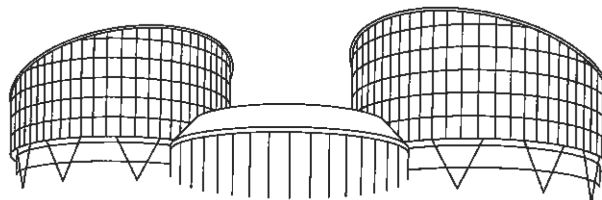

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

Application no. 48841/11
Oleg FILIN
against the Republic of Moldova and Russia
lodged on 25 July 2011

**STATEMENT OF FACTS**

1. The applicant, Mr Oleg Filin, is a Moldovan national, who was born in 1974 and lives in Chişinău. He is represented before the Court by Mr A. Postica, P. Postica and Ms N. Hriplivii, from "Promo LEX", a nongovernmental organisation based in Chişinău.

**A. The circumstances of the case**

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

*1. The applicant's abduction*

3. On 25 March 2009 the applicant was at home together with his wife, his son and a neighbour (P. T.). Somebody rang the door bell and when the applicant opened, he saw three persons, who showed him identity documents proving their status as officers of the Rîşcani police station in Chişinău. They asked the applicant to follow them to that station to give certain explanations. He initially agreed, but when his wife saw him outside approaching the officers' car he started resisting the officers. They then forced him into the car. She subsequently found out that the reason for her husband's resistance had been that the car was registered in the self-proclaimed Moldovan Transdniestrian Republic ("the MRT") and that he feared being transferred to MRT authorities.

4. Having called some ten minutes later the Rîşcani police station, the applicant's wife was told that her husband had not been taken to that place.

Some ten more minutes later her husband called and told her that he was being detained in the detention centre of the MRT militia based in Dubăsari.

5. On 21 October 2009 the applicant was convicted by the Dubăsari city court to eight years' imprisonment for his role in a burglary committed by a group of persons on 22 August 1997. That judgment was upheld by the Supreme Court of the MRT on 22 December 2009.

*2. The applicant's criminal complaint*

6. On 15 July 2010 the applicant asked the Prosecutor General's Office to start a criminal investigation against the officers from the Rîşcani police station involved in his abduction and transportation to the MRT.

7. On 26 July 2010 a prosecutor from the Ciocana prosecutor's office decided not to start a criminal investigation, in the absence of evidence that a crime had been committed. That decision was annulled by the Prosecutor General's Office on 7 October 2010 as unlawful.

8. On 31 December 2010 a prosecutor from the Ciocana prosecutor's office decided not to start a criminal investigation. He found that the applicant's wife had given a detailed description of two of the three men who had come to take her husband to the police station on 25 March 2010. Since her husband had been sentenced earlier, he had been visited by the local police before, so this was not an unusual request. When she called the Rîşcani police station and was told that nobody had been brought there that evening she panicked. However, ten minutes later her husband called and told her that he was already in the Dubăsari militia's detention in the MRT. The prosecutor found that it had not been established that any Moldovan police officer had participated in the applicant's arrest and transportation to the MRT, and that the only person known to have taken part was R., the chief of the Dubăsari militia. Therefore, no crime had been committed by Moldovan officers and the investigation had to be discontinued. That decision was annulled by another prosecutor from the Ciocana prosecutor's office on 21 January 2011 in order to carry out a more thorough investigation.

9. On 7 June 2011 the criminal investigation was suspended owing to the fact that it had been impossible to identify the author(s) of the crime.

*3. Civil proceedings launched by the applicant*

10. On 9 July 2010 the applicant signed a civil court action against the Ministry of Finances of the Republic of Moldova whereby he asked for his sentence by the MRT courts to be recognised as void and not having any legal force. He also asked for a finding that his detention was unlawful and for an order for his release, as well as for compensation of EUR 20,000 for every month of his unlawful detention. The applicant's wife lodged this court action with the Chişinău Court of Appeal. In his court action the applicant noted that he authorised his wife to represent him in the court proceedings and to lodge the court action, since he was unable to do it himself, being detained in the MRT.

11. On 12 July 2010 the Ciocana District Court decided to leave unexamined the court action, finding that it had been lodged by the applicant's wife in the absence of a power of attorney authorising her to act

as his representative. The court recalled the various means by which an applicant could authorise another person to represent him before the courts, among which was the signing of a request made to the court and which was to be included in the file (Article 80 (8) of the Code of Civil Procedure, see paragraph 17 below).

12. In an appeal of 16 February 2011 the applicant's wife stressed that her husband had personally signed a written request to the court whereby he had expressly authorised her to represent him in the court proceedings. She also referred to her husband's inability to personally defend his rights before the courts, being unlawfully detained by the MRT authorities.

13. On 25 January 2011 the Chişinău Court of Appeal rejected the appeal because the applicant had not submitted to the court a power of attorney authorising her lodge the appeal in her husband's name.

14. On 1 October 2010 the applicant made a complaint to the Ambassador of the Russian Federation in Moldova, with similar demands as those made in his court action lodged with the Moldovan courts.

### *4. Conditions of detention*

15. In his letter to the Ambassador of the Russian Federation in Moldova the applicant described as follows the conditions of his detention, which he considered to be contrary to the requirements of Article 3 of the Convention. The cells in which he was held lacked access to tap water, natural light and fresh air; access to these was at the mercy of the prison administration. Between April and September 2010 he was unable to take a shower with hot water and could only use an outside shower when it was warm enough outside. Therefore, he was unable to maintain personal hygiene and risked various illnesses. He also claimed that, at the time of writing his complaint, he was in contact with detainees ill with tuberculosis and that medical assistance in the prison was virtually inexistent, with only four places in the medical unit for 800 to 1000 detainees in the prison.

16. The applicant claims that the cells in the Hlinaia prison in which he is detained are overcrowded, as found by the CPT during their visit there in the year 2000. The toilet is in the cell and smells terribly. The clothes are hanged for drying in the cell and the air is very humid.

## B. Relevant domestic law and international material

17. The relevant part of the Code of Civil Procedure, prior to its amendment on 1 January 2012, reads as follows:

> "Article 80. Formulation of the representative's authority
>
> ...
>
> (8) The powers of the representative may also be attested ... in a written request, which shall be annexed to the file."

18. The relevant parts of the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) concerning its visit to the Transnistrian region of the Republic of Moldova from 27 to 30 November 2000 (CPT/Inf (2002) 35) read as follows:

"42. According to the information provided by the authorities, there are approximately 3,500 prisoners in the region's penitentiary establishments i.e. an incarceration rate of some 450 persons per 100,000 of the population. The number of inmates in the three establishments visited was within or, in the case of Prison N° 1, just slightly over their official capacities. Nevertheless, the delegation found that in fact the establishments were severely overcrowded.

The situation was at its most serious in Prison N° 1. The cells for pre-trial prisoners offered rarely more - and sometimes less - than 1 m² of living space per prisoner, and the number of prisoners often exceeded the number of beds. These deplorable conditions were frequently made worse by poor ventilation, insufficient access to natural light and inadequate sanitary facilities. Similar, albeit slightly better, conditions were also observed in the Sizo section of Colony No. 3 and in certain parts of Colony No. 2 (for example, Block 10).

51. The CPT has already highlighted the poor material conditions of detention which prevailed in the establishments visited and has made recommendations designed to address the fundamental problem of overcrowding (cf. paragraphs 42 and 43).

In addition to overcrowding, the CPT is very concerned by the practice of covering cell windows. This practice appeared to be systematic vis-à-vis remand prisoners, and was also observed in cells accommodating certain categories of sentenced prisoners. The Committee recognises that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of such security measures should be the exception rather than the rule. Further, even when specific security measures are required, such measures should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

It is also inadmissible for cells to accommodate more prisoners than the number of beds available, thereby compelling prisoners to sleep in shifts.

Consequently, the CPT recommends that the authorities set the following as short-term objectives:

i) all prisoner accommodation to have access to natural light and adequate ventilation;

ii) every prisoner, whether sentenced or on remand, to have his/her own bed.

Further, as measures to tackle overcrowding begin to take effect, the existing standards concerning living space per prisoner should be revised upwards. The CPT recommends that the authorities set, as a medium-term objective, meeting the standard of 4m² of floor space per prisoner.

52. As the delegation pointed out at the end of its visit, material conditions of detention were particularly bad at Prison N° 1 in Glinoe. The CPT appreciates that under the present circumstances, the authorities have no choice but to keep this establishment in service. However, the premises of Prison N° 1 belong to a previous age; they should cease to be used for penitentiary purposes at the earliest opportunity."

# COMPLAINTS

## A. Complaints directed against both respondent Governments

19. The applicant complains under Article 3 of the Convention about inhuman conditions of detention.

20. He also complains under Article 5 § 1 of the Convention about his unlawful detention following his abduction from his home and following decisions adopted by unlawfully constituted MRT courts.

21. The applicant complains of a breach of Article 8 of the Convention by the unauthorised entry into his apartment of the MRT and Moldovan police officers and because of the conditions in which he is detained.

22. The applicant further complains that he did not have effective remedies in respect of his complaints under Articles 3 and 5 of the Convention, contrary to the requirements of Article 13 of the Convention.

## B. Complaints directed against the Government of the Republic of Moldova

23. The applicant complains under Article 6 of the Convention about the refusal of the Moldovan courts to examine his court action, thereby breaching his right of access to a court.

24. He finally complains that he did not have effective remedies in respect of his complaint under Article 6 of the Convention, contrary to the requirements of Article 13 of the Convention.

## QUESTIONS TO THE PARTIES

### A. Questions to both respondent Governments:

1. Does the applicant come within the jurisdiction of the Republic of Moldova and/or the Russian Federation within the meaning of Article 1 of the Convention as interpreted by the Court, inter alia, in the cases of *Ilaşcu and Others v. Moldova and Russia* [GC], (No. 48787/99, ECHR 2004-VII) and *Catan and Others v. Moldova and Russia* [GC] (nos. 43370/04, 8252/05 and 18454/06, §§ 102-123, 19 October 2012) on account of the circumstances of the present case?

2. Has there been a violation of Article 3 of the Convention? In particular, is the applicant being detained in inhuman and/or degrading conditions?

3. Do the facts of the case disclose a violation of Article 5 § 1 of the Convention? In particular, was the applicant's arrest by the MRT authorities on Moldovan territory "lawful", within the meaning of Article 5 § 1 of the Convention?

4. Did the applicant have at his disposal effective remedies in respect of his complaints under Articles 3 and 5 of the Convention, as required under Article 13 of the Convention?

### B. Questions to the Government of the Republic of Moldova:

5. Has there been a breach of the applicant's rights guaranteed under Article 6 § 1 of the Convention by Moldova as a result of the Moldovan courts' refusal to examine his court action?

6. Did the applicant have at his disposal effective remedies in respect of his complaint under Article 6 of the Convention, as required under Article 13 of the Convention?