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

FIFTH SECTION

DECISION

Application no. 42047/06
Vazha GHVALADZE
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 12 October 2006,

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 Vazha Ghvaladze, is a Georgian national, who was born in 1971 and lives in Rustavi. He was successively represented before the Court by Ms K. Butskhrikidze, Mr M. Nozadze and Ms. S. Abuladze, lawyers practising in Tbilisi.

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

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

A. Criminal proceedings against the applicant

4. On 4 June 2005 the applicant was arrested in relation to a criminal investigation into multiple instances of car theft.

5. On 6 June 2005 the Tbilisi City Court authorised the applicant's pre-trial detention, and he was placed in Tbilisi Prison no. 5 (hereinafter "Prison no. 5"). On 27 March 2006 he was transferred further to Rustavi Prison no. 6 ("Prison no. 6")

6. By a judgment of 2 February 2007, the Tbilisi City Court, sitting as a court of first instance, found the applicant guilty of complicity to commit theft of motor vehicles on a large scale as well as of misappropriation of official identity papers of another person. He was sentenced to ten years' imprisonment.

7. The applicant lodged an appeal. By a decision of 27 September 2007, the Tbilisi Court of Appeals upheld both the conviction and sentence parts of the contested judgment of 2 February 2007. As confirmed by a copy of his appeal and the minutes of the appellate hearing, the applicant did not raise, at least in remote terms, a complaint about an unlawful calculation of the prison sentence by the first-instance court.

8. A further appeal on points of law lay against the appellate decision of 27 September 2007 (the so-called "cassation proceedings"). However, the case file, as it was supplemented by the parties' submissions subsequent to the communication of the application, does not contain information about progress in the cassation proceedings, if any. Thus, it is not known whether the applicant lodged an appeal on points of law, and, if so, when the Supreme Court examined it, and what was its final decision.

9. On 19 April 2013 the Government informed the Court that the applicant had been granted, on 21 December 2012, early release from prison on the basis of an Amnesty Act.

B. The applicant's state of health in prison

10. According to the case file, the applicant never complained about any particular aspect of the material conditions of his detention either in Prison no. 5 or Prison no. 6 (see paragraph 5 above) before any of the domestic authorities.

11. The case file further discloses that he had been suffering from a number of chronic and incurable medical conditions even prior to the initiation of the above-mentioned criminal proceedings against him (see paragraph 4 above). Thus, according to a medical opinion issued on 8 May 2002, he had had a hernia in his pharynx, stomach ulcer, hepatic insufficiency and total blindness in his right eye.

12. In the context of the criminal proceedings at issue in the present case, the applicant was admitted to the prison hospital for intensive courses of treatment for his various medical conditions on five regular occasions: between 3 and 11 September 2005, 12 September – 29 October 2005, 7 January – 18 February 2006, 24 July 2006 – 3 February 2007 and 13 March 2007 – 14 May 2009.

13. During those periods in the prison hospital, the applicant had been examined not only by prison doctors but also by such private specialists invited in from civilian hospitals as a neurologist (8 consultations), a hepatologist (6 consultations), an urologist (4 consultations), an ophthalmologist (6 consultations) and a psychiatrist (3 consultations) Those medical specialists prescribed the applicant with relevant drugs, such as certain intravenous drips used for his hypovolaemia (blood plasma deficiency), vitamin injections and medicine administered for his liver problems and high blood pressure, and so forth.

14. Furthermore, following a recommendation given by a hepatologist, the prison medical staff administered a number of repeated examinations and tests on the applicant, such as ultrasound examination of his abdominal cavity and an X-ray examination of his intestines, in 2005-2008. Based on the results of those examinations, the prison medical staff conducted a detoxification treatment of the applicant on two occasions in 2006 and 2007. In addition, in 2005-2007, the applicant's blood's chemical composition was tested at least thirteen times, whilst his urine was tested seven times.

15. On 4 November 2008 the prison authority proposed to the applicant, in implementation of a recommendation given by an ophthalmologist, a surgical removal of the already blind eye-ball from his right eye cavity (see paragraph 11 above) in the prison hospital settings. The applicant refused that offer.

16. On 26 April 2009 the prison authority arranged for the applicant's transfer to a civilian hospital specialised in treatment of eye diseases. An eye surgeon of that hospital offered the applicant to conduct a surgery on the right eye with the aim of the extraction of the dysfunctional eye-ball. The applicant categorically refused that offer again, despite the fact that the relevant costs were to be covered by the State. During the subsequent days of his stay in the civilian hospital, the applicant was consulted by such private specialists as a cardiologist, a hepatologist, and a neurologist. They prescribed him with certain additional medications necessary for his condition. All the costs associated with the applicant's stay in the civilian hospital were incurred by the State. On 2 May 2009 he was moved back from the civilian to the prison hospital, where the treatment with the prescribed drugs continued under the supervision by the prison medical staff.

COMPLAINTS

17. The applicant complained under Article 3 of the Convention that the material conditions of his detention in Prisons nos. 5 and 6 had been poor

and that he had been denied medical care for his health problems for almost four years, starting from the commencement of his detention in June 2005 until May 2009.

18. Under Article 7 of the Convention, the applicant complained that the prison sentence of ten years, which had been imposed on him by the first-instance court's judgment of 2 February 2007 (see paragraph 6 above), had been a result of an erroneous calculation and/or reading of the relevant criminal law provisions.

THE LAW

A. Complaints under Article 3 of the Convention

19. The applicant complained about the inadequacy of the material conditions of his detention and lack of medical care in prison. He invoked Article 3 of the Convention, which reads as follows:

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

1. The parties' arguments

20. Noting that the applicant had never contested the alleged inadequacy of the material conditions of his detention before any of the authorities, the Government objected to that particular complaint on the ground of non-exhaustion of domestic remedies. In that respect, they also observed that the applicant had not provided individual accounts of what exactly the material conditions of his detention in the relevant prisons had been. As regards the applicant's health problems, referring to his medical file (see paragraphs 11-16), the Government stated that he had been provided with all the requisite treatment by the prison authority, and that the relevant complaint was therefore manifestly ill-founded.

21. The applicant stated in reply, without submitting any supporting evidence, that the hygiene conditions during his detention in the various custodial institutions had not been compatible with his human dignity, and that the medical care for his various health problems, making a particular emphasis on his eye problem, had been deficient. His arguments about the alleged inadequacy of the medical care were limited in time until May 2009 (see also paragraph 17 above).

2. The Court's assessment

22. Referring to its relevant case-law in respect of conditions of detention in Georgian custodial institutions at the material time, the Court

reiterates the rule that whenever an applicant wished to challenge allegedly poor material conditions of detention in a Georgian prison, even if such complaints did not call for the full and meticulous exhaustion of any specific criminal or civil remedies (see, for comparison, *Aliev v. Georgia*, no. 522/04, § 62 and 63, 13 January 2009, and also *Goginashvili v. Georgia*, no. 47729/08, §§ 54 and 57, 4 October 2011), it was still required, at the very minimum, that at least one of the responsible State agencies must have been informed of the applicant's subjective assessment that the conditions of the detention in question constituted a lack of respect for, or diminished, his or her human dignity. Without such basic conduct at the domestic level by a person who wished to challenge the conditions of his or her detention in Strasbourg, the Court would necessarily have difficulty in evaluating the credibility of an applicant's allegations of fact in that respect (see *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007, and *Janiashvili v. Georgia*, no. 35887/05, § 70, 27 November 2012).

23. Having regard to the material available in the case file, the Court notes that the applicant never informed any of the relevant authorities of his dissatisfaction with any particular aspect of the material conditions of his detention, including that relating to sanitary conditions, be it in Prison no. 5 or Prison no. 6. Furthermore, in the proceedings before the Court, the applicant limited his submissions to vague and general statements only. Consequently, the Court finds that the applicant has failed to discharge his burden of proof and substantiate his complaint properly (compare, amongst many other similar authorities, with *Muršić v. Croatia* [GC], no. 7334/13, § 127, ECHR 2016; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 122, 10 January 2012, and *Ildani v. Georgia*, no. 65391/09, §§ 26 and 27, 23 April 2013).

24. As to the complaint about the alleged lack of medical care, the Court reiterates that when assessing the adequacy of medical care in prison, it must, in general, show sufficient flexibility when defining the required standard of health care, which must accommodate the legitimate demands of imprisonment but remain compatible with human dignity and the due discharge of positive obligations by States. In that regard, it is incumbent upon the relevant domestic authorities to ensure, in particular, that diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic and involved a comprehensive therapeutic strategy. The mere fact of a deterioration of an applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the applicant's treatment in prison, cannot suffice, by itself, for a finding of a violation of the State's positive obligations under Article 3 of the Convention, if, otherwise, it can be established that the relevant domestic authorities have in a timely fashion provided all the reasonably available medical care in a conscientious effort to hinder the development of the illness in question. A prison authority's

failure to keep comprehensive records concerning a detained applicant's state of health or a respondent Government's failure to submit such records in their entirety would consequently allow the Court to draw inferences as to the merits of the applicant's allegations of a lack of adequate medical care (see, for instance, *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-140, ECHR 2016, with further references therein; *Jashi v. Georgia*, no. 10799/06, § 61, 8 January 2013; *Goginashvili*, cited above, §§ 71-81, and *Jeladze v. Georgia*, no. 1871/08, §§ 28-32, 18 December 2012, with further references).

25. Returning to the circumstances of the present case, the Court first notes that the applicant's complaint about the alleged lack of medical care stretches over the period between June 2005 and May 2009 (see paragraphs 17 and 21 above). Following the communication of the present application, the Government submitted a copy of the medical file on the applicant's treatment, fully accounting for the period in question. In other words, by disclosing all the information necessary for the assessment of the quality of the treatment in issue, the Government have discharged their burden of proof, assisting the Court in its task of factual determination, and the applicant's subsequent objections must be treated with caution (see *Goginashvili*, cited above, § 72).

26. The evidence available to the Court clearly demonstrates that the applicant was examined by the prison doctors on a regular basis both on an out- and in-patient basis. Thus, he was admitted to the prison hospital for intensive courses of treatment for his various medical conditions on five regular occasions. During the time thus spent in the prison hospital, he received care for his psychiatric, hepatic, urological and other problems, which included various laboratory, blood and urine tests and various scans, and repeated consultations with appropriate medical specialists invited in from civilian hospitals (see paragraphs 12-15 above and compare with *Janiashvili*, cited above, §§ 77-79; *Goloshvili v. Georgia*, no. 45566/08, §§ 39-40, 20 November 2012, and contrast, for instance, with *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007, and *Poghosyan v. Georgia*, no. 9870/07, § 57, 24 February 2009). The Court further attaches significance that, despite the applicant's uncooperative conduct in that respect, the prison authority did not hesitate to place him on 26 April 2009 in a specialised civilian hospital for the purposes of addressing his eye problem. In that private medical setting, with the State fully covering the costs of the stay, the applicant underwent numerous extensive examinations, was administered requisite drugs and was even offered a surgical intervention, which he eventually turned down (see paragraph 16 above compare with *Jashi*, cited above, § 68, and contrast with *Pitalev v. Russia*, no. 34393/03, § 57, 30 July 2009, and *Akhmetov v. Russia*, no. 37463/04, §§ 81-83, 1 April 2010).

27. In those circumstances, the Court considers that the prison authority showed a sufficient degree of due diligence, providing the applicant with sufficiently prompt, regular and strategically planned treatment for his various health problems, including the condition affecting his eye.

28. It follows that the applicant's both 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

29. The applicant also made a complaint under Article 7 of the Convention concerning the prison sentence imposed by the first-instance court's judgment 2 February 2007 (see paragraph 18 above).

30. However, not only did the applicant fail to voice any similar grievance about the imposed prison sentence before the appellate instance, but he also omitted to inform the Court about whether, and if so, when the final level of jurisdiction, the Supreme Court, had had a chance to examine his criminal case in cassation proceedings (see paragraphs 7 and 8 above). By omitting to communicate this essential element of information about the criminal proceedings at stake, the applicant failed to substantiate properly his complaint under Article 7 of the Convention, which is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Anne-Marie Dougin
Acting Deputy Registrar

Síofra O'Leary
President