

Rzeplinski - Queen Recommendations for Resolving the Ilascu Case

How to resolve the situation: both internal and external variants are possible; both have advantages and disadvantages, degrees of acceptability and unacceptability to participants. Almost all would require statutory modifications. There is no simple road to judicial resolution of this case, but there are judicial ways to resolve it. (See A. Rzeplinski, Report, January 1994, pp. 14-15.)

Ideally, the prisoners should be turned over to the Moldovan authorities and the process reopened from the beginning. There is no question that jurisdiction in this case belongs to Moldova, but there are two complications. First, the public atmosphere has become politically charged as regards this case. What are called "terrorists" in Tiraspol are known as "patriots" in the Chisinau press.

Second, the Moldovan Supreme Court, the judicial body that would hear the case if the Prosecutor brings it before them, has already made public statements *en banc* about the case, dismissing the Tiraspol Court's actions as unconstitutional and illegal. While such statements might be expected from parliamentary bodies, the fact that they came from judicial authorities causes the Tiraspol leaders to say: "Why should we release the prisoners and ask for a new trial when the Chisinau courts have already said what their position will be?"

After interviewing participants and studying the documents, we suggest the following steps, which require both internal discussion with all participants and the support of international organizations. What follows is not a final proposal, but working suggestions reflecting issues all participants have raised and outlining steps toward a solution. The recommendations provide a preliminary framework; if the parties wish to move ahead toward a legal resolution of this issue, a meeting can be planned to refine the process.

Since there were systemic violations of procedural norms, we recommend the process be started from the beginning.

1) Reopen the investigation, with a three-person prosecutorial team of international experts familiar with Soviet-type criminal law and exposed to its Moldovan mutations. One of the international experts would be a specialist in the forensic-scientific aspects of criminal investigations.

The investigators would be free to examine all documents relevant to the case, interview witnesses, conduct examinations, and reach conclusions. We anticipate this aspect of the case would take approximately six weeks to complete.

At the same time, the prisoners would be placed under the prosecutor's jurisdiction. If the special prosecutor concludes there is no basis for a trial, the prisoners would be freed immediately and unconditionally, and could not be retried under any charges related to this matter.

The special prosecutor has a right to recommend a trial only on the murder charges, as opposed to political charges, in this process; such a trial would be held on neutral territory employing a panel of three international judges.

Parenthetically, if the special prosecutor does not recommend a new trial, relatives of the murder victims would have the right to appeal the case to the court, and the court would decide whether or not to accept the appeal.

2) The trial would be held in a city such as Tighina or a country lending its good offices, such as the Ukraine. We estimate such a process would take approximately three or more weeks.

3) The three judges would be familiar with the Moldovan Criminal Code, as amended, and the applicable international human rights statutes. Judges might come from such countries as Poland, Latvia, Lithuania, Belarus, and the Ukraine, as well as Western Europe. In addition, it is imperative that the six defendants be provided with expert legal counsel throughout the entire proceedings, and that an international legal expert be available as counsel to all participants at the trial, should there be one.

As in the case of the investigative process, the prisoners would be under the court's jurisdiction.

International organizations, such as the OSCE and Council of Europe, would assist participants with expert assistance throughout this process, including brokering conditions of the investigation and trial, and agreed-upon costs of the case.