

OPINION No. 8/2004 (REPUBLIC OF MOLDOVA)

Communication addressed to the Government on 19 January 2004.

Concerning: Andrei Ivantoc.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government in its reply failed to provide it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. The Working Group has brought the communication to the attention of the Government, but the Government failed to provide the Working Group with information that would have enabled the Working Group to take a position on the merits of the communication. The reply of the Government has been forwarded to the source, which offered no comments on it.
5. According to the information submitted to the Working Group by the source, Andrei Ivantoc, born in 1961, a Romanian citizen since 2001, a former member of the Popular Front of Moldova opposed to Transnistria separatism and to the authorities of the self-proclaimed Dniester Moldovan Republic (DMR), has been arbitrarily held in detention in Tiraspol for over 11 years.
6. Mr. Ivantoc was arrested on 2 June 1992 in Tiraspol, in the aftermath of the armed conflict in Moldova's eastern territories. In 1993, he was charged with high treason and "terrorism actions against the Soviet power". It is alleged that those charges were politically motivated and brought because of Mr. Ivantoc's opposition to Transnistrian secessionism. On 9 December 1993, Mr. Ivantoc was sentenced to 15 years' imprisonment by a court in the DMR. His property and personal assets were ordered confiscated.
7. According to the source, the court that convicted Mr. Ivantoc had neither jurisdiction nor competence. It was an illegitimate tribunal established by the administration of an unrecognized political entity. Consequently, his detention is illegal.
8. In addition, Mr. Ivantoc's right to due process was grossly violated. Violations included denial of his right to legal counsel, politically motivated charges and gross mistreatment in detention. He was subjected to torture, food deprivation, lack of medical attention and random beatings. Mr. Ivantoc is currently confined in an isolated and unheated cell, without adequate apparel. He is being held in a regime tantamount to incommunicado detention, being refused medical care and contact with his family and the outside world.
9. The source adds that Mr. Ivantoc is under medical observation for psychiatric and physiological disorders. On 28 December 2003, he went on a hunger strike after the prison authorities refused to pass on to him the food and winter hat sent by his wife.

10. The source adds that Moldovan authorities are responsible for the foregoing human rights violations because they have not taken adequate measures to put a stop to them. The Government of the Republic of Moldova has not taken an active stand to ensure that the fundamental safeguards against arbitrary detention and against torture and ill-treatment of detainees are observed in Transnistria. Such conduct should be part of its responsibility to monitor the observance of human rights standards on the entire territory under its jurisdiction, even though the authorities in Chisinau cannot regulate the conduct of the administrative structures established de facto in Tiraspol.

11. In its reply the Government made reference to the case of *Ilascu v. the Republic of Moldova and the Russian Federation*, in which one of the applicants is Mr. Ivantoc. This case was lodged in 1999 with the European Court of Human Rights and is still pending. The Government, arguing that any decision by the Working Group in this case would provoke a conflict of competence between two international human rights mechanisms, informed the Working Group that the requested information will be provided after the European Court has completed its examination of the case.

12. The source has not offered any comment on the reply of the Government, despite the Working Group's invitation to do so.

13. The Working Group examined first whether the case that is pending before the European Court is identical to the communication submitted to the Working Group. On the basis of the decision on admissibility of the Grand Chamber of the European Court of Human Rights, taken on 4 July 2001, it ascertained that one of the complaints submitted to the European Court on behalf of Mr. Ivantoc is that he is being detained arbitrarily. Therefore, that part of the application to the European Court seems to coincide with the allegations of the source submitted to the Working Group.

14. On the basis of paragraph 25 of its methods of work, the Working Group does not consider itself precluded from the examination of a communication on the sole basis that an identical or the same application is pending before the European Court.

15. The International Covenant on Civil and Political Rights, to which the Republic of Moldova is a party, provides in its article 2 that each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant.

16. In the consideration of the present communication the following question should be addressed first: How can a State that has been divested, by force and against its will, of being capable, in the physical sense, to exercise its sovereign powers on a territorial entity discharge its obligation under article 2 of the International Covenant on Civil and Political Rights, and under what conditions could it be made accountable for the violation of human rights that have been committed on the territorial entity on which it is prevented by force from exercising control? In

this context, the Working Group notes that the source itself acknowledges that the authorities of the Republic of Moldova cannot regulate the conduct of the administrative structures established de facto in Tiraspol, where Mr. Ivantoc is being detained.

17. Since, however, neither the source nor the Government provided the Working Group with sufficient information to enable it to examine the relevant facts and circumstances of the case, on which its opinion could be based, the Working Group decides, with reference to paragraph 17 (d) of its methods of work, to provisionally file the case.

Adopted on 27 May 2004