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

FIFTH SECTION

DECISION

Application no. 5137/09
Ioseb ELBAKIDZE
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 19 September 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 20 January 2009,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ioseb Elbakidze, is a Georgian national who was born in 1984 and lives in Tbilisi. He was represented before the Court by Ms S. Abuladze, a lawyer practising in Tbilisi.

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

The circumstances of the case

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

1. The criminal proceedings against the applicant

4. The applicant, who had been previously convicted of a drug-related offence and released under an amnesty on 3 December 2008, was rearrested

on 12 December 2008 on suspicion of the possession of drugs. According to the search record, 0.1086 g of heroin was found on his person. The record, which was signed by the applicant, stated that the search had been conducted by two police officers immediately upon his arrest ("urgent search"); the applicant had waived his right to have witnesses present during the search.

5. The arrest and search records both contained the applicant's signature as confirmation that he had taken knowledge of the records and had been served with a copy.

6. On the same day the applicant was subjected to a blood test. He tested negative for drugs.

7. On 13 December 2008 the Gori District Court, at the request of the Gori District prosecutor, examined the results of the urgent search and authorised it *ex post facto*.

8. The applicant requested bail. On 14 December 2008 the court refused his request and remanded him in custody for two months. Having reviewed the case material and heard the parties' oral submissions, the court confirmed that there was a reasonable suspicion that the offence had been committed. His pre-trial detention was found to be justified by the assumption that, in view of the seriousness of the offence, he might abscond from justice, unduly influence the investigation and obstruct the collection of evidence. The court stressed in that connection that, having regard to the applicant's character, his criminal record and the fact that he was suspected of reoffending while on probation, it could not be excluded that, if released, he would abscond and avoid prosecution. The court thus concluded that a more lenient preventive measure could not secure the aims set out in Article 151 § 1 of the Code of Criminal Procedure.

9. The applicant's lawyer appealed against the detention order on 15 December 2008. Calling into question the credibility of the incriminating evidence and the facts as disclosed in the arrest and search records, he argued that there could be no reasonable suspicion that the applicant had committed the offence in question. On 24 December 2008 the Tbilisi Court of Appeal dismissed the appeal as inadmissible without holding an oral hearing.

10. On 1 May 2009 the Gori District Court convicted the applicant of possession of drugs under Article 260 § 2 (a) and (e) of the Criminal Code and sentenced him to eight years' imprisonment. The total sentence, which included the unserved part of his previous sentence, was eight years, five months and twenty-nine days. The court rejected the applicant's claims that the drugs in question had not belonged to him. It referred in that connection to the testimony of the police officers, who maintained that the applicant had been promptly notified of the reasons for his detention and served with a copy of the arrest and search records, after being given the opportunity to

read them. The Court questioned the applicant's wife, but found that her testimony amounted to hearsay evidence.

11. On 23 September 2009 the Tbilisi Court of Appeal upheld the applicant's conviction, fully supporting the reasoning of the first-instance court. The appellate court stated that it could not agree with the applicant's submission that the seized drugs had not been his, because this was rebutted by the case material. The arrest and search records had been duly signed by the applicant, and he had not made any comments regarding their accuracy.

12. On 19 March 2010 an appeal by the applicant on points of law was dismissed as inadmissible by the Supreme Court.

2. The applicant's state of health

13. According to the available medical documentation, the applicant was suffering from chronic viral hepatitis C (HCV) and chronic acute bronchitis with associated asthmatic syndrome before entering the prison system.

14. On 12 January 2009 his lawyer wrote to the director of the medical department of the Ministry of Corrections, Probation and Legal Assistance (hereinafter "the Ministry of Corrections"), requesting information about the applicant's treatment history. The lawyer also notified the director of the applicant's diagnosis, requesting that he be given a medical examination and follow-up treatment. On 14 January 2009 the applicant's lawyer sent another letter to the governor of Tbilisi no. 8 Prison, where the applicant was being detained at the material time, requesting that he be given a medical examination and, if needed, follow-up treatment. It appears that the two requests were left unanswered.

15. According to the case file, on 19 February 2009 the applicant's lawyer sent letters to the Minister of Corrections and the head of the prisons department of the Ministry of Corrections (hereinafter "the prisons department"), enquiring about the applicant's medical condition and complaining of a lack of medical treatment in prison. On 26 February 2009 the applicant's lawyer sent another letter to the Minister of Corrections, requesting that the applicant be transferred to the prison hospital with a view to providing him with adequate medical treatment. On the same day the applicant's lawyer wrote to the head of the prisons department with a request that the applicant be given a comprehensive medical examination. It can be seen from the case file that on 6 March 2009 the applicant's lawyer sent two additional requests to the Minister of Corrections and the head of the prisons department for the applicant to be transferred to the prison hospital. It appears from the case file that none of the requests were answered.

16. On 6 April 2009 the applicant was diagnosed with HCV. On 14 April 2009 he had a HCV RNA (Hepatitis C virus RNA nucleic acid amplification test) and several other examinations. On 6 May 2009 he was transferred to a specialist medical centre, where he had various additional

tests including on HCV genotype, thyroid gland hormone and ANA (antinuclear antibodies) determination.

17. On 21 May 2009 the applicant was transferred to the prison hospital. On 25 May 2009 he was enrolled in antiviral treatment with interferon and ribavirin. On 25 August and 25 November 2009 he underwent a follow-up check-up which showed that the treatment had been successful. On 8 June 2010 he had another medical examination which confirmed that he had achieved sustained virological response. In the meantime, on 21 January 2010 he also underwent surgery in a civilian hospital for a chondroma (benign tumour) of his left foot. Moreover, his medical file reveals that he was also seen by an ophthalmologist and a psychiatrist and prescribed certain treatment for his other minor ailments.

18. On 10 March 2011 the applicant was discharged from the prison hospital and transferred to Rustavi no. 6 Prison. His diagnosis at the material time was the following: a chondroma of the left foot post-operative period and inactive HCV virus. His post-transfer medical file shows that he continued his symptomatic treatment in prison and had regular access to various specialists whenever the need arose.

COMPLAINTS

19. Relying on Article 3 of the Convention, the applicant complained of inadequate medical care in prison.

20. Under Article 5 § 2, he claimed that he had not been promptly informed of the reasons for his arrest. Relying on Article 5 § 3, he further alleged that the reasoning in the detention order of 14 December 2008 had been insufficient to justify his pre-trial detention.

21. Invoking Article 6 § 3 (a), (b) and (d), the applicant mainly reiterated his complaints about his pre-trial detention. He also claimed that he had not been given sufficient time to prepare his defence and had not been allowed to have his wife questioned on his behalf.

THE LAW

A. Complaint under Article 3 of the Convention

22. The applicant complained of inadequate medical care in prison. He relied on Article 3 of the Convention, which reads:

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

23. The Government submitted that the applicant's complaint under Article 3 was inadmissible for non-exhaustion of domestic remedies. In their view, he should have filed an administrative complaint against the prison authorities or sought compensation. In the alternative, they alleged that he had submitted false information about the treatment provided to him in prison, which amounted to an abuse of the right of application within the meaning of Article 35 § 3 (a) the Convention.

24. In reply, the applicant maintained his allegations about the inadequacy of the medical treatment available to him in prison. He claimed that the prison authorities had known from the outset of his detention that he had been diagnosed with HCV. As to the non-exhaustion of domestic remedies, while referring to dozens of allegedly unanswered complaints lodged with the various prison authorities, he dismissed the remedies proposed by the Government as ineffective.

25. Having regard to the Court's relevant case-law (see *Goginashvili v. Georgia*, no. 47729/08, §§ 51-60, 4 October 2011, and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 55, 22 November 2011) the Court dismisses the Government's non-exhaustion plea. Furthermore, it finds it unnecessary to consider their objection as to the abuse of the right of individual application, as the applicant's complaint under Article 3 of the Convention is in any event inadmissible for the following reasons.

26. In view of the medical file and the parties' submissions, from which it appears that the applicant was provided with medical treatment throughout his detention, the only issue which the Court has to address is whether the treatment provided to the applicant was delayed and if so, whether that delay had a detrimental impact on his health (see *Jirsák v. the Czech Republic,* no. 8968/08, § 81, 5 April 2012, with further references therein).

In that connection, the Court observes that, according to the case file, the applicant voiced his medical concerns with the relevant prison authorities for the first time on 12 January 2009 (see paragraph 14 above). The relevant authorities were thus expected to act. His reiterated requests for the required medical attention did not yield results until 6 April 2009, when he first had his medical check-up. He was transferred to a specialist medical centre for inpatient tests a month later (see paragraph 16 above). In May 2009 he was provided with all the required medical check-ups. He was enrolled in anti-viral treatment which he completed successfully (see paragraph 17 above). He was also treated for his remaining conditions (see paragraphs 17-18 above).

The Court notes that there was a delay of three months as the authorities did not act on the applicant's requests until April 2009. However, there is no evidence of the detrimental effect that that inaction had on the applicant's health. The treatment that followed thereafter was adequate and appropriate.

27. In view of the above-mentioned factors, the Court concludes that the applicant's complaints under Article 3 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The remainder of the application

28. The applicant complained under Article 5 § 2 of the Convention that he had not been promptly informed of the reasons for his arrest. Relying on Article 5 § 3, he further alleged that the reasoning in the detention order of 14 December 2008 had been insufficient to justify his pre-trial detention. Invoking Article 6 § 3 (a), (b) and (d) of the Convention, he mainly reiterated his complaints about his pre-trial detention. He also claimed that he had not been given sufficient time to prepare his defence or allowed to have his wife questioned on his behalf.

29. The Court considers that the complaint under Article 5 § 2 is manifestly ill-founded. It appears from the case file that the applicant's rights under that provision were respected (see paragraphs 4-5 and 10 above).

30. As regards the complaint under Article 5 § 3 concerning the court decision of 14 December 2008, the Court notes that one of the grounds relied on by the prosecutor in his request for detention, which was confirmed by the domestic court in the contested decision, was the fear that, if released, the applicant might abscond. The court relied in that connection on the seriousness of the crime, the severity of the penalty he faced and his criminal record (see paragraph 8 above). The Court considers that that line of reasoning does not seem to have been manifestly unreasonable or irrelevant at the material time. Therefore, the applicant's initial two-month period of pre-trial detention cannot be said to have been unreasonable within the meaning of Article 5 § 3 (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87-91, ECHR 2016 (extracts) with further references therein; see also *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 27 June 2007; *Galuashvili v. Georgia,* 40008/04, §§ 46-50, 17 July 2008, and *Saghinadze and Others v. Georgia*, no. 18768/05, § 137, 27 May 2010). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

31. Lastly, as to the applicant's various complaints under Article 6 § 3 (a), (b) and (d), the Court, in the light of all the material in its possession and in so far as the matters complained of are within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 October 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Síofra O'Leary
President