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

FOURTH SECTION

DECISION

Application no. 71672/10
Zaza MAMULASHVILI
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 6 May 2014 as a Committee composed of:

George Nicolaou, *President,*
Ledi Bianku,
Nona Tsotsoria, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 November 2010,

Having regard to the declaration submitted by the respondent Government on 17 February 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 Zaza Mamulashvili, is a Georgian national, who was born in 1970 and lives in Tbilisi. He was represented before the Court by Ms N. Chocheli, a lawyer practising in Tbilisi.

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

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

A. The circumstances of the case

4. On 30 October 2008 the applicant, who had previously been fined under the Code of Administrative offences for drug abuse, was arrested on suspicion of unlawful possession of drugs. According to the record of his

body search, 0.6288 g of heroin was found on his person. The applicant was immediately subjected to a blood test which confirmed that he was in a state of drug intoxication. Subsequently, the police conducted a search of his home, as a result of which other types of illicit narcotic and psychotropic substances were discovered there in various quantities.

5. On the same date the applicant's acquaintance was also arrested. He confessed to being a drug addict and named the applicant as his drug dealer.

6. On 13 July 2009 the Tbilisi City Court acquitted the applicant of the drug-dealing charges, concluding that the record of his body search and the incriminating statements of his acquaintance had been obtained with certain procedural deficiencies and thus were inadmissible evidence. However, the City Court found the applicant guilty of unlawful purchase, possession and personal use of drugs, offences under Article 260 § 2 (a) and Article 273 of the Criminal Code of Georgia respectively, and sentenced him to eleven years in prison. The conviction of the applicant was primarily based on the results of the search of the applicant's home, the statements of the police officers who had conducted that search, and the results of the chemical examination of the seized substances as well as of the applicant's drug test.

7. The applicant then requested the Tbilisi City Court, having regard to his serious medical condition, to suspend his prison sentence. In support, he submitted a report on his medical examination conducted by private medical experts between 11 December 2008 and 20 May 2009, according to which he was suffering from chronic viral hepatitis C (HCV), duodenal ulcer with recurrent bleedings, hiatus hernia, chronic venous insufficiency and peripheral neuropathy. His condition was qualified as chronic and potentially serious. The experts opined that the applicant required a surgery for his duodenal ulcer and a qualified treatment for his HCV and venous insufficiency on an in-patient basis. The report concluded that without adequate treatment there was a risk of the applicant developing life-threatening complications.

8. The Tbilisi City Court rejected the applicant's request for the suspension of his sentence as unsubstantiated.

9. On 8 December 2009 the Tbilisi Court of Appeal, while confirming the applicant's conviction, reduced his sentence to ten years' imprisonment. The appellate court similarly rejected the applicant's request for the suspension of his prison sentence. The applicant's appeal on points of law was rejected by the Supreme Court of Georgia on 24 May 2010.

COMPLAINTS

10. The applicant complained under Article 3 of the Convention of the failure to provide him with adequate medical treatment in prison, of the

inadequacy of the prison conditions and of the refusal of the domestic courts to suspend his prison sentence. Relying on Article 6 § 1 of the Convention he also challenged the outcome of the criminal proceedings conducted against him. In this connection, he also alleged a violation of Articles 14 and 18 of the Convention and Article 1 of Protocol no. 1.

THE LAW

A. As to the communicated complaints under Article 3 of the Convention

11. On 15 December 2010 the Court communicated to the Government the applicant's complaints under Article 3 of the Convention concerning the alleged lack of adequate medical treatment in prison and the appropriateness of his continued detention in view of his medical condition and the allegedly poor detention conditions.

12. By a letter of 17 February 2014 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

13. The Government's unilateral declaration reads as follows:

> "The Government of Georgia acknowledge that in the particular circumstances of the instant case there was a violation of Article 3 of the European Convention on Human Rights. They do so on account of the material conditions of the applicant's detention in Tbilisi no. 1 Prison and deficiencies identified in the course of his medical treatment.
>
> Considering the fact that during his detention the applicant was subjected to effective antiviral treatment for his HCV which was successfully accomplished;
>
> Taking into account that the applicant was released from imprisonment before expiration of his ten-year sentence, i.e. on 17 January 2013 on the basis of an Amnesty Law;
>
> The Government declares that it is prepared to pay the applicant 4,500 (four thousand five hundred) Euros to cover any and all pecuniary and non-pecuniary damages;
>
> This sum will be converted into the national currency at the rate applicable on the date of the payment, and will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court, pursuant to Article 37 § 1 of the European Convention on Human Rights. 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. The payment shall constitute a final resolution of the case. ..."

14. By a letter of 18 March 2014 the applicant requested that the Court to reject the Government's proposal on the basis that the unilateral declaration was insufficient in terms of the level of compensation proposed, which he found inadequate having regard to the damage sustained. The applicant also raised new complaints about other facts unrelated to the current case. In particular, he alleged several incidents of his ill-treatment in prison.

15. The Court reiterates that Article 37 of the Convention provides that the Court 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) in particular empowers the Court 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".

16. The Court also recalls 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 (see, as a recent authority among many others, *Beridze v. Georgia* (dec.), no. 16206/06, 30 April 2013; *Tabagari v. Georgia* (dec.), nos. 70820/10 and 60870/11, 18 June 2013, and *Mazanashvili v. Georgia* (dec.), no. 19882/07, 28 January 2014). To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [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, 18 September 2007).

17. In examining the Government's declaration, the Court notes at the outset that they have explicitly acknowledged a violation of the applicant's rights under Article 3 of the Convention. In this regard, it reiterates that there already exists well-established case-law on the issue of 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) as well as case-law concerning prison conditions (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 84-87, 27 January 2009, with further references therein; see also, *Kalashnikov v. Russia,* no. 47095/99, §§ 97-99, ECHR 2002-VI; *Melnik v. Ukraine*, no. 72286/01, §§ 107-108, 28 March 2006; and *Bragadireanu v. Romania*, no. 22088/04, §§ 92-98, 6 December 2007).

18. Given the nature of the admissions contained in the Government's unilateral declaration, as well as the amount of compensation proposed, the

Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1(c)). Moreover, in the light of the above considerations, and in particular given the clear 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 this part of the application (Article 37 § 1 in fine).

19. The Court notes the modalities agreed by the respondent Government for the payment of the amount proposed (see paragraph 13 above).

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

B. As to the other alleged violations of the Convention

21. The applicant complained under Article 6 § 1 of the Convention about the outcome of the criminal proceedings conducted against him. In this connection, he also relied on Articles 14 and 18 of the Convention and Article 1 of Protocol No. 1.

22. Having regard to all the materials in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 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 the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it relates to the above-mentioned complaints;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President