



SECOND SECTION

**CASE OF JESTCOV v. THE REPUBLIC OF MOLDOVA AND
RUSSIA**

(Application no. 33567/15)

JUDGMENT

STRASBOURG

28 September 2021

This judgment is final but it may be subject to editorial revision.

In the case of Jestcov v. the Republic of Moldova and Russia,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Carlo Ranzoni, *President*,

Egidijus Kūris,

Pauliine Koskelo, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 33567/15) against the Republic of Moldova and Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Mr Petru Jestcov (“the applicant”), on 30 June 2015;

the decision to give notice to the Moldovan and Russian Governments (“the Governments”) of the complaint concerning the right to life and to declare inadmissible the remainder of the application;

the parties’ observations;

the Russian Government’s objection to the examination of the application by a Committee and the Court’s decision to reject it;

Having deliberated in private on 7 September 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case is about the failure to enforce a custodial sentence in respect of the applicant’s wife’s murder in the Republic of Moldova when the perpetrator fled the country. The applicant complains under Article 2 of the Convention that Russia and Moldova were responsible for the impunity of the perpetrator, who was allegedly hiding in the self-proclaimed “Moldovan Republic of Transdniestria” (the “MRT” – see for more details *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 28-185, ECHR 2004-II).

THE FACTS

2. The applicant was born in 1950 and lives in Chişinău. The applicant was represented by Mr A. Tighinean, a lawyer practising in Chişinău.

3. The Governments were represented by their Agents.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 9 November 2010 the applicant’s wife was robbed and murdered in Chişinău, Moldova. An investigation was initiated against several suspected perpetrators, including N.C., a Russian national. In the course of the proceedings, N.C. was in pre-trial detention.

6. On 2 December 2011 the Botanica District Court convicted N.C. of being an accomplice in armed robbery and murder and sentenced her to 13 years of imprisonment.

7. On 11 April 2012 the Chişinău Court of Appeal upheld N.C.'s appeal, reheard the case, acquitted her of all charges, and released her from detention in the courtroom.

8. On 29 January 2013, in the absence of N.C., the Supreme Court of Justice finally quashed the appellate judgment and upheld the first-instance judgment against N.C.

9. On 20 March 2013 the Botanica District Court sent all materials of the criminal file to the Dubăsari Police to enforce the sentence in respect of N.C.

10. On 2 July 2013 the General Police Inspectorate informed the applicant that N.C. had not yet been declared wanted.

11. Following the request of the Dubăsari Police, on 6 May 2015 the Dubăsari District Court declared N.C. wanted.

12. Following a search notice issued by Moldovan authorities, on 11 September 2015 the Russian authorities traced N.C. to Surgut, Russia, and interviewed her about the circumstances of the case. She claimed to be unaware of her conviction in the Republic of Moldova, as she had moved back to Russia after her acquittal by the appellate court in 2012.

13. On 17 September 2015 the Russian authorities informed the Moldovan authorities about N.C.'s location and on 19 October 2015 confirmed that she was a Russian national and, therefore, could not be extradited pursuant to Article 57 of the 1993 Minsk Convention on mutual legal assistance in civil, family and criminal matters.

14. After the communication of the case, on 15 October 2019 the Chişinău District Court requested the transfer of the enforcement of N.C.'s custodial sentence to the Russian Federation, relying on Article 2 of the 1997 Additional Protocol to the Convention on the Transfer of Sentenced Persons. On 25 October 2019 the Moldovan Minister of Justice forwarded the request to the Russian Ministry of Justice.

15. On 4 February 2020 the Moldovan transfer request was directed by the Russian Ministry of Justice to the Surgut City Court, which on 10 April 2020 granted the recognition and the enforcement on the territory of the Russian Federation of the custodial sentence in respect of N.C. and ordered N.C.'s arrest.

RELEVANT LEGAL FRAMEWORK

16. The Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons (ETS No. 167 – “the Transfer Protocol”) was ratified by both Moldova and Russia, in 2004 and 2007, respectively. The relevant provisions of that treaty read as follows:

“Article 2 – Persons having fled from the sentencing State

1. Where a national of a Party who is the subject of a sentence imposed in the territory of another Party as a part of a final judgment, seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former Party before having served the sentence, the sentencing State may request the other Party to take over the execution of the sentence.

2. At the request of the sentencing State, the administering State may, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision on the request. Requests for provisional measures shall include the information mentioned in paragraph 3 of Article 4 of the Convention. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.

3. The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

17. The applicant complained that the failure to put into execution the custodial sentence in respect of N.C. had breached Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

18. The Moldovan Government submitted that the applicant had not exhausted the domestic remedy under Law no. 87 on compensation by the State for damage caused by the excessive length of proceedings or failure to execute a judicial decision. They argued therefore that the part of the application concerning Moldova should be declared inadmissible for failure to exhaust domestic remedies in Moldova.

19. The applicant made no specific submissions.

20. The Court notes that it has already considered this remedy and found it to be effective in respect of the non-enforcement of civil judgments (see

Balan v. Moldova (dec.), no. 44746/08, 24 January 2012, and *Manascurta v. Moldova* (dec.), no. 31856/07, 14 February 2012).

21. The Court observes that in the present case the applicant has the standing of a victim who does not formulate any civil claims against the perpetrator. In this capacity, he does not appear to have any legal standing in the enforcement of the criminal custodial sentence in respect of the perpetrator. In the absence of explicit legal provisions or of examples of domestic case-law providing for the victim's right to seek compensation for the non-enforcement of the criminal sentence against the perpetrator, the Court is not convinced that in the circumstances of this case this remedy is sufficiently certain, in theory and in practice, and accessible (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). For this reason, the Moldovan Government's objection of non-exhaustion of domestic remedies must be dismissed.

22. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other ground. The Court therefore declares it admissible.

B. Merits

23. The applicant argued that both respondent States were responsible for the failure to enforce the custodial sentence in respect of N.C. because they had jurisdiction over the "MRT", to which it was believed that N.C. had absconded.

24. The Moldovan Government submitted that they had discharged their procedural obligations under Article 2 of the Convention by identifying, convicting and searching for the perpetrator. Once N.C. had been traced to the Russian Federation in 2015, it had not been possible to carry out her extradition to Moldova because of her Russian nationality (see paragraphs 11-13). The Moldovan Government subsequently submitted information about the recognition of the custodial sentence and the initiation of enforcement proceedings in the Russian Federation in 2020 (see paragraphs 14-15).

25. The Russian Government argued that it was incumbent on the Moldovan authorities to take all reasonable measures to enforce the custodial sentence in respect of N.C., while the Russian authorities did not have any obligation to act on their own motion. When the Moldovan authorities requested legal assistance, the Russian authorities swiftly traced the perpetrator and cooperated for the recognition and enforcement of the custodial sentence. For this reason, the Russian Government contended that they had fulfilled all procedural obligations of cooperation.

26. The Court reiterates that the enforcement of a sentence imposed in the context of the right to life must be regarded as an integral part of the State's procedural obligation under Article 2 (see, *mutatis mutandis*, *Kitanovska Stanojkovic and Others v. the former Yugoslav Republic of Macedonia*, no. 2319/14, §§ 32-33, 13 October 2016; *Akeliene v. Lithuania*, no. 54917/13, § 85, 16 October 2018; *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 50, 26 May 2020). Moreover, Article 2 of the Convention imposes a duty on States to execute their final judgments without undue delay (*Kitanovska Stanojkovic and Others*, cited above, § 32).

27. In the context of the right to life, the Court notes that the Convention's special character as a collective enforcement treaty entails in principle an obligation on the part of the States concerned to cooperate effectively with each other in order to bring the perpetrators to justice and that Article 2 may require from both States a two-way obligation to cooperate with each other, implying at the same time an obligation to seek assistance and an obligation to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case (see *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, §§ 232-233, 29 January 2019).

28. In the present case, the Court observes that the Moldovan authorities deemed it appropriate, in the light of the circumstances of the death of the applicant's wife, to prosecute N.C. The criminal proceedings against her led to conviction and sentence, finally confirmed on appeal approximately two years and two months after the murder. The applicant did not criticise either the conduct of those proceedings or the outcome. Accordingly, the Court concludes that the imperative of establishing the circumstances of the death, and the person responsible for the loss of life, was satisfied in this case.

29. The main thrust of the applicant's complaint is that to date N.C. has not actually started to serve the sentence, for which delay the applicant holds responsible the Moldovan and the Russian authorities.

30. The Court observes that while the identification and conviction of the perpetrator was carried out promptly, the Moldovan authorities took over two years before they issued a search notice for the perpetrator (see paragraph 11). Four months after the search notice had been issued, the Russian authorities traced N.C., interviewed her and informed the Moldovan authorities that extradition was not possible due to N.C.'s Russian nationality (see paragraphs 12-13). Subsequently, it was only after the communication of the case by the Court, six years after the sentence had become final and four years after N.C.'s location had become known, that the Moldovan authorities sought the transfer of the enforcement of the custodial sentence to the Russian Federation (see paragraph 14). Six months later the Russian authorities recognised the custodial sentence and ordered

its enforcement on the territory of the Russian Federation (see paragraph 15).

31. The Moldovan authorities did not submit any explanation for the two-year delay in issuing the search notice and the four-year delay in seeking the transfer of the enforcement proceedings to the Russian Federation after having identified N.C.'s whereabouts.

32. On the facts of the case, the Court considers that the Moldovan authorities did not display the requisite diligence in seeking the enforcement of the custodial sentence in respect of N.C. (see, *a contrario*, *Zoltai v. Hungary and Ireland*, (dec.), no. 61946/12, 29 September 2015). The delays indicated above, which are entirely attributable to the Moldovan authorities, cannot be regarded as reasonable and were not in conformity with the State's obligation under Article 2 of the Convention, irrespective of whether N.C. had absconded after her conviction.

33. Accordingly, there has been a violation of the procedural aspect of Article 2 of the Convention by the Republic of Moldova.

34. As to the Russian authorities, the Court observes that they responded to the Moldovan requests for legal assistance, identified N.C.'s location, confirmed her Russian nationality which precluded her extradition and cooperated when the Moldovan authorities sought the transfer of the enforcement proceedings. The Court has not been informed about the actual serving of the sentence in the Russian Federation after 10 April 2020, when the State took over the execution. However, until that date, the Court can find no basis in the facts of this case to conclude that the Russian authorities failed to fulfil their procedural obligations under Article 2 of the Convention.

35. Accordingly, there has been no violation of Article 2 of the Convention by the Russian Federation.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

37. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and made no claims in respect of costs and expenses.

38. The Moldovan Government considered the applicant's claims excessive and asked the Court to dismiss them.

39. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

40. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 2 of the Convention admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention by the Republic of Moldova;
3. *Holds* that there has been no violation of Article 2 of the Convention by the Russian Federation;
4. *Holds*
 - (a) that the Republic of Moldova is to pay the applicant, within three months, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Moldovan lei, at the rate applicable at the date of settlement
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Carlo Ranzoni
President