



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

Communicated on 11 July 2014

THIRD SECTION

Application no. 5349/02
Alexandru DRACI against the Republic of Moldova and Russia
lodged on 24 September 2001

STATEMENT OF FACTS

1. The applicant, Mr Alexandru Draci, is a Ukrainian national, who was born in 1956 and lives in Toronto. He is represented before the Court by Mr V. Nagacevski and Mr V. Turcan, lawyers practising in Chişinău.

A. The circumstances of the case

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

3. The applicant was the director of a company (D.) registered in Ukraine. In 1996, in the name of D., he concluded a contract with a collective farm (N.), situated in the self-proclaimed “Moldovan Republic of Transdniestria” (“MRT”). According to the contract, N. undertook to send D. 15 tons of paprika and 5 tons of butter, while D. undertook to send 275 tons of diesel fuel as payment.

4. Subsequently, N. sent the paprika, but according to the applicant some of it had been of poor quality and D. had suffered losses. As a result, D. had refused to send the diesel fuel.

5. On 22 December 1996 the applicant was summoned to the Department for the Fight against Organised Crime in Crivoi Rog, Ukraine, and asked to give explanations concerning his refusal to send the diesel fuel. On 24 January 1997 he was summoned again. After the second interview he was taken, allegedly against his will and without his passport, to the “MRT”.

6. He was accused of fraud, and on 30 December 1999 he was convicted and sentenced to 10 years’ imprisonment by the “Ribnita People’s Court”. It appears that he did not appeal against that judgment which then became final.

7. While in detention pending trial and after his conviction, the applicant was initially held in solitary confinement for more than two years. The cell

was a concrete box with no windows or ventilation, no artificial light, toilet or tap water.

8. Thereafter, and until his release, he was detained in cells with persons who were ill with tuberculosis. During his detention several detainees allegedly died from tuberculosis. He was given food once a day – some 250g of soup with no proteins or vitamins, 100g of porridge of the same quality and 250g of bread. As a result of the lack of food the applicant developed constant hunger pains, which was tantamount to torture for him. The cell was infested with blood-sucking parasites. Their bites caused him discomfort and itching, which in turn created wounds which bled after being scratched. As a result, he caught the skin disease streptoderma. The lack of medical treatment left him suffering and he was only able to cure himself by taking medication borrowed from another detainee. The lack of medication caused him to constantly fear that he might fall ill with no possibility of being treated.

9. The applicant also claimed that during his detention he was severely beaten on two occasions.

10. On 2 March 2002 the applicant was released from prison pursuant to an Amnesty Act.

B. Relevant non-Convention material

11. In the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Moldova between 21 and 27 July 2010 (CPT/Inf (2011) 8) the CPT stated that, following the refusal of the “MRT” authorities to allow members of the Committee to meet in private with detainees, the CPT interrupted its visit because such a limitation ran against one of the fundamental characteristics of the prevention mechanism enshrined in its mandate.

12. The relevant parts of the report of the CPT on its visit to Moldova between 27 and 30 November 2000 (CPT/Inf (2002) 35) read as follows:

“40. At the outset of the visit, the authorities of the Transnistrian region provided the delegation with detailed information on the five penitentiary establishments currently in service in the region.

In the time available, the delegation was not in a position to make a thorough examination of the whole of the penitentiary system. However, it was able to make an assessment of the treatment of persons deprived of their liberty in Prison No. 1, at Glincoe, Colony No. 2, at Tiraspol, and the SIZO (i.e. pre-trial) section of Colony No. 3, again at Tiraspol.

41. As the authorities are certainly already aware, the situation in the establishments visited by the delegation leaves a great deal to be desired, in particular in Prison No. 1. The CPT will examine various specific areas of concern in subsequent sections of this report. However, at the outset, the Committee wishes to highlight what is perhaps the principal obstacle to progress, namely the high number of persons who are imprisoned and the resultant overcrowding.

42. According to the information provided by the authorities, there are approximately 3,500 prisoners in the region’s penitentiary establishments i.e. an incarceration rate of some 450 persons per 100,000 of the population. The number of inmates in the three establishments visited was within or, in the case of Prison N° 1, just slightly over their

official capacities. Nevertheless, the delegation found that in fact the establishments were severely overcrowded.

The situation was at its most serious in Prison N° 1. The cells for pre-trial prisoners offered rarely more - and sometimes less - than 1 m² of living space per prisoner, and the number of prisoners often exceeded the number of beds. These deplorable conditions were frequently made worse by poor ventilation, insufficient access to natural light and inadequate sanitary facilities. Similar, albeit slightly better, conditions were also observed in the SIZO section of Colony No. 3 and in certain parts of Colony No. 2 (for example, Block 10).

43. An incarceration rate of the magnitude which presently prevails in the Transnistrian region cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies, prosecutors and judges must, in part, be responsible for the situation. At the same time, it is unrealistic from an economic standpoint to offer decent conditions of detention to such vast numbers of prisoners; to attempt to solve the problem by building more penitentiary establishments would be a ruinous exercise.

The CPT has already stressed the need to review current law and practice relating to custody pending trial (cf. paragraph 12). **More generally, the Committee recommends that an overall strategy be developed for combating prison overcrowding and reducing the size of the prison population. In this context, the authorities will find useful guidance in the principles and measures set out in Recommendation N° R (99) 22 of the Committee of Ministers of the Council of Europe, concerning prison overcrowding and prison population inflation (cf. Appendix 3).**

48. The CPT recognises that in periods of economic difficulties, sacrifices may have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty to ensure that that person has access to certain basic necessities. Those basic necessities include appropriate medication. Compliance with this duty by public authorities is all the more imperative when it is a question of medication required to treat a life-threatening disease such as tuberculosis.

At the end of the visit, the CPT's delegation requested the authorities to take steps without delay to ensure that all penitentiary establishments are supplied on a regular basis with medicines of various types and, in particular, with a suitable range of anti-tuberculosis drugs. **The CPT wishes to be informed of the action taken in response to that request.**

49. Official health-care staffing levels in the penitentiary establishments visited were rather low and, at the time of the visit, this situation was exacerbated by the fact that certain posts were vacant or staff members on long-term leave had not been replaced. This was particularly the case at Prison N° 1 and Colony N° 2. **The CPT recommends that the authorities strive to fill as soon as possible all vacant posts in the health-care services of those two establishments and to replace staff members who are on leave.**

The health-care services of all three penitentiary establishments visited had very few medicines at their disposal, and their facilities were modestly equipped. The question of the supply of medicines has already been addressed (cf. paragraph 48). As regards the level of equipment, the CPT appreciates that the existing situation is a reflection of the difficulties facing the region; it would be unrealistic to expect significant improvements at the present time. However, it should be possible to maintain all existing equipment in working order. In this context, the delegation noted that all the radiography machines in the establishments visited were out of use. **The CPT recommends that this deficiency be remedied.**

On a more positive note, the CPT was very interested to learn of the authorities' plans for a new prison hospital, with a region-wide vocation, at Malaiești. This is a most welcome development. **The Committee would like to receive further details concerning the implementation of those plans.**

51. The CPT has already highlighted the poor material conditions of detention which prevailed in the establishments visited and has made recommendations designed to address the fundamental problem of overcrowding (cf. paragraphs 42 and 43).

In addition to overcrowding, the CPT is very concerned by the practice of covering cell windows. This practice appeared to be systematic vis-à-vis remand prisoners, and was also observed in cells accommodating certain categories of sentenced prisoners. The Committee recognises that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of such security measures should be the exception rather than the rule. Further, even when specific security measures are required, such measures should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

It is also inadmissible for cells to accommodate more prisoners than the number of beds available, thereby compelling prisoners to sleep in shifts.

Consequently, the CPT recommends that the authorities set the following as short-term objectives:

i) all prisoner accommodation to have access to natural light and adequate ventilation;

ii) every prisoner, whether sentenced or on remand, to have his/her own bed.

Further, as measures to tackle overcrowding begin to take effect, the existing standards concerning living space per prisoner should be revised upwards. **The CPT recommends that the authorities set, as a medium-term objective, meeting the standard of 4m² of floor space per prisoner.**

52. As the delegation pointed out at the end of its visit, material conditions of detention were particularly bad at Prison N° 1 in Glinoe. The CPT appreciates that under the present circumstances, the authorities have no choice but to keep this establishment in service. However, the premises of Prison N° 1 belong to a previous age; **they should cease to be used for penitentiary purposes at the earliest opportunity.”**

13. In the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to the Republic of Moldova from 4 to 11 July 2008 (A/HRC/10/44/Add.3) the following findings were made:

“Transnistrian region of the Republic of Moldova

45. According to several of his interlocutors, including detainees, progress has been made with improving conditions in the penitentiary system, e.g. functioning heating, food quality improved, HIV treatment in prisons commenced in September 2007. However, complaints about the poor quality and sometimes lack of food were common. The Special Rapporteur also received reports that international programmes are often not extended into the Transnistrian region of the Republic of Moldova, which means less out-reach in terms of health care and problems in particular with regard to tuberculosis treatment and a higher percentage of persons sick with tuberculosis and HIV.

46. The Special Rapporteur is concerned that many human rights violations flow from the legislation in force, which, for instance, requires solitary confinement for persons sentenced to capital punishment and to life imprisonment and which prescribes draconic restrictions on contacts with the outside world.

47. Conditions in custody of the militia headquarters in Tiraspol were clearly in violation of minimum international standards. The Special Rapporteur considers that detention in the overcrowded cells with few sleeping facilities, almost no daylight

and ventilation, 24 hours artificial light, restricted access to food and very poor sanitary facilities amounts to inhuman treatment.”

14. On 19 May 2009 the press office of the “MRT prosecutor” published a report according to which a verification of the detention facilities in the Slobozia region of the “MRT” revealed multiple breaches of norms concerning hygiene, material conditions and medical assistance.

COMPLAINTS

15. The applicant complains under Article 3 of the Convention that he was held in inhuman conditions, without adequate medical treatment.

16. He also complains under Articles 5 and 6 of the Convention that his detention and conviction were unlawful, as they have been ordered by unlawfully created “MRT authorities”.

QUESTIONS TO THE PARTIES

1. Does the applicant come within the jurisdiction of Moldova and/or Russia 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, *Ivanțoc and Others v. Moldova and Russia*, no. 23687/05, 15 November 2011 and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012 (extracts)) on account of the circumstances of the present case?

In particular, in the light of the above-mentioned cases, could the responsibility of the respondent Governments under the Convention be engaged on account of their positive obligations to secure the applicant’s rights under the Convention?

Have there been any developments following the above-mentioned cases which might affect the responsibility of either Contracting Party?

2. Has there been a violation of Article 3 of the Convention in the present case? In particular:

(a) was the applicant provided with an appropriate level of medical assistance?

(b) was he held in inhuman conditions of detention?

3. Has there been a violation of Article 5 § 1 of the Convention? In particular, was the applicant’s detention “lawful”, within the meaning of that provision?

4. Has there been a violation of Article 6 § 1 of the Convention? In particular, did the applicant have a fair trial by a tribunal “established by law”, within the meaning of that provision?