

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

THIRD SECTION
DECISION

Application no. 16206/06
Tamaz BERIDZE
against Georgia

The European Court of Human Rights (Third Section), sitting on 30 April 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 April 2006,

Having regard to the declaration submitted by the respondent Government on 15 November 2012 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Tamaz Beridze, is a Georgian national, who was born in 1950 and lives in Kutaisi. He was represented before the Court by Mr Z. Rostiashvili and Ms T. Tskhvediani, lawyers practising in Tbilisi.

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

3. On 31 August 2004 the applicant, a judge of the High Court of the Ajarian Autonomous Republic at the material time, was arrested for bribe-taking. His arrest, which took place on a street in the city of Batumi just as the alleged victim had left a sum of 3,000 USD in his vehicle, had been planned by police after receiving a complaint from the victim. The search, as a result of which the police marked USD notes were seized from the applicant's vehicle, was conducted in the presence of two independent witnesses.

4. On 3 September 2004 the Supreme Court of Georgia ordered the applicant's pre-trial detention for three months. Subsequently, the applicant's detention was extended several times. The applicant claimed, however, that his overall detention during the proceedings at first instance had lasted eighteen months and eleven days, exceeding the maximum period of pre-trial detention of twelve months allowed at the material time.

5. On 7 June 2006 the Kutaisi City Court convicted the applicant of bribery, an offence under Article 338 §1 of the Criminal Code of Georgia, and sentenced him to seven years' imprisonment. The court dismissed the applicant's allegation that the money had been planted in his vehicle as unsubstantiated. It accepted the victim's version of the events further supported by the testimony of the police officers involved in the covert operation and the independent witnesses who had been present during the search. Furthermore, the court relied on the results of the search of the applicant's vehicle and other crime-detection examinations, which, *inter alia,* established traces of chemical from the seized USD notes on the hands of the applicant.

6. The applicant's appeal on points of law was rejected by the Supreme Court of Georgia on 5 April 2007.

7. The applicant complained, under Article 5 § 1 of the Convention, that his initial detention without a court order had exceeded the maximum seventy-two-hour period permitted by domestic law. Relying on Article 6 § 1 of the Convention he also complained about his allegedly unlawful detention during the criminal proceedings conducted against him at first instance.

8. In an additional application form, lodged with the Court on 4 October 2007, the applicant further challenged, under Article 6 § 1 of the Convention, the outcome of the criminal proceedings conducted against him.

9. On 6 September 2011 the Court communicated to the Government the applicant's complaints under Article 5 § 1 of the Convention concerning the unlawfulness of his initial detention period without a court order and of his detention during the first-instance court proceedings.

THE LAW

A. The complaints under Article 5 § 1 of the Convention

10. After the failure of attempts to reach a friendly settlement, by a letter of 15 November 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the communicated part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

11. The relevant parts of the declaration read as follows:

> "... the Government hereby wish to express – by way of a unilateral declaration – their regretful acknowledgement of a violation of Article 5 § 1 of the Convention in the present case on account of exceeding seventy-two-hour statutory time-limit of initial detention as laid down in the domestic legislation. Further, the applicant's detention during the first instance court proceedings went beyond the maximum time-limit envisaged under the Code of Criminal Procedure of Georgia by approximately 6 months.
>
> The Government are prepared to pay Mr. Beridze 4 500 Euros. This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Georgian Laris at the rate applicable of the date of payment, and will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention of Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement ...
>
> In the light of the above-stated the Government believe that the unilateral declaration does adequately address the Applicant's grievances under the Convention."

12. By a letter of 12 December 2012, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the Government had not also acknowledged the unlawfulness of his conviction. The applicant also disputed the sum proposed by the Government.

13. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

14. It also recalls that, in certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued (see *Taktakishvili v. Georgia* (dec.), no. 46055/06, 16 October 2012). To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

15. Having due regard to the terms of the Government's unilateral declaration in the present case, the Court observes that their declaration contains a sufficiently clear acknowledgement of a breach of Article 5 § 1 of the Convention. In this regard, the Court notes that there already exists a well-established case-law concerning complaints about the unlawfulness of the initial period of detention without a court order (see *Salayev v. Azerbaijan*, no. 40900/05, §§ 44-48, 9 November 2010; *Farhad Aliyev v. Azerbaijan*, no. 37138/06, §§ 166-169, 9 November 2010, and *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010). The Court has also established in a number of cases its practice concerning complaints about the detention without judicial authorisation during the court proceedings (see, for example, *Korchuganova v. Russia*, no. 75039/01, § 56, 8 June 2006; *Baranowski v. Poland*, no. 28358/95, §§ 50-58, ECHR 2000-III, and *Gigolashvili v. Georgia*, no. 18145/05, §§ 106, 8 July 2008).

16. Hence, in view of the nature of the admission contained in the Government's declaration, as well as of the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)). Moreover, in light of the above considerations, and in particular given the clear case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

17. Moreover, the Court notes the Government's undertaking to convert the amount into the national currency at the rate applicable at the date of payment, and to pay within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. It further interprets the Government's declaration as meaning that in the event of a failure to pay the compensation proposed within the above stated period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

18. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could

be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

B. Other alleged violations of the Convention

19. As regards the applicant's complaint under Article 6 § 1 of the Convention about the outcome of the criminal proceedings conducted against him, the Court, in the light of all the material in its possession and in so far as the matters complained of are within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 5 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application, in so far as it relates to the complaints under Article 5 § 1 of the Convention, out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President