



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

16 March 2010

FOURTH SECTION

Application no. 10094/10
by Iurie MATCENCO
against Moldova and Russia
lodged on 18 February 2010

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Iurie Matcenco, is a Moldovan national who was born in 1976 and lives in Bender, Moldova. He is represented before the Court by Ms D. Străisteanu, Mr A. Zubco and Mr I. Manole 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 applicant, may be summarised as follows.

According to his representatives, the applicant was arrested by the militia of the separatist Transdniestrian region (MRT) on 1 September 2009 on suspicion of fraud. He is detained in prison no. 3 in Tiraspol.

From the date of his arrest he has not seen his relatives, but was able to inform them, through another detainee, of some details of his situation. He was subjected to psychological pressure and physical ill-treatment: he was beaten, subjected to a mock execution and then the militia broke the middle finger of his left hand. All these acts were done in order to force him to make self-incriminating statements, in the absence of any legal assistance.

The applicant's representative also submitted a letter, signed by the applicant and addressed to the Joint Control Commission (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 90, ECHR 2004-VII

for details), in which the applicant had complained of the above actions against him.

The applicant also went on a hunger strike on 7 December 2009 in protest against the abuses against him and discontinued his strike on 21 January 2010, when he was again ill-treated. During his hunger strike he was allegedly not seen by any doctor and lost some 15kg in weight.

In a letter from the MRT “Ministry of Justice”, the applicant's wife was informed that he had indeed gone on a hunger strike and that the diagnosis of chronic gastritis had been established, along with “alimentary dystrophia with the loss of 15kg of body weight as a result of prolonged refusal to eat”.

The applicant allegedly continues to be refused medical assistance required as a result of his ill-treatment and his hunger strike. His requests to see his relatives and his representatives have been rejected without any reasons.

The applicant's representatives complained to the Moldovan authorities about the applicant's situation. On 26 January 2010 the Prosecutor General's Office informed them that Moldova could not intervene “due to the political situation since 1992” and that when ratifying the Convention the Moldovan Parliament had made a reservation in respect of the country's ability to ensure observance of human rights in its eastern regions before the final settlement of the conflict in those regions.

The applicant's representatives argue that Moldova is responsible for its failure to take any action aimed at protecting the applicant's rights, the authorities continuing to rely on the reservation to the Convention despite the Court's conclusion in *Ilaşcu*, cited above, that that reservation was not valid. They also consider that the Russian Federation continues to influence the actions of the MRT authorities and fails to ensure that those authorities observe the rights protected under the Convention.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that he was ill-treated by the MRT militia while in detention and that he was not given the necessary medical assistance.

2. He also complains under Article 5 of the Convention that he was deprived of legal assistance since the day of his arrest.

3. He further complains under Article 8 of the Convention that he was not allowed to see his family for several months.

4. The applicant complains under Article 13 of the Convention without further detail.

QUESTIONS TO THE PARTIES

As to the admissibility

1. Does the applicant 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 applicant's rights under the Convention?

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

As to the merits

2. Has there been a violation of Article 3 of the Convention as a result of the applicant's alleged ill-treatment upon his arrest? Was the applicant given medical assistance required by his medical condition?

3. Do the facts of the case disclose a violation of Article 5 of the Convention? In particular, was the applicant given the possibility to be assisted by a lawyer of his own choice during his detention?

4. Do the facts of the case disclose a violation of Article 8 of the Convention as a result of the refusal to allow the applicant visits by his relatives?

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