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

THIRD SECTION

DECISION

Application no. 14985/07
Shakhi KVARATSKHELIA and Shakhi KVARATSKHELIA
against Russia

The European Court of Human Rights (Third Section), sitting on 3 May 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 3 April 2007,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Shakhi Kvaratskhelia and Mr Shakhi Kvaratskhelia, are Georgian nationals, who were born in 1937 and 1974 respectively and live in Tbilisi. They were represented before the Court by Mr P. Beria and Mr G. Mirtskhulava, lawyers practising in Tbilisi.

2. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights, Vice Minister of Justice of the Russian Federation. The Georgian Government, who had made use of their right to intervene under Article 36 of the Convention, were represented by

Mr L. Meskhoradze, Government Agent of Georgia to the European Court of Human Rights

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

4. In August 1994, the applicants settled in the Russian Federation, in Moscow and were temporarily registered as living in Russia.

5. On 4 October 2006, the first applicant's wife and the second applicant's mother, Mrs Jabelia was arrested and taken into police custody at Moscow police station no. 143. On 5 October she was brought before the Nogatinski District Court (Moscow).

6. In a decision of the same day the court ordered Mrs Jabelia to pay a fine of 1,000 roubles and ordered her detention in the Moscow detention centre for aliens pending her administrative expulsion from the Russian Federation.

7. Upon arrival at the centre for aliens on 5 October 2006 Mrs Jabelia was examined by the medical staff and was found to be in good health. On 10 October 2006 she started complaining of severe headaches and was diagnosed with high blood pressure.

8. On 30 November 2006 the Moscow Court of Appeal set aside the decision of the Nogatinski District Court on the ground that, until 23 December 2005, Mrs Jabelia and her family had been living in Moscow and were lawfully registered. Subsequently Mrs Jabelia had not received her new passport until early October 2006, which had prevented her from having her registration extended. Accordingly the Court of Appeal found that Mrs Jabelia had not breached the residence rules applicable to aliens.

9. Despite that decision Mrs Jabelia remained in the detention centre for aliens. At 5.30 a.m. on 2 December 2006 Mrs Jabelia had a heart attack. The doctor from the detention centre for aliens was not available as his working hours were from 10 a.m. to 6 p.m. The staff called an ambulance, but Mrs Jabelia was already dead when it arrived.

10. On 2 December 2006 the prosecutor's office of the Tver District (Moscow) opened an investigation which was carried out from 2 December 2006 to 9 January 2007.

11. In an order of 9 January 2007, the prosecutor indicated that there was no need to institute criminal proceedings in respect of Mrs Jabelia's death. According to that order, the autopsy report had established that Mrs Jabelia had died of a stroke following a cardiac ischemia combined with high blood pressure. Furthermore, she had been compelled to return to the detention centre despite the decision of the Court of Appeal, which had failed to immediately inform the prison authorities. A copy of that decision had not arrived at the detention centre for aliens until 5 December 2006. However, there was no direct causal link between that lack of information, Mrs Jabelia's unauthorised return to the detention centre and her death.

12. In an order of 26 September 2007 the Tver District Court dismissed the applicants' appeal.

COMPLAINTS

13. The applicants complained that there has been a violation of Article 2 of the Convention in connection with the death of Mrs Jabelia. They submitted that the authorities had known the risk related to her deteriorating health but had failed to take the necessary measures to prevent her death. Furthermore, they maintained that the authorities had not carried out an effective investigation as required by Articles 2 and 13 of the Convention.

14. The applicants further alleged that the authorities had failed to provide Mrs Jabelia with the appropriate medical treatment and that this, in connection with the uncertainty of her fate and the distress suffered, amounted to a violation of Article 3 of the Convention.

15. They furthermore maintained that their own situation and mental suffering endured in connection with Mrs Jabelia's arrest, detention and death amounted to a violation of Article 3 of the Convention.

16. They also considered that the lack of an effective remedy amounted to a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention in respect of Mrs Jabelia and themselves.

17. Under Article 5 § 1 (f) of the Convention, the applicants complained that Mrs Jabelia's arrest and detention had been unlawful, in particular after 30 November 2006 when the decision to detain her had been set aside. They also alleged a violation of Article 13 of the Convention taken in conjunction with Article 5 § 1 (f). Furthermore, they maintained that the proceedings related to her arrest and detention had not complied with the requirements of Article 5 § 4 of the Convention.

18. Finally, the applicants maintained that the Russian authorities' treatment of Mrs Jabelia disclosed a violation of Article 18 of the Convention taken in conjunction with Article 5 § 1 (f) of the Convention.

THE LAW

19. By letter of 20 November 2015 the Court received the following declaration from the Government:

> "I, Georgy Matyushkin, Representative of the Russian Federation at the European Court of Human Rights, Vice Minister of Justice of the Russian Federation, declare that the Government of Russia offer to pay *ex gratia* to Shakhi Kvaratskhelia and Shakhi Kvaratskhelia, with a view to securing a friendly settlement of the

above-mentioned case pending before the European Court of Human Rights, EUR 70,000 (seventy thousand euros) to cover any and all pecuniary and non-pecuniary damage as well as EUR 3,500 (three thousand five hundred euros) to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants.

This sum will be converted into the local currency at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay this sum within the said three month period, the Government undertake to pay simple interest on them, 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. The payment will constitute the final resolution of the case."

20. By letter of 21 December 2015 the Court received the following declaration, signed by the applicants' counsel:

"We, Pavle Beria and Giorgi Mirtskhulava note that the Government of Russia are prepared to pay *ex gratia* to Shakhi Kvaratskhelia and Shakhi Kvaratskhelia, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, EUR 70,000 (seventy thousand euros) to cover any and all pecuniary and non-pecuniary damage as well as EUR 3,500 (three thousand five hundred euros) to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants.

This sum will be converted into the local currency at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay this sum within the said three month period, the Government undertake to pay simple interest on them, 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.

Having consulted the applicants, I would inform you that they accept the proposal and waive any further claims against Russia in respect of the facts giving rise to the application. They declare that this constitutes a final resolution of the case."

21. The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases in accordance with Article 39 of the Convention.

Done in English and notified in writing on 26 May 2016.

Stephen Phillips
Registrar

Luis López Guerra
President