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

FOURTH SECTION

DECISION

Application no. 18372/04
Davit MIRTSKHULAVA
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 2 July 2015 as a Committee composed of:

Päivi Hirvelä, *President,*
Faris Vehabović,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 April 2004,

Having regard to the declaration submitted by the respondent Government on 3 April 2015 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 Davit Mirtskhulava, is a Georgian national, who was born in 1955 and lives in Tbilisi. He was represented before the Court by Ms T. Abazadze, 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 applicant was the Minister of Energy of Georgia between December 1999 and August 2003.

4. On 24 December 2003 a criminal case was instituted against him on a charge of abuse of public authority detrimental to the interests of the State. He was accused, amongst other, of having committed unlawful financial transaction, including misappropriation of State funds, upon payment of default interest to an Armenian company on a debt relating to the purchase of electricity in 1998-1999.

5. In a public interview given to a national television statement on 24 December, the then President of Georgia, invited to comment on the initiation of the criminal case against the applicant, the former high-level public official, stated that the applicant "attempted to flee the country via north-western Georgia to take refuge in Russia" and that he was not "the applicant's enemy but if no one were to be held accountable for the millions stolen and the fact that people had been living in semi-darkness for years, such things would continue to happen in future".

6. On 16 January 2004 the applicant was arrested in relation to the above-mentioned criminal case. His pre-trial detention was examined and authorised by the domestic courts on 17 and 22 January 2004.

7. On 15 June 2004 the Tbilisi City Court held a preparatory hearing, during which the applicant's pre-trial detention was extended.

8. On 21 March 2005, when the trial of the applicant's criminal case was still ongoing, the President of Georgia, whilst addressing the Cabinet of Ministers, made another public statement:

> "I am not satisfied that you are merely not stealing, I am demanding you to be more than that, to be productive ... Otherwise, those who steal will end up where Mirtskhulava is ... People like Mirtskhulava and others have been illegally selling 10% and 15% of the energy produced by Georgia and pocketing the proceeds."

9. After several weeks of trial, by a judgment of 30 March 2005 the Tbilisi City Court convicted the applicant as charged, that is of repeated fraud and abuse of public authority detrimental to the interests of the State, and sentenced him to ten years' imprisonment.

10. On 14 July 2006 the Tbilisi Court of Appeal varied the applicant's conviction of 30 March 2005 and sentenced him to a term of imprisonment of six years and seven months.

11. On 14 January 2008 the applicant was released from serving the outstanding part of his sentence by a pardon granted by the President of Georgia.

12. Throughout all the period of his detention, starting from the day of his arrest on 16 January 2004 until his early release on 14 January 2008, the applicant complained to the relevant national authorities about his cardiovascular and other health problems. He was provided on a regular basis with the requisite medical care, by spending extensive periods of his detention in the prison hospital.

COMPLAINTS

13. The applicant complained under Article 3 of the Convention about the lack of adequate medical care for his cardiovascular diseases in prison.

14. Under Article 5 §§ 1, 3 and 4 of the Convention, he complained that his arrest and pre-trial detention had been unreasonable.

15. Under Articles 6 § 2 and 8 of the Convention, the applicant complained that the public statements of the President of Georgia had tainted his rights to presumption of innocence and to respect for private life.

16. Under Article 1 of Protocol No. 12, he claimed that the criminal investigation against him had been the form of a discriminatory treatment.

THE LAW

17. After unsuccessful friendly-settlement negotiations, by letter dated 3 April 2015 the Government informed the Court that they proposed to make a declaration with a view to resolving all the issues raised by the application. To this end, they made the following statement:

> "The Government wish to express by way of a unilateral declaration their regretful acknowledgement of a violation of Article 3 of the Convention on account of inadequacy of medical treatment dispensed to Mr Davit Mirtskhulava in prison, violations of Article 5 §§ 1 and 3 of the Convention on account of certain deficiencies that occurred in the course of the applicant's pre-trial detention and the lack of sufficient reasoning in the relevant domestic decisions authorising his detention, as well as a violation of Article 6 § 2 of the Convention on account of the statements of the then President of Georgia M.S. undermining the presumption of innocence of the applicant."

18. The Government undertook to pay the applicant's 5,000 (five thousand) euros to cover any pecuniary and non-pecuniary damage as well as costs and expenses, which 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. It will be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay this sum within the said three-month period, the Government undertook 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.

19. They Government further requested the Court to strike out the whole of the application on the basis of the above-mentioned declaration.

20. On 6 May 2015 the Court received a letter from the applicant informing the Court that he agreed to the terms of the Government's declaration and did not object to the striking-out of the whole of the application.

21. The Court finds that following the applicant's express agreement to the terms of the declaration made by the Government, the case should be treated, in substance, as a friendly settlement between the parties. It therefore takes note of the terms of this friendly settlement. Reminding the

applicant that the supervision of the execution of the friendly settlement terms is the prerogative of the Committee of Ministers (Article 39 § 4 of the Convention), the Court is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application.

22. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases pursuant to Article 39 of the Convention.

Done in English and notified in writing on 30 July 2015.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President