

The Russian Federation and the Republic of Moldova are Obligated to Take Prompt Actions to Guarantee a Legal Framework Compatible with the European Convention for the Transnistrian Region

On 23 February 2016, the Grand Chamber of the European Court of Human Rights made public the judgment on the case of *Mozer v. Moldova and Russia (no. 11138/10)*. The case was initiated by a Moldovan citizen of German ethnicity and represented before the Court by lawyers and legal experts from Promo-LEX Association.

The applicant complained to the Court that he was kidnapped by Transnistrian militia bodies on 24 November 2008. During a period of about one and half years, the applicant was detained in inhuman conditions in Transnistria and Hlinaia penitentiaries and was refused the health care. After a summary conviction he was released on 1 July 2010.

The Court unanimously decided that the applicant was under the jurisdiction of both countries: the Republic of Moldova and the Russian Federation.

The Court recognized by 16 votes for and one against that the Russian Federation was liable for violating the right to freedom and safety as a result of the prolonged detention of the applicant without a legal basis during 24 November 2008 – 1 July 2010. The Court also decided that the persistent

refusal to provide the applicant with health care and his detention in inhuman conditions in several Transnistrian penitentiaries were a violation of his right not to be tortured. The right to privacy and family life and the right to freedom of religion were also infringed as a result of the refusal to meet with the representatives of the cult the applicant belonged to.

The Russian Federation was indebted to pay material and non-material damages of EUR 25,000 to the applicant and EUR 4,000 in respect of costs for legal assistance. Two judges had separate opinion.

The judgment of the European Court of Human Rights may serve as reference and has a real importance taking into account the following findings.

Liability of the Russian Federation

Despite the fact that no evidence was submitted to prove that the applicant was arrested by the Russian state employees, the Court decided that conclusive evidence of effective control of the Russian Federation over the Transnistrian region for the period up to 1 July 2010 were presented. In this way, the violations committed by the officers of the so-called entity were blamed on Russian Federation, including the serious violation of the applicant's rights.

Following the analysis of how the law has evolved in the Republic of Moldova, the High Court found another finding of impact. The Court underlined that contrary to the constitutional law of the Republic of Moldova, which was surveyed and monitored by several international bodies, the so-called legislation that applies to the Transnistrian region has never been subject to a review. Thus, arrest and sentencing decisions taken by the so-called Courts on the basis of some local acts cannot be considered to be adopted under a judicial tradition compatible with international human

rights standards.

Moreover, based on this principle, the Court ruled that the so-called judges and other authorities, as representatives of an unknown legislation, could not order the arrest and conviction of the applicant in a legal way.

Liability of the Republic of Moldova

The Court also made reference to some particularly important issues. Paragraph 154 of the judgement provides that both the Prosecutor's Office and the Ombudsperson's Office have not intervened promptly in solving the problem of the applicant, invoking exceptions that are not relevant. However, the Court held further that the authorities responsible for the negotiation process made active public appeals and notifications to release the applicant. Moreover, the Court decided that the authorities of the Republic of Moldova also fulfilled other tasks that fall within the State's positive obligations, namely: declared void the judgments under which the applicant was convicted, initiated criminal prosecution on the illegal detention, established courts and institutions to protect the rights of the Transnistrian inhabitants etc. The Republic of Moldova avoided the conviction only due to these circumstances.

Conclusions

Promo-LEX Association appreciates the judgment of the European Court on the case of Mozer v. Moldova and Russia. This judgment is to determine the authorities and foreign partners to rethink some approaches that have been to the detriment of the population.

The conclusions presented in this judgment are sufficient to the Republic of Moldova to continue working for human rights observance in the Transnistrian region, even if the Russian authorities were held liable for all violations occurred in this case.

We consider that the transitional justice issue is a priority approach in the negotiations of conflict settlement. Tolerating the enforcement of a pseudo-legislation is inadmissible on the territory of the Republic of Moldova.

We request the constitutional authorities of the Republic of Moldova and the Russian Federation to start a social dialogue of reconciliation, able to convince the population from the left bank of Nistru River to accept the transitional justice.

Promo-LEX thanks its partners and especially RCTV Memoria, for contributing to improve the health of Boris Mozer and supporting the family.

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