

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

THIRD SECTION

DECISION

Application no. 17491/09
Mamuka ALADASHVILI
against Georgia

The European Court of Human Rights (Third Section), sitting on 3 April 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 February 2009,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the applicant's letter of 12 October 2011,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Mamuka Aladashvili, is a Georgian national who was born in 1989 and is currently serving a sentence in Rustavi Prison No. 16 ("Rustavi Prison"). He was represented before the Court by Mr Mamuka Nozadze, a lawyer practising in Gori. The Georgian

Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

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

## A. As the case stood prior to the applicant's request for withdrawal

3. On 29 May 2009 the Court gave notice to the respondent Government of the applicant's complaint under Article 3 of the Convention concerning his alleged contraction of pulmonary miliary tuberculosis and tubercular meningoencephalitis in prison, the respondent State's subsequent failure to provide adequate medical care for these diseases and the incompatibility of the conditions of the applicant's detention with his state of health.

4. On 7 July 2009, after the applicant had additionally complained of ill-treatment by prison staff and the Government's failure to fulfil an interim measure previously indicated by the Court on 11 June 2009 under Rule 39 of the Rules of Court, the Court decided to communicate these new issues as well, under Articles 3 and 34 of the Convention.

5. On 11 August 2009 the Government submitted their observations on the admissibility and merits of the case, reporting, *inter alia*, on the treatment provided to the applicant in prison both before and after the Court's intervention on 29 May 2009. In particular, it appeared that the applicant had been receiving anti-tuberculosis treatment with the relevant antibiotic drugs under the DOTS programme (Directly Observed Treatment, Short-course – the treatment strategy for the detection and cure of TB recommended by the World Health Organisation) both on an inpatient and outpatient basis since 28 May 2008. As a result of that treatment, which was successfully completed in May 2009, his state of health, as confirmed by the results of a comprehensive medical check-up conducted between May and June 2009, significantly improved. The relevant magnetic resonance screening and sputum and blood tests confirmed that there were no longer any traces of the relevant bacilli either in the applicant's lungs or in his meninges.

6. On 12 October 2011 the applicant personally informed the Court that he wished to withdraw his application. He explained that, as a result of the Court's effective intervention, the relevant domestic authorities had started providing him with the requisite treatment for his tuberculosis and that the purpose of his application had thus been achieved.

## B. Subsequent proceedings

7. On 16 November 2011 the Government, commenting on the applicant's request for withdrawal, confirmed again that he had been cured of tuberculosis in prison. Consequently, the Government submitted that the

treatment given to the applicant in prison fully had corresponded to the requirements of Article 3 of the Convention and that his request for the discontinuation of the proceedings was thus legitimate.

8. On 28 November 2011 the applicant's representative, Mr Mamuka Nozadze, objected, on behalf of his client, to the withdrawal of the application. The representative declared that the applicant had actually been forced by the prison authority to write request for withdrawal under threat of physical violence.

9. By a letter of 6 December 2011, the Court sent the representative's objection to the Government for comments and also invited the applicant and Mr Nozadze to clarify whether or not they had discussed the matter with each other before submitting the above-mentioned objection; the Court specified that the applicant should submit his comments in person.

10. On 8 December 2011 the Government Agent invited Mr Nozadze, in the light of the Court's instruction of 6 December 2011, to visit the applicant in prison together, so that the matter could be discussed in each other's presence transparently, and so that the applicant's real position on the issue of the withdrawal of his application could be discovered.

11. Mr Nozadze accepted the Government Agent's suggestion, and a meeting between them and the applicant took place in Rustavi Prison on 19 December 2011. As disclosed by a verbatim record of that meeting, the content of which was duly confirmed by the signatures of all three attendees, only then did the applicant learn for the first time of Mr Nozadze's objection to his request for withdrawal. Blaming his representative for that unsolicited intervention, the applicant confirmed his wish to withdraw his application from before the Court. He emphasised that he had never been subjected to any kind of pressure by the authorities and that it was his voluntary decision to request the discontinuation of the proceedings.

12. In a separate letter addressed to the Court on 20 December 2011, Mr Nozadze acknowledged that he had not consulted the applicant before submitting his objection of 28 November 2011. The representative confirmed that his client had unequivocally expressed his wish to have the proceedings discontinued during the meeting of 19 December 2011.

13. On 2 January 2012 the Government, noting the discrepancy between Mr Nozadze's objection and the applicant's own position on the withdrawal of the application, accused the former of misleading conduct within the meaning of Rule 44D of the Rules of Court.

# THE LAW

14. Having regard to the relevant circumstances of the present case, the Court regrets that the applicant's representative, without having ever discussed the matter with his client, took the liberty of making unsolicited statements on behalf of the latter, which gratuitously alarmed the Court and contradicted the applicant's own free will. The representative exceeded the authority given to him by the applicant and impeded the proper functioning of the Court. Furthermore, the incident under consideration is not a single, isolated instance of such uncooperative conduct by this lawyer, and a similar situation arose in another application represented by him (see *Kotchlamazashvili v. Georgia* (dec.), no. 42270/10, 3 April 2012). However, the Court reiterates that it cannot be its task to deal with a succession of ill-founded and querulous complaints or with otherwise abusive conduct of applicants or their authorised representatives, which creates gratuitous work for the Court, incompatible with its real functions under the Convention (see *The Georgian Labour Party v. Georgia* (dec.), no. 9103/04, 22 May 2007). 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 professional ethics. Otherwise, the wilful or negligent misuse of the Court's resources undermines the credibility of lawyers' work in the eyes of the Court and even, if done systematically, may result in them being excluded from the proceedings under Rules 36 § 4 (b) and 44D of the Rules of Court (see *Petrović v. Serbia* (dec.), no. 56551/11, 18 October 2011).

15. Furthermore, having regard to the applicant's own request for withdrawal of his application, which was reiterated in an unambiguous manner and reasonably explained by the fact of having received adequate medical care in prison, the Court is convinced that the applicant no longer wishes to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Acting under Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the application.

16. In view of the above, it is appropriate to lift the interim measure previously indicated under Rule 39 of the Rules of Court and to strike the case out of the list.

For these reasons, the Court unanimously

*Decides* to strike the application out of its list of cases.

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| Marialena Tsirli | Josep Casadevall |
| Deputy Registrar | President |