

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

FIFTH SECTION

CASE OF KUPARADZE v. GEORGIA

(Application no. 30743/09)

JUDGMENT

STRASBOURG

21 September 2017

FINAL

21/12/2017

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 Kuparadze 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 Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 29 August 2017,

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

PROCEDURE

1. The case originated in an application (no. 30743/09) 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, Ms Gvantsa Kuparadze ("the applicant"), on 5 March 2009.

2. The applicant was represented by Ms M. Kavtaradze, a lawyer practicing in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, and subsequently by their acting Agents, most recently Ms S. Mezurnishvili of the Ministry of Justice.

3. The applicant alleged that her placement in an adult prison – in a cell initially shared with adults and subsequently in the section for juvenile offenders within that prison – rather than in a juvenile detention facility, as well as the material conditions of her detention in the section for juvenile offenders, had been contrary to Articles 3 and 13 of the Convention. She also complained that the criminal proceedings against her had been unfair, in breach of Article 6 §§ 1 and 3 (d) of the Convention.

4. On 28 September 2015 the complaints under Articles 3 and 13 and Article 6 §§ 1 and 3 (d) of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1992 and lives in Tbilisi.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Criminal proceedings against the applicant

7. On 9 November 2006 a classmate of the applicant, Mr T.T. (hereinafter "T.T."), was stabbed several times in a secondary school playground. The applicant, aged fourteen at the material time, was present at the scene. There were no eyewitnesses to the incident.

8. According to the applicant's version of the events, on the above date and at the material time, she met with T.T. in the school playground. They were discussing T.T.'s need for a certain sum of money when four young men – strangers to the applicant – appeared and two of them immediately attacked T.T. One of the two attackers held T.T. down on the ground and both men stabbed him several times with two different knives. The applicant claimed that T.T. had owed them money. One witness ("the witness") stated that at the material time she had seen two young men fitting the description given by the applicant climb into the school playground swearing and leave after a while.

9. According to the official version of the events based on T.T.'s statements, the applicant and T.T. met in the school playground following the former's promise to lend T.T. a certain sum of money. In the course of the conversation, T.T. kneeled with his back to the applicant. At that moment, the applicant hit him on the head. T.T. fell to the ground and the applicant stabbed him with a knife from behind. While T.T. remained conscious, the applicant held him down with one hand and continued stabbing him with the other. T.T. was facing the ground during the entire incident and could not see whether the applicant was using a knife. T.T. managed to escape from the applicant and ran approximately forty metres before falling unconscious on the school's basketball court, where he was eventually found. Later he was transported to a hospital where, after emergency surgery, his life was saved.

10. On 14 November 2006 the applicant was arrested in view of T.T.'s statement given to the investigating authorities. She was subsequently remanded in custody on charges of attempted aggravated murder.

11. On 9 January 2007 a forensic expert report of the Ministry of the Interior ("the first MI report") confirmed that multiple wounds had been inflicted upon the victim with "a sharp object, possibly a knife". A forensic chemical examination report no. 443/sq produced by the Ministry of the

Interior ("the second MI report") found particles of grey cotton fibre on the applicant's jacket that by their colour, structure, and type were similar to the grey cotton fibre contained in the textile of the victim's jacket.

12. On an unspecified date an initial forensic medical expert report no. 6135 by the National Forensic Bureau ("the first NFB report") concluded that T.T.'s wounds had been inflicted with a sharp object and that taken together, they had been life-threatening. The expert attached particular importance to two wounds to the chest which had perforated T.T.'s lungs. Between 16 and 20 February 2007 the same forensic expert carried out an additional examination and issued report no. 998/31 ("the second NFB report") at the applicant's request. The second report specified that six wounds had perforated T.T.'s lungs and re-confirmed that "all the wounds had been inflicted with some sharp object/objects and, taken together, were life-threatening." Concerning the question of whether the injuries were inflicted on the victim with one or several weapons, the NFB expert stated:

> "In order to answer that question it is necessary to convene a panel of forensic-medical experts, and additionally to have the clothes as well as the object/objects possibly used to inflict the injuries presented, if available."

13. The expert testified during the proceedings before the first-instance court that the discrepancy between the first and the second NFB reports concerning the number of wounds inflicted on the victim had been caused by the poor quality of the photocopied material relied on during the first NFB expert examination. The expert confirmed that the second NFB report was therefore more accurate and six, rather than two, wounds had perforated T.T.'s lungs. The exact figure depicting the total number of wounds was not explicitly specified either by the experts or by the domestic courts.

14. On 12 June 2007 the Tbilisi City Court found the applicant guilty as charged and sentenced her to ten years' imprisonment, of which the last five years were suspended on probation. Dismissing altogether the applicant's version of the events and relying on T.T.'s statements, the first and second NFB reports, the first and the second MI reports and other evidence in the case, the court found that the applicant had stabbed T.T. "with a knife." The knife was never recovered. Amongst certain other items of evidence, the City Court also referred, in its judgment, to statements of several witnesses, schoolmates of the applicant, according to which the latter was known for having been carrying a knife with her at school on a regular basis.

15. The applicant appealed, reiterating that the victim had been stabbed by two young men with two knives and that she could not possibly have inflicted the wounds alone. She argued that the witness statement supporting her version of the events had been rejected arbitrarily. During the trial at the Tbilisi Court of Appeal, in accordance with Article 364 § 1 of the Code of Criminal Procedure (see paragraph 40 below), the defence adduced in evidence two alternative forensic reports, both issued on 2 November 2007, and argued that their results supported the applicant's version of the events,

including the use of two knives, and conclusively excluded the applicant's guilt.

16. The first report, of a comprehensive alternative forensic expert examination, was prepared by a panel of experts at a private forensic science centre. The descriptive part of the report no. 42/k, which reflected results of an examination carried out between 25 October and 2 November 2007 ("the first alternative forensic report"), was based on the following material: the judgment of the first-instance court, T.T.'s statements, the applicant's statements, the first MI report and T.T.'s medical file.

17. The applicant's lawyer presented the panel of experts with the following questions:

> "1. Based on the [existing evidence and the victim's statements] ... was the victim capable of showing resistance to G. Kuparadze or otherwise defending himself ...?
>
> 2. Considering the existing material, what type of pain and responsive reactions (self-defence, etc.) would the [victim] have had at the time the first injury was inflicted on him?
>
> 3. In view of the [victim's] statements and considering the mechanism used to inflict the injuries described in the [forensic reports], how plausible is it that G. Kuparadze inflicted them on the [victim] by holding his shoulder with one hand while the latter was initially kneeling and then crawling on the ground face-down?
>
> 4. In view of the convicted G. Kuparadze's statement, how possible is it that the [victim's] injuries described in the [forensic reports], given the mechanism used to inflict them, were inflicted by two different persons if one of them had been holding [the victim]?"

18. The part of the report entitled "circumstances of the case" contained excerpts from the applicant's criminal case file with the following concluding paragraph:

> "Given that the [first-instance] court accepted the [victim's] statements and dismissed the statements given by the convicted G. Kuparadze and [the witness], that the statements given by the [victim] and the convicted G. Kuparadze essentially contradict each other, that there is no eyewitness in the case except for [the witness], as well as the fact that the weapon of the crime is missing, the lawyer commissioned the alternative expert examination to determine the truth regarding the case and in order to receive answers to his questions."

This was followed by a more detailed account and an assessment of the matter.

19. After examining all the material at hand, the experts came to the following conclusions in response to the questions posed by the applicant:

> "1. ... Before losing consciousness, T.T. was able to carry out various active measures (self-defence, punching, running, etc.).
>
> 2. ... [considering the nature of the injuries] T.T. would have experienced a sharp, strong pain at the moment of their infliction which would have triggered adequate self-defensive or other movements.

3. Considering the statement given by T.T. ... the location of the wounds ... and the anatomical-physiological differences between the sexes ... it is hard to imagine how G. Kuparadze could have inflicted the wounds on T.T. in the conditions described by the latter.

4. Considering the nature and location of T.T.'s wounds, it is entirely possible that they were inflicted in the conditions described by G. Kuparadze (by two individuals, one holding T.T. and both stabbing him with knives)."

20. The applicant's lawyer commissioned a second forensic expert report from the Research Centre for Independent Forensic Examinations of the Georgian Technical University concerning the instrument of the crime and other technical aspects of the incident. The report no. 2-e-116, which reflected results of an examination carried out between 19 October 2007 and 2 November 2007 ("the second alternative forensic report"), was based on the following material: the statements of T.T., the statements of the applicant, the first MI report, the second NFB report, T.T.'s medical file and the first-instance court judgment.

21. The lawyer presented the panel of experts with the following questions:

"1. In view of the [forensic] expert reports presented, were the injuries to [the victim's] body and [through his] clothes inflicted with one or several objects (knives)?

2. How possible is it that G. Kuparadze inflicted the wounds as described in T.T.'s statement, by holding his shoulder with one hand while he was initially kneeling and then crawling on the ground face-down, in view of the mechanism used to inflict the wounds [described in the forensic and forensic medical reports]?

3. How possible is it that the ... wounds were inflicted by two different individuals and accordingly with two different knives, in accordance with the statement given by G. Kuparadze?"

22. Having provided a reconstruction of the incident by means of sketches and having analysed the case materials, the experts reached the following conclusions:

"1. The wounds were inflicted on T.T.'s body and [through his] clothes not with one but with two sharp objects, possibly knives, of different sizes, 2 and 4 centimetres wide [respectively].

2. G. Kuparadze could not have inflicted the wounds as described in T.T.'s statement, by holding his shoulder with one hand while he was initially kneeling and then crawling on the ground face-down, in view of the mechanism used to inflict the wounds [described in the forensic and forensic medical reports] and bearing in mind the limited access to the areas of impact.

3. ... it is possible ... that the ... wounds were inflicted by two different individuals (and accordingly with two different knives), as described in G. Kuparadze's statement."

23. On 7 December 2007 the Tbilisi Court of Appeal upheld the conviction. Concerning the applicant's argument that the witness statement confirmed her version of the events, the court reasoned that although the

witness had stated that she had seen two men climb in and out of the school playground, she had also said that that was a common sight at that school. Accordingly, the court found it impossible to establish that those persons had been implicated in T.T.'s stabbing.

24. The Court of Appeal dismissed the two alternative forensic reports commissioned by the defence. Regarding the first alternative forensic report, the court stated the following:

> "The court cannot accept the findings of the [first alternative forensic report] given that it is drafted in violation of a number of procedural norms. In particular, information as to which specific materials were presented [to the experts] and relied on when reaching the conclusions is missing; the research part of the forensic report contains a legal assessment of the [first-instance court] judgment and of a number of pieces of evidence, whereas under Article 96 of the Code of Criminal Procedure an expert examination is not to be carried out to determine legal matters. Furthermore, the concluding part of the expert examination [report] is presumptive, speculative and based on probability which, in the first place, is beyond the expert's competence as provided for in Articles 365 [and] 374 of the Code of Criminal Procedure, [and] no evidentiary value may be attributed to speculative findings, in accordance with Article 371 (6) [of the Code]."

25. As regards the second alternative forensic report, the court noted the following:

> "The court cannot accept the findings of the [second alternative forensic report] as they are also speculative. Furthermore, the report relies on the conclusions of the medical and forensic expert examinations [medical documentation, the MI report and the second NFB report] which themselves do not categorically determine the nature of the object used to inflict the injuries on the victim, and even more so the number [of such injuries]. Without referring to a concrete scientific study, the [report] analyses and rejects the victim's statement and relies on the statement of the accused."

26. The appellate court also reasoned that the applicant's argument that two unidentified men had beaten the victim while stabbing him was not confirmed in view of the absence of any physical signs of beating in the relevant forensic medical report. In the subsequent part of the judgment the Court of Appeal referred to the first and the second MI reports and the second NFB report, among other evidence, while upholding the judgment of the first-instance court.

27. On 12 September 2008 the Supreme Court of Georgia dismissed an appeal on points of law lodged by the applicant as inadmissible. Without responding to the applicant's arguments that the lower courts' dismissal of the alternative forensic reports had been erroneous and arbitrary, and that the main argument of the defence had been left without an appropriate answer, the court reproduced the relevant provision of the Criminal Procedure Code, holding that "the case [was] not important for the development of the law and coherent judicial practice, the [contested] decision [did] not differ from the Supreme Court's existing practice in such matters, and the appellate court [had] not committed any major procedural

flaws during its examination which could have significantly affected its outcome."

B. The conditions of the applicant's detention

1. Separation of juveniles from adult inmates in prison

28. On 16 November 2006 the applicant, aged fourteen at the time, was remanded in custody and placed in a cell together with adult female inmates in Tbilisi Prison no. 5 for Women and Juveniles ("prison no. 5"). According to the case file, the applicant did not complain about the material conditions of her detention in that cell.

29. On 10 January 2007 the Minister of Justice issued an order for the creation of a separate section for juvenile female offenders within prison no. 5, and instructed the relevant authority to separate the inmates accordingly.

30. On 24 January 2007 the applicant was moved to the newly created juvenile section of prison no. 5. She was alone in a cell for five months and subsequently shared the cell with two other juveniles. The applicant complained about the material conditions of detention in that cell during the proceedings concerning the deferral of her sentence (see paragraphs 32-34 below).

2. Material conditions of detention and deferral proceedings

31. On 21 February 2009 the Public Defender of Georgia visited the applicant in prison. In letters dated 6 March and 24 April 2009 addressed to the Minister of Corrections and Legal Assistance, the Public Defender expressed his concerns about the conditions of the applicant's detention in prison no. 5. According to him, the cell in which the applicant was detained with two other juveniles measured approximately 12-15 square metres, the water tap was out of order, causing humidity in the cell, and the ventilation did not function properly, which led to an unpleasant odour. According to a press release issued by the Public Defender's Office on 20 March 2009, the tap in the applicant's cell was fixed shortly afterwards.

32. On 11 March 2009 the applicant instituted proceedings requesting the deferral of her sentence pending the construction of a separate detention facility for juvenile female offenders. She argued that, in the absence of a separate facility, her detention in the adult prison, even if in a separate section for juveniles, as such amounted to a breach of Article 3 of the Convention. She further complained that the cell where she was serving her sentence was too small, the water tap was out of order causing humidity, the ventilation did not function properly, and that she was deprived of the opportunity to have daily walks, contrary to Article 3 of the Convention.

33. On 16 June 2009 the Tbilisi City Court rejected the deferral request as manifestly ill-founded. It reasoned that domestic legislation did not provide for deferral of a sentence pending the construction of a separate detention facility for juveniles and that the complaints concerning the alleged violation of the applicant's rights under Article 3 of the Convention had not been substantiated. The applicant appealed.

34. On 23 September 2009 the Tbilisi Court of Appeal rejected the appeal as manifestly ill-founded in a final decision. It reasoned that such a deferral was not guaranteed by the domestic legislation. As regards the applicant's allegation that her rights under Article 3 of the Convention had been violated, the court found the complaint unsubstantiated and contrary to the material available before it. It based its finding on the applicant's own admission before the court that she had been afforded the possibility of unlimited daily walks but sometimes chose not to use her exercise time, as she preferred not to share the space with other inmates, that she was free to take showers even if taking turns with other juvenile inmates, and that she was able to see the psychologist present in the prison without any problems.

35. According to the applicant, she completed her secondary education while in detention, and was admitted to a university after passing the requisite admission exam.

36. On 11 November 2011 the applicant was released on probation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

1. The Imprisonment Act (1999)

37. The Imprisonment Act of 1999, in force at the material time and in so far as relevant, provided:

Section 6(2)

"Penal establishments ... are created and closed down by the Minister of Justice ..."

Section 6(4)

"A minor who is sentenced to imprisonment shall be placed ...

b) in an educational facility for juveniles between the age of fourteen and eighteen."

Section 19(2)

"A single penal establishment may comprise [several] detention regimes."

Section 22

"1. The following categories shall be placed separately in a penal establishment: ...

a) females;

b) juveniles; ...

3. The Minister of Justice may, in agreement with the Minister of Labour, Health and Social Affairs, decide upon a different method of separation."

2. Order of the Minister of Justice (2007)

38. Order No. 6 of the Minister of Justice dated 10 January 2007 provided:

"In accordance with sections 6(2) and 19(2) of the Imprisonment Act and in order to ensure the security of the penal establishments of the Ministry of Justice of Georgia and their population, to improve the living and health-and-hygiene conditions and to ensure the separation of female juvenile offenders, ... a section for juvenile female offenders shall be created in Tbilisi Prison no. 5 for women and juveniles ..."

3. Public Defender of Georgia

39. The relevant part of the Public Defender's report for the second half of 2008 reads:

"The cell [where three juveniles, including the applicant, are placed] measures approximately 12-15 square metres, the washbasin is out of order, which creates humidity, the cell is not fully ventilated and there is an unpleasant smell. According to the [juvenile] detainees, the prison does not have a separate yard designated for them ... The prison administration uses a room of approximately 15 square metres covered with a metal net instead of a ceiling. This cell is used as an exercise yard where juvenile inmates are taken for two hours per day ..."

B. Criminal proceedings

40. Provisions of the Code of Criminal Procedure (1998) ("the Code"), in force at the material time, concerning forensic expert examinations, in so far as relevant, read:

Article 96 § 4

"An expert examination shall not be implemented to decide legal matters."

Article 364 § 1

"A party [to criminal proceedings] has a right to commission an [alternative] expert examination at their own expense in order to determine circumstances that, in their view, may aid the protection of their interests. The expert institution is obliged to carry out the examination commissioned and paid for by the party [to the criminal proceedings]. The conclusion of the expert examination shall be admitted to the criminal case file as evidence and assessed together with other evidence if the party so requests."

Article 365

"Questions put before an expert and his or her findings should not exceed the scope of the expert's special knowledge."

Article 371

"... 2. The forensic report shall contain the [following] information: the expert's identity (name, surname, education, specialisation, years of experience working in the field, academic degree and title, position), a warning given to the expert concerning the criminal responsibility for knowingly reaching an erroneous conclusion, the basis for carrying out the examination, the persons who attended the process, the materials of the criminal case file relied on, physical evidence, samples or other objects studied, type of examination and methods used, their reliability, reasoned answers to the questions presented [to the expert], relevant circumstances established on the expert's own initiative. ...

6. Speculative findings of an expert concerning the circumstances to be assessed have no evidentiary value, but they should nevertheless be reflected in the expert's findings."

Article 374

"1. An expert opinion is assessed by an investigator or a prosecutor based on its reasoning, compatibility with the evidence in the criminal case, and on whether the procedural rules governing expert examinations have been observed.

2. An expert opinion is not mandatory for the party that commissioned it but any disagreement should be reasoned.

3. If several expert examinations are carried out as part of the [same] criminal case and there is a difference of opinion among the experts, the doubt should benefit the suspect or the accused, in line with Article 10 § 4 of the Code."

41. Provisions of the Code concerning the scope of the judicial examination of a case by an appellate court and the admissibility criteria of an appeal on points of law before the Supreme Court, in so far as relevant, read:

Article 520 § 1

"The lodging of an appeal obliges the appellate court to review the case and to carry out the judicial investigation anew. A court [of appeal] may not refuse to examine a case."

Article 533 § 4

"... Only new evidence presented to the appellate court is subject to a fresh examination as part of the appellate proceedings. [All] evidence assessed by a first-instance court is regarded as fully examined [with certain exceptions]."

Article 547 § 2

"An appeal on points of law is admissible if:

a) the case is important for the development of the law and coherent judicial practice;

b) the decision of the appellate court differs from the Supreme Court's existing practice in such matters;

c) The appellate court has committed major substantive or procedural flaws during its examination which could have significantly affected the outcome of the case."

III. RELEVANT INTERNATIONAL LAW DOCUMENTS

A. Council of Europe documents

42. Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules ("European Prison Rules"), adopted on 11 January 2006, in so far as relevant, reads:

"18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

...

c. young adult prisoners separately from older prisoners.

18.9. Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned."

43. Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, adopted by the Committee of Ministers on 5 November 2008, provides, in so far as relevant:

"49.1. Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it.

...

59.1. Juveniles shall not be held in institutions for adults, but in institutions specially designed for them. If juveniles are nevertheless exceptionally held in an institution for adults, they shall be accommodated separately unless in individual cases where it is in their best interest not to do so. ...

59.2. Exceptions may have to be made to the requirements for separate detention in terms of sub-paragraph 1 in order to allow juveniles to participate jointly in organised activities with persons in institutions for adults."

B. United Nations documents

44. Article 37 of the United Nations Convention on the Rights of the Child ("the CRC") of 1989, in force with respect to Georgia since 1994, in so far as relevant, reads:

"States Parties shall ensure that: ...

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall

be separated from adults unless it is considered in the child's best interest not to do so ..."

45. The relevant parts of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), adopted by the General Assembly on 29 November 1985 (A/RES/40/33), state:

"13.4. Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

...

26.3. Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults."

C. The United States Department of State

46. The US Department of State 2008 Country Report on Human Rights Practices in Georgia stated:

"The justice ministry was in the middle of a multiyear program to build and renovate prisons in order to meet international physical standards. During the year the government increased the budget for capital expenditures on prisons by 555 percent compared to 2006. In January a justice ministry decree created a new juvenile department in two prisons for women, which meant that juvenile female inmates would be confined separately from adults, as was the case for males."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained under Articles 3 and 13 of the Convention about the conditions of her detention. The Court, being master of the characterisation to be given in law to the facts of the case, considers that this part of the application falls to be examined under Article 3 of the Convention only. The provision reads as follows:

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

48. The Government refrained from commenting on the admissibility and merits of the complaint.

49. The applicant maintained that her initial detention in a cell with adult inmates for about two months constituted inhuman treatment. She further complained of the material conditions of detention in her cell in the juvenile female offenders' section, including the lack of personal space, prison overcrowding, the absence of daily walks, a malfunctioning water tap

causing humidity, and poor ventilation. The applicant maintained that her detention in the section for juvenile female offenders, in the absence of a separate detention facility for juvenile female offenders, constituted inhuman treatment.

A. Admissibility

50. The Court reiterates that the object of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

51. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

52. The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no 27824/95, § 39, ECHR 2002-VII, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 75-78, 10 January 2012, with further references). In the context of complaints relating to conditions of detention, as long as the applicant stays within the same type of detention facility, and provided the material conditions have remained substantially the same, it matters not that he or she was transferred between cells or wings within the same remand prison, from one remand prison to another within the same region or even to a remand prison in a different region (see *Ananyev*, cited above, § 77, with further references). Nevertheless, the Court reiterates that a significant change in the detention regime, even where it occurs within the same facility, has been held to put an end to the "continuing situation", and the six-month time-limit would thus be calculated from that date: this would be the case, for instance, where the applicant has moved from a communal cell to solitary confinement or from an ordinary cell to the hospital wing (ibid., with further references).

53. Turning to the circumstances of the present case, the Court observes that the applicant was initially remanded in custody in an ordinary prison for adults, sharing her cell with adult female inmates for about two months,

thus falling under the ordinary prison regime. On 10 January 2007, in line with the relevant legislation in force at the material time, which allowed for the coexistence of several detention regimes in a single facility (see paragraph 37 above), a separate section for juvenile offenders was created in that prison and the applicant was transferred to the section on 24 January 2007 (see paragraphs 29-30 and 38 above). She was initially placed in a separate cell alone for five months and subsequently shared the cell with two other juveniles.

54. The Court observes that the applicant's complaints concerning the period of her detention in prison no. 5 are different in nature. The applicant's sole complaint about the initial period of her detention concerned her placement in a cell together with adult inmates. That situation ended with the applicant's transfer to the juvenile female offenders' section of that prison. The complaints relating to her subsequent placement in that section concerned the material conditions of her detention in a cell which she shared only with juveniles, and her request to defer the sentence until the construction of a separate detention facility for juveniles. In the light of the above principles, the nature of the applicant's complaints and in view of the change of her detention regime, the Court does not find any special circumstances which would enable it to construe the entire period of the applicant's detention as a "continuing situation" (see, *mutatis mutandis*, *Zakharin and Others v. Russia*, no. 22458/04, § 115, 12 November 2015) rather than as two distinct periods. Consequently, the applicant's complaint about the initial period of her detention in a prison for adults, in a cell together with adult inmates, was submitted more than two years after the situation had come to an end. It follows that the complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

55. As regards the remaining complaints under Article 3 of the Convention concerning the applicant's placement in a separate section for juvenile offenders and the conditions of detention in that section, the Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. General principles

56. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment. However, in order to come within the scope of Article 3, the ill-treatment

must reach a minimum level of severity (see *Blokhin v. Russia* [GC], no. 47152/06, § 135, ECHR 2016). The assessment of this minimum is a relative one and depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, *inter alia*, *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015, with further references, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

57. In the context of deprivation of liberty, the Court has consistently stressed that, to fall under Article 3, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with detention (see *Muršić v. Croatia* [GC], no. 7334/13, § 99, ECHR 2016). The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

58. As far as the standard of proof is concerned, allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Bouyid*, cited above, § 82).

2. Application of the above principles to the present case

59. In determining whether, in the light of the above principles, the cumulative effects of the conditions of the applicant's detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II) in the present case amounted to treatment in breach of Article 3, the Court observes the following.

60. As regards the applicant's complaint concerning the separation of juvenile and adult offenders in prison no. 5 by means of the creation of a separate section in the absence of a separate detention facility for juvenile female offenders, the essence of the applicant's complaint at the domestic level related to the deferral of her sentence pending the construction of such a separate facility (see paragraphs 32-34 above). Insofar as the applicant complained about the authorities' refusal to release her pending the construction of a separate detention facility, the Court reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee (see, *mutatis mutandis*, *Kudła,* cited above, § 93). Furthermore, the Convention does not prohibit the States from subjecting convicted juveniles to imprisonment (see, *mutatis mutandis*,

T. v. the United Kingdom [GC], no. 24724/94, § 97, 16 December 1999). The Court observes that both the domestic legislation in force at the material time (see paragraph 37 above) and the pertinent international documents (see paragraphs 42-45 above) allow for a certain degree of latitude relating to the manner in which the separation of juvenile and adult offenders is to be effectuated, including the placement of juvenile offenders in separate parts of institutions normally designed for adult inmates. In this connection, contrary to the applicant's complaint, her placement in the section for juvenile offenders does not, in and of itself, raise an issue under Article 3 of the Convention (see, *mutatis mutandis, D.G. v. Ireland*, no. 39474/98, § 97, ECHR 2002-III, and contrast with *Güveç v. Turkey*, no. 70337/01, § 98, ECHR 2009 (extracts)). The Court will therefore assess whether the conditions of detention at the juvenile female offenders' section, taken as a whole, complied with the State's obligation under Article 3 of the Convention to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła*, cited above, § 94).

61. The Court observes that the applicant contested several aspects relating to the conditions of her detention. She submitted before the Court that she had been entirely deprived of any possibility of exercising her right to daily walks. However, it transpires from the case file that she expressly admitted to the contrary during the judicial proceedings at the domestic level (see paragraph 34 above). Similarly, the claim concerning a malfunctioning washbasin causing humidity in the cell appears to have been a one-off, temporary problem (see paragraph 31 above). Furthermore, the applicant's complaint regarding the insufficiency of personal space in a cell measuring approximately 12-15 square metres and shared by a maximum of three juveniles, including the applicant, which thus entitled her to at least 4 square metres of personal space, does not raise an issue under Article 3 of the Convention (compare with *Muršić*, cited above, § 106). In assessing the overall conditions of the applicant's detention, the Court takes note of the fact that, as it further transpires from the case file, the juvenile offenders' section offered an opportunity to freely consult the psychologist present on the premises, to shower freely (see paragraph 34 above), and to continue her education (see paragraph 35 above).

62. The Court further observes that the applicant's complaint about the overcrowding in prison no. 5 and her having to share a cell in the section for juvenile offenders with adult inmates is not supported by any evidence and is furthermore at odds with the applicant's own account that she was placed alone in that cell for five months (see paragraph 30 above) and the Public

Defender's description of the conditions in the cell (see paragraph 31 above). Observing that the applicant has not substantiated her complaint in this regard (see, among other authorities, *Pitalev v. Russia*, no. 34393/03, § 40, 30 July 2009), the Court cannot establish the existence of the alleged conditions beyond reasonable doubt.

63. Lastly, when complaining of a dysfunctional ventilation system, the applicant did not provide any details as to the severity of the problem or its duration. The Court notes that in order to determine precisely the severity of the situation in each particular case, it expects an applicant to provide specific examples as to the time periods complained of and the duration of such conditions. In the absence of such information, even assuming that the ventilation system was dysfunctional, while regrettable, this fact alone does not amount to a violation of Article 3 (see, *mutatis mutandis*, *Golubenko v. Ukraine* (dec.), no. 36327/06, § 60, 5 November 2013, and *Insanov v. Azerbaijan*, no. 16133/08, § 125, 14 March 2013).

64. Having regard to all the foregoing considerations, the Court finds that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

65. The applicant complained that by failing to adequately address the two alternative forensic reports submitted by the defence, the Court of Appeal had failed to give sufficient reasons for its decision to convict her of a criminal offence, which had rendered the criminal proceedings unfair. She further complained of a violation of her right of access to a court, in view of the refusal of the Supreme Court to consider the case on its merits. The applicant relied on Article 6 §§ 1 and 3 (d) of the Convention, which in its relevant parts reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

66. The Government refrained from commenting on the admissibility and merits of the complaints.

67. The applicant maintained that the Court of Appeal had rejected two alternative forensic reports based on a manifestly arbitrary reasoning, rendering the criminal proceedings unfair. She further submitted that the Supreme Court had dismissed her appeal on points of law without considering its merits, depriving her of the right of access to a court.

A. Admissibility

68. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Fairness of the criminal proceedings

(a) General principles

69. The general principles concerning the issue of unfairness resulting from the reasoning adopted by the domestic courts were recently summarised by the Court in its *Moreira Ferreira v. Portugal (no. 2)* [GC] (no. 19867/12, § 83, 11 July 2017) judgment as follows (references omitted):

> "(a) It is not for the Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention ...
>
> (b) Article 6 § 1 of the Convention does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. Normally, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable ..."

70. The Court further reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see *Moreira Ferreira*, cited above, § 84; see also *Tchankotadze v. Georgia*, no. 15256/05, § 103, 21 June 2016, and *Deryan v. Turkey*, no. 41721/04, § 33, 21 July 2015).

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

71. In so far as the applicant's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz*, cited above, § 28).

72. The Court further observes that the appellate court's reasoning for dismissing the findings of the two alternative forensic reports submitted by the applicant in support of her version of the events (see paragraphs 24-25 above) is open to certain criticism, particularly as regards the assertion that the impugned reports lacked relevant information despite evidence to the contrary (see paragraphs 16 and 20 above). However, the reasons for the judgment clearly indicate that the appellate court assessed, in the light of the relevant domestic law, the substantive findings contained in the reports. In particular, the Court of Appeal considered the respective reports concluding that the relevant findings were speculative (see paragraphs 24 and 25 above) and thus of no evidentiary value within the meaning of Article 371 § 6 of the Code (see paragraph 40 above). Accordingly, the Court does not consider that the appellate court's reasoning to dismiss the two alternative forensic reports was of such an inconclusive nature as to disturb the overall fairness of the proceedings (compare again with *Moreira Ferreira*, cited above, § 84, and see also *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 62, ECHR 2015 with further references).

73. Furthermore, the Court of Appeal responded to the applicant's argument that allegedly two young men had beaten and stabbed the victim, finding it unconfirmed in view of the absence of any physical signs of beating in the relevant forensic medical report (see paragraph 26 above). The Court further notes that the findings of the Court of Appeal concerning the applicant's guilt were based on evidence assessed and accepted during the proceedings at the first-instance court, including the forensic expert evidence such as the second MI report (see paragraph 11 above), the authenticity and accuracy of which had not been put in question at any stage of the proceedings.

74. In the light of the foregoing considerations, and bearing in mind that the applicant had the benefit of adversarial proceedings, the Court finds that there has been no violation of Article 6 § 1, both taken alone and in conjunction with Article 6 § 3 (d) of the Convention.

2. Access to court

75. In so far as the applicant complains of the denial of access to the Supreme Court, the Court reiterates that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 33, *Reports of Judgments and Decisions* 1997-VIII; *Nersesyan v. Armenia* (dec.), no. 15371/07, § 21, 19 January 2010; and *Lorger v. Slovenia* (dec.), no. 54213/12, § 16, 26 January 2016).

76. The Court has found on several occasions that the introduction and application of admissibility requirements in respect of appeals on points of law lodged with courts of cassation pursue a legitimate aim in the interests of good administration of justice (see *Tchaghiashvili v. Georgia* (dec.), no. 19312/07, § 34, 2 September 2014; *Nersesyan,* cited above, § 22; and *Borisenko and Yerevanyan Bazalt Ltd v. Armenia* (dec.), no. 18297/08, 14 April 2009). The Court observes that the Supreme Court of Georgia, unlike the lower courts, does not carry out a full review of a case, such as the assessment of facts and evidence relied on by the former, and the scope of its consideration is limited to specific legal matters (see paragraph 41 above). In such circumstances, the Court does not consider that the cassation court's decision not to admit the appeal was disproportionate to the legitimate aim pursued. Furthermore, as far as the reasoning of the Supreme Court's decision is concerned, the Court reiterates that where a cassation court refuses to accept a case because the legal grounds for it have not been made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see *Tchaghiashvili*, cited above, § 34; *Marini v. Albania*, no. 3738/02, § 106, 18 December 2007; and *Jaczkó v. Hungary*, no. 40109/03, § 29, 18 July 2006).

77. In the light of the foregoing, the Court finds that there has been no violation of Article 6 § 1 of the Convention on account of the refusal of the Supreme Court to consider the case on its merits.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaint under Article 3 of the Convention concerning the applicant's placement in a separate section for juvenile female offenders and the material conditions of detention in that section, and the complaints under Article 6 §§ 1 and 3 (d) of the Convention concerning the fairness of the criminal proceedings and access to a court, and the remainder of the application inadmissible;

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

3. *Holds* that there has been no violation of Article 6 § 1 taken alone or in conjunction with Article 6 § 3 (d) of the Convention on account of the reasoning of the Court of Appeal's judgment;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the refusal by the Supreme Court to grant leave to appeal.

Done in English, and notified in writing on 21 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President