

jh
Heard at Field House

PH (Sufficiency of Protection-
Mafia) Moldova [2004] UKIAT
00011

On 13 November 2003
Prepared 19 November 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

10 February 2004

Before:

Mr H J E Latter (Chairman)
Mr A A Lloyd JP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

RESPONDENT

Representation

For the appellant: Mr J Jones, Home Office Presenting Officer
For the respondent: Mr I Ali, Counsel instructed by Welfare Rights
Advice Service

DETERMINATION AND REASONS

1. The Secretary of State appeals against the determination of an Adjudicator (Mr B Lloyd) who allowed the respondent's appeal on both asylum and human rights grounds against the decision made on 23 March 2003 giving directions for his removal as an illegal entrant. In this determination the Tribunal will refer to the respondent to this appeal as the applicant.
2. The applicant claims to have arrived in the United Kingdom on 12 March 2003 by sea. He left Moldova on 28 or 29 January 2003 and travelled through Ukraine, Poland, Germany, Belgium and France. He was a holder of a Moldovan passport issued in around May 2001 but disposed of it when he arrived in Ukraine. He did not claim asylum on

arrival but was apprehended by the police on 16 March 2003. He claimed asylum the following day. His claim was refused for the reasons set out in the decision letter dated 23 March 2003. The Adjudicator heard the appeal against this decision on 1 May 2003.

3. The applicant was born in 1960 in Kalfa Village, Novo Anenski Region in Moldova. He is a Moldovan national and an orthodox Christian. By profession he is a mechanic but in 1989 he trained to become a policeman. He did not join the police immediately as he wanted to do something else but he returned to the police force in spring 2000 as a commissioned Lieutenant. After a year he was promoted to Senior Lieutenant and worked at the Benderi police station as Lieutenant in charge of prison security. There were no particular problems until August 2002 when he was called into the office of his superior, Major Viktor Popov, for a private conversation. The appellant was told that he had to change his citizenship from Moldovan to that of the Dnestra Moldavian Republic (DMR). The appellant refused as he was a Moldovan citizen but in effect he was told he had no option if he wished to retain his job. In consequence he was dismissed.
4. The applicant was then unemployed. He said that after leaving the police there were three separate occasions when he was subjected to beatings and harassment by the Mafia and the police in Moldova. The first occasion was in September 2002 when he was at home with his wife and two children. Men who said they had been sent by Major Popov took the applicant away and asked him if he had changed his mind about switching citizenship. When he said he had not, he was beaten with truncheons. Two or three days later the same people returned to his home saying that Major Popov wished to see him. He was taken to the outskirts of the town by car. He was stood next to a tree and they began to humiliate him by pointing a machine gun at him. A magazine was put in the gun and fired but it was empty. The applicant was then beaten. He was left and had to make his own way home.
5. In November 2002 the same people came to his home again, taking him to the outskirts of the town, beating him and cutting him on the chest with a sharp knife. Again the applicant had to make his own way home. He was taken to hospital where his wounds were stitched. He did not return home but went into hiding staying with friends and his mother. His wife told him that people continued to come looking for him. He realised that he could not stay in Moldova any longer and made arrangements to leave. He did not report the incidents to the police as he was being persecuted by one of the top policemen in the force. Any complaint would not have been followed up.
6. The Adjudicator found that the applicant was overall a credible witness and that his account of events was true. He had established a likelihood of persecution on the grounds of his nationality, as an ethnic Moldovan who had refused to succumb to pressure to take up the

nationality of the region in the eastern part of Moldova now known as Transnistria or the DMR. He had come into contact with senior figures in the police who had been able to further their duress because of associations with elements of organised crime, both within the DMR and wider through the whole Republic of Moldova.

7. The Adjudicator commented that he found it difficult to make any precise assessment of the level of actual violence which the applicant had suffered but he did accept that he was subjected to harassment, persecution and general threats and ill-treatment because of his refusal to take up DMR nationality. It was for this reason that he had been dismissed from the police force and, during the period September to November 2002, he was the victim of a number of attempts, placing him under violent duress with a view to persuading him to change his nationality or taking revenge and retribution for his confrontation with his senior officer.
8. The Adjudicator has set out his conclusions on the asylum claim in paragraphs 19-22. He found that the applicant had a well-founded fear of persecution on the ground of nationality if returned to Moldova. There is clearly a typing error in paragraph 20 where there is a reference to Ukraine. The state authorities would not be able to provide a sufficiency of protection to him in the face of criminal actions perpetrated by elements that were in collusion with the authorities as part of a web of corruption and organised crime. He did not believe that the applicant would be able to seek a safe refuge in other parts of Moldova outside the so-called DMR because the influence and association of the law enforcement mechanism with agencies of organised crime was extensive and pervasive. The appeal was also allowed on human rights grounds for the reasons set out in paragraph 23: there would be a breach of the applicant's rights under both Articles 2 and 3.
9. In the grounds of appeal it is argued that the Adjudicator failed to deal adequately with the background evidence, in particular relating to whether the applicant would be able to relocate. The Adjudicator was wrong to find that the applicant was a credible witness as there were various discrepancies he had been unable to resolve. The Adjudicator had commented on the general vagueness of parts of the evidence. The Adjudicator appeared to have accepted that the applicant had been intent on reaching the United Kingdom rather than claiming asylum in any other western country. He was wrong to find a breach of Articles 2 and 3 in the light of his difficulty in assessing the precise level of danger the applicant was likely to face. There was no corroborative evidence as to the degree of harm. The Adjudicator had been wrong to place considerable weight on the general demeanour of the applicant.
10. At the hearing before the Tribunal Mr Jones focused his submissions primarily on the issue of internal flight and the finding that the applicant could not relocate in other parts of Moldova. This issue had not been

adequately dealt with. On the applicant's own account his fears arose because of his failure to take DMR citizenship. In fact there was no such internationally recognised citizenship. In the light of the background evidence the Adjudicator had failed to explain why the applicant could not seek safety outside Transnistria. The reason given in paragraph 20, the pervasive influence of those involved in corruption and crime, failed to address the issue of the adequacy of protection outside the DMR. There was no bar on travel between Moldova and the DMR. There was no reason to believe, even if the Mafia continued to have an interest in the applicant, that they would seek him out and take reprisals in Moldova.

11. Mr Ali submitted that the Adjudicator's findings were properly open to him. The DMR had sought to declare itself independent. The Adjudicator had accepted the applicant's account of events. Once he had fallen foul of Major Popov and the Mafia he would have nowhere to hide in Moldova. The Adjudicator was entitled to reach this conclusion.
12. The background to the dispute between Moldova and the DMR is set out in paragraphs 4.8-32 of the CIPU report April 2003. Following Moldova declaring its independence from the USSR in 1991, armed conflict broke out in the Transnistria region between the Slavic Dniestr guard and government troops. A peace agreement in July 1992 gave Transnistria special status within Moldova. However, there has been continued dispute as to how this autonomy will work out in practice. According to paragraph 4.32 of the CIPU report, despite the Moldovan government's agreement to give Transnistria broad autonomy in exchange for re-unification, negotiations broke down towards the end of 2002. In February 2003 the Moldovan President invited the Transnistrian authorities to join in writing a new constitution which would create a common state in which Transnistria would be a federal unit. Relations between the two regions worsened in March 2003, apparently after several EU countries and the USA acted on the Moldovan authorities' request not to grant visas to 17 Transnistrian politicians. The position is complicated by the presence of Russian troops in Transnistria but it has been agreed that there will be a full withdrawal by 31 December 2003.
13. The position is considered further in the Moldova Operational Guidance Note April 2003. Moldova has promised to relax border controls at the Transnistria border and to recognise identity papers issued by the Transnistrian authorities internally but not internationally. Ethnic Moldovans constitute 40% of the population in Transnistria. There are credible reports that ethnic Moldovans have experienced some discrimination in that area but the level of harassment and discrimination would be unlikely to amount to persecution within the terms of the 1951 Convention. There is no bar to travel between Transnistria and the rest of Moldova. It is considered that if an ethnic Moldovan experienced discrimination in Transnistria he would and could relocate to the part of Moldova administered by the central

government in Chifinau where the majority are Moldovan speakers. It is against this background that the claim made by the applicant must be assessed.

14. The Adjudicator found the applicant to be a credible witness and although the grounds of appeal seek to challenge these findings, that challenge was not pursued to any great extent at the hearing before the Tribunal. It is clear that the Adjudicator did feel considerable doubts about some aspects of the evidence. The fact that the applicant travelled through a number of countries without claiming asylum and then only claimed asylum in the United Kingdom after he was arrested casts considerable doubt on the credibility of the applicant's account. However, the Adjudicator heard the applicant give evidence and in our view it cannot be said that his findings on credibility were not properly open to him.
15. The issue for the Tribunal is whether on the basis of the Adjudicator's findings of fact, it was properly open to him to find that the applicant had a well founded fear of persecution in Moldova. He had such a fear in his home area arising from his refusal to take up DMR citizenship. This led to him losing his employment and to reprisals being taken against him, on his own account instigated by Major Popov. It was the applicant's evidence that a consequence of taking up DMR citizenship would be that he would have to involve himself with the Mafia and that was not what he wanted. When the applicant was asked about this in his oral evidence, he said that the widespread involvement of Mafia activity within the DMR meant that citizenship of the Republic almost always carried with it a link to the Mafia. When asked who was involved in Mafia activity, he replied that a lot of people were involved, many of them important people. The Adjudicator noted that the applicant seemed to stop short of saying that the whole of the police force were involved, but he did point to the fact that Major Popov was the Director of the police within the Transnistria region. There was no one above him and he had considerable influence.
16. The Adjudicator found that the convention reason giving rise to the risk of persecution was the fact that the applicant was an ethnic Moldovan who refused to take up the nationality of the DMR. This highlights the significance of the issue of internal relocation. It is hardly likely that the applicant would have a fear of persecution because of his Moldovan nationality in the main part of Moldova. The applicant's fears are limited to the DMR. There is no reason to believe that he would be at any risk in Moldova because of his refusal to take DMR citizenship. If the applicant faced persecution in the DMR, the obvious course in the light of his refusal to give up Moldovan citizenship would be for him to relocate in Moldova. There is no practical reason why he is unable to do so. There is freedom of movement between Moldova and the DMR and in our judgment no reason why the applicant should not look to the authorities in Moldova for protection against any action taken by the DMR authorities.

17. In essence it is argued that the appellant would be at risk in Moldova from the Mafia or those involved in organised crime and that the Moldovan authorities would be unable to provide adequate protection within the principles set out in Horvath.
18. Two issues arise. The first is whether on return to Moldova either Major Popov or the Mafia will now have any continued interest in the applicant. The Tribunal are not satisfied that there is any such real risk. Their interest in the applicant arose from the fact that he refused to take DMR citizenship. This has led him to leave the DMR and indeed Moldova. If he now returns to Moldova there is no reason why Major Popov would seek further reprisals against him, still less why he would be of any interest to the Mafia or other criminal organisations.
19. The Tribunal accept, and it is confirmed by the background evidence, that corruption is common amongst state officials in Moldova: see paragraph 6.111 of the CIPU report. Nonetheless the authorities are attempting to take action against corruption. In July 1999 the then Interior Minister announced that 15 criminal cases had been opened against Interior Ministry officers and in March 2000 an officer within the Department of Combating Organised Crime and Corruption was arrested in connection with a number of crimes. The Adjudicator was referred to the determination in Ursu [2002] UKIAT 02495 where on the facts of that case it was held that there was no adequate protection against those involved in organised crime. In our judgment that case turned on its own particular facts. The Tribunal are not satisfied that the applicant would be at risk as he has described but, in any event, as a former policeman from the DMR the Tribunal do not accept that the applicant would be unable to look to the authorities in Moldova for protection. In these circumstances the Tribunal are satisfied that the Adjudicator's assessment of the risk on return to Moldova was not properly open to him.
20. It follows that the appeal by the Secretary of State is allowed.

H J E Latter
Vice President