

CASE OF ILAȘCU AND OTHERS v. MOLDOVA AND RUSSIA

(Application no. 48787/99)

JUDGMENT

STRASBOURG

8 July 2004

B. The Court's assessment

1. General principles

1. The Court considers that the general principles summarised above (see paragraphs 310-21) are relevant to the examination of the question whether the applicants come within the jurisdiction of the Russian Federation.

2. Application of the above principles

2. In the present case, the Court's task is to determine whether, regard being had to the principles set forth above (see, in particular, paragraphs 314-16), the Russian Federation can be held responsible for the alleged violations.

3. The Court notes at the outset that the Russian Federation is the successor State to the USSR under international law (see paragraph 290 above). It further notes that, when the CIS was set up, Moldova did not join in exercises by the CIS armed forces and later confirmed that it did not wish to take part in the military aspect of cooperation within the CIS (see paragraphs 293-94 above).

(a) Before ratification of the Convention by the Russian Federation

4. The Court notes that on 14 November 1991, when the USSR was being broken up, the young Republic of Moldova asserted a right to the equipment and weapons stocks of the USSR's 14th Army which was stationed in its territory (see paragraph 37 above).

It also entered into negotiations with the Russian Federation with a view to the withdrawal of that army from its territory.

5. The Court observes that during the Moldovan conflict in 1991-92 forces of the 14th Army (which owed allegiance to the USSR, the CIS and the Russian Federation in turn) stationed in Transdniestria, an integral part of the territory of the Republic of Moldova, fought with and on behalf of the Transdniestrian separatist forces. Moreover, large quantities of weapons from the stores of the 14th Army (which later became the ROG) were voluntarily transferred to the separatists, who were also able to seize possession of other weapons unopposed by Russian soldiers (see paragraphs 48-136 above).

The Court notes that from December 1991 onwards the Moldovan authorities systematically complained, to international bodies among others, of what they called "the acts of aggression" of the 14th Army against the Republic of Moldova and accused the Russian Federation of supporting the Transdniestrian separatists.

Regard being had to the principle of States' responsibility for abuses of authority, it is of no consequence that, as the Russian Government submitted, the 14th Army did not participate as such in the military operations between the Moldovan forces and the Transdniestrian insurgents.

6. Throughout the clashes between the Moldovan authorities and the Transdniestrian separatists, the leaders of the Russian Federation supported the separatist authorities by their political declarations (see paragraphs 46, 75, 137 and 138 above). The Russian Federation drafted the broad lines of the ceasefire agreement of 21 July 1992, and moreover signed it as a party.

7. In the light of all these circumstances, the Court considers that the Russian Federation's responsibility is engaged in respect of the unlawful acts committed by the Transdniestrian separatists, regard being had to the military and political support it gave them to help them set up the separatist regime and the participation of its military personnel in the fighting. In acting thus, the authorities of the Russian Federation contributed both militarily and politically to the creation

of a separatist regime in the region of Transnistria, which is part of the territory of the Republic of Moldova.

The Court also notes that even after the ceasefire agreement of 21 July 1992 the Russian Federation continued to provide military, political and economic support to the separatist regime (see paragraphs 111-61 above), thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy vis-à-vis Moldova.

8. The Court further notes that in the context of the events mentioned above the applicants were arrested in June 1992 with the participation of soldiers of the 14th Army (subsequently the ROG). The first three applicants were then detained on 14th Army premises and guarded by 14th Army troops. During their detention, these three applicants were interrogated and subjected to treatment which could be considered contrary to Article 3 of the Convention. They were then handed over into the charge of the Transnistrian police.

Similarly, after his arrest by soldiers of the 14th Army, the fourth applicant was handed over to the Transnistrian separatist police, then detained, interrogated and subjected on police premises to treatment which could be considered contrary to Article 3 of the Convention.

9. The Court considers that on account of the above events the applicants came within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention, although at the time when they occurred the Convention was not in force with regard to the Russian Federation.

This is because the events which gave rise to the responsibility of the Russian Federation must be considered to include not only the acts in which the agents of that State participated, like the applicants' arrest and detention, but also their transfer into the hands of the Transnistrian police and regime, and the subsequent ill-treatment inflicted on them by those police, since in acting in that way the agents of the Russian Federation were fully aware that they were handing them over to an illegal and unconstitutional regime.

In addition, regard being had to the acts the applicants were accused of, the agents of the Russian Government knew, or at least should have known, the fate which awaited them.

10. In the Court's opinion, all of the acts committed by Russian soldiers with regard to the applicants, including their transfer into the charge of the separatist regime, in the context of the Russian authorities' collaboration with that illegal regime, are capable of engaging responsibility for the acts of that regime.

It remains to be determined whether that responsibility remained engaged and whether it was still engaged at the time of the ratification of the Convention by the Russian Federation.