

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT IN THE CASE OF
ILAȘCU AND OTHERS v. MOLDOVA AND RUSSIA

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Ilașcu and Others v. Moldova and Russia* (application no. 48787/99). The Court held

- by eleven votes to six, that the applicants came within the jurisdiction of Moldova within the meaning of Article 1 of the European Convention on Human Rights (State jurisdiction) as regards its positive obligations; and
- by sixteen votes to one, that the applicants came within the jurisdiction of Russia within the meaning of Article 1 of the Convention;

Treatment and conditions suffered by the applicants

- by eleven votes to six, that there had been **no violation of Article 3** (prohibition of torture and inhuman or degrading treatment or punishment) by Moldova on account of the ill-treatment inflicted on *Mr Ilașcu* and the conditions in which he was detained while under the threat of execution;
- by sixteen votes to one, that there had been **a violation of Article 3** (prohibition of torture) by Russia on account of the ill-treatment inflicted on *Mr Ilașcu* and the conditions in which he was detained while under the threat of execution;
- by eleven votes to six, that there had been **a violation of Article 3** (prohibition of torture) by Moldova since May 2001 on account of the ill-treatment inflicted on *Mr Ivanțoc* and the conditions in which he had been detained;
- by sixteen votes to one, that there had been **a violation of Article 3** (prohibition of torture) by Russia on account of the ill-treatment inflicted on *Mr Ivanțoc* and the conditions in which he had been detained;
- by eleven votes to six, that there had been **a violation of Article 3** (prohibition of inhuman and degrading treatment) by Moldova since May 2001 on account of the ill-treatment inflicted on *Mr Leșco* and *Mr Petrov-Popa* and the conditions in which they had been detained;
- by sixteen votes to one, that there had been **a violation of Article 3** (prohibition of inhuman and degrading treatment) by Russia on account of the ill-treatment inflicted on *Mr Leșco* and *Mr Petrov-Popa* and the conditions in which they had been detained;

Deprivation of liberty

- by eleven votes to six, that there had been **no violation of Article 5** of the Convention (right to liberty and security) by Moldova on account of *Mr Ilașcu*'s detention;

¹ Judgments of the Grand Chamber are final (Article 44 of the Convention).

- by eleven votes to six, that there had been and continued to be **a violation of Article 5** of the Convention by Moldova on account of the detention of *Mr Ivanțoc*, *Mr Leșco* and *Mr Petrov-Popa* after May 2001;
- by sixteen votes to one, that there had been **a violation of Article 5** by Russia as regards *Mr Ilașcu* until May 2001 and that there had been and continued to be **a violation of Article 5** as regards *Mr Ivanțoc*, *Mr Leșco* and *Mr Petrov-Popa*;

The Court further held

- unanimously, that there was no cause to examine separately the complaint of a violation of Article 2 (right to life) on account of the fact that *Mr Ilașcu* was sentenced to death;
- unanimously, that there was no cause to examine separately the complaint under Article 8 (right to respect for private and family life);
- unanimously, that it did not have jurisdiction to examine the complaint under Article 6 of the Convention (right to a fair trial);
- by fifteen votes to two, that there had been **no violation of Article 1 of Protocol No. 1** (protection of property)
- by sixteen votes to one, that Moldova and Russia **had failed to discharge their obligations under Article 34** of the Convention (individual applications).

Under Article 41 of the Convention (just satisfaction), the Court held

- by ten votes to seven, that Moldova was to pay Mr Ivanțoc, Mr Leșco and Mr Petrov-Popa 60,000 euros (EUR) each for pecuniary and non-pecuniary damage, EUR 3,000 to each applicant for non-pecuniary damage arising from the breach of Article 34 and an overall sum of EUR 7,000 for costs and expenses, less EUR 1,321.34 already received in legal aid;
- By sixteen votes to one, that Russia was to pay EUR 180,000 to Mr Ilașcu and EUR 120,000 to each of the other applicants for pecuniary and non-pecuniary damage, EUR 7,000 to each applicant for non-pecuniary damage arising from the breach of Article 34 and an overall sum of EUR 14,000 for costs and expenses, less EUR 2,642.66 already received in legal aid.

The Court further held, unanimously, that Moldova and Russia were to take all the necessary steps to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release.

(The judgment is available in English and in French).

1. Principal facts

The applicants, Ilie Ilașcu, Alexandru Leșco, Andrei Ivanțoc and Tudor Petrov-Popa, who were Moldovan nationals at the time when the application was lodged, were born in 1952, 1955, 1961 and 1963 respectively. Mr Ilașcu acquired Romanian nationality in 2000, as did Mr Leșco and Mr Ivanțoc in 2001. The applicants, with the exception of Mr Ilașcu and Mr Leșcu, who were released in May 2001 and June 2004 respectively, are currently detained in the Transnistrian region.

At the material time Mr Ilașcu was the local leader of the Popular Front and was working towards the unification of Moldova with Romania. He was twice elected to the Moldovan Parliament and was appointed as a member of the Moldovan delegation to the Parliamentary Assembly of the Council of Europe. In December 2000 he was elected to the Senate of the

Romanian Parliament and appointed as a member of the Romanian delegation to the Parliamentary Assembly.

Between 2 and 4 June 1992 the applicants were arrested at their homes in Tiraspol by a number of people, some of whom were wearing uniforms bearing the insignia of the former USSR's Fourteenth Army. They were accused of anti-Soviet activities and illegally combating the legitimate government of the State of Transdniestria, under the direction of the Moldovan Popular Front and Romania. They were also charged with a number of offences which included two murders. On 9 December 1993 the "Supreme Court of the Transdniestrian region" sentenced Mr Ilaşcu to death and ordered the confiscation of his property. The other applicants were sentenced by the same court to terms of 12 to 15 years' imprisonment, and their property was likewise ordered to be confiscated.

2. Procedure and composition of the Court

The application was lodged on 14 June 1999. On 20 March 2001 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber (Article 30 of the Convention). The Grand Chamber decided to hold a hearing on the admissibility and merits of the application, and the President invited the Romanian Government to take part. By a decision of 4 July 2001 the application was declared partly admissible, after a hearing had been held on 6 June 2001. A delegation of the Court conducted an on-the-spot investigation in Chişinău and Tiraspol from 10 to 15 March 2003.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Nicolas **Bratza** (British),
Loukis **Loucaides** (Cypriot),
Ireneu **Cabral Barreto** (Portuguese)
Françoise **Tulkens** (Belgian),
Corneliu **Bîrsan** (Romanian),
Josep **Casadevall** (Andorran),
Boštjan **Zupančič** (Slovenian),
John **Hedigan** (Irish)
Wilhelmina **Thomassen** (Netherlands),
Tudor **Panţîru** (Moldovan),
Egil **Levits** (Latvian)
Anatoli **Kovler** (Russian),
Elisabet **Fura-Sandström** (Swedish), *judges*,

and also Paul **Mahoney**, *Registrar*.

3. Summary of the judgment¹

Complaints

The applicants complained of a violation of Article 6 of the Convention on the grounds that the court which had convicted them did not have jurisdiction and that, at all events, the proceedings which had led to their conviction had not been fair. They also complained, under Article 1 of Protocol No. 1 to the Convention, of the confiscation of their possessions, and maintained that their detention had been unlawful, contrary to Article 5. Mr. Ilașcu further complained of a violation of Article 2 on account of his being sentenced to death. All the applicants complained in addition of the conditions of their detention, relying expressly on Articles 3 and 8 and, in substance, Article 34.

They submitted that the Moldovan authorities were responsible for the violations they alleged since they had not taken adequate measures to put a stop to them. In their submission, the Russian Federation shared that responsibility as the territory of Transnistria was under Russia's *de facto* control owing to the stationing of its troops and military equipment there and the support it gave to the separatists.

Decision of the Court

Article 1

As regards Moldova

On the basis of all the material in its possession, the Court considered that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, did not exercise authority over part of its territory, namely that part which was under the effective control of the Transnistrian region. However, even in the absence of effective control over the Transnistrian region, Moldova still had a positive obligation under Article 1 of the Convention to take the measures that it was in its power to take and were in accordance with international law to secure to the applicants the rights guaranteed by the Convention.

Consequently, the applicants were within the jurisdiction of the Republic of Moldova for the purposes of Article 1, but its responsibility for the acts complained of was to be assessed in the light of its positive obligations under the Convention. These related both to the measures needed to re-establish its control over Transnistrian territory, as an expression of its jurisdiction, and to measures to ensure respect for the applicants' rights, including attempts to secure their release.

As regards the applicants' situation, the Court noted that before ratification of the Convention in 1997 and even after that date the Moldovan authorities had taken a number of measures to secure the applicants' rights. On the other hand, it did not have any evidence that since Mr Ilașcu's release in May 2001 effective measures had been taken to put an end to the continuing infringements of their Convention rights complained of by the other applicants. In their bilateral relations with the Russian Federation the Moldovan authorities had not been any more attentive to the applicants' fate; the Court had not been informed of any approach by the Moldovan authorities to the Russian authorities after May 2001 aimed at obtaining the remaining applicants' release.

¹ This summary by the Registry does not bind the Court.

Even after Mr Ilaşcu's release in May 2001, it had been within the power of the Moldovan Government to take measures to secure to the applicants their rights under the Convention. The Court accordingly concluded that Moldova's responsibility was capable of being engaged on account of its failure to discharge its positive obligations with regard to the acts complained of which had occurred after May 2000

As regards Russia

During the Moldovan conflict in 1991-92 forces of the former Fourteenth Army (which had owed allegiance to the USSR, the CIS and the Russian Federation in turn) stationed in Transdnistria, had fought with and on behalf of the Transdnistrian separatist forces. Large quantities of weapons from the stores of the Fourteenth Army had been voluntarily transferred to the separatists, who had also been able to seize possession of other weapons unopposed by Russian soldiers. In addition, throughout the clashes between the Moldovan authorities and the Transdnistrian separatists the Russian leaders had supported the separatist authorities by their political declarations.

The Russian authorities had therefore contributed both militarily and politically to the creation of a separatist regime in the region of Transdnistria, part of the territory of the Republic of Moldova. Even after the ceasefire agreement of 21 July 1992 Russia had continued to provide military, political and economic support to the separatist regime, thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy vis-à-vis Moldova. In the Court's opinion, all of the acts committed by Russian soldiers with regard to the applicants, including their transfer into the charge of the separatist regime, in the context of the Russian authorities' collaboration with that illegal regime, were capable of engaging responsibility for the consequences of the acts of that regime.

The Russian army was still stationed in Moldovan territory in breach of the undertakings to withdraw them completely given by Russia at the OSCE summits in 1999 and 2001. Both before and after 5 May 1998, when the Convention came into force with regard to Russia, in the security zone controlled by the Russian peacekeeping forces Transdnistria continued to deploy its troops illegally and to manufacture and sell weapons in breach of the agreement of 21 July 1992. All of the above proved that the Transdnistrian region remained under the effective authority, or at the very least under the decisive influence, of Russia, and in any event that it survived by virtue of the military, economic, financial and political support that Russia gave it.

That being so, the Court considered that there was a continuous and uninterrupted link of responsibility on the part of Russia for the applicants' fate, as its policy of support for the regime and collaboration with it had continued beyond 5 May 1998, and after that date Russia had made no attempt to put an end to the applicants' situation brought about by its agents and had not acted to prevent the violations allegedly committed. The applicants therefore came within the "jurisdiction" of Russia and its responsibility was engaged with regard to the acts complained of.

The Court's jurisdiction

The Court observed that the Convention had come into force with regard to Moldova on 12 September 1997 and with regard to Russia on 5 May 1998. It pointed out that the Convention applied only to events subsequent to its entry into force with regard to the Contracting States concerned. Consequently, the Court did not have jurisdiction to examine the complaint under Article 6 and had jurisdiction to examine those under Articles 3, 5 and 8 only in so far as they concerned events subsequent to the dates on which the Convention had

entered into force with regard to Moldova and Russia. Lastly, the Court had jurisdiction to examine Mr Ilaşcu's complaint under Article 2.

Article 2

Since Mr Ilaşcu had been released and was now living with his family in Romania, the Court considered that the risk of enforcement of the death penalty imposed on him was more hypothetical than real. On the other hand, it was not disputed that after ratification of the Convention by the two respondent States Mr Ilaşcu must have suffered as a consequence both of the death sentence imposed on him and of his conditions of detention while under the threat of execution of that sentence. That being so, the Court considered that the facts complained of by Mr Ilaşcu did not call for a separate examination under Article 2 of the Convention, but would be more appropriately examined under Article 3 instead.

Article 3

As regards Mr Ilaşcu

During the very long period he had spent on "death row" the applicant had lived in the constant shadow of death, in fear of execution. Unable to exercise any remedy, he had lived for many years, including the time after the Convention's entry into force, in conditions of detention apt to remind him of the prospect of his sentence being enforced. The anguish and suffering he felt had been aggravated by the fact that the sentence had no legal basis or legitimacy for Convention purposes. The "Supreme Court of the Transdnistriean region" which had passed sentence on Mr Ilaşcu had been set up by an entity which was illegal under international law and had not been recognised by the international community. That "court" belonged to a system which could hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That was evidenced by the arbitrary nature of the circumstances in which the applicants had been tried and convicted, as they had described them in an account which had not been disputed by the other parties and as described and analysed by the institutions of the OSCE.

As regards the applicant's conditions of detention while on death row, the Court noted that Mr Ilaşcu had been detained for eight years in very strict isolation: he had had no contact with other prisoners, no news from the outside - since he was not permitted to send or receive mail - and no right to contact his lawyer or receive regular visits from his family. His cell had been unheated, even in severe winter conditions, and had had no natural light source or ventilation. Mr Ilaşcu had also been deprived of food as a punishment, and, given the restrictions on receiving parcels, even the food he received from outside had often been unfit for consumption. He had been able to take showers only very rarely, often having to wait several months between one and the next. On that subject the Court referred to the report of the Committee for the Prevention of Torture following its visit to Transdnistria in 2000, in which it had described isolation for so many years as indefensible.

The applicant's conditions of detention had had deleterious effects on his health, which had deteriorated in the course of the many years he had spent in prison; he had not received proper care, having been deprived of regular medical examinations and treatment and dietetically appropriate meals. The Court noted with concern the existence of rules authorising discretion in relation to correspondence and prison visits, on the part of both prison warders and other authorities, and emphasised that such rules were arbitrary and incompatible with the appropriate and effective safeguards against abuses which any prison system in a democratic society must put in place. Moreover, in the present case, such rules had made the applicant's conditions of detention even more difficult.

The death sentence imposed on the applicant, coupled with the conditions he had been living in and the treatment he had suffered during his detention had been particularly serious and cruel and must accordingly be considered acts of torture within the meaning of Article 3. As Mr Ilaşcu had been detained at the time when the Convention came into force with regard to Russia, the latter was responsible for his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison. Mr Ilaşcu had been released in May 2001 and it was only from that date on that Moldova's responsibility was engaged for failure to discharge its positive obligations. Consequently, there had been a violation of Article 3 by Russia but not by Moldova.

As regards Mr Ivanțoc

In the light of all the information at its disposal, the Court considered that it could take it as established that during the applicant's detention he had received a large number of blows and other ill-treatment, and that at times he had been denied food and all forms of medical assistance in spite of his state of health, which had been weakened by these conditions of detention. In particular, the Court drew attention to the persecution and ill-treatment to which he had been subjected in May 1999 after lodging his application to the Court.

In addition, Mr Ivanțoc had been detained since his conviction in 1993 in solitary confinement, without contact with other prisoners and without access to newspapers. He was not permitted to see a lawyer, his only contacts with the outside world taking the form of visits and parcels from his wife, subject to authorisation by the prison authorities when they saw fit to give it. All these restrictions, which had no legal basis and were left to the authorities' discretion, were incompatible with a prison regime in a democratic society and had played their part in increasing the applicant's distress and mental suffering. He had been detained in an unheated, badly ventilated cell without natural light, and had not received the treatment required by his state of health, despite a few medical examinations authorised by the prison authorities.

Taken as a whole, and regard being had to its seriousness, its repetitive nature and its purpose, the treatment inflicted on Mr Ivanțoc had caused "severe" pain and suffering, had been particularly serious and cruel and had constituted acts of torture within the meaning of Article 3. As Mr Ivanțoc had been detained at the time when the Convention came into force with regard to the Russian Federation, the latter was responsible on account of his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison. There had therefore been a violation of Article 3 by Russia and by Moldova.

As regards Mr Leșco and Mr Petrov-Popa

The Court considered that it could take it as established that during their detention Mr Leșco and Mr Petrov-Popa had experienced extremely harsh conditions of detention (visits and parcels from their families subject to the discretionary authorisation of the prison administration; deprivation of food at times, or distribution of food unfit for consumption, deprivation most of the time of all forms of appropriate medical assistance despite their state of health, which had been weakened by these conditions of detention; lack of the dietetically appropriate meals prescribed by their doctors). These conditions had deteriorated since 2001. In addition, Mr Petrov-Popa had been held in solitary confinement since 1993, having no contact with other prisoners or access to newspapers in his own language. Both Mr Petrov-Popa and Mr Leșco had been denied access to a lawyer until June 2003.

Such treatment was apt to engender pain or suffering, both physical and mental. Taken as a whole, and regard being had to its seriousness, it could be termed inhuman and degrading

treatment within the meaning of Article 3. As Mr Leşco and Mr Petrov-Popa had been detained at the time when the Convention came into force with regard to Russia, the latter was responsible for their conditions of detention, the treatment inflicted on them and the suffering caused to them in prison. There had therefore been a violation of Article 3 by Russia and by Moldova.

Article 5

Referring to its conclusions under Article 3 regarding the nature of the proceedings in issue, the Court found that none of the applicants had been convicted by a “court”, and that a sentence of imprisonment passed by a judicial body such as the “Supreme Court of the Transnistrian region” at the close of proceedings like those conducted in the present case could not be regarded as “lawful detention” ordered “in accordance with a procedure prescribed by law”. That being so, the deprivation of liberty suffered by the applicants could not satisfy the conditions laid down in paragraph 1 (a) of Article 5 of the Convention. It followed that there had been a violation of Article 5 § 1 of the Convention until May 2001 as regards Mr Ilaşcu, and that there had been and continued to be a violation of that provision as regards the applicants still detained.

Having regard to the fact that the applicants were detained at the time of the Convention’s entry into force with regard to Russia, the Court concluded that the conduct constituting a violation of Article 5 was imputable to the Russian Federation as regards all the applicants. Taking into account its conclusion that the responsibility of the Republic of Moldova by virtue of its positive obligations was engaged from May 2001, the Court concluded that there had been no violation of Article 5 by Moldova as regards Mr Ilaşcu, but a violation of that provision as regards the other applicants.

Article 8

The applicants’ complaint was limited to the fact that it was impossible to write freely to their families and the Court from prison and to the difficulties they had encountered in receiving visits from their families. As to the complaint relating to the impossibility of applying to the Court from prison, this fell more naturally under Article 34, which the Court was to examine separately. However, having taken these allegations into account in the context of Article 3, the Court considered that it was not necessary to examine them separately from the standpoint of Article 8.

Article 1 of Protocol No. 1

Even on the supposition that it had jurisdiction to rule on this complaint, the Court noted that it had not been substantiated, and therefore concluded that there had been no violation of the provision relied on.

Article 34

The Court noted that the applicants had asserted that they had not been able to apply to it from their place of detention and that their application, which had been signed by their wives, had been lodged by the only lawyer who was representing them at the beginning of the proceedings. It further noted the threats made against the applicants by the Transdniestrian prison authorities and the deterioration in their conditions of detention after their application was lodged. Such acts constituted an improper and unacceptable form of pressure which had hindered their exercise of the right of individual petition.

In addition, the Court noted with concern the content of a note of April 2001 sent by Russia to the Moldovan authorities, from which it appeared that the Russian authorities had requested Moldova to withdraw the observations it had submitted to the Court in October 2000 in so far as these implied responsibility on the part of Russia on account of the fact that its troops were stationed in Moldovan territory, in Transdniestria. At the hearing on 6 June 2001 the Moldovan Government had declared that it wished to withdraw the part of its observations concerning Russia. Such conduct on the part of the Russian Government represented a negation of the common heritage of political traditions, ideals, freedom and the rule of law mentioned in the Preamble to the Convention and were capable of seriously hindering the Court's examination of an application lodged in exercise of the right of individual petition and thereby interfering with the right guaranteed by Article 34 of the Convention itself. There had therefore been a breach by Russia of Article 34 of the Convention.

The Court further noted that after Mr Ilaşcu's release he had spoken to the Moldovan authorities about the possibility of obtaining the release of the other applicants, and that in that context Mr Voronin, the President of Moldova, had publicly accused Mr Ilaşcu of being the cause of his comrades' continued detention, through his refusal to withdraw his application against Moldova and Russia. Such remarks by the highest authority of a Contracting State, making an improvement in the applicants' situation depend on withdrawal of the application lodged against that State or another Contracting State, represented direct pressure intended to hinder exercise of the right of individual petition. That conclusion held good whatever the real or theoretical influence that authority might have on the applicants' situation. Consequently, Mr Voronin's remarks amounted to an interference by Moldova with the applicants' exercise of their right of individual petition, in breach of Article 34.

Judge Casadevall expressed a partly dissenting opinion, joined by Judges Ress, Tulkens, Bîrsan and Fura-Sandström. Judges Ress and Loucaides each expressed a partly dissenting opinion. Judge Bratza expressed a partly dissenting opinion, joined by Judges Rozakis, Hedigan, Thomassen and Panțiru. Judge Kovler expressed a dissenting opinion. These opinions are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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