CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## PARTIAL DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 1579/02
by Eugenia DUCA
against Moldova

The European Court of Human Rights (Fourth Section), sitting on 14 February 2006 and 11 April 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 14 January 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mrs Eugenia Duca, is a Moldovan national who was born in 1953 and lives in Chişinău. She was represented before the Court by Mr V. Nagacevschi and Mr V. Constantinov, acting on behalf of "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Government were represented by Mr V. Pârlog, their Agent.

## A. The circumstances of the case

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

### *1. Background to the case*

During the period with which the application is concerned, Ms Duca was the manager of a private company. In 1998 two employees of the company applied to the Chişinău District Court for a declaration of their status as founders of the company. In 2000 the Supreme Court of Justice, in a final decision, dismissed their application.

In 1999 the plaintiffs in the above proceedings lodged a criminal complaint against the applicant on charges of large-scale theft and forgery of public documents. On 11 August 1999 the Chişinău District Police Department instituted criminal proceedings against the applicant on the above charges. On 10 July 2001 the case was referred to the Ciocana District Court, where on 1 November 2002 the applicant was convicted and sentenced to five years' imprisonment. On 12 December 2002 the Chişinău Regional Court partially quashed the judgment of the first instance court. The proceedings ended with the final judgment of the Court of Appeal of 18 February 2003, acquitting the applicant. During the proceedings the applicant was detained twice: first, on remand, between 21 December 2001 and 24 April 2002 and secondly, after being convicted, between 1 November 2002 and 12 December 2002.

### *2. The applicant's conditions of detention in the Remand Centre of the Ministry of Internal Affairs*

The applicant's complaints regarding the conditions of detention relate to two periods of detention served in the Remand Centre of the Ministry of Internal Affairs, namely between 21 December 2001 and 27 February 2002, and between 1 November 2002 and 12 December 2002.

#### (a) The applicant's submissions

The applicant submitted that her cell was overcrowded. Usually fourteen persons were detained in it. It was damp and lacked fresh air. As a result of the damp, the inmates' clothes were wet. There was a ventilation system; however, to save money it was on for only two hours a day. The window was covered with metal shutters, preventing daylight from passing through. The electric light was always on.

Instead of a toilet, there was a bucket that was not separated from the rest of the cell. The detainees hung up a blanket; however, the guards used to remove it in order to humiliate them. Instead of beds, there were wooden platforms with no mattresses, pillows, blankets or bed linen. The inmates

were denied the opportunity of outdoor exercise. There was no means of maintaining hygiene in the cell since water was provided for only five to ten minutes per day. The cell was infested with vermin.

The food served to the prisoners was inedible; the daily amount spent by the State for a detainee's food was 3.5 Moldovan lei (MDL) (the equivalent of 0.23 euros (EUR) at the time). In particular, the daily meals included a cup of hot water and a slice of bread in the morning, an almost cold semi-liquid porridge at noon and a cup of hot water in the evening. According to the applicant's lawyers, the applicant protested to the prison authorities about the conditions of her detention. As a result, on 22 February 2002, she was placed in solitary confinement for eight hours. In that cell, the floor was covered with human hair (the detainees having had their hair cut there), excrement and insects.

According to the applicant, the prison did not provide proper medical assistance to the prisoners. A medical attendant with basic medical training was present in the prison for only four hours a day and in urgent cases an ambulance was called.

**(b) The Government's submissions**

Referring to the first period of detention, the Government submitted that the applicant had been detained together with four other detainees in a cell of 5.2 square metres. Due to the lack of an exercise yard in the prison, the detainees were not allowed a daily walk. The sanitary conditions, the food and the opportunities for recreation were satisfactory and met the requirements of the law in force.

Referring to the second period of detention, the Government submitted that the applicant was detained in cell no. 2 with a surface of 12.9 square metres together with three to four other detainees.

The ventilation system was in good order in all the cells of the prison. The cell had a window and accordingly had access to natural light. There was a sink with running water in the cell. The food was satisfactory although due to lack of money, detainees were not provided with meat and fish. In view of this, they had the right to receive food from their families.

As to the recreational facilities, the applicant could have played chess or dominoes and read magazines and books. She had the opportunity to receive parcels and visits from relatives as well as to walk. She was allowed to pray and to use religious literature and objects.

There were medical personnel in the prison who provided basic medical assistance. In urgent cases, an ambulance was called. The ambulance was called once for the applicant.

According to the Government, during the summer of 2002 it allocated MDL 108,500 (approx. EUR 8,000 as of September 2002) for the purpose of improving the conditions of detention in the prison, including building walls to separate the toilets from the rest of each cell.

*3. Alleged interference with the applicant's correspondence*

The applicant complained that during her first detention the prison authorities interfered constantly with her correspondence with her lawyers.

*4. Applicant's domestic proceedings against the Government*

Following her acquittal on 18 February 2003, the applicant introduced a civil action against the Government in accordance with Law No. 1545 (see the "Relevant Domestic Law"), claiming compensation of EUR 461,800 for the illegal acts of the investigation organs, the prosecution and the courts.

In her application the applicant claimed compensation for an illegal attempt to interrogate her as a witness, an illegal indictment on four occasions, an illegal break-in and search of her apartment, illegal imposition of the obligation not to leave the city for 778 days, illegal detention in a hospital for four days and illegal detention in two remand centres for 169 days. She did not claim compensation for the conditions of detention or for interference with her right to correspondence while in detention.

On 1 September 2004 the Râşcani District Court found in favour of the applicant and stated *inter alia* that:

> "On 11 August 1999 criminal proceedings were instituted against the applicant....
>
> ...
>
> [account of the proceedings]
>
> ...
>
> On 18 February 2003 the Court of Appeal acquitted her on the ground that no criminal offence was ever committed. Thus, the applicant was illegally charged on four occasions. She was under an obligation not to leave the city, being thus limited in her freedom of movement for 778 days. She was illegally detained in prison for 169 days and 7 hours, of which 111 days were spent in the Remand Centre of the Ministry of Internal Affairs.
>
> It is obvious that while being charged illegally with a criminal offence, the applicant and her family endured mental suffering.
>
> Moreover, the applicant's lawyer declared that she was detained in inhuman conditions in the Remand Centre of the Ministry of Internal Affairs, which was confirmed by the CPT report of 2001.
>
> There is no doubt that these circumstances intensified her moral suffering."

The court awarded the applicant a lump sum of MDL 150,000 (the equivalent of EUR 10,289 at the time).

Both the applicant and the Government appealed against this judgment.

The applicant argued that the amount awarded was too small and did not cover the real moral damage she had suffered. She also argued that the court had failed to compensate her for the illegal break-in and search of her apartment and for illegal detention in a hospital for four days. The applicant

did not mention the conditions of detention and the alleged interference with her correspondence while in detention.

The Government argued that the applicant had not presented evidence in support of her submission that she had endured moral suffering. She was detained for a relatively short time and she was acquitted on the basis of new evidence presented by her. Moreover, the compensation would have to be paid from tax money.

On 12 October 2004 the Chişinău Court of Appeal dismissed the appeals while finding that the applicant had been illegally charged on four occasions, that her freedom of movement had been limited for 778 days and that she was illegally detained in prison for 169 days. The Court of Appeal found that the first instance court had correctly applied the provisions of Article 1 of Law No. 1545. It did not say anything about the conditions of detention or the alleged interference with the applicant's correspondence while in detention.

The Government and the General Prosecutor's Office lodged an appeal on points of law with the Supreme Court of Justice. They argued *inter alia* that the amount awarded to the applicant was exaggerated since it was the taxpayers that had to pay it and not the persons who were directly responsible for causing suffering to the applicant.

On 1 December 2004 the Supreme Court of Justice declared the Government's appeal on points of law inadmissible while finding that the first and the second instance courts had correctly applied the provisions of Law No. 1545. It reiterated that Mrs Duca had been illegally prosecuted and that this had been demonstrated by the acquittal decision of the Court of Appeal of 18 February 2003.

## B. Relevant domestic law

The relevant provisions of the Constitution of the Republic of Moldova read as follows:

**Article 30**

"The State shall ensure the privacy of letters, telegrams, other postal dispatches, telephone conversations and the use of other legal means of communication".

The relevant provisions of the Code for the Execution of Criminal Sentences, in force at the relevant time, read:

**Article 73 § 2**

"A convicted prisoner's outgoing and incoming correspondence [...] shall be subject to censorship."

The relevant provisions of the Code for the Execution of Criminal Sentences, as modified on 7 November 2002, read as follows:

**Article 73 § 2**

"All prisoners' correspondence ... shall be verified or censored, except correspondence with their lawyers and with the national and international bodies charged with the protection of human rights. Correspondence shall be delivered within 24 hours."

The relevant provisions of Law No. 1545 "on Compensation for Damage caused by the Illegal Acts of the Criminal Investigation Bodies, Prosecution and Courts", read as follows:

**Article 1**

(1) In accordance with the present law, individuals and legal entities are entitled to compensation for non-pecuniary and pecuniary damage caused as a result of:

a) illegal detention, illegal arrest, illegal indictment, illegal conviction;

b) illegal search carried out during the investigation phase or during the trial of the case, confiscation, levy of a distraint upon property, illegal dismissal from employment, as well as other procedural acts that limit the persons' rights;

c) illegal administrative arrest or order to work for the community, illegal confiscation of the property, illegal fine;

d) the carrying out of operative investigative measures in breach of lawful procedure;

e) illegal seizure of accounting documents, other documents, money, or stamps as well as the blocking of bank accounts.

(2) The damage caused shall be fully compensated, irrespective of the degree of culpability of the agents of the criminal investigation organs, prosecution and courts.

**Article 4**

A person shall be entitled to compensation in accordance with the present law when one of the following conditions is met:

a) the pronouncement of an acquittal judgment;

b) the dropping of charges or discontinuation of an investigation on the ground of rehabilitation;

c) the adoption of a decision by which an administrative arrest is cancelled on the grounds of rehabilitation;

d) the adoption by the European Court of Human Rights or by the Committee of Ministers of the Council of Europe of a decision in respect of damages or in respect of a friendly settlement agreement between the victim and the representative of the Government of the Republic of Moldova before the European Court of Human Rights. The friendly settlement agreement shall be approved by the Government of the Republic of Moldova; ...

# COMPLAINTS

1. The applicant complained under Article 3 of the Convention that the conditions of her detention, between 21 December 2001 and 27 February 2002, and between 1 November 2002 and 12 December 2002, amounted to inhuman and degrading treatment.

2. She also complained, under Article 5 § 3 of the Convention, that the decisions to detain her on remand were unjustified and not based on relevant and sufficient grounds.

3. She further complained, that the judge who ordered her detention on remand and two judges of the Chişinău Regional Court who examined the appeals against the above order did not qualify, under Article 5 § 3 of the Convention, as judges "authorised by law".

4. She complained that, in breach of her right under Article 6 § 2 of the Convention to be presumed innocent until proved guilty of an offence, the Chişinău District Court, in its decision of 21 December 2001, stated that she was trying to escape conviction for the offences with which she had been charged, a statement, which according to her, could be interpreted as an establishment of criminal guilt.

5. Lastly, she complained, under Article 8 of the Convention, about the interference by the prison authorities with her right to respect for her correspondence with her lawyers.

# THE LAW

## A. The applicant's complaints under Article 5 and under Article 6 of the Convention

In her initial application the applicant submitted complaints under Articles 5 § 3 and 6 § 2 of the Convention; however in her observations of 5 June 2005 she informed the Court that she did not want to pursue those complaints. Accordingly the Court will not examine them.

## B. The Government's objection as to the non-exhaustion of domestic remedies

In their observations of September 2002 the Government submitted that the applicant had not exhausted domestic remedies. In particular she had not complained to the domestic courts about her conditions of detention. She also could have complained to the prison administration.

The applicant submitted that the Government had failed to indicate the legal provision on which she could have relied or the competent court to

which she could have applied. Nor had the Government provided examples of similar cases that had been resolved by the domestic courts.

The Court notes that the Government's non-exhaustion objection in the present case does not differ from that raised in *Ostrovar v. Moldova* (dec.), no. 35207/03, 22 March 2005. Since in that case the Court found the remedies suggested by the Government to be ineffective because they were not able to provide redress and compensation, the Government's objection must be dismissed in the present case also.

### C. The Government's objection as to the applicant's victim status

In their observations of May 2005 the Government submitted that the applicant had lost her victim status since by virtue of the final judgment of the Supreme Court of Justice of 1 December 2004 she had been compensated for the alleged breaches of her rights provided for by Articles 3, 5 and 8 of the Convention.

The applicant submitted that she was able to apply for compensation only once she had been acquitted, and that it related only to some of her complaints under Article 5 of the Convention but not to those under Articles 3 and 8 of the Convention. In view of the above, the applicant expressed her wish to withdraw her complaints under Article 5 as having been remedied at domestic level. She also expressed her wish to withdraw her complaint under Article 6 § 2 of the Convention.

The Court recalls that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive the individual of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44).

The Court notes that the domestic courts applied the provisions of Law No. 1545, according to which, in general terms, any individual acquitted of a criminal offence, or in respect of whom the charges had been dropped, could claim compensation for wrongful prosecution. Law No. 1545 sets a standard which is higher than the one required by the Convention. Under its provisions it is possible to claim compensation even in the absence of any breach of Article 5 or of any other right guaranteed by the Convention. It is only if a person is subjected to one of the acts enumerated in Article 1 of the Law, in the course of wrongful criminal proceedings, that a right to compensation arises.

Article 1 of the Law contains an exhaustive list of acts of the law enforcement organs in respect of which a right to compensation arises. Detention in inhuman or degrading conditions, or an interference with the right to respect for correspondence, are not specifically mentioned in that

list, although subparagraph 1 of Article 1 confers an entitlement to "compensation for non-pecuniary and pecuniary damage caused as a result of" *inter alia* illegal detention – a formulation which, on its face, is broad enough to encompass damage related to inhuman prison conditions. The Court, however, need not express an opinion on this question of domestic law since in the circumstances of the present case the first instance court, in its judgment of 1 September 2004 expressly made reference to the conditions of detention in which the applicant had been detained, and took into account in fixing the level of damages that these conditions had intensified her moral suffering. Moreover, the amount awarded can be considered sufficient to cover both the illegal detention and the inhuman conditions of detention. In such circumstances, the Court accepts that in the present case the applicant received compensation in relation to her complaint under Article 3 of the Convention. Accordingly, the applicant can no longer claim to be a "victim" of a violation of Article 3.

That is not the case, however, in respect of the applicant's complaint under Article 8 of the Convention, in respect of which she continues to be a "victim".

### D. Alleged violation of Article 8 of the Convention

The applicant complained under Article 8 of the Convention about the interference by the prison authorities, during the first period of detention, with her right to respect for correspondence with her lawyers, by reason of the state of the law.

Article 8 of the Convention provides:

> "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."

The Government did not contest the facts alleged by the applicant and submitted that the measures applied by the authorities to the applicant's correspondence complied with the applicable domestic regulations. They maintained that, the interference complained of was "in accordance with the law" and proportionate to the nature of the applicant's conviction. They also submitted that the control over correspondence of detained persons was not in itself incompatible with the Convention. In a letter of 24 November 2002 the Government informed the Court that on 7 November 2002 the Parliament of the Republic of Moldova had modified the Code of Execution of Criminal Sanctions to bring it into closer harmony with the requirements of Article 8 of the Convention.

The applicant submitted in reply that while it was true that the censorship had been carried out in accordance with domestic law, that law did not specify with clarity and precision the limits of the discretion vested in the public authorities.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

*Declares* admissible, without prejudging the merits, the applicant's complaints concerning her right to correspondence with her lawyers.

*Declares* the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President