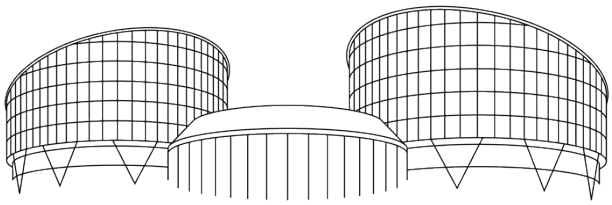

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BEKAURI v. GEORGIA

(Application no. 14102/02)

JUDGMENT
(Preliminary Objection)

STRASBOURG

10 April 2012

FINAL

10/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bekauri v. Georgia**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 20 March 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14102/02) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Pridon Bekauri ("the applicant"), on 31 March 2002.

2. The applicant was represented before the Court by Ms Eliso Butkhuzi, Ms Lia Mukhashavria and Mr Vakhtang Vakhtangidze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were successively represented by Mr Konstantine Korkelia, the former First Deputy Minister of Justice, and their current Agent, Mr Levan Meskhoradze of the Ministry of Justice.

3. The applicant mainly alleged that his life sentence was not compatible with Article 3 of the Convention.

4. By a decision of 29 June 2010 the Court declared the above-mentioned complaint under Article 3 of the Convention admissible, rejecting the remainder of application as inadmissible for various reasons

5. The Government and the applicant each filed, on 5 October and 30 November 2010 and 28 February 2011, their observations on the merits (Rule 59 § 1).

THE FACTS

6. The applicant was born in 1977 and is currently detained in Ksani prison no. 7.

I. AS THE CASE STOOD PRIOR TO THE COURT'S DECISION OF 29 JUNE 2010

7. On 2 May 2005 the Court communicated the application, asking the parties about the compatibility of the applicant's life sentence, which had resulted from his conviction for murder of a police officer, with Article 3 of the Convention.

8. On 30 August 2005 the Government submitted their observations on the admissibility and merits of the case, which the Court transmitted to the applicant, who was represented by Ms Butkhuzi ("the applicant's first representative") at that time. The representative was invited to submit observations on behalf of her client by 24 November 2005 but failed to do so. The Court then extended of its own motion the relevant time-limit until 10 February 2006, but the representative still failed to submit any observations.

9. By a letter of 14 February 2006 the Court, noting her persistent failure to submit observations on behalf of the applicant, advised Ms Butkhuzi that it would proceed with the examination of the case as its file stood.

10. On 10 May 2006 the applicant's first representative, claiming to have lost the case materials, requested the Court to provide her with a copy of the file. The Court granted that request on 16 May 2006.

11. On 3 July 2006 Ms Mukhashavria and Mr Vakhtangidze informed the Court of their designation as additional legal counsels for the applicant ("the new representatives") and expressed their intention to submit observations on the admissibility and merits of the case in the near future. The Court replied on 10 July 2006, reminding the new representatives of the applicant's unjustified failure to submit observations within the previously allotted and extended time-limits, in breach of the relevant procedural rules. The Court stated that no further extension of the relevant time-limit could be allowed at that stage and advised the new representatives to contact their colleague, Ms Butkhuzi, in order to obtain the necessary documents and additional information about the proceedings.

12. On 12 July 2006 the new representatives again requested the Court to give them another time-limit for the submission of observations. The Court rejected that reiterated request on 31 July 2006.

13. On 15 February 2007 the new representatives requested the Court to provide them with another copy of the case materials, explaining that the applicant's first representative had not shared the materials with them. In reply, the Court, noting that the relevant materials had already been sent to the first representative, still granted, as an exception, the new representatives' request on 6 March 2007 by providing them with another copy of the file.

14. On 7 May 2007 the applicant's new representatives reiterated for the third time their readiness to submit observations on behalf of the applicant.

15. On 21 January 2010 the applicant's father enquired with the Court about the state of the proceedings. He complained that he had been in a complete information vacuum as regards the development of the case and also requested to be provided with a copy of the case materials.

II. THE CIRCUMSTANCES DISCOVERED AFTER THE COURT'S DECISION OF 29 JUNE 2010

16. On 5 October 2010 the Government submitted, as part of their observations on the merits, a copy of the final and enforceable decision of 12 March 2007 of the Supreme Court of Georgia.

17. As disclosed by that decision, the Supreme Court, granting Ms Butkhuzi's request of 28 April 2006, had commuted the applicant's life sentence to the sixteen years' imprisonment in the light of amendments to the Criminal Code mitigating criminal responsibility for the offence he had committed. Consequently, the applicant's new prison term would expire and result in his release on 7 August 2014.

THE LAW

18. The applicant complained that the mode of the execution of his life sentence under Georgian law was incompatible with Article 3 of the Convention. This provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' arguments

19. In their observations on the merits of the applicant's complaint under Article 3 of the Convention, the Government raised two preliminary objections. Firstly, referring to the fact of the commutation of his life sentence by the Supreme Court on 12 March 2007, they submitted that the applicant had lost victim status. Secondly, the Government stated that the applicant's failure to inform the Court of such a focal development of his case amounted to an abuse of the right of individual petition, within the meaning of Article 35 § 3 of the Convention.

20. In reply, the applicant's new representatives, apart from maintaining the complaint on the merits, briefly commented that they had first learnt of the commutation of their client's life sentence during a meeting with him at the end of May 2010. They added that the applicant himself had learnt of the Supreme Court's decision of 12 March 2007 only in November 2007.

B. The Court's assessment

21. The Court points out that, according to Rule 47 § 6 of the Rules of Court, applicants, acting in person or through their legal representatives, are under the continuous obligation to keep the Court informed of all important circumstances regarding their pending applications. It recalls that an application may be rejected as abusive under Article 35 § 3 of the Convention if, among other reasons, it was knowingly based on untrue facts (see *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006; and *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 2004). Incomplete and therefore misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Pirtskhalaishvili v. Georgia* (dec.), no. 44328/05, 29 April 2010; and *Khvichia v. Georgia* (dec.), no. 26446/06, 23 June 2009). Furthermore, the Court reiterates that it cannot be its task to deal with a succession of ill-founded and querulous complaints or with otherwise manifestly abusive conduct of applicants or their authorised representatives, which creates gratuitous work for the Court, incompatible with its real functions under the Convention (see *Petrović v. Serbia* (dec.), no. 56551/11, 18 October 2011; and *The Georgian Labour Party v. Georgia* (dec.), no. 9103/04, 22 May 2007).

22. Returning to the circumstances of the present case, the Court first finds that the conduct of the applicant's first representative, Ms Butkhuzi,

was deplorable. Apart from the fact that she had failed to submit observations on the admissibility and merits of the case despite the extension of the relevant time-limit, had lost the case materials twice, had failed to cooperate with the applicant's other representatives and had apparently left the applicant's family in ignorance as regards the developments of the case, which omissions naturally resulted in an additional, gratuitous administrative workload for the Court, her negligent attitude went as far as withholding from the Court the crucial information about the commutation of the applicant's life sentence to the fixed prison term, which fact related to the very core of the subject matter of the present application.

23. As regards the applicant's new representatives, the Court finds it unacceptable that they, legal professionals who had assumed responsibility for the case as early as on 3 July 2006, did not learn about the commutation of their client's life sentence, which occurred in March 2007, until the end of May 2010. In any event, pursuant to their obligations under Rule 47 § 6 of the Rules of Court, both the applicant and his representatives should have informed the Court of that critical development of the case immediately upon its discovery, which important circumstance would then have been taken into consideration by the Court upon the examination of the admissibility of the application on 29 June 2010. Unfortunately, they failed to do so and did not even provide a justifiable explanation for that serious procedural omission.

24. The Court thus considers that the conduct of the applicant and of his representatives, in particular that of Ms Butkhuzi, was a "vexing manifestation of irresponsibility" (see *The Georgian Labour Party*, the decision cited above), incompatible with the purpose of the right of individual application as provided for in the Convention, and significantly impeded the proper functioning of the Court. In general, lawyers must understand that, having due regard to the Court's duty to examine allegations of human rights violations, they must show a high level of professional prudence and meaningful cooperation with the Court by sparing it from the introduction of unmeritorious complaints and, once proceedings have been instituted, then meticulously abide by all the relevant rules of the procedure and urge their clients to do the same. Otherwise, the wilful or negligent misuse of the Court's resources may undermine the credibility of lawyers' work in the eyes of the Court and even, if done systematically, may result in them being banned from representing applicants under Rule 36 § 4 (b) of the Rules of Court (see *Petrović*, the decision cited above).

25. In the light of the foregoing, the Court considers that the Government's preliminary objection is well-founded and the present

application is abusive within the meaning of Article 35 § 3 (a) *in fine* of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Upholds the Government's preliminary objection as to abuse of the right of petition and *holds* that it is unable to take cognisance of the merits of the case.

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President