

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

THIRD SECTION

DECISION

Application no. 29180/10
Gabriel ONIANI
against Georgia

The European Court of Human Rights (Third Section), sitting on 9 April 2013 as a Committee composed of:

Luis López Guerra, *President,*
Nona Tsotsoria,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 27 April 2010,

Having regard to the declaration submitted by the respondent Government on 4 February 2013 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 Gabriel Oniani, is a Georgian national, who was born in 1967 and lives in Rustavi. He was represented before the Court by Mr Nikoloz Kvaratskhelia and Ms Natia Davitaia, lawyers practising in Tbilisi.

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

3. The applicant, who was convicted of various offences on 10 July 2007, is serving a ten-year prison sentence in Rustavi no. 2 Prison. According to the medical report of 2 July 2009, the applicant was diagnosed

as suffering *inter alia* from the following: subarachnoid cyst on the right side of the forehead, cortical atrophy, circular protrusion of L3 disc, sequestered hernia of L4 disc and chronic HCV. The experts, who classified the applicant's condition as of moderate severity, concluded that he was in need of a neurosurgical treatment in order to prevent further exacerbation of his pathology.

4. On 8 July 2009 the applicant requested the Rustavi City Court to suspend his prison sentence in view of his serious medical condition. By a decision of 17 July 2009 the Rustavi City Court rejected the applicant's request as unsubstantiated. The refusal was upheld by the Tbilisi Court of Appeal on 29 October 2009.

5. Relying in substance on Article 3 of the Convention the applicant claimed that the prison authorities were not in a position to provide him with adequate medical treatment for his serious neurological disorders and other medical grievances. He complained in this connection about the refusal of the domestic courts to suspend his prison sentence.

6. The Court notes that on 24 May 2012 it communicated to the Government the applicant's complaints under Article 3 of the Convention concerning the alleged lack of adequate medical treatment for him in prison and the refusal of the domestic courts to suspend his prison sentence.

7. After the failure of attempts to reach a friendly settlement, by a letter of 4 February 2013 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.

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

> "The Government wish to express – by way of a unilateral declaration – their regretful acknowledgement of violation of Article 3 of the Convention on account of certain deficiencies in timely diagnosis and treatment of subarachnoid cyst of the right side of the forehead, cortical atrophy, delay in diagnosis and surgical treatment for his L5 arcotomy on the left side, L5 discectomy as well as certain delay in timely conducting the specific tests for HCV.
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> ... The Government undertakes to: ensure the applicant's post-surgery treatment under the requisite medical supervision; ensure the supervision of the applicant's general and psychiatric state of health before the final decision on the commencement of anti-viral treatment; ensure the repetitive assessment of the applicant's state of health by the medical concillium consisting of the specialists of the civilian clinic; the applicant's family members and the lawyer will also be invited to attend the concillium; ensure the applicant's treatment for hepatitis C immediately as soon as the applicant's psychiatric condition is improved.
>
> The Government are prepared to pay Mr. Oniani 3000 Euros. This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Georgian Lari at the rate applicable of 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 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 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 will constitute the final resolution of the case.
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> In the light of the above-stated the Government believe that the unilateral declaration does adequately address the applicant's grievances under the Convention."

9. By a letter of 22 February 2013 the applicant submitted that he accepted the terms of the declaration.

THE LAW

10. The Court considers that the applicant's express agreement to the terms of the declaration made by the Government can be considered as an implied friendly settlement between the parties.

11. It therefore takes note of the friendly settlement reached between the parties. It 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 (Article 37 § 1 *in fine* of the Convention).

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 in accordance with Article 39 of the Convention.

Marialena Tsirli	Luis López Guerra
Deputy Registrar	President