



## Russia responsible for unlawful detention of criminal suspect in inhuman conditions in Transdniestria

The case of **Mozer v. the Republic of Moldova and Russia** (application no. 11138/10) concerned the detention of a man suspected of fraud, as ordered by the courts of the self-proclaimed “Moldavian Republic of Transdniestria” (the “MRT”).

In today’s **Grand Chamber** judgment<sup>1</sup> in the case, the European Court of Human Rights held, by a majority:

that there had been **no violation of Article 3 (prohibition of inhuman and degrading treatment)** of the European Convention on Human Rights by the Republic of Moldova, and that there had been a **violation of Article 3** of the Convention by Russia;

that there had been **no violation of Article 5 § 1 (right to liberty and security)** by the Republic of Moldova, and that there had been a **violation of Article 5 § 1** by Russia;

that there had been **no violation of Article 8 (right to respect for private and family life)** by the Republic of Moldova, and that there had been a **violation of Article 8** by Russia;

that there had been **no violation of Article 9 (freedom of thought, conscience and religion)** by the Republic of Moldova, and that there had been a **violation of Article 9** by Russia;

that there had been **no violation of Article 13 (right to an effective remedy) in conjunction with Articles 3, 8 and 9** by the Republic of Moldova, and that there had been a **violation of Article 13 in conjunction with Articles 3, 8 and 9** by Russia.

The Court held, by a majority, that the facts complained of fell within the jurisdiction of both the Republic of Moldova and of Russia.

Although Moldova had no effective control over the acts of the “MRT” in Transdniestria, the fact that the region was recognised under public international law as part of Moldova’s territory gave rise to an obligation for the State to use all the legal and diplomatic means available to it to continue to guarantee the enjoyments of the rights under the Convention to those living there.

At the same time, the “MRT”’s high level of dependency on Russian military, economic and political support gave a strong indication that Russia continued to exercise effective control and decisive influence over the “MRT” authorities.

The Court maintained its conclusion in previous cases in finding that the “MRT courts”, which had ordered Mr Mozer’s detention, had not belonged to a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention during the period in question. His detention based on the orders of those courts had therefore been unlawful.

The Court concluded that the Republic of Moldova, having fulfilled its obligations in respect of Mr Mozer by making significant legal and diplomatic efforts to support him, had not violated his rights under the Convention. At the same time, having regard to its finding that Russia had exercised effective control over the “MRT” during the period in question, the Court concluded that Russia was responsible for the violations of the Convention.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Principal facts

The applicant, Boris Mozer, is a Moldovan national who was born in 1978. Until 2010 he lived in Tiraspol, in the “Moldovan Republic of Transdniestria” (“MRT”), an unrecognised separatist entity which split from Moldova in September 1990. Since 2011 he has been an asylum seeker in Switzerland.

In November 2008 Mr Mozer was arrested and remanded in custody for an undetermined period of time by the authorities of the self-proclaimed “MRT” on suspicion of defrauding two companies, for one of which he worked. According to his submissions, he was asked to confess to the crime, which he claims he did not commit. He signed various confessions, allegedly following threats to him and his relatives. His detention was subsequently extended on a number of occasions and his appeals against the detention orders were rejected.

In July 2010 the “Tiraspol People’s Court” convicted Mr Mozer of defrauding the two companies and sentenced him to seven years’ imprisonment, suspended for five years. It ordered his release subject to an undertaking not to leave the city. He subsequently left for medical treatment in Chişinău (Republic of Moldova). In 2011 he arrived in Switzerland. Owing to his failure to appear before the probation authorities, the “Tiraspol People’s Court”, in February 2013, ordered that the sentence – which in the meantime had been reduced to six years and six months’ imprisonment – be served in full.

Following a request from Mr Mozer’s lawyer, the Supreme Court of the Republic of Moldova, in January 2013, quashed the judgment of the “Tiraspol People’s Court” of July 2010, finding that the courts established in the “MRT” had not been created in accordance with Moldovan legislation. In May 2013, the Prosecutor General of Moldova informed Mr Mozer’s lawyer that it had initiated a criminal investigation into his unlawful detention.

Mr Mozer had been suffering from bronchial asthma, respiratory deficiency and other health problems. His medical condition worsened while in prison and he suffered several asthma attacks. According to his submissions, the cell where he was kept was very hot, humid, poorly ventilated, and it lacked access to natural light. It was overcrowded, infested with insects, and other prisoners were allowed to smoke inside the cell. For many hours he did not have access to a toilet and he was unable to dry clothes outside the cell. The quality of the food was very poor and no hygiene products were available. Throughout his detention he did not receive the medical assistance required by his condition.

In May 2009 doctors found that Mr Mozer would have to be transferred to the respiratory department of a hospital, but that this would be impossible to arrange due to a lack of personnel to guard him during his stay there. His mother subsequently asked the “MRT Ministry of Interior” for her son’s transfer to a specialised hospital, as bronchial asthma was one of the reasons listed by this Ministry as a reason for a transfer to hospital. However, the request was refused on the ground that only convicted prisoners could be transferred to a hospital for that reason.

In February 2010, a medical board concluded that Mr Mozer’s life expectancy was not favourable and that his continued pre-trial detention appeared difficult due to the lack of staff and equipment necessary to the treatment required by his condition. Despite these findings Mr Mozer was transferred to another pre-trial detention centre, which was less well equipped than the facility where he had been staying before.

According to Mr Mozer’s submissions, he was denied any visits by his parents during the first six months of his detention. He was also denied visits by a pastor, which he had requested, in June and September 2009.

Mr Mozer’s parents made several complaints to the Moldovan authorities and the Russian Embassy in Moldova concerning their son’s condition. On 3 November 2009 the Moldovan Prosecutor

General's Office informed them that it could not intervene due to the political situation in the Transdnestrian region since 1992.<sup>2</sup> It also referred to Moldova's reservation in respect of its inability to ensure observance of the European Convention on Human Rights in the Eastern regions of Moldova. A complaint to the Russian Embassy in Moldova was forwarded to the "MRT prosecutor's office". That office replied that Mr Mozer's case was pending before the "MRT courts", which alone were competent to deal with any complaints.

After notice of the case before the European Court of Human Rights had been given to the Moldovan and the Russian Governments, the Moldovan Deputy Prime Minister, in March 2010, wrote, in particular, to the Russian, Ukrainian and United States ambassadors to Moldova asking them to assist in securing Mr Mozer's rights.

## Complaints, procedure and composition of the Court

Mr Mozer complained that he had been arrested and detained unlawfully by the "MRT authorities" and that he had been absent from some of the hearings concerning his detention pending trial, in violation of Article 5 §§ 1 and 4 (right to liberty and security / right to have the lawfulness of one's detention decided speedily by a court). Relying on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment), he further maintained that he had not been given the medical assistance required by his condition and that he had been held in inhuman conditions of detention. Moreover, he complained that he had been prevented from seeing his parents and his pastor, in breach of Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion). He finally complained, in particular, that he did not have an effective remedy in respect of his complaints under articles 2, 3, 5, 8 and 9. Mr Mozer maintained that his complaints fell within the jurisdiction of both Moldova and Russia.

The application was lodged with the European Court of Human Rights on 24 February 2010. On 20 May 2014 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing was held on 4 February 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,  
Dean **Spielmann** (Luxembourg),  
Işıl **Karakaş** (Turkey),  
Josep **Casadevall** (Andorra),  
Luis **López Guerra** (Spain),  
Mark **Villiger** (Liechtenstein),  
Ján **Šikuta** (Slovak Republic),  
George **Nicolaou** (Cyprus),  
Nebojša **Vučinić** (Montenegro),  
Kristina **Pardalos** (San Marino),  
Erik **Møse** (Norway),  
Paul **Lemmens** (Belgium),  
Paul **Mahoney** (the United Kingdom),  
Johannes **Silvis** (the Netherlands),  
Ksenija **Turković** (Croatia),  
Dmitry **Dedov** (Russia) and,

<sup>2</sup> Following the dissolution of the Soviet Union, the Moldovan Parliament adopted a declaration of independence in 1991. Separatists in the Transdnestrian region of Moldova had already proclaimed the "Moldavian Republic of Transdnestria" (MRT), which has not been recognised by the international community. Violent clashes broke out, during which the separatists obtained weapons from troops of the Soviet Union (subsequently the Russian Federation) which had remained in Moldovan territory, some of whom joined the separatists. In July 1992 a ceasefire agreement was reached between Moldova and the Russian Federation, providing for the withdrawal of the two sides and the creation of a security zone. See Grand Chamber judgment *Ilaşcu and Others v. Moldova and Russia* (no. 48787/99), 8 July 2004.

Mihai Poalelungi (Republic of Moldova), *ad hoc Judge*,

and also Søren Prebensen, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### Jurisdiction

The Court came to the conclusion that the facts complained of fell within the jurisdiction of both the Republic of Moldova and of Russia under Article 1 of the Convention (obligation to respect human rights). In several previous cases, the Court had reached the finding that complaints in respect of the Transdniestrian region fell within both States' jurisdiction<sup>3</sup> and there were no reasons to draw a different conclusion in Mr Mozer's case.

Although Moldova had no effective control over the acts of the "MRT" in Transdniestria, the fact that the region was recognised under public international law as part of Moldova's territory gave rise to an obligation for that State, under Article 1, to use all the legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights under the Convention to those living there.

As regards Russia, the Court maintained the findings it had made in the previous cases, to the effect that the "MRT" was only able to continue to exist because of Russian military, economic and political support. In those circumstances, the region's high level of dependency on Russian support gave a strong indication that Russia continued to exercise effective control and decisive influence over the "MRT" authorities.

### Article 5

The Court considered that it was primarily for Russia – as the State which had effective control over the unrecognised entity at issue – to show that the "MRT courts" complied with the principles of the Court's case-law, namely that they formed "part of a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention". The Court had previously found that the "MRT courts", which had ordered Mr Mozer's detention, belonged to a system which did not comply with these standards. Since to date Russia had not submitted to the Court any information which would enable it to assess whether the "MRT courts" fulfilled the necessary requirements, it was unable to verify whether the situation had changed.

Moreover, there was no reason to assume that there was a system reflecting a judicial tradition compatible with the Convention in the region, similar to the one in the remaining area of the Republic of Moldova. While Moldovan law had been subject to a thorough analysis before joining the Council of Europe in 1995 and amendments to ensure compatibility with the Convention had been proposed, no such analysis had been made of the "MRT legal system", which had divided from the Moldovan judicial system in 1990.

Finally, the circumstances in which Mr Mozer had been arrested and the way his detention had been ordered and extended confirmed the conclusions as to the "MRT courts'" incompatibility with the Convention, especially the order for his detention for an undefined period of time and the examination in his absence of the appeal against the extension of his detention.

The Court therefore concluded that its previous findings concerning the "MRT courts" were still valid as regards the period of time covered by Mr Mozer's case. His detention based on the orders of those courts had therefore been unlawful.

<sup>3</sup> Most recently in the case of *Catan and Others v. the Republic of Moldova and Russia* (nos. 43370/04, 8252/05 and 18454/06), Grand Chamber judgment of 19 October 2012

The Court considered that the Moldovan Government had made significant efforts to support Mr Mozer. It noted in particular, that the authorities had made a number of appeals to other countries, notably Russia, asking them to assist in securing his rights. Furthermore, the Moldovan Supreme Court, following a request from Mr Mozer, had quashed his conviction. The Court concluded that the Republic of Moldova had fulfilled its obligations in respect of Mr Mozer. Accordingly there had been **no violation of Article 5 § 1 by Moldova.**

Having regard to its finding that Russia had exercised effective control over the “MRT” during the period in question and that Mr Mozer’s detention had been unlawful, the Court held that there had been a **violation of Article 5 § 1 by Russia.**

In view of its findings under Article 5 § 1, the Court did not consider it necessary to examine separately the complaint under Article 5 § 4.

### Article 3

As regards the complaints under Article 2 and 3, the Court noted that the doctors who had examined Mr Mozer had at no point concluded that there was an immediate risk to his life. The Court therefore did not consider that the complaints required a separate examination under Article 2.

The Court observed that although the doctors had considered Mr Mozer’s condition to be deteriorating and the specialists and equipment required to treat him to be lacking, the “MRT” authorities had not only refused to transfer him to a civilian hospital for treatment but they had also exposed him to further suffering and a more serious risk to his health by transferring him to an ordinary prison. It was indisputable that he had suffered greatly from his asthma attacks. The Court was also struck by the fact that his illness, while considered serious enough to warrant the transfer to a civilian hospital of a convicted person, had not been a ground for the transfer of a person awaiting trial. Given the lack of any explanation for the refusal to offer him appropriate treatment, the Court found that Mr Mozer’s medical assistance had not been adequately secured.

Having regard to Mr Mozer’s description of the very poor detention conditions, the Court noted that neither the Moldovan nor the Russian Government had commented on it. However, that description was largely confirmed by the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the United Nations Special Rapporteur on visits to various detention facilities in the “MRT”. On that basis, the Court found it established that the conditions of Mr Mozer’s detention had amounted to inhuman and degrading treatment within the meaning of Article 3.

As regards the States’ responsibility, the Court referred to its findings under Article 5. For the same reasons given in respect of Article 5 § 1, the Court found that there had been **no violation of Article 3 by Moldova** and that there had been a **violation of Article 3 by Russia.**

### Article 8 and Article 9

On the basis of the information before it, the Court saw no reason to doubt Mr Mozer’s submission that he had been completely denied visits by his parents during the first six months of his detention and that the pastor who had attempted to visit him had been denied access. It was unclear whether there was any legal basis for those restrictions and no reasons had been advanced to justify them. The Court considered that it had not been shown that the interferences with Mr Mozer’s rights under Article 8 and Article 9 had pursued a legitimate aim or had been proportionate to that aim.

For the same reasons given in respect of Article 5 § 1, the Court found that there had been **no violation of Article 8 and Article 9 by Moldova** and that there had been a **violation of Article 8 and Article 9 by Russia.**

### Article 13 in conjunction with Articles 3, 5, 8 and 9

Mr Mozer had been entitled to an effective domestic remedy within the meaning of Article 13 in respect of his arguable complaints under Articles 3, 8 and 9. As to his complaint under Article 5 § 1, the Court noted that Article 5 § 4 – the separate examination of which it had not considered necessary in the circumstances of the case – was the provision on which to rely to seek judicial review of his detention. Concerning the complaints under Articles 3, 8 and 9, there was no indication that any effective remedies had been available to him in the “MRT”.

The Court referred to its finding that Moldova, having no means of controlling the actions of the “MRT” authorities, had been under an obligation to use all the legal and diplomatic means available to it to continue to guarantee to those living in the Transdnistrian region the enjoyment of the rights and freedoms defined in the Convention. It observed that Moldova had created a set of judicial, investigative and civil service authorities which worked in parallel with those created by the “MRT”. While the effects of any decisions taken by those authorities could only be felt outside the Transdnistrian region, they had the function of enabling cases to be brought before the Moldovan authorities, which could then initiate diplomatic and legal steps to attempt to intervene in specific cases, in particular by urging Russia to fulfil its obligations under the Convention in its treatment of the “MRT” and the decisions taken there. In that light, the Court considered that the Republic of Moldova had thus fulfilled its obligations. Accordingly, there had been **no violation of Article 13 of by Moldova.**

The Court referred to its finding that Russia continued to exercise effective control over the “MRT”. In the absence of any submission by the Russian Government as to any remedies available to Mr Mozer, the Court concluded that there had been a **violation of Article 13 in conjunction with Articles 3, 8 and 9 by Russia.**

### Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Mozer 5,000 euros (EUR) in respect of pecuniary damage, EUR 20,000 in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

### Separate opinions

Judge López Guerra expressed a concurring opinion; Judge Dedov expressed a dissenting opinion. These separate opinions are annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.