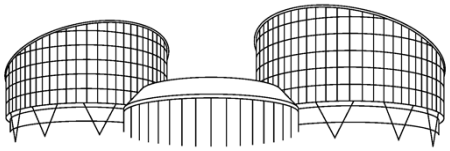

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF OZDIL AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Application no. 42305/18)

JUDGMENT

STRASBOURG

11 June 2019

FINAL

11/09/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ozdil and Others v. the Republic of Moldova,

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

Robert Spano, *President,*
Marko Bošnjak,
Julia Laffranque,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Darian Pavli, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 21 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 42305/18) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Turkish nationals, Mr Yasin Özdil, Mr Müjdat Çelebi, Mr Riza Doğan, Mr Sedat Hasan Karacaoğlu and Mr Mehmet Feridun Tüfekçi ("the applicants"), on 6 September 2018.

2. The applicants were represented by Mr V. Nagacevschi, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr O. Rotari.

3. The applicants alleged, in particular, that they had been unlawfully deprived of their liberty and extradited to Turkey contrary to Articles 5 § 1 and 8 of the Convention and Article 1 of Protocol No. 7.

4. On 19 October 2018 notice of the complaints concerning Articles 5 § 1, 8 and Article 1 of Protocol No. 7 was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On the same date the Turkish Government were informed of their right to intervene in the proceedings, in accordance with Article 36 § 1 of the Convention and Rule 44 § 1(b) of the Rules of Court, but they did not wish to avail themselves of that right. The Court also decided to give priority to the case under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1976, 1972, 1976, 1970 and 1976 respectively. They are currently detained in Turkey.

A. Background to the case

6. The applicants were secondary school teachers in a private chain of schools in Moldova called Orizont, which has been in operation since 1993.

7. Mr Yasin Ozdil had lived in Moldova since 2015 with his wife and their two minor children. Mr Mujdat Celebi had lived in Moldova since 2014 with his wife and their three minor children. Mr Riza Dogan had lived in Moldova since 1993 with his wife and their two minor children, who are Moldovan citizens. Mr Sedat Hasan Karacaoglu had lived in Moldova since 1998 with his wife. Mr Mehmet Feridun Tufekci had lived in Moldova since 1993 together with his Moldovan wife and their two minor children, who are Moldovan citizens. All the applicants had valid residence permits for Moldova.

8. During the night of 15 to 16 July 2016 a group of members of the Turkish armed forces calling themselves the "Peace at Home Council" attempted to carry out a military coup aimed at overthrowing the democratically elected parliament, government and President of Turkey. The day after the attempted military coup, the national authorities blamed the network linked to Fetullah Gülen, a Turkish citizen living in Pennsylvania (United States of America) and considered to be the leader of a terrorist organisation known as FETÖ/PDY ("Gülenist Terror Organisation/Parallel State Structure"). Several criminal investigations were subsequently initiated by the appropriate prosecuting authorities in relation to suspected members of that organisation. In connection with the above events, the Turkish ambassador to Moldova accused the Orizont schools of ties to that movement and accused the teachers in those schools of terrorism.

9. In May 2017 the Turkish Prime Minister visited Moldova and requested from his Moldovan counterpart the shutdown of the Orizont schools.

10. On 31 March 2018 the principal of the Chişinău-based Orizont secondary school was arrested at Chişinău Airport and questioned for seven hours by the Moldovan secret service concerning allegations of supporting terrorist organisations. A criminal investigation was initiated against him and the preventive measure of a bar on leaving the country for ten days was imposed.

11. In connection with the above events, on 6 April 2018 all the applicants applied to the Moldovan Bureau for Migration and Asylum ("the

BMA") for asylum. They sought to obtain refugee status in Moldova because they feared reprisals in their country of origin, Turkey, on the grounds of their political views.

12. On 10 April 2018 the charges against the principal of the Chişinău Orizont secondary school were dropped and the investigation was discontinued. On 5 May 2018 the applicants wrote to the competent authorities in Moldova and asked for information on whether there were any pending criminal investigations concerning them. In a letter dated 13 June 2018 the prosecutor's office specialising in organised crime wrote to the applicants, stating that there were no pending criminal investigations involving them. A similar letter was received by the applicants on 31 July 2018 from the anti-corruption prosecutor's office.

B. The applicants' transfer to Turkey

13. On 6 September 2018 in the morning, seven teachers from the Orizont schools – among them the applicants – were arrested in their homes or on their way to work by individuals wearing plain clothes and taken to an unknown destination. Later in the day the Moldovan secret service issued several statements concerning a large anti-terrorist operation which had taken place that day, during which seven foreign nationals suspected of ties to an Islamist organisation had been arrested and removed from Moldova in cooperation with secret services from other countries.

14. On the same day the Turkish media reported that the Turkish secret service had conducted a successful operation in Moldova, during which seven members of the Fethullah Gülen movement had been arrested.

15. On 6 September 2018 some of the members of the applicants' families, their colleagues from the schools and human rights defenders spent the day at the airport in the hope of stopping the applicants' deportation to Turkey. They expected the applicants to be taken to Turkey by the scheduled flight leaving later in the day.

16. The fate of the applicants, and even whether they were still in Moldova, remained unknown to their families for several weeks. The Moldovan authorities refrained from communicating any information about them either to their families or to the press.

17. It appeared later that on the very morning of their arrest the applicants were taken directly to Chişinău Airport, where an aeroplane chartered for that purpose was waiting for them and took them immediately to Turkey.

C. Events that took place after the applicants' transfer to Turkey

18. On 7 September 2018, the head of the BMA, O.P., stated in an interview that the authority had not been involved in the case of the seven

Orizont teachers and that the procedure for declaring them undesirable and removing them from Moldova had not been carried out by the BMA.

19. Several days after the applicants' arrest, their families received letters from the BMA containing decisions dated 4 September 2018 in which the applicants' applications for asylum were rejected. The decisions contained a thorough analysis of the manner in which the Gülen movement followers had been treated in Turkey and concluded that the applicants' fear of reprisals at the hands of the Turkish authorities were justified. In particular, the BMA found that the Turkish authorities had committed acts of harassment, threatening, arbitrary detentions and other serious human rights violations in respect of opposition leaders and members of the Gülen movement. The BMA concluded that the applicants fulfilled the legal requirements to be granted asylum in Moldova. Nevertheless, their applications were rejected on the basis of a classified note received from the Moldovan secret service, according to which the applicants presented a threat to national security. The decisions did not give any details as to the content of the note, not even the date on which it had been issued. The applicants were given fifteen days to leave the country and they were entitled to challenge the decisions within thirty days. The letters accompanying the decisions were posted on 7 and 10 September 2018 and were signed by the head of the BMA, O.P.

20. Several days after the applicants' arrest and transfer to Turkey their families also received from the BMA decisions dated 5 September 2018, banning the applicants from entering Moldovan territory for a period of five years and ordering their expulsion under supervision from Moldova by the BMA in accordance with section 58 of the Status of Aliens Act (see paragraph 27 below). The letters accompanying the decisions were also signed by the head of the BMA, O.P.

21. On different dates in September and October 2018 the applicants' representative, who had received powers of attorney from their wives, contested the above decisions in court. However, their actions were dismissed on the grounds that the powers of attorney had not been signed by the applicants themselves. The court decisions were challenged before the hierarchically superior court but without any success.

D. International reactions to the applicants' transfer to Turkey

22. On 15 October 2018 the European Parliament made public a report on the implementation of the EU Association Agreement with Moldova (2017/2281(INI)). In its report, the European Parliament issued a statement in which it expressed itself in the following terms on the manner in which the applicants had been transferred from Turkey:

> "29. Strongly condemns the recent extradition/abduction of Turkish citizens to Turkey due to their alleged links to the Gülen movement, in violation of the rule of

> law and basic human rights; urges the Moldovan authorities to ensure that any extradition requests coming from third countries are processed in a transparent manner while following judicial procedures fully in line with European principles and standards..."

23. Amnesty International also made a statement in relation to the deportation of the seven Orizont teachers to Turkey. On 6 September 2018 the organisation's director for Eastern Europe and Central Asia made the following statement in relation to the applicants' transfer to Turkey:

> "The Moldovan authorities didn't just violate these individuals' rights once by deporting them - they put them on a fast-track to further human rights violations such as an unfair trial. ... The latest arrests in Moldova follow the pattern of political reprisals against Turkish nationals living abroad by the increasingly repressive government of Recep Tayyip Erdoğan. ... Forcible return of those seeking protection in Moldova is a flagrant violation of Moldova's international human rights obligations. The state authorities must immediately hold to account those responsible for the arbitrary detention and expulsion of the Turkish nationals."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Expulsion

24. Moldovan legislation makes a distinction between simple expulsion – that is to say when the expelled person leaves the country him or herself within a specified period of time after being obliged to do so – and expulsions under supervision (*îndepărtare sub escortă*) – when the expelled person is accompanied by specialised personnel of the BMA.

25. The only authority responsible for expulsion is the Bureau for Migration and Asylum. This body decides on asylum applications and on expulsion of aliens. The decisions issued by the BMA can be challenged before the Centru District Court, which is the district court with territorial competence. The decisions of the Centru District Court can be further challenged on appeal before the Chişinău Court of Appeal. Finally, the decisions of the Chişinău Court of Appeal can be challenged with an appeal on points of law to the Supreme Court of Justice. Challenging the decisions of the BMA has suspensive effect and the person concerned can remain on the territory of the Republic of Moldova until such time as the case has been determined by a final judicial decision.

26. Under section 55 of the Status of Aliens Act (Law no. 200 of 16 July 2010), an alien can be barred from entering the territory of the Republic of Moldova for a period of five to fifteen years. A decision barring a person in this manner must be reasoned. If the grounds for undesirability are national security, no reasons can be given. Section 56 of the same Act provides that a decision barring the alien from entering must be served on him or her personally in exchange for a signature confirming receipt. If the alien is not present, the decision must be posted to him or her by registered post. Under

section 57 of the same Act, a decision declaring an alien undesirable can be challenged before a court within five days; however, such a challenge does not have suspensive effect. The court can, however, order the suspension of the decision at the request of the applicant. A request to suspend the decision must be examined with urgency.

27. Under section 58 of the Status of Aliens Act, the expulsion of an alien under supervision must be carried out by BMA personnel by way of accompanying the person concerned to a border crossing point, the country of origin or transit or to his or her destination. The measure of expulsion under supervision can be applied to persons who unlawfully entered the country, who failed to leave the country within the prescribed period of time, who entered the country during a period of prohibition, who had been barred from entering, who had been declared undesirable or in respect of whom the measure of expulsion had been applied.

28. In accordance with section 28(a) of the Asylum Act (Law No. 270 of 18 December 2008), no asylum seeker can be expelled from the country until a final determination of his or her asylum application. Under section 28(b) of the same Act, an asylum seeker whose application for asylum has been finally rejected has the right to stay fifteen more days on the territory of the country unless his or her application was treated under the urgent procedure, in which case he or she has to leave the country after the adoption of the final decision.

B. Extradition

29. The extradition procedure is regulated by Articles 541-50 of the Code of Criminal Procedure. Pursuant to Article 546 § 5 it is forbidden to extradite persons sought by foreign countries for offences which are considered to be political in nature under the law of Moldova.

30. The authority responsible for extradition in Moldova is the Department for International Legal Assistance and European Integration within the Prosecutor General's Office. Extradition can be applied to persons in respect of whom wanted notices by foreign countries have been issued through Interpol, the CIS equivalent of Interpol or otherwise. After receiving a wanted notice, the Department for International Legal Assistance must apply to an investigating judge for an extradition order. The judge must decide on the matter after holding a hearing with the participation of a prosecutor, a representative of the Ministry of Justice, the concerned person and his or her lawyer. The extradition order issued by the investigating judge must provide reasons and can be challenged with an appeal on points of law to the Chişinău Court of Appeal. The appeal on points of law has suspensive effect. The decision of the Court of Appeal is final.

31. The person to be extradited can be detained during the proceedings for a period of up to 180 days. The urgent extradition procedure can be applied only if the person to be deported has expressly agreed to it. In that case detention can last up to forty days. In all cases detention must have been ordered by an investigating judge and can be challenged before the hierarchically superior court.

THE LAW

32. The applicants complained that their arrest and detention had been unlawful and contrary to Article 5 § 1 of the Convention, which in its relevant parts reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ..."

33. They also complained that they had not had a fair hearing in the proceedings concerning their extradition, as required by Article 6 of the Convention, which reads:

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

34. They further argued that their extradition to Turkey had been in breach of their right to respect for private and family life, as guaranteed by Article 8 of the Convention, which reads as follows:

> "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."

35. The applicants lastly complained that the decision to extradite them to Turkey had not complied with the procedural requirements of Article 1 of Protocol No. 7, which reads as follows:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

I. ADMISSIBILITY OF THE COMPLAINTS

A. Non-exhaustion of domestic remedies

36. The Government submitted that the applicants had not exhausted domestic remedies available to them. In particular, the applicants' representative's court action against the BMA's decisions to reject their asylum application and bar them from re-entering Moldova had been rejected for failure to produce powers of attorney signed by the applicants themselves. In the Government's opinion such an omission on the part of the applicants' representative had amounted to a failure to properly seize the domestic courts and thus to exhaust domestic remedies.

37. The applicants' representative argued that he had not had contact with his clients and that their families had not had the means to finance his trip to Turkey in order to obtain powers of attorney from the applicants. In any event, the applicants' representative expressed the view that the remedy in question had not been accessible to the applicants because the decision to remove them had been posted to them after their deportation to Turkey. Moreover, the remedy would not have been effective because the Moldovan courts could not have ordered that the applicants be returned from prison in Turkey.

38. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see, for example, *Sabeh El Leil v. France* [GC], no. 34869/05, § 32, 29 June 2011). Under Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Tănase v. Moldova* [GC], no. 7/08, § 120, ECHR 2010).

39. The Court places emphasis on the fact that the applicants were transferred from Moldova to Turkey in the morning of 6 September 2018 by members of the secret services of Moldova and Turkey (see paragraphs 13 and 14 above). It has not been demonstrated by the Government that the applicants had, at that point, been notified of any decisions in their cases, either as to their application for asylum in accordance with the Status of Aliens Act or of a decision on their extradition under the Code of Criminal Procedure. Therefore, the Court does not accept that in the particular circumstances of their case recourse to the domestic courts could have been considered, as argued by the Government, an effective remedy to be exhausted after their transfer to Turkey (see, *Čonka v. Belgium*, no. 51564/99, § 46, ECHR 2002-I; and *De Souza Ribeiro v. France* [GC], no. 22689/07, §§ 94-97, ECHR 2012). Moreover, the Government have not shown that the domestic courts would have been in a position to order the applicants' release from detention in Turkey and their subsequent return to Moldova.

40. In view of the above considerations, the Court rejects the Moldovan Government's objection of non-exhaustion of domestic remedies.

B. Complaint under Article 6 of the Convention

41. The applicants argued that they had not had a fair hearing in the proceedings concerning their alleged extradition.

42. The Court notes that the facts of this case do not concern the determination of the applicants' civil rights or obligations or of a criminal charge against them. In this context, it reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him or her, within the meaning of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X; *Penafiel Salgado v. Spain* (dec.), no. 65964/01, 16 April 2002; and *Sardinas Albo v. Italy* (dec.), no. 56271/00, ECHR 2004-I). Consequently, Article 6 § 1 of the Convention is not applicable in the instant case. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected under Article 35 §§ 3 and 4.

C. Remaining complaints

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

A. The parties' submissions

44. The applicants argued that their detention on the morning of 6 September 2018 and their handing over to the Turkish authorities had been unlawful under domestic law.

45. The Government admitted that the applicants had been deprived of their liberty for a short period of time. However, that deprivation had been justified under the second limb of sub-paragraph (f) of Article 5 § 1 of the Convention and effected for the purpose of the applicant's expulsion under supervision from the territory of the Republic of Moldova in accordance with the decision of the BMA to bar them from the territory. The Government also submitted that at the time of their transfer to Turkey the applicants had not opposed being expelled to their country of origin and that they had not claimed that they had risked being tortured or subjected to inhuman treatment if sent to that country. Moreover, the Moldovan authorities had not been in possession of any such information.

B. The Court's assessment

1. General principles

46. Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual, and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty. Three strands of reasoning in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly, and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, both procedural and substantive, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, ECHR 2016 (extracts), with further references).

47. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A

no. 33; *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III; *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports* 1996-V; *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III; and *Vasileva v. Denmark*, no. 52792/99, § 32, 25 September 2003).

48. It is clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see, for example, *Saadi v. the United Kingdom* [GC], no. 13329/03, § 68, ECHR 2008).

49. One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, § 59, Series A no. 111; *Saadi*, cited above, § 69; and *Mooren v. Germany* [GC], no. 11364/03, §§ 77-79, 9 July 2009) or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports* 1996-III; *Liu v. Russia*, no. 42086/05, § 82, 6 December 2007; and *Marturana v. Italy*, no. 63154/00, § 80, 4 March 2008).

50. It must also be stressed that the authors of the Convention reinforced the individual's protection against arbitrary deprivation of his or her liberty by guaranteeing a corpus of substantive rights which are intended to minimise the risks of arbitrariness, by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act. The requirements of Article 5 §§ 3 and 4 with their emphasis on promptness and judicial supervision assume particular importance in this context. Prompt judicial intervention may lead to the detection and prevention of life-threatening measures or serious ill-treatment which violate the fundamental guarantees contained in Articles 2 and 3 of the Convention. What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection (see *El-Masri v. the Former Yugoslav Republic of Macedonia* [GC], no. 39630/09, 13 December 2012, § 231).

51. Although the investigation of terrorist offences undoubtedly presents the authorities with special problems, that does not mean that the authorities have carte blanche under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence (ibid., § 232).

2. Application of the above principles to the present case

52. It is the Government's position that the measure applied to the applicants was expulsion on the basis of the BMA decision of 5 September

2018 on grounds of national security and in accordance with the procedure provided for by section 58 of the Status of Aliens Act (see paragraph 27 above). The Court notes, however, that the Moldovan secret service issued several press statements on 6 September 2018 in which it declared that the operation concerning the applicants had been prepared and carried out by it (see paragraph 13 above). Moreover, according to the same press statements the operation had been conducted in cooperation with the secret services of other countries. The involvement of the Turkish secret services was not disputed by the Government in their observations.

53. The Government submitted that the Moldovan authorities were not aware of the applicants' fears of travelling to Turkey. However, the Court notes that the applicants clearly expressed their fear of criminal prosecution in Turkey in their asylum applications (see paragraph 11 above). Moreover, in the decisions dated 4 September 2018 concerning those applications, the BMA considered the applicants' fear of politically motivated persecution in Turkey to be well-founded (see paragraph 19 above).

54. It appears in the present case that the Moldovan authorities not only failed to give the applicants a choice of jurisdiction to be expelled to, but deliberately transferred them directly to the Turkish authorities.

55. The material in the case file also indicates that the joint operation of the Moldovan and Turkish secret services was prepared well in advance of 6 September 2018. The fact that the applicants were transported to Turkey in a specially chartered aeroplane for that purpose is only one of the elements that support that point of view. The facts of the case also indicate that the operation was conceived and organised in such a manner as to take the applicants by surprise so that they would have no time and possibility to defend themselves.

56. The Court further notes the interview with the head of the BMA of 7 September 2018 in which she stated that she was not aware of what had happened to the applicants and that the BMA had not been involved in the matter (see paragraph 18 above). It is noted in that context that the BMA decisions concerning the applicants were dated 4 and 5 September 2018. The trustworthiness of those dates is certainly a matter of concern and must be treated with caution in view of the statements made by the head of the BMA on 7 September 2018. Another element of the case which casts doubt on the said decisions is the fact that the BMA did not serve the decisions on the applicants as required by section 56 of Status of Aliens Act in the case of persons who are present, but posted them to their families after the removal of the applicants, as required in the case of persons who are not present (see paragraph 26 above).

57. Viewing the circumstances of the case as a whole and having regard to the volume of evidence pointing in the same direction and to the speed with which the Moldovan authorities acted, the Court concludes that the applicants' deprivation of liberty on 6 September 2018 was neither lawful

nor necessary within the meaning of Article 5 § 1 (f), nor devoid of arbitrariness. Depriving the applicants of their liberty in this way amounted to an extra-legal transfer of persons from the territory of the respondent State to Turkey which circumvented all guarantees offered to them by domestic and international law (see paragraphs 29-31 above). There has therefore been a breach of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. The parties' submissions

58. The applicants submitted that they had lived in Moldova together with their families for long periods of time. After their extradition to Turkey their families had remained in Moldova without sources of income. Their families could not return to Turkey for fear of reprisals and therefore all contact with them had been interrupted. Thus, there had been an interference with their private and family lives. That interference had not been in accordance with the law because the law on the basis of which they were expelled from Moldova did not offer any guarantees against abuse and arbitrariness. Moreover, the interferences had not been necessary in a democratic society.

59. The Government did not dispute that the applicants' removal from the territory of Moldova had constituted an interference with their private and family lives. However, that interference had been in accordance with the provisions of the Status of Aliens Act, had pursued the legitimate aim of protection of national security and had been necessary in a democratic society because it had been justified by the pressing social need to ensure the nation's safety. The Government also argued that the applicants' families had not even attempted to visit them in Turkey during their detention and expressed the view that they would not be at any risk in Turkey. The Turkish authorities had informed the applicants' families that the applicants had been taken into custody and the latter had been visited by family members who lived in Turkey on multiple occasions.

B. The Court's assessment

60. The Court reiterates that the Convention does not guarantee, as such, any right of an alien to enter or to reside in a particular country. However, the removal of a person from a country where close members of his or her family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

61. The Court notes that in the instant case the applicants had been living for long periods of time in Moldova, some of them for over twenty years. They had been lawfully resident there, had had employment and had started families, some of them with Moldovan nationals. The couples had had children, some of whom were Moldovan nationals (see paragraph 7 above).

62. Since it was not disputed by the Government that the applicants had been integrated into Moldovan society and had had genuine family lives there, the Court considers that their exclusion from Moldovan territory put an end to that integration and radically disrupted their private and family lives. Accordingly, the Court considers that there has been an interference in the applicants' private and family lives.

63. Such interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 8. It is therefore necessary to determine whether it was "in accordance with the law", motivated by one or more of the legitimate aims set out in that paragraph, and "necessary in a democratic society".

64. The Court reiterates that it has consistently held that the expression "in accordance with the law" requires firstly that the impugned measure should have a basis in domestic law, but also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

65. Admittedly, in the particular context of measures affecting national security, the requirement of foreseeability cannot be the same as in many other fields (see *Leander v. Sweden*, 26 March 1987, § 51, Series A no. 116).

66. Nevertheless, domestic law must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power (see *Malone v. the United Kingdom*, 2 August 1984, § 68, Series A no. 82).

67. Turning to the facts of the present case, the Court notes that Moldovan law contains norms regulating expulsion and extradition. Nevertheless, as found above, the applicants were removed from Moldova by way of an extra-legal transfer which circumvented the guarantees offered by domestic and international law (see paragraph 57 above). Since this forcible transfer, which led to a radical disruption of the applicants' private and family lives, lacked sufficient legal basis, it was not in "accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention.

68. The Court further reiterates that a person subject to a measure based on national security considerations must not be deprived of all guarantees against arbitrariness. He or she must, among other things, be able to have the measure in question scrutinised by an independent and impartial body competent to review all the relevant questions of fact and law, in order to determine the lawfulness of the measure and censure a possible abuse by the authorities. Before that review body the person concerned must have the benefit of adversarial proceedings in order to present his or her point of view and refute the arguments of the authorities (see *Al-Nashif v. Bulgaria*, no. 50963/99, §§ 123-24, 20 June 2002).

69. The Court observes that no proceedings were brought against the applicants for participating in the commission of any offence in Moldova or any other country. Apart from the general grounds mentioned above, the authorities did not provide the applicants with any other details. The Court notes, furthermore, that, in breach of domestic law, the applicants were not served with the decisions declaring their presence undesirable until after they had been expelled.

70. The Court attaches weight to the fact that the domestic courts refused to examine the applicants' court actions against the decisions rejecting their asylum applications and declaring them undesirable persons on very formalistic grounds, namely that the powers of attorney given to their lawyers had been signed by their spouses and not by them. Had it been otherwise, the domestic courts would in any event have been unable to examine the real motives behind the expulsion because domestic law did not provide that the note of the secret service which had served as grounds for the applicants' expulsion had to be made available to the judges.

71. As the applicants did not enjoy the minimum degree of protection against arbitrariness on the part of the authorities, the Court concludes that the interference with their private and family lives was not in accordance with a " law" satisfying the requirements of the Convention (see, *mutatis mutandis*, *Al-Nashif*, cited above, § 128).

72. There has accordingly been a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 7 TO THE CONVENTION

73. Having regard to the findings under Articles 5 § 1 and 8 of the Convention, the Court considers that it is not necessary to rule separately on this complaint also.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

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

A. Damage

75. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage.

76. The Government considered those amounts to be excessive.

77. In the light of all the circumstances, the Court awards each applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicants' representative also claimed EUR 1,000 for the costs and expenses incurred before the Court. He did not, however, submit any details on how the above amount was calculated. He argued that since the amount was not significant, he did not consider it necessary to substantiate it in any way.

79. The Government argued that the claim was unsubstantiated and asked the Court to dismiss it.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court may have regard in that connection to such matters as the number of hours worked and the hourly rate sought (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI).

81. In the instant case, however, the applicants' representative has not substantiated in any way his claim. The Court therefore decides not to award any sum under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 7 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay each applicant, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants claim for just satisfaction.

Done in English, and notified in writing on 11 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President