

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

FIFTH SECTION

CASE OF MAISAIA v. GEORGIA

(Application no. 75969/14)

JUDGMENT

STRASBOURG

7 May 2024

This judgment is final but it may be subject to editorial revision.



In the case of Maisaia v. Georgia,

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

Carlo Ranzoni*, President*,
Lado Chanturia,
María Elósegui*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 75969/14) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 November 2014 by a Georgian national, Mr Vakhtang Maisaia ("the applicant"), who was born in 1972, lives in Tbilisi and was represented by Ms N. Londaridze and Ms T. Avaliani, lawyers practising in Georgia;

the decision to give notice of the complaints under Article 3 of the Convention to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 4 April 2024,

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

SUBJECT MATTER OF THE CASE

1. The case mainly concerns, under Article 3 of the Convention, the applicant's alleged ill-treatment in prison, which purportedly formed part of a large-scale and systematic ill-treatment of prisoners at the material time, and the competent domestic authorities' failure to conduct an effective investigation into his allegations.

2. On 5 May 2009 the applicant was arrested and placed in police custody on suspicion of having committed espionage, an offence of which he was subsequently convicted.

3. On 8 May 2009 the applicant was transferred from police custody to Tbilisi prison no. 8 ("the Gldani prison"). As part of his admission procedure to Gldani Prison, a doctor examined him and noted in his medical file that he had no injuries at the time of his admission and was in a good state of health, not suffering from any medical condition.

4. On 25 August 2010 the Investigation Unit of the Ministry of Prisons opened, in reply to the applicant's complaint of the same day, a criminal investigation into ill-treatment to which the applicant had allegedly been subjected, in the hands of prison guards, on the previous day, 24 August, in Gldani Prison. A medical examination of the applicant was immediately

commissioned, the results of which established the existence of marks of ill-treatment (multiple bruises and lesions) on his face and body. The investigators also questioned a number of witnesses – cellmates of the applicant as well as prison guards of Gldani prison. Whilst one of the cellmates confirmed that the applicant had been beaten up by prison guards, the other questioned witnesses stated that the applicant had inflicted those injuries to himself by hitting his head and body against the wall and the window bar in his cell.

5. When questioned by the investigators on 25 August 2010, the applicant stated that, apart from the incident of 24 August 2010, he had been subjected to ill-treatment in Gldani prison on a regular basis, and that those systematic acts of physical and psychological abuse had lasted in the period between 8 May and 23 June 2009. He also gave the names of the abusers to the investigators and provided further details about the circumstances in which his ill-treatment had occurred on 24 August 2010.

6. On 13 September 2010, in a special statement issued about the applicant's case, the World Organisation Against Torture (an international human rights observer based in Geneva, Switzerland), expressed its concerns about the applicant's safety in prison. The statement emphasised that, based on the information received from the applicant's family, after having reported his ill-treatment in Gldani prison (see the preceding paragraph), he started receiving death threats from prison guards.

7. Between 22 September 2010 and May 2012, the applicant repeatedly enquired (at least on four occasions) about the progress in the criminal investigation with both the Ministry of Prisons and the Chief Public Prosecutor's Office ("the CPPO"). Relying further on the medical opinion confirming the existence of marks of ill-treatment (see paragraph 4 above), he repeatedly requested to be granted the status of aggrieved party. His letters were either left unanswered or the authorities would advise him that the investigation was still ongoing.

8. In September 2012 a footage of repeated acts of ill-treatment of inmates at different prison establishments, including and in particular Gldani Prison, was disseminated in the Georgian media ("the prison scandal").

9. On 13 January 2013 the applicant was released from prison based on an amnesty.

10. Between February 2013 and October 2014, the applicant filed repeated enquires (at least on six occasions) with the CPPO about the progress in the investigation, if any, asking to be granted the status of an aggrieved party. Those repeated enquiries were either left unanswered, or the prosecution authorities would advise the applicant about the need to wait for certain investigative measures to be completed.

11. According to the information available in the case file, the criminal investigation into the applicant's ill-treatment in Gldani prison is currently still ongoing, but no other details about its progress are known.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

12. As regards the admissibility of the application, the Government submitted that the application had not been lodged with the Court with due expedition as required by Article 35 § 1 of the Convention, because the applicant had failed to voice his grievances before the relevant domestic authorities in a timely fashion. The applicant disagreed.

13. The Court observes that whilst the applicant had allegedly been subjected to a beating by the Gldani prison guards on 24 August 2010, the very next day he voiced his grievances before the competent domestic authorities. When questioned by the investigators for the first time on 25 August 2010, the applicant further complained about his regular ill-treatment which had allegedly taken place in Gldani prison in the period between 8 May and 23 June 2009. The indicated time-line is not significant enough to question the applicant's due diligence, especially when assessed against the fact that the psychological effects of ill-treatment inflicted by State agents may undermine a victim's capacity to take the necessary steps to bring proceedings against a perpetrator without delay, when the victim remains within the same agents' control (see *Ochigava v. Georgia*, no. 14142/15, § 51, 16 February 2023). That being so, the Court is satisfied that the applicant voiced the grievances about his alleged ill-treatment in Gldani prison before the competent domestic authorities in a timely fashion and, furthermore, made repeated attempts at regular intervals to enquire about the progress in the investigation, in the hope of an effective outcome, before lodging the present application (see paragraphs 7 and 10 above, and compare *Ochigava* cited above, § 52, with further references therein).

14. In the light of the foregoing, the Court does not see any reason to conclude that, at the time of lodging his application with the Court on 26 November 2014, the applicant had been aware, or should have been aware, for more than six months, of the lack of prospects for an effective criminal investigation. The Government's objection must therefore be dismissed. As the application is not 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.

15. The parties exchanged legal arguments on the merits.

16. The relevant general principles concerning the procedural and substantive obligations under Article 3 of the Convention were summarised by the Court in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88 and 114-23, ECHR 2015).

17. As regards the procedural obligations under Article 3, the Court reiterates that effective deterrence against serious acts such as intentional attacks on the physical integrity of a person requires efficient criminal-law

response (compare, for instance, *Pulfer v. Albania*, no. 31959/13, § 71, 20 November 2018). However, the circumstances of the present case point to significant deficiencies in the respondent State's criminal response at stake. Notably, the Court observes that whilst the applicant formally voiced his complaint of ill-treatment as early as August 2010, giving all the details and even naming the alleged abusers, the competent domestic authorities have still not been able to investigate his case and bring the perpetrators to justice. There were periods of unexplained inactivity on the part of the investigating authorities, and, what is more, the applicant has unjustifiably been denied the requisite procedural standing of an aggrieved party, which would have enabled him to closely follow the investigation, assess its reliability and contribute to its proper conduct (compare *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 108, 1 June 2017). In this connection, the Court reiterates that "justice delayed is often justice denied", as the existence of unreasonable periods of inactivity and a lack of diligence on the authorities' part in conducting the proceedings may render the investigation ineffective (compare *Ochigava*, cited above, §§ 58-59).

18. As regards the complaint under the substantive limb of Article 3, the Court recalls that it already established in an almost identical case that, based on the relevant findings given by domestic courts in relation to the existence of an endemic problem of physical abuses of prisoners in various custodial institutions of the country, there had indeed been "systematic and systemic abuse" of inmates at a number of prisons in Georgia by representatives of the prison authority at the material time (compare *Ochigava*, cited above, §§ 7, 34 and 61). Attaching further significance to the fact that, in the present case, there exist sufficient medical evidence attesting the existence of the injuries on the applicant's person, the origin of which coincided with the description of the alleged treatment and that the requisite negative inferences should be drawn from the domestic authorities' failure to conduct an effective investigation (compare, *ibidem.*, § 61), the Court endorses the relevant facts as submitted by the applicant and finds that his ill-treatment took place and was attributable to the respondent State.

19. In the light of the foregoing, the Court concludes that there has been a violation of both the substantive and procedural aspects of Article 3 of the Convention.

II. REMAINING COMPLAINT

20. The applicant also raised other complaints under Article 3. The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any

appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

21. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage

23. The Government submitted that the claim was unsubstantiated and excessive.

24. The Court finds that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the relevant circumstances of the case as well as to various equitable considerations, the Court finds it appropriate to award the applicant EUR 15,000 under this head, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 of the Convention concerning the applicant's ill-treatment in Gldani prison and the competent domestic authorities' failure to conduct an investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under both the substantive and procedural limbs;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Carlo Ranzoni President