



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

THIRD SECTION

Application no. 57468/08
Viorel PANTELEICIUC
against the Republic of Moldova and Russia
lodged on 27 November 2008

STATEMENT OF FACTS

1. The applicant, Mr Viorel Panteleiciuc, is a Moldovan national, who was born in 1980 and lives in Grimancăuți. He is represented before the Court by Mr A. Postica, a lawyer practising in Chișinău.

The circumstances of the case

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

1. The applicant's arrest and administrative proceedings

3. The applicant is a farmer who grows and sells potatoes. On 5 February 2008 he and his brother went to the Varnița village, in the vicinity of the city of Bender/Tighina. The latter is controlled by the authorities of the self-proclaimed "Moldovan Republic of Transnistria" ("the MRT"), while Varnița itself is under Moldovan control.

4. Having sold potatoes for some time in Varnița, with authorisation from the local administration, at around 2. 30 p.m. the applicant was approached by plain clothed officers of the MRT customs authority. The latter asked for documents for the merchandise. The applicant explained that he had all the relevant documents and had paid tax to the Moldovan local authorities in Varnița. Shortly thereafter two more officers from the MRT security and customs authorities arrived in a car. When the applicant's brother announced that he had called the Moldovan police, the applicant was attacked by the MRT officers, forced into their car and driven away.

5. Later in the evening the applicant's car with the remainder of merchandise was seized by the MRT customs authority. According to the applicant, an officer of the Moldovan police was present and did not interfere.

6. On 6 February 2008 the "Bender city court" found the applicant guilty of having committed the administrative offence of resistance to the customs officers. The applicant had explained that he considered having been arrested on Moldovan territory (Varnița village) and not having seen any signs warning that he was about to cross into the territory under the MRT control. The court sentenced him to three days' detention. According to the applicant, the hearing took place in Russian, a language which he understood only to a limited degree, and in the absence of a translator. He was refused the right to be assisted by a lawyer when preparing for the hearing, and a court-appointed lawyer was only present at the court hearing, not assisting him in any manner. The applicant obtained neither a copy of the record of his arrest prior to its examination by the court, nor a copy of the court decision of 6 February 2008.

7. The decision was enforced immediately and the applicant served all three days until the evening of 8 February 2008, when he was released. He could recover his car and merchandise at 11 p.m. on the same day.

8. On 15 February 2008 the applicant appealed against the decision of the first-instance court. At his request, on 17 March 2008 he obtained a copy of that decision.

9. On 18 March 2008 the "MRT Supreme Court" quashed the lower court's decision because of the failure to specify the exact place where the offence had been committed. The case was sent for re-examination by the lower court. The applicant was not informed of that decision. On 25 April 2008 the "MRT Supreme Court" accepted an extraordinary appeal lodged by the president of that court's chair and decided that the case was to be re-examined by that court. The applicant was not informed of that decision.

10. On 27 May 2008 the applicant received by mail a letter dated 12 May 2008 summoning him to the hearing of the "MRT Supreme Court" on 27 May 2008. Because of this late summoning he could not appear at the hearing. On the same day the court rejected the applicant's appeal against the decision of 6 February 2008, finding that he had been arrested on the territory of the city of Bender after refusing to abide by orders of the MRT customs authority.

2. Complaints made to the Moldovan and foreign authorities

11. On 6 February 2008 the applicant's brother made a criminal complaint in the applicant's name to various Moldovan authorities, including the Prosecutor General's Office, about the applicant's unlawful arrest by officers from the MRT. He asked for the criminal prosecution of those responsible.

12. On 7 February 2008 the applicant's brother sent a complaint about the applicant's abduction by the MRT authorities to the embassies of several countries in Moldova, including that of the Russian Federation. On 11 February 2008 the applicant thanked in a letter the various embassies, including that of the Russian Federation, for their intervention into the case

by bringing the matter before the Joint Control Commission¹. Following this alleged intervention the applicant's car and merchandise were returned to him.

13. On 28 February 2008 the Moldovan police station in Bender started a criminal investigation of the applicant's abduction by MRT officers. The outcome of that investigation is currently unknown.

COMPLAINTS

14. The applicant complains under Article 5 § 1 of the Convention that he was arrested unlawfully on the territory controlled by the Moldovan authorities, in the absence of a reasonable suspicion of having committed a crime.

15. He also complains of a breach of Article 5 § 3 of the Convention in that he was not "brought promptly before a judge or other officer authorised by law to exercise judicial power".

16. He further complains under Article 5 § 4 of the Convention that he did not have the possibility, during his three-day detention, to appeal against the decision sentencing him to detention.

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

18. He further complains under Article 6 § 3 of the Convention that his procedural rights had not been observed during the administrative proceedings against him.

19. He finally complains under Article 13 of the Convention that he did not have at his disposal effective remedies in respect of his complaints under Article 5 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 *Ilaşcu 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 detained by the MRT authorities on reasonable suspicion of having committed an offence and was that detention lawful, within the meaning of Article 5 § 1 of the Convention?

¹ A body set up under the Agreement on the principles for the friendly settlement of the armed conflict in the Transdnistrian region of the Republic of Moldova (signed by the Republic of Moldova and Russia and 21 July 1992) composed of representatives of the Republic of Moldova, Russia and the MRT, with its headquarters in Tighina (Bender).

3. Has there been a violation of Article 6 §§ 1 and/or 3 of the Convention? In particular, was the applicant summoned in time for the hearing of the “MRT Supreme Court” of 27 May 2008? Was he assisted by a lawyer of his own choosing, was he allowed the possibility to read the record of his arrest of 5 February 2008 before the first-instance court hearing and did he benefit from the services of a translator?

4. 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?