

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

THIRD SECTION

# CASE OF JANIASHVILI v. GEORGIA

*(Application no. 35887/05)*

JUDGMENT

STRASBOURG

27 November 2012

**FINAL**

27/02/2013

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



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

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 6 November 2012,

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

# PROCEDURE

1. The case originated in an application (no. 35887/05) 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 Givi Janiashvili ("the applicant"), on 29 June 2005.

2. The applicant was represented by Ms Tsira Javakhishvili, Ms Kesaria Tsartsidze and Mr Zurab Rostiashvili, lawyers practising in Tbilisi. The Georgian Government ("the Government") were successively represented by their Agents, Mr Mikheil Kekenadze, Mr Davit Tomadze and Mr Levan Meskhoradze, of the Ministry of Justice.

3. On 29 November 2007 the application was communicated, under Articles 3, 5 and 8 of the Convention, to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. 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

5. The applicant was born in 1962 and lives in Tbilisi.

## A. First set of criminal proceedings

6. On 13 May 2004 at around 10 p.m. the applicant, who was apparently being sought by the Ministry of State Security, was leaving Georgia through the Vale border checkpoint when he was stopped by officers of the border police and subjected to a strip search. His luggage was also searched. No illegal objects or substances were found. The applicant's papers were also legal and in order. Nonetheless, the applicant was detained and the State Security Ministry was informed accordingly.

7. While waiting for the Ministry officials to arrive at the border, the applicant was kept in the house of the head of the border police in Akhaltsikhe, the capital of the region, about thirty kilometres from the border. He was not under formal arrest at that point. The representatives of the Ministry of State Security arrived on 14 May 2004 at around 5.10 a.m., and an official document on the applicant's handover was subsequently drawn up by the representatives of both authorities.

8. At an unspecified location, on 14 May 2004 at 7.20 a.m., the officials of the Ministry of State Security proceeded to search the applicant again. According to the report drawn up at the time, the second search took place at the Vale border checkpoint and an illegal substance was discovered in the applicant's luggage. An arrest report was drawn up.

9. Later on 14 May 2004, with his lawyer present, the applicant was charged with buying, handling and illegally transporting 0.06 grams of heroin. The decision to bring charges against the applicant indicates that he claimed that no drugs had been found during the search.

10. On 16 May 2004 the applicant's lawyer gathered written statements from various guards and other agents of the border police who had been present during the applicant's arrest at the Vale checkpoint. They all confirmed that no illegal objects or substances had been found during the first search carried out on the applicant at the checkpoint (see paragraph 6 above).

11. On 16 May 2004 the Adigeni Court of First Instance decided to place the applicant in pre-trial detention for three months. This decision was upheld by the Tbilisi Regional Court on 2 June 2004. The Regional Court gave as the main reason for its decision, after replying to each of the arguments mentioned in the applicant's appeal against the previous court decision, the risk of absconding which followed from the applicant's attempt to cross the border with Turkey without permission; thus, the court cited as a fact that the applicant had been placed by a court order under compulsory psychiatric treatment since 20 January 2005 in relation to unrelated criminal proceedings for murder, and thus had no right to leave the country without the consent of the relevant medical institution.

12. It is not clear from the case file which custodial institution the applicant was placed in at that time.

13. On 2 June 2004 the applicant's lawyers lodged an application with the investigator in charge of the case to have evidence heard from Mr N.N., who had been cited as a witness in the police report of the search during which the heroin had supposedly been found by the officials of the Ministry of State Security. According to both Mr N.N. and his wife, he had spent the entire night in question at home and had not witnessed any kind of search by Ministry officials.

14. On 13 August 2004 the Tbilisi Regional Court extended the period of the applicant's pre-trial detention until 14 September 2004. In the reasoning part of the decision, the court stated "in view of the particular gravity of the charge, the applicant may impede the establishment of the truth, abscond or continue his criminal activities".

15. On 13 September 2004 the Tbilisi Regional Court further extended the applicant's pre-trial detention by two months. The court gave two reasons for its decision: the gravity of the charge and the need to conduct a forensic psychiatric assessment of the applicant to establish whether he could be held responsible for the impugned offence.

16. On 13 November 2004 the Supreme Court of Georgia decided to extend the applicant's pre-trial detention until 14 January 2005. The Supreme Court stated that in view of the particular gravity of the charge against the applicant, it was reasonable to assume that he could abscond or impede the establishment of the truth; additional time was necessary for the conduct of a number of unspecified investigative measures.

17. On 17 November 2004 the applicant was placed in cell no. 99 of Tbilisi Prison No. 5.

18. On 20 November 2004 the applicant was transferred to the medical wing of the same prison, cell 123, where he stayed, under the constant supervision of medical personnel, until his release on 3 May 2005 (see paragraph 20 below).

19. The trial started before the Aspindza District Court on 13 January 2005, during which the border police officers asserted that no illegal objects or substances had been found during the search at the Vale checkpoint and that the applicant had not been subjected to another search before being handed over to the officials of the Ministry of State Security who had come for him from Tbilisi. The State Security Ministry officials who had signed the report on the second search were called upon to identify Mr N.N., whom they had allegedly asked to be a witness. None of them was able to identify him.

20. On 3 May 2005 the Aspindza Court acquitted the applicant and ordered his immediate release. The prosecutor's office appealed against the judgment. The appeal was dismissed and the acquittal upheld by the Tbilisi Court of Appeal on 20 September 2006.

## B. The second set of criminal proceedings

21. On 9 May 2005 an officer of the Ministry of the Interior reported to his superiors that he had discovered incidentally, during the telephone tapping he had been carrying out in connection with unrelated criminal proceedings, that the applicant might be a drug addict, keeping heroin in his home for resale. On the same day, proceedings for a drug offence were instituted.

22. By an order dated 11 May 2005, the Tbilisi City Court, having regard to the above-mentioned information, authorised the police to conduct a personal search of the applicant as well as of his domicile.

23. On 12 May 2005 the investigators in charge of the newly instituted drugs case issued a warrant for the arrest of the applicant as an accused.

24. On 12 May 2005 an arrest operation was carried out at the applicant's home. The investigators, accompanied by members of the special forces wearing balaclavas, shot their way into the house. They searched the premises and arrested the applicant at 2.20 p.m. They then proceeded to strip-search him between 2.30 and 2.40 p.m. The police report of the arrest states that the applicant had an injury to his forehead because he had resisted the police officers and the use of force had become necessary. During the strip search, 1.44 grams of heroin were found in the applicant's pyjama pocket. The search of the house took place between 2.30 and 3.20 p.m. Two unused syringes and a blackened spoon were seized.

25. The applicant produced a video recording of the operation. It showed around ten or more police officers entering the applicant's house firing shots and the applicant being arrested and handcuffed with his hands behind his back. The recording does not show the alleged beating; however, it can be seen that before the strip search began the applicant had an open wound on his forehead. A police officer informed the applicant of the court decision of 11 May 2005 authorising the search of his home and the strip search. He asked the applicant if he was in possession of any illegal items. The applicant consented to being strip searched and answered that he "was not in possession of anything illegal, unless they themselves had brought along something of the sort". The house was searched from top to bottom (drawers, boxes, bags, wardrobes and handbags were opened, mattresses were overturned, and so on). A blackened spoon was discovered in the bathroom, behind the toilet. Only the applicant's wife was present during the search. She was not present during the strip search carried out on her husband, who called to her at the end: "Girl, they've planted drugs in my pocket". The applicant's wife screamed that the police were unscrupulous and went to call a lawyer.

26. On 12 May 2005 the applicant lodged a complaint with the investigator in charge of the case, stating that he had resisted the fifteen State agents who had burst into his house only when one of them had

attempted to slip heroin into his pocket. He had then been beaten with rifle butts. He requested a medical examination, claiming that he was in pain all over his body.

27. On the same day the applicant was examined by a doctor from the detention unit of the Ministry of the Interior, who found bruises on his forehead, around his eyes and under his left armpit. He noted that the applicant had sore ribs, that he was complaining of being sore all over and that he claimed to be suffering from hepatitis and drug addiction.

28. On 13 May 2005, with his two lawyers present, the applicant was charged with concealing drugs.

29. On 14 May 2005 the Tbilisi Regional Court upheld the legality of the records of the search of the applicant's home and the strip search of 12 May 2005.

30. On 15 May 2005 the Tbilisi City Court decided to place the applicant in pre-trial detention; this decision is not included in the case file. He was then placed in cell 123 of the medical wing of Tbilisi Prison No. 5, where he started receiving treatment for his symptoms under the supervision of medical specialists.

31. On 19 May 2005 the Tbilisi Regional Court upheld the decision of 15 May 2005 on the grounds that, in view of all of the documents in the case file, it was reasonable to suspect the applicant of having committed the acts of which he was accused, that he was accused of a particularly serious crime, and that there had been no violation of his procedural rights.

32. On 18 May 2005 an independent medical examination was carried out at the request of the applicant's lawyers. According to the medical report, the applicant was suffering from headaches and pains in the chest and back, and had trouble keeping his balance because of dizziness. Chest pain prevented him from breathing normally. The applicant had bruises on his left eye, a bruise measuring 2.5 cm by 0.2-0.3 cm under his right eye, an open wound and bruises on the right-hand side of his forehead (one of which measured 2 cm by 1.5 cm). He also had bruises measuring 3.5 cm by 2.5 cm and 3 cm by 0.3 cm on the left-hand side of his forehead, as well as bruises around his fifth, sixth and seventh ribs on the left side, measuring 6 cm by 0.2-03 cm, 5 cm by 0.3-0.4 cm and 6 cm by 0.2-0.3 cm. The applicant had trouble walking, as he was suffering from intense pain in his left buttock. The expert considered that the injuries could date back to 12 May 2005 and could have been inflicted in the circumstances alleged by the applicant. The medical report contains numerous photographs of the applicant and records the above-mentioned injuries.

33. On 6 June 2005 the lawyers requested that the court order a psychiatric report to ascertain whether the applicant could be held responsible for his actions at the material time.

34. On 22 June 2005 the applicant was examined by a medical assessment panel which found that he was suffering from chronic hepatitis

C (HCV), a cerebral syndrome from a previous head injury and chronic inflammation of the gall bladder.

35. The case file shows that since 1981 the applicant had been undergoing treatment by doctors from his local psychiatric hospital. According to expert reports from 1984-87, he was not responsible for his actions at that time and was suffering from a personality disorder, compounded by a head injury and psychosis. He was subsequently admitted to hospital on numerous occasions and even underwent compulsory treatment in a secure psychiatric institution on the basis of court decisions issued in 1997 and on 12 December 2002. The compulsory treatment ordered on the latter date lasted until 20 January 2004. As reported in an expert opinion dated 17 November 2004, the applicant was suffering from a severe personality disorder, compounded by a head injury and psychotic tendencies.

36. On 3 August 2005 expert psychiatrists, commissioned by the investigation, assessed the applicant's mental health. The experts confirmed the medical diagnosis of 17 November 2004, adding that the applicant had been partially responsible for his actions at the material time.

37. On 28 September 2005 the applicant was placed, on the basis of a medical opinion, in the prison hospital, where he received appropriate treatment for headaches, insomnia and depression. He also underwent a complete haematological staging in order to have his HCV activity monitored.

38. On 29 June 2005 the Tbilisi City Prosecutor's Office, allowing the applicant's criminal complaint of 28 June 2005, launched an investigation of allegations of abuse of power and disproportionate use of force by agents of the Ministry of the Interior during the applicant's arrest on 12 May 2005. After interviewing the applicant, his wife and witnesses on his behalf, who had been guests at the applicant's house on 12 May 2005 when the police arrived, as well as the law-enforcement officers who had participated in the applicant's arrest, examined the results of the medical examination of 18 May 2005 and conducted certain other investigative measures, the prosecuting authority decided, in a resolution of 29 December 2005, to abandon the investigation, as no criminal acts had been found to have been committed by the Ministry's agents. Notably, the prosecuting authority concluded that the minor injuries that the applicant had sustained during the arrest resulted from his own resistance to the police's lawful orders in an attempt to abscond, and that the agents had not exceeded their official duties, but had used force which was proportionate in the circumstances, falling within the margins prescribed by the relevant provisions of the Police Act and the Criminal Code.

39. As was mentioned in the operative part of the prosecutorial resolution of 29 December 2005, a further appeal lay against it, pursuant to Article 242 of the Code of Criminal Procedure, with the Tbilisi Court of

Appeal within fifteen days of delivery of the resolution to the parties. However, according to the case file, the applicant, having received the resolution, did not lodge an appeal against it.

40. In the evening of 17 January 2006 the applicant was admitted to the prison hospital for a second psychiatric assessment, which was supposed to last fifteen days, but on 20 January 2006 he was discharged early and sent back to Tbilisi Prison no. 7.

41. On 20 July 2006 the Rustavi City Court found the applicant guilty of illegally buying and concealing heroin in very large quantities, and sentenced him to fifteen years' imprisonment. In its judgment, the court relied on the expert report of 3 August 2005, which stated that the applicant was partially responsible for his actions. The court also found, in particular, that the applicant had tried to wrest a gun from a police officer who had been attempting to arrest him, and that he had tried to escape through the back door of the house. The intervention of the special forces and the use of force had therefore become necessary.

42. On an unspecified date the applicant lodged an appeal against the judgment of 20 July 2006. The case file does not refer to any further developments in the criminal proceedings.

### C. The applicant's state of health and the proceedings before the Court

43. On 26 April 2006 the Court, in response to the applicant's request, invited the Government to (a) clarify why the applicant had been discharged from hospital on 20 January 2006 (see paragraph 40 above), (b) produce the documents relating to the medical care that the applicant had received in prison for his psychiatric condition and HCV and (c) provide detailed information about the conditions of his detention.

44. The Government, who were asked to provide the above information by 8 June 2006, made no response to the Court's request under point (a) above. They produced the entries made in the applicant's medical file between 17 and 20 January 2006. It emerged from these that during his stay in the hospital the applicant had been irritable and that on 18 January 2006 he had been seen by doctors.

45. As to the request for information at point (b) above, the Government submitted that on 7 June 2006 the authorities had brought three specialists from a civilian hospital and the prison hospital – a therapist, a psychiatrist and a cardiologist – to examine the applicant in prison. The specialists established that the applicant was experiencing pain in his right kidney and had difficulty urinating. The doctors decided that a urethral ultrasound would be necessary and that, if need be, an urologist could be consulted. The applicant was prescribed sedatives. For everything else, the doctors further concluded that the applicant was not suffering from psychosis at the

time of the medical examination and that there was no need to prescribe any mental health treatment or to hospitalise him.

46. As to the Court's request under point (c), the Government submitted that the applicant was detained in Tbilisi Prison no. 7 and that the conditions of his detention satisfied the requirements of domestic law and Article 3 of the Convention (natural light, electricity, cleanliness, ventilation, adequate food, access to water, separate toilets in cells, opportunity for daily exercise, and so on). The Government claimed that whenever he needed to the applicant could freely consult the prison doctor, as the service was available at all times, day and night. They submitted that the applicant had unhindered access to his lawyer, with whom he could meet without prison guards present. Indeed, since his arrest he had met her fourteen times.

47. In letters dated 16 June, 5 July and 19 August 2006 the applicant's lawyer told the Court that her client had been suffering from stones in the urinary tract since 2003 and had been undergoing regular treatment at the hospital in Rustavi. The applicant's lawyer also produced a statement by the doctor from Tbilisi Psychiatric Hospital who had monitored the applicant between 17 and 20 January 2006 in the prison hospital. The psychiatrist explained that, given the complexity of the applicant's case, it had been impossible for him to reach a definitive diagnosis in three days.

48. On 24 October 2006 the Chamber decided, in the light of the information set out above, to apply Rule 39 of the Rules of Court and to indicate to the Government that a medical examination, including a blood test, should be carried out on the applicant by a joint committee of medical experts. The Chamber decided to specify that the medical report requested must contain diagnoses concerning the applicant's psychiatric condition, the type and progress of his HCV, the urethral stone and any other illness diagnosed during the examination. The Chamber also decided that, depending on the diagnoses, the Government should supply a plan of the medical treatment that the authorities planned to provide for the applicant for each of the conditions observed.

49. On 9 November 2006, with a view to executing the Court's decision, the Tbilisi Court of Appeal ordered a medical examination to be carried out on the applicant by a joint committee made up of two psychiatrists, two therapists and two urologists, nominated by the parties. The committee was instructed to answer the questions asked by the Court and draw up a detailed treatment plan on the basis of the diagnoses.

50. Consequently, the applicant was transferred on 13 November 2006 to the National Forensics Bureau at the Ministry of Justice, and the joint committee began its work by ordering a blood test, a chest ultrasound scan and an electrocardiogram. The committee issued its report on 12 December 2006 ("the medical report of 12 December 2006"). Its results show that, in the psychiatrists' opinion, the applicant was suffering from a personality disorder, compounded by a head injury and psychotic tendencies. The

doctors considered that at the time of the events the applicant had been partially responsible for his actions. In their opinion, no compulsory psychiatric treatment would be necessary as an ancillary penalty in the event of a criminal conviction. The therapists concluded that the applicant had chronic viral hepatitis C with minimal activity and noted that he had previously had pulmonary tuberculosis. The urologists stated that the applicant had stones in his right kidney.

51. A psychiatrist nominated by the defence added a separate opinion to the report, in which she stated that the applicant was suffering from a chronic stress-related disorder which, in her opinion, constituted chronic emotional disturbances complicated by drug addiction, but which did not cause dementia. Consequently, she considered that the applicant had been lucid at the time of the events and, more specifically, when he had described his arrest. From a psychiatric point of view, he was not in need of any compulsory or immediate treatment. She recommended that he consult the prison psychiatrist regularly and that he be treated with specific medication, with the psychiatrist regularly adjusting the doses.

52. On 24 April 2007 the Government informed the Court that on 10 April 2007 the Tbilisi Court of Appeal had held that the medical report of 12 December 2006 was not complete because did not contain a treatment plan, and had ordered a further assessment of the applicant by the same committee. As a result, the applicant had been admitted to the prison hospital.

53. On 26 April 2007 the applicant was again placed in the prison hospital, where he underwent a number of medical examinations, including a brain tomography and a scan of the abdominal cavity. He was then prescribed antibiotics and antispasmodics for an infection in his urinary tract.

54. On 24 May 2007 and 14 January, 11 March and 29 April 2008 the applicant was repeatedly examined by medical specialists, including a psychiatrist, dermatologist, ophthalmologist, urologist and infectiologist. He subsequently underwent medical tests, including HCV feature assessment by polymerase chain reaction, blood biochemical analysis, and a bacterioscopic examination of his sputum.

55. The results of the above-mentioned medical consultations and examinations revealed that the applicant no longer had any mental problems, nor any urinary infections either, and that his HCV was still maintaining a moderate level of activity. The experts stated that the applicant's overall health condition was stable and he did not require hospitalisation.

56. Despite the above findings, the applicant was admitted to the prison hospital first for a few days from 20 October and then again on 4 November 2008 for additional examinations, so that a correct plan of treatment for his HCV could be developed. He underwent echoscopy of the internal organs,

general and biochemical analysis of blood, X-ray of the thorax, and other tests. The applicant was also diagnosed at that time with bacterial bronchitis and onychomicosis (fungal infection of the nail), for which infectious disease he was duly prescribed antibiotics and other drugs; he had recovered from these by 20 November 2008.

57. Once the inflammation in the applicant's system had been eliminated, on 24 November 2008 the applicant started receiving anti-viral treatment for his HCV on an inpatient basis in the prison hospital. Alongside the treatment, which is known for its strong side effects, the applicant remained under the constant supervision of the medical staff of the hospital and continued undergoing blood analysis in order to have his condition monitored.

58. On 31 December 2008 the applicant, who was still in the prison hospital at that time, was diagnosed with *staphylococcus aureus*, and the relevant antibiotic therapy was begun immediately under the constant supervision of an infection specialist. On 17 January 2009 the prison authority arranged for the applicant to be transferred to a civilian hospital which specialised in the treatment of sepsis. After receiving appropriate treatment there, which resulted in his system becoming clear of bacteria, the applicant was discharged from the civilian hospital back to the prison hospital on 23 January 2009.

### II. RELEVANT DOMESTIC LAW

59. Pursuant to Articles 242 and 399 of the Code of Criminal Procedure, as it stood at the material time, a prosecutorial resolution on the discontinuation of criminal proceedings may be appealed against to a court within fifteen days of the delivery of that resolution to the parties concerned.

60. The relevant provisions of the Code of Criminal Procedure concerning pre-trial detention are summarised in paragraphs 35-36 and 29-41 of the Court's judgment in the case of *Giorgi Nikolaishvili v. Georgia* (no. 37048/04, 13 January 2009).

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

61. The applicant complained under Article 3 of the Convention that (a) he had been ill-treated by police during his arrest on 12 May 2005 and the authorities had failed to investigate the incident, (b) he had been held in

overcrowded cells in Tbilisi Prisons Nos. 5 and 7 and (c) there had not been adequate medical care for his various diseases in prison. 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 applicant's arrest on 12 May 2005*

62. As regards the applicant's complaint of excessive use of force by the police during his arrest on 12 May 2005 and the absence of an investigation in that respect, the Government, after supplementing the case file with a copy of the resolution of 29 December 2005 of the Tbilisi City Prosecutor's Office (see paragraphs 38 and 39 above), stated that the complaint was manifestly ill-founded. Notably, the resolution showed, on the contrary, that the investigation had in reality been duly launched and had resulted, after a number of investigative measures, in the establishment as fact that the force used against the applicant during his arrest had been proportionate and necessary in the circumstances. In addition, noting that the applicant had not appealed against the resolution before a court, the Government took the view that the applicant had failed to exhaust the clearly available domestic remedy as required by Article 35 § 1 of the Convention.

63. The applicant did not comment on the Government's objections.

64. The Court observes that, according to the case materials, the applicant failed to appeal to a court against the resolution of 29 December 2005 of the Tbilisi City Prosecutor's office abandoning the investigation of his complaint of ill-treatment on 12 May 2005. The applicant has not contested this. However, that basic procedural remedy had clearly been open to him under Articles 242 and 399 of the Code of Criminal Procedure (see paragraphs 39 and 59 above). Consequently, the Court considers that the applicant's associated complaint under Article 3 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### *2 The alleged overcrowding in the prison cells*

65. As to the applicant's complaint that he had been detained in overcrowded cells in Tbilisi Prisons Nos. 5 and 7, the Government submitted that it was manifestly ill-founded. In support, they submitted explanatory notes from the governors of those prisons dated 14 February 2008, as well as relevant excerpts from the prison logs concerning the

movement of the applicant between the various cells and descriptions of the conditions in those cells.

66. Notably, the above-mentioned documents disclosed that while the applicant was in cell 99 of Tbilisi Prison No. 5, which measured 32 square metres and contained ten beds, the cell had nine other inmates. As to cell 123 in the medical wing of the same prison, where the applicant was detained first between 20 November 2004 and 3 May 2005 and then again between 15 May 2005 and 13 January 2006, it measured 15 square metres, contained four beds, and was shared by the applicant with three other inmates at the material time.

67. As to Tbilisi Prison No. 7, the applicant was mostly detained, with three other inmates, in cells. 10 and 17, which both measured 10 square metres and contained four beds. For a short period of time, the applicant was placed, with seven other inmates, in cell. 18, which measured 19 square metres and contained eight beds.

68. As the Government emphasised, the excerpts from the prison log and the governors' explanatory memos further disclosed that the applicant had never complained, either to the prison or other authorities, that the personal space available in the relevant cells of Tbilisi Prison Nos. 5 and 7 was insufficient for him.

69. In reply, the applicant, without rebutting the Government's above-mentioned submissions, maintained, without submitting any evidence in support, that there were not enough beds in the cells where he had been held.

70. Referring to its relevant case-law in respect of the conditions of detention in Georgian custodial institutions at the material time, the Court reiterates that such general structural problems in the penal sector as overcrowding, whilst not calling for the full and meticulous exhaustion of any specific criminal or civil remedies (see, for comparison, *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007; *Aliev v. Georgia*, no. 522/04, § 62 and 63, 13 January 2009; and *Goginashvili v. Georgia*, no. 47729/08, §§ 54 and 57, 4 October 2011), still required, as a minimum, that at least one of the responsible State agencies – the prison authority, the courts, the prosecution, and so on – had to be informed of the applicant's subjective assessment that the conditions of detention constituted a lack of respect for, or diminished, his or her human dignity (see *Ramishvili and Kokhreidze*, decision cited above). Without such basic conduct at the domestic level by a person who then wishes to challenge the conditions of his or her detention in Strasbourg, the Court would necessarily have difficulty in evaluating the credibility of the applicant's allegations of fact in that respect.

71. However, according to the case file, the applicant never informed any of the relevant authorities of his dissatisfaction with the purported overcrowding in the cells of Tbilisi Prison Nos. 5 and 7. Furthermore, his

allegation that there were insufficient beds in the cells in either of the two prisons was clearly rebutted by the detailed documentary evidence submitted by the Government, an issue which was then left undisputed by the applicant. In such circumstances, the applicant's current attempts to persuade the Court to accept his allegations of overcrowding, unsupported by evidence, are feeble.

72. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

*3. The alleged lack of medical care in prison*

73. The Government, having submitted the applicant's medical file in its entirety, accounted in detail for many factual circumstances, unknown to the Court prior to the communication of the application, concerning the treatment provided to the applicant in prison. Referring to those numerous circumstances (see paragraphs 37 and 43-58 above), the Government claimed that the applicant's treatment fully satisfied the requirements of Article 3 of the Convention, rendering the applicant's complaint manifestly ill-founded.

74. In reply the applicant, without submitting any medical documents in support, bluntly reiterated that the treatment dispensed to him in prison had been inadequate and that, in consequence, his condition had considerably worsened and there was currently an imminent and real risk to his life.

75. At the outset, the Court notes that, contrary to the applicant's allegation, no worsening of any of the applicant's chronic health problems could be discerned from his medical file, which was submitted in its entirety by the Government after communication of the present application. Indeed, the Government, by disclosing all the information necessary for the assessment of the quality of the disputed treatment, have discharged their part of the burden of proof and have properly assisted the Court in its task of determining the facts, whilst the applicant limited himself to wholly unsubstantiated assertions (compare with *Goginashvili*, § 72, and contrast with *Malenko v. Ukraine*, no. 18660/03, §§ 56-57, 19 February 2009). It is important that the prison authority has been able to maintain a comprehensive medical record of the applicant's state of health, monitoring the treatment he underwent from the beginning of his detention until the present day (compare with, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII (extracts)). Furthermore, the Court reiterates that 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, cannot suffice of itself 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 (see

*Goginashvili*, cited above, § 71). In other words, it is mainly through the prism of this "due diligence" test that the Court must assess the adequacy of the medical care dispensed to the applicant in prison.

76. Having due regard to his medical file, the Court observes that the prison authority correctly took charge of the applicant's health by transferring him regularly to the prison hospital, where he received courses of comprehensive inpatient treatment for his psychiatric, hepatic, urological and other problems, which included various laboratory tests and scans, and repeated consultations with appropriate medical specialists (see paragraphs 37, 45, 53-54 and 56 above and compare with *Goginashvili*, cited above, §§ 73-76, and contrast, for instance, with *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007, and *Poghosyan v. Georgia*, no. 9870/07, § 57, 24 February 2009). The medical file confirms that numerous different types of medication and other types of treatment were administered to the applicant in the prison hospital, as well as on an outpatient basis during his detention in Tbilisi Prisons Nos. 5 and 7, with the State bearing the cost (contrast with, for example, *Pitalev v. Russia*, no. 34393/03, § 57, 30 July 2009; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 117, 29 November 2007; and *Holomiov v. Moldova*, no. 30649/05, § 119, 7 November 2006).

77. The Court notes the prison authority's willingness to arrange for the applicant to be examined by medical specialists invited in from civilian hospitals, and that it even arranged on one occasion for him to be transferred for treatment in a specialist civilian hospital (see paragraph 58 above). It is praiseworthy that the domestic authorities did not hesitate to resort to the services of specialist medical facilities in the civilian sector (see, *a contrario*, *Aleksanyan v. Russia*, no. 46468/06, § 155-157, 22 December 2008, and *Akhmetov v. Russia*, no. 37463/04, § 81, 1 April 2010). The Court further finds it important that the prison authority has started dispensing, under close medical monitoring, appropriate treatment for the applicant's hepatitis C, using appropriate anti-viral agents (see paragraph 57 above). The Court also attaches significance to the fact that the respondent Government correctly implemented the interim measure indicated by the Court under Rule 39 of the Rules of Court with respect to the applicant's medical condition, which is yet another manifestation of the fact that the relevant domestic authorities have been genuinely conscientious in their dealings with the applicant's health (see paragraphs 48-53 above).

78. Thus, the Court finds that not only did the applicant promptly and with sufficient regularity have consultations with the appropriate doctors in prison, who made accurate diagnoses and prescribed him the appropriate treatment, but also that the prison authority then ensured that the prescribed treatment was duly administered to the applicant in the prison hospital at State expense (contrast with *Hummatov*, cited above, § 116, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006). Indeed, the

applicant's medical supervision has proved to be of a regular and systematic nature, rather than addressing his renal disorders on a symptomatic basis, and has made use of a truly comprehensive therapeutic strategy (compare with *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005, and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

79. In the light of the foregoing, the Court concludes that the prison authority has shown a sufficient degree of due diligence, providing the applicant with prompt and systematic medical care. Accordingly, the applicant's complaint under Article 3 of the Convention, which, as it turned out after the communication of the application, was based on the collection of unsubstantiated allegations, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## II. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 OF THE CONVENTION

80. The applicant complained that the length of his detention pending trial in relation to both sets of criminal proceedings had not been accompanied by sufficiently and adequately reasoned court decisions, in breach of Article 5 § 3 of the Convention. This provision reads as follows:

**Article 5 § 3**

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

81. After the communication of the application, the applicant specified that his complaint under Article 5 § 3 of the Convention with respect to the first set of criminal proceedings concerned both the initial court decisions dated 16 May and 2 June 2004, imposing the measure of pre-trial detention for the first two months, and the subsequent decisions of 13 August, 13 September and 13 November 2004, extending that measure.

82. As to the second set of criminal proceedings, the applicant limited his complaint only to the initial court decisions of 15 and 19 May 2005 which had imposed the detention for three months.

83. The Government contested those complaints, maintaining that the reasons expressly given in the contested judicial decisions had been adequate.

### A. Admissibility

84. In so far as the applicant's complaint under Article 5 § 3 of the Convention concerning the reasonableness of the detention pending trial in the second set of the criminal proceedings is concerned, the Court, noting

that the applicant limited himself to challenging the reasons in the initial court decisions' which had imposed pre-trial detention for the first three months, considers that the initial period in question cannot be said to have been unreasonable within the meaning of Article 5 § 3 of the Convention even if it was mostly based only on a reasonable suspicion that the applicant had committed the offence with which he had been charged (see paragraph 31 above, and compare, for instance, with *Galuashvili v. Georgia*, no. 40008/04, § 50, 17 July 2008; *Saghinadze and Others v. Georgia*, no. 18768/05, § 137, 27 May 2010; *Klamecki v. Poland*, no. 25415/94, §§ 74 and 76, 28 March 2002; and also *Malikowski v. Poland*, no. 15154/03, § 52, 16 October 2007). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

85. As to the complaint under Article 5 § 3 of the Convention concerning the reasonableness of the detention pending trial in the first set of the criminal proceedings is concerned, the Court, noting the length of that detention, which was extended by the domestic courts on several occasion, considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. The complaint must therefore be declared admissible.

### B. Merits

86. With respect to the reasonableness of the applicant's detention pending trial in the first set of the criminal proceedings, which lasted almost one year (see paragraphs 6 and 20 above), the Court notes that, whilst one of the grounds confirmed by the domestic courts in the initial decisions of 16 May and 2 June 2004 – the risk that he would abscond – had been sufficiently closely linked to the circumstances of the case (see paragraph 10 above), the subsequent court decisions, dated 13 August, 13 September and 13 November 2004, were, on the contrary, couched in more abstract terms. In the latter decisions, the domestic courts failed in their obligation to establish convincingly the existence of specific facts justifying continued detention and to consider alternative non-custodial pre-trial restraint measures. The only somewhat specific ground relied on by the domestic court in one of those decisions on extension – the need to subject the applicant to a forensic psychiatric examination (see paragraph 14 above) - is still unconvincing, as the court did not explain why the planned implementation of that forensic measure ran counter to a non-custodial measure of restraint. Thus, on the basis of those manifestly deficiently reasoned decisions, which mostly relied on a stereotyped formula, paraphrasing the terms of the Code of Criminal Procedure (compare, for instance, with *Patsuria*, cited above, §§ 12, 14 and 15; *Javakhishvili v. Georgia* (dec.), no. 42065/04, 2 October 2007; and *Giorgi Nikolaishvili*,

cited above, § 79), the applicant was remanded in custody in total for almost a year, which period cannot be deemed reasonable (see *Saghinadze*, cited above, § 139; *Giorgi Nikolaishvili*, cited above, §§ 73, 76; and *Patsuria*, cited above, § 74).

87. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

88. The applicant further complained that the search of his house on 12 May 2005 had been carried out without a lawful basis, in breach of Article 8 of the Convention.

89. Supplementing the case file with a copy of the Tbilisi City Court's order of 11 May 2005 (see paragraph 22 above), the Government stated that the applicant's complaint was, in the light of that order, manifestly ill-founded.

90. The applicant disagreed. However, apart from citing general principles from the Court's relevant case-law under Article 8 of the Convention, he did not submit any argument specifically related to the circumstances of his case.

91. The Court notes that not only had the search of the applicant's house been authorised by the Tbilisi City Court's order of 12 May 2005, the results of that search then underwent a second judicial examination on 14 May 2005, which resulted in their legalisation. Consequently, there can be no room for contesting the lawfulness of the above-mentioned investigative measure which, furthermore, was a necessary interference with the applicant's rights under Article 8 of the Convention as it was carried out in the interests of "the prevention of crime" (compare with, for instance, *Mastepan v. Russia*, no. 3708/03, §§ 39-46, 14 January 2010).

92. It follows that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. Relying on Article 5 §§ 1 (c), 2, 4 and 5 and Article 6 §§ 1 and 3 of the Convention, cited separately and in conjunction with Article 13, the applicant bluntly complained that his pre-trial detention had been unlawful and challenged the fairness and the outcome of the second set of the criminal proceedings. Apart from citing general principles from the Court's relevant case-law, he failed to specify or substantiate his complaints by providing meaningful arguments.

94. However, the Court, in the light of all the material in its possession and having due regard to the relevant circumstances of case concerning both

sets of the criminal proceedings against the applicant, 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.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

96. The applicant claimed 170,500 and 100,000 Georgian laris (GEL) (84,567 and 49,600 euros[1] (EUR)) in pecuniary and non-pecuniary damages respectively.

97. The Government submitted that the amounts claimed were unsubstantiated and excessive.

98. The Court does not discern any causal link between the only violation found under Article 5 § 3 of the Convention and the pecuniary damage alleged; it therefore rejects this claim. However, having regard to the relevant circumstances of the present case and ruling on an equitable basis, the Court awards the applicant EUR 600 in respect of non-pecuniary damage.

### B. Costs and expenses

99. The applicant also claimed GEL 70,000 (EUR 34,719) on account of his representation before the domestic courts and the Court by the three lawyers, which amount included the costs incurred by the lawyers on such administrative expenses as postage, telephone, and fax. In support, they produced a copy of the legal services agreement, according to which the applicant promised to pay his three advocates GEL 30,000 (EUR 14,880) for defending his interests in the domestic proceedings. However, in the absence of the relevant invoice, it was not clear whether that payment had ever been made. Furthermore, as regards the various administrative expenses, apart from postal receipts which showed that GEL 339.25

[1] Here and elsewhere, approximate conversions are given in accordance with the exchange rate of the Georgian lari and to the euro on 26 July 2012.

(EUR 168) had been paid for mailing various documents to the Court, no other invoices, vouchers or any other financial documents were submitted.

100. The Government submitted that the claim was unsubstantiated and excessive. However, they acknowledged that the applicant had necessarily incurred some legal costs and invited the Court to award, in accordance with its established case-law, a reasonable amount.

101. The Court notes that the applicant did not produce invoices confirming that the claimed fees and expenses had actually been incurred by him in their entirety. However, the fact remains that, as conceded by the Government, the representatives provided the applicant with legal assistance which was not free of charge. The Court reiterates in this regard that it is not bound by domestic fee scales and practice (see *Assanidze v. Georgia* [GC], no. 71503/01, § 206, ECHR 2004-II, and *Patsuria*, cited above, § 103). Having due regard to the complexity of the case, the Court, making its assessment on an equitable basis, considers it reasonable to award the sum of EUR 1,000 on account of the applicant's representation before the Court.

### C. Default interest rate

102. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 3 of the Convention concerning the reasonableness of the detention pending the trial in the first set of the criminal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the reasonableness of the applicant's detention pending trial in the first set of the criminal proceedings;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 600 (six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President