

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

THIRD SECTION

CASE OF JELADZE v. GEORGIA

(Application no. 1871/08)

JUDGMENT

STRASBOURG

18 December 2012

FINAL

18/03/2013

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



In the case of Jeladze 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 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 1871/08) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Genadi Jeladze ("the applicant"), on 7 December 2007.

2. The applicant was represented by Mr Dimitri Khachidze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

3. On 20 May 2009 the Court decided to communicate the complaint under Article 3 of the Convention concerning lack of adequate medical care in prison to the Government (Rule 54 § 2 (b) of the Rules of Court). It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The Government and the applicant each submitted, on 14 September and 17 November 2009 respectively, observations on the admissibility and merits of the communicated complaint (Rule 54 (a) of the Rules of Court). The Government submitted additional comments on the applicant's submissions on 13 January 2010.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and is currently serving a prison sentence in Rustavi no. 6 Prison.

A. The criminal proceedings against the applicant

6. On 21 July 2004 the applicant was detained on suspicion of aggravated murder and causing actual bodily harm, offences under Articles 109 and 120 of the Criminal Code of Georgia respectively.

7. On 24 July 2004 the Oni District Court, acting at the prosecutor's request, remanded the applicant in custody for three months. His pre-trial detention was subsequently extended several times.

8. On 30 June 2006 the applicant was convicted as charged and sentenced to eighteen years' imprisonment. His conviction was based on several witness statements, forensic reports, and certain other pieces of evidence. The applicant appealed against his conviction, claiming that the first-instance court had erred in the application of domestic law and the assessment of the facts. He complained, in particular, that the Oni District Court had failed to take the statements of the defence witnesses into account.

9. On 15 November 2006 the Kutaisi Court of Appeal, after re-hearing the applicant, the victim and the key witnesses and reviewing the other evidence, upheld the applicant's conviction in full.

10. The applicant's appeal on points of law of 12 December 2006, in which he reiterated the arguments he had made before the first two instances, was rejected by the Supreme Court of Georgia on 7 June 2007.

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

11. In view of the deterioration of the applicant's state of health, on 4 June 2007, the applicant's advocate requested the Ministry of Justice, the authority in charge of the prison system at the material time, to conduct a comprehensive examination of his client's medical condition. His request was, however, refused. Between 8 June and 18 July 2007 experts from the National Forensic Bureau ("the NFB"), an agency of the Ministry of Justice, conducted the medical examination at the applicant's own expense ("the medical report of 18 July 2007"). The conclusions of that examination showed that the applicant was suffering from a chronic form of

viral Hepatitis C ("HCV") with moderate pathological activity; the experts classified the applicant's condition as "not serious" and recommended that he receive antiviral treatment on an out-patient basis.

12. On 1 August 2007 the applicant's lawyer requested the Prison Department of the Ministry of Justice ("the Prison Department") to transfer his client from Rustavi no. 6 Prison, where he was detained at the time, to the Prison Department's medical establishment ("the prison hospital") for the purposes of antiviral treatment. In support of the above request, the applicant's lawyer submitted the medical report of 18 July 2007.

13. On 6 August 2007 the Governor of Rustavi no. 6 Prison replied that the applicant was receiving hepatoprotective drugs in prison, and that his state of health was stable.

14. In the meantime, the applicant was transferred, for unknown reasons, from Rustavi no. 6 to Rustavi no. 2 Prison, which fact his lawyer complained of to the Prison Department on 29 August 2007. He also reiterated his request for the applicant's transfer to the prison hospital.

15. In letters of 12 and 20 September 2007, the Governor of Rustavi no. 2 Prison and a representative of the Prison Department respectively, citing the medical report of 18 July 2007, stated that "in view of the applicant's current state of health, his transfer to [the prison hospital] for medical assessment and treatment [was] unnecessary". They noted that the applicant was receiving symptomatic treatment on an out-patient basis.

16. On 24 June 2008 the applicant's lawyer requested the Prison Department to specify what treatment was being provided for his client in prison. A copy of the applicant's medical file was also requested.

17. In a reply of 14 July 2008, the Prison Department stated that the applicant had not been treated with antiviral medication; spasmolytic and hepatoprotective drugs had been provided instead. Blood and liver tests performed on the applicant had disclosed that his state of health remained satisfactory. The reply further noted that the applicant was under the supervision of the medical personnel of Rustavi no. 2 Prison. The lawyer's request for a copy of the applicant's medical file was left unanswered.

18. On 21 July 2008 the applicant's lawyer requested the NFB to conduct another comprehensive medical examination of his client in order to establish how his HCV condition had evolved since July 2007. For that purpose, on 18 July 2008 the lawyer had presented a service agreement to the NFB according to which the applicant was to cover the costs of the examination. However, after a preliminary estimate disclosed that those costs would amount to some 1,000 Georgian laris (GEL) (approximately 450 euros)[1], on 30 September 2008 the lawyer, referring to the difficult financial situation of the applicant's family, requested that the examination

[1] Approximate conversion is given in accordance with the exchange rate of the GEL to the Euro on 22 March 2012.

be conducted at the Prison Department's expense. In this connection, it was brought to the Department's attention that the applicant had been infected with HCV in prison.

19. The request of 21 July 2008 was dismissed by the Prison Department on 8 October 2008.

20. On 20 October 2008 the applicant's lawyer requested the Court, under Rule 39 of the Rules of Court, to indicate to the Government an interim measure ensuring that the applicant was provided with a comprehensive medical examination and an appropriate treatment plan. On 22 October 2008 the Government were requested, under Rule 54 § 2 (a) of the Rules of Court, to provide the Court with up-to-date information on the applicant's state of health and his current medical treatment.

21. On 13 November 2008 the Government submitted to the Court a copy of the applicant's medical file, according to which it appeared that the applicant had been transferred to the prison hospital on 30 October 2008. Comparing the results of the various medical tests which the applicant had undergone upon his transfer to the prison hospital with the conclusions of the medical report of 18 July 2007, the Government stated that the applicant's HCV had not progressed and that his general condition had remained stable. They contended that, in view of the fact that the applicant's HCV was in a latent form, antiviral medication was not necessary. Instead, Ringer Lactate and glucose transfusions containing vitamins C, B1 and B6 were to be given to him. Riboxin, a medication having positive metabolic effects, was also prescribed.

22. By a letter of 20 January 2009 the Government submitted the results of the applicant's additional medical examination, conducted at a civil laboratory centre on 8 December 2008. The results of the laboratory tests showed that the applicant was infected with HCV, Genotype 3a, with a viral load of 316130 UL/ml, and he required antiviral medication. Consequently, the Government, in consultation with qualified medical experts, proposed a treatment plan according to which the antiviral agents Intron A and Ribovirin were to be administered to the applicant for twenty-four weeks. The medical information further disclosed that the applicant's state of health was stable; no jaundice of the skin or sclera was noticeable; the amount of bilirubin was within the norms; the liver bore no signs of serious internal injury but its lower border was palpable 2 cm below the costal margin.

23. The medical file shows that the applicant initially accepted the proposed treatment plan. However, according to four handwritten notes dated 26 and 29 December 2008 and 9 January and 18 May 2009, he opted for postponing the treatment until he had undergone another forensic examination. The note of 18 May 2009 does not bear the applicant's signature.

24. In the meantime, the applicant was additionally diagnosed with a personality disorder and was transferred to the prison hospital, where he was

seen by various specialists, including a psychiatrist, and prescribed the relevant drug-based treatment.

25. According to the applicant's medical file, on 4 June 2009 he consented in writing to receiving antiviral treatment, however, only on condition that he was transferred either to Ksani no. 7 or Rustavi no. 2 Prison.

26. On 29 June 2009 he was again offered antiviral treatment on an out-patient basis on the premises of Rustavi no. 6 Prison. A handwritten note according to which the applicant again refused the proposed treatment plan was signed by the head doctor of Rustavi no. 6 Prison, another doctor from the prison hospital, and one of the prison officers. The handwritten note contained at the end a comment by the applicant stating that he had never refused the proposed antiviral treatment and that no preconditions for the treatment had been set by him. The applicant maintained that the conditions in Rustavi no. 6 Prison were inadequate for the treatment. He also stated that on several occasions handwritten notes concerning his refusal to start the treatment had been drawn up in his absence.

27. As disclosed by the case file, on 16 December 2009 the applicant finally agreed to the proposed anti-viral treatment plan.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. The relevant legal provisions concerning the protection of prisoners' rights, as well as excerpts from the Public Defender's report for the second half of 2007 bearing on medical problems in prison, including those created by HCV, are cited in the case of *Poghosyan v. Georgia* (no. 9870/07, §§ 20-22, 24 February 2009).

The right to health and problems related to the exercise of that right within the prison system of Georgia **- Special Report by the Public Defender of Georgia, covering 2009 and the first half of 2010**

29. The relevant excerpts from the above-mentioned report read:

"**Viral Hepatitis**

The problem of viral hepatitis remains one of the most acute issues within the establishments of the Georgian prison system. About 40% of the inmates who died in 2009 were suffering from viral hepatitis. 15% of the deceased had cirrhosis of the liver and related complications such as bleeding from the upper part of the gastrointestinal tract, which in several instances was the direct cause of the inmates' death. As regards the statistical data for 2010, 47.4% of the prisoners who died in the first half of 2010 were diagnosed as suffering from viral hepatitis; some of them had developed life-threatening complications. The monitoring carried out by the National Preventive Mechanism revealed that the chief doctors of the prison establishments recognised viral hepatitis as one of the most widespread diseases. However, no

accurate record is maintained concerning instances of viral hepatitis infection; nor is any other type of statistical data gathered in the prisons of Georgia. The [prison] doctors have information only concerning cases where the hepatitis diagnosis has been confirmed by lab results. The monitoring revealed that a lot of prisoners who had clinically apparent signs of liver damage had not been examined for the presence of viral hepatitis at all."

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

30. The European Prison Rules lay down the following guidelines as concerns healthcare services in prisons:

"*Admission*

15.1 At admission the following details shall be recorded immediately concerning each prisoner: ...

f. subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others. ...

16. As soon as possible after admission:

a. information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42; ...

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary. ...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to: ...

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;

B. Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf/E (2002) 1 - Rev. 2010)

31. The following are the relevant extracts concerning health care services in prisons:

> 33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.
>
> It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.
>
> 34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention ... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay ...
>
> 39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment. ...
>
> 54. A prison health care service should ensure that information about transmittable diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and to prison staff. Where appropriate, medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out.

C. Report of 25 October 2007 (CPT/Inf (2007) 42) on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT") from 21 March to 2 April 2007

32. The relevant parts of the report read as follows:

> "76. Despite the goodwill and commitment of health-care staff at the penitentiary establishments visited, the provision of health care to prisoners remained problematic, due to the shortage of staff, facilities and resources. The delegation heard a number of complaints from prisoners at all the establishments visited concerning delays in access to a doctor, the inadequate quality of care (in particular, dental and psychiatric care) and difficulties with access to outside specialists and hospital facilities. ...
>
> 78. Prisoners in need of hospitalisation were transferred to the Central Penitentiary Hospital, upon recommendation by the prison doctor. Some complaints were heard at the establishments visited of long delays in securing such transfers, due to a limited

capacity. Inmates who could not be admitted to the Central Penitentiary Hospital depended financially on their families (including, apparently, to cover the cost of escort to the hospital). The CPT recommends that measures be taken to ensure that prisoners in need of hospital treatment are promptly transferred to appropriate medical facilities.

79. As a result of the insufficient number of doctors and nurses, the medical examination upon admission was superficial, if it took place at all. The only establishment at which prisoners were systematically screened upon arrival was Prison No. 5 in Tbilisi, where new arrivals were undressed and screened for injuries by a doctor or a nurse, and all cases of injuries and complaints of ill-treatment were immediately reported to the Prosecutor's Office. However, in other aspects the initial medical examination was cursory and did not identify detained persons' health-care needs. At the rest of the establishments visited, there was no routine medical examination on arrival. A prisoner could be seen by a doctor if he/she had a particular health complaint and specifically requested an examination. ...

80. No progress had been made since the previous visit in respect of medical documentation. Only a small number of prisoners (i.e. those who had a particular medical problem) had a medical file worthy of the name. In line with its previous recommendations, the CPT recommends that the Georgian authorities take steps to open a personal and confidential medical file for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of his treatment, including any special examinations he has undergone. ...

... [R]ecommendations

- the Georgian authorities to take steps to ensure that all newly arrived prisoners are seen by a health-care staff member within 24 hours of their arrival. The medical examination on admission should be comprehensive, including appropriate screening for transmissible diseases (paragraph 79); ...

- the Georgian authorities to take steps to open a personal and confidential medical file for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of his treatment, including any special examinations he has undergone (paragraph 80)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained under Article 3 of the Convention that he had been infected with HCV in prison and that the relevant prison authorities had failed to provide him with adequate medical treatment in this regard. This provision reads as follows:

Article 3

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

A. Admissibility

34. The Court notes that the applicant's complaint under Article 3 of the Convention is effectively twofold: that he was infected with HCV in prison, and that the prison authorities had failed to provide him with adequate medical treatment in this regard.

35. As to the alleged infection with HCV in prison, the Court considers that this aspect of the applicant's complaint does not concern the structural problem of inadequate medical treatment of Georgian prisoners suffering from serious contagious diseases at the material time (see *Poghosyan,* cited above, § 69, and *Ghavtadze v. Georgia*, no. 23204/07, §§ 103-105, 3 March 2009) but clearly relates to the applicant's personal situation of having allegedly contracted HCV in prison. The Court is thus of the opinion that a civil claim for damages under Article 207 of the General Administrative Code and Article 413 of the Civil Code was, in these particular circumstances, the most effective remedy to be used (see *Goloshvili v. Georgia,* no. 45566/08, §§ 24-25 and 32-33, 23 October 2012, not yet final). Since the applicant in the current case has never attempted to bring such a civil claim for damages for his alleged infection with HCV, the Court considers that this aspect of the 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.

36. The Court further notes that the remaining part of the applicant's complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The Government firstly submitted that they had not been under any obligation to conduct compulsory screening of the applicant for the presence of HCV. Secondly, in connection with the adequacy of the medical treatment available to the applicant in the post-diagnosis period, they claimed, without providing any relevant medical evidence in support, that the applicant's state of health at the initial phase of his diagnosis had been stable; he had been examined on several occasions; no deterioration of his condition had been noted and he had been given vitamins and

hepatoprotectors. In the Government's view, the fact that the applicant had not been provided with antiviral treatment immediately after his infection was revealed did not in itself amount to a violation of Article 3 of the Convention.

38. As regards the subsequent phase of the applicant's treatment, following the applicant's transfer to the prison hospital on 30 October 2008, the Government noted that he had been provided with a comprehensive medical examination on the basis of which a treatment plan had been drawn up. The Government regretted that subsequently the applicant had refused antiviral treatment. In this connection, they dismissed the applicant's allegations concerning the inadequacy of the living conditions in Rustavi no. 6 Prison as unsubstantiated. They maintained that the applicant had been promised that he would be placed under permanent medical supervision, provided with the relevant diet and medication, and allowed outdoor exercise every day.

39. The applicant contested the Government's submissions. He argued that the authorities' reaction to his diagnosis had been belated and inadequate. In particular, the applicant stated that despite his diagnosis, he had not been provided with a single medical test for more than fifteen months; hence, the relevant prison authorities could not have been monitoring the progress of his disease. It was only on 30 October 2008, after the Court's intervention, that the applicant had finally been transferred to the prison hospital for an examination.

40. The applicant also disputed the Government's assertion that he had refused to cooperate with the authorities. He explained that his refusals to submit to medical treatment had pursued the single purpose of forcing the prison authorities to transfer him to a "proper" establishment where the treatment would be accompanied by appropriate nutrition and adequate living conditions. In the applicant's opinion it was indisputable that he wanted to protect his health, but that aim was impossible to achieve in Rustavi no. 6 Prison.

2. The Court's assessment

(a) General principles

41. The Court reiterates that Article 3 of the Convention imposes an obligation on States to protect the physical well-being of persons deprived of their liberty (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). At the same time, it cannot be construed as laying down a general obligation to release detainees on health grounds. Rather, the compatibility of a detainee's state of health with his or her continued detention, even if he or she is seriously ill, is contingent on the State's ability to provide relevant treatment of the requisite quality in prison (see *Goginashvili v. Georgia*, no. 47729/08, §§ 69-70, 4 October 2011, and

Makharadze and Sikharulidze v. Georgia, no. 35254/07, §§ 71-73, 22 November 2011, with further references).

42. The Court has held in its case-law that the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII (extracts)); that the diagnoses and care are prompt and accurate (see *Hummatov*, cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March); and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at, to the extent possible, curing the detainee's diseases or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov,* cited above, § 116, and *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006). At the same time the Court notes that in the assessment of the adequacy of the treatment it must be guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one of means, not of result (see *Goginashvili,* cited above, § 71).

(b) Application of the above principles to the circumstances of the present case

43. The Court considers that there are essentially two elements in the applicant's complaint under Article 3 of the Convention which require consideration on the merits:

(a) the applicant's complaint regarding the domestic authorities' failure to provide him with the required medical examination and subsequent antiviral treatment in due time (the period until 30 October 2008); and

(b) the applicant's complaint regarding the inadequacy of the antiviral treatment plan offered to him subsequently.

i. Medical assistance up until 30 October 2008

44. From the very outset the Court would like to address the issue of compulsory screening of prisoners for HCV infection raised by the Government (see paragraph 37 above). It is to be recalled in this connection that the gravity of the problem of HCV transmission in the Georgian prisons, as well as the role of the above-mentioned screening in minimising the spread of this disease, was already acknowledged by the Court in its

leading case on the matter, *Poghosyan v. Georgia* (cited above, § 69; see also *Ghavtadze*, cited above, §§ 103-105*).* In the instant case the applicant did not have a screening test for HCV during the first three years of his detention. Even subsequently, after the appearance of the first HCV symptoms, his request for the relevant medical examination was dismissed by the prison authorities and he was obliged to obtain a medical examination at his own expense (see paragraph 11 above). The Court finds this negligence on the part of the relevant prison authorities to be incompatible with the respondent State's general obligation to take effective measures aimed at preventing the transmission of HCV and other contagious diseases in the prison sector (see paragraphs 30-32 above).

45. Turning now to the post-diagnosis period itself, the Court observes that in the present case the applicant was diagnosed with HCV in July 2007 (see paragraph 11 above). After that date, according to the available medical information, the applicant was examined for the first time only after his transfer to the prison hospital on 30 October 2008 (see paragraph 21 above). The Government submitted that the applicant had undergone several medical check-ups in between (see paragraphs 13, 15 and 17 above), which assertion the applicant disputed (see paragraph 39 above). The Court notes that the Government did not provide any medical documentation in support of their assertion (see paragraphs 17 and 37 above). That being so, the Government, in the Court's opinion, have failed in accounting for the detained applicant's state of health and thus in discharging their part of the burden of proof (see, *Malenko v. Ukraine*, no. 18660/03, §§ 55-58, 19 February 2009; *Petukhov,* cited above, §§ 94-96; *Khudobin,* cited above, § 88; and, *a contrario, Goginashvili*, cited above, § 72).

46. The Court, hence, considers, in the absence of any evidence to the contrary, that for more than fifteen months the applicant was left without appropriate diagnostic treatment, despite a concrete medical recommendation to the contrary (see *Poghosyan*, cited above, § 57; compare with paragraphs 48-50 below). He was also left without the relevant information in respect of his illness, and thus was deprived of any control over it (see *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007). In this regard, the Court considers irrelevant the Government's submission, unsupported by relevant medical evidence, that the applicant received hepatoprotectives and vitamins, since as a consequence of the lack of adequate medical examinations, the exact effect of chronic hepatitis on the applicant's health was never established and the applicant could not have been provided with adequate medical care (see *Testa*, cited above, § 52, and *Poghosyan*, cited above, §§ 57-58).

47. To conclude, the relevant domestic authorities failed in their duty to account for the medical condition of the detained applicant; they also failed to screen the applicant for HCV; most importantly, the Government's reaction to the applicant's diagnosis of HCV was belated and inadequate

(see, *a contrario, Đermanović v. Serbia*, no. 48497/06, §§ 58, 23 February 2010). The Court, hence, finds a violation of Article 3 of the Convention on account of the absence of adequate medical care for the applicant up until 30 October 2008.

ii. Medical assistance from 30 October 2008

48. As already noted above, on 30 October 2008 the applicant was transferred to the prison hospital, where he was provided with the required diagnostic examination and subsequently offered a concrete antiviral treatment plan. The applicant, however, rejected the proposed treatment plan as incomplete, claiming that it was not accompanied by appropriate nutrition and adequate living conditions. He was particularly opposed to being treated on the premises of Rustavi no. 6 Prison.

49. The Court notes at the outset that there is a disagreement among the parties as regards the validity of several handwritten notes according to which the applicant apparently refused the proposed antiviral treatment plan. Notwithstanding the possible flaws in the way the applicant's consent for the treatment was sought, the Court considers that there is no need for it to resolve this controversy for the following reason: the applicant has reiterated his argument before the Court concerning the deficiency of the treatment plan offered to him by the Rustavi no. 6 prison authorities. He reaffirmed in his observations that his refusal to submit to medical treatment had pursued the purpose of forcing the prison authorities to transfer him to a "proper" establishment. Therefore, the sole question now pending before the Court is whether Rustavi no. 6 Prison was capable of providing the applicant with antiviral treatment accompanied by adequate nutrition and adequate living conditions.

50. The Court observes that the Government claimed in their observations that the applicant had been promised that he would be placed under permanent medical supervision in Rustavi no. 6 prison. He had been further promised that his antiviral treatment would be accompanied by the relevant diet and medication, and that he would be allowed outdoor exercise every day. The applicant challenged the veracity of the Government's submission, failing, however, to provide any evidence in support. The Court considers this failure particularly striking in view of the fact that the applicant did not even try the treatment at that time. Most importantly, as disclosed by the case file, the applicant has at the end accepted the very same treatment plan in December 2009. The Court, therefore, finds that the applicant's complaint concerning the inadequacy and incompleteness of the treatment plan offered him is unsubstantiated. Accordingly, there has been no violation of Article 3 of the Convention on account of the medical treatment provided to the applicant following his transfer to the prison hospital on 30 October 2008.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant complained under Article 5 §§ 1 and 3 of the Convention about the alleged unlawfulness of his arrest and pre-trial detention. Relying on Article 6 § 1 of the Convention, he further challenged the outcome of the criminal proceedings conducted against him, denouncing as unreliable the results of the forensic report which served as a basis for his conviction.

52. The Court notes that the applicant's pre-trial detention within the meaning of Article 5 §§ 1 and 3 ended upon his conviction at first instance on 30 June 2006 (see *Davtian v. Georgia* (dec.), no. 73241/01, 6 September 2005), and thereafter his detention was covered by Article 5 § 1 (a) (see *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7). However, the applicant lodged his application with the Court only on 7 December 2007, which was more than six months after the date of his conviction at first instance. It follows that the complaints under Article 5 §§ 1 and 3 of the Convention are inadmissible for failure to comply with the six-month rule, and that they must be rejected under Articles 35 §§ 1 and 4 of the Convention.

53. The Court further finds, in light of all the material in its possession, that the applicant's submissions under Article 6 § 1 of the Convention do not disclose any appearance of an arguable issue under this provision and must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed, on the basis of the relevant bill, GEL 154[1] (one hundred fifty-four GEL) as compensation for the cost of his medical examination conducted in June-July 2007, and EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage he had sustained on account of his infection with HCV in prison, followed by inadequate medical care.

[1] About EUR 75, approximate conversion is given in accordance with the exchange rate of the GEL to the Euro on 20 June 2012.

56. The Government submitted that there had been no violation calling for compensation. In the alternative, the Government asserted that the applicant's claims for non-pecuniary damage were unsubstantiated and highly excessive. As regards the pecuniary damage claimed by the applicant, they considered that all the costs of the applicant's medical treatment had been born by the prison authorities; hence, there was no reason to attribute to the Government costs of an additional medical examination.

57. The Court notes first of all its above finding of a violation of Article 3 of the Convention on account of the failure of the prison authorities to provide the applicant with prompt and adequate medical examination and treatment in prison. The Court agrees that the applicant must have suffered distress and anguish resulting from the shortcomings in his medical treatment. Ruling on an equitable basis and taking all the circumstances of the case into account, it awards the applicant EUR 5,000 in respect of non-pecuniary damage. The Court also finds that there is a direct causal link between the medical expenses incurred by the applicant and the violation of Article 3 found above. It thus awards the applicant EUR 75 in respect of pecuniary damage.

B. Costs and expenses

58. The applicant claimed GEL 2,000[1] (two thousand GEL) in respect of his representation in the proceedings before both the domestic courts and the Court. In support of this claim, he submitted a legal service contract dated 2 July 2006, signed by the applicant's mother and the lawyer. According to the terms of the contract, the applicant's mother was to pay the lawyer the fixed sum of GEL 2,000. The applicant further claimed, on the basis of the relevant bills, a total of GEL 234[2] (two hundred thirty-four GEL) for postal services.

59. The Government did not comment on this claim.

60. The Court recalls that in order for costs and expenses to be recoverable under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant EUR 500 in respect of the legal costs and EUR 115 in respect of the postal expenses.

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[1] About EUR 965, approximate conversion is given in accordance with the exchange rate of the GEL to the Euro on 20 June 2012.

[2] About EUR 115, approximate conversion is given in accordance with the exchange rate of the GEL to the Euro on 20 June 2012.

C. Default interest

61. 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 3 of the Convention concerning the alleged absence of adequate medical care for the applicant in prison admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequate medical treatment provided to the applicant in prison up until 30 October 2008;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the medical treatment provided to the applicant from 30 October 2008 onwards;

4. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 75 (seventy-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(iii) EUR 615 (six hundred fifteen 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President