

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

THIRD SECTION

CASE OF JASHI v. GEORGIA

(Application no. 10799/06)

JUDGMENT

STRASBOURG

8 January 2013

FINAL

08/04/2013

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



In the case of Jashi 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,
Kristina Pardalos, *judges,*
Konstantine Vardzelashvili, ad hoc *judge,*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 4 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 10799/06) 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 Davit Jashi ("the applicant"), on 20 March 2006. The initial application contained complaints under Article 3, which concerned the allegedly poor conditions of the applicant's detention and the lack of adequate medical care for his various diseases in prison, as well as other complaints under Articles 5, 6 and 13 of the Convention.

2. The applicant was initially represented by Ms E. Beselia and Mr D. Jinjolava and then, following a change of counsel taking place on 3 November 2008, by Ms M. Kobakhidze and Mr L. Tchintcharauli, lawyers practising in Tbilisi. The Georgian Government ("the Government") were successively represented by their Agents, Ms I. Bartaia, Mr M. Kekenadze and Mr L. Meskhoradze, of the Ministry of Justice.

3. On 16 January 2007 the Court decided to strike the application out of its list of cases under Rule 37 § 1 (a) and *in fine* of the Rules of Court (see *Jashi v. Georgia* (dec.), no. 10799/06, 16 January 2007).

4. On 9 December 2008 the Court decided, under Article 37 § 2 of the Convention, to restore the above application to its list only as regards the complaint concerning the adequacy of the medical treatment provided to the applicant in prison. Under Rule 54 § 2 (b) of the Rules of Court, the Court also decided that notice of that issue should be given to the Government under Articles 2 and 3 of the Convention (see *Jashi v. Georgia* (dec.), no. 10799/06, 9 December 2008). It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Nona Tsotsoria, the judge elected in respect of Georgia was unable to sit in the case (Rule 28). Konstantine Vardzelashvili was accordingly appointed to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 as in force at the time).

6. The parties submitted observations on the admissibility and merits of the complaints communicated under Articles 2 and 3 of the Convention (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1973 and is currently serving a prison sentence.

8. On 30 March 2005 the applicant was convicted for the first time of drug trafficking, and was sentenced to two years in prison but released on probation. As disclosed by his medical file, prior to those criminal proceedings he had suffered serious cranial traumas, as a result of which his mental health had deteriorated.

9. On 28 September 2005 the applicant was arrested again for possession of 3.84 g of heroin and 0.121 g of methadone (for a more detailed description of the circumstances surrounding his arrest and the subsequent criminal proceedings, see *Jashi v. Georgia* (dec.), no. 10799/06, 16 January 2007). He was detained in Tbilisi no. 5 Prison.

10. On 28 December 2005 a psychiatric report, after having described the exact nature of the applicant's mental disturbances, stated that it was impossible to reach a definite diagnosis without subjecting the applicant to a comprehensive psychiatric examination, which ought to be conducted in an appropriate medical setting. No such examination followed.

11. On 20 January 2006, during a preparatory hearing of the applicant's trial, the Zugdidi District Court, granting a request made by his lawyer which was based on the psychiatric report of 28 December 2005 and aimed at the determination of the applicant's mental capacity to stand trial, ordered that the applicant be admitted to the Poti Psychiatric Hospital for one month in order to allow a forensic psychiatric examination to take place. The court specified that the applicant's trial could only be resumed after the results of the forensic examination had been obtained.

12. The Zugdidi District Court's ruling of 20 January 2006 was final, but the authorities refused to enforce it despite numerous complaints being made by the applicant and his lawyers in that regard.

13. On 9 March 2006 the applicant was transferred to Zugdidi Prison, under a strict regime.

14. On 7 April 2006 the applicant's representatives requested the Court under Rule 39 of the Rules of Court to indicate to the Government that the ruling of 20 January 2006 of the Zugdidi District Court, by which their client ought to have been admitted to the Poti Psychiatric Hospital, be enforced immediately.

15. On 26 April 2006 the President of the Chamber decided not to indicate the interim measure sought. Instead, under Rules 40 and 54 § 2 (a) of the Rules of Court, urgent notice of the application was given to the Government, who were also asked to explain the reasons for the non-enforcement of the ruling of 20 January 2006 and to submit documents accounting for the medical treatment provided to the applicant in prison.

16. On 23 May 2006 the Zugdidi District Court ordered that the applicant be admitted for one month to the psychiatric ward of the National Forensic Bureau ("the NFB") so that his psychiatric examination could be conducted.

17. In enforcement of that order, the prison authority transferred the applicant on 31 May 2006 to the NFB. On 8 June 2006 the applicant requested that two psychiatric experts of his choice be allowed to take part in the examination, but that was not authorised. On 14 June 2006 a panel consisting of State psychiatric experts issued a report about the applicant's mental health, and on the following day the applicant was sent back to Zugdidi Prison.

18. According to the report of 14 June 2006, the applicant did not have any chronic or temporary psychiatric diseases or dementia but had an organic personality disorder which was mostly manifested by his anti-social behaviour but did not, however, affect his capacity to understand the wrongfulness of his actions and thus be held liable for them. The report further confirmed that the applicant's condition did not impair his capacity to take part effectively in the criminal proceedings and stated that he did not require any compulsory mental treatment in a specialised psychiatric hospital.

19. On 24 May and 30 June 2006 the Court received, respectively, the Government's reply, claiming that it was both unnecessary and procedurally incorrect to enforce the Zugdidi District Court's ruling of 20 January 2006 at that stage of the criminal proceedings (the Government subsequently reiterated that argument in their observations, see paragraph 53 below), and the applicant's repeated request for the indication of the above-mentioned interim measure. The applicant's submissions disclosed that, on 15 June 2006, he had attempted suicide by slashing his wrists and that, in general, his behaviour had become aggressive upon his return to Zugdidi Prison on 14 June 2006. As was clear from the applicant's submissions, neither he nor

his lawyers had been acquainted with the content of the medical report of 14 June 2006 at that time.

20. On 4 July 2006 the President of the Chamber, having examined the parties' latest submissions, decided to apply Rule 39 of the Rules of Court. It was indicated to the Government that the applicant's mental health should be examined in an appropriate medical establishment. The examination had to be conducted by a panel of psychiatric experts composed on a parity basis, and, having due regard to its conclusions, the Government were to provide the applicant with adequate medical treatment.

21. On 12 July 2006 the applicant again attempted suicide in Zugdidi Prison by overdosing on certain, unspecified drugs. He was immediately provided with appropriate medical care in prison, which included pumping his stomach and treatment with tranquilisers.

22. On 21 July 2006 the Zugdidi District Court, having regard to the interim measure indicated by the Court on 4 July 2006, ordered that the applicant be subjected to another psychiatric examination in an appropriate psychiatric establishment in line with the Court's recommendations concerning the composition of the panel of experts.

23. On 22 July 2006 the applicant, using electrical wiring, slashed his wrists again in Zugdidi Prison. He was immediately transferred from the prison to a civilian hospital in Zugdidi, where he was provided with the necessary emergency care. Subsequently, on 30 July 2006, a preliminary criminal probe was opened into that incident. The enquiry was closed by a prosecutorial decision of 28 December 2007 on the basis of the finding that the prison staff could not be held responsible for the applicant's self-harming behaviour because electrical wiring was not, according to the relevant prison rules, a prohibited item and the incident had itself resulted from the applicant's own emotional disturbance, which was not imputable to the prison staff.

24. On 27 July 2006, in enforcement of the Zugdidi District Court's order of 21 July 2006, the applicant was again admitted to the psychiatric ward of the NFB, where his psychiatric condition was examined by a panel of experts composed on a parity basis, with the applicant and the State each nominating two psychiatrists. The examination lasted until 18 August 2006, and on the latter date the panel issued a report which mostly reiterated the results of the previous report of 14 June 2006. Notably, apart from an organic personality disorder, the panel determined that the applicant did not suffer from any serious psychiatric diseases, was responsible for his actions and did not require compulsory psychiatric treatment. The second report added that as a result of the applicant's personality disorder he had symptoms of depression, which were manifested, *inter alia*, by behavioural and verbal indications that he was contemplating suicide, and by his irritable and aggressive behaviour and difficulties in communication.

25. On 18 August 2006 the prison authority, having regard to the latest medical report concerning the applicant's mental health, admitted him to the psychiatric ward of the prison hospital, where he stayed for the following two years, until 31 August 2008.

26. On 25 August 2006 the applicant made another suicide attempt by taking a drug overdose in the prison hospital. As disclosed by an entry made in the applicant's medical file by a doctor who supervised the subsequent emergency procedures (pumping of his stomach, blood transfusions and so on), the applicant had swallowed a cocktail of strong drugs, including antibiotics and tranquilisers.

27. In a decision of 24 January 2007, the Zugdidi District Court endorsed a plea bargain reached between the prosecution and the applicant on the same day. The decision disclosed that, in the course of the plea-bargaining, the applicant had confessed to the crime of large-scale drug trafficking and had agreed to be sentenced to nine years in prison, to pay a fine of 100,000 Georgian laris (EUR 55,815) and to undergo compulsory medical treatment for drug addiction. The decision became final.

28. According to a report on the applicant's medical examination conducted by the NFB in the prison hospital between 3 August and 12 October 2007 ("the first medical report"), he suffered from cardiac ischemia, class III-IV angina, arterial hypertension, and grade II-III heart failure. He also suffered from a number of diseases of the veins, such as varicose veins on both legs and venous insufficiency, and had certain neurocirculatory and neurovegetative disorders. The first medical report also noted that the applicant, being diagnosed with a personality disorder and showing clear suicidal tendencies, had several self-inflicted blade wounds on his forearms and abdomen. The report's findings were that, from the cardiac point of view, the applicant could be considered to be in a grave condition and needed treatment in a specialised hospital. As to his neurovascular problems, he could be treated by a specialist on an outpatient basis.

29. On 31 January 2008 the cardiologist who was treating the applicant in the prison hospital, having due regard to his cardiac diagnosis (see the preceding paragraph), to the nature of the pains in his chest and to his other symptoms, opined that, in order to develop a correct treatment plan, a special X-ray test – a coronary angiogram – was required.

30. Another examination of the applicant's state of health was conducted in the prison hospital, at the request of his representatives, by the NFB between 10 March and 2 June 2008. The relevant report ("the second medical report") reiterated all the conclusions of the first report and added that the applicant also suffered from chronic obstructive pulmonary disease. It was noted that the applicant's heart and neurovascular problems had deteriorated. The second medical report concluded that the applicant ought to be admitted to and adequately treated in a cardiology hospital; a coronary

angiogram was required. From the cardiac point of view, the applicant was and had the propensity to remain in a grave condition. As to his vascular problems, the report noted that the applicant could still be treated by a specialist on an outpatient basis. However, in the event of any further deterioration, treatment in a specialised medical establishment would become necessary.

31. On 7 July 2008 the applicant was diagnosed with viral hepatitis C (HCV).

32. On 15 July 2008 the staff of the prison hospital offered the applicant the possibility of undergoing a coronary angiogram in a private cardiology hospital. The applicant turned down that offer, which was recorded in writing.

33. As disclosed by the applicant's medical file accounting for his treatment in the prison hospital between 18 August 2006 and 31 July 2008, on which latter date he was discharged from the prison hospital to Rustavi no. 2 Prison, he was repeatedly provided with appropriate psychotropic drugs (antipsychotics, antidepressants and tranquilisers) for his personality disorder and depression. The applicant also repeatedly underwent comprehensive medical examinations (which also involved a full analysis of blood and urine samples, including biochemical, thyroid, liver function and glucose level tests), an X-ray of the thorax, electrocardiography, scans of the abdomen and of the vascular system in the lower limbs and so on. He also had consultations with medical specialists such as a vascular surgeon, infectious disease specialist and cardiologist and, following the prescriptions of those medical specialists, was administered various drugs, including a number for his cardiac problems.

34. On 11 September 2008 the applicant was again admitted to the prison hospital for treatment for his depression, which lasted until 25 September 2008. During his stay in the hospital, he had consultations with a psychologist and a psychiatrist, in addition to a cardiologist for his cardio-vascular problems. He also underwent various types of medical examinations, such as a comprehensive analysis of his blood (including liver function tests) and urine, an X-ray of his thorax, various scans of his abdomen and so on. After his discharge back to Rustavi no. 2 Prison, which was authorised by his attending doctor, the applicant was prescribed, on 26 September 2008, with antidepressant drugs to be administered on an out-patient basis.

35. On 6 October 2008 the applicant's representatives asked the Head of the Prisons Department of the Ministry of Justice to transfer their client to a cardiology hospital, in accordance with the recommendations of the second medical report. The authority's attention was brought to the applicant's other medical problems, such as his mental disorder and HCV. The request went unanswered.

36. On 3 November 2008 the applicant's representatives requested the Court under Rule 39 of the Rules of Court to indicate to the Government that the applicant should be transferred from Rustavi no. 2 Prison to a cardiology hospital where adequate treatment for his heart problems could be dispensed.

37. On 9 December 2008 the Court indicated to the Government that the applicant should be placed in a hospital specialising in cardiology treatment, where he should receive treatment consistent with the recommendations of the second medical report.

38. A third examination of the applicant's state of health, with an emphasis on his cardiac problems, was conducted at the request of his representatives by the NFB between 2 October and 25 December 2008. The relevant report ("the third medical report") reiterated all the conclusions of the previous two reports concerning his heart problems. Notably, the third medical report confirmed that the applicant ought to be placed and adequately treated in a cardiology hospital.

39. As disclosed by the relevant verbatim records, on 25 and 26 December 2008 and 5 January 2009 the staff of the prison hospital, having regard to the interim measure indicated by the Court on 9 December 2008, repeatedly offered the applicant a transfer to a civilian cardiology hospital for "an angiogram and appropriate medical treatment". However, the applicant turned down all those offers, without giving an explanation.

40. On 15 January 2009 the applicant's representative asked the prison authority to arrange for the applicant's transfer to a cardiology hospital for both an angiogram and follow-up medical treatment, rather than only for the medical scan itself.

41. Finally, on 3 April 2009 the prison authority, after having obtained the applicant's consent to receive "the necessary medical examinations and treatment", arranged for his transfer to Guli Hospital, a private hospital in Tbilisi specialised in cardiology treatment.

42. The applicant stayed in the private cardiology hospital until 15 May 2009, during which period he underwent various extensive medical examinations related to his cardiac problems. A cardiologist and allergist from that hospital, having noted that the applicant was highly allergic to iodine, the use of which substance was necessary for the conduct of a coronary angiogram, decided that it was more prudent to abstain from that scan. Instead, the applicant's in-patient treatment there proceeded with a supervised intake of cardiology drugs. As a result of the treatment administered, the applicant's cardiac condition, as confirmed by his attending cardiologist's opinion of 15 May 2009, considerably improved. All his chest pain fully disappeared, the arterial tension stabilised and the results of an electrocardiogram were positive, and, as the medical specialist opined, it was thus possible to proceed with the applicant's treatment by medication in a general medical establishment. During his stay in the private

hospital, the applicant had consultations with an infectious diseases specialist in respect of his HCV and his blood samples were taken for analysis. At the time of the applicant's discharge from the hospital on 15 May 2009, the results of that analysis were still not known.

43. Accordingly, on 15 May 2009 the applicant, after having successfully completed the treatment for his cardiac problems, was transferred from the civilian to the prison hospital, where he then underwent a full biochemical analysis of his blood samples with the aim of developing an exact treatment plan for his HCV. As a result, on 8 June 2009 the prison hospital offered to start a course of treatment with the appropriate antiviral drugs (Intron A (interferon alpha-2b) and Rebetol (ribavirin)). However, given the strong neurologic side-effects of those drugs, the applicant decided to postpone the treatment until the improvement of his mental condition.

44. In the prison hospital, the applicant then had, between May and August 2009, repeated consultations with a cardiologist, endocrinologist, psychiatrist, psychologist and infectious diseases specialist. None of them detected a worsening of the applicant's condition. In particular, as confirmed by the results of the consultations with the psychologist and psychiatrist which took place on 3 June 2009, the signs of the applicant's depression and personality disorder had disappeared by that time and he no longer required treatment with psychotropic drugs.

45. Thus, having regard to the stabilisation of the applicant's psychological condition and the cessation of his intake of psychotropic drugs, the prison hospital again offered the applicant, on 30 June 2009, treatment with a course of Intron A and Rebetol, which the applicant accepted. The applicant's treatment with those drugs, which started on 1 July 2009, continued until 29 December 2009, and its results were successful. Notably, as confirmed by blood tests (involving a determination of the applicant's hepatitis C virus RNA levels by the quantitative polymerase chain reaction (PCR) method) conducted on 29 January and 22 July 2010, the applicant's viral load was "negative", which indicated the non-progression of the disease.

II. RELEVANT INTERNATIONAL DOCUMENTS

A. Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 March to 2 April 2007 (CPT/Inf (2007) 42)

46. The relevant excerpts from the above-mentioned Report, bearing on the problem of psychiatric care for prisoners, read:

"As regards the provision of psychiatric care to prisoners, the situation observed at the establishments visited during the 2007 visit is a matter of serious concern to the CPT. Each of the penitentiary establishments accommodated a certain number of inmates with psychiatric or psychological problems. However, the lack of psychiatrists (even when there was a psychiatrist's post, it was vacant) made it impossible to detect and care for prisoners suffering from mental disorders. Prison doctors were not allowed to prescribe any psychotropic medication and, as a result, there was often a discontinuation in the treatment started before imprisonment. The delegation was concerned to note that prisoners who had been sentenced by a court to undergo compulsory psychiatric treatment were not receiving any therapy. In most cases, the only chance of access to psychiatric care was transfer to the Central Prison Hospital. The CPT recommends that the Georgian authorities take steps to fill the psychiatrists' posts at the establishments visited and to reinforce the provision of psychiatric care to prisoners."

B. Undue Punishment – Abuses against Prisoners in Georgia, Report by Human Rights Watch, 13 September 2006 (Volume 18, No. 8 (D))

47. The relevant excerpts from the above-mentioned Report read:

"The situation for psychiatric patients within the penitentiary system is grave. The Standard Minimum Rules require that 'the medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.' The CPT also pays particular attention to this category of individuals. As in other parts of the Republican Prison Hospital, conditions of detention for psychiatric patients were substandard and many detainees in need of care both in the hospital and in the regular prison facilities were clearly not able to receive it. ...

Prison authorities in various facilities acknowledged that there were detainees in their prisons with suspected or confirmed mental illnesses, but said these individuals were not transferred out of the regular prison facilities or treated within the medical wards of the facilities. Many also dismissed their conditions as not warranting special care. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

48. The applicant complained that the State had failed in its positive obligations to provide him with appropriate medical care for his mental health, cardiac and hepatic problems, in breach of Articles 2 and 3 of the Convention, which read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. ..."

Article 3

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

A. Admissibility

49. The Government submitted that, as the applicant had apparently not filed, under the relevant prison rules, complaints of a lack of medical care, seeking preventive remedial actions, the application was premature and should thus be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

50. The applicant disagreed, highlighting that he had, in actual fact, filed numerous complaints concerning his health with various prison authority officials, which had, however, been either examined belatedly or left unanswered altogether.

51. The Court reiterates that prior to 1 October 2010, Georgian law and practice did not provide for an effective legal remedy allowing a claimant to obtain injunctive relief in a situation concerning a lack of medical care in prison. Consequently, it was sufficient for an ill detainee, who wished to complain to the Court of a lack of adequate medical care, to have alerted the relevant domestic authorities about his or her state of health (see *Goginashvili v. Georgia*, no. 47729/08, §§ 51-61, 4 October 2011, and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, §§ 53-55, 22 November 2011). Having regard to the facts of the present case, the Court observes that the prison authority was sufficiently aware of the applicant's mental health, cardiac and hepatic problems. Consequently, the Government's objections of non-exhaustion should be dismissed.

52. It follows that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The Government's submissions

53. The Government submitted that the relevant domestic authorities had done everything possible to identify whether the applicant had had the capacity to understand the wrongfulness of the offences he had committed, which capacity had shown that he was in good mental health. As regards the

non-enforcement of the Zugdidi District Court's ruling of 20 January 2006, the Government, giving an interpretation of the relevant provisions of the Code of Criminal Procedure, argued that it had not been necessary to enforce it, as the judge had not been entitled by law to order a forensic psychiatric examination during the first preparatory hearing of the trial. Referring to a letter dated 6 March 2006 from the Deputy Director of the Poti Psychiatric Hospital which stated that it was not possible to conduct psychiatric examinations there, the Government further argued that it had also been impossible to enforce the ruling of 20 January 2006 for objective reasons. In any event, the Government continued, the non-enforcement of that ruling had not raised an issue as regards the applicant's medical treatment, as the medical reports subsequently obtained on 14 June and 18 August 2006 had confirmed that the applicant had not had any serious psychiatric disorders and had not required compulsory psychiatric treatment. Admittedly, he had had a personality disorder and had shown certain signs of depression. However, the Government argued that the applicant had been duly provided with the requisite treatment for those minor ailments.

54. As to the applicant's repeated suicide attempts, the Government submitted that, given the absence of any serious psychiatric illness and of the consequent need to place the applicant in a mental hospital for compulsory treatment, the prison authority had not been able to foresee those unfortunate incidents. In addition, the authority had provided a timely response to those incidents and had arranged for immediate and effective medical assistance. The Government further stated that the applicant had benefited from constant supervision by proficient clinicians during his treatment with psychotropic drugs in the prison hospital. The Government also emphasised that with respect to one of his suicide attempts, the authorities had duly opened a criminal probe, the results of which had excluded liability on the part of the relevant prison staff for that unforeseeable incident which, on the contrary, had been attributable to the applicant's emotional instability.

55. As regards the applicant's cardiac problems, the Government submitted that he had been provided with all necessary treatment in the prison hospital. As to his placement in a specialised cardiology hospital for a coronary angiogram and treatment, they argued that initially the applicant had himself refused to cooperate with the authorities, thus impeding the enforcement of the relevant interim measure indicated by the Court under Rule 39 of the Rules of Court. After having finally agreed to be transferred to the private cardiology hospital, he had then been duly provided with all necessary treatment, as a result of which his cardiac condition had significantly improved. Lastly, as regards the applicant's HCV, the Government observed that, as soon as he had been cured from his personality disorder and depression, he had started receiving, on 1 July

2009, the relevant antiviral drugs; that treatment had been successfully completed on 29 December 2009.

56. In support of their claim that the applicant had been provided with adequate medical care for his mental health, cardiac and hepatic problems, the Government submitted a copy of his medical file, which accounted for the treatment dispensed in prison as of 18 August 2006.

2. The applicant's submissions

57. The applicant's representatives replied that the authorities should, of necessity, have enforced the Zugdidi District Court's ruling of 20 January 2006 by admitting their client to the Poti Psychiatric Hospital for a forensic examination. Rebutting the Government's argument as to the impossibility of enforcing that ruling for objective reasons, the representatives submitted a letter dated 13 January 2006 from the Director of the Asatiani Psychiatric Hospital in Tbilisi, according to which it had been fully possible for psychiatrists from that hospital to conduct a forensic examination on the premises of the Poti Psychiatric Hospital at the material time. The representatives further stated that the fact that the applicant had been admitted to the psychiatric wing of the prison hospital for almost two years, during which period he had systematically been treated with tranquilisers, antidepressants and antipsychotics, had amounted to an acknowledgment by the authorities of his mental illness. The representatives insisted that, given the regularity of their client's suicide attempts in Zugdidi Prison and in the prison hospital, the prison authority should be suspected of having been negligent with respect to the applicant. Thus, as soon as the applicant had first attempted suicide by slashing his wrists, he should immediately have been transferred to the prison hospital and placed under constant and appropriate medical supervision. However, even after the applicant's belated transfer to that hospital, he had managed to persist with his suicidal behaviour by overdosing on drugs, which pointed to a failure of the prison hospital staff to restrict the applicant's unregulated access to strong drugs.

58. As regards his cardiac problems, the applicant's representatives stated that their client had initially refused to be transferred to the specialised cardiac hospital because he had wished to stay there for full treatment rather than only for a coronary angiogram. Furthermore, the representatives argued that the applicant's discharge from the private cardiology hospital on 15 May 2009 had been premature, as the infectious diseases specialist had not yet prescribed him treatment for his HCV. They claimed that the treatment for HCV in the prison hospital could not have been effective, as that hospital had not been an appropriate medical institution. In support of this assertion, they submitted an opinion from a private expert in infectious diseases who, without having studied the applicant's medical file, suggested that, in general, cardiac patients who had been prescribed in-patient treatment in a cardiology hospital must be

administered anti-HCV drugs, which might cause deleterious side-effects on the patient's cardiac condition as well as on his or her mental stability, in the same specialised medical setting, under the joint supervision of a cardiologist and a hepatologist. With respect to the applicant's HCV, the representatives added that the administration of the relevant anti-viral medication had started belatedly.

3. The Court's assessment

(a) Preliminary considerations as regards the scope of the case

59. Having regard to the particular circumstances of the present case, the Court considers that it would be more appropriate to examine the applicant's complaint of a lack of adequate medical care for his various diseases under Article 3 of the Convention only, dispensing with an examination of the same issue under Article 2.

60. Furthermore, the Court finds it appropriate, in the circumstances, to examine the problems related to the applicant's mental health, given the particular delicacy of the issue, separately from that concerning his cardiac and hepatic problems.

(b) General principles concerning the adequacy of medical care in prison

61. The Court recalls that, when assessing the adequacy of medical care in prison, it must reserve, in general, sufficient flexibility in 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 of its positive obligations by the State. In this respect, it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been 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 an applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the applicant's treatment in prison, cannot suffice, by 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 a timely fashion provided all reasonably available medical care in a conscientious effort to hinder development of the disease in question (see, among other authorities, *Goginashvili*, cited above, §§ 69-71). A prison authority's failure to keep comprehensive records concerning a detained applicant's state of health or the respondent Government's failure to submit such records in their entirety would consequently allow the Court to draw inferences as to the merits of the applicant's allegations of a lack of

adequate medical care (see, for instance, *Gladkiy v. Russia*, no. 3242/03, § 90, 21 December 2010).

62. A detained applicant who suffers from a mental disorder might be more susceptible to feelings of inferiority and powerlessness, which calls for increased vigilance in reviewing the issue of the adequacy of psychiatric care in prison (see, for instance, *Sławomir Musiał v. Poland*, no. 28300/06, §§ 87 and 96, 20 January 2009; and also *Dybeku v. Albania*, no. 41153/06, § 47, 18 December 2007). In order to judge the respondent State's responsibility for the well-being of a detainee with suicidal tendencies, the Court must establish that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life and health of the identified individual and, if so, that they failed to take the necessary precautionary measures in order to diminish the opportunities for self-harm (see, for instance, *Shumkova v. Russia*, no. 9296/06, §§ 90-91, 14 February 2012).

(c) Application of these principles to the present case

i. As to the applicant's mental health

63. The Court notes that the authorities learnt of the applicant's mental health problems by 20 January 2006 at the latest, when the relevant medical report recommended to the Zugdidi District Court that the applicant should be subjected to a comprehensive psychiatric examination for the purpose of obtaining a correct diagnosis (see paragraph 10 above). However, it was not until 14 June 2006 that the applicant underwent such an examination for the first time, the results of which then permitted a diagnosis that he suffered from an organic personality disorder (see paragraphs 17 and 18 above). In this regard, the Court attaches importance to the relevant authorities' refusal to implement immediately the Zugdidi District Court's ruling of 20 January 2006 concerning the applicant's placement in the psychiatric hospital for the purposes of a forensic psychiatric examination (see paragraph 12 above). The refusal to enforce that final court ruling obviously hindered the development of an appropriate treatment plan for the applicant in a timely manner. Furthermore, having regard to the parties' submissions on the question, the Court cannot conclude, contrary to the Government's assertion, that the enforcement of that ruling was objectively impossible (see paragraphs 53 and 57 above). All in all, the Court considers that, apart from the domestic authorities' refusal to execute the final and enforceable court ruling concerning the applicant's medical examination, the above-mentioned unjustifiable delay in making the correct medical diagnosis obviously cannot be deemed reasonable, especially in a situation where the well-being of a mentally unstable detainee was at stake.

64. The above-mentioned delay in the diagnosis of the applicant's mental disorder was apparently one of the main reasons why his treatment

with antipsychotics, antidepressants and tranquilisers started as late as 18 August 2006, when he was finally transferred to the prison hospital. Prior to that date, however, as can be inferred from the Government's failure to disclose any medical records accounting for the applicant's treatment during the preceding period, he had not been provided with any meaningful psychiatric care for his personality disorder and depression on an out-patient basis, either in Tbilisi no. 5 prison or in Zugdidi Prison. This conclusion is also consistent with the general picture of the level of psychiatric care in prisons in Georgia, as was documented at the material time by the relevant international observers (see paragraphs 46 and 47 above). Notably, the Court is mindful that the only way of obtaining a minimum level of psychiatric or psychological treatment for mentally disturbed prisoners at that time was to have them transferred to a prison hospital, which, in the applicant's case, did not happen until 18 August 2006.

65. In the meantime, however, the applicant's untreated mental disorder and depression apparently caused him to commit several suicide attempts, either by slashing his wrists or overdosing on various drugs. Those repeated incidents, which occurred at regular and rather short intervals, cast, in the eyes of the Court, legitimate doubt on the conscientiousness of the prison authority's attention towards the applicant's self-harming behaviour. For instance, the Court finds it difficult to understand how it could be that the prison authority, whilst aware of the applicant's personality disorder and of the associated tendency towards demonstrative acts of self-mutilation, did not strictly monitor his access to various serious drugs, such as antibiotics and tranquilisers, which failure was at the core of his second suicide attempt by overdosing. In this connection, it is of further concern that the respondent State did not comprehensively account for any of the applicant's suicide attempts, which could have been done by launching timely and meaningful inquiries into each the incidents.

66. The Court thus finds that, albeit the applicant started receiving treatment for his personality disorder after 18 August 2006, prior to that date his mental condition had been left totally untreated by the prison authority. The authority was too late in obtaining the correct diagnosis of the applicant's condition, which failure obviously delayed the beginning of the treatment as well. Of particular concern was the relevant domestic authorities' unjustified refusal to implement the Zugdidi District Court's ruling of 20 January 2006 concerning the applicant's admission to the psychiatric hospital for a medical examination. Furthermore, whilst being perfectly aware of the applicant's self-harming tendencies, the prison authority could not be said to have exercised the necessary vigilant control over his behaviour, thus failing, contrary to its positive obligations, to diminish the risk of suicide attempts in prison. These findings are sufficient for the Court to conclude, without exploring the other aspects of the case,

that there has been a breach of Article 3 of the Convention on account of the failure to provide timely and adequate care for the applicant's mental health problems in prison.

ii. As to the applicant's cardiac and hepatic problems

67. Having regard to his medical file, the Court observes that, as regards the applicant's cardiac problems, the prison authority duly took charge of them, providing the requisite treatment during his stay in the prison hospital between 18 August 2006 and 31 July 2008. Notably, he was repeatedly consulted by a cardiologist, a vascular surgeon and other appropriate medical specialists, underwent the necessary medical examinations, including electrocardiography and scans of the vascular system, was administered cardiology drugs and so on (see paragraph 33 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).

68. Subsequently, the prison authority offered the applicant a transfer to a private cardiology hospital for the purposes of conducting a special scan, a coronary angiogram, which had been recommended by the medical reports. However, the applicant initially turned down that offer, making certain additional demands, thus needlessly further complicating the situation (see paragraphs 39 and 58 above). However, the Court recalls that Article 3 of the Convention cannot be interpreted as requiring a prisoner's every wish and preference regarding medical treatment to be accommodated. In this as in other matters, the practical demands of legitimate detention may impose restrictions a prisoner will have to accept (see *Mathew v. the Netherlands*, no. 24919/03, § 186, ECHR 2005-IX). Despite the applicant's initially uncooperative conduct, the prison authority finally managed to have him transferred on 3 April 2009 to the private hospital specialised in cardiology treatment. In that private medical setting, the applicant underwent numerous extensive examinations and was administered, with the State bearing their cost, various cardiology drugs, as a result of which treatment his condition considerably improved and he was then discharged back to the prison on 15 May 2009 (see paragraph 43 above and contrast with, for example, *Pitalev v. Russia*, no. 34393/03, § 57, 30 July 2009, and *Akhmetov v. Russia*, no. 37463/04, § 81, 1 April 2010).

69. The Court further finds it important that the prison authority started dispensing, subject to close medical monitoring, adequate treatment for the applicant's HCV with the appropriate antiviral drugs, as result of which the level of the virus in the applicant's system became so low as to be undetectable (see paragraph 45 above). Admittedly, that treatment did not start shortly after the relevant diagnosis had been made (see paragraph above). However, as the facts of the case show, that delay was apparently deliberate and accorded with the attending doctors' professional caution.

Notably, given the often deleterious effects of anti-HCV drugs on patients' mental stability, it was first necessary to have the applicant's personality disorder and symptoms of depression successfully treated. This is exactly what happened in the applicant's situation (see paragraphs 43 and 45 above and compare with *Ghavtadze v. Georgia*, no. 23204/07, § 83, 3 March 2009). In other words, the prison authority made use of a truly comprehensive therapeutic strategy to treat the applicant's HCV (compare with *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005, and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

70. In the light of the foregoing, the Court concludes that the prison authority showed a sufficient degree of due diligence, providing the applicant with sufficiently prompt and strategically planned therapy for his cardiac and hepatic problems. Accordingly, there has been no violation of Article 3 of the Convention in this respect.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government submitted that the claimed amount was excessive.

74. Having regard to the relevant circumstances of the present case and ruling on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

75. In the absence of a claim for costs and expenses, the Court notes that there is no call to make any award under this head.

C. Default interest

76. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the level of treatment for the applicant's mental disorders;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the level of the treatment for the applicant's cardiac and hepatic problems;

4. *Holds* that there is no need to examine the complaint under Article 2 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 8 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President