



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

Communicated on 8 October 2014

THIRD SECTION

Application no. 3368/12
Pavel BELOZIOROV and Nadejda MOLODTOVA
against the Republic of Moldova and Russia
lodged on 3 January 2012

STATEMENT OF FACTS

1. The first applicant, Mr Pavel Beloziorov, is a Moldovan national, who was born in 1978 and lives in Dubăsari. The second applicant, Mrs Nadejda Molodţova, is a Russian national who was born in 1956 and lives in Radujnii. They are represented before the Court by Mr A. Postica, Mr V. Postica, Ms N. Hriplivîi and Mr A. Zubco, lawyers practising in Chişinău.

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

A. The first applicant's arrest and conviction

3. The first applicant is the son of the second applicant. Long before the relevant events the first applicant was diagnosed with osteomyelitis of the left side of his jaw. As his illness progressed the first applicant started to take strong painkillers on a regular basis to alleviate his pain.

4. On 11 August 2011 at approximately 10 p.m. the first applicant decided to go to a nearby shop and buy some alcohol, since the painkillers were not sufficient to alleviate his pain. Having drunk 100ml of vodka, he headed home, but on his way was stopped by members of the militia of the self-proclaimed "Moldovan Republic of Transdniestria" ("the MRT"), and asked to go with them to the station. He refused and resisted their efforts to force him into their car.

5. On 12 August 2011 the "Dubăsari People's Court" found the first applicant guilty of refusing to abide by the lawful orders of the "MRT militia" and sentenced him to five days' administrative detention. Also on 12 August 2011 the first applicant was examined by a dentist, who diagnosed him with osteomyelitis and gave him painkillers.

6. On 16 August 2011 the “MRT prosecutor’s office” initiated a criminal investigation in respect of the first applicant on suspicion of carrying out an act of violence endangering the life of two militiamen.

7. On 18 August 2011 the “Dubăsari People’s Court” ordered his detention pending trial, without indicating the period for which the order was valid. The court noted the absence of any evidence that the first applicant’s state of health would not allow him to be treated while in detention.

8. The first applicant appealed to the “MRT Supreme Court”, noting, inter alia, that he had fully acknowledged his guilt, including before the first-instance court, and thus had no reason to obstruct the investigation, that he had permanent residence in the “MRT”, that many witnesses had already testified and the case against him was very clear. He fully acknowledged his guilt but needed medical treatment to alleviate his severe pain, treatment which was unavailable in prison. It is not known what the decision of the appeal court was, but the first applicant remained in detention pending trial.

9. On 20 September 2011 the first applicant was diagnosed with cancer of the jaw. The second applicant then made several complaints to various authorities in the “MRT” and in Russia about the failure to provide her son with the medical treatment required by his condition.

10. On 3 October 2011 the deputy head of the Centre for medical help and social rehabilitation of the “MRT Ministry of Justice” (“the medical centre”) in prison no. 3 in Tiraspol, where the first applicant was being treated, informed the head of the “MRT Republican Hospital” of the first applicant’s serious condition and asked for him to be registered as an oncology patient, and for permission to issue him with strong painkilling medication containing morphine, as well as chemotherapy.

11. On 10 October 2011 the head of the medical centre informed the first applicant’s lawyer that his client had cancer of the upper jaw on the left side, stage 3, group 2. He added that photodynamic therapy had been considered for treating the first applicant, but that this treatment was not available in prison.

12. On 2 November 2011 the first applicant’s case, in which he was accused of having committed an act of violence endangering the life of two militiamen, was submitted to the “MRT prosecutor’s office”, then to the “Dubăsari People’s Court”. According to the documents in the case file, an expert report found that one of the militiamen he had resisted on 11 August 2011 had suffered slight injuries and the other had lost several buttons from his clothing in the struggle.

13. The second applicant continued to send complaints and requests to “MRT”, Moldovan and Russian authorities, asking for their assistance in ensuring her son’s treatment for his cancer.

14. On 28 November 2011 the “Dubăsari People’s Court” found the first applicant guilty of the offence he had been charged with and gave him a five-year suspended sentence. He was released on the same day and was admitted to a specialist hospital in Chişinău, where he spent two weeks receiving specialised treatment and undergoing several operations. On 15 December his diagnosis was changed from cancer to osteomyelitis.

B. The conditions of the first applicant's detention

15. The first applicant was initially detained in the temporary detention facility of the "Dubăsari militia station". On 18 August 2011 he was transferred to prison no. 1 in Hlinaia, the same prison in which the applicants were held in the case of *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII). According to the first applicant, the conditions of detention as described in that case were similar in his case (in particular, the lack of ventilation and access to natural light, which was replaced by constant artificial lighting, and overcrowding).

16. He was allegedly held in a cell with poor sanitary conditions; the other inmates were heavy smokers; the cell was damp and full of parasites; and drinking water was not always available.

17. He was deprived of sleep due to the absence of powerful morphine-based painkillers (prohibited in prison for security reasons). He was thus given much less effective painkillers and had to endure immense suffering. He could not eat properly because of his pain, so he limited himself to liquid, which he was given once a day, except for when relatives sent him a parcel.

18. According to the first applicant, the Medical Centre had no oncology specialist, nor appropriate medication or facilities for administering chemotherapy.

19. From the date of the first applicant's arrest on 11 August 2011 until 28 November 2011, the applicants were not allowed to see each other. The investigator in charge of the case against the first applicant was the sole person who could grant him the right to see a visitor and this decision was at his total discretion.

C. Relevant non-Convention material

20. 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) states that, following the refusal of the "MRT" authorities to allow members of the Committee to meet in private with detainees, the CPT cut short its visit because such a limitation ran against one of the fundamental characteristics of the prevention mechanism enshrined in its mandate.

21. 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 Glinoe, 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."**

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

"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.”

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

COMPLAINTS

24. The first applicant complains under Article 3 of the Convention that he was detained in inhuman conditions, which aggravated his health problems, and that he was not given the medical assistance required by his condition.

25. He also complains under Article 5 that he was detained by unlawfully created MRT authorities and courts and that his warrant of arrest did not indicate the period of its validity.

26. Both applicants also complain of a breach of Article 8 of the Convention owing to the refusal of the “MRT authorities” to allow them to meet during the entire period of the first applicant’s detention.

27. Lastly, the applicants complain under Article 13 of the Convention that they did not have effective remedies in respect of their complaints under Articles 3 and 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Do the applicants' complaints 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 *Ilaşcu 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 applicants' 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 first 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, could "MRT courts" and other "MRT authorities" order the first applicant's "lawful arrest or detention" within the meaning of Article 5 § 1 of the Convention? Was the applicant remanded on 19 August 2011 for an undetermined period of time?

4. Has there been a violation of Article 8 of the Convention? In particular, were the applicants prevented from seeing each other and if so was this a proportionate interference with their right to a family life?

5. Has there been a violation of Article 13 of the Convention taken in conjunction with Articles 3, 5 and 8 of the Convention?