



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

THIRD SECTION

Application no. 8833/10
Iurie TOTCHI and Others
against the Republic of Moldova, Russia and Ukraine
lodged on 29 January 2010

STATEMENT OF FACTS

1. The first and second applicants, Mr Iurii Toțchii and Mrs Tatiana Toțcaia, are Russian nationals, who were born in 1946 and 1951 respectively and live in Bender. The third applicant, Mr Marc Fașcevschii, is a Ukrainian national who was born in 1973 and lives in Tiraspol. They are represented before the Court by Mr S. Popovschii from the “Assistance for Effective Justice”, a non-governmental organisation based in Tiraspol.

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

A. The death of the applicants’ relative

3. On 6 July 2001 two persons (K.S. and K.V.) collected mushrooms in the woods and sold them, without authorisation from the competent authorities, on a market in Tiraspol, a city controlled by the self-proclaimed Moldovan Republic of Transnistria (“the MRT”). On 8 July 2011 two persons who had consumed mushrooms were admitted to the intensive care unit of the “Republican Clinical Hospital” in Tiraspol (“the RCH”). It was established that both were victims of poisonous mushrooms which they had bought from K.S. and K.V. More persons were subsequently admitted to that hospital, all of whom had consumed mushrooms from the same sellers.

4. On 9 July 2001 at 10.35 a. m. the RCH staff made an urgent call to the “Republican Centre for Hygiene and Epidemiology” (“the Centre”), informing about the incident and about the marketplace where the mushrooms had been bought from.

5. Also on 9 July 2001 at around 5 p. m. Fașcevschaia Iana (F.I., who was the daughter of the first and second applicants and the wife of the third applicant) together with her mother bought mushrooms from K.S. and K.V. The latter showed them a certificate from the veterinary and sanitary expertise laboratory of the market on which they were selling their merchandise, confirming that the mushrooms were suitable for consumption. Later that day F.I. prepared dinner for her family. At around 4.10 a. m. on 10 July 2001 she felt discomfort in her stomach. She was admitted to the RCH at 6 am. on the same day.

6. Because F.I.'s state of health worsened significantly on 13 July 2001, she was urgently transported to the 3rd city hospital in Chișinău. Despite all efforts of the doctors, on 15 July 2001 she died in that hospital.

B. Investigation of F.I.'s death and the criminal proceedings

7. On 19 July 2001 the “Tiraspol Prosecutor's Office” started two criminal investigations: against K.S. and K.V. as well as against the expert from the local market's sanitary expertise laboratory. However, on 31 May 2002 both investigations were discontinued. It was established that K.S. and K.V. had had no way to determine that amongst the mushrooms which they were selling were several poisonous ones, the more so that they had been issued a certificate by the laboratory. As for the laboratory expert, her guilt was clear from the documents in the file, notably the fact that she had used a rudimentary method of verifying the mushrooms by visually inspecting them and by boiling them together with an onion and observing any changes in the latter's colour. It was established that none of the market laboratories in the MRT had equipment needed for biochemical tests on mushrooms. However, by virtue of an amnesty law she could no longer be prosecuted.

8. During the following years the applicants made numerous complaints to various authorities in the MRT, in Moldova and in Russia. The MRT prosecutor's office reopened the criminal investigation against K.S. and K.V. and discontinued it three times. Eventually, they were relieved from criminal responsibility due to the application of the limitation period for criminal responsibility.

9. On an unknown date the criminal investigation was extended to three officials from the Centre, who were accused of negligence by failing to react promptly to the urgent call from the RCH on 9 July 2001 and had not prevented the further sale of dangerous mushrooms, even though they had had time to do so.

10. On 14 May 2009 the “Tiraspol city court” found two of the three officials accused of negligence (see the preceding paragraph) guilty as charged. It was established that they had not followed the applicable rules and had not promptly and fully investigated the cases of poisoning with mushrooms. The court found that had they done their jobs properly, the further sale of mushrooms would have been prohibited and that F.I.'s death would have been prevented. However, due to the expiry of the limitation period, the two officials were relieved from criminal responsibility.

11. On the same day the court adopted a decision whereby it drew the attention of the Centre's administration to the fact that it had established serious shortcomings in the work aimed at preventing incidents similar to

that of F.I. In particular, it noted the fact that the old regulations concerning the activity of veterinary and sanitary laboratories no longer applied, while no new regulations had been adopted by the date of adopting the decision. Therefore, those laboratories effectively worked without a legal basis and the staff employed could not bear criminal responsibility should similar cases happen in the future. Moreover, those laboratories did not have any equipment for testing the quality of food. Finally, the court noted that the prosecution had asked for documents concerning the laboratory expert concerned by F.I.'s case only in October 2004 and that it had allowed the investigation to run for such a long period of time that the limitation period expired. These unwarranted delays allowed the persons responsible for F.I.'s death to avoid criminal responsibility.

12. On 30 July 2009 the “MRT Supreme Court” upheld the judgment of 14 May 2009, essentially repeating the lower court's reasons.

13. The applicants attempted to have the judgments partly quashed by the Moldovan courts, but the latter refused to examine the appeal on the ground that they could not review judgments adopted by the MRT courts.

COMPLAINTS

14. The applicants complain that the respondent States did not discharge their positive obligations under Article 2 of the Convention to use all the means of pressuring the MRT authorities to protect F.I.'s right to life and to investigate her death. As a result, the MRT authorities did not create a framework to effectively prevent the risk to the life of consumers by failing to provide for a system of emergency alerts and a protocol to be followed in life-threatening food poisoning circumstances and by failing to provide with appropriate testing equipment and properly trained personnel the authorities charged with issuing food quality certificates. They also complain that, in their specific case, the doctors did not send F.I. immediately to another hospital, even though they knew that their own hospital lacked the necessary equipment, and that the authorities did not carry out an effective investigation of her death.

15. They also complain under Article 6 § 1 of the Convention that the courts which examined the case were not created under Moldovan law and were not independent and impartial, that there was no right of appeal but only of appeal in cassation, that the proceedings breached their right to equality of arms and to access to the materials of the case, that they were not kept informed of the course of the investigation and that they could not pursue the accusation when the prosecutor dropped the charges.

16. They further complain under Article 13 that they did not have at their disposal effective remedies in respect of their complaints under Articles 2 and 6 of the Convention, notably due to the fact that they could not challenge the decisions adopted by the MRT authorities before the courts of the respondent States.

17. The applicants complain under Article 14 in conjunction with Article 6 of the Convention that their procedural rights, as persons residing

in the “MRT”, are not guaranteed to the same degree as those of persons living in Moldova proper, Russia and Ukraine.

18. They finally complain under Article 17 of the Convention that the respondent States acted in a manner leading to the destruction of their Convention rights by the excessive use of force and interference with the sovereignty of Moldova, resulting in the creation of a vacuum in the protection of Convention rights on the territory controlled by the MRT.

QUESTIONS TO THE PARTIES

1. Do the applicants 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 2 of the Convention? In particular:

(a) Has there been an effective investigation into F.I.’s death? Have there been unwarranted delays in the investigation and did such delays result in the effective impunity of those eventually found to be responsible for F.I.’s death? Were the applicants sufficiently involved in the investigation, such as being informed of its course?

(b) Did the authorities discharge their positive obligation to take such measures – whether legislative or concerning the implementation of applicable rules – to reasonably reduce the risk to public health against food poisoning?

3. Has there been a violation of Article 13 taken in conjunction with Article 2 of the Convention?