

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

THIRD SECTION

CASE OF GOLOSHVILI v. GEORGIA

(Application no. 45566/08)

JUDGMENT

STRASBOURG

20 November 2012

FINAL

20/02/2013

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



In the case of Goloshvili v. Georgia,

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

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 45566/08) 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 Giorgi Goloshvili ("the applicant"), on 16 July 2008.

2. The applicant was represented successively by Mr Shalva Khachapuridze and Mr Mamuka Nozadze, lawyers practising in Georgia. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze, of the Ministry of Justice.

3. The applicant alleged that he had been infected with pulmonary tuberculosis and that the relevant authorities had failed to provide adequate medical care in prison, in breach of Article 3 of the Convention.

4. On 4 January 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The parties submitted observations on the admissibility and merits of the communicated complaints (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1988 and is currently serving a prison sentence in Geguti no. 8 Prison.

A. Criminal proceedings

7. On 8 March 2006 the applicant was arrested in connection with a robbery.

8. On 16 October 2006 the Kaspi District Court convicted him and three others of conspiracy to commit robbery. The conviction was based on various evidence, including the statements of the victim, who had identified the applicant and the other accused as the perpetrators during the trial. The applicant was sentenced to six years in prison.

9. As disclosed by the transcript of the trial, the victim, a person of Azerbaijani origin who had difficulty in speaking Georgian, was assisted by an interpreter. The lawyers of the accused, including that of the applicant, extensively examined the victim and other witnesses for the prosecution.

10. On 8 November 2006 the applicant appealed against the conviction of 16 October 2006, calling into question the lower court's assessment of the evidence and accusing the investigating authority of procedural omissions. He stated, in particular, that the victim's incriminating statements lacked credibility, in so far as the victim had been examined at the investigation stage without the assistance of an interpreter.

11. On 25 May 2007 the Tbilisi Court of Appeal, replying to all his major arguments, dismissed the applicant's appeal of 8 November 2006. As regards the complaint concerning the victim's statements, the court noted that the conviction had been based on the statements given during the trial, rather than on those obtained at the investigation stage. Having reviewed those statements, the appellate court confirmed their credibility.

12. The decision of 25 May 2007 dismissing the applicant's appeal was finally upheld by the Supreme Court of Georgia on 17 January 2008.

B. The applicant's state of health

13. According to the case file, prior to the initiation of the criminal proceedings against the applicant and his consequent detention, he had had no major medical problems and was in good health. Notably, he had been a member of a wrestling club in Gori and, as his coach confirmed, had been in excellent physical condition and been considered a promising sportsman at that time.

14. The case file also contains a document dated 4 November 2008 from the Gori tuberculosis hospital, stating that the applicant had never been registered as a patient there.

15. Subsequent to his arrest on 8 March 2006, the applicant was placed in Tbilisi no. 5 Prison, where he allegedly shared a cell with prisoners infected with pulmonary tuberculosis ("TB").

16. On 29 February 2008, the applicant was transferred to Geguti no. 8 Prison, where his state of health began to deteriorate from late May 2008. His symptoms were fever and a cough.

17. On 18 June 2008, pursuant to a complaint of 17 June 2008 from the applicant's mother, a medical expert examined the applicant, diagnosing him with TB. On the same day he was transferred to Ksani Prison, where prisoners with TB were housed.

18. As disclosed by the circumstances of the case, on 7 July 2008 a medical expert of Ksani TB Prison issued an opinion which confirmed that the applicant's right lung had been affected by TB, with a positive sputum culture, and that the disease was at the stage of disaggregation; the applicant was occasionally coughing up blood. The opinion further disclosed that the applicant had started receiving anti-TB medication under the DOTS programme (*Directly Observed Treatment, Short-course* – the treatment strategy for detection and cure of TB recommended by the World Health Organisation) on 26 June 2008. Notably, he had been prescribed with daily dosages of such conventional antibiotics as isoniazid (300 mg), ethambutol (1,100 mg), rifampicin, pyrazinamide (1,600 mg) and streptomycin (1 gr).

19. On 2 July 2008 the prison authorities arranged for the applicant's sputum culture and sensibility to be tested by the National Centre for Tubercular and Lung Diseases. The results of those tests, issued on 2 September 2008, showed that the sputum culture was already negative. It was also established that the applicant's TB bacterium maintained sensitivity with respect to the administered antibiotic drugs, which confirmed the suitability of the ongoing treatment.

20. On 19 September 2008 the prison authority arranged for another round of specific bacteriological tests (smear, culture and susceptibility), the results of which, issued on 22 September 2008, disclosed that the applicant's treatment was continuing to show promising results.

21. On 26 February 2009 the applicant's treatment was completed, and on the following day he was transferred from Ksani TB Prison to Geguti no. 8 Prison. The termination of the treatment was based on the opinion of the doctor who had been monitoring the applicant since 26 June 2008, as well as on the results of laboratory tests of the applicant's sputum, dated 18 February 2008, which confirmed that TB bacilli were no longer present in the applicant's lungs.

22. The applicant's medical file further discloses that during the whole period of his treatment, from 26 June 2008 until 26 February 2009, his intake of antibiotics had been closely monitored by medical personnel with the appropriate training.

23. On 19 April 2010 the prison authorities arranged for an X-ray examination of the applicant's thorax, the results of which confirmed that there were no new tubercular signs in the applicant's lungs, thus excluding the risk of relapse.

II. RELEVANT DOMESTIC LAW

24. Article 207 of the General Administrative Code stated that an individual could sue a State agency for damage under the rules on liability for civil wrongs contained in the Civil Code.

25. Article 413 of the Civil Code entitled an individual to request compensation for non-pecuniary damage caused in respect of damage to his or her health.

THE LAW

I. THE SCOPE OF THE CASE

26. The Court notes that, after the communication of the application to the respondent Government concerning the alleged infection of the applicant with pulmonary TB and the absence of adequate medical care in prison, the applicant introduced new grievances concerning allegedly poor material conditions of his detention in Tbilisi no. 5 Prison (overcrowding, lack of hygiene, ventilation, daylight, and so on).

27. In the Court's view, since the new grievances cannot be considered an elaboration of the applicant's two original complaints, on which the parties have commented, these matters cannot be taken up in the context of the present application (see, for instance, *Saghinadze and Others v. Georgia*, no. 18768/05, § 72, 27 May 2010, and *Kats and Others v. Ukraine*, no. 29971/04, § 88, 18 December 2008).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained under Article 3 of the Convention that he had been infected with pulmonary TB in prison and that the State had not provided him with timely and adequate medical care. This provision reads as follows:

Article 3

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

A. Admissibility

1. The parties' arguments

29. The Government submitted that the complaints under Article 3 of the Convention were premature, as the applicant had not sought monetary compensation for the alleged infection with TB and the subsequent lack of adequate medical treatment for that disease in prison. Referring to a number of court decisions in unrelated but relevant civil cases, the Government argued that the applicant should have sued the relevant State authority and requested compensation for non-pecuniary damage under the relevant provisions of the General Administrative Code and the Civil Code. Furthermore, if he believed that he was sharing a prison cell with inmates infected with TB in Tbilisi Prison no. 5, he could have requested the prison authorities, under the Imprisonment Act of 22 July 1999, to arrange for him to be transferred to another, uncontaminated cell. The Government thus stated that the complaints under Article 3 of the Convention should be rejected under Article 35 §§ 1 and 4 for non-exhaustion of domestic remedies.

30. As regards the particular complaint concerning the alleged infection of the applicant with TB in prison, the Government added that, in the light of the applicant's medical file, it was manifestly ill-founded.

31. The applicant replied that the remedies suggested by the Government had been irrelevant and inaccessible in his particular situation. Notably, he claimed that the transmission of TB in Georgian prisons was a general problem, whilst the possibility of bringing a civil action for damages before a court was complicated by court fees which he could not afford. He maintained that he had been infected with TB in prison.

2. The Court's assessment

(a) As to the alleged infection of the applicant with TB in prison

32. Given that the complaint in question does not concern the structural problem of inadequate treatment of Georgian prisoners suffering from serious contagious diseases at the material time (see *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 54, 22 November 2011) but rather relates to the applicant's personal situation of having contracted the relevant infection, the Court is of the opinion that a civil claim for damages under Article 207 of the General Administrative Code and Article 413 of the Civil Code was, in the circumstances, the most relevant remedy to be used (compare, for instance, with *Buzychkin v. Russia*, no. 68337/01, §§ 74 and 75, 14 October 2008; *Gladkiy v. Russia*, no. 3242/03, § 78, 21 December 2010; *Sizov v. Russia (no. 2)*, no. 58104/08, §§ 31-33, 24 July 2012; and see

also *Goginashvili v. Georgia*, no. 47729/08, §§ 48-50, 4 October 2011 and *Makharadze and Sikharulidze*, cited above, §§ 53 and 54, where the Court acknowledged that the compensatory and preventative remedies could, in principle, co-exist and that the extent of their relevance in each particular case depended upon the exact nature of a prisoner's health-related complaints made under Article 3 of the Convention).

33. However, since the fully cured applicant has never attempted to bring such a civil claim for damages for his alleged infection with TB in prison, the Court considers that his complaint must now be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) As to the absence of adequate medical care in prison

34. The Court reiterates that, given the specific nature of the problem of the absence of adequate medical care in the Georgian prison sector, rather than claiming monetary compensation a more appropriate course of action for a seriously ill detainee would be to seek preventative remedial action, requesting a specific medical intervention aimed at a direct and timely alleviation of the sufferings caused by the ongoing disease. However, prior to 1 October 2010 Georgian law and practice, including the Imprisonment Act of 22 July 1999, did not provide for an effective legal avenue for obtaining injunctive relief in such medical situations; consequently, it was sufficient for an ill detainee who wished to complain to the Court under Article 3 of the Convention about a lack of adequate medical care to have placed the relevant domestic authorities on alert with respect to his state of health (see *Goginashvili v. Georgia*, cited above, §§ 51-61, and *Makharadze and Sikharulidze v. Georgia*, also cited above, §§ 53-55).

35. Having regard to the relevant circumstances of the present case, the Court observes that the prison authorities were sufficiently aware of the applicant's TB and his associated medical needs. Consequently, the Government's objections of non-exhaustion should be dismissed. It follows that the applicant's complaint under Article 3 of the Convention concerning the alleged lack of adequate medical care for his TB is neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. The complaint must therefore be declared admissible.

B. Merits

36. With respect to the adequacy of the applicant's treatment, the Government, submitting a copy of his medical file accounting for the treatment provided to him on 18 June 2008, referred to various relevant circumstances and claimed, on the basis of those circumstances (see paragraphs 17-23 above), that the treatment had been adequate. The

Government emphasised that the applicant had been cured of TB as result of that effective and timely treatment.

37. The applicant disagreed.

38. The Court reiterates that, when assessing the adequacy of medical care in prison, it must in general reserve sufficient flexibility when defining the required standard of health care, which must accommodate the legitimate demands of imprisonment but remain compatible with human dignity and the due discharge by the State of its positive obligations. In this respect, it is incumbent upon relevant domestic authorities to ensure, in particular, that diagnosis and care are prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic and involved a comprehensive therapeutic strategy. The mere fact of a deterioration of the applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the treatment in prison, does not suffice as such for a finding of a violation of the State's positive obligations under Article 3 of the Convention, if, on the other hand, it can be established that the relevant domestic authorities have in timely fashion resorted to all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question. Indeed, the State's obligation to cure a seriously ill detainee is one of means, not of result (see, among other authorities, *Goginashvili*, cited above, §§ 69-71).

39. Having due regard to his medical file, the Court notes that the prison authorities first took charge of the applicant's TB on 18 June 2008, that is only a day after the applicant's mother had voiced her complaint about her son's health for the first time. By 26 June 2008 the applicant had already started receiving appropriate antibiotics under the DOTS programme. He also benefited from regular and comprehensive medical examinations and consultations with medical specialists, which allowed for the treatment to be reviewed and adjusted according to his specific needs. In this respect, the Court attaches particular importance to the fact that the antibiotics, which had been supplied by the prison authorities in sufficient quantity for the whole duration of the applicant's treatment (eight months), were closely monitored by clinicians with the appropriate training, and there had been full access to well-equipped bacteriological laboratories, located in a civilian medical institution, for all the necessary smear, culture and susceptibility tests (see paragraphs 19-22 above and contrast with *Makharadze and Sikharulidze*, cited above, §§ 78-81; see also *Gladkiy*, cited above, § 94).

40. Thus, as a result of the prompt and accurate diagnosis of the applicant's TB, the subsequent regular and systematic clinical assessment and bacteriological monitoring of the applicant's condition, and the administration of the relevant drugs in the requisite dosages, formed part of the comprehensive therapeutic strategy which finally resulted in the

applicant's recovery from TB by February 2009. It is also noteworthy that the prison authority arranged for a fluorography check-up in April 2010, the results of which confirmed that there had been no relapse (compare, for instance, with *Pakhomov v. Russia*, no. 44917/08, §§ 67-69, 30 September 2011, and *Khatayev v. Russia*, no. 56994/09, §§ 88, 89 and 91, 11 October 2011).

41. In the light of the foregoing, the Court concludes that the prison authorities have shown a sufficient degree of due diligence in providing the applicant with prompt and systematic medical care. Accordingly, there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

42. Relying on Articles 6 § 1 and 13 of the Convention, the applicant claimed innocence, accusing the domestic courts of erroneous assessment of the evidence. He argued, in particular, that the victim's incriminating statements lacked credibility and should not have been confirmed by the conviction of 16 October 2006.

43. The Court notes that the applicant's questions, under Article 6 § 1 of the Convention, about the outcome of the criminal proceedings against him challenge the domestic courts' findings of fact. In other words, the applicant requests the Court to act as an appeal court of "fourth instance". However, the Court reiterates that the domestic courts are best placed to assess the relevance of evidence to issues in the case and to interpret and apply rules of substantive and procedural law (see, amongst many authorities, *Patsuria v. Georgia*, no. 30779/04, § 86, 6 November 2007, and *Kobelyan v. Georgia*, no. 40022/05, § 14, 16 July 2009). All the applicant's arguments concerning the accuracy of the assessment of the evidence, including the victim's statements, were voiced by his lawyer before the domestic courts without any impediment, and the courts then examined those arguments and gave answers; their reasoning does not disclose any manifest arbitrariness (see, for comparison and by contrast, *Melich and Beck v. the Czech Republic*, no. 35450/04, §§ 52 and 53, 24 July 2008).

44. Finally, the Court notes that no separate issue arises under Article 13 of the Convention on account of the applicant's disagreement with the outcome of the domestic proceedings.

45. Consequently, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 3 of the Convention concerning the alleged absence of adequate medical care for the applicant's tuberculosis in prison admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 20 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President