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

FIFTH SECTION

DECISION

Application no. 60867/08
Shota SHANIDZE
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 7 November 2017 as a Committee composed of:

Síofra O'Leary, *President,*
Nona Tsotsoria,
Lətif Hüseynov, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 2 December 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Shota Shanidze, is a Georgian national, who was born in 1989 and is currently serving a prison sentence. He was represented before the Court by Mr M. Chikovani, a lawyer practising in Tbilisi.

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

A. The circumstances of the case

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

4. On 16 September 2006 the applicant, aged seventeen at the time, was arrested and charged with aggravated robbery, concealing a crime, and hooliganism.

5. On 18 September 2006 the Tbilisi City Court remanded the applicant in pre-trial detention in Tbilisi Prison no. 5 for women and juveniles ("Prison no. 5").

6. On 22 September 2006 a neurologist diagnosed the applicant with a convulsive disorder, prescribed the relevant medication, and recommended that he have an electroencephalogram ("EEG"), which was performed on 29 September 2006. The neurologist concluded that the applicant needed to consult a psychiatrist.

7. On 28 September 2006 the applicant's health deteriorated and a psychiatrist was asked to assess his condition. The applicant was diagnosed with an acute hallucinatory-delusional condition and a depressive syndrome. The psychiatrist recommended that he be transferred to the psychiatry ward of the Medical Establishment for Prisoners and Convicts no. 18 ("the prison hospital"), or any other psychiatric establishment, and that he have a forensic psychiatric examination.

8. On 30 September 2006 the applicant was transferred to the psychiatry ward of the prison hospital, where he stayed for three months. The applicant was reassessed and diagnosed with reactive depression and an acute hallucinatory-delusional condition. He had treatment with the relevant medication, as prescribed by a psychiatrist, and was kept under daily medical supervision. According to the applicant's medical history, on 25 October 2006, while he was still on the psychiatric ward at the prison hospital, he punched the wall and fractured the fifth metacarpal bone. He was given an X-ray and a cast was put on the injured hand.

9. On 29 November 2006 the applicant's mental condition was assessed by the National Forensic Bureau of Georgia ("the NFB") as part of the criminal proceedings against him. Owing to the complexity of his case, the panel of experts involved was unable to make a precise diagnosis and recommended his transfer to the Bureau for an inpatient examination.

10. On 27 December 2006 the Tbilisi City Court ordered the applicant's transfer to the NFB for a comprehensive psychiatric examination.

11. On 30 December 2006 the applicant was returned from the prison hospital's psychiatric ward to Prison no. 5. According to the applicant's medical file, the transfer was approved by a psychiatrist due to an improvement in his condition.

12. On 10 January 2007 the applicant was placed in the NFB for the court-commissioned psychiatric examination.

13. According to an NFB report of 31 January 2007 ("the first NFB report"), the applicant suffered from an organic personality disorder. While the applicant had been of sound mind and in full control of his actions at the time of committing the alleged offences, he had developed reactive psychosis, a temporary mental disorder, subsequent to his arrest. Considering the symptoms, which included hallucinations, panic, and destructive delusions, the experts concluded that the applicant was unable to

give statements or participate in any other meaningful way in the criminal proceedings, and that any punishment would not have the intended correctional affect. The experts recommended that the applicant be confined to the Poti Strict Regime Psychiatric Hospital pending his recovery.

14. On 31 January 2007 the applicant was returned from the NFB to Prison no. 5.

15. On 3 February 2007 the applicant was returned to the psychiatric ward of the prison hospital, where his diagnosis was confirmed. He was provided with medical treatment under the supervision of a psychiatrist. He also had various examinations such as blood and urine tests, a chest X-ray, and consultations with an allergy specialist, a cardiologist and an ear, nose and throat doctor to determine his general state of health. The applicant also consulted the neurologist, who diagnosed him with a traumatic brain injury and prescribed him the relevant medication.

16. On 17 March 2007 the Tbilisi City Court convicted the applicant as charged and sentenced him to nine years' imprisonment. Taking into consideration the findings of the NFB report of 31 January 2007 regarding the applicant's temporary mental disorder (see paragraph 13 above), the court suspended the sentence and committed him to mandatory treatment in the Poti Strict Regime Psychiatric Hospital pending his recovery.

17. On 16 May 2007 the applicant was transferred from the prison hospital to the Poti psychiatric institution.

18. On 17 September 2007 the Tbilisi Court of Appeal, finding the applicant innocent of two of the three charges, upheld his conviction for aggravated robbery and reduced his sentence to five years' imprisonment. The court also referred to amendments of the Criminal Code, which had removed provisions on the suspension of sentences for defendants who had developed a mental disorder after committing a crime and their confinement for mandatory medical treatment. As a consequence, it ordered the transfer of the applicant, of full legal age by that time, to an ordinary prison.

19. On 20 May 2008 the Supreme Court of Georgia found a cassation claim by the applicant inadmissible as unsubstantiated and thus his conviction became final.

20. Notwithstanding the Court of Appeal's ruling, the applicant was not transferred to an ordinary prison and continued to receive psychiatric treatment at the Poti psychiatric institution. He was subsequently transferred to Khoni Psychiatric Hospital on 22 November 2007.

21. According to the applicant's medical history, on 14 October 2007 the applicant carried out an act of self-harm and was transferred to a civilian hospital to treat injuries on his stomach. Upon his return he stated that he had tried to commit suicide. On 17 October 2007 the applicant attempted to commit suicide by overdosing on an unidentified drug. He was taken to a civilian hospital for emergency treatment and returned to the Poti psychiatric hospital the same day.

22. On 17 February 2008, during his stay at Khoni Psychiatric Hospital, the applicant took a disposable razor apart and used it to self-harm by inflicting multiple lacerations on his forearms. He was immediately taken to the emergency unit of a civilian hospital, where his wounds were stitched. He returned to the Khoni psychiatric hospital the same day.

23. The applicant's condition was reassessed and treatment at the psychiatric clinic prolonged on 11 December 2007, 7 March 2008, and 6 June 2008, respectively. A panel of experts confirmed again the diagnosis of reactive psychosis, a temporary mental disorder which expressed itself as a hallucinatory-paranoid syndrome.

24. On 13 August 2008 the applicant absconded from the Khoni psychiatric institution.

25. On 1 September 2008 the applicant was recaptured and remanded in custody in Prison no. 8 on a new charge of aggravated murder.

26. From 1 to 30 October 2008 the applicant was placed in the NFB for a psychiatric examination as part of the new set of criminal proceedings in order to assess whether he had been of sound mind at the time of committing the alleged crime and whether he needed treatment in a specialist psychiatric institution. According to a forensic psychiatric examination report ("the second NFB report") issued on 21 October 2008, the applicant was diagnosed with an organic personality disorder, which was confirmed, among other observations, by his history of cranial traumas and accompanying anti-social behaviour, emotional instability and aggressiveness. In the experts' opinion, the condition did not, however, affect his capacity to understand the wrongfulness of his actions. The report stated further that the applicant did not show any symptoms of psychosis, while some of his statements were to be assessed as incompatible with the clinical picture of known forms of mental illnesses and were therefore simulated. The panel of experts concluded that the applicant suffered from a chronic condition, but it did not belong to any category of incurable illness, did not require compulsory treatment in a specialist psychiatric hospital and did not prevent him from serving his sentence.

27. The applicant was found guilty on an unspecified date and sentenced to thirteen years in prison. He was placed in Prison no. 8, an ordinary prison.

B. Relevant international documents

28. Excerpts of the relevant international documents bearing on the problem of psychiatric care for prisoners in Georgia at the material time are set out in *Jashi v. Georgia* (no. 10799/06, §§ 46-47, 8 January 2013).

COMPLAINTS

29. The applicant complained under Article 3 of the Convention that the medical care and treatment provided to him during his detention in various prison and medical institutions had been inadequate in view of his mental health problems. Subsequently the applicant raised a complaint concerning the allegedly inadequate treatment for his other health conditions, such as allergies and cardiologic, gastrointestinal, and respiratory issues.

30. Relying on Article 6 §§ 1 and 3 (c)-(d) and Article 7 of the Convention the applicant complained about the outcome of the proceedings and the domestic courts' assessment of facts and law.

THE LAW

A. Complaints under Article 3 of the Convention

31. The applicant complained under Article 3 of the Convention that the State had failed to provide him with adequate psychiatric treatment while in detention, which had led to a deterioration in his health and his attempts to commit suicide. The provision reads as follows:

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

32. The Government submitted that they would limit their observations to the period running from the applicant's detention on remand on 18 September 2006 until the lodging of his application with the Court on 2 December 2008. They stated that the applicant had failed to comply with the six-month rule with respect to the initial period of his detention and argued that that period ought to be calculated from the date of the applicant's transfer to a specialist psychiatric hospital on 16 May 2007.

33. The Government further submitted that the application did not disclose a violation of the Convention as the applicant had received prompt, systematic, and comprehensively planned medical assistance. His condition had also been reassessed by a panel of experts on several occasions during the relevant period. They further noted that the obligation to cure a seriously ill detainee was one of means used and not the result obtained, and that the Government had demonstrated a sufficient degree of due diligence. Referring to *Kudła v. Poland* ([GC], no. 30210/96, §§ 96-97, ECHR 2000-XI), they argued that the applicant's attempts at suicide could not be attributed to the Government in view of the appropriate medical care he had been given and that he, at the material time, had been placed in specialist psychiatric institutions.

34. The applicant submitted that his detention had constituted a continuing situation and that the six-month time-limit had been complied with. He further submitted that in view of his mental condition and the lack of adequate medical treatment, his detention at the prison establishments and the psychiatric hospital had fallen short of the requirements of Article 3 of the Convention. The applicant submitted, in particular, that his placement in ordinary prison cells during his transfers to and from the prison hospital, lasting ten and three days respectively, before being transferred to specialist psychiatric institutions, had contributed to the deterioration of his health. He further argued that the Government had not adopted a comprehensive therapeutic strategy for his condition and had failed to take the necessary precautionary measures in respect of his suicidal and self-harming tendencies. The applicant subsequently complained that he had received inadequate treatment for his other health conditions, such as his allergies and cardiologic, gastrointestinal and respiratory issues.

35. The Court reiterates that as a rule the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no.65550/01, 30 March 2004).

36. The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 75-78, 10 January 2012, with further references). In the context of complaints relating to conditions of detention, as long as the applicant stays within the same type of detention facility and provided the material conditions have remained substantially the same, it does not matter that he or she was transferred between cells or wings within the same remand prison, from one remand prison to another within the same region or even to a remand prison in a different region (see *Ananyev*, cited above, § 77, with further references).

37. Turning to the circumstances of the present case, and considering that the applicant's complaint relates to the alleged inadequacy of medical treatment with respect to his mental health in all the relevant facilities, the Court finds it warranted to dismiss the Government's preliminary objection and to consider the applicant's detention from 18 September 2006 onwards, without dividing it into separate periods (see, *mutatis mutandis, Guliyev v. Russia*, no. 24650/02, §§ 31 and 33, 19 June 2008, and *Buzhinayev v. Russia*, no. 17679/03, § 23, 15 October 2009).

38. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment. However, in order to come within the scope of Article 3, the ill-treatment must reach a minimum level of severity (see *Blokhin v. Russia* [GC], no. 47152/06, § 135, ECHR 2016). The assessment of this minimum is a relative one and depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, *inter alia*, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX, and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015, with further references).

39. Under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła*, cited above, § 94, and *Enea v. Italy* [GC], no. 74912/01, § 57, ECHR 2009).

40. In deciding on the compatibility of an applicant's health with his stay in detention, the Court considers at least three relevant factors: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (see, among other authorities, *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006, and *Goginashvili v. Georgia*, no. 47729/08, § 70, 4 October 2011). The Court is mindful of the fact that the adequacy of the medical assistance is always the most difficult element to determine. In this task, it must reserve, in general, sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008). That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Blokhin*, cited above, § 138). In this respect, it is incumbent upon the relevant domestic authorities to ensure, in particular, that the diagnosis and care have been prompt and accurate, and that supervision by proficient medical personnel has been regular and systematic, and involved a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, § 142, 2 June 2016).

41. The Court reiterates that a detained applicant who suffers from a mental disorder might be more susceptible to feelings of inferiority and powerlessness, which calls for increased vigilance in reviewing the issue of

the adequacy of psychiatric care in prison (see *Dybeku v. Albania*, no. 41153/06, § 47, 18 December 2007; *Sławomir Musiał v. Poland*, no. 28300/06, §§ 87 and 96, 20 January 2009; and *Jashi v. Georgia*, (no. 10799/06, § 62, 8 January 2013). In order to judge the respondent State's responsibility for the well-being of a detainee with suicidal tendencies, the Court must establish that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life and health of the identified individual and, if so, that they failed to take the necessary precautionary measures in order to diminish the opportunities for self-harm (see *Renolde v. France*, no. 5608/05, §§ 82-83, ECHR 2008 (extracts), and *Shumkova v. Russia*, no. 9296/06, §§ 90-91, 14 February 2012).

42. Turning to the circumstances of the present case, the Court notes that the main issue to be determined is whether or not the respondent State was able to provide adequate treatment for the applicant's mental health problems throughout his detention. In its assessment of this matter, the Court considers that it must be guided by the due diligence test, since the State's obligation to cure a seriously ill prisoner is that of the means used, not of the result obtained (see, among other authorities, *Goginashvili*, cited above, § 71). It is further noted that Article 3 cannot be interpreted as requiring the relevant authorities to place a detainee in a civilian hospital to obtain a particular kind of medical treatment (see, *mutatis mutandis*, *Kudła*, cited above, § 93) or to secure for every detained person medical assistance of the same standard as that in the best civilian clinics (see *Golubenko v. Ukraine* (dec.), no. 36327/06, § 90, 5 November 2013).

43. The Court notes that following the communication of the present application, the Government submitted a copy of the full medical file on the applicant's treatment and periodic examinations at all the relevant institutions. Thus, by disclosing all the information necessary for the assessment of the quality of the treatment in issue, the Government have discharged their burden of proof and duly assisted the Court in its task of factual determination. That being so, the applicant's subsequent objections must be treated with caution (see *Goginashvili*, cited above, § 72).

44. The applicant's mental health problems manifested themselves shortly after his detention on remand. With respect to the initial period of his detention, the Court observes that the applicant was promptly transferred to a psychiatric ward at the prison hospital with a diagnosis of an acute hallucinatory-delusional condition and reactive depression and received the relevant treatment under the supervision of a psychiatrist (see paragraphs 7-8 above). While the applicant had a self-harm episode, fracturing his fifth metacarpal bone during his stay at the prison hospital, it was treated promptly (see paragraph 8 above). On two occasions, before and after his transfer for an inpatient expert examination, the applicant was placed in an ordinary prison for ten and three days respectively (see paragraphs 11 and

14 above). As the medical file shows, the first transfer was authorised by a prison hospital psychiatrist after an improvement in his condition (see paragraph 11 above). As for the second brief period of three days, and without there being any specific complaints relating to that particular episode, that occurrence alone does not raise an issue under Article 3 of the Convention. Apart from those two episodes, the applicant was held in a psychiatric ward at the prison hospital until his transfer to a specialist institution, and, as appears from the case file, received adequate medical treatment and supervision.

45. Subsequently, the applicant was placed in the Poti psychiatric institution, as recommended by the NFB experts and ordered by the first-instance court (see paragraphs 13 and 16 above). Later, he was transferred to the Khoni psychiatric institution (see paragraph 20 above). According to the case file, the applicant received daily psychiatric supervision and adequate treatment at both psychiatric institutions. The Court notes that during his placement at the two institutions, the applicant carried out acts of self-harm and showed suicidal tendencies on three occasions. He committed an act of self-harm at the Khoni psychiatric institution by lacerating his forearms and received adequate emergency treatment for that injury (see paragraph 22 above). He also attempted to commit suicide twice while placed at the psychiatric institution in Poti (see paragraph 21 above). According to the medical evidence available to the Court, the applicant was provided with timely emergency care during those episodes. In addition, the Court observes that his condition was reassessed and compulsory treatment in the specialist institutions prolonged by a panel of experts on several occasions (see paragraph 23 above). Accordingly, as the applicant's suicide attempts occurred when he was placed at specialist psychiatric institutions, receiving daily psychiatric supervision, adequate treatment, and periodic review of his condition and treatment plan by a panel of relevant experts, the Court does not find that the Government can be held responsible for what happened (see *Kudła*, cited above, §§ 63-64 and 96-97).

46. The Court observes that the applicant absconded from the Khoni psychiatric institution and was remanded in custody on a new charge of aggravated murder. He was placed in an ordinary prison upon his recapture for one month until his placement at the NFB for a psychiatric examination by a panel of experts (see paragraphs 24-26 above). The applicant did not raise specific grievances in relation to that period of his detention, except for noting that, as such, it had been incompatible with his health. As is clear from the second NFB report issued subsequently, on 21 October 2008, the applicant was not in need of specialist psychiatric treatment at that time and his health was compatible with detention. In the absence of any specific complaints relating to that period, the discomfort experienced during that

one month, if any, did not reach the minimum level of severity under Article 3 of the Convention.

47. As regards the applicant's subsequent placement in an ordinary prison to serve the new sentence, it appears to have been in line with the conclusions reached by the NFB. In particular, the second NFB report concluded that the applicant suffered from an organic personality disorder of a chronic nature. In the panel's opinion, the condition did not, however, necessitate treatment in a specialist psychiatric hospital and did not prevent him from serving his sentence. It was further concluded that his behaviour was simulated and not in line with the clinical picture of known forms of mental illness (see paragraph 26 above). The applicant was accordingly placed in an ordinary prison to serve his new sentence (see paragraph 27 above). The Court further notes that the applicant did not complain about that subsequent period of detention.

48. Having regard to the applicant's detailed medical file and the findings of the second NFB report, the Court finds that he received adequate psychiatric supervision and treatment for his mental health problems, both in the prison hospital and in the specialist psychiatric institutions that appears to have contributed to the improvement of his mental health. His subsequent placement in an ordinary prison to serve his new sentence was also duly assessed and found to be warranted by the conclusions of a panel of medical experts.

49. Accordingly, the applicant's complaint under Article 3 of the Convention relating to the medical care and treatment he received for his mental health problems during detention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

50. As concerns the applicant's additional complaint concerning the allegedly inadequate treatment for his other health conditions, such as allergies and cardiologic, gastrointestinal, and respiratory issues, the complaint was not part of the initial application and was raised at a later stage of the proceedings. The Court reiterates that there is no need to give a ruling on complaints raised after the communication of an application to the Government. Accordingly, the applicant's subsequent complaint is not a part of the case referred to the Court (see *Dimitriu and Dumitrache v. Romania*, no. 35823/03, § 24, 20 January 2009; and *Nicolescu v. Romania*, no. 31153/03, § 32, 20 January 2009; see also *Bazjaks v. Latvia*, no. 71572/01, § 70, 19 October 2010).

B. The remainder of the application

51. The applicant complained under Article 6 §§ 1 and 3 (c)-(d), and Article 7 of the Convention about the outcome of the criminal proceedings and the domestic courts' assessment of facts and law.

52. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 November 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Síofra O'Leary
President