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

FOURTH SECTION

DECISION

Application no. 21785/10
Gocha BREGADZE
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 1 June 2015 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Faris Vehabović,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 April 2010,

Having regard to the declaration submitted by the respondent Government on 3 February 2014 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 Gocha Bregadze, is a Georgian national, who was born in 1978. He was represented before the Court by Mr G. Lobzhanidze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

2. The part of the application concerning the alleged lack of medical care for the applicant in prison had been communicated to the Government under Article 3 of the Convention on 30 August 2010. In particular, the complaint consisted in an allegation that the prison authorities were late in diagnosing the applicant with pulmonary tuberculosis (TB) and providing him with appropriate treatment despite the fact that he requested such treatment on 21 February 2010, the day when he suddenly started bleeding from the mouth ("the oral bleeding incident").

3. As part of their observations on the admissibility and merits of the case filed with the Court on 22 December 2010, the Government submitted a full copy of the applicant's prison medical file. The documents disclosed that the applicant was checked for TB both before the oral bleeding incident, with a bacterioscopic test of his phlegm occurring on 14 January 2010, and after it, with an X-ray of the lungs and repeat bacterioscopic test taking place on 25 February and 20 May 2010 respectively. Those medical examinations, which were closely supervised by a phtisiologist and other medical specialists, did not show the existence of any traces of TB. It was only on 26 October 2010, when a third bacterioscopic test of the applicant's phlegm was conducted, that its results suggested that the applicant was contaminated with TB. Already on 2 November 2010 the applicant was involved into a special anti-TB treatment program (DOTS) in prison, within the framework of which he started receiving an array of the requisite antibiotics. The result of the treatment was successful, as already by the end of November 2010 the results of a comprehensive examination of the applicant's health at the Prison Hospital confirmed that, his TB being sensitive to the administered drugs, he was quickly recovering. The medical file also disclosed that the applicant was receiving requisite treatment for his certain gastric problems in prison.

4. Albeit maintaining his application, the applicant neither disputed the Government's post-communication submissions nor submitted any just satisfaction claims.

5. On 12 September 2012 the applicant was released from prison.

COMPLAINTS

6. The applicant made two unrelated complaints under Article 3 of the Convention: (i) that he was denied medical care for his tuberculosis in prison, and (ii) that he was ill-treated by unidentified police officers upon his arrest. No other details concerning the second complaint were given.

THE LAW

A. As regards the complaint about the lack of medical care in prison

7. After the failure of attempts to reach a friendly settlement, by a letter of 3 February 2014 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the communicated part of the application.

8. Thus, noting that the relevant State authorities duly provided the applicant with all necessary medical treatment immediately after diagnosing him with TB for the first time in October 2010, the Government nevertheless acknowledged that between May and October 2010 there had been no proper medical screening of the applicant's health in breach of the State's positive obligations under Article 3 of the Convention. In that connection, the Government undertook to pay the applicant 1,500 (one thousand five hundred) euros to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, which will be converted into the national currency at the rate applicable on the date of payment, and will be free of any taxes that may be applicable, and it will be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay this sum within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. They further requested the Court to strike out the application.

9. By a letter of 5 March 2013, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the proposed amount was low and that the declaration did not refer to his alleged ill-treatment by unspecified police officers upon his arrest.

10. The Court reiterates 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".

11. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

12. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary issues) [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, 18 September 2007).

13. The Court has established in a number of cases, including those brought against Georgia, its practice concerning complaints about the absence of adequate medical care for various life-threatening diseases,

including pulmonary TB, in prison (see, for example, *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 75-93, 22 November 2011; *Poghosyan v. Georgia*, no. 9870/07, §§ 46-62, 24 February 2009; *Goginashvili v. Georgia*, no. 47729/08, §§ 57-61 and 71-81, 4 October 2011; *Jeladze v. Georgia*, no. 1871/08, §§ 43-50, 18 December 2012; and *Jashi v. Georgia*, no. 10799/06, §§ 63‑66, 8 January 2013). Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is adequate in the particular circumstances of the present case – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

14. Moreover, in light of the above considerations, and in particular given the clear and extensive 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 application (Article 37 § 1 *in fine*).

15. The Court notes the modalities agreed by the respondent Government for the payment of the amount proposed (see paragraph 8 above).

16. 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 (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

17. Accordingly, the complaint covered by the Government's unilateral declaration should be struck out of the list.

B. As regards the complaint concerning the applicant's alleged ill-treatment

18. As to the applicant's complaint under Article 3 of the Convention about the alleged ill-treatment by unidentified police officers on an unspecified date, apart from the fact that it is clearly unsubstantiated, the Court notes that, according to the materials available in the case file, the applicant never voiced that particular grievance before the relevant domestic authorities.

19. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 3 of the Convention concerning the lack of medical care in prison and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike a part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 9 July 2015.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President