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

FOURTH SECTION

DECISION

Application no. 28987/08
Denis KVARELASHVILI
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 16 June 2015 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Faris Vehabović,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 June 2008,

Having regard to the declaration submitted by the respondent Government on 23 May 2014 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 Denis Kvarelashvili, is a Georgian national, who was born in 1975 and died on 23 September 2013 (see paragraph 24 below). He was successively represented before the Court by Mr M. Nozadze and Ms S. Abuladze, lawyers practising in Tbilisi.

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

A. Criminal proceedings against the applicant

3. On 5 August 2005 the applicant was arrested in relation to murder and unlawful possession of weapons. By a judgment of 2 August 2006 he was convicted of those offences, and sentenced to twelve years' imprisonment. The conviction was upheld on appeal on 1 May 2007. By a decision of

29 November 2007 the Supreme Court dismissed the applicant's cassation claim as inadmissible, and finally terminated the proceedings.

4. The applicant was held in Tbilisi prison no. 5 between 5 August 2005 and 5 April 2006, before being transferred to Tbilisi prison no. 1. He remained there until 14 December 2006, on which date he was further transferred to Rustavi prison no. 6, where he stayed until his admission on 10 April 2008 to the prison hospital (see paragraph 9 below). On 26 November 2008 the applicant was placed in a newly opened prison hospital.

B. The applicant's state of health

5. The applicant had become infected with the hepatitis C virus well before his arrest. Blood tests performed in Belgium in 2002 showed that he was suffering from incurable and thus particularly dangerous form of viral hepatitis with a delta agent (hepatitis D, being a superinfection of hepatitis B). Having been admitted to hospital in April 2003, the applicant, from 14 April 2003 onwards, was given antiviral treatment using Roferon.

6. On 23 February 2004 the applicant had to stop the treatment because of its high cost.

7. After his arrest on 5 August 2005, the applicant started receiving an anti-viral drug, Interferon, in prison. The treatment with that single drug lasted one year, but his virus proved to be unresponsive to it.

8. On 15 February 2006 the applicant was examined by a medical commission in Tbilisi prison no. 5. The diagnosis of hepatitis D was then confirmed and corresponding blood tests were found necessary. Those blood tests were duly performed in March-April 2006.

9. Between August and October 2007 the applicant suffered from bleeding in the mouth. On 10 April 2008, showing signs of febrility, the applicant was placed in the prison hospital. Between 11 and 24 April 2008 various blood and urine tests were carried out in that hospital. The presence of the AIDS virus, particularly dangerous when associated with hepatitis D, was ruled out. On 30 April 2008 a prison doctor specialising in infectious diseases observed that the applicant was suffering from intense pain in his tibias, anorexia, adynamia, nausea and arthralgia, which at times became unbearable for him. The doctor further noted that, since August 2007, the applicant had been suffering from a sub-febrile state. In the light of the above-mentioned blood tests, the doctor presumed that he had chronic hepatitis D. He then prescribed disintoxication treatment, with the use of antioxidants, vitamins and hepatoprotectors, finding it necessary for the applicant to be examined after undergoing a blood test for hepatitis D and the requisite tests to ascertain the state of the liver tissue.

10. The prison hospital authorities sought the help of a private insurance company for the financing of these tests. On 7 May 2008 they had still not

been carried out. According to the applicant's doctor, the appropriate medical treatment could not be prescribed until the degree of liver fibrosis had been determined. On 12 June 2008 the prison hospital reiterated its request for the financing of the blood tests by the private insurance company.

11. The FibroTest and ActiTest on the liver tissue were finally carried out on 2 July 2008. They showed that the degree of liver fibrosis was F1-F2 (the intermediate stage) and the inflammation index A3, indicating a low viral load of hepatitis B with a delta agent in the blood. The file shows that the degree of liver fibrosis had previously been F0-F1.

12. On 23 and 28 July, 4, 22 and 27 August and 4 September 2008, the applicant applied to the prison authorities seeking his placement in the National Centre for Immunology and Infectious Diseases, so that he could receive appropriate treatment for his hepatitis. Most of his requests went unanswered.

13. In view of the results of the above-mentioned tests, the chief doctor of the prison hospital noted on 4 September 2008 that the liver fibrosis had worsened and concluded that the condition was progressing. In his view, this was far from encouraging, especially as, in the past, the one-year single-drug treatment had not produced any results. He noted that the applicant was being treated using moderate disintoxication, electrolyte injections and vitamins, together with hepatoprotectors (Karsil, Riboxin and Hepatoritz). There was thus no reason to admit him to a specialised clinic.

14. On 10 September 2008 the director of social services of the prisons department of the Ministry of Justice replied to the applicant's request of 22 August 2008 (see paragraph 12 above), informing him that his general state of health was not classified as serious and that there was no need to place him in a specialised clinic.

15. On 6 January 2009 the infectious diseases specialist of the prison hospital informed the applicant that in most cases of hepatitis D the antiviral treatment was unsuccessful. His case was therefore no exception. As the applicant had followed such treatment in the past without being cured, the only solution consisted in remaining under constant medical supervision and he was already under such supervision at the prison hospital.

C. Proceedings before the Court

16. On 11 March 2009 notice of the application was given to the respondent Government with a particular emphasis on the alleged lack of medical care for the applicant's hepatitis D in prison. The Court also decided to apply Rule 39 of the Rules of Court until further notice by indicating to the respondent Government to undertake necessary measures aimed at safeguarding the applicant's health and life in prison.

17. On 7 June and 29 October 2009 the Government submitted their observations on the admissibility and merits of the case, which included a copy of the applicant's full medical file in prison. According to that file, starting from his placement in the prison hospital the applicant had been regularly examined (at least once a month) by various doctors, including an urologist, a hepatologist, a gastroenterologist, a neurologist, a dentist, a therapist, a cardiologist and a dermatologist. Despite the fact that the anti-viral treatment had been duly provided to him in the requisite dosages, his hepatitis D remained unresponsive to the administered drugs. He, however, remained under permanent medical supervision in the prison hospital. The Government pointed out that the applicant remained under medical supervision in the infectious diseases unit.

18. By submitting a copy of the prison hospital log, the statements of the medical staff and photographic illustrations, the Government additionally accounted for the conditions in which the applicant was held in the new prison hospital, starting from 28 November 2008. Thus, the hospital consisted of six different units (therapy, psychiatry, infectiology, anaesthetics, surgery, intensive care), it also had two operating theatres, dental and eye surgeries and a laboratory for bacteriological, clinical, biochemical and immunological analyses, with various modern medical imaging systems. Doctors specialising in some thirty fields work at the hospital. Other specialists may be called in, if need be. The infectious diseases unit where the applicant is placed employed, among others, a hepatologist, two infectious disease specialists, one head nurse and four duty nurses.

19. Upon his admission, the applicant was placed in cell no. 10, with space for two prisoners. In that cell there was a separate toilet, a washbasin, central heating, beds with mattresses, pillows and sheets, a bedside shelf and a radio. The sheets were changed once a week and the cell was cleaned daily. The applicant could have a shower every week in one of the hospital bathrooms. The prisoners had towels and soap. Other personal hygiene products could be purchased at the shop in the adjoining prison. The prison and hospital shared a laundry, which had a staff of seven. Four different specially-adapted weekly menus were available to the inmates, including a variety of food (except fruit), providing for three meals a day. The applicant had been granted one of these menus on the basis of a medical prescription. The Government asserted that he was free to buy fruit and fruit juice in the prison shop. All the necessary medication, including those necessary for the applicant's hepatic problems, were provided by the private insurance company Aldagi on the basis of an insurance agreement entered into with the State on 26 October 2007. The applicant was entitled to a daily walk of at least one hour and that he was allowed without hindrance to keep his prayer book and icons. The photographs submitted by the Government showed that the applicant's cell was a modern and clean premise; it was

fitted with a metal door containing a small opening in the middle and bolted from the outside and equipped with a bed with a mattress, a pillow and sheets, a bedside shelf, a washbasin and a separate toilet. Water bottles were spread over the floor; books, periodicals, pens, a prayer book and candles could be seen on the shelves, and icons were hanging on the walls.

20. On 10 September 2009 the applicant replied to the Government's factual submissions. He maintained his allegations of inadequate treatment, without submitting any evidence in support.

21. On 4 August 2010 the Government submitted to the Court the latest medical documents accounting for the applicant's state of health in the prison hospital. The submitted medical file confirmed that the applicant had been benefiting from constant medical supervision in the prison hospital, and that his condition remained stable, without though any real improvement, given the unresponsiveness of his hepatitis to the administered drugs.

22. In his letter of 30 September 2010, the applicant's advocate, without providing any medical or other relevant evidence in support, merely alleged that the treatment administered to the applicant in the prison hospital had been inadequate.

23. On 6 May 2011 the Court, having regard to the available medical documents, decided to discontinue the application of Rule 39 of the Rules of Court.

24. On 11 October 2013 Ms Madona Kvarelashvili, the applicant's wife, informed the Court that her husband had died in the prison hospital on 23 September 2013. Without submitting any new complaint in her own name or on behalf of her late husband, she stated her intention of pursing the applicant's application as it stood at hand.

COMPLAINTS

25. The applicant complained under Article 3 of the Convention that the conditions of his detention in various custodial institutions were not compatible with his state of health given that the prison authority had been withholding medical treatment from him.

26. He also complained about the unlawfulness of his pre-trial detention and called into question the factual findings of the domestic courts which confirmed his conviction under, respectively, Articles 5 § 1 and 6 § 1 of the Convention.

27. Under Article 8 of the Convention, the applicant complained that the prison authority had not allowed his wife to visit him in prison during the pre-trial detention.

28. Under Articles 9 and 10 of the Convention, he asserted that the prison authority had withheld from him a prayer book and religious icons upon his transfer to the new prison hospital and had refused to provide him with either newspapers or access to television/radio there. Invoking Article 34 of the Convention, the applicant also claimed that after his transfer to the new prison hospital, the authority had not allowed him to meet with his legal representatives, thus significantly impeding him in his communication with the Court.

THE LAW

A. As regards the complaint under Article 3 of the Convention concerning the lack of medical care

29. After the failure of attempts to reach a friendly settlement, by a letter of 29 May 2014 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by a part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

30. The declaration provided as follows:

> "The Government accept that in the particular circumstances of the instant case there was a violation of Article 3 of the Convention on account of deficiencies identified in the course of the medical treatment of Mr Kvarelashvili.
>
> In the light of the above-mentioned, the Government declare that they are prepared to pay to the applicant's wife, Ms Madona Kvarelashvili, 4,500 (four thousand five hundred) euros to cover any and all pecuniary and non-pecuniary damages and costs and expenses.
>
> This sum will be converted into the national currency at the rate applicable on the date of payment, and will be free of any taxes that may be applicable to the applicant. It 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 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. ..."

31. By a letter of 23 June 2014, the applicant's wife indicated that she was not satisfied with the terms of the unilateral declaration on the ground that the proposed sum was not an adequate compensation. She maintained that the treatment administered to her husband in prison had been insufficient.

32. At the outset, the Court notes that the applicant's wife may claim to be a victim, within the meaning of Article 34 of the Convention, of the violations alleged by her husband under Article 3 of the Convention (see,

amongst others, *Renolde v. France*, no. 5608/05, § 69, 16 October 2008). Having regard to her letter of interest in maintaining the proceedings on behalf of her late husband (see paragraph 24 above), the Court reiterates that the scope of the present case is restricted to the alleged absence of medical care for the applicant's hepatitis D in prison, exactly as this issue was communicated to the Government under Article 3 of the Convention (see *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 71-72, 27 May 2010).

33. The Court reiterates that Article 37 of the Convention provides that 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".

34. 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.

35. 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 issues) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

36. Having due regard to the terms of the Government's unilateral declaration in the current case, the Court observes that their declaration contains a sufficiently clear acknowledgment of a breach of Article 3 of the Convention on account of the absence of adequate medical care for the applicant's various diseases. In this regard, the Court notes that there already exists a well-established case-law, including those with respect to Georgia, concerning the lack of adequate medical treatment in prison (see, for instance, *Goginashvili v. Georgia*, no. 47729/08, §§ 57-61 and 71-81, 4 October 2011; *Jeladze v. Georgia*, no. 1871/08, §§ 43-50, 18 December 2012, and *Jashi v. Georgia*, no. 10799/06, §§ 63‑66, 8 January 2013).

37. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases (see, amongst many others, *Kviriashvili v. Georgia* (dec.), no. 13906/10, 9 September 2014; and *Miminoshvili v. Georgia* (dec.), no. 10300/07, 24 June 2014) – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c)).

38. 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 part of the application (Article 37 § 1 *in fine*).

39. The Court notes the modalities agreed by the respondent Government for the payment of the amount proposed (see paragraph 30 above).

40. 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).

41. Accordingly, the complaint covered by the Government's unilateral declaration should be struck out of the list.

B. As regards the remainder of the application

42. As regards the applicant's complaints under Article 5 § 1 and Article 8 of the Convention concerning, respectively, the alleged unlawfulness of and lack of conjugal visits during his pre-trial detention, the Court observes that the period of that particular instance of deprivation of liberty had ended with the applicant's conviction at first instance on 2 August 2006 (see *Davtian v. Georgia* (dec.), no. 73241/01, 6 September 2005), whereas the present application was not lodged until 6 June 2008. It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

43. The applicant's complaint under Article 6 § 1 is aimed at challenging the domestic courts' findings of fact. However, the Court reiterates that the national courts are best placed to assess the relevance of the evidence to the issues in the case and to interpret and apply rules of substantive and procedural law (see, amongst many authorities, *Patsuria v. Georgia*, no. 30779/04, § 86, 6 November 2007, and *Kobelyan v. Georgia*, no. 40022/05, § 14, 16 July 2009). This particular complaint is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

44. As to the applicant's additional complaints under Articles 9, 10 and 34 of the Convention which relate to the various aspects of his detention in the new prison hospital, the Court observes that they are grounded on unsubstantiated assertions. Notably, after the communication of the present case, the Government submitted, as part of their observation, excerpts from the prison hospital log as well as the statements from the medical staff and photographic illustrations (see also paragraphs 17-19 above), which various items of evidence were concordant in confirming that the applicant was in actual fact keeping a corner furnished with religious icons in his cell and was uninhibitedly provided with various newspapers and periodicals. In addition, as it could be inferred from the Government's

factual submissions, the prison hospital was equipped with a library, and the internal rules on discipline allowed him to procure for himself, with his own means, either a television or a radio set, if he so wished, but he had never declared to the administration of the prison hospital his wish to have one. The log on visits at the prison hospital further disclosed that, after his placement there on 26 November 2008, the applicant was visited by his representative in his cell on a regular basis, without any restrictions. The Court further observes that in reply to these factual submissions the applicant maintained his complaints, without, though, rebutting in any substantiated manner the Government's evidentiary submissions (see also paragraph 20 above).

45. As regards the applicant's complaint under Article 34 of the Convention, the Court additionally observes that between 26 November 2008 and 23 September 2013 (see paragraph 24 above), the applicant's representatives, in addition to their reiterated requests under Rule 39 of the Rules of Court and a submitted set of observations on the admissibility and merits of the application, sent twenty-seven letters, in which they claimed to be transmitting to the Court latest factual updates of the situation on behalf of their imprisoned client. In such circumstances, the applicant's allegation of his inability to communicate with the Court appears to be unsubstantiated.

46. In the light of all the above-mentioned considerations (see the two preceding paragraphs), the Court finds that the applicant's complaints under Article 9, 10 and 34 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

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

Decides to strike a 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 9 July 2015.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President