

# Hearing at the European Court of Human Rights held for three cases against Moldova and Russia



On June 9th 2009, the hearings were held before the Fourth Chamber of the European Court of Human Rights on the admissibility and merits in the cases of Catan and v 27 Others v. Moldova and Russia (no. 43370/04), Elena Căldare and 42 Others v. Moldova and Russia

(no. 8252/05), Eleonora Cercavschi and 98 Others v. Moldova and Russia (no. 18454/06).

The applicants, all Moldovan nationals, live in the Transnistrian region. Each application concerns a separate Moldovan-language school and is brought by a group of parents, children and teachers.

The applicants complain that they have been subjected to harassment because of their desire for the schools to continue providing an education in the Moldovan language, using the Latin script, and in accordance with the Moldovan curriculum. They rely on Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights, and on Article 2 of Protocol No. 1 (right to education) to the Convention.

The applicants filed a number of petitions and complaints with the authorities of the Russian Federation, since most of the Transnistrian region leaders are Russian citizens, some of

them having even received Russian State decorations, and the Russian Federation continues to have troops stationed in Transnistria and is the mediator in the conflict between Moldova and the secessionist regime in Tiraspol. The Ministry of Foreign Affairs of the Russian Federation replied by making public general statements about the escalation of the conflict around the Moldovan-speaking schools in Transnistria. Stating that the underlying problem was the ongoing conflict between Moldova and the Transnistrian region, the Russian Ministry of Foreign Affairs drew the attention of Moldova and Tiraspol administration to the fact that the use of force to solve the conflict could endanger security in the region and urged them to use various types of negotiations in order to solve the conflict.

The applicants also complained about their situation to the Moldovan authorities, who, despite promises to solve the problem of schools in the Transnistrian region using the Latin script, have not succeeded in doing so.

The applicants point out that there are 92,000 pupils in the Transnistrian region. While in 1989 Moldovans represented 40% of the total population, Ukrainians 26 % and Russians 26%, this proportion is far from being respected in the schools in the "MRT": in 82 % of these schools, the curriculum is devised in Russian, in 13.5 % the curriculum is in Moldovan/Romanian with the Cyrillic script, in 3.8 % the curriculum is in Moldovan/Romanian with the Latin script and in 0.7 % in Ukrainian.

**Representatives of the parties:**

Moldovan Government: Vladimir Grosu, Agent and Ina Rusu, Adviser.

Russian Government: Georgy Matyushkin, Agent; Oxana Sirotkina, Oxana Yurchenko, Irina Koganova, Nikolay Fomin, Tatiana Kleyменова, Alexander Makhnev Advisers;

Applicants: Alexandru Postică, Ion Manole, Counsel; Doina Ioana Străisteanu and Iain Byrne from [INTERIGHTS](#), Advisers.

One of the applicants, Andrei Tihovschi, also attended the hearing.

### **The circumstances of the case CATAN and 27 Others against Moldova and Russia**

Evrica High School in Rîbnița is one of the six schools using the Moldovan/Romanian language with the Latin script in the so-called "Moldavian Republic of Transnistria" ("MRT"). The applicants are pupils or parents of pupils at Evrica School, which has about 600 pupils.

On 18 August 1994 the "MRT" regime forbade the use of the Latin script in the school.

Since 1997, Evrica School has been using premises situated on Gagarin Street built with Moldovan public funds. The school was registered with the Moldovan Ministry of Education and was therefore using a Latin script curriculum approved by the Ministry of Education.

By a decision of 21 May 1999, the "MRT" regime ordered that all schools belonging to foreign States and functioning on the territory of the "MRT" had to register with the "MRT" authorities, failing which they would not be recognized and would be deprived of their rights.

Evrika School refused to register, since registration involved using the Cyrillic script curriculum devised by the "MRT" regime and deprived the schools thus registered of the right to be sponsored by the Moldovan Ministry of Education. On 26 February 2004 the building used by the school was transferred by the Transnistrians to the administration of the Rîbnița Department of Education. They reiterated their request for registration with the "MRT" education system.

On 14 July 2004 the Transnistrians closed down all schools using the Latin script.

Having regard to incidents in which the other schools in Transnistria teaching in Romanian had been involved following the decision to close them down, students, parents and

teachers from Evrika School took it upon themselves to guard the school day and night.

On 29 July 2004 Transnistrian police stormed the school and evicted the women and children who were inside it. Five men who were inside the school were arrested and subsequently sentenced to three or seven days' administrative imprisonment. The same day the husband of the school's director was arrested in the street and sentenced to seven days' administrative imprisonment for public-order disturbances.

Over the following days local police and civil servants from the Rîbnița Department of Education visited the parents of children registered with the school, asking them to withdraw their children from the school and to put them in a school registered with the "MRT" regime. The parents were told that if they did not do so, they would be fired from their jobs and would even be deprived of their parental rights. As a result of this pressure, many parents withdrew their children and transferred them to another school.

On 29 September 2004, and following the intervention of the OSCE Mission to Moldova, the school was able to register with the Tiraspol Chamber of Registration as a foreign institution of private education, but could not resume its activity for lack of premises.

It was only on 2 October 2004 that the "MRT" regime allowed the school to reopen in another unfinished and inappropriate building, which used to be a kindergarten. Since its reopening, the school has been obliged to use a Cyrillic alphabet curriculum devised by the "MRT" regime and has been deprived of a telephone.

### **The circumstances of the case Elena CĂLDARE and 42 Others v. Moldova and Russia**

Alexandru cel Bun High School in Tighina (Bender) is one of the six schools in the so-called "Moldavia Republic of Transnistria" ("MRT") using Moldovan/Romanian language in the Latin script. The applicants are pupils or parents of pupils

at Alexandru cel Bun High School, which had before the events described below about 1600 pupils.

The school has been using premises situated on Kosmodemianskaia Street built with Moldovan public funds and rented to them by the Moldovan authorities. The school was registered with the Moldovan Ministry of Education. During 2004, the "MRT" warned the school to register with the competent "MRT" bodies, failing which the school would be closed down and disciplinary measures would be taken against the Head of the school.

On 14 July 2004 the Transnistrians closed down all the schools using the Latin alphabet.

On 18 July 2004 the school was disconnected from electricity and water supplies and on 19 July 2004 the school administration was notified that it could no longer use the premises on Kosmodemianskaia Street. However, teachers, pupils and parents occupied the building refusing to leave. Transnistrian police tried unsuccessfully to reoccupy the premises, and eventually surrendered the building. They withdrew on 28 July 2004.

Following these incidents, about 200 pupils left the school, which currently has 1400 pupils.

On 20 September 2004, and following various negotiations with international observers, including from the Council of Europe, the school was reconnected to water and electricity.

The "MRT" regime allowed the school to resume its activity in September 2004. Since its reopening the school has been obliged to use a Cyrillic alphabet curriculum devised by the "MRT" regime.

### **The circumstances of the case Eleonora CERCAVSCHI and Others v. Moldova and Russia**

School in Grigoriopol used to be a school in the so-called "Moldavian Republic of Transnistria" ("MRT") using the Cyrillic alphabet curriculum devised by the "MRT". The

applicants are teachers, pupils and parents of pupils at that school, which functions today in Dorotcaia (under Moldovan control).

The school, which had before the events complained of about 520 pupils, today has 200 pupils.

In 1996, at the request of the parents and their children, the school filed a number of petitions with the "MRT" regime, requesting to be allowed to use the Latin script. AS a result, between 1996 and 2002, the "MRT" regime took various measures in order to discourage their claims, such as use of hostile press campaign, constant intimidation and threats by security forces.

These measures reached a climax on 22 August 2002 when Transnistrian police stormed the school and evicted the teachers, the pupils and their parents who were inside it. On 28 August 2002 the President of the Pupils committee was arrested and subsequently sentenced to fifteen days' administrative imprisonment.

Faced with the occupation of the building by the "MRT" regime, which refused the use of the curriculum with the Latin script, the Moldovan Ministry of Education decided that the school should be transferred temporarily to a building in Doroțcaia, a village about 20 kilometers from Grigoriopol and which is under Moldovan control. Each day, pupils and teachers who were crossing to Doroțcaia in four buses, were subjected to controls, annoyance and acts of humiliation such as spitting and swearing by the local police and civil servants. Following these incidents, 300 pupils left the school.

In April 2002 the parents and the teachers reiterated their request for registration with the Moldovan Ministry of Education and for the use of the Latin script curriculum. Their request was rejected by "MRT" authorities. Therefore, the school filled a number of petitions and complained about this situation to the OSCE, the United Nations Organization, as well as to the Russian and Moldovan authorities. The

Russian authorities replied by using both Moldova and “MRT” to use various types of negotiations in order to solve the conflict. The Moldovan authorities declared to the applicants that they could not help.

### **Complaints**

The applicants complained that they were unable to continue using the building on Gagarin Street. They also alleged that they were harassed by the “MRT” regime because they chose to use the Latin alphabet.

They claimed that the children were obliged to study in an artificial language created by the Soviet authorities, that is, Moldovan/Romanian with the Cyrillic script. Moreover, they were obliged to follow a

Transnistrian curriculum, which was inspired by the theory and methods of denationalization of the local population initiated in the Transnistrian region in 1924. This curriculum, they alleged, cultivated hostility towards the legitimate Moldovan authorities, the Moldovan/Romanian language, and also towards the history, culture and values pertaining to the territory on the west bank of the Nistru river (under Moldovan control). Disciplines such as history and the mother-tongue language were not presented in an objective and critical way; instead, they were used as instruments of propaganda and indoctrination. In sum, the education received by the children in Evrika School was not based on the values of a democratic society and did not correspond to the parents’ philosophical convictions. This constituted an infringement of their right to education and teaching in conformity with their philosophical convictions guaranteed by Article 2 of Protocol No. 1 to the Convention, as interpreted by the Court in many cases, inter alia, in the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark (judgment of 7 December 1976, Series A no. 23).

They further complained of discrimination on ethnic grounds, which denoted a lack of respect on the part of the “MRT” for

their cultural and ethnic background. The shock and stress which they felt as a result of this discrimination, particularly between July and October 2004, but also today, amounted to treatment contrary to Article 3 of the Convention. They relied in this respect on the case of Abdulaziz Cabales and Balkandali v. United Kingdom (judgment of 28 May 1985, Series A no. 94).

They also alleged that, having regard to the threats, persecution and mockery to which they and their families were regularly subjected, they feared for their physical security, and invoked in this respect Articles 3 and 8 of the Convention and the Court's judgment in the Belgian Linguistics case (judgment of 23 July 1968, Series A no. 6).

They also invoked Articles 13 and 14 of the Convention taken together with Articles 3 and 8 of the Convention and Article 2 of Protocol No. 1.

The applicants considered that the Moldovan authorities were responsible because Transdniestria was a part of Moldova and the Moldovan authorities therefore had positive obligations to secure the applicants' rights. They further considered that the Russian authorities were responsible for the foregoing violations since the Transdniestrian territory was under Russia's de facto control.

### **Questions to the parties**

#### *As to the admissibility*

1. Do the applicants 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 case of Ilaşcu and Others v. Moldova and Russia [GC], (No. 48787/99, ECHR 2004-VII) on account of the circumstances of the present cases ?

In particular, in the light of the case of Ilaşcu and Others, 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 Ilaşcu and Others case which might affect the responsibility of either Contracting Party?

2.If the responsibility of one or both respondent Governments was engaged, were there any effective domestic remedies which the applicants were required to exhaust pursuant to Article 35 of the Convention before filing the current applications?

*As to the merits*

3.Do the measures taken against the applicants constitute a violation of their rights provided for in Article 8 taken alone or in conjunction with Article 14 of the Convention?

4. Do the measures taken against the applicants constitute a violation of their rights provided for in Article 2 of Protocol No. 1 to the Convention taken alone or in conjunction with Article 14 of the Convention?

The video of the Hearing is available here:  
[http://www.echr.coe.int/ECHR/EN/Header/Press/Multimedia/Webcasts+of+public+hearings/webcastEN\\_media?&p\\_url=20090609-1/lang/](http://www.echr.coe.int/ECHR/EN/Header/Press/Multimedia/Webcasts+of+public+hearings/webcastEN_media?&p_url=20090609-1/lang/)

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