



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

THIRD SECTION

Application no. 56618/08
Stefan BERZAN
against the Republic of Moldova and Russia
lodged on 22 November 2008

STATEMENT OF FACTS

1. The applicant, Mr Stefan Berzan, is a Moldovan national, who was born in 1982 and lives in Dorotcaia. He is represented before the Court by Mr P. Postica, a lawyer practising in Chişinău.

The circumstances of the case

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

3. The applicant is a Moldovan fire-fighter living in the village of Dorotcaia, under Moldovan control. On 18 May 2008 he and several of his colleagues went for a party in the Butor village, under the control of the self-proclaimed “Moldovan Republic of Transnistria” (“the MRT”). The next day they wanted to buy gas and other items. Since they did not have “MRT roubles”, the only currency accepted on the territory controlled by the MRT, his friends tried to pay with a 100 United States dollar bill belonging to the applicant. When one seller expressed his doubts as to the authenticity of the bill, they went to the local currency exchange office and asked to verify whether the bill was authentic. The verification revealed that the bill was fake. It was taken away from the applicant and he left home.

4. On an unknown date the MRT prosecutor’s office started a criminal investigation into the attempted circulation of fake money. The applicant was called several times at his phone number and MRT militia officers came to his home, inviting him to follow them to the Grigoriopol, a town under MRT control, for “clarifying some issues”, without informing him of their real intentions. He refused to follow them.

5. Also looking to talk to the applicant was M., the chief of the Dubăsari police station, a subdivision of the Moldovan police. He agreed with the applicant to meet on 22 May 2008 at the Moldovan police station in Doroțcaia. On that day at around 1.20 p.m. the applicant came to that police station and told M. everything he knew about the fake bill and the events of 19 May 2008. M. did not register the offence of which he was effectively informed by the applicant. After a while three officers of the MRT militia entered the office and were greeted by M., who obviously knew them. Together they convinced the applicant to follow them to the Grigoriopol militia station in order to write an explanation. When M. promised the applicant to accompany him and guaranteed his safe return, the applicant agreed to follow.

6. When exiting the Dubăsari police station the applicant handed all his documents to a friend. He was then taken in M.'s car to Grigoriopol, accompanied by the three MRT officers. Both the Moldovan and the MRT checkpoints allowed them to pass without any verification of documents after M. discussed with the relevant officers.

7. Upon their arrival at the Grigoriopol militia station the applicant was taken to an office and offered to tell where he had obtained the fake bill and why he tried to put it into circulation. When he claimed that he was not the owner of that bill, he was hit several times and told details of his story, which the officers obviously found out from M. He was informed that he was accused of having committed the offence of circulating fake money and that he would be released only if he made a self-incriminating statement.

8. On the same day a record of his arrest was made. On 24 May 2008 a judge ordered his detention pending trial for two months, the reasons given consisting, essentially, of the possibility for him to abscond outside the territory controlled by the MRT.

9. The applicant was not allowed to inform his wife about his arrest and she did not know his whereabouts until 24 May 2008. During all this time M. was coming to work, but made no attempts to inform the applicant's wife of her husband's arrest in MRT. She had to talk to eye witnesses in Doroțcaia in order to find out that the applicant had been taken to MRT.

10. On 5 June 2008 the applicant's wife made a public appeal to various Moldovan authorities. On 18 June 2008 the Dubasari prosecutor's office (a subdivision of the Moldovan prosecuting authorities) replied that a criminal investigation had been opened into her husband's abduction, but that his conviction by the MRT courts could not be annulled because the authorities did not have any control over the actions of the MRT.

11. On 11 August 2008 the "Grigoriopol city court" in the MRT convicted the applicant of circulating fake money and sentenced him to five years of imprisonment, suspended for one year. He was then released and he returned home.

12. On 5 September 2008 the applicant was dismissed from his job because under his employer's regulations a person convicted of a criminal offence could not be employed.

COMPLAINTS

13. The applicant complains under Article 5 § 1 of the Convention that he was arrested in the absence of a suspicion of having committed a crime.

14. He also complains under Article 5 §§ 1 and 3 of the Convention that he was illegally transferred by a Moldovan officer to the MRT authorities, which had no legitimacy as investigating or judicial bodies.

15. He further complains under Article 5 § 4 of the Convention that he could not appeal against the decision of the “MRT court” to remand him pending trial during his entire detention of 60 days.

16. The applicant complains under Article 5 § 5 of the Convention that he does not have a right to claim compensation for his unlawful detention.

17. He also complains under Article 6 § 3 of the Convention that his trial by the “MRT court” was unfair.

18. He finally complains that he did not have effective remedies in respect of his complaints under Article 5, as required under Article 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Does the applicant come within the jurisdiction of the Republic of Moldova and/or the Russian Federation within the meaning of Article 1 of the Convention as interpreted by the Court, *inter alia*, in the cases of *Ilașcu and Others v. Moldova and Russia* [GC], (No. 48787/99, ECHR 2004-VII) and *Catan and Others v. Moldova and Russia* [GC] (nos. 43370/04, 8252/05 and 18454/06, §§ 102-123, 19 October 2012) on account of the circumstances of the present case?

2. Do the facts of the case disclose a violation of Article 5 § 1 of the Convention? In particular, was the applicant’s detention lawful, within the meaning of Article 5 § 1 of the Convention?

3. Did the applicant have at his disposal effective remedies in respect of his complaints under Article 5 § 1 of the Convention, as required under Article 13 of the Convention?