

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

FOURTH SECTION

DECISION

Application no. 10300/07
Anzor Miminoshvili
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 24 June 2014 as a Committee composed of:

George Nicolaou, *President,*
Nona Tsotsoria,
Paul Mahoney, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 March 2007,

Having regard to the declaration submitted by the respondent Government on 29 April 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 Anzor Miminoshvili, is a Georgian national, who was born in 1960 and lives in Strasbourg. He was represented before the Court by Maître A. Tallec, a lawyer practising in France. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze of the Ministry of Justice.

2. On 9 October 2007 the Court gave notice to the Government of the applicant's complaint under Article 3 of the Convention concerning the alleged lack of adequate medical treatment for his serious cardiac problems in prison. On 8 April 2009, following his re-arrest, the Court additionally communicated the applicant's similar complaints under Articles 3 and 34 of the Convention.

THE LAW

A. As regards the complaint under Article 3 of the Convention

3. After the failure of attempts to reach a friendly settlement, by a letter of 29 April 2014 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 application. They further requested the Court to strike out the application in accordance with Article 37 § 1 (c) of the Convention.

4. The relevant parts of the declaration read as follows:

> "By way of a Unilateral Declaration 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 certain deficiencies identified in the course of medical treatment of the applicant.
>
> In the light of particular facts of the applicant's case, the Government declare that they are prepared to pay the applicant 4,500 (four thousand five hundred) Euros to cover any pecuniary and non-pecuniary damage and costs and expenses.
>
> This sum will be converted into Georgian 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 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 the 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. ..."

5. By a letter of 15 May 2014 the applicant requested the Court to reject the Government's proposal, noting that the unilateral declaration would have allowed the Government to avoid responding to the applicant's complaints on the merits.

6. The Court recalls 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".

7. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued (see *Taktakishvili v. Georgia* (dec.), no. 46055/06, 16 October 2012, and *Beridze v. Georgia* (dec.), no. 16206/06, 30 April 2013). 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* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI, and *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007).

8. Having regard to the terms of the Government' s unilateral declaration in the current case, the Court observes that their declaration contains a sufficiently clear acknowledgement of a breach of Article 3 of the Convention on account of the lack of adequate medical treatment in prison. In this regard, the Court notes that it has already established in a number of cases, including those brought against Georgia, its practice concerning the lack of adequate medical care in prison (see, for instance, *Jeladze v. Georgia*, no. 1871/08, §§ 50 and 57, 18 December 2012; *Irakli Mindadze v. Georgia*, no. 17012/09, §§ 48 and 53, 11 December 2012; and *Jashi v. Georgia*, no. 10799/06, §§ 70 and 74, 8 January 2013).

9. Hence, 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 – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

10. 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 application (Article 37 § 1 *in fine*).

11. The Court notes the modalities agreed by the respondent Government for the payment of the amount proposed.

12. 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 (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

13. 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

14. The applicant alleged under Article 34 of the Convention an interference with his right of individual petition mainly because of his re-arrest. Having regard to all the evidence in its possession, the Court has not found any appearance of a breach of the cited provision. It follows that this part of the application is 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 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 complaint;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President