



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

SECOND SECTION

CASE OF MACHINA v. THE REPUBLIC OF MOLDOVA

(Application no. 69086/14)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Prison authorities' unreasonable delay in screening prisoner for hepatitis C • Failure to investigate applicant's complaints concerning infection while in prison • Failure to take effective measures aimed at preventing transmission of contagious diseases in prison • Inadequate medical supervision and treatment in prison
Art 13 (+ Art 3) • Lack of effective remedy for inadequate medical care

STRASBOURG

17 January 2023

FINAL

17/04/2023

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

In the case of Machina v. the Republic of Moldova,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Saadet Yüksel,

Lorraine Schembri Orland,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 69086/14) 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 Tatiana Machina (“the applicant”), on 23 October 2014;

the decision to give notice to the Moldovan Government (“the Government”) of the complaints concerning the material conditions of detention, infection with hepatitis C (HCV), inadequate medical care in prison and lack of effective remedies (Articles 2, 3, 8 and 13 of the Convention) and to declare inadmissible the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court;

the decision of 9 April 2019 to declare inadmissible the complaints under Article 3 of the Convention concerning the material conditions of detention;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Equal Rights Trust, which had been granted leave to intervene by the President of the Section;

Having deliberated in private on 6 December 2022,

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

INTRODUCTION

1. The case concerns inadequate medical care in prison for an inmate with severe motor disabilities and an infection with HCV which allegedly occurred in prison (Article 3 of the Convention). The applicant also complained of the absence of an effective remedy in respect of those complaints (Article 13 of the Convention).

THE FACTS

2. The applicant was born in 1985 and lives in Chişinău. The applicant was represented by Mr A. Postică, a lawyer practising in Chişinău.

3. The Government were represented by their Agents, Mr M. Gurin and Mr O. Rotari.

4. The facts of the case may be summarised as follows.

5. Since a spinal cord trauma in 2003, the applicant has suffered from spastic paraplegia (muscle weakness and stiffness affecting the lower limbs). She was in prison from 14 February 2011 to 7 July 2016 serving a custodial sentence. She served most of her sentence in Prison no. 13 but was transferred on several occasions to Prison Hospital no. 16 for inpatient care.

A. Medical assistance in detention

6. The applicant was not screened for any transmissible diseases such as human immunodeficiency virus (HIV) or HCV upon her arrival in prison, although her past drug use was noted in her medical file. On 15 February 2012 a blood test, carried out at the applicant's request to investigate the cause of a pain in her right flank, revealed that she was infected with HCV. She was diagnosed with chronic HCV with "[zero] activity".

7. According to her prison medical file, the applicant was diagnosed on various occasions with respiratory infections, dermatitis and otitis, and was prescribed antibiotics, painkillers and other medication. There are a few records of this medication being administered. The applicant was regularly prescribed drug substitution therapy. She often attended medical consultations for pain in her legs and back related to her paraplegia. On various occasions she was prescribed anti-inflammatory treatment and painkillers. In 2013 she was examined by an orthopaedist, who recommended additional examinations and surgery on her legs.

8. The applicant was provided with dental services on at least six occasions, including on 13 May 2011, when she claimed to have contracted HCV.

9. In respect of her HCV diagnosis, the applicant was twice examined by the prison doctor ("GP") (*terapeut*), in February and August 2012, and was prescribed a special diet, hepatoprotectors and antispasmodics. There are no records of this medication being administered or of any blood tests to establish the applicant's HCV viral load.

10. The applicant was provided with inpatient treatment on four occasions, mainly for her paraplegia (anti-inflammatory treatment). There is no record of any inpatient medical assistance related to HCV.

B. Complaints made by the applicant

11. The applicant complained to various authorities on several occasions, including on 11 July 2014 to the Ombudsperson, that the material conditions of detention failed to adequately accommodate her physical disability and that she was not receiving adequate medical care for her health condition. The Ombudsperson carried out visits to Prison no. 13 and requested the Prison Service (*Departmentul Institutiilor Penitenciare* – “the DIP”) to improve the material conditions of detention.

12. Following her complaints, the DIP informed the applicant on several occasions, including on 24 August 2012 and 13 August 2014, that she had been provided with qualified medical assistance in Prison no. 13 and occasionally in Pruncul Prison Hospital no. 16. These replies did not refer to any medical assistance related to HCV.

13. On 11 September 2011 the applicant lodged a complaint with the Equality Council (the national body for equal treatment and protection from discrimination) of inadequate detention conditions and medical care, which had led to her infection with HCV and which amounted to a failure by the authorities to provide reasonable accommodation in view of her disability, and therefore constituted discrimination. She sought an acknowledgement that her rights had been violated and an order for the DIP to improve the conditions of her detention. The prison doctor submitted before the Equality Council that the applicant must have contracted HCV in some other way than the dental services provided in prison, without providing any further details. On 11 December 2014 the Equality Council granted the applicant’s requests in full. The DIP did not take any steps to comply with that decision.

14. In May 2012 the applicant complained to the Chişinău District Court (Centru Division) investigating judge about the conditions in which she was serving her custodial sentence, and in particular the inadequate medical assistance provided in prison and her infection with HCV. In the course of proceedings, the prison doctor argued that the applicant had contracted HCV through sexual contact before incarceration. On 5 April 2016 the proceedings were discontinued at the applicant’s request, on the basis that a relevant finding had already been made by the Equality Council.

15. On 2 May 2019 the applicant lodged a complaint using the new compensatory remedy concerning material conditions of detention (see *Draniceru v. the Republic of Moldova* (dec.), no 31975/15, §§ 10-19, 12 February 2019). Relying on Article 3 of the Convention, she complained of the inadequacy of the material conditions and medical care she had received during her detention in Prison no. 13. She complained that her infection with HCV had resulted from medical negligence in prison and the inadequate material conditions of her detention. She claimed compensation in line with the Court’s case-law without specifying an amount. The proceedings are still pending.

RELEVANT LEGAL FRAMEWORK

16. The Criminal Code of the Republic of Moldova, enacted by Law no. 895 of 18 April 2002, reads as follows:

Article 213

Negligent violation of rules and methods for providing medical assistance [medical negligence]

“The violation by a doctor or another member of medical staff of the rules or methods for the provision of medical assistance, if this has resulted in:

- (a) a serious bodily injury; or
- (b) the patient’s death,

shall be punished by imprisonment of up to three years with (or without) the deprivation of the right to hold a certain position or exercise a certain activity for between two and five years.”

17. The Regulation on the forensic assessment of bodily injuries, approved by order no. 99 of 27 June 2003 of the Ministry of Health of the Republic of Moldova, lists the injuries which are classified as serious. The list refers to various bone fractures and wounds but does not include infection with HCV or other infectious diseases.

18. The relevant provisions of international documents concerning health care issues related to transmissible diseases in prisons are set out in the judgments of *Vasyukov v. Russia* (no. 2974/05, §§ 43-47, 5 April 2011) and *Jeladze v. Georgia* (no. 1871/08, §§ 30-31, 18 December 2012).

THE LAW

I. DISJOINDER OF THE APPLICATION

19. On 9 April 2019 the Court decided to join this application with eleven others (see *Tălămbuță and Others v. the Republic of Moldova* (dec.), nos. 23151/09 and 11 other applications, § 12, 9 April 2019) in view of the similarity of the complaints concerning material conditions of detention, declared the applications partially inadmissible and adjourned the examination of the remainder of the applications.

20. The Court now considers that it is necessary to disjoin this application from the eleven others and to examine it separately.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained that she had not been provided with adequate medical assistance and that she had been infected with HCV in prison. She relied on Article 3 of the Convention, which reads as follows:

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

22. The Court has previously examined comparable cases concerning infections with HCV under Article 2 of the Convention (see *G.N. and Others v. Italy*, no. 43134/05, §§ 69-70, 1 December 2009) or under Article 3 the Convention (see, for example, *Mitkus v. Latvia*, no. 7259/03, § 62, 2 October 2012, and *Cătălin Eugen Micu v. Romania*, no. 55104/13, § 56, 5 January 2016). Without losing sight of the applicant’s vulnerability owing to her disability and detention, the Court will examine her complaints under the substantive and procedural aspects of Article 3 of the Convention.

A. Admissibility

23. The Government submitted that the applicant had failed to exhaust the available domestic remedies in respect of her complaint concerning the infection with HCV because the proceedings under the new compensatory remedy were still pending. They also referred to the case of *Ismatullayev v. Russia* ((dec.), no. 29687/09, 6 March 2012) and subsequent case-law against Russia, according to which a criminal-law complaint was an adequate remedy within the meaning of Article 35 § 1 of the Convention for an applicant to complain of his or her infection with transmissible diseases while in detention. In this connection, the Government referred to the provisions of the Moldovan Criminal Code on medical negligence (section 213).

24. The applicant argued that the new compensatory remedy was not applicable to complaints about medical care in prison, including infection with HCV. Moreover, she submitted that she had informed the national authorities of her allegations through her complaints and proceedings before the Equality Council and the investigating judge, which had been attended by the prosecutor. She argued that the Code of Criminal Procedure obliged the prosecutor to initiate an investigation of his own motion once the elements of a crime had become known to him. She submitted that there had been no effective remedies available to her and that this was the reason why she had also complained under Article 13 of the Convention.

25. The Court notes that the compensatory remedy set up under the Code of Criminal Procedure refers exclusively to compensation for inadequate material conditions of detention (see *Draniceru*, cited above, §§ 10-19). In this regard, the applicant’s complaints concerning inadequate medical care and her infection with HCV were not declared inadmissible in 2019 (see *Tălămbuță and Others*, cited above, §§ 25-26) and the Government did not submit any reason why the Court should reach a different conclusion now.

26. Moreover, the Court reiterates that cases of transmission of life-threatening infections, such as HIV and HCV, which result from negligent or wilful actions of State agents cannot be remedied exclusively through an award of compensation to the victim (see *Ismatullayev*, cited

above, § 27, with further references; and *Jeladze v. Georgia*, cited above, § 35).

27. With respect to a criminal-law remedy, the Government did not specify whether the Moldovan Criminal Code criminalised infecting a person with HCV but argued that the criminal offence of medical negligence was applicable to the applicant's situation. However, the Court notes that the domestic law does not appear to classify infection with HCV as a serious bodily injury and that this circumstance may preclude involuntary infection of a person with HCV from being classified as medical negligence (see paragraphs 16-17 above). In the absence of examples of domestic practice confirming the Government's interpretation, the Court is not convinced of the availability of this remedy.

28. In the absence of any information as to the existence of effective remedies, which had to be exhausted, and as the applicant provided some evidence that she had approached the domestic authorities and received negative replies, the Court rejects the Government's objection.

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

30. The relevant general principles concerning the adequacy of medical treatment in prisons have been summarised by the Court in *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-40, 23 March 2016, with further references therein). The principles concerning infection with transmissible diseases in prison have been summarised in *Cătălin Eugen Micu* (cited above, §§ 54-62).

31. The applicant submitted that she had been infected with HCV while undergoing a dental procedure in prison and that she had not been provided with adequate medical care in respect of her health condition, which had continued to deteriorate during her detention.

32. The Government informed the Court that, according to the Prison Service, the prison administration had not kept records of the number of inmates with HCV at the time of the applicant's incarceration and that, to prevent the spread of transmissible diseases, the prison administration followed a sterilisation protocol for medical instruments.

33. The Government submitted that the applicant had already been in poor health when admitted to the prison, that there was no evidence that she had been subsequently infected with HCV and that her past drug addiction had put her at a high risk of contracting the illness outside the prison. At the time of her admission, there had been no mandatory screening for HCV upon entry in prison. The Government agreed that the applicant required medical assistance for her HCV infection and argued that qualified and sufficient assistance had been provided.

34. The Equal Trust Fund submitted that failure to adjust prison conditions for the needs of people with disabilities is discrimination. Such form of ill-treatment should be investigated, prosecuted and punished. An appropriate remedy and reparation should comprise not only adequate compensation but also transformative remedies aimed at addressing structural discrimination.

35. The Court considers that there are essentially two elements in the applicant's complaint under Article 3 of the Convention which require consideration on the merits: the first refers to her alleged infection with HCV in prison and the second refers to the alleged inadequacy of the medical care in prison.

1. Alleged infection with HCV in prison

36. The parties disputed how and when the applicant had contracted HCV. The Court notes that in February 2012 she was diagnosed by prison doctors as suffering from HCV after she had requested a screening test because of liver pain and rumours in the prison that other inmates had been infected. No blood test was carried out to establish whether she had been carrying the HCV virus when she entered the prison a year earlier and there was no indication that she had been suffering from HCV at the time.

37. The Court reiterates that the primary responsibility of prison officials in charge of a detention facility is that of ensuring appropriate conditions of detention, including adequate healthcare for prisoners. It follows that a complaint of negligent actions by prison medical personnel resulting in the transmission of a life-threatening infection would necessarily call into question the way in which the prison administration had discharged its duties and complied with the domestic legal requirements (see *Ismatullayev*, cited above, § 26).

38. The requirements imposed on a State with regard to detainees' health may differ depending on whether the disease contracted was transmissible or non-transmissible. The spread of transmissible diseases and, in particular, tuberculosis, hepatitis and HIV/Aids, should be a public health concern, especially in the prison environment. On this matter, the Court considers it desirable that, with their consent, detainees undergo, free screening tests for hepatitis and HIV/Aids within a reasonable time after their admission to prison (see *Cătălin Eugen Micu*, cited above, § 56, with further references). An unreasonable delay in screening for HCV is incompatible with the respondent State's general obligation to take effective measures aimed at preventing the transmission of HCV and other contagious diseases in prisons (see *mutatis mutandis*, *Jeladze v. Georgia*, cited above, § 44).

39. In the present case, the national authorities found that the applicant's allegations were unsubstantiated because there was no information that the applicant had ever been tested for HCV prior to her detention on 14 February 2011. Although the applicant's complaints refer to concrete facts

which could have been investigated (contrast *Antonovs v. Latvia* (dec.), no. 19437/05, § 97, 11 February 2014), the national authorities did not carry out any investigation – internal, disciplinary or criminal – to assess the risk of infection in prison through dental services. The Court finds it striking that the prison administration did not keep a record of HCV-infected inmates or carry out a simple check to investigate if any other inmates who had had dental services in the same period of time were positive for HCV.

40. While the material in the case file does not enable the Court to conclude beyond all reasonable doubt that the applicant contracted HCV after her incarceration, the difficulty in determining whether there was any substance to her allegations results from the lack of screening tests on arrival at the prison and the authorities' subsequent failure to investigate her complaints effectively (see *Popa v. Moldova*, no. 29772/05, § 39, 21 September 2010).

41. The Court has frequently held that the obligation to investigate, which stems from Articles 1 and 3 of the Convention, “is not an obligation of results, but of means” (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II). What this means is that the domestic authorities are not obliged to come to a conclusion which coincides with the claimant's account of events. However, any investigation carried out by the authorities should in principle be capable of leading to the establishment of the facts of the case and the potential identification and punishment of those responsible. Thus, an investigation into serious allegations of treatment contrary to Article 3 of the Convention must be thorough and the authorities must always make a serious attempt to find out what happened (see *Mitkus*, cited above, §§ 76-82 in the context of an investigation into HCV infection in prison).

42. The Court notes that the applicant submitted complaints to the domestic authorities about her alleged infection with HCV while in prison. In the course of proceedings before the Equality Council and the investigating judge, the prison doctor argued that the applicant had become infected before incarceration through sexual contact. On no occasion was there any attempt to investigate the applicant's version of facts.

43. The Court reiterates that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence capable of refuting the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, with further references). Moreover, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing

facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (*ibid.*, § 83).

44. In view of the above, the Court cannot but conclude that the national authorities made no real attempt to find out what happened and that the delay in carrying out a screening (one year after incarceration) undermined any possibility to assess whether the applicant was infected with HCV after her incarceration. For this reason, the Court is unable to determine whether the contamination had occurred in prison and, therefore, concludes that the relevant prison authorities' failure to carry out an investigation and a screening without delay was incompatible with the respondent State's general obligation to take effective measures aimed at preventing the transmission of HCV and other contagious diseases in prisons.

45. There has accordingly been a violation of Article 3 of the Convention on account of the failure to prevent the transmission of HCV in prison.

2. Alleged inadequacy of medical care in prison

46. The Court must now examine whether the respondent State fulfilled its positive obligation to provide the applicant with appropriate treatment suited to her condition.

47. The Court notes that the applicant's medical file refers to repeated medical consultations and transfers to the prison hospital for treatment of her paraplegia, and contains a detailed account of an orthopaedic consultation in 2013 with a recommendation for surgery. The applicant did not provide any details as to what medical treatment in respect of her condition was sought and refused to substantiate her complaint.

48. With respect to chronic HCV, because it is an illness that primarily attacks the liver and which, with time, can lead to liver cirrhosis, liver cancer and death, it was essential for the applicant's state of health to be assessed with a view to providing her with adequate treatment. Such an assessment could have been made based on a liver biopsy and relevant blood tests to determine the viral genotype and viral load (see *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007, and *Poghosyan v. Georgia*, no. 9870/07, § 57, 24 February 2009).

49. The applicant was diagnosed with chronic HCV in an inactive phase, but it is unclear how this diagnosis was established considering that no assessment of viral load was carried out throughout the entire duration of her detention. In this connection, the Court considers irrelevant the Government's submission that the applicant had been receiving treatment, since, as a consequence of the lack of adequate medical examinations, the exact effect of HCV on her health had not been established and therefore she could not have been provided with adequate medical care (see *Testa*, cited above, § 52;

Poghosyan, cited above, §§ 57-58; and *Irakli Mindadze v. Georgia*, no. 17012/09, § 45, 11 December 2012). There is no evidence that the applicant was ever examined by a specialist doctor or that the prescribed HCV medication had ever actually been administered (see *Cosovan v. the Republic of Moldova*, no. 13472/18, §§ 28 and 30, 22 March 2022, which noted the absence of a hepatologist in Prison no. 16 and the lack of accreditation of the prison medical service). The Court hence considers that the Government failed in discharging their burden of proof concerning the availability of adequate medical supervision and treatment of the applicant while she was in prison.

50. The Court thus concludes that there has been a violation of Article 3 of the Convention on account of the lack of adequate care for the applicant during her detention in prison.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

51. The applicant complained that she had not had an effective remedy for her complaints concerning lack of medical care in detention and infection with HCV in prison, in breach of Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

52. In view of its finding above of a violation under Article 3 of the Convention (see paragraphs 44-45), the Court concludes that the complaint under Article 13 concerning the applicant’s allegation of infection with HCV should not be examined separately.

53. At the same time, the complaint concerning the existence of an effective remedy in respect of allegations of inadequate medical care in prison is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared admissible.

54. The applicant submitted that there had been no effective remedies to contest the absence of medical assistance.

55. The Government argued that there was no need to examine the complaint considering that there had been no arguable claim under Article 3 of the Convention.

56. In view of its finding above of a violation under Article 3 of the Convention (see paragraph 50), the Court concludes that the applicant should have had an effective remedy in respect of this complaint. The Court notes that similar violations have been found in the past (see *Valentin Baştovoi v. the Republic of Moldova*, no. 40614/14, §§ 18 and 29, 28 November 2017) and that the Government did not submit any reason why the Court should reach a different conclusion in the present case.

57. Accordingly, the Court considers that it has not been shown that there were effective remedies in respect of the applicant's complaint concerning inadequate medical care in prison and therefore concludes that there has been a breach of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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."

59. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,480 in respect of costs and expenses incurred before the Court. She submitted a contract signed with her representative and a breakdown of legal costs.

60. The Government submitted that the claims were excessive.

61. Ruling on an equitable basis, the Court awards the applicant EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable to her. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 2,500 in respect of costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to her.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Disjoins* the application from the others to which it was joined;
2. *Declares* the complaints concerning Article 3 (medical care in prison and infection with HCV) and concerning Article 13 of the Convention (medical care in prison) admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention with regard to the State's failure to prevent the transmission of HCV in prison;
4. *Holds* that there has been a violation of Article 3 of the Convention with regard to the absence of necessary medical care in prison;
5. *Holds* that there has been a violation of Article 13 of the Convention in respect of the complaint concerning medical care in prison;
6. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention in conjunction with the complaint concerning infection with HCV in prison;

7. *Holds*,

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President