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

FOURTH SECTION

DECISION

Application no. 49448/08
Aleksandre MANUKIAN
against Georgia

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

Krzysztof Wojtyczek, *President,*
Nona Tsotsoria,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 September 2008,

Having regard to the declaration submitted by the respondent Government on 30 September 2015 requesting the Court to strike in part the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksandre Manukian, is a Georgian national, who was born in 1965 and is currently in detention in Tbilisi. He was represented before the Court by Ms E. Fileeva, a lawyer practising in Tbilisi.

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

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

A. The circumstances of the case

4. At the material time, the applicant was serving a prison sentence for various offences in Rustavi Prison no. 1. According to the bill of indictment,

he and four other inmates attacked the head of the prison department (the authority in charge of prisons at the time), B. Akh, the governor of Rustavi Prison no. 1, T. T., and three other representatives of the prison department while they were inspecting the prison early on 30 January 2006. The head of the prison department and the accompanying prison officials were granted victim status in the above criminal proceedings.

5. On 1 August 2006 the Rustavi City Court convicted the applicant and his co-defendants under Article 378 § 4 of the Criminal Code of Georgia (disobedience to a public authority, obstruction of prison activities and attacking prison officers). The trial judge concluded that the applicant had attacked the victims by throwing bottles and other items at them, by verbally insulting them and also by inciting other prisoners to riot against the prison administration. The applicant was sentenced to eight years' imprisonment. The final sentence, which included the unserved part of his previous sentence, was set at ten years and four months.

6. In finding the applicant guilty, the first-instance court relied on the statements of the five victims, including pre-trial statements by the head of the prison department and the prison governor. The two men, despite repeated requests from the defendants, were not heard in court. The court also relied on the testimony of seven members of the prison department's special unit ("the special unit"), which was involved in the incident, as well as on statements by two prisoners who had witnessed the events at issue.

7. According to the applicant, the Rustavi City Court found him guilty without considering the version of events given by him and his co-defendants. They alleged, in particular, that on 30 January 2006, they had been woken up at around 5 a.m. by the head of the prison department, accompanied by the governor of Rustavi Prison no.1, several prison department employees and members of the special unit, who had verbally insulted them and subjected them to humiliating treatment. The applicant had been threatened by the head of the prison department and then ill-treated by several special unit officers. The prisoners had protested and the head of the prison department and his colleagues had left. However, after a short while, at around 7 a.m. the special unit had re-entered the prison, forced the prisoners out of their dormitories and had severely beaten them. According to the applicant, they were made to pass through a so-called corridor formed of special unit officers, who had beaten and insulted them. A group of prisoners, including the applicant, had then been transferred to Ksani Prison, where they were put in a punishment cell and left for a month in extremely poor conditions, without any medical assistance. In support of their version of events, the applicant and his co-defendants requested that the trial judge question several other prisoners and the doctor who had recorded the injuries of the prisoners who had been ill-treated. The requests were, however, refused.

8. The applicant appealed against his conviction, protesting his innocence and stating that the statements of the prosecution witnesses had been contradictory, that his ill-treatment allegations had not been considered and that certain evidence given in his defence had been ignored.

9. On 23 April 2007 the Tbilisi Court of Appeal dismissed an appeal by the applicant, finding that the first-instance court had properly established the applicant's guilt and had given the correct legal classification to his actions. The appeal court failed to summon the two victims, B. Akh. and T. T., to the proceedings. As for defence witnesses, it only allowed the questioning of one prisoner who had witnessed the events of 30 January 2006. The appeal court did not examine the applicant's allegation of ill-treatment.

10. By a decision of 11 February 2008, the Supreme Court of Georgia rejected an appeal on points of law by the applicant as inadmissible.

B. Relevant domestic law

11. The relevant provisions of the Code of Criminal Procedure, as in force at the material time, read as follows:

Article 261 – Obligation to initiate a preliminary investigation

"Upon receipt of information concerning the commission of a crime, the investigator and the public prosecutor, within the limits of their powers, shall open an investigation. ..."

Article 263 – Information concerning the commission of a crime

"1. A preliminary investigation shall be opened on the basis of information concerning the commission of a crime brought to the attention of the investigator or the public prosecutor by a natural person or other legal entity ... reported in the media, or brought to light during the investigation of a case by the authority in charge of the investigation ..."

501. Referral of criminal case for additional investigation

"If the prosecutor requests that a charge against the accused be classed as a more serious offence, the judge (court) shall rule on referring the criminal case back for additional investigation ..."

COMPLAINTS

12. The applicant complained under Article 3 of the Convention that he had been ill-treated during the events of 30 January 2006 by the head of the prison department, the accompanying staff members and by officers from the special unit; that he had subsequently been put in a punishment cell and left without the required medical assistance in inadequate conditions; and that no adequate investigation had been conducted into his allegations of

ill-treatment. Relying on Article 6 of the Convention, he further claimed that the criminal proceedings conducted against him had been unfair. He noted, in particular, that the investigation had not been independent, as it had been conducted by the Investigative Department of the Ministry of Justice, the same ministry which had been, via the prison department, in charge of the prison system at the material time; that the domestic courts had examined the case in a one-sided manner, refusing to question witnesses in the applicant's defence and dismissing requests for key prosecution witnesses to be questioned in court.

THE LAW

A. The Government's unilateral declaration

13. On 15 April 2015 the Court communicated to the Government the applicant's complaints under Article 3 and Article 6 §§ 1 and 3 (d) of the Convention (see paragraph 12 above).

14. By a letter of 30 September 2015 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving some of the issues raised by the communicated application, while they considered the remainder of the application inadmissible. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

15. The declaration provided as follows:

> "The Government of Georgia express their regretful acknowledgement of a violation of Article 6 § 1 of the European Convention on Human Rights on account of the failure of domestic courts to give due consideration to the applicant's version of events of 30 January 2006 in the course of the determination of criminal charges against him.
>
> The Government in particular acknowledge the violation of Article 6 §§ 1 and 3 (d) of the Convention due to the applicant's inability to examine prosecution witnesses, namely B. Akh. and T. T., during the proceedings in domestic courts as well as obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
>
> Having due regard to the fact that the Investigative Department of the Ministry of Justice, which conducted the criminal investigation against the applicant, did not meet the requirements of independence and impartiality as provided for under Article 6 § 1 of the Convention;
>
> Bearing in mind the applicant's right envisaged under Article 310 (e) of the Criminal Code of Procedure of Georgia, entitling him to address a domestic court with a request to re-open a criminal case on the basis of a decision/judgment rendered by the Court;

> The Government undertake to pay Mr Aleksandre Manukian 2,000 (two thousand) Euros to cover any pecuniary and non-pecuniary damages and costs and expenses, plus any tax that may be chargeable to the applicant.
>
> This sum will be converted into the Georgian national currency at the rate applicable on the date of 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 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 Government therefore invite the Court to strike out this part of the application, as "any other reason" justifying the striking out of the case of the Court's list of cases referred to in Article 37 § 1 (c) of the Convention."

16. By a letter of 16 November 2015, the applicant indicated that he was ready to accept the terms of the Government's proposal, on condition that the Government in addition secure his early release from prison.

17. 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".

18. 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 (see, among many other cases, *Taktakishvili v. Georgia* (dec.), no. 46055/06, 16 October 2012; *Beridze v. Georgia* (dec.), no. 16206/06, 30 April 2013; *Tabagari v. Georgia* (dec.), nos. 70820/10 and 60870/11, 18 June 2013; and *Tsaguria v. Georgia* (dec.), no. 65969/09, 15 September 2015).

19. To that end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular in *Tahsin Acar v. Turkey* ((preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); (see also *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).

20. In examining the Government's declaration, the Court notes at the outset that the Government have explicitly acknowledged that a violation of the applicant's rights under Article 6 §§ 1 and 3 (d) of the Convention took place. In that regard, it notes that the Court has already established its practice on the various aspects of fair trial guarantees relied upon by the applicant in his Article 6 complaints (see, for instance, *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 100-165, ECHR 2015 with further

references therein, and *Huseyn and Others v. Azerbaijan*, nos. 35485/05, 45553/05, 35680/05 and 36085/05, §§ 205-207, 26 July 2011; see also, *mutatis mutandis, Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006; *Antipenkov v. Russia*, no. 33470/03, § 69, 15 October 2009; and *Virabyan v. Armenia*, no. 40094/05, § 153, 2 October 2012).

21. The explicit acknowledgment of a breach of the applicant's right to a fair trial under Article 6 §§ 1 and 3 (d) of the Convention further opens to the applicant the possibility, as expressly noted in the Government's declaration, to request the reopening of the criminal proceedings conducted against him under Article 310 of the Code of Criminal Procedure of Georgia (see *Taktakishvili* (dec.), § 22, and *Tabagari* (dec.), § 26, both cited above; see also *Molashvili v. Georgia* (dec.), no. 39726/04, §§ 33-34, 30 September 2014).

22. Thus, having regard to the nature of the admissions contained in the Government's unilateral declaration, the consequent possibility for the applicant to request the reopening of the relevant criminal proceedings, 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)).

23. 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).

24. The Court notes the arrangements agreed by the respondent Government for the payment of the proposed amount (see paragraph 15 above).

25. 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).

26. In view of the above, it is appropriate to strike this part of the application out of the list of cases.

B. As to the remainder of the application

27. The applicant complained under Article 3 of the Convention that he had been ill-treated during the events of 30 January 2006 by the head of the prison department, the accompanying staff members and by officers from the special unit; that he had subsequently been put in a punishment cell and left without the required medical assistance in inadequate conditions; and that no adequate investigation had been conducted into his allegations of ill-treatment.

1. The parties' submissions

28. The Government in their observations submitted that the above complaints were inadmissible for failure to exhaust domestic remedies or in the alternative that the applicant had failed to comply with the six-month rule. They stressed that the applicant had never filed a formal criminal complaint requesting the opening of a criminal investigation into his allegations of ill-treatment during the events of 30 January 2006 or in their immediate aftermath. He had maintained his grievances during the criminal proceedings conducted against him, however those proceedings, according to the Government, had not been the appropriate forum for the applicant's Article 3 complaints. Moreover, if the applicant had been afraid to lodge a separate criminal complaint concerning his alleged ill-treatment, or if he had believed that the available domestic remedies would have been ineffective, he should have complained to the Court within six months of the alleged incident.

29. The applicant submitted in reply that there had been special circumstances at the material time which had dispensed him from the obligation to use the remedy suggested by the Government. His argument in that respect was threefold. Firstly, while in prison, the applicant had not had adequate access to the services of the Public Defender of Georgia, human rights NGOs, lawyers or even the social services. Secondly, the applicant had found himself in a particularly vulnerable situation after the alleged incident of ill-treatment: despite a substantial deterioration in his health no medical or other type of support had ever been provided to him. Lastly, the practice of physical and psychological abuse of prisoners had been regular and systematic at the material time and no adequate remedies had been available as a culture of impunity had been prevalent.

2. The Court's assessment

(a) General principles

30. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter if it has been submitted within six months of the date of the final decision in the process of the exhaustion of domestic remedies. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it also protects the authorities and others concerned from being in a position of uncertainty for a prolonged period of time (see, for example, *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

31. The only remedies that must be exhausted are those which are available and sufficient to afford redress in respect of the breaches alleged, but not such which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; see

also *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-75, 25 March 2014, with further references therein). If no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see, among many other examples, *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002, and *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000). However, special considerations may apply in exceptional cases, where an applicant avails himself of or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective. In that situation, it is appropriate to take as the start of the six-month period the date when he or she first became aware or ought to have become aware of those circumstances (see, among other authorities, *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001; *Bulut and Yavuz,* and *Hazar and Others,* both cited above).

32. Where time is of the essence for resolving an issue in a case, there is a burden on the applicant to ensure that his or her claims are raised before both the relevant domestic authorities and the Court with the necessary expedition to ensure that they may be properly and fairly resolved (see, amongst others, *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III, and *Aydin and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005). Indeed, with the lapse of time, witnesses' memories fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish. All those factors can mean that the Court's own examination and judgment may be deprived of meaningfulness and effectiveness (see *Manukyan v. Georgia* (dec.), no. 53073/07, § 28, 9 October 2012*,* with further references therein).

(b) Application of above principles to the circumstances of the current case

33. The Court notes, having regard to the relevant national legislation (see paragraph 11 above) and the Court's case-law (see *Mikiashvili v. Georgia*, no. 18996/06, § 61, 9 October 2012 with further references therein; *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007; and *Taktakishvili* (dec.)*,* cited above, § 29), that the remedy normally available in Georgian law in respect of inhuman and degrading treatment allegedly caused by prison officials is a criminal complaint to the prosecuting authorities. In the current case, the applicant did not lodge a complaint with the competent domestic authorities that could have brought about such an investigation. He argued in that respect that he had been exempted from pursuing that remedy for a number of reasons (see paragraph 29 above).

34. The Court does not find it necessary to determine whether it could be said that there existed such special circumstances in the present case which

would dispense the applicant from the obligation to exhaust domestic remedies. It notes in that regard the following: the alleged ill-treatment of the applicant happened on 30 January 2006 and in its immediate aftermath, whereas the current application was lodged with the Court more than two and a half years later, on 25 September 2008. Should the applicant have believed from the very outset that no effective domestic remedy was available to him to complain of his alleged ill-treatment, he should have lodged his application with the Court within six months of the date of the incident, that is on 30 July 2006 at the latest (see, among many other authorities, *Manukyan* (dec.), cited above, § 29, *Akhvlediani and Others v. Georgia* (dec.), no. 22026/10, § 26, 9 April 2013; *X and Y v. Georgia* (dec.), no. 5358/14, 9 September 2014; and *Davitashvili v. Georgia* (dec.), no. 11182/10, § 12, 1 December 2015). The applicant did not explain to the Court why he had waited for more than two years to lodge the present application.

35. The Court does not lose sight of the fact that at the material time the trial against the applicant was ongoing and that he raised his allegations of ill-treatment during it. The Government submitted in that connection that those proceedings were not the proper judicial forum for voicing Article 3 complaints (see paragraph 28 above). The Court doubts whether raising the ill-treatment grievance during the applicant's trial on various charges against him could be considered effective as such. The judges were not authorised to order a preliminary investigation into the applicant's allegations of ill-treatment or direct the prosecutor to do so (see paragraph 11 above; compare with *Virabyan*, cited above, § 142). Indeed, the trial court and appeal court judges did not admit the applicant's complaints (see paragraphs 7-9 above; see, *a contrario, Virabyan*, cited above, § 141-142; see also *Akulinin and Babich v. Russia*, no. 5742/02, §§ 31-33, 2 October 2008; and *Vladimir Fedorov v. Russia*, no. 19223/04, §§ 41-50, 30 July 2009). As for the prosecutor, he showed indifferent to the allegations and remained passive throughout the proceedings.

In those circumstances, the ongoing trial could not have enabled the applicant to obtain redress for the alleged ill-treatment and whatever expectations he may have had in that regard were groundless (see *Vučković and Others,* cited above, para.75; see also, *mutatis mutandis, Akhvlediani and Others* (cited above), § 25, and *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 98-99, ECHR 2013 (extracts)). The inadequacy of such a potential remedy should have been all the more obvious to the applicant and his lawyer given their argument that there existed a persistent culture of impunity among prison officials in Georgia at the material time (see paragraph 29 above).

36. Lastly, the applicant stated in his observations that he had made several attempts to voice his ill-treatment allegations before various national authorities in 2008 and then again in 2013-14, but that those had no effect

whatsoever. The Court notes that while providing copies of letters sent, *inter alia*, to the Public Defender of Georgia and to members of Parliament to corroborate his statement, the applicant failed to provide the Court with a single copy of any criminal complaint filed with the prosecution authorities. In any event, it appears to the Court that at this stage the applicant has not submitted any new information so as to warrant the interruption of the initial six-month period (see *Manukyan* (dec.), cited above, § 32, with further references therein).

37. In view of all the aforementioned factors, the Court concludes that the applicant failed to act with due diligence and expedition and that his complaint concerning the alleged ill-treatment on 30 January 2006 and the lack of an effective investigation in that regard is inadmissible under Article 35 §§ 1 and 4 of the Convention for failure to comply with the six-month rule.

38. As to the applicant's additional complaint under Article 3 of the Convention concerning his placement in a punishment cell in poor conditions, the Court notes the following. According to the case file, the applicant left the punishment cell on 24 February 2006, while the current application was not submitted to the Court until 25 September 2008. It therefore considers that that part of the applicant's complaints has also been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Mikiashvili,* cited above, § 63, and compare with *Ramishvili and Kokhreidz* (dec.), cited above).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 §§ 1 and 3 (d) of the Convention and of the arrangements for ensuring compliance with the undertakings referred to therein;

Decides to strike the part of the application that relates to the above-mentioned complaints 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 26 May 2016.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President