

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

THIRD SECTION

DECISION

Application no. 53073/07
Karen MANUKYAN
against Georgia

The European Court of Human Rights (Third Section), sitting on 9 October 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 14 November 2007,

Having regard to the Government's observations dated 17 September 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Karen Manukyan, is a Georgian national, who was born in 1982 and lives in Rustavi. He was represented before the Court by Mr Zaza Khatiashvili and Mr Levan Javakhadze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The criminal proceedings against the applicant and his alleged ill-treatment

3. On 2 September 2004 a married couple, Mr E.M. and Mrs N.K, lodged a criminal complaint with the police, alleging that they had been victims of kidnapping and extortion. On 7 September 2004 criminal proceedings were initiated under Articles 143 § 2 (a) and (b), 181 § 2 (a) and (b) and 236 §§ 1 and 2 of the Criminal Procedure Code of Georgia for aggravated unlawful deprivation of liberty, extortion and unlawful purchase and possession of firearms.

4. On 13 September 2004 the applicant was arrested in connection with the above proceedings. As disclosed by the record of a search of the applicant's vehicle, which according to the applicant had been falsified, several items of evidence were found in the vehicle and collected for further examination, including one hand grenade, several cartridges and a face mask.

5. The applicant alleges that on the same date several police officers subjected him to ill-treatment upon his transfer to the Ministry of Internal Affairs of Georgia, with the aim of obtaining a confession to the charges against him. The police officers allegedly tied the applicant to a chair and beat him for five hours, the applicant receiving a particularly large number of blows to the head. The beatings were allegedly encouraged and supervised by two senior police officers, Mr B. Kh. and Mr. J. J., who threatened to kill the applicant if he did not plead guilty.

6. Subsequently, the applicant was transferred to a temporary detention centre, where, upon admission, he was visually examined by a duty officer in the presence of another prison officer. According to the record drawn up by the duty officer and duly signed by the applicant ("the record of 13 September 2004"), multiple scratches and reddened areas were identified on the applicant's neck. The record also stated that the applicant had said that he had sustained those injuries prior to his arrest.

7. At a photo identity parade held on 14 September 2004, the victims identified the applicant as one of their kidnappers.

8. On 17 September 2004 a department head of the Tbilisi City Prosecutor's Office, relying on the record of 13 September 2004, instructed the Vake-Saburtalo district prosecutor to inquire into the origin of the applicant's injuries and take any lawful actions required. As disclosed by the case file, the above request has not resulted in any actual investigative actions.

9. On 25 April 2006 the applicant and three co-accused were convicted on multiple charges of aggravated kidnapping, extortion, hostage-taking, unlawful purchase and possession of firearms, and causing both grave and minor bodily injuries, committed while acting in an organised, armed criminal gang. The applicant was sentenced to thirteen years' imprisonment. The applicant's conviction was primarily based on the victims' statements, the results of the identity parade, the record of the search of the applicant's vehicle, statements from the police officers who had conducted the search, and an analysis of the incoming and outgoing mobile phone calls of the applicant and his three co-accused. According to the transcript of the trial hearing, both victims identified the applicant in court as the perpetrator. The court rejected the applicant's alibi and supporting witness testimonies as unsubstantiated, reasoning that the alibi had been made up with the sole purpose of evading criminal responsibility.

10. In his appeal dated 30 May 2006, the applicant reiterated all the arguments made by him at the first-instance hearing. Notably, the applicant challenged the results of the search of his vehicle and complained of inaccurate assessment of evidence by the trial court and also about the dismissal of his alibi. The applicant did not make allegations of ill-treatment.

11. On 29 January 2007 the Tbilisi Court of Appeal, whilst modifying the qualification of the offences, maintained the applicant's conviction and his sentence of thirteen years' imprisonment. The appellate court endorsed the reasoning of the first-instance court concerning the conclusiveness of the incriminating evidence. On 25 July 2007 the Supreme Court of Georgia rejected the applicant's appeal on points of law.

2. The investigation of the allegations of the applicant's ill-treatment

12. On 10 October 2007 the applicant's lawyer lodged a criminal complaint with the General Prosecutor of Georgia and, relying on Article 3 of the Convention, requested the initiation of a criminal investigation of the applicant's allegations of ill-treatment. The lawyer denounced the failure of the prosecuting authorities to carry out the prosecutor's instructions of 17 September 2004, and to conduct an inquiry into the circumstances in which the applicant had sustained his injuries. The lawyer particularly stressed the relevant authorities' failure to question the applicant in connection with his injuries. In support of the above request, the lawyer provided the General Prosecutor of Georgia with a copy of the record of 13 September 2004 assessing the applicant's injuries, the applicant's statement describing ill-treatment he stated he had suffered – including the names of some of the alleged perpetrators, and a copy of the prosecutor's decision of 17 September 2004.

13. The above complaint was forwarded to the Tbilisi City prosecutor on 20 October 2007 with a request to report back.

14. On 1 November 2007 criminal proceedings were initiated by the prosecuting authorities in connection with the applicant's allegations of ill-treatment on 13 September 2004. On 5 January 2008, while being questioned as a witness, the applicant maintained his allegations of ill-treatment and named the key suspects again. On 24 January 2008 a forensic examination established that the applicant's injuries as described in the record of 13 September 2004 were of a minor nature, causing no damage to his state of health.

15. As disclosed by the relevant criminal case file submitted by the Government, several witnesses were questioned, including two of the alleged suspects named by the applicant and the two investigators and the prosecutor in charge of the criminal case against the applicant. They all denied the applicant's allegations. Several other investigative actions were also carried out for the purpose of verifying the applicant's claims. According to the Government, no evidence was found to substantiate the applicant's allegations.

3. The applicant's state of health

16. On 6 February 2005 the applicant was transferred to the psychiatric wing of the prison hospital with symptoms of post-traumatic stress disorder. By that time he had developed insomnia, frequent headaches and dizziness. He complained in particular of depression, irritability and tinnitus. Following a psychiatric evaluation, the applicant was diagnosed as suffering from emotionally unstable personality disorder and post-traumatic non-psychotic cerebral syndrome. The medical report of the applicant's treatment in the prison hospital between 6 February and 4 May 2005 noted that the applicant had suffered from concussion several times in the past. The report also noted that the applicant had never been registered with any psychiatric hospital in the past and that his parents did not suffer from any genetically transmissible diseases.

17. The applicant was discharged from the prison hospital after four months of treatment and returned to Tbilisi no. 1 Prison on 4 June 2005.

18. On 30 October 2007 the applicant's lawyer wrote a letter to the governor of Tbilisi no. 1 Prison, where the applicant was an inmate at the material time, inquiring about the availability of a psychiatrist in the prison. In a reply of 5 November 2007, the prison governor informed the lawyer that the applicant had been transferred to Rustavi no. 6 Prison. He further maintained in general terms that a psychiatrist from the prison hospital was asked to attend whenever the need arose.

19. In September 2010 the applicant raised new medical grievances with the prison authorities. Notably, he complained of pain in the waist area and after a medical check-up was diagnosed with radiculopathy. The applicant was prescribed relevant drug-based treatment on an out-patient basis.

20. As disclosed by his medical file, the applicant subsequently had periodic consultations with various specialists, including a psychiatrist. The most recent consultation, on 15 August 2011, indicated that the applicant's mental condition was stable, with no signs of psychosis.

B. Relevant domestic law

21. 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 ..."

COMPLAINTS

22. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated in police custody and that the domestic authorities had failed to conduct an effective investigation of his allegations of ill-treatment. He also complained under Article 3 of the Convention that the prison authorities had withheld adequate psychiatric treatment from him. Relying on Article 6 § 1 of the Convention the applicant further challenged the outcome of the criminal proceedings against him. In this connection, he also relied upon Article 14 of the Convention, alleging discrimination on the grounds of his Armenian ethnicity.

THE LAW

23. The Court notes at the outset that the applicant failed to submit observations on the admissibility and merits of the case in reply to those of the Government within the time-limit indicated by the Court. He did inform the Court, however, that he wished to maintain his application. The Court will therefore proceed with examination of the case as it stands.

A. The complaints under Articles 3 and 13 of the Convention

24. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated in police custody and that the domestic authorities had failed to conduct an effective investigation in this regard. He also complained under Article 3 of the Convention that the prison authorities had been withholding adequate medical treatment from him. Articles 3 and 13 of the Convention provide respectively:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting."

1. The applicant's alleged ill-treatment and failure to investigate it adequately

(a) The Government' arguments

25. The Government contended, amongst other things, that the complaint concerning the applicant's alleged ill-treatment on 13 September 2004 and the failure to conduct an effective investigation in that respect should be declared inadmissible for failure to comply with the six-month rule. The Government stressed in that connection that the applicant had requested the initiation of an investigation only on 10 October 2007, more than three years after the alleged incident. Moreover, he had not voiced his allegations of ill-treatment during the criminal proceedings conducted against him. Hence, according to the Government, the applicant failed to demonstrate due diligence and take the appropriate initiative to lodge his complaint with due expedition as required by the six-month rule laid down in Article 35 § 1 of the Convention (see *Baran and Hun v. Turkey*, no. 30685/05, § 46, 20 May 2010, and, *mutatis mutandis, Narin v. Turkey*, no. 18907/02, §§ 43 and 51, 15 December 2009).

(b) The Court's assessment

i. General principles

26. The Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought

also to protect the authorities and others concerned from being in a position of uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002). 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 *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). 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: it is therefore appropriate to take as the start of the six-month period the date when he first became aware or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

27. The determination of whether the applicant in a given case has complied with the admissibility criteria will depend on the circumstances of the case and other factors such as the diligence and interest displayed by the applicant as well as the adequacy of the investigation in question (see Narin, cited above, § 43). The Court reiterates in this connection that where there has been an action allegedly in contravention of Articles 2 or 3 of the Convention, the victim is expected to take steps to keep track of the investigation's progress or lack thereof, and to lodge his or her application with due expedition once he or she is or should have become aware of the lack of any effective criminal investigation (see, *mutatis mutandis*, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, ECHR 2009-...; see also, *Baran and Hun*, cited above, § 46; *Ekrem Baytap v. Turkey* (dec.), no. 17579/05, 29 April 2010; *Mađer v. Croatia*, no. 56185/07, § 84, 21 June 2011; *Stanimirović v. Serbia*, no. 26088/06, § 29, 18 October 2011; *Nasirkhaeva v. Russia* (dec.), no. 1721/07, 31 May 2011; and *Finozhenok v. Russia* (dec.), 3025/06, 31 May 2011).

28. Where time is of 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, memories of witnesses 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, and the Court's own examination and judgment may be deprived of meaningfulness and effectiveness (see *Varnava and Others,* cited above, § 161).

ii. Application of the above principles to the circumstances of the present case

29. The Court notes that the applicant complained to the prosecutor's office about the alleged ill-treatment of 13 September 2004 only on 10 October 2007. In the proceedings before the Court he failed to provide any explanation whatsoever for his three years of total inactivity. Assuming that the applicant had considered the available domestic remedies to be ineffective, he should have then applied within six months of the alleged incident that is on 13 March 2005 the latest (see *Hazar and others* (dec.), cited above).

30. At the same time, the Court observes, in line with the applicant's argument, that in view of the prosecutor's instructions of 17 September 2004 (see paragraph 8 above), the law-enforcement bodies were indeed expected to ascertain the cause of the applicant's injuries. The authorities' failure to act, although unacceptable to the Court, could not however have relieved the applicant of his own obligation to undertake an elementary step and seek information from the prosecuting authorities about the progress of the investigation, if any had been initiated (see, *mutatis mutandis, Bayram and Yıldırım* (dec.), cited above, and *Gasyak and Others v. Turkey*, no. 27872/03, § 58, 13 October 2009). In this connection, the Court notes that the applicant must have been aware that no criminal prosecution had taken place because he, as the main witness and the victim of the alleged ill-treatment had never been questioned in that respect. He also was not made aware of any steps taken by the prosecutor's office at the time and thus had no grounds to believe that an investigation was on-going.

31. Further, the Court does not lose sight of the fact that at the material time the criminal proceedings against the applicant were still ongoing. The applicant therefore could have expected the domestic courts to address the issue of his alleged ill-treatment in the context of those proceedings. The Court, however, notes that the applicant did not pursue his grievances before either the prosecuting or the judicial authorities in the context of the criminal proceedings conducted against him (see, *a contrario, Maďer*, cited above, § 85). According to the case file, neither the applicant nor his lawyer had ever voiced those allegations of ill-treatment during those proceedings. The Court finds this failure on the part of the applicant and his lawyer particularly striking in view of the fact that at the material time no separate criminal proceedings had been instituted in respect of the circumstances of the applicant's alleged ill-treatment. Therefore, the applicant was indeed expected, in the light of the due diligence principle, to voice his allegations of ill-treatment in the context of the only available proceedings.

32. Lastly, as to the investigation opened in November 2007 in the wake of the applicant's complaint of 10 October 2007, it appears to the Court that at this stage the applicant has not submitted any new information, which could have warranted the interruption of the initial six-month period (see, *a contrario*, *Brecknell v. the United Kingdom*, no. 32457/04, § 70-71,

27 November 2007; G*asyak and Others*, cited above, §§ 60 and 63; and *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 et al., §§ 53-54, 1 June 2010). The applicant, without referring to any new developments, merely contacted the authorities with the effect of prodding them into some belated activity after a lull of more than three years (see *Finozhenok* (dec.) and *Nasirkhayeva* (dec.) cited above).

33. In view of all the above, the Court considers, that irrespective of any time-limits that might be envisaged by the relevant national law for bringing a criminal complaint about alleged ill-treatment, the unexplained inactivity of the applicant and indifference on his part towards the possible investigation for over three years rendered, from the Court's own perspective, his complaint of 10 October 2007 negligent (see paragraph 28 above). The applicant failed to lodge a criminal complaint of his own motion with due expedition; he further failed to follow up on the progress of the prosecutor's instructions of 17 September 2004 or to pursue his grievances in the context of the criminal proceedings conducted against him. Hence, the applicant failed to act with due diligence and expedition and his complaint concerning his alleged ill-treatment and the lack of an effective investigation in that regard is inadmissible for failure to comply with the six-month rule.

2. Allegation of lack of medical care in prison

(a) The Government's arguments

34. The Government maintained, *inter alia*, that the applicant had failed to exhaust the various domestic remedies concerning his complaint about the lack of adequate medical treatment in prison.

(b) The Court's assessment

35. The Court does not have to address the exhaustion argument raised by the Government in connection with the complaint of lack of adequate medical treatment, since this complaint is in any event inadmissible, for the following reasons.

36. The Court notes that the applicant made a general complaint about the worsening of his mental state of health and unavailability of adequate medical treatment in this respect. However, as is apparent from the case file, he has never made an analogous complaint to the prison authorities. In the initial phase of his detention the applicant underwent four months of psychiatric treatment on an inpatient basis at the prison hospital. Since then he has never asked the prison authorities to provide him with medical assistance in relation to his mental health problems. Moreover, he consulted doctors on a number of occasions with respect to his other medical

complaints, and was provided with the examinations and medication he needed in this regard (see paragraphs 19-20 above).

37. The Court considers that the applicant has failed to show that he was indeed in need of specific medical treatment which was withdrawn from him by the prison authorities (see *Katcheishvili v. Georgia* (dec.), no. 55793/09, 24 November 2009, and *Jularic v. Croatia* (dec.), no. 26611/08, 24 June 2010). There is no evidence whatsoever in the case file to support his allegations. Accordingly, it follows that the complaint of lack of medical care in prison is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. The remainder of the application

38. Under Article 6 § 1 of the Convention the applicant called into question the outcome of the criminal proceedings conducted against him, denouncing in particular the assessment of evidence by the domestic courts. In this connection, he also relied upon Article 14 of the Convention, alleging discrimination on the grounds of his Armenian ethnicity.

39. The Court, in light of all the material in its possession, finds that the applicant's submissions under Articles 6 § 1 and 14 of the Convention do not disclose any appearance of an arguable issue under these provisions and must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President