to establish such circumstances by suggesting, in paragraph 114, that such extraterritorial control can be exercised directly by a State through its agents or the assertion of its authority, but concludes immediately afterwards, in the same paragraph, as follows: “The Court accepts that there is no evidence of any direct involvement of Russian agents in the action taken against the applicants’ schools”. So, what exceptional circumstances remain? The “effective control over the “MRT” during the relevant period” (see paragraphs 114 and 116 of the judgment), plus the conclusions containing strong political overtones (paragraphs 117-121). Is this sufficient?

Some observers refer to “the unforeseeability” of the Court’s case-law in certain areas, particularly humanitarian law (see *Kononov v. Latvia* [GC], no. 36376/04, ECHR 2010)<sup>2</sup>. By contrast, the outcome of the present case was only too foreseeable, given that the judgments in *Ilaşcu and Others* and *Ivanțoc and Others* are – rightly or wrongly – already established case-law. What is “unforeseeable” in this judgment, however, is the controversial interpretation of the content and scope of the right to education set forth in Article 2 of Protocol No. 1. In the leading *Belgian linguistic case* the Court’s interpretation of the second sentence of that Article dispelled any ambiguities: “This provision does not require of States that they should, in the sphere of education or teaching, respect parents’ linguistic preferences, but only their religious and philosophical convictions. To interpret the terms “religious” and “philosophical” as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which is not there” (*Case ‘relating to certain aspects of the laws on the use of languages in education in Belgium’ v. Belgium* (merits), 23 July 1968, § 6, Series A no. 6). Admittedly, that judgment also says that the right to education would be meaningless if it did not imply, in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be. The Court could therefore have concentrated on the exercise of this “linguistic” right which, in the present case, ran up against the problem of the use of a particular alphabet.

In its admissibility decision the Court reiterated the position of the Moldovan Government in that connection: “According to the information available to the Moldovan Government, education in the three schools which were the subject of the present applications was currently being carried out in the official Moldovan language, using the Latin script, and based on curricula approved by the Moldovan Ministry of Education and Youth (MEY). The applicants had not provided any evidence to prove that the “MRT” authorities had been successful in their attempts to impose the Cyrillic script and an “MRT” curriculum... Thus, despite the attempts of the “MRT” authorities, the children were receiving an education in their own language and according to the convictions of their parents” (see *Catan and Others v. Moldova and Russia* (dec.), nos. 43370/04, 8252/05 and 18454/06, § 117, 15 June 2010).

In my view, the schooling issue as such and the language-alphabet aspect stops there. Regard must of course be had to Article 32 of the Convention, and also the notion that the Convention is a living instrument, but it should not be forgotten that the Convention is an international treaty to which the Vienna Convention on the Law of Treaties applies: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (Article 31 “General rule of interpretation”). In my view, the Court should not examine the complaint under Article 2 of Protocol No. 1 on

the merits because this complaint goes well beyond the ordinary meaning given to the right to education.

However, the Court follows a slippery slope proposed by the applicants: “education should be directed to the ‘full development of the human personality’” (see paragraph 125 of the judgment). In its examination of this application, the Court seeks to develop its case-law on Article 2 of Protocol No. 1... while refraining, by a majority, from replacing the problem within the context of the provisions of Article 8. The magic wand consisting in an “evolutive interpretation” of the Convention is applied only to Article 2 of Protocol No. 1, giving it a meaning hitherto unseen... The task that the Court sets itself at the beginning of its analysis of the context of this Article (see paragraph 136 of the judgment) conflicts with the *ratione materiae* criterion. I fear that, in taking this approach, the Court is setting a bad example of what is called “judicial activism”. In my view, the case is too sensitive to be used as a trial ground for judicial activism.

This activism is also apparent, alas, in the application of Article 41 of the Convention. What I find particularly shocking is the “egalitarian” approach: children aged six at the time of the events (born in 1997 or 1998) are placed on an equal footing with secondary-school pupils, and parents of schoolchildren with parents who have not included their children in their application. In the fairly recent judgment in the case of *Ponomaryovi v. Bulgaria* (no. 5335/05, § 56, ECHR 2011), the Court awarded each of the applicants EUR 2,000 on account of the violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1. In *Oršuš and Others v. Croatia* ([GC], no. 15766/03, ECHR 2010), which concerns the education of Roma children, it awarded each applicant, for several violations, among which was Article 2 of Protocol No. 1, EUR 4,500, and in *Sampanis and Others v. Greece* (no. 32526/05, 5 June 2008) it awarded each applicant EUR 6,000 on account of the greater seriousness of the violation (Article 13 and Article 14 taken in conjunction with Article 2 of Protocol No. 1). In the present case, however, a far more generous award is made in respect of a single violation. This observation also concerns the costs and expenses: EUR 10,000 in *Oršuš* and EUR 50,000 in the present case, whereas these are both Grand Chamber cases... The principle “it’s not my money” is irrelevant because it is the taxpayer’s money of a member State of the Council of Europe.

It is in the light of all the foregoing considerations that I am unable to subscribe to the majority view regarding certain points that I consider to be of major importance.

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## ENDNOTES

- 1 Referring to the Court’s conclusion in *Ilaşcu* regarding “the effective authority” and “the decisive influence” of Russia in the region, G. Cohen-Jonathan observes: “This reiterates the terms and the solution analysed in *Cyprus v. Turkey*: the important point under Article 1 is to determine which State exercises effective control (or “decisive” influence”) where overall control is not exercised” – G. Cohen-Jonathan. “Quelques observations sur les notions de ‘jurisdiction’ et d’injonction”, *Revue trimestrielle des droits de l’homme*, no. 2005/64, p. 772.
- 2 E. Decaux. “De l’imprévisibilité de la jurisprudence européenne en matière de droit humanitaire”, *Revue trimestrielle des droits de l’homme*, no. 2011/86, pp. 343-57.

## ANNEX

## LIST OF APPLICANTS

## 1. Catan and Others (application no. 43370/04)

No.	Applicant	Date of Birth
1.	BULGAC Elena	29/01/1968
2.	BULGAC Cristina	18/04/1988
3.	BULGAC Diana	29/05/1990
4.	CACEROVSCHI Lilia	14/10/1969
5.	CACEROVSCHI Andrei	07/01/1990
6.	CACEROVSCHI Tatiana	31/08/1995
7.	CATAN Alexei	02/06/1962
8.	CATAN Elena	09/10/1988
9.	CRIJANOVSKI Anastasia	11/11/1969
10.	CRIJANOVSKI Olesea	20/11/1994
11.	CRIJANOVSKI Oxana	24/11/1990
12.	DUBCEAC Teodora	12/11/1957
13.	DUBCEAC Vladimir	22/07/1993
14.	PETELIN Tatiana	13/06/1969
15.	PETELIN Daniel	15/06/1994
16.	PRIMAC Maria	04/05/1961
17.	PRIMAC Ana	18/06/1991
18.	SAFONOVA Lidia	26/12/1967
19.	SAFONOVA Alisa	18/06/1995
20.	SAFONOVA Olesea	14/04/1990
21.	SALEBA Tatiana	24/05/1969
22.	SALEBA Iana	26/09/1989
23.	SARACUȚA Victor	20/08/1967
24.	SARACUȚA Doina	14/10/1990
25.	SARACUȚA Tatiana	16/05/1996
26.	SCRIPNIC Tatiana	29/08/1961
27.	SCRIPNIC Corneliu	25/04/1989
28.	TIHOVSCHI Andrei	09/12/1958

## 2. Caldare and Others (application no. 8252/05)

No.	Applicant	Date of Birth
29.	BEIU Elena	06/07/1970
30.	BEIU Vladimir	28/05/1991
31.	BURAC Tamara	31/08/1965
32.	BURAC Dorin	14/07/1994
33.	BURAC Irina	04/04/1986
34.	CALDARE Elena	15/08/1969
35.	CALDARE Ruxanda	02/02/1992
36.	CALMÎC Ecaterina	05/07/1971
37.	CALMÎC Vadim	10/12/1992
38.	CARACACI Claudia	05/06/1959
39.	CARACACI Ala	04/02/1987
40.	CARACACI Oxana	04/03/1988
41.	CÎRLAN Valentina	01/04/1969
42.	CÎRLAN Artiom	08/07/1991
43.	CÎRLAN Sergiu	28/05/1995
44.	DOCHIN Elena	29/09/1965
45.	DOCHIN Cristina	08/08/1989
46.	GĂINĂ Maria	17/11/1967
47.	GĂINĂ Alina	15/12/1992
48.	GĂINĂ Victoria	02/04/1989
49.	LIULICA Victoria	28/04/1963
50.	LIULICA Elena	10/05/1990
51.	LIULICA Maxim	26/05/1987
52.	MUNTEANU Raisa	04/08/1958
53.	MUNTEANU Iulia	21/02/1994
54.	MUNTEANU Veronica	24/09/1987
55.	PĂDURARU Constantin	02/06/1967
56.	PĂDURARU Elena	08/06/1995
57.	RÎJALO Larisa	01/04/1966
58.	RÎJALO Rodica	07/10/1989
59.	SAVA Maria	18/10/1960
60.	SAVA Roman	22/12/1990
61.	SAVA Ștefan	22/12/1990
62.	SIMONOV Aurelia	18/09/1970



63.	GRITCAN Natalia	04/09/1994
64.	GRITCAN Olga	31/07/1996
65.	TELIPIS Olga	24/10/1955
66.	TELIPIS Alexandra	26/05/1990
67.	TELIPIS Cristina	26/05/1990
68.	ȚOPA Maria	30/06/1955
69.	ȚOPA Ana	30/01/1987
70.	ȚURCANU Tamara	06/10/1963
71.	ȚURCANU Andrei	29/09/1987

### 3. Cercavschi and Others (application no. 18454/06)

No.	Applicant	Date of Birth
72.	ARCAN Liuba	10/02/1977
73.	ARCAN Irina	08/10/1994
74.	BACIOI Anatoli	29/08/1960
75.	BACIOI Nina	18/08/1962
76.	BACIOI Irina	24/05/1989
77.	BACIOI Mariana	24/05/1989
78.	BALTAG Tamara	13/09/1961
79.	BALTAG Igor	16/12/1994
80.	BALTAG Liuba	18/11/1998
81.	BODAC Ion	02/06/1962
82.	BODAC Tatiana	24/07/1994
83.	BOVAR Natalia	15/07/1971
84.	BOVAR Alexandru	12/08/1992
85.	BOVAR Ana	14/12/1998
86.	BOZU Nicolae	11/10/1964
87.	BOZU Nina	18/07/1966
88.	BOZU Sergiu	20/11/1988
89.	BRIGALDA Serghei	08/10/1967
90.	BRIGALDA Svetlana	02/09/1971
91.	CALANDEA Galina	18/01/1974
92.	CALANDEA Iurie	30/10/1967
93.	CERCAVSCHI Eleonora	11/09/1960
94.	JMACOVA Nadejda	05/04/1989
95.	CHIRICOI Natalia	27/02/1964
96.	CHIRICOI Dumitru	06/08/1992
97.	CHIRICOI Liuba	16/04/1960

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98.	CHIRILIUC Natalia	24/05/1966
99.	CHIRILIUC Mihail	08/06/1997
100.	CHIRILIUC Tatiana	26/04/1991
101.	CHIȘCARI Ghenadie	19/12/1961
102.	CHIȘCARI Egor	23/03/1989
103.	COJOCARU Mariana	16/10/1974
104.	COJOCARU Andrei	03/06/1998
105.	COJOCARU Corina	11/09/1996
106.	COJOCARU Doina	06/11/1994
107.	COJOCARU Elena	03/06/1998
108.	FRANȚUJAN Tatiana	22/03/1968
109.	FRANȚUJAN Elena	23/05/1990
110.	FRANȚUJAN Victoria	31/10/1988
111.	FRANȚUJAN Tatiana	01/02/1971
112.	GAVRILAȘENCO Maria	04/02/1964
113.	GAVRILAȘENCO Olga	08/10/1998
114.	GAZ Diana	21/05/1987
115.	GAZUL Svetlana	23/02/1967
116.	GAZUL Constantin	26/11/1992
117.	GAZUL Victor	05/08/1989
118.	GOGOI Svetlana	14/08/1977
119.	GOGOI Nicolae	20/05/1998
120.	GOLOVCO Irina	05/05/1960
121.	GOLOVCO Elena	14/06/1987
122.	GORAȘ Angela	30/07/1970
123.	GORAȘ Vladimir	31/07/1967
124.	GORAȘ Valeriu	29/06/1994
125.	IVANOV Lidia	31/03/1967
126.	IVANOV Cristina	30/09/1989
127.	JITARIUC Svetlana	31/03/1960
128.	JITARIUC Laura	01/10/1994
129.	MASLENCO Boris	07/07/1966
130.	MASLENCO Valentina	02/02/1966
131.	MASLENCO Ion	25/05/1992
132.	MASLENCO Tatiana	20/05/1989
133.	MONOLATI Svetlana	16/08/1975
134.	MUNTEAN Ion	03/03/1958

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135.	MUNTEAN Dumitru	17/09/1991
136.	NAZARET Natalia	13/11/1958
137.	NAZARET Gheorghe	04/08/1958
138.	NAZARET Elena	14/04/1989
139.	PALADI Natalia	24/05/1979
140.	PARVAN Elena	22/10/1973
141.	PARVAN Natalia	26/09/1993
142.	PARVAN Vitalie	29/06/1998
143.	PAVALUC Nadejda	08/05/1969
144.	PAVALUC Andrei	19/03/1991
145.	PAVALUC Ion	11/01/1994
146.	PLOTEAN Viorelia	25/08/1968
147.	PLOTEAN Cristina	03/07/1990
148.	PLOTEAN Victoria	13/02/1992
149.	POGREBAN Ludmila	07/07/1968
150.	RACILA Zinaida	10/04/1965
151.	RACILA Ecaterina	01/02/1991
152.	RACILA Ludmila	03/01/1989
153.	ROȘCA Nicolae	17/12/1957
154.	ROȘCA Victoria	09/04/1990
155.	ROTARU Emilia	17/08/1968
156.	ROTARU Ion	30/08/1989
157.	ROTARU Mihai	16/08/1994
158.	SANDUL Serghei	07/07/1970
159.	SANDUL Liubovi	15/08/1998
160.	STANILA Raisa	18/02/1961
161.	STANILA Svetlana	20/12/1988
162.	TARAN Igor	30/01/1969
163.	TARAN Olga	03/03/1998
164.	TIRON Valentina	01/07/1955
165.	TIRON Ana	19/06/1987
166.	TRANDAFIR Galina	26/08/1964
167.	TRANDAFIR Natalia	24/11/1987
168.	TULCII Igor	07/07/1963
169.	TULCII Olga	01/10/1987
170.	ZEABENȚEV Andrei	28/12/1997