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

FIFTH SECTION

DECISION

Application no. 25395/11
Natia JANELIDZE
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 10 November 2022 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Arnfinn Bårdsen*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 25395/11) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 April 2011 by a Georgian national, Ms Natia Janelidze, who was born in 1974 and lives in Tbilisi ("the applicant") who was represented by Mr Z. Todua, a lawyer practising in Tbilisi;

the decision to give notice of the application to the Georgian Government ("the Government"), represented by their former Agent, Mr L. Meskhoradze;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns, under Articles 3 and 6 of the Convention, the applicant's alleged lack of adequate medical treatment in prison, the refusal of the domestic courts to suspend her prison sentence and the lack of an oral hearing in the proceedings for the suspension of her sentence.

2. The applicant was serving a fourteen-year prison sentence following her conviction for murder on 27 July 2007. In April 2009 she was diagnosed with uterine fibroma. On 22 May 2009 the applicant was transferred to a specialised civil hospital, where she had a hysterectomy (surgical removal of the uterus), as a consequence of which she developed urinary retention. Until

1 June 2009 she was kept in a prison hospital under the supervision of a therapist, a gynaecologist and a surgeon. Subsequently, she was returned to prison, where she was provided with medication on an ongoing basis. On 26 October and 3 November 2009, the applicant underwent ultrasound examinations of her bladder, which were followed by an examination by a urologist on the latter date. During the consultation it was revealed that the applicant had been carrying out self-catheterisation for the previous four months. The urologist recommended a comprehensive urological examination in the National Urological Centre ("the NUC"). She continued to take certain medication for stimulation of the bladder, which did not, however, yield any results.

3. On 1 March and 3 May 2010, the applicant was again seen by a urologist. She was diagnosed with an atonic bladder and was fitted with a urinary catheter. The applicant was also prescribed certain medication. The catheterisation caused the applicant discomfort and pain, so on 6 June 2010, with her consent, she was transferred to the NUC, where she underwent a suprapubic cystostomy (an operation to create an opening between the bladder and the exterior, providing a drainage route for urine). By that time her diagnosis was an atonic bladder, chronic urinary retention, and renal calculus (kidney stones) in the right kidney, a complication she had developed as a result of her bladder dysfunction. She stayed in the NUC until 15 June 2010 and was discharged with a recommendation to stay under a urologist's supervision.

4. On 7 June 2010, the applicant's lawyer requested that the applicant undergo a comprehensive medical examination with a view to assessing the seriousness of her medical condition. According to a report on the examination of the applicant's state of health between 8 June and 5 August 2010 ("the medical report of 5 August 2010"), her diagnosis of atonic bladder, complete urinary retention and renal calculus in the right kidney was confirmed. The report concluded that the applicant's condition was not grave, but she required ongoing medical treatment on an outpatient basis.

5. On 6 November 2010 the applicant's lawyer requested that the Tbilisi City Court suspend the applicant's prison sentence. The lawyer argued that the applicant's medical condition was grave in view of the fact that the treatment available to her in prison was inadequate, and that the medical procedure (of direct electrical stimulation) she allegedly required could not be performed in Georgia. Relying on Article 3 of the Convention, the lawyer asserted that the applicant's imprisonment, in view of her physical condition and the general conditions in prison, amounted to inhuman and degrading treatment. The applicant's lawyer asked the Tbilisi City Court to examine their request at an oral hearing and to summon three medical experts for examination. On 10 November 2010 the Tbilisi City Court, without holding an oral hearing, dismissed the applicant's request for the suspension of her sentence. Relying on the medical report of 5 August 2010, the court reasoned

that, whilst Article 283 of the Code of Criminal Procedure provided for the possibility of suspending a prison sentence in the event of a prisoner having a serious disease, the applicant's condition was not grave and thus fell outside the scope of the relevant exception.

6. The applicant appealed complaining, *inter alia,* about the absence of an oral hearing in the above mentioned proceedings. On 8 December 2010 the Tbilisi Court of Appeal, fully subscribing to the reasoning of the first-instance court, dismissed the applicant's appeal without holding an oral hearing. According to the operative part of the decision, no appeal lay against it.

7. In the meantime, on 18 August 2010 the applicant was transferred to a private medical facility to have her catheter replaced. Her condition upon discharge from the hospital was characterised as satisfactory. On 6 October 2010 she was again transferred to the NUC, where she was administered the prescribed medical treatment. On 23 December 2010 the applicant was transferred to the newly built Tbilisi Prison no. 5 for Women and Juveniles. On 11 January 2014 the applicant was released from prison on the basis of a presidential pardon.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

8. The applicant's complaint under Article 3 of the Convention is threefold: firstly, that she had developed urinary retention and other bladder complications while in prison; secondly, that the relevant authorities were not capable of providing her with adequate medical treatment in prison; and thirdly that the combination of the above mentioned made her unfit for continued detention.

9. Regarding the first element, the parties were not in dispute as to the fact that the applicant had developed urinary retention in prison and the applicant failed to show that this was the result of a medical error or negligence. The hysterectomy was performed with her consent at a private medical establishment chosen by her. The case file does not disclose any evidence of failures on the authorities' part in this regard, and it does indeed appear that bladder complications are common after a hysterectomy.

10. As to the post-surgery treatment, the Government submitted a copy of the applicant's medical file, containing full details of the period in question. By disclosing all the information necessary for the assessment of the quality of the treatment in issue, they 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 v. Georgia*, no. 47729/08, § 72, 4 October 2011). The evidence available to the Court demonstrates that considerable attention was paid to the applicant's health by the relevant authorities after her medical condition had deteriorated in prison.

She was placed under the constant supervision of medical staff and given the benefit of consultations with specialists outside the prison system. An aspect which might appear problematic in the applicant's complaint is that of self-catheterisation. However, she did not specifically argue, and it does not appear from the medical evidence, that this episode in her medical treatment resulted in the deterioration of her medical condition. Moreover, the applicant failed to identify any particular occasions on which she had requested but had been denied medical treatment, or any specific steps which she had requested of the authorities in order to ensure her health and well-being but which had been refused.

11. As to the adequacy of the treatment after undergoing the suprapubic cystotomy, the applicant's submissions, in essence, consist in arguing that the prison authorities failed to provide her with the procedure involving direct electrical stimulation. However, the applicant did not submit any evidence in support of her argument that the medical procedure she sought was recommended by medical experts (see *Krivolapov v. Ukraine*, no. 5406/07, § 76, 2 October 2018; see also *Wenner v. Germany*, no. 62303/13, §§ 67-68, 1 September 2016), and the Government maintained that the treatment sought by the applicant was experimental and was not available in Georgia. The Court, being sensitive to the subsidiary nature of its role, reiterates that it is not its task to rule on matters lying exclusively within the field of expertise of medical specialists and to establish whether an applicant in fact required a particular treatment or whether the choice of treatment methods appropriately reflected the applicant's needs (see *Ukhan v. Ukraine*, no. 30628/02, § 76, 18 December 2008, and *Sergey Antonov v. Ukraine*, no. 40512/13, § 86, 22 October 2015).

12. In those circumstances, the Court considers that the prison authorities showed a sufficient degree of diligence and provided the applicant with sufficiently prompt, regular and appropriate treatment for her bladder problems.

13. As regards the complaint that her physical impairment and the discomfort and pain caused by the catheter, coupled with the unavailability of the required medical procedure in prison, made the applicant unfit for continued detention, the Court notes that while the applicant's medical condition was serious, it was not life-threatening. As already established above, she was provided with adequate medical care in prison (see paragraph 12 above). To the extent that the applicant appears to be complaining about prison conditions in view of her physical impairment, the Court notes that she did not require a personal assistant for the purpose of providing round-the-clock care and that she was able to maintain her autonomy (compare *Xiros v. Greece*, no. 1033/07, § 78, 9 September 2010). There was also no issue with the prison premises, such as the applicant's cell not being adequately equipped or being insufficiently adapted to her condition.

14. The Court further considers that the applicant has not substantiated, for example by means of medical reports, her assertion that in view of her medical condition, her detention should have been precluded on medical grounds (contrast *Contrada v. Italy (no. 2)*, no. 7509/08, §§ 82 and 85, 11 February 2014; see also *Xiros*, cited above, § 79) and/or that the alleged deficiencies in her medical care resulted in increased mental and physical suffering and the deterioration of her health (see *Xiros*, cited above, § 81).

15. In conclusion, the Court accepts that the applicant's medical condition rendered her more vulnerable than the average detainee, and that her detention may have exacerbated to a certain extent her feelings of distress. However, on the basis of the evidence before it, and bearing in mind the treatment and care that the prison authorities were providing to her, the Court finds the applicant's various complaints under Article 3 of the Convention to be manifestly il-founded.

16. It follows that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained under Article 6 § 1 of the Convention about the lack of an oral hearing regarding the suspension of her sentence.

18. The Government have not contested that Article 6 of the Convention was applicable *ratione materiae* in the present case. Nonetheless, even in the absence of an objection by the Government, this question calls for consideration by the Court of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

19. The Court notes that Article 6 § 1 of the Convention is not applicable under its criminal head, as proceedings concerning the prison system, including those relating to the suspension of a prison sentence, do not relate in principle to the determination of a "criminal charge" (see *Enea v. Italy* [GC], no. 74912/01, § 97, ECHR 2009, and *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 48, 22 June 2021). As to the civil head of Article 6, the Court has consistently held that the examination of requests for temporary release or of issues relating to the manner of execution of a custodial sentence do not fall within the scope of Article 6 § 1 of the Convention as they do not concern the determination of "civil rights and obligations" within the meaning of that provision (see *Boulois v. Luxembourg* [GC], no. 37575/04, § 87, ECHR 2012 and *Ballıktaş Bingöllü*, cited above, § 48). The Court further observes that the Convention does not guarantee, as such, a right to conditional release or to serve a prison sentence in accordance with any particular sentencing regime (ibid.; see also *Aydin v. Turkey* (dec.), no. 41954/98, 14 September 2000, and *Dybeku v. Albania*, no. 41153/06, § 55, 18 December 2007).

20. The proceedings brought by the applicant in the present case concerned a request for the suspension of a prison sentence in view of her poor health. Albeit related to the applicant's health, the subject of the proceedings as such was the manner of execution of her custodial sentence (see *Dybeku*, cited above, § 56). Were the applicant to consider that what was at stake for her was her right to healthcare in prison and the related right to serve her prison sentence in adequate conditions, a separate complaint in that regard to the domestic courts would have constituted a relevant remedy (see *Goginashvili*, cited above, §§ 55-56).

21. The Court, accordingly, finds that the proceedings at stake in the present case fall outside the scope *ratione materiae* of the Court's jurisdiction as they did not involve the determination of a "criminal charge" or of "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention. It follows that this complaint must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 December 2022.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President