



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

3 May 2010

FOURTH SECTION

Applications nos. 315/10, 1153/10 and 1158/10
by Evghenii ANTONOV, Serghei BĂLUȚĂ and Alexandru BEZRODNÎ
against Moldova and Russia
lodged on 23 December 2009

STATEMENT OF FACTS

THE FACTS

Application no. 1153/10
by Serghei and Tamara Băluță
against Moldova and Russia
lodged on 23 December 2009

The first applicant, Mr Serghei Băluță, is a Moldovan national who was born in 1984 and lives in Lunga. The second applicant, Mrs Tamara Băluță, is a Moldovan national who was born in 1954 and lives in Lunga. They are represented before the Court by Mr A. Zubco from “Promo-LEX”, a non-governmental organisation based in Chișinău.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant was arrested in Tiraspol in December 2004 and accused of murder and arson. He was allegedly severely beaten. He was released in 2007 with an undertaking not to leave the city without permission. However, he left to work abroad and was rearrested on 13 September 2009 when he returned home.

He was initially held in the pre-trial detention centre of the MRT “Ministry of Internal Affairs” (“IVS Tiraspol”), then moved to the Hlinaia prison in Grigoriopol.

The first applicant has allegedly been held in inhuman conditions of detention (in a dark, damp cell without basic hygiene and without any facilities for a daily walk). According to the second applicant, food and other items which she attempts to send to the first applicant do not reach him (except for bread) and all her requests to see him have been refused.

On 13 October 2009 the second applicant found out that many of the detainees in IVS Tiraspol were on hunger strike in protest against abuse and inhuman conditions of detention. Allegedly, on 16 October 2009 a special riot police force entered the prison and beat up the prisoners.

The OSCE was refused access to IVS Tiraspol on 19 October 2009. Further complaints to the Moldovan, Russian and MRT authorities were unsuccessful. In particular, on 27 October 2009 the second applicant complained to the Russian Embassy in Moldova, which promised to officially contact the MRT prosecutor's office in connection with the case.

In reply to the second applicant's letter of 12 October 2009 asking for permission to see the first applicant, on 29 October 2009 the "Prosecutor's Office of the MRT" replied that "under [the applicable legislation] the investigator is not under an obligation to authorise the meeting of detainees with their relatives. In your case, such meetings were refused." No other reasons were given.

On an unknown date the applicant was transferred to another prison in Grigoriopol, also under the control of the MRT authorities.

COMPLAINTS

1. The first applicant complains under Article 3 of the Convention that he is being detained in inhuman conditions.

2. He also complains, under Article 5 § 1 of the Convention, alone and in conjunction with Article 13 of the Convention, that his arrest was based on decisions by the MRT authorities, which did not have the authority to lawfully order his arrest on the territory of Moldova.

3. The first applicant complains, under Article 5 § 4 of the Convention, alone and in conjunction with Article 13 of the Convention, that he cannot challenge the decisions to detain him pending trial before any court without the assistance of counsel (the lawyer appointed by the "MRT court" refused to do so).

4. The applicants complain under Article 8 of the Convention that they are not allowed to meet each other in prison. The second applicant also claims that her telephone is tapped and that she is being monitored and intimidated by unknown persons.

Application no. 315/10
by Evghenii and Irina ANTONOV
against Moldova and Russia
lodged on 23 December 2009

The first applicant, Mr Evghenii Antonov, is a Russian national who was born in 1979 and lives in Tiraspol. The second applicant, Mrs Irina Antonova, is a Ukrainian national who was born in 1954 and lives in Tiraspol. They are represented before the Court by Mr A. Zubco from “Promo-LEX”, a non-governmental organisation based in Chişinău.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant was arrested in Tiraspol in August 2009 and accused of having in his possession a hunter's knife and a packet of marijuana. He was initially held in the pre-trial detention centre of the MRT “Ministry of Internal Affairs” (“IVS Tiraspol”), and on 30 October 2009 was moved to the Hlinaia prison in Grigoriopol.

A few days after his arrest the first applicant called the second applicant and asked her to bring him food and warm clothes. He told her that he was being held in a dark, damp cell without basic hygiene. The applicants' representative claims that the conditions of detention were similar to those established by the Court in *Ilaşcu and Others v. Moldova and Russia* [GC] (no. 48787/99, ECHR 2004 VII).

The second applicant was not allowed to see the first applicant, and the OSCE was allegedly refused access to IVS Tiraspol on 19 October 2009, where some 90 detainees, including the first applicant, were on a hunger strike to protest against ill-treatment and inhuman conditions of detention. Further complaints to the Moldovan, Russian and MRT authorities were unsuccessful.

On 9 December 2009 the second applicant was able to see the first applicant during a court trial; she submitted that he looked tired and weak.

COMPLAINTS

1. The first applicant complains under Article 3 of the Convention that he is being detained in inhuman conditions.

2. He also complains, under Article 5 § 1 of the Convention, alone and in conjunction with Article 13 of the Convention, that his arrest was based on decisions by the MRT authorities, which did not have the authority to lawfully order his arrest on the territory of Moldova.

3. He further complains, under Article 5 § 3 of the Convention, alone and in conjunction with Article 13 of the Convention, that no relevant and sufficient reasons for his detention pending trial were given.

4. The first applicant complains, under Article 5 § 4 of the Convention, alone and in conjunction with Article 13 of the Convention, that he cannot

challenge the decisions to detain him pending trial before any court without the assistance of counsel.

5. The applicants complain under Article 8 of the Convention that they are not allowed to meet each other in prison. The second applicant also claims that her telephone is tapped and that her home is being monitored by unknown persons.

Application no. 1158/10
by Alexandru and Liudmila Bezrodnî
against Moldova and Russia
lodged on 23 December 2009

The first applicant, Mr Alexandru Bezrodnî, is a Ukrainian national who was born in 1986 and lives in Tiraspol. The second applicant, Mrs Liudmila Bezrodnaia, is a Russian national who was born in 1967 and lives in Tiraspol. They are represented before the Court by Mr A. Zubco from “Promo Lex”, a non-governmental organisation based in Chişinău.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant is the leader of the non-governmental organisation “The World of Youth”. He was arrested in Tiraspol in July 2009 and accused of stealing roses from a public park, as well as endangering the life of three “militia” officers and private security agents. He was initially held in the pre-trial detention centre of the MRT “Ministry of Internal Affairs” (“IVS Tiraspol”), then moved to the Hlinaia prison in Grigoriopol.

On 29 July 2009 the second applicant was told by a lawyer appointed by the “MRT court” that the first applicant had been brought to that court for a hearing. When the second applicant saw the first applicant, he allegedly had blood on his face and some green substance on his head, which she claims masked the effects of a severe blow to his head. She also saw bruises on the first applicant's body. The first applicant was allegedly able to tell the second applicant that he was being ill-treated with the aim of extracting self-incriminating statements from him.

Also on 29 July 2009 the “Tiraspol town court” ordered the first applicant's detention pending trial for an undetermined period of time. It reiterated the charges against the first applicant and stated that

“... the court takes into account the fact that [the first applicant] is charged with a serious offence for which the law provides a punishment of lengthy imprisonment, that he is not well viewed by society, that he is unemployed and has already been convicted of a criminal offence in the past, that he does not acknowledge his guilt, which gives the court reasons to believe that if released he may abscond or reoffend. The case-file contains sufficient evidence to support the investigator's request.”

On an unknown date in September 2009 the first applicant attended a court hearing and was able to have a brief conversation with the second applicant, in the course of which he told her that he had been ill-treated and intimidated. He described the conditions of detention in the following manner: he was held in a cell in the basement of the detention centre without any access to daylight; he was held with persons with infectious diseases such as HIV and tuberculosis; there were insufficient beds (in the form of hard platforms, without any mattresses or bed linen), forcing the detainees to take it in turns to get some sleep; he was only allowed one shower a month; the toilet was in the cell and was very rarely cleaned; the cell was damp and lacked a working ventilation system; the cell was full of parasitic insects and on the rare occasions when disinfections were carried

out the detainees were present in the cell; there were almost no hygiene products; the food was inedible, full of mould and insects; and no medical assistance was given to him despite his injuries.

The second applicant claims that all the food and other items which she attempts to send to the first applicant are rejected by the prison administration or destroyed. On 13 October 2009 the second applicant was told by the prison staff that no food was necessary for the detainees since they were on hunger strike. He warned that if the strike continued, riot police would be called in.

On 15 October 2009 Mr V. Ursu, a member of the Consulting Committee for Prevention of Torture in Moldova, reported that on 14 October 2009 he was informed by relatives of several persons detained in the detention centre of the MRT “Ministry of Internal Affairs” that many detainees in that centre were on hunger strike and that they were being subjected to ill-treatment.

On 16 October 2009 the second applicant found out that the riot police had entered the prison. She was unable to find out what had happened to the first applicant.

The applicants have submitted several press reports concerning the hunger strike at the above-mentioned detention centre and the alleged ill-treatment of detainees. They have also submitted copies of press reports by the MRT media, according to which on 22 October 2009 the MRT “Minister of Justice” declared that pre-trial detention centres were overcrowded.

The OSCE was allegedly refused access to IVS Tiraspol on 19 October 2009. Further complaints to Moldovan, Russian and MRT authorities were unsuccessful. In particular, on 27 October 2009 the second applicant complained to the Russian Embassy in Moldova, which promised to officially contact the MRT prosecutor's office in connection with the case.

COMPLAINTS

1. The first applicant complains under Article 3 of the Convention that he was ill-treated upon his arrest and during his subsequent detention.

2. He also complains, under the same Article, that he is being detained in inhuman conditions.

3. He further complains, under Article 5 § 1 of the Convention, alone and in conjunction with Article 13 of the Convention, that his arrest was based on decisions by the MRT authorities, which did not have the authority to lawfully order his arrest on the territory of Moldova.

4. The first applicant also complains under Articles 5 § 1 and 13 of the Convention that he was arrested in the absence of a reasonable suspicion of having committed a crime, but rather in connection with his activities as the leader of his non-governmental organisation.

5. He further complains, under Article 5 §§ 3, 4 and 5 of the Convention, alone and in conjunction with Article 13 of the Convention, that an “MRT court” authorised his detention pending trial only seven days after his arrest and that he cannot challenge that decision before a higher court without

assistance from a lawyer. The “court” did not give relevant and sufficient reasons for ordering his detention pending trial.

6. The applicants complain under Article 8 of the Convention that they were not allowed to meet in prison. The second applicant also claims that her telephone has been tapped ever since she made her first complaints to the MRT authorities.

QUESTIONS TO THE PARTIES

1. Do the applicants come within the jurisdiction of Moldova and/or Russia within the meaning of Article 1 of the Convention as interpreted by the Court, *inter alia*, in the case of *Ilaşcu and Others v. Moldova and Russia* [GC], (No. 48787/99, ECHR 2004-VII) on account of the circumstances of the present case?

In particular, in the light of the case of *Ilaşcu and Others*, could the responsibility of the respondent Governments under the Convention be engaged on account of their positive obligations to secure the applicants' rights under the Convention?

Have there been any developments following the *Ilaşcu and Others* case which might affect the responsibility of either Contracting Party?

2. Did the applicants exhaust “all domestic remedies ..., according to the generally recognised rules of international law...”, as required under Article 35 of the Convention?

3. In the case of Mr Bezrodnîi, has there been a violation of Article 3 of the Convention as a result of his alleged ill-treatment upon his arrest and thereafter?

4. In respect of Mr Antonov, Mr Băluţă and Mr Bezrodnîi, has there been a violation of Article 3 of the Convention on account of the conditions in which each applicant has been detained since his arrest?

5. Do the facts of the case disclose a violation of Article 5 of the Convention? In particular:

(a) in respect of Mr Antonov, Mr Băluţă and Mr Bezrodnîi, was their detention by the MRT authorities based on “the lawful detention of a person after conviction by a competent court”, within the meaning of Article 5 § 1 of the Convention (see *Ilaşcu and Others*, § 461 et seq.)?

(b) at the time of the arrest of Mr Bezrodnîi, was there a “reasonable suspicion of having committed an offence”, within the meaning of Article 5 § 1 of the Convention?

(c) in the cases of Mr Antonov and Bezrodnîi, did the “MRT courts” give “relevant and sufficient reasons”, within the meaning of Article 5 § 3 of the Convention, for their decisions ordering the applicants' detention pending trial?

(d) did Mr Antonov, Mr Băluţă and Mr Bezrodnîi have the practical possibility of appealing to a higher court against the decisions ordering their detention pending trial, as required under Article 5 § 4 of the Convention?

6. Do the facts of the case disclose a violation of Article 8 of the Convention as a result of the refusal to allow Mr Antonov, Mr Băluţă and

Mr Bezrodnîi visits by the second applicant in each application (their mothers)?

7. Did the applicants have at their disposal effective remedies in respect of their complaints under Articles 3, 5 and 8 of the Convention, as required under Article 13 of the Convention?