



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

31 March 2010

FOURTH SECTION

Application no. 11138/10
by Boris MOZER
against Moldova
lodged on 24 February 2010

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Boris Mozer, is a Moldovan national who was born in 1978 and lives in Tiraspol. He is represented before the Court by Mr A. Postică, Mr P. Postică and Ms D. Străisteanu, lawyers practising in Chişinău.

A. The circumstances of the case

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

1. The applicant's arrest, conditions of his detention and medical treatment

On 24 November 2008 the applicant was detained for allegedly defrauding the company for which he worked. He was asked to “confess” to the crime, which he claims he has not committed, and he signed all the “confessions” faced with threats to him and his relatives (including a mock execution and threats of a “real one” if he disobeyed). Due to the stress, his health condition (bronchial asthma, an illness which he has since childhood) worsened and he suffered several suffocation fits. Since then he was often moved from one detention centre to another, each such centre offering unhealthy conditions of detention (high humidity, lack of access to natural

light and lack of ventilation, overcrowding, such as being held in a 15 sq. m. cell together with 12 other persons, heavy smoking in the cell which contributed to the applicant's fits, his transportation in a metal truck in which he suffocated, etc.) and suffered numerous suffocation fits.

During his detention, the applicant often complained of his medical condition and asked for medical assistance. His parents asked on many occasions for a qualified pneumology doctor to see the applicant. Only on 12 March 2009 did such a doctor see the applicant and carry out laboratory testing. The doctor diagnosed him with unstable bronchial asthma and recommended treatment. All the requests from the applicant and his parents to transfer him to a hospital were rejected.

In May 2009 the applicant was transferred to the Centre for medical help and social rehabilitation of the "MRT Ministry of Justice" ("the Centre"). The doctors at the Centre confirmed his prior diagnosis and that he had frequent suffocation fits, with respiratory insufficiency of 2nd - 3rd degree. His health condition continued to worsen. On 7 May 2009 the Centre informed the applicant's relatives that it did not have a pneumology doctor or the required laboratory equipment to properly treat the applicant. The doctors added that the applicant needed to be transferred to the pneumology section of the Republican clinical hospital, but that this was impossible to ensure due to a lack of personnel to guard the applicant during his stay.

On an unknown date in 2009 the applicant's mother asked for the applicant's transfer to a specialised hospital, since bronchial asthma was one of the reasons listed by the "MRT Ministry of Interior" as a reason for a transfer to hospital. In its reply of 1 June 2009 the "MRT Ministry of Interior" informed her that only convicted persons could be transferred to a hospital on that ground.

On 21 September 2009 the Centre informed the applicant's parents that since May 2009 he had been constantly treated on an in-patient basis, but that his health condition continued to worsen, with no visible improvement as a result of therapy.

On 15 February 2010 a medical board composed of four high-ranking MRT doctors established that "despite the repeated treatment given, the respiratory dysfunction continues to increase and no effect of therapy is noticeable. A continuing negative dynamic is observed, with an increase in the frequency of suffocation fits and the difficulty of interrupting them." In addition to the initial diagnosis of bronchial asthma and respiratory insufficiency, the board found that the applicant had 2nd degree posttraumatic encephalopathy. The board concluded that "the [applicant's] life expectancy/prognosis is not favourable. His continued detention in the conditions of [pre-trial detention centres] appears difficult due to the absence, at [the Centre] of laboratory equipment and specially qualified medical staff in order to carry out the required therapy and its verification".

Despite the finding of the medical board on 15 February 2010, on the same day the applicant was transferred to another pre-trial detention centre in Hlinaia, which is less equipped than the Centre. On 16 February 2010 the applicant's mother was allowed to see him there. He informed her of the poor conditions of his detention (lack of ventilation, heavy smoking by detainees, overcrowding), and that he had already had two suffocation fits

that day. The applicant's mother was told by the prison staff that she had to bring him the required medicines since none was available in that prison.

On 18 February 2010 the applicant's mother asked the “MRT President” for the applicant's urgent transfer to a specialised hospital and for his release from pre-trial detention in order to ensure that he obtained the required treatment. She did not receive any reply.

On an unknown date after 18 February 2010 the applicant was transferred to an unspecified detention facility in Tiraspol.

2. Extensions of the applicant's detention

On 26 November 2008 the “Tiraspol district court” adopted a decision, ordering the applicant's detention for an undetermined period.

On 5 December 2008 the “MRT Supreme Court” rejected the applicant's lawyer's appeal as unfounded. The applicant was not present at this hearing.

On 20 March 2009 the “Tiraspol district court” extended the applicant's detention for up to four months from the date of arrest.

The applicant's parents sold his apartment and paid 40,000 United States dollars (“USD”) to the company allegedly defrauded by their son, representing the damage allegedly caused. However, instead of releasing the applicant pending trial as promised, the sum asked from the applicant was increased to USD 85,000.

On 21 May 2009 the “Tiraspol district court” extended the applicant's detention for up to eight months from the date of arrest. That decision was upheld by the “MRT Supreme Court” on 29 May 2009.

On 22 July 2009 the “Tiraspol district court” extended the applicant's detention for up to ten months from the date of arrest.

On 22 July 2009 the “Tiraspol district court” extended the applicant's detention for up to twelve months from the date of arrest. That decision was upheld by the “MRT Supreme Court” on 2 October 2009. No further decision extending the applicant's detention was adopted after that date, and the lawfulness of his detention has never been verified in any other form since then.

On an unknown date the applicant's criminal case was submitted to the trial court and is pending before that court.

3. The applicant's meetings with his parents and his pastor

From November 2008 until May 2009 the applicant was not allowed to see his parents. During those few visits which were allowed thereafter (such as on 16 February 2010), they were not allowed to speak their own language (German), but were forced to speak Russian under penalty of interrupting the meeting.

In June and September 2009 pastor Per Berghene Holm from Norway attempted to see the applicant at the latter's request in order to provide him with religious services. He was denied access to the applicant. On 30 September 2009 a “Presidential adviser” acknowledged that there were no reasons for refusing access to the applicant by his pastor and that the refusal was incompatible with the “MRT Constitution and laws”. The applicant's pastor was finally allowed to see the applicant on 1 February 2010. However, a guard remained in the room throughout the meeting.

4. *Complaints to the Moldovan and Russian authorities*

The applicant's parents made several complaints to the Moldovan authorities and the Russian Embassy in Moldova concerning their son's condition.

On 12 October 2009 the Centre for Human Rights of Moldova replied that it had no means of monitoring the applicant's case.

On 3 November 2009 the Moldovan Prosecutor General's Office informed the applicant's parents that it could not intervene due to the political situation in the Transdnestrian region created since 1992. It also referred to Moldova's reservation in respect of its inability to ensure observance of the Convention in the Eastern regions of Moldova.

The complaint made to the Russian Embassy in Moldova was forwarded to the "MRT prosecutor's office". The latter replied to the Embassy that the applicant's case was pending before the "MRT courts", which alone were competent to deal with any complaints after the case had been submitted to the trial court.

The applicant also complained to the Joint Control Commission (for more details, see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 90, ECHR 2004-VII).

COMPLAINTS

The applicant contends that his rights guaranteed under the Convention have been violated by MRT authorities, while the respondent Governments have failed to take any effective action to prevent and stop those violations, contrary to their obligations under Article 1 of the Convention.

1. The applicant complains that his life is put at risk by the failure to provide him with the required medical assistance, contrary to the requirements of Article 2 of the Convention, which imposes "positive obligations" on Member States to protect his life.

2. He also complains under Article 3 of the Convention that he is denied appropriate medical assistance and is being held and transported in inhuman conditions of detention, while being moved repeatedly from one cell to another, destabilising his health state even further.

3. He further complains under Article 5 of the Convention because he was arrested by persons lacking the authority for arresting him; because his further detention was authorised and extended by illegal courts set up by the MRT authorities and based on MRT laws which are contrary to the Convention; and because he was deprived of procedural guarantees, including a lack of any legal basis or review of his detention after 24 October 2009. Moreover, he was allegedly not brought before the courts when they decided to extend his detention pending trial.

4. The applicant complains under Article 8 of the Convention that he was not allowed to meet his relatives for prolonged periods of time without

any reason and that they were not allowed to speak in their own language during those meetings which were authorised.

5. He also complains under Article 9 of the Convention of the refusal to allow him to meet his pastor for prolonged periods of time without any reason. He also complains about the presence of a guard during his meeting with the pastor.

6. He further complains under Article 13 of the Convention that he had no effective remedies either in Moldova or Russia in respect of his complaints under the above-mentioned Articles of the Convention.

7. The applicant finally complains under Article 17 of the Convention that the respondent Governments allowed the creation and continue to tolerate the existence and operation of an abusive entity in which Convention rights do not exist. Moreover, Moldova continues to rely on its reservation made when ratifying the Convention, despite the Court's finding in *Ilaşcu*, cited above, that that reservation was not valid.

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 the applicant's life been put in danger as a result of the alleged failure to provide the applicant with the medical assistance required by his medical condition? If so, has there been a violation of Article 2 of the Convention as a result of that failure?

3. Has there been a violation of Article 3 of the Convention in the present case? In particular:

(a) was the applicant provided with an appropriate level of medical assistance?

(b) was he detained in inhuman conditions of detention, also considering his state of health?

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

(a) did the applicant's detention based on decisions by the MRT authorities and courts amount to “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) was there a legal basis for his detention after 24 October 2009 (see *Boicenco v. Moldova*, no. 41088/05, § 154, 11 July 2006)?

(c) was the applicant present at the court hearings which dealt with requests for extending his detention pending trial?

5. 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 and the refusal to allow them to speak their own language during those visits which were allowed?

6. Do the facts of the case disclose a violation of Article 9 of the Convention as a result of the refusal to allow the applicant visits by his pastor, as well as of the alleged presence of a guard during the meeting which was authorised?

7. Did the applicant have at his disposal effective remedies in respect of his complaints under Articles 2, 3, 5, 8 and 9 of the Convention, as required under Article 13 of the Convention?

8. Has there been a violation of Article 17 of the Convention in the present case?