



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

FOURTH SECTION

CASE OF MERIAKRI v. MOLDOVA

(Application no. 53487/99)

JUDGMENT
(Striking out)

STRASBOURG

1 March 2005

FINAL

06/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Meriakri v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 1 February 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 53487/99) 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, Mr V. Meriakri ("the applicant"), on 28 April 1999.

2. The applicant, who had been granted legal aid, was represented by Mr A. Tanase, a lawyer practising in Chisinau. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Pârlog.

3. The applicant complained, invoking in substance Article 8 of the Convention, about the interference by the prison authorities with his right to respect for his correspondence with the Court and certain domestic authorities.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 6 May 2003, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, both parties filed proposals with the Registry in the context of friendly-settlement negotiations (Article 38 § 1 (b) of the Convention). No settlement was reached.

7. By a letter dated 28 October 2003 the Government requested the Court to strike the case out of its list and enclosed the text of a declaration with a view to resolving the issues raised by the application. The applicant

filed written observations on the Government's request and the Government replied to the applicant's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1952 and lives in Cricova, Chişinău.

9. On 5 March 1997 he was arrested on a charge of complicity in an aggravated robbery. On 22 July 1997 the Buiucani District Court convicted the applicant of conspiracy to commit aggravated robbery and, as a dangerous recidivist, sentenced him to twelve years' imprisonment, to be served in a labour camp with a severe regime. The applicant appealed against this decision.

10. On 20 November 1997 the Chişinău Regional Court dismissed the appeal as unfounded and upheld the decision of the District Court. The applicant lodged an appeal in cassation against this decision. Following an oral hearing on 12 February 1998, the Appellate Court, in its final judgment, dismissed the appeal and upheld the decision of the Regional Court.

11. The applicant lodged an application with the European Court on 28 April 1999. On 2 August 1999, he wrote to the Court, which had requested various documents from him, enclosing a request he had submitted on 16 July 1999 to the prison administration, seeking, *inter alia*, copies of the complaints he had sent to the Chişinău Public Prosecutor's Office and the Prosecutor General's Office and the replies they had sent him. At the top of his request someone had written:

"To the special unit. For action. 17 July 1999",

and on the back of the document there was a list, hand-written, but not by him, of eleven complaints which he had addressed to various domestic authorities. The applicant also sent the Court a letter addressed to him on 20 April 1999 by the Moldovan mission of the OSCE. The letter bore a number of stamps, indicating that it had passed through various offices between 5 May and 25 June 1999. According to the applicant, it was delivered to him only on 1 July 1999.

12. In his letter to the Court of 4 October 1999 the applicant explicitly complained that his letters had been opened by the prison administration, and asked the Court to order the Head of the prison's Special Unit not to open letters addressed to him. The applicant returned to the Court a letter dated 2 September 1999 from the Court's Registry, which now bore the stamp:

“Entry no. 374, on 10 September 1999”,

together with a hand-written note stating:

“The special unit. Received on 10 September 1999”.

The applicant informed the Court that he had not received the letter until 22 September 1999.

13. On 15 March 2001 the applicant returned to the Court its letter to whom, dated 9 February 2001, which had been stamped:

“Entry no. 77, 22.02”.

Someone had also written on the letter:

“The special unit. 22.02.2001”.

14. In a letter dated 2 September 2001, the applicant complained that about 80 pages of documents sent to him by the Court had been handed to him by the prison administration in an open envelope.

15. On 10 June 2002 the applicant’s counsel sent to the Court a copy of a letter to him from the applicant, dated 4 December 2001 and requesting a meeting. The letter had been posted on 7 December 2001 accompanied by a written note from the prison’s Governor, stamped with a registration number, and stating:

“We despatch the petition of the convicted prisoner Meriacre Victor Gheorghe detained in the institution OȘC 29/15 in Rîșcani district of Cricova city. Annexe 4 pages”.

16. The applicant was released from prison on 11 November 2004, in accordance with a general amnesty enacted by Parliament.

II. RELEVANT DOMESTIC LAW

A. The law as it applied at the time of the alleged interferences

17. Article 30 of the Constitution provides a general guarantee of privacy of correspondence, in the following terms:

“(1) The State shall ensure the privacy of letters, telegrams and other postal dispatches, of telephone conversations and of the use of other legal means of communication”.

18. This principle was restricted in relation to detainees. Specific provisions relating to the privacy of prisoners’ correspondence were set out in the Code for the Execution of Criminal Sentences (“the Execution Code”), which provided as follows:

Article 14

“(1) A convicted prisoner shall enjoy rights established in the legislation on the execution of criminal sanctions in accordance with the nature of the sanction and the restrictions of any of his rights imposed upon him by the sentencing court.

(2) A convicted prisoner shall be entitled:

(c) to receive and send mail, and to submit explanations, proposals and complaints in his language, and, if necessary, to use the services of an interpreter.”

Article 73

“(1) A convicted prisoner shall be entitled to receive and send an unlimited number of letters and telegrams.

(2) A convicted prisoner’s outgoing and incoming correspondence ... shall be subject to censorship. A petition addressed to an ombudsman by a detained person shall not be verified by the prison administration and shall be transmitted to the addressee within twenty-four hours (as amended by Law no. 18-XIV of 14 May 1998).

(4) A convicted prisoner’s proposals, requests and complaints addressed to an hierarchically higher legal authority shall be dispatched to such authority within three days.”

19. The Code of Criminal Procedure (“CCP”) stated in Article 383:

“(2) ...packages with food and parcels received by [convicted prisoners] shall be subject to verification, and their correspondence shall be subject to censorship. ...”

20. Law no. 1226 of 27 June 1997 on Pre-Trial Detention set out an identical rule for persons detained on remand (Article 12).

Article 18 of the same law further provided:

“(2) Complaints, requests and letters of [persons detained awaiting trial] shall be subject to censorship by the prison administration. Complaints, requests and letters addressed to the public prosecutor shall not be subjected to any control and shall be despatched to the addressee within twenty-four hours of their being filed.”

21. More detailed rules concerning the operation of the censorship system as it applied to convicted prisoners were contained in the Government’s Decision no. 923, of 20 December 1994:

“(18) ...Letters shall be placed in post boxes or shall be transmitted to representatives of the administration in open envelopes. ...

(19) ...Proposals, requests and complaints containing obscene statements, including those of a defamatory nature, which are damaging to the honour and dignity of an employee of the institution, shall not be dispatched to the addressee. Such letters shall be attached to the personal file and the sender shall be subject to disciplinary sanctions.”

B. Changes to the law

22. Since the interferences complained of in the present application, the law regarding the censorship of prisoners' correspondence has been amended.

The first reform was contained in the Order of the Minister of Justice no. 122, of 8 April 2002, which allowed detainees privacy for certain categories of their legal correspondence:

“(1) The correspondence of detained persons with an ombudsman, with the Council of Europe, with the European Court of Human Rights or with his or her lawyer shall not be subject to control or censorship and shall be despatched to the addressee within twenty-four hours of its being filed or received.”

23. This exception to the general rule of censorship was expanded later in the year, by Law no. 1430, adopted on 7 November 2002, which entered into force on 3 December 2002. This Law repealed Article 73(4) of the Execution Code (see paragraph 18 above), and amended Article 73(2) to read as follows:

“(2) A convicted prisoner's outgoing and incoming correspondence ... shall be subject to control or censorship, except for correspondence with the law enforcement authorities, his lawyers and legally established national and international organisations for the protection of human rights, and shall be dispatched or transmitted to the addressee within twenty-four hours of its being filed or received.”

Law no. 1430 also amended Article 18(2) of Law no. 1226 (see paragraph 20 above), to provide:

“(2) Complaints, requests and letters of detained persons, including accused persons, shall be subject to censorship by the prison administration. A detained person's correspondence with the public prosecutor, his lawyers and legally established national and international organisations for the protection of human rights shall not be subject to any control or censorship and shall be despatched or transmitted to the addressee within twenty-four hours of its being filed or received.”

24. Article 383(2) of the CCP (see paragraph 19 above) was repealed on 12 June 2003 and, by virtue of Law no. 206 of 29 May 2003, which entered into force on 18 July 2003, the correspondence of prisoners awaiting trial is no longer subject to censorship (see paragraph 20 above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25. The applicant complained about the interference by the prison authorities with his right to respect for his correspondence with the Court, his lawyer and certain domestic authorities. The Court considers that this complaint falls under Article 8 of the Convention, which provides, in so far as relevant:

“1. Everyone has the right to respect for his ... correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

26. In a letter dated 28 October 2003 the Government informed the Court that they proposed to settle the case by the following means:

- the payment to the applicant of the equivalent (at the exchange rate then applying) of 890 euros (EUR) (14,000 Moldovan Lei (MDL)), as compensation for any non-pecuniary damage caused to him by the interference with his correspondence with the Court and with his lawyer. The Government mentioned in this connection that the minimum monthly salary in Moldova was MDL 100;
- an official apology to the applicant for the fact that his correspondence was interfered with by the prison authorities;
- the harmonisation of national law with the requirements of the Convention as regards the rights of convicted prisoners to confidentiality for their correspondence with the Court and with other legal bodies.

The Government submitted that they had already amended the relevant legislation, with the aim of giving a higher level of protection to the rights of prisoners (see paragraphs 22-24 above). In the event that the applicant refused to accept the above terms of settlement, the Government asked the Court to strike out the application, in accordance with Article 37 of the Convention.

27. The applicant, in his written reply, asked the Court to reject the Government's proposal. The offer of MDL 14,000 was too low, given that, although the minimum monthly wage was MDL 100, the minimum “consumption basket”, representing the amount needed each month to survive, was, in October 2003, MDL 1,269. Moreover, the changes made to national law were insufficient, since, although censorship and interferences with a prisoner's letters to and from his or her lawyer, law enforcement

bodies, and national and international human rights organs were now prohibited, all other correspondence was still subject to mandatory censorship, with no limit, and was retained for 72 hours.

28. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case (see paragraph 6 above). It recalls that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential. Rule 62 § 2 of the Rules of Court further stipulates in this connection that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings.

The Court will therefore proceed on the basis of the declaration made outside the framework of the friendly-settlement negotiations by the Government on 28 October 2003.

29. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

Article 37 § 1 *in fine* includes the proviso that:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

30. The Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State as regards the confidentiality of a prisoner’s correspondence (see, amongst many others, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 67; *Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80; *McCallum v. the United Kingdom*, judgment of 30 August 1990, Series A no. 183; *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233; *Petra v. Romania*, no. 27273/95, *Reports of Judgments and Decisions* 1998-VII; *Niedbala v. Poland*, no. 27915/95, judgment of 4 July 2000 (unpublished); *Rehbock v. Slovenia*, no. 29462/95, *Reports* 2000-XII; *Poltoratskiy v. Ukraine*, no. 38812/97, *Reports* 2003-V).

31. It has carefully examined the terms of the Government’s declaration. Having regard to the nature of the admissions contained in the declaration as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed (which is consistent with the amounts awarded in the above-mentioned cases), the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)) (see, for the relevant principles, *Tahsin Acar*

v. Turkey, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; and also *Haran v. Turkey*, no. 25754/94, judgment of 26 March 2002).

32. Moreover, given, in particular, the clear and extensive case-law on this topic (referred to above), it is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

33. The Court has a discretion to award legal costs when it strikes out an application (Rule 43 § 4 of the Rules of Court). In the present case, taking into account the relatively straightforward nature of the issues involved, but also the amount of work carried out by the applicant's lawyer, it decides to award EUR 2,000 in respect of legal costs and expenses.

34. Finally, it recalls that, in accordance with Rule 43 § 3 of the Rules of Court, the present judgment will be forwarded to the Committee of Ministers to allow the latter to supervise the execution of the Government's undertakings. In the event that the Government fails to pay the sums referred to in paragraphs 26 and 33 above within three months of the date of delivery of the present judgment, simple interest will be payable at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

35. Accordingly, the application should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 44 § 2 of the Rules of Court);
2. *Decides* to strike the application out of the list in accordance with Article 37 § 1 (c) of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) 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.

Done in English, and notified in writing on 1 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President