

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

FIFTH SECTION

CASE OF POGHOSOV v. GEORGIA

(Application no. 33323/08)

JUDGMENT

STRASBOURG

29 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Poghosov v. Georgia,

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

Síofra O'Leary, *President,*
Nona Tsotsoria,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 6 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 33323/08) 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 Mikheil Poghosov ("the applicant"), on 29 May 2008.

2. The applicant was represented by Ms L. Mukhashavria and Mr V. Imnaishvili, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agents, Mr L. Meskhoradze and Mr B. Dzamashvili, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had contracted tuberculosis (TB) in prison, for which the authorities had failed to administer timely and adequate treatment.

4. On 22 November 2011 the application was communicated to the Government.

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1986 and lives in Tbilisi.

A. Criminal proceedings against the applicant

6. The applicant was arrested on suspicion of murder on 16 April 2005. On 11 January 2007 the Tbilisi City Court convicted the applicant as charged and sentenced him to life imprisonment. The conviction was upheld on appeal by the Tbilisi Court of Appeal on 12 May 2007. The Supreme Court of Georgia rejected an appeal on points of law by the applicant as inadmissible.

B. The applicant's state of health

7. According to the applicant, prior to the initiation of the criminal proceedings against him and his detention, he had no major medical problems and was in good health.

8. Subsequent to his arrest, the applicant was placed in Tbilisi Prison no. 5 from where he was transferred to Tbilisi Prison no. 1 and then back to Tbilisi Prison no. 5 sometime in February 2006.

9. According to the applicant, in October 2006 his state of health started to deteriorate. He had a fever and was coughing. He lost weight and felt extremely weak. The applicant alleged that he voiced his medical concerns with the prison administration and requested a medical check-up, however in vain as he was not provided with any medical assistance. He failed to submit a copy of any of the complaints in this connection.

10. On 11 January 2007 the applicant, after having complained to the prison administration, was seen by a prison doctor who prescribed him antibiotics. Two weeks later, on 28 January 2007, he was transferred to the prison hospital, where he underwent various medical examinations. On 2 February 2007 he was diagnosed with tuberculosis of the right lung MGB (+) positive, further complicated by left-arm spontaneous pneumothorax. On 5 February 2007 the applicant was placed on the DOTS programme (Directly Observed Treatment, Short-course – the treatment strategy for the detection and cure of TB recommended by the World Health Organisation) and started receiving conventional, first-line anti-TB medication. In addition, he was provided with vitamins.

11. On 8 October 2007 the applicant completed the course of treatment. However, a medical examination of 18 October 2007 revealed a recurrence of the tuberculosis. On 30 October 2007 the applicant was enrolled in the second phase of anti-TB treatment which he successfully completed on 6 August 2008. On 26 August 2008 the applicant underwent another bacteriological sputum smear, which was negative, that is to say it showed no evidence of the TB microbacterium.

12. According to the case file, since then the applicant had repeatedly undergone sputum tests. The latest medical examination of which the Court was informed, on 29 February 2012, revealed that the applicant's TB was in a non-active phase. Thus, he did not require any anti-TB treatment.

II. RELEVANT DOMESTIC LAW AND OTHER NATIONAL AND INTERNATIONAL DOCUMENTS

13. The relevant legal provisions concerning the protection of prisoners' rights, as well as excerpts from the relevant national and international documents regarding medical problems in the custodial institutions of Georgia at the material time are set out in the following judgments:

Goginashvili v. Georgia (no. 47729/08, §§ 32-44, 4 October 2011), *Makharadze and Sikharulidze v. Georgia* (no. 35254/07, §§ 40-48, 22 November 2011) and *Jeladze v. Georgia* (no. 1871/08, §§ 28-32, 18 December 2012, with further references therein).

THE LAW

I. SCOPE OF THE CASE

14. After the communication of the application to the respondent Government, the applicant's representatives introduced in reply to the Government's observations new complaints concerning, *inter alia*, the conditions of the applicant's detention in Tbilisi Prison no. 5 in the period between July 2005 and August 2006, and in Rustavi Prison no. 6 after January 2007. The representatives also alleged that the applicant had been subjected to physical abuse in prison, and had had several episodes of alleged self-harm, which had gone uninvestigated.

15. The Court observes that the application form concerned the applicant's alleged infection with TB in prison, the lack of adequate medical treatment in this regard, and the allegedly poor conditions of the applicant's detention in Tbilisi Prison no. 1. Therefore, in the Court's view, the new complaints concerning the applicant's alleged ill-treatment and several episodes of self-harm cannot be considered as an elaboration of the applicant's original complaints on which the parties have commented and hence these matters cannot be taken up in the context of the present application (see *Irakli Mindadze v. Georgia*, no. 17012/09, § 25, 11 December 2012, with further references therein). The same holds true as regards the conditions of the applicant's detention in Tbilisi Prison no. 5 and Rustavi Prison no. 6 (see, for example, *Kharchenko v. Ukraine*, no. 40107/02, § 45, 10 February 2011), save for those aspects of the detention which were directly relevant to the applicant's medical treatment in prison, and had hence been elaborated already in the application form.

16. To sum up, the scope of the Court's analysis in the current case will be confined to the applicant's initial complaints, notably, the assessment of his possible infection with TB in prison, the timing and adequacy of the medical care provided in that connection, and the adequacy of the conditions of detention in Tbilisi Prison no. 1.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

17. The applicant complained under Article 3 of the Convention that he had been infected with TB in prison and that the relevant prison authorities

had failed to provide him with timely medical treatment in this connection. He also complained of the poor conditions of detention in Tbilisi Prison no. 1. Article 3 of the Convention reads as follows:

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

A. Admissibility

18. As to the conditions of detention in Tbilisi Prison no. 1, the Court notes that the applicant left that prison in February 2006 (see paragraph 8 above), whereas the current application was submitted with the Court only on 19 May 2008. It therefore considers that this part of the applicant's complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Mikiashvili v. Georgia*, no. 18996/06, § 63, 9 October 2012 with further references therein; see also *Mazanashvili v. Georgia,* no. 19882/07, § 40, 28 January 2014).

19. As regards his alleged infection with TB in prison, the applicant in the current case has never attempted to bring a civil claim for damages for his alleged infection. The Court notes, however, that it has previously examined a similar situation and found that a civil claim for damages under Article 207 of the General Administrative Code and Article 413 of the Civil Code was the most effective remedy to be used (see *Goloshvili v. Georgia*, no. 45566/08, §§ 24-25 and 32-33, 23 October 2012; see also *Jeladze v. Georgia,* no. 1871/08, § 35, 27 November 2012, and *Ildani v. Georgia,* no. 65391/09, § 28, 2 April 2014). The Court sees no reason to depart from its previous conclusion and considers that this aspect of the complaint under Article 3 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

B. Merits

1. The parties' arguments

21. The Government claimed that the first time the applicant had complained about his health had been in early January 2007 and noted that on 28 January 2007 he had been transferred to the prison hospital. They submitted to the Court a copy of his medical file, in which it was noted that according to the applicant, he had started experiencing the first signs of TB on 11 January 2007. According to the same medical file, on 2 February 2007 he had been diagnosed with TB and within three days – on 5 February

2007 – he had been enrolled in the DOTS programme. He had completed the treatment in October 2007. By the end of October 2007, the infection had been detected again, and on 31 October 2007 the applicant had been re-enrolled in the DOTS programme. The second round of anti-TB treatment had been successfully completed in August 2008. Subsequently, the applicant had been regularly subjected to various tests, including chest radiography, which had confirmed that no active tubercular processes had persisted and hence no treatment had been required.

22. The Government submitted that all costs related to the applicant's anti-TB treatment had been exclusively born by the State.

23. The applicant maintained in reply that the prison authorities had failed to provide prompt and adequate treatment to him which had resulted in extreme deterioration in his medical condition. He claimed that he had complained already in October 2006 about his poor health and all he had been given had been paracetamol. Only four months later had he been finally transferred to the prison hospital. The applicant stated that that delay had had a detrimental effect on this health.

24. The applicant further averred that he had been dependent on his family throughout his stay in prison. In support, he submitted a list of medicines which had allegedly been bought by his family for him in June 2012.

25. Lastly, the applicant asserted that he was not disputing the successfulness of the anti-TB treatment he had been provided with as such.

2. The Court's assessment

(a) General principles

26. The relevant general principles concerning the adequacy of medical treatment in prisons have been summarised by the Court in the cases of *Goginashvili v. Georgia* (no. 47729/08, §§ 69-70, 4 October 2011), *Jeladze* (cited above, §§ 41-42) and *Irakli Mindadze* (cited above, §§ 39-40).

(b) Application of the principles to the present case

27. The Court notes firstly that the applicant did not challenge the successfulness of the anti-TB treatment provided to him in prison (see paragraph 25 above). Furthermore, notwithstanding the generally worded allegations that the applicant had depended on his family for the provision of the relevant medical treatment, the applicant did not dispute the fact that the anti-TB treatment within the scope of the DOTS programme had been entirely conducted at the expense of the State. Therefore, it appears that the only issue which remains to be addressed in the current case is whether the treatment provided to the applicant was delayed and whether this in itself amounted to a violation of Article 3 of the Convention (see *Jirsák v. the Czech Republic,* no. 8968/08, § 81, 5 April 2012, with further

references therein). The Court makes the following observations in this regard.

28. While the applicant claimed that he had already complained to the prison authorities about high fever, coughing and pain in the chest area in October 2006, he failed to submit a copy of the relevant complaint (see paragraph 9 above). The Government on their part asserted that the applicant had voiced his medical complaints only in January 2007 (see paragraph 21 above). According to the applicant's medical file, upon his transfer to the prison hospital, he claimed that he had started suffering from the relevant symptoms on 11 January 2007 (see paragraph 21 above). In the absence of any other evidence, the Court considers that the applicant voiced his medical complaints for the first time in January 2007. In such circumstances, the applicant's transfer to the prison hospital on 28 January 2007, albeit not immediate, cannot be considered to have been particularly delayed. The applicant had not yet been diagnosed with TB. Moreover, in response to his complaint he was immediately seen by a prison doctor and given basic anti-inflammatory medicine (see paragraph 23 above).

29. It is true that the seriousness of the problem of TB in Georgian prisons, as well as the role of screening for TB in minimising the spread of this disease, has already been acknowledged by the Court in its case-law on the matter (see *Ghavtadze v. Georgia*, no. 23204/07, §§ 103-05, 3 March 2009; see also, *Poghosyan v. Georgia*, no. 9870/07, § 69, 3 February 2009, and, *mutatis mutandis*, *Jeladze*, cited above, § 44). In the present case the applicant did not have a screening test for TB during the initial two and a half years of his detention. However, as is apparent from the case file, the applicant never voiced any TB-related ailments in the period concerned (compare *Ildani,* cited above, §§ 37-38, where despite his diagnosis of chronic bronchitis and reiterated requests for a proper medical check-up, the applicant was provided with TB examination only after a fifteen-month delay); nor did he complain about being placed in a cell with an inmate ill with TB (compare *Vasyukov v. Russia*, no. 2974/05, § 68, 5 April 2011). The moment he raised his complaints, adequate medical examination was conducted followed by a diagnosis of TB. The applicant was enrolled in the DOTS programme and his treatment was completed successfully.

30. In view of the foregoing considerations, the Court concludes that there was no violation of Article 3 of the Convention with respect to the applicant on account of the alleged lack of timely anti-TB treatment in prison.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention concerning the alleged lack of timely 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 29 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Síofra O'Leary
Acting Deputy Registrar	President