



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

FOURTH SECTION

CASE OF OPREA v. MOLDOVA

(Application no. 38055/06)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

21/03/2011

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

In the case of Oprea v. Moldova,

The European Court of Human Rights (Fourth Section), sitting as a committee composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence early, *Section Registrar*,

Having deliberated in private on 30 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 38055/06) 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 a Moldovan national, Ms Daria Oprea (“the applicant”), on 23 August 2006.

2. The applicant was represented by Mr V. Mardari, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that she had been denied necessary medical assistance while in detention and that the domestic courts had ordered her detention pending trial without giving sufficient reasons and in the absence of a reasonable suspicion that she had committed a crime.

4. The applicant and the Government each filed further written observations (Rule 59 § 1 of the Rules of Court) on the merits.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1957 and lives in Hîrbovăţ.

6. The applicant is the president of the non-governmental organisation Dumitriţa, which specialises in providing assistance to people in need. She suffers from epilepsy with organic personality changes and low frequency

tonic epileptic fits. She was treated on an in-patient basis in the Clinical Psychiatric Hospital during the period 22 May to 12 June 2006.

7. On 27 July 2006 the applicant was summoned to appear before an investigator of the Centre for Fighting Economic Crime and Corruption (“the CFECC”). When she appeared, she was arrested on suspicion of having misappropriated funds donated by a Swedish charity to her organisation for distribution to persons in need. The applicant was placed in the CFECC detention centre.

8. The applicant informed the investigator of her illness and told him that she needed to regularly take medication prescribed for her by her psychiatrist. The officer allegedly replied that detainees were not allowed to have any medication in their possession.

9. According to the applicant, on being taken to her cell she had an epileptic fit and an ambulance was called to give her emergency assistance. She was then placed in an unventilated cell with another woman, who smoked continually. The applicant does not smoke and was thus exposed to passive smoking, which exacerbated her epilepsy problems.

10. On 29 July 2006 the investigator asked the investigating judge to issue a warrant for the applicant's arrest. On the same date Judge Drosu, the investigating judge of the Buiucani District Court, rejected the request, finding it unsubstantiated. The judge noted that the applicant had pleaded not guilty and that the investigator had not proved there was an absolute need to detain the applicant. There was no evidence that she might abscond, put pressure on witnesses or interfere with the course of the investigation. Moreover, the judge took into account the criteria of Article 176 § 3 of the Code of Criminal Procedure, which had been invoked by the applicant's lawyer, namely, that the applicant “had a stable residence and a job, was of an advanced age and not in good health, and did not have a criminal record”.

11. Immediately after the hearing of 29 July 2006, the prosecutor informed the applicant that a provisional measure requiring her not to leave her village for thirty days had been imposed.

12. In reply to a request by the prosecutor of 28 July 2006, on 31 July 2006 the Clinical Psychiatric Hospital of the Ministry of Health and Social Protection (“the CPH”) confirmed that the applicant had been treated for epilepsy in the hospital during the period 22 May to 12 June 2006. The CPH added that urgent medical assistance could be provided to the applicant by calling an ambulance and that she was eligible to receive free medication on the basis of a prescription issued by her local psychiatrist.

13. On 1 August 2006 the prosecutor appealed against the decision of the investigating judge. He noted that the criminal case had been initiated on 16 June 2006 and that the evidence obtained so far, including an audit of the non-governmental organisation's activities, attested to a misappropriation of funds (amounting to 950,970 Moldovan lei (MDL) or 55,957 euros (EUR)

at the time). As the director of Dumitrița, the applicant was directly responsible for the manner in which the money and items had been used. Since many of the persons receiving aid from the applicant's organisation were elderly and poor, they could easily be influenced by the applicant, who was accused of a serious crime punishable by ten to twenty-five years' imprisonment. Moreover, the applicant might interfere with the course of the investigation, as was clear from her "not guilty" plea and her claim that the Swedish organisation was simply punishing her for her organisation's refusal to participate in a bigger project.

14. On 7 August 2006 the Chișinău Court of Appeal quashed the investigating judge's decision of 29 July 2006 and ordered the applicant's detention for ten days. The court found as follows:

"[I]n examining the request for a preventive measure of detention the [lower] court did not take into account the seriousness of the crime which [the applicant] is suspected of having committed, and adopted a premature and unsubstantiated decision. [The applicant] is suspected of having committed an exceptionally serious crime which is punishable by more than two years' imprisonment, and she may abscond, interfere with the course of the investigation or commit other crimes."

15. According to the applicant, she was not summoned to the hearing of 7 August 2006 and did not attend it, although her lawyer did attend. The decision of 7 August 2006 mentioned that the applicant had participated in the hearing.

16. The applicant was arrested shortly thereafter at her house, on the basis of an arrest warrant of the same date issued by the Chișinău Court of Appeal. The warrant stated as follows:

"[The applicant] is suspected of having committed a crime punishable by more than two years' imprisonment, and of absconding from the law-enforcement authority and the court, and might interfere with the course of the investigation and commit other crimes".

Also on 7 August 2006, the applicant was formally indicted for the crime.

17. In the meantime a request by the applicant's lawyer to declare her arrest on 27 July 2006 unlawful was rejected as unfounded by the investigating judge on 3 August 2006. The judge found that although the investigator had only noted one reason as the ground for the applicant's arrest (namely, a direct indication by a witness that she had committed the crime), that ground was expressly provided for by law.

18. On 11 August 2006 the prosecutor asked for an extension of the applicant's detention pending trial for another thirty days. The request referred to the same facts as those mentioned in the request of 1 August 2006, but mentioned in addition the Court of Appeal's decision of 7 August 2006 and the formal indictment of the same date. The applicant opposed that request, referring to her stable residence and job, as well as her health problems.

19. On 15 August 2006 the investigating judge of the Buiucani District Court granted the request and extended the applicant's detention pending trial for another thirty days. The court noted that on 7 August 2006 the Chişinău Court of Appeal had annulled the decision of 29 July 2006 and that on 7 August 2006 the applicant had been indicted for the crime. The court added:

“[T]he grounds relied on by the Chişinău Court of Appeal for ordering [the applicant's] arrest remain valid. In such circumstances the validity of the arrest warrant shall be extended, since the reasons cited by the prosecution for extending it have priority; [the detention] will be part of the normal course of the criminal proceedings; the arguments of the defence were examined by the appellate court”.

20. On an unknown date after 15 August 2006 the applicant's lawyer made a *habeas corpus* request to the investigating judge, in which he referred to the decision of 15 August 2006 and asked for his client's release on medical grounds. He informed the judge of his client's medical condition and of the inadequate medical assistance available at the CFECC, which was contrary to Article 3 of the Convention. He made a similar complaint to the Chişinău Court of Appeal in an appeal against the decision of 15 August 2006, adding that his client had had several epileptic fits after her arrest and that the CFECC could not provide the full-time specialised medical assistance she required. It appears that there was no response to any of these complaints.

21. The applicant claims that she was summoned before the investigator on several occasions before her arrest on 27 July 2006. She and her lawyer duly appeared before the investigator each time and at no time did she abscond from the investigation. On 17 August 2006 the applicant's lawyer was informed by the Anenii Noi Post Office that no registered mail had been delivered to the applicant during the period 1 to 17 August 2006. Nor was there any evidence in the file that the applicant had in fact been summoned to appear before the Chişinău Court of Appeal on 7 August 2006. In the absence of an official summons, the applicant could not have appeared before the investigating authorities or the courts since that would have been in breach of the preventive measure imposed on her on 29 July 2006 in respect of the undertaking not to leave her village.

22. According to the medical documents submitted by the Government, the applicant was treated by a psychiatrist (R.V.) during her detention at the CFECC. R.V. visited her twenty-four times, that is, almost every day and on three occasions twice a day. She received the treatment prescribed by that doctor, as can be seen from his notes in the medical visits register. According to the same register, on 17 August 2006 R.V. noted:

“The administration has been informed about the worsening of the patient's state of health and of the need to transfer her to a medical institution.”

On 1 September 2006 R.V. wrote in the medical visits register that the applicant was to be transferred to the hospital in Costiujeni, her condition having improved.

Later that day the applicant was transferred to the Costiujeni Clinical Psychiatric Hospital for in-patient treatment. Before her release from the CFECC she wrote a note in the medical register (dated 1 August 2006) in which she stated that she had no complaints about her treatment there and thanked the doctor for his assistance. On 20 September 2009 R.V. wrote a “medical report” in which he essentially stated that the applicant had received medical assistance appropriate to her state of health during her detention at the CFECC.

23. According to the applicant, she had a number of epileptic fits at the time of the events described above, which occurred in the CFECC detention facility and in the prosecutor's office, the court hall and even during a court hearing. Two such fits happened in the prosecutor's office on 29 July 2006 immediately after the hearing, when her lawyer gave her emergency assistance. She also claims that she can occasionally sense the onset of a fit sufficiently far in advance to be able to take the relevant medication and thus prevent the fit from occurring. However, as she was denied access to her medication in the cell, she was not able to prevent any of her fits.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The relevant provisions of domestic law have been set out in *Ostrovar v. Moldova*, no. 35207/03, 13 September 2005; *Sarban v. Moldova*, no. 3456/05, 4 October 2005; *Becciev v. Moldova*, no. 9190/03, 4 October 2005; and other similar cases in respect of Moldova.

25. The Government submitted a list of laws, regulations, Ministry orders and other acts or bills yet to be enacted aimed at improving various aspects of prison conditions and the medical treatment of detainees.

26. The Government annexed to their observations copies of judgments in the cases of *Drugaliu v. the Ministry of Internal Affairs and the Ministry of Finance*; *Gristiuc v. the Ministry of Finance and the Penitentiaries' Department*; *Ipate v. the Penitentiaries' Department*; and *Ciorap v. the Ministry of Finance, the Ministry of Internal Affairs and the Prosecutor General's Office*, all cases in which the applicants had been awarded compensation for ill-treatment and/or inhuman conditions of detention.

THE LAW

27. The applicant complained under Article 3 of the Convention that she had not been given medical assistance adequate to her state of health, which was incompatible with detention. Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

28. She also complained, under Article 5 § 3 of the Convention, that her detention pending trial had not been based on relevant and sufficient reasons. Article 5 § 3 reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

29. She finally complained, under Article 6 § 1 of the Convention, that she had not been summoned to the hearing of 7 August 2006 and that she and her lawyer had not been given access to the findings of the audit of her non-governmental organisation. The relevant part of Article 6 reads as follows:

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

I. ADMISSIBILITY

30. The Government submitted that the applicant had failed to exhaust available domestic remedies in respect of her complaint under Article 3 of the Convention. In particular, she could have lodged a civil court action seeking compensation for the alleged violation, similar to those brought successfully by the applicants in the above-cited cases of *Drugaliov*, *Gristiuc*, *Ipate* and *Ciorap*. Moreover, she did not submit a complaint concerning the alleged inadequacy of her medical treatment to any of the domestic authorities, such as the Penitentiaries' Department. The only complaint made was addressed to the investigating judge, who was not competent to decide on that issue. That competence lay with the civil court examining any complaints seeking compensation for damage caused.

31. The applicant disagreed and claimed that her lawyer had complained twice to the domestic courts about the inadequacy of the medical assistance available to her as an epileptic. She submitted copies of the complaints made to the investigating judge and the Chişinău Court of Appeal in which her lawyer had asked for her release in order for her to obtain the medical assistance required by her illness, relying on Article 3 of the Convention. Moreover, she had allegedly made verbal complaints to the prison administration, but to no avail.

32. The Court reiterates that an individual is not required to try more than one avenue of redress when there are several available (see, for example, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32). It is clear from the documents submitted to the Court by the parties that, when the applicant was still in detention, her lawyer complained of the allegedly inadequate medical care to the domestic courts in a *habeas corpus* request and in an appeal (see paragraph 20 above). The Government have admitted in the past that such a procedure constitutes an effective remedy against alleged breaches of Article 3 (see *Holomiov v. Moldova*, no. 30649/05, §§ 102 and 105, 7 November 2006).

33. In so far as the other remedy referred to by the Government is concerned, namely a civil action to request an immediate end to the alleged violation, the Court observes that it has already found that that procedure does not constitute an “effective remedy” in respect of on-going violations of Article 3 of the Convention (see *Holomiov*, cited above, § 107). In *Holomiov* the Court found as follows:

“[T]he Court does not consider that, at the present time, the existence of an effective remedy before the national courts for the applicant's complaint about the lack of adequate medical care in his place of detention has been clearly established. However, the Court may in future reconsider its position if it is informed of consistent application of the Convention by the domestic courts”.

All the cases relied on by the Government in the present case concern compensation awards for past violations of Article 3 similar to those relied on in *Holomiov*. However, the applicant was transferred to a hospital offering adequate medical treatment only after she had lodged her application with the Court on 26 August 2006. Therefore, the cases referred to by the Government do not affect the findings made in *Holomiov*.

34. In her initial application, the applicant also complained under Article 6 § 1 of the Convention. However, in her subsequent observations, she asked the Court not to proceed with the examination of that complaint since it was already covered by her complaint under Article 5 § 3 of the Convention. Accordingly, the Court finds no reason to examine this complaint.

35. The Court finds, therefore, that the complaint under Article 3 of the Convention cannot be declared inadmissible for non-exhaustion of domestic remedies and accordingly the Government's objection must be dismissed. It considers that the applicant's complaints under Articles 3 and 5 § 3 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits. No other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Arguments of the parties

36. The applicant complained of the inadequate medical assistance at the CFECC. According to the applicant, no medical assistance was available at the CFECC in 2006, and thus she had to be assisted by a team of ambulance personnel. Moreover, epilepsy required a special type of treatment, including ensuring an adequate level of emotional well-being. The lack of basic hygiene, the fact that her cellmate smoked, the uncertainty about whether she would receive medical assistance whenever a fit occurred contributed to her continuous stress and suffering. She added that she had written a thank-you note in the medical register after being told that not doing so would result in a delay in her being transferred to a hospital.

37. The Government argued that the applicant had been given medical assistance appropriate to her condition. She was seen by a psychiatric doctor on twenty-four occasions during her detention and all the drugs prescribed by that doctor were administered. The doctor treated the applicant in accordance with the recommendations of a doctor from the psychiatric hospital in Costiujeni. Moreover, on one occasion the doctor noted that the applicant had tried to simulate a worse state of health than was in reality the case.

Although the CFECC did not hold a licence for psychiatric drugs, some were brought for the applicant by her relatives. The Government added that, in any event, the period during which the applicant had been detained at the CFECC was too short to amount to treatment contrary to Article 3 of the Convention.

B. The Court's assessment

38. The Court refers to the general principles concerning medical assistance to detainees set out in its previous case-law (see, amongst many other authorities, *Kudla v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, ECHR 2001-III and *Rivière v. France*, no. 33834/03, §§ 59-63, 11 July 2006). In particular, it reiterates that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention (see *Mouisel v. France* no. 67263/01, § 37, ECHR 2002-IX). Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado*

v. Switzerland, 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79).

39. In the present case, the parties submitted conflicting evidence regarding whether the applicant had been offered the medical assistance required by her condition during her detention at the CFECC. On the one hand, the applicant was treated on an in-patient basis both prior to and immediately after her detention at the CFECC, which would suggest a need for treatment in a specialised psychiatric institution. On the other hand, a psychiatrist treated her during her detention in the CFECC and initially considered her state of health satisfactory. The Court considers that in such circumstances the need to offer the applicant additional medical assistance was not self-evident. It was therefore primarily for the doctor treating the applicant to decide whether her condition was compatible with prolonged detention, or whether she required in-patient treatment in a hospital.

40. In this latter respect, the Court notes that on 17 August 2006 R.V., the psychiatrist who was treating the applicant on a daily basis, noted in the medical visits register that he had informed the detention centre administration that her condition had worsened and that she needed to be transferred to a medical institution (see paragraph 22 above). However, despite this medical advice, the applicant was not transferred to a specialised medical institution until 1 September 2006, being required to spend an extra two weeks at the CFECC. The Court also notes that despite an improvement in the applicant's health by the date of her transfer, noted by the doctor (see paragraph 22 above), it was still considered necessary to transfer her to a specialised hospital. This supports the overall impression that her detention at the CFECC after 17 August 2006 was incompatible with her medical condition.

41. In view of the above, the Court considers that the absence of evidence that verbal complaints had been made is not determinative. Similarly, the "thank-you" note which for some unexplained reason the applicant was allowed to write in the medical visits register held by the CFECC administration, does not change the Court's finding, especially given that the state of her mental health required in-patient treatment in a psychiatric hospital both prior to and immediately after the statement was made (see paragraphs 12 and 22 above).

42. There has, accordingly, been a violation of Article 3 of the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

43. The applicant complained that her detention pending trial had not been based on relevant and sufficient reasons, contrary to Article 5 § 3 of the Convention. The relevant part of Article 5 § 3 reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

44. The Government considered that the courts had given relevant and sufficient reasons for their decisions ordering the applicant's detention pending trial. In particular, they referred to the seriousness of the alleged crime, the risk that the applicant might abscond, and the risk of her influencing witnesses who were vulnerable persons dependent on donations from the applicant's organisation.

45. The Court refers to the relevant principles concerning the obligation to give relevant and sufficient reasons for ordering detention pending trial established in its previous case-law (see, amongst many other authorities, *Sarban v. Moldova*, no. 3456/05, §§ 95-99, 4 October 2005).

It will examine the case under Article 5 § 3 of the Convention along the lines of the applicant's complaint, although it does not exclude that similar cases could also raise an issue under Article 5 § 1 of the Convention where the initial reasons for detention are insufficient and no new reasons are given for a continuation of detention (see *Turcan v. Moldova*, no. 39835/05, § 52, 23 October 2007).

46. In the present case, the Court notes that the domestic courts did not refer to any specific fact or document which supported the prosecutor's allegation of a risk of absconding or interfering with the investigation. Moreover, the higher court, and subsequently another investigating judge, gave no consideration to any of these arguments in their decisions, apparently treating them as irrelevant to the question of the lawfulness of the applicant's pre-trial detention, even though they were obliged to consider such factors under Article 176 § 3 of the Code of Criminal Procedure (see *Sarban*, cited above, §§ 52 and 101). This is striking, given the fact that on 29 July 2006 an investigating judge had found that a number of those factors militated against the applicant's detention (see paragraph 10 above). The courts limited themselves in their decisions to repeating in an abstract and formulaic way the formal grounds for detention provided by law. These grounds were cited without any attempt to show how they applied to the applicant's case or on which specific facts the courts had relied when assessing the risks posed by the applicant. There was, moreover, no examination of alternative preventive measures such as house arrest or detention in a specialised medical institution, which would also have prevented any attempt by the applicant to influence witnesses. It is also important to note that it was never argued that during the time when she was subjected to a non-custodial preventive measure the applicant had tried to abscond or interfere in any manner with the investigation. The courts failed to take this into account, just as they did not devote sufficient attention to her state of health, which was also relevant for the decision applying the preventive measure of arrest.

47. In the light of the above, the Court considers that the reasons relied upon by the Chişinău Court of Appeal and by the investigating judge in their decisions ordering and extending the applicant's pre-trial detention, were not "relevant and sufficient".

48. There has accordingly been a violation of Article 5 § 3 of the Convention in this respect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed EUR 9,000 in compensation for the suffering caused to her as a result of the violation of her rights under Articles 3 and 5 § 3 of the Convention.

51. The Government considered that no compensation was payable in the absence of a violation of any provision of the Convention. In any event, the sum claimed was excessive in the light of previous similar case-law in respect of Moldova.

52. In the light of all the circumstances, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 1,600, representing 20 hours' work by her legal representative, charged at EUR 80 per hour, for costs and expenses incurred before the Court. She annexed a list of hours which her lawyer had spent working on the case.

54. The Government submitted that the claim was unrealistic in the light of the national economic climate. Moreover, the applicant had not submitted a copy of her lawyer's contract to substantiate the expenses claimed.

55. 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. In the present case, regard being had to the limited nature of the issue before it and the abundant case-law in this respect, and the fact that it is clear that the representative represented the applicant in the proceedings

before the Court, it considers it reasonable to award EUR 1,000 for costs and expenses.

C. Default interest

56. The Court considers it appropriate that the default interest 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable on the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President