

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

FIFTH SECTION

CASE OF KITIASHVILI v. GEORGIA

(Application no. 37747/08)

JUDGMENT

STRASBOURG

23 November 2017

FINAL

23/02/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kitiashvili v. Georgia,

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

Angelika Nußberger, *President,*
Nona Tsotsoria,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 31 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 37747/08) 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 Zakaria Kitiashvili ("the applicant"), on 23 July 2008.

2. The applicant was represented by Ms S. Abuladze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their successive Agents, most recently Mr L. Meskhoradze, of the Ministry of Justice.

3. The applicant alleged, in particular, that the authorities had failed to provide him with adequate medical care for his various medical conditions in prison.

4. On 20 March 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and at the material time was serving a sentence of imprisonment. The facts of the case as submitted by the parties may be summarised as follows.

A. Different sets of criminal proceedings against the applicant

6. The case file indicates that in April 2001 and March 2005 the applicant was found guilty of various criminal offences, but his prison sentence was suspended for health reasons (cardiovascular and lung disorders, high blood pressure, a left bundle branch block, and tuberculosis of the left lung).

7. In November 2005 and March 2007 two additional sets of criminal proceedings on multiple charges including armed robbery were initiated against the applicant. He was arrested on 28 December 2006 and placed in pre-trial detention.

8. On 14 June 2007 the applicant was found guilty as charged in the first set of proceedings and sentenced to twenty-four years' imprisonment. The applicant did not appeal against his conviction.

9. On 25 September 2007, in the second set of criminal proceedings, the applicant was found guilty of armed robbery and sentenced to thirteen years' imprisonment. The court further decided that the aggregate term of imprisonment to be served pursuant to that judgment and the judgment of 14 June 2007 should be fixed at thirty years.

10. The judgment of 25 September 2007 was altered on appeal on 21 January 2008. The prison sentence for the offences committed in 2005 was reduced to ten years, but the total sentence to be served remained unchanged at thirty years. An appeal on points of law by the applicant was rejected as inadmissible by the Supreme Court of Georgia on 15 September 2008.

11. On 1 November 2012 the applicant was granted early release from prison.

B. The applicant's health and medical treatment in prison

12. The applicant entered the prison system with a history of tuberculosis of the left lung. On 10 April 2008 he was transferred to the Department of Prisons' medical facility ("the prison hospital"), where an X-ray of his lungs was performed. As no pathologies were revealed, the applicant was returned to Rustavi Prison no. 6 on 17 April 2008.

13. On 1 May 2008 he was hospitalised again because of a cyst on his right testicle, and on 4 May 2008 he underwent a surgical operation to have the cyst removed. The results of a subsequent biopsy revealed that the cyst was a benign skin cyst. On 6 May 2008 additional blood tests revealed that the applicant did not have AIDS, but it was not possible at that stage to determine the presence of the hepatitis C antibody in his blood. Further tests three months later were recommended. After a trouble-free period of convalescence, the applicant was sent back to prison on 24 May 2008.

14. On 23 June 2008 the applicant's lawyer asked for additional medical tests to be organised for the applicant. In particular, he asked for a blood test for hepatitis C. That request apparently went unanswered. On 10 July 2008 the applicant was transferred to the prison hospital because of an abscess in his lower jaw. In addition to being treated by a dentist, according to the medical file, the applicant had a consultation with a neurologist and an endocrinologist because he was experiencing persistent headaches. The neurologist diagnosed him with post-traumatic encephalopathy and prescribed treatment. On 30 July 2008 the applicant was discharged from the prison hospital, although his headaches persisted.

15. On 8, 9, 15 and 24 September 2008 the applicant applied to the prison authorities to be returned to the prison hospital "for serious health reasons". He did not specify what was wrong with his health. On 10 September 2008 the prison authorities forwarded the applicant's letters to the governor of Rustavi Prison no. 6 and the head of the prison administration's group of medical experts, so that they could be examined and appropriate action could be taken.

16. On 30 October 2008 the applicant staged a hunger strike to obtain an examination by a neurologist. On 5 November 2008 the applicant was seen in prison by a neurologist, who prescribed treatment for his post-traumatic encephalopathy.

17. On 10 November 2008 representatives of the Public Defender's Office visited the applicant, who complained of headaches. The applicant alleged that during his previous stay in the prison hospital he had taken medicine for his headaches for a week, but to no avail. He said that he had suffered from headaches before his arrest, however, the pain had become more severe, and at that point it had been constant for six months. He also alleged that the treatment prescribed on 5 November 2008 had not yielded any results. On 11 November 2008 the Public Defender sent a report on the meeting to the prison governor and requested news of the applicant's state of health.

18. On 27 November 2008, after having examined the applicant, the neurologist diagnosed neurasthenia and post-traumatic encephalopathy. Noting that the previous treatment had not worked, he considered that a more thorough examination was necessary.

19. On 8 December 2008 the applicant staged a second hunger strike, requesting that he be transferred to the prison hospital. He maintained that, having suffered a serious head injury in the past, he was in need of a comprehensive inpatient examination of his head. He further complained that, although he was only being prescribed simple sedatives, he was not receiving them. On 17 December 2008 a representative from the Public Defender's office met with the chief physician of Rustavi Prison no. 6, where the applicant was staying at the material time. The doctor confirmed that the applicant was suffering from headaches and was in need of a

tomography scan. He explained, however, that the applicant was only receiving pain medication, as the relevant insurance company refused to finance the required examination and treatment. According to an entry in the applicant's medical file, on 19 December 2008 he was still on hunger strike, suffering from headaches.

20. On 29 December 2008 the Public Defender wrote a letter to the Minister of Justice, the head of the Prisons Department, and the Governor of Rustavi Prison no. 6, challenging the effectiveness of the insurance company with which the Ministry of Prisons had concluded a contract, on the basis of, *inter alia*, the applicant's case. The Public Defender alleged that the applicant was being denied adequate examination and treatment for his post-traumatic brain condition. While discussing in detail the failures and shortcomings of the existing insurance scheme, the Public Defender recommended that the relevant authorities annul the relevant contract.

21. In the meantime, an X-ray of the applicant's lungs taken on either 22 or 23 of December 2008 had revealed signs of recurrent tuberculosis. His doctor recommended bacteriological analysis and an examination by a specialist. On 23 January 2009 bacteriological tests revealed the presence of tuberculosis bacteria, and the applicant was immediately put on a DOTS (Directly Observed Treatment, Short-course) programme, the treatment strategy for the detection and cure of tuberculosis, as recommended by the World Health Organisation.

22. According to an entry in the applicant's medical file, on 18 February 2009 he was still suffering from constant headaches. The doctor treating the applicant recommended that he be transferred to the prison hospital for proper examination. On 19 February 2009 the applicant was placed in the prison hospital with a diagnosis of pulmonary tuberculosis and post-traumatic encephalopathy. There, he underwent various medical tests, including a blood test for hepatitis C markers, which was negative, and a tomography scan. He also had a consultation with a neurologist. As a result, he was diagnosed with intracranial hypertension syndrome. The applicant was prescribed relevant treatment and sent back to Rustavi Prison no. 6 on 26 February 2009.

23. On 5 March 2009 the applicant was placed in a facility in Ksani for prisoners with tuberculosis. On 10 and 13 July 2009 he violated the internal rules of the facility. As a result, on an unspecified date he was transferred back to Rustavi Prison no. 6, where, according to the latest medical examination of which the Court was informed, he continued his treatment for tuberculosis.

24. On 14 July 2009 the applicant underwent a serological test, which detected no active hepatitis C virus in his system.

C. Conditions of the applicant's detention

25. On 29 December 2006 the applicant was placed in Tbilisi Prison no. 5, where he stayed for almost six months. According to him, the conditions of detention in that prison were inhuman and degrading. In view of the severe overcrowding in prison, he had to take turns sleeping, sleeping for a maximum of four hours a day. The sanitary and hygienic conditions were appalling, and for months there was no opportunity for him to have proper shower. The applicant was also deprived of the opportunity to have regular outdoor exercise. Whilst in Tbilisi Prison no. 5, he was not allowed to see his family even once.

26. On 23 June 2007, following his conviction, the applicant was transferred to Rustavi Prison no. 6. According to him, the conditions of his detention improved there, although he was still deprived of regular outdoor exercise. Moreover, the nutrition in the prison was poor and he was deprived of basic items relating to hygiene, such as soap, bed linen, toilet paper, and towels.

27. According to a letter from the prison governor dated 24 June 2008, the applicant was only visited by his family once during his time in that prison, on 22 April 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

The Law on Imprisonment of 1999 (abolished with the adoption of the new Code of Imprisonment in 2010)

28. The Law on Imprisonment of 1999 set out two distinct legal regimes for family visits for people in prison: one for defendants in pre-trial detention, and the other for people who had been convicted. Section 89 regulated the entitlements of defendants, and provided that defendants were only authorised to receive family visits with the prior consent of a prosecutor or an investigator. For people who had been convicted, in accordance with section 48 of the same law, the number of family visits allowed per month differed according to the regime of the particular prison they were in.

29. The relevant provisions of the Law on Imprisonment, in force at the material time, read as follows:

Section 48. Visits from family members and other relatives

"1. A person who has been convicted has a right to see his or her family members and other close relatives ... This right can be restricted only in view of the security needs of the penal establishment, also for the purpose of securing order in the penal establishment.

2. The right to have a meeting with a person who has been convicted may be granted to family members and close relatives. The duration of a visit shall not exceed one hour. A person wishing to see a person who has been convicted shall give notice of the visit to the administration of the penal establishment at least five working days in advance.

...

4. Female detainees who have been convicted are entitled to a maximum of four family visits per month, whilst the number of family visits for male detainees who have been convicted is defined in accordance with the regime of the relevant penal establishment. Having regard to a convicted person's conduct or attitude towards work, and for the purposes of his or her social rehabilitation, notwithstanding his or her sex, age or the [regime of the prison which he or she is in], a governor of a penal establishment can grant a convicted person a right to an additional family visit.

4(1). A decision to allow a convicted person to receive an additional family visit is taken by the governor of the penal establishment at his or her own initiative ..."

Section 89. Family visits to prisoners

"1. A prisoner (a defendant, [or] a person who has been convicted, ...) is entitled to a maximum of two family visits per month. ...

1(1). A defendant is granted a right to a family visit by an investigator [or a] prosecutor. A defendant shall be informed in writing of any reasoned decision by an investigator or prosecutor refusing a family visit within 24 hours. In the event of a refusal, the defendant can appeal against it to the district (city) court. ... The decision of the district (city) court is final ...

1(2) In exceptional circumstances, a convicted person's ... entitlement to a family visit can be restricted in the interests of a case by a decision of a district (city) court acting upon the application of a prosecutor. The district (city) court shall take a decision within 48 hours of the filing of such an application by a prosecutor. This decision is final ..."

30. In addition, in accordance with sections 73 and 74 of the above law, male detainees in general regime prisons who had been convicted were entitled to a maximum of two family visits per month, whilst male detainees in strict regime prisons who had been convicted were entitled to one family visit per month.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant alleged that he had not been provided with adequate medical care for his various medical conditions in prison. He further complained regarding the inadequacy of the material conditions of his detention in Tbilisi Prison no. 5 and Rustavi Prison no. 6. The applicant relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Conditions of detention in Tbilisi Prison no. 5

32. The Court notes that the applicant left Tbilisi Prison no. 5 on 23 June 2007 (see paragraph 26 above), whereas the current application was submitted to the Court on 23 July 2008. In this connection, it reiterates its relevant case-law, in accordance with which it will not consider detention conditions as a continuous situation in circumstances where the complaint concerns an episode, treatment or particular detention regime attached to an established period of detention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 76-78, 10 January 2012). In the present case, the applicant was transferred from Tbilisi Prison no. 5 to Rustavi Prison no. 6. He did not claim that the material conditions of detention in those two establishments had been identical with regard to the overcrowding and consequent problems as to sleeping and sanitation (see paragraphs 25-26 above).

33. Having regard to the above circumstances and the fact that the applicant was never returned to Tbilisi Prison no. 5 after 23 June 2007 (see, *a contrario*, *Răducanu v. Romania*, no. 17187/05, § 73, 12 June 2012), the Court cannot conclude that there was a continuous situation. It therefore considers that this part of the applicant's complaint under Article 3 of the Convention was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Mirzashvili v. Georgia*, no. 26657/07, § 51, 7 September 2017; see also *Gorguiladzé v. Georgia*, no. 4313/04, §§ 23-24, 20 October 2009, and *Mazanashvili v. Georgia,* no. 19882/07, § 40, 28 January 2014).

2. Conditions of detention in Rustavi Prison no. 6

34. The Government submitted that the complaint about the conditions of detention as described by the applicant was wholly unsubstantiated. In their view, the fact that he had never voiced his alleged grievances to the relevant prison authorities suggested that those allegations were untrue. Furthermore, they were premature, owing to non-exhaustion of domestic remedies, and amounted to an abuse of the right of application within the meaning of Article 35 § 3 of the Convention.

35. In reply, the applicant maintained that he had not received adequate nutrition and had also been deprived of basic items of hygiene in Rustavi Prison no. 6. Thus, he had never been provided with toilet paper, a toothbrush, soap, or towels. As for food, his family had not been allowed to send him food parcels, and he had not had money to purchase additional

products in the prison shop. As a result, he had often been left hungry. Furthermore, he had not been allowed to have regular showers and had been entitled to outdoor exercise only twice a week.

36. Referring to its case-law in respect of conditions of detention in Georgian custodial institutions at the material time, the Court reiterates the rule that, whenever an applicant wished to challenge allegedly poor material conditions of detention in a Georgian prison, even if such a complaint did not call for the full and meticulous exhaustion of any specific criminal or civil remedies (compare with *Goginashvili v. Georgia*, no. 47729/08, §§ 54 and 57, 4 October 2011, and *Aliev v. Georgia*, no. 522/04, § 62 and 63, 13 January 2009), it was still required, at the very minimum, that at least one of the responsible State agencies be informed of the applicant's subjective assessment that the conditions of detention in question constituted a lack of respect for, or diminished, his or her human dignity. Without such basic conduct at domestic level by a person who wished to challenge the conditions of his or her detention, the Court would necessarily have difficulties in evaluating the credibility of an applicant's allegations of fact in that respect (see *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 96, 1 June 2017; see also, *Janiashvili v. Georgia*, no. 35887/05, §§ 70-72, 27 November 2012, and *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007).

37. Having regard to the material available in the case file, the Court notes that the applicant never informed any of the relevant authorities of his dissatisfaction with any particular aspect of the material conditions of his detention, including that relating to poor nutrition or a lack of hygiene products in Rustavi Prison no. 6 (see, *a contrario*, the applicant's multiple complaints concerning his state of health and the lack of adequate medical treatment in this regard, paragraphs 14, 15, 17, and 19 above). Furthermore, in the proceedings before the Court, the applicant limited his submissions to general statements, failing to submit any evidence in support (see *Muršić v. Croatia* [GC], no. 7334/13, § 127, ECHR 2016, and *Ananyev*, cited above, § 122). In view of the factors mentioned above, the Court considers that the applicant has failed to substantiate his complaint properly (see *Janiashvili*, cited above, §§ 70 and 71; *Ildani v. Georgia*, no. 65391/09, § 27, 23 April 2013; *Mazanashvili*, cited above, § 41; *Nozadze v. Georgia* (dec.), no. 41541/05, § 31, 9 May 2017; and *Mindadze and Nemsitsveridze*, cited above, § 97). The complaint should therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

3. Medical treatment in prison

38. The Government submitted that the complaint under Article 3 of the Convention concerning the alleged lack of adequate medical treatment in prison was premature, as the applicant had not sought monetary compensation for the alleged negligence on the part of the prison

authorities. In addition, they also claimed that the complaint was unsubstantiated. In particular, they submitted that the applicant had been provided with adequate medical treatment for all of his ailments throughout his detention.

39. The applicant did not reply to the Government's above objections.

40. As regards the Government's plea as to non-exhaustion, having regard to the Court's case-law on the subject (see *Goginashvili*, cited above, §§ 51-60; and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 55, 22 November 2011), the Court dismisses it. It further notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

41. The applicant maintained that the diagnosis of recurrent tuberculosis had been belated; accordingly, the treatment had been late in starting, and as a result the disease had progressed to the infiltration and decomposition stage. He also reiterated that the treatment provided for his neurological problems and other health conditions had never been adequate.

42. The Government submitted that the applicant's allegations were untrue. They asserted that while in Rustavi Prison no. 6 he had been kept under constant medical supervision, receiving regular outpatient treatment and being seen by specialist doctors whenever necessary. He had been transferred to the prison hospital several times, where improvements in his condition had been confirmed. The applicant's cyst had been operated on in April 2008 and he had had a dental procedure in July 2008. He had been enrolled in the DOTS programme in January 2009, and had been examined in relation to his post-traumatic brain injury and diagnosed with intracranial hypertension syndrome in February 2009. Subsequently, he had been closely monitored in relation to all of his conditions.

43. In connection with the applicant's tuberculosis, the Government also submitted that he had continually received anti-tuberculosis treatment, even after his discharge from the Ksani facility in July 2009. In support of their argument, they provided the Court with a copy of his medical file.

2. The Court's assessment

(a) The general principles

44. The relevant general principles concerning the adequacy of medical treatment in prisons have been summarised by the Court in the case of *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-140, ECHR 2016, with

further references therein; see also *Goginashvili*, cited above, §§ 69-70; *Jeladze v. Georgia*, no. 1871/08, §§ 41-42, 18 December 2012; and *Irakli Mindadze v. Georgia,* no. 17012/09, §§ 39-40, 11 December 2012).

(b) Application of the principles to the case

45. The Court considers that there are essentially three elements to the applicant's complaint under Article 3 of the Convention which require consideration on the merits: (1) the applicant's complaint regarding the delay in treating his tuberculosis; (2) the applicant's complaint regarding the inadequacy of the treatment provided for his post-traumatic brain condition and related headaches; and (3) the applicant's complaint concerning the inadequacy of the treatment for the rest of his medical conditions.

46. Starting with the last element, the Court notes that on 4 May 2008 the cyst on the applicant's right testicle was operated on and the applicant subsequently spent twenty days in the prison hospital (see paragraph 13 above). The case file does not indicate that the applicant ever complained regarding the way in which the operation had been carried out or any related post-operative complications. On 10 July 2008 he was transferred back to the prison hospital because of an abscess in his lower jaw (see paragraph 14 above). After being operated on, he was discharged on 30 July 2008 in a satisfactory condition. As regards hepatitis C, on 6 May 2008 the applicant was examined for the presence of the hepatitis C antibody in his blood, however, it was not possible to determine anything at that stage (see paragraph 13 above). In February and July 2009 the applicant underwent a blood test, which revealed no active hepatitis C virus and thus no need for treatment in this respect (see paragraphs 22 and 24 above). The Court does not see that any issue arises under Article 3 of the Convention in relation to the way the applicant's above conditions were treated.

47. As for the tuberculosis, according to the case file, the applicant had a history of tuberculosis prior to his detention. In April 2008 he had an X-ray on his lungs and no active tuberculosis bacteria were detected (see paragraph 12 above). In December 2008 he had another examination and this time tuberculosis bacteria were found (see paragraph 21 above). Within one month of the diagnosis of recurrent tuberculosis, namely on 23 January 2009, he was enrolled in the DOTS programme (see paragraph 21 above). On 5 March 2009 he was transferred to the facility in Ksani for prisoners with tuberculosis. It is important to note that, according to the case file, no complaint was lodged by the applicant with the Ksani prison authorities in connection with the medical treatment provided to him at that facility. It is true that subsequently he was discharged from the Ksani facility for violating internal discipline and returned to Rustavi Prison no. 6. However, as the case file indicates, he continued to have tuberculosis treatment in the latter establishment under the supervision of relevant specialists (see paragraph 43 above). The Court reiterates that it is guided by the due

diligence test in its assessment of the adequacy of the treatment, since the State's obligation to cure a seriously ill detainee concerns the means to be employed and not the results to be achieved (see *Goginashvili*, cited above, § 71). In view of the Court's relevant case-law, and having regard to the relevant factual circumstances, the Court sees no negligence on the part of the prison authorities in their diagnosis and treatment of the applicant's tuberculosis.

48. As regards the applicant's post-traumatic brain condition, he argued that on several occasions certain medicines had been withheld from him, and that, in any event, he had not been provided with a comprehensive examination of his brain, including a tomography scan. The Court notes that the applicant staged two hunger strikes in protest against the prison authorities' reluctance to address his headaches seriously (see paragraphs 16 and 19 above). He also had to raise this issue with the representatives of the Public Defender in order to increase pressure on the prison authorities (see paragraphs 17 and 19 above). Nonetheless, the Court cannot overlook the fact that the applicant had regular access to a neurologist (see paragraphs 14, 16 and 18 above), having his first examination immediately after voicing a complaint about the headaches for the first time (see paragraph 14 above). He had several treatments, although they were unsuccessful (see paragraphs 14 and 16 above). There is no evidence that the diagnostic process, although complicated by the applicant's multiple conditions and thus protracted, had a negative impact on his state of health, and he makes no specific allegations in this respect (compare with *G. v. Russia*, no. 42526/07, §§ 85-86, 21 June 2016, and *Bulava v. State* [Committee], no. 62812/12, §§ 37-39, 25 July 2017; see also *Elbakidze v. Georgia* (dec.) [Committee], no. 5137/09, § 26, 19 September 2017). The Court finds the fact that the tomography scan was conducted following a delay of almost three months regrettable (see paragraphs 18-19 and 22 above). However, after his diagnosis with intracranial hypertension syndrome in February 2009, the applicant was prescribed appropriate treatment and he never voiced any grievances in this respect (see paragraph 22 above).

49. The foregoing considerations are sufficient to enable the Court to conclude that, despite certain shortcomings and delays, the overall medical treatment available to the applicant in prison was adequate. Accordingly, there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50. In his application form the applicant complained under Article 8 of the Convention concerning his inability to receive family visits during the initial nineteen months of his detention, and subsequently his being allowed to receive only one family visit every six months. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

51. The Government claimed that the applicant's complaint under Article 8 of the Convention was inadmissible for non-exhaustion of domestic remedies. In particular, in connection with the first aspect of the complaint concerning the period of his pre-trial detention, they submitted that the applicant had never requested a family visit in accordance with the procedure provided for in section 89 of the Law on Imprisonment, in force at the material time (see paragraph 29 above). As for the subsequent post-conviction period, he had been entitled to supplementary visits with the consent of the governor of the relevant prison, but he had never availed himself of this opportunity.

52. In reply, the applicant maintained his complaint, alleging that during the first nineteen months of his detention he had been allowed to see his family only once, on 28 December 2008. Subsequently, he had seen his family once every six months. He said that it would have been useless to request family visits and complain to the relevant prison authorities in that regard.

53. In his observations, the applicant additionally complained that during the family visits he had been unnecessarily separated from visitors by a glass partition, and that only two adult members of his family had been admitted per visit.

2. The Court's assessment

54. The Court notes that the applicant complained for the first time regarding the manner in which the family visits had been conducted in Rustavi Prison no. 6 in his observations submitted in reply to those of the Government. This complaint is distinct from the initial complaint under Article 8 of the Convention raised in his application form (see paragraph 50 above). There is not only a difference in substance, because the initial complaint exclusively concerned the number of family visits the applicant had received throughout his detention; in terms of the relevant legislative basis, the Court notes that the conditions for family visits (for example, rules regarding a glass partition and the number of persons allowed) are regulated by the rules of the relevant prison, whereas the number of visits a

prisoner may have is provided for in the Law on Imprisonment. Therefore, in the Court's view, the new grievance cannot be considered an elaboration of the applicant's original complaint on which the parties have commented, and hence it cannot be taken up in the context of the present application (see, *mutatis mutandis*, *Saghinadze and Others v. Georgia*, no. 18768/05, § 72, 27 May 2010, and *Irakli Mindadze*, cited above, § 25, with further references therein).

55. As to the applicant's complaint concerning his limited ability to receive family visits during the initial nineteen months of his detention, and subsequently his being allowed to receive only one family visit every six months, the Court observes that, given the distinct detention regime put in place for defendants during their pre-trial detention (see paragraphs 28-29 above), the Court was to treat the two aspects of this complaint separately: the periods before and after the applicant' conviction. It does not, however, see a need to distinguish between the two periods in the current case, as it finds the applicant's complaint under Article 8 of the Convention as a whole unsubstantiated. During his pre-trial detention the applicant was allowed under domestic law to have family visits with the prior consent of an investigator or prosecutor (see paragraphs 28-29 above). However, he failed to submit to the Court a copy of at least one request for such a family visit, or a copy of a refusal or subsequent complaint against the refusal. The same holds true for his post-conviction period: in accordance with the relevant legislation in force at the material time, the applicant was allowed to receive one or two family visits per month depending on his prison regime (see paragraph 30 above). It is not clear from the case file whether the applicant ever asked for such a visit in accordance with the procedure prescribed by law and was not allowed to have one. The case file does not contain a single copy of a request or subsequent complaint against a refusal. In such circumstances, without examining the Government's non-exhaustion plea in detail, the Court considers that the applicant has failed to substantiate his complaint regarding the restrictions on his receiving regular family visits in prison (see *Guk v. Ukraine* [Committee], no. 16995/05, § 93, 8 December 2016). It thus finds that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. Lastly, the applicant complained under Article 5 §§ 1, 2 and 3 of the Convention that he had not been informed of the grounds for his detention, and that the relevant court decisions ordering his pre-trial detention lacked sufficient reasoning. Relying on Article 6 § 1 of the Convention, he contested the reasoning of the first-instance court in its decision of 14 June 2007. In connection with the same set of criminal proceedings, he also

alleged, without providing any explanations or details, a violation of Article 6 § 3 (a), (b) and (d) of the Convention. Lastly, under Article 7 of the Convention, the applicant alleged that the domestic courts had failed to take into account the 2007 amendments to the Criminal Code of Georgia, in accordance with which the rules on sentence calculation had been changed in his favour.

57. As to the complaints under Article 5 §§ 1, 2 and 3 of the Convention, the Court notes that the applicant was arrested on 28 December 2006 and his pre-trial detention ended on 14 June 2007 with his conviction at first instance by the Khashuri District Court (see *Assanidze v. Georgia* [GC], no. 71503/01, § 190, ECHR 2004- II). Hence, the complaints under Article 5 §§ 1, 2 and 3 of the Convention raised in the application form of 23 July 2008 must be dismissed as falling outside the six-month time-limit laid down by Article 35 § 1 of the Convention (see *Ghvaladze v. Georgia* (dec.), no. 42047/06, 11 September 2007).

58. In connection with the various complaints under Article 6 §§ 1 and 3 (a), (b) and (d) of the Convention, the Court notes the following: the applicant raised those complaints in the context of the criminal case which ended with the 14 June 2007 decision rendered at first instance by the Khashuri District Court. The applicant never appealed against that decision. Hence, his complaints are inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention, and are rejected pursuant to Article 35 § 4.

59. The same holds true for the applicant's complaint under Article 7 of the Convention. As the case file indicated, he never raised his grievance concerning the inaccurate calculation of his prison term at domestic level. The complaint is thus inadmissible under Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention concerning the alleged lack of adequate medical treatment in prison admissible, and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 23 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Angelika Nußberger President