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

FOURTH SECTION

DECISION

Application no. 17775/09
Merab TSIKLAURI
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 6 May 2014 as a Committee composed of:

George Nicolaou, *President,*
Ledi Bianku,
Nona Tsotsoria, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 February 2009,

Having regard to the declaration submitted by the respondent Government on 14 February 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 Merab Tsiklauri, is a Georgian national, who was born in 1969 and lives in Tbilisi. He was represented before the Court by Mr V. Talakvadze and Ms I. Maglakelidze, 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 facts of the case as submitted by the parties may be summarized as follows.

4. The applicant who was convicted of various offences on 26 February 2007, was suffering from, *inter alia,* the following diseases: post-traumatic myelopathy, complete paraplegia, pelvic floor dysfunction, chronic osteomyelitis, arthritis of the right ankle and osteoporosis. According to a medical report dated 12 December 2007, he required complex long-term medical treatment involving neurological therapy and, besides a course of

antibiotics, surgery on the right lower limb. The applicant was also suffering from type C viral hepatitis. Between 4 September 2008 and 21 May 2009 he was kept in a prison hospital in accordance with a court decision of 20 August 2008. On 21 May 2009 he was moved to Rustavi no. 2 prison, before being readmitted to hospital following repeated requests from his lawyer. On 6 July 2009 the applicant was transferred back to Rustavi no. 2 prison.

5. Between 2 and 10 February 2009 the applicant went on hunger strike. He maintained that he was not being given an appropriate diet for his condition, as required by a medical prescription. The applicant and the prison doctors disagreed as to his ability to move about occasionally with the aid of crutches and to get out of his wheelchair to go to the toilet.

6. On 20 August 2008 and 5 May 2009 applications for the suspension of the applicant's prison sentence on medical grounds were refused by the domestic courts. The decisions were upheld on appeal.

COMPLAINTS

7. The applicant complained under Articles 3 and 13 of the Convention that he had been left without adequate medical treatment in prison and without effective domestic remedies in this regard. He also claimed that his conditions of detention were extremely poor and that the domestic courts, in view of his serious medical condition, should have released him from prison.

THE LAW

A. The Government's unilateral declaration and the applicants' reply

8. By a letter of 14 February 2014 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.

9. The Government's unilateral declaration reads as follows:

> "The Government of Georgia wish to express – by way of a unilateral declaration – their regretful acknowledgment of the violation of Articles 3 and 13 of the Convention. The Government do so in the following circumstances:
>
> - the lack of medical treatment and care in prison violated Article 3 of the Convention;

- material conditions of the applicant's detention in Rustavi no. 2 Prison, in the circumstances of the present case, were not compatible with the requirements of Article 3 of the Convention;

- prior to the adoption of the new prison code, which entered into force on1 October 2010 and introduced effective complaint procedure related to the absence of adequate medical care in prison, the ineffectiveness of domestic remedy amounted to a violation of Article 13 of the Convention;

Considering Mr Merab Tsiklauri's early release on parole on 1 March 2013 and in the light of the above:

The Government are prepared to pay to the applicant 4,500 Euros (four thousand five hundred). This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Georgian national currency at the rate applicable of the date of payment, and will be free from 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 Court of 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 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 fulfillment of the above-mentioned condition shall constitute a final resolution of this application. ..."

10. By a letter of 5 March 2014 the applicant requested that the Court reject the Government's proposal on the basis that the unilateral declaration was insufficient in terms of the level of compensation proposed, which he found inadequate having regard to the damage sustained. The applicant also submitted that the acknowledgement of the violations under Articles 3 and 13 of the Convention was rather vaguely worded.

B. The Court's decision

11. Article 37 of the Convention provides that the Court 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) in particular empowers the Court 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".

12. The Court also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued (see, as a recent authority among many others, *Beridze v. Georgia* (dec.), no. 16206/06, 30 April 2013, and *Tabagari v. Georgia* (dec.), nos. 70820/10 and 60870/11, 18 June 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*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

13. Turning to the Government's declaration, the Court notes at the outset that the Government have explicitly acknowledged a violation of Articles 3 and 13 of the Convention with respect to the applicant. In this connection, it reiterates that there already exists an abundance of well-established case-law, including against Georgia, concerning lack of adequate medical treatment in prison and lack of effective remedies in this regard (see, for instance, *Goginashvili v. Georgia*, no. 47729/08, §§ 57-61, 71-81, 4 October 2011; *Jeladze v. Georgia*, no. 1871/08, §§ 43-50, 18 December 2012, and *Jashi v. Georgia*, no. 10799/06, §§ 63-66, 8 January 2013) as well as case-law concerning prison conditions (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 84-87, 27 January 2009, with further references therein; see also, *Kalashnikov v. Russia,* no. 47095/99, §§ 97-99, ECHR 2002-VI; *Melnik v. Ukraine*, no. 72286/01, §§ 107-108, 28 March 2006; and *Bragadireanu v. Romania*, no. 22088/04, §§ 92-98, 6 December 2007).

14. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)). 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*).

15. The Court notes the modalities agreed by the respondent Government for the payment of the amount proposed (see paragraph 10 above).

16. 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).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Articles 3 and 13 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.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President