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

FIFTH SECTION

DECISION

Application no. 65150/14
Davit CHICHUA
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 10 October 2017 as a Committee composed of:

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

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

Having regard to the above application lodged on 16 September 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the declaration submitted by the respondent Government on 26 May 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Davit Chichua, is a Georgian national, who was born in 1961 and lives in Tbilisi. He was represented before the Court by Ms T. Avaliani, a lawyer practising in Tbilisi.

2. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

3. On 25 March 2012 the applicant was charged with a criminal offence, arrested and placed in detention on remand in Tbilisi Prison no. 8 ("prison no. 8").

4. During his trial on 23 August 2012, the applicant stated that he had been subjected to ill-treatment by guards of prison no. 8. He did not specify

either the exact date or the manner of the alleged treatment, nor showed any medical certificates as proof of the purported physical abuse.

5. On 6 September 2012 a criminal probe was launched into the applicant's allegations by a public prosecutor's office.

6. On 23 September 2012 a visual examination of the applicant's entire body was conducted by a doctor. The written record of that examination, signed by the applicant, did not mention any marks of ill-treatment.

7. Various investigative measures had been undertaken during the criminal probe, including interviews with both the applicant and those prison guards whom he had accused of ill-treatment. The applicant did not provide the investigators with either a medical certificate or any other evidence capable of supporting his allegation of ill-treatment. In the light of the absence of *prima facie* indications of the veracity of the applicant's allegations, he was not granted victims status, but the prosecution authority still proceeded with the investigation.

8. In his application lodged with the Court on 16 September 2014, the applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated by the guards of prison no. 8 on unspecified dates between 25 March and 23 August 2012 and that the criminal probe into his allegations had been ineffective. In support of his complaint about the alleged ill-treatment, he submitted to the Court a medical certificate dated 4 May 2012. The certificate mentioned marks of a light head injury which had been caused, according to the applicant's own explanations contained in the same document, by a car accident in January 2012.

9. On 1 December 2014 notice of the applicant's complaints under both the substantive and procedural limbs of Article 3 of the Convention, as well as under Article 13, was given to the Government.

10. After the failure of attempts to reach a friendly settlement, on 26 May 2015 the Government submitted observations on the admissibility and merits of the applicant's complaint under the substantive limb of Article 3 – concerning his ill-treatment by the prison guards – and a unilateral declaration inviting the Court to strike out the remaining complaints under the substantive limb of Article 3 and under Article 13 - concerning the allegedly ineffective domestic investigation – in accordance with Article 37 § 1 (c) of the Convention.

THE LAW

A. As regards the complaint under the substantive limb of Article 3 of the Convention

11. The applicant complained that he had been ill-treated by the guards of prison no. 8, in breach of the respondent State's negative obligations under Article 3 of the Convention. This provision reads as follows:

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

12. The Government objected that the complaint was not properly substantiated by the applicant. In particular, he had not produced any documentary evidence, of medical or other nature, which could have established the existence of marks of ill-treatment on his person.

13. In his observations in reply, the applicant, without submitting any new evidence or arguments in rebuttal of the Government's objection, maintained that he had been ill-treated in prison no. 8.

14. The Court observes that the applicant did not advance any tangible proof or convincing argument in support of his claim about ill-treatment by the guards of prison no. 8 during the initial months of his detention on remand. Thus, whilst the only piece of evidence relied on by the applicant in that respect was the medical certificated dated 4 May 2012, that medical document linked the marks of the applicant's head injury to the traffic accident that had occurred back in January 2012, prior to his arrest on 25 March 2012 (see paragraphs 3 and 8 above). Moreover, when the applicant, in a follow-up to his claim about ill-treatment, was visually examined by a doctor on 23 September 2012, that examination did not reveal the existence of marks of ill-treatment on the applicant's person (see paragraph 6 above). The applicant also omitted, in his allegations before the domestic authorities and the Court, to specify the exact dates and manner of the treatment to which he had purportedly been subjected (see paragraphs 4 and 13 above).

15. In the light of the foregoing considerations, the Court, being aware of its responsibility to be cautious in taking on the role of a first-instance tribunal of fact (see, among many other authorities, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and also *Talat Tepe v. Turkey*, no. 31247/96, § 49, 21 December 2004), is unable, in view of the scarce evidence in the case file and solely on the basis of the applicant's unsubstantiated assertions, to consider the impugned ill-treatment in prison no. 8 as a fact established "beyond reasonable doubt" (compare with, among many other authorities, *Poltoratskiy v. Ukraine*, no. 38812/97, §§ 122-124, ECHR 2003-V; *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008, and also *Davtian v. Georgia*, no. 73241/01, § 38, 27 July 2006).

16. Accordingly, the complaint under the substantive limb of Article 3 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. As regards the complaints under the procedural limb of Article 3 and Article 13 of the Convention

17. The applicant complained that the criminal probe into his allegations of ill-treatment had been ineffective, in breach of the respondent State's positive obligations under Articles 3 and 13 of the Convention. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

18. In their unilateral declaration, the Government admitted to a violation of Article 3 of the Convention under its procedural limb, as well as of Article 13, on account of the inconclusiveness of the criminal probe launched into the applicant's allegations of ill-treatment.

19. Noting that the relevant domestic law-enforcement authorities were best placed to determine, by virtue of an adequate criminal investigation, the veracity of the applicant's allegations, the Government made the following undertaking:

> "...to ensure an effective investigation into the applicant's allegations [of ill-treatment] in full compliance with the relevant principles established by the Court."

20. In addition, the Government undertook to pay EUR 3,000 (three thousand euros) to the applicant, specifying that the sum was meant to cover any pecuniary and non-pecuniary damage as well as costs and expenses, and would be converted into the respondent State's national currency at the rate applicable on the date of payment and be free of any taxes that might be chargeable to the applicant. It will be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay this sum within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

21. By a letter of 8 June 2015, the applicant indicated that he was not satisfied with the terms of the unilateral declaration submitted by the Government on the ground of insufficiency of the proposed amount of compensation.

22. The Court reiterates that under Article 37 of the Convention it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified,

under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

23. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

24. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

25. The Court has established in a number of cases, including those brought against Georgia, its practice concerning complaints about the lack of effective investigations into allegations of ill-treatment of detainees (see, for instance, *Mikiashvili v. Georgia*, no. 18996/06, §§ 86-92, 9 October 2012; *Dvalishvili v. Georgia*, no. 19634/07, §§ 46-52, 18 December 2012, and also *Lopata v. Russia*, no. 72250/01, §§ 109-120, 13 July 2010).

26. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

27. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

28. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

29. In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaint.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under the procedural limb of Article 3 and under Article 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 2 November 2017.

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