



## The Belgian authorities did not examine the medical situation of a person suffering from serious illnesses who faced deportation to Georgia, and the impact of his removal on his family life

In today's **Grand Chamber** judgment<sup>1</sup> in the case of [Paposhvili v. Belgium](#) (application no. 41738/10) the European Court of Human Rights held, unanimously, that there would have been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights if Mr Paposhvili had been removed to Georgia without the Belgian authorities having assessed the risk faced by him in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, and

**a violation of Article 8 (right to respect for private and family life)** if Mr Paposhvili had been removed to Georgia without the Belgian authorities having assessed the impact of removal on the applicant's right to respect for his family life in view of his state of health.

The case concerned an order for Mr Paposhvili's deportation to Georgia, issued together with a ban on re-entering Belgium.

The Court noted that the medical situation of Mr Paposhvili, who had been suffering from a very serious illness and whose condition had been life-threatening, had not been examined by the Belgian authorities in the context of his requests for regularisation of his residence status. Likewise, the authorities had not examined the degree to which Mr Paposhvili had been dependent on his family as a result of the deterioration of his state of health.

The Court found, in particular, that in the absence of any assessment by the domestic authorities of the risk facing Mr Paposhvili, in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, the information available to those authorities had been insufficient for them to conclude that the applicant, if returned to Georgia, would not have run a real and concrete risk of treatment contrary to Article 3 of the Convention.

The Court also found that it had been up to the national authorities to conduct an assessment of the impact of removal on Mr Paposhvili's family life in the light of his state of health. In order to comply with Article 8 the authorities would have been required to examine whether, in the light of the applicant's specific situation at the time of removal, the family could reasonably have been expected to follow him to Georgia or, if not, whether observance of Mr Paposhvili's right to respect for his family life required that he be granted leave to remain in Belgium for the time he had left to live.

### Principal facts

The applicant, Georgie Paposhvili, was a Georgian national who was born in 1958 and lived in Brussels. He died on 7 June 2016. On 20 June 2016 the applicant's wife and her three children expressed the wish to pursue the proceedings before the Court.

Mr Paposhvili arrived in Belgium on 25 November 1998, accompanied by his wife and their six-year-old child. The couple subsequently had two more children. Between 1998 and 2007 Mr Paposhvili was convicted of a number of offences, including robbery with violence and

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

participation in a criminal organisation. While serving his various prison sentences, Mr Paposhvili was diagnosed with a number of serious medical conditions, including chronic lymphocytic leukaemia and tuberculosis, for which he received hospital treatment. He submitted several unsuccessful applications for regularisation of his residence status on exceptional or medical grounds. In August 2007 the Minister for the Interior issued a deportation order directing the applicant to leave the country, and barred him from re-entering Belgium for ten years on account of the danger he posed to public order. The order became enforceable once Mr Paposhvili had completed his sentence but was not in fact enforced, as he was undergoing medical treatment. On 7 July 2010 the Aliens Office issued an order for him to leave the country, together with an order for his detention. He was transferred to a secure facility for illegal immigrants with a view to his return to Georgia, and travel papers were issued for that purpose. On 23 July 2010 Mr Paposhvili applied to the European Court of Human Rights for an interim measure under Rule 39 of its Rules of Court suspending his removal; the request was granted. He was subsequently released. The time-limit for enforcement of the order to leave Belgian territory was extended several times. In November 2009 the applicant's wife and the three children were granted indefinite leave to remain in Belgium. Between 2012 and 2015 Mr Paposhvili was arrested on several occasions for shoplifting.

## Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), Mr Paposhvili alleged that substantial grounds had been shown for believing that if he had been expelled to Georgia he would have faced a real risk there of inhuman and degrading treatment and of a premature death.

Under Article 8 (right to respect for private and family life), Mr Paposhvili complained that his removal to Georgia, ordered together with a ten-year ban on re-entering Belgium, would have resulted in his separation from his family, who had been granted leave to remain in Belgium and constituted his sole source of moral support.

The application was lodged with the European Court of Human Rights on 23 July 2010. On 28 July 2010, under Rule 39 of the Rules of Court, the Court requested the Government not to remove Mr Paposhvili pending the outcome of the proceedings before the Aliens Appeals Board.

In its Chamber judgment of 17 April 2014 the European Court of Human Rights unanimously declared the application admissible and held that the enforcement of the decision to remove the applicant to Georgia would not entail a violation of Articles 2 and 3 of the Convention. The Court held by a majority that there had been no violation of Article 8 of the Convention.

On 14 July 2014 Mr Paposhvili requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber). On 20 April 2015 the panel of the Grand Chamber accepted that request. A hearing was held on 16 September 2015.

Judgment was given by the Grand Chamber of 17 judges, composed in this case as follows:

Guido **Raimondi** (Italy), *President*,  
Işıl **Karakaş** (Turkey),  
Luis **López Guerra** (Spain),  
Khanlar **Hajiyev** (Azerbaijan),  
Nebojša **Vučinić** (Montenegro),  
Kristina **Pardalos** (San Marino),  
Julia **Laffranque** (Estonia),  
André **Potocki** (France),  
Paul **Lemmens** (Belgium),  
Helena **Jäderblom** (Sweden),  
Valeriu **Griţco** (the Republic of Moldova),

Faris **Vehabović** (Bosnia and Herzegovina),  
Ksenija **Turković** (Croatia),  
Dmitry **Dedov** (Russia),  
Egidijus **Kūris** (Lithuania),  
Robert **Spano** (Iceland),  
Jon Fridrik **Kjølbro** (Denmark),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### Article 3 (prohibition of inhuman or degrading treatment)

The Court noted that Mr Paposhvili had been suffering from a very serious illness and that his condition had been life-threatening. He had provided detailed medical information obtained from a doctor specialising in the treatment of leukaemia and head of the haematology department in a hospital devoted entirely to the treatment of cancer. According to this information, the applicant's condition had become stable as a result of the treatment he was receiving in Belgium. This was a highly targeted treatment aimed at enabling him to undergo a donor transplant, which offered the last remaining prospect of a cure provided it was carried out within a fairly short timeframe. If the treatment being administered to Mr Paposhvili had been discontinued, his life expectancy, based on the average, would have been less than six months.

Mr Paposhvili had made two requests for regularisation of his residence status in Belgium on medical grounds, on the basis of section 9*ter* of the Aliens Act. His requests had been based primarily on the need to obtain appropriate treatment for his leukaemia and on the premise that he would have been unable to receive suitable care for his condition in Georgia. However, the requests had been refused by the Aliens Office on the grounds that Mr Paposhvili was excluded from the scope of section 9*ter* of the Act because of the serious crimes he had committed. The Aliens Appeals Board had held that, where the administrative authority had advanced grounds for exclusion, it was not necessary for it to examine the medical evidence submitted to it. With regard to the complaints based on Article 3 of the Convention, the Aliens Appeals Board had noted that the decision refusing leave to remain had not been accompanied by a removal measure, with the result that the risk of the applicant's medical treatment being discontinued in the event of his return to Georgia had been purely hypothetical. The *Conseil d'État* had upheld that reasoning, specifying that the medical situation of an alien who faced removal from the country and whose request for leave to remain had been refused should be assessed at the time of enforcement of the removal measure rather than at the time of its adoption.

The Court concluded that, although the Aliens Office's medical adviser had issued several opinions regarding Mr Paposhvili's state of health based on the medical certificates provided by the applicant, these had not been examined either by the Aliens Office or by the Aliens Appeals Board from the perspective of Article 3 of the Convention in the course of the proceedings concerning regularisation on medical grounds. Nor had Mr Paposhvili's medical situation been examined in the context of the proceedings concerning his removal. In the Court's view, the fact that an assessment of this kind could have been carried out immediately before the removal measure was to be enforced did not address these concerns, in the absence of any indication of the extent of such an assessment and its effect on the binding nature of the order to leave the country. Consequently, the Court considered that in the absence of any assessment by the domestic authorities of the risk facing Mr Paposhvili, in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, the information available to those authorities had been insufficient for them to conclude that the applicant, if returned to Georgia, would not have run a real and concrete risk of treatment contrary to Article 3 of the Convention. **The Court therefore held that if Mr Paposhvili**

**had been removed to Georgia without these factors being assessed, there would have been a violation of Article 3.**

#### Article 8 (right to respect for private and family life)

The Court observed that the Belgian authorities had likewise not examined the degree to which Mr Paposhvili had been dependent on his family as a result of the deterioration of his state of health. Indeed, in the context of the proceedings for regularisation on medical grounds, the Aliens Appeals Board had dismissed Mr Paposhvili's complaint under Article 8 on the ground that the decision refusing him leave to remain had not been accompanied by a removal measure. Nevertheless, the Court considered that it had been up to the national authorities to conduct an assessment of the impact of removal on Mr Paposhvili's family life in the light of his state of health; this constituted a procedural obligation with which the authorities had to comply in order to ensure the effectiveness of the right to respect for family life. In the Court's view, the Belgian authorities would have been required, in order to comply with Article 8, to examine whether, in the light of the applicant's specific situation at the time of removal, the family could reasonably have been expected to follow him to Georgia or, if not, whether observance of Mr Paposhvili's right to respect for his family life required that he be granted leave to remain in Belgium for the time he had left to live. Accordingly, **the Court held that if Mr Paposhvili had been removed to Georgia without these factors having been assessed, there would also have been a violation of Article 8 of the Convention.**

#### Article 41 (just satisfaction)

The Court held that its conclusion concerning Articles 3 and 8 constituted sufficient just satisfaction in respect of any non-pecuniary damage that Mr Paposhvili might have sustained. It also held that Belgium was to pay Mr Paposhvili's family 5,000 euros (EUR) in respect of costs and expenses.

#### Separate opinion

Judge P. Lemmens expressed a concurring opinion which is annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.