



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

FOURTH SECTION

CASE OF TETUNASHVILI v. GEORGIA

(Application no. 29727/21)

JUDGMENT

STRASBOURG

11 February 2025

This judgment is final but it may be subject to editorial revision.

In the case of Tetunashvili v. Georgia,

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

Anne Louise Bormann, *President*,

Sebastian Rădulețu,

András Jakab, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 29727/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 27 May 2021 by a Georgian national, Mr Vladimer Tetunashvili (“the applicant”), who was born in 1978, lives in Gori and was represented by Mr A. Merebashvili, a lawyer practising in Tbilisi;

the decision to give notice of the application to the Georgian Government (“the Government”), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice;

the parties’ observations;

Having deliberated in private on 21 January 2025,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant’s complaints, under Articles 3, 5 and 13 of the Convention, that his arrest was unlawful, that he was ill-treated by police officers, and that the investigation into his allegations had not been effective.

I. APPLICANT’S ARREST AND ALLEGED ILL-TREATMENT

2. According to the applicant’s version of events, on 17 April 2020 at around 5 p.m., he was stopped by two police officers in the street in Gori and asked to produce an identity document. He complied with the request, however, the police officers did not accept his document and informed him that he would be fined. The applicant protested and started to film his identity card and the two officers, using his mobile phone. The police officers became aggressive and started to insult him. In the meantime, several more police officers arrived on the scene and one of them tried to grab the mobile phone, however, the applicant would not let go. According to the applicant and two eyewitnesses, one of the police officers then kicked the applicant causing his mobile phone to fall to the ground and break. The applicant was then forced into a police vehicle and taken to the Gori police station. According to the applicant, he was slapped in the face and sworn at in the police car during the

journey to the police station. He was also verbally and physically assaulted by the police upon his arrival at the police station.

3. According to the testimony of the police officers, they stopped the applicant to check his identity. He refused to produce his identity document and became aggressive, insulting the officers. Despite their repeated requests, he did not calm down and was eventually arrested, with the help of several other police officers, for breaching public order and disobeying police orders. As to the force used, the police officers stated that the applicant had resisted arrest and had himself, voluntary, fallen to the ground. The applicant continued to behave aggressively in the police car, insulting the officers. Upon his arrival at the police station, the police officers tried to handcuff him, but he resisted even more, throwing himself to the ground again.

4. The administrative-arrest report stated that the applicant had refused to show the police officers his identity document and had verbally insulted them. He had then resisted arrest, resulting in the police officers having to use “proportionate force”. The arrest report further noted that a visual examination of the applicant identified minor scratches and bruises on his right shoulder and arm, the right side of his neck and around his left ribcage, and reddish spots in the area of his right ankle.

5. From Gori police station the applicant was transferred to a temporary detention centre, where he underwent a visual examination by a duty doctor, who noted his complaints of back pain and requests for pain killers. According to the record of that visual examination, the applicant, who had a history of, among other things, spinal hernia, claimed that he had been kicked in the back at the police station. The doctor noted that there was no visible injury as such, but that the applicant’s allegations of being kicked were consistent with his severe pain. The doctor informed the State Inspectorate’s service of the applicant’s allegations.

6. Early the next day, the applicant was transferred to a local hospital as a result of his complaints of severe back pain and where he again complained of being assaulted by police officers. Having undergone a medical examination in connection with his back pain, including an x-ray of the spine, no new back injury was identified, and the applicant was only given pain-killers.

7. On 18 April 2020 the applicant was charged with administrative offences under Article 166 (breaching public order) and Article 173 (disobedience to lawful orders of the police) of the Code of Administrative Offences (“the CAO”). The administrative-offence report stated that the applicant had refused to comply with a police order to produce his identity card, had insulted police officers and had resisted arrest. The applicant refused to sign that report.

8. On 26 June 2020 the Gori District Court, having examined the administrative case brought against the applicant, including, among other things, hearing in-court evidence from the applicant, the two police officers

who had effected his arrest and two eyewitnesses, decided to discontinue the proceedings. The district court judge concluded that the evidence concerning the circumstances of the case was contradictory and was insufficient to establish the applicant's guilt.

II. INVESTIGATION INTO THE APPLICANT'S ALLEGATIONS OF ILL-TREATMENT

9. On 23 April 2020 the State Inspectorate's service opened a criminal investigation under Article 333 § 2 (b) of the Criminal Code (abuse of power using violence). The authority examined seventeen witnesses, among them, the applicant, ten police officers, four eyewitness and two doctors. The service also obtained a copy of the administrative-arrest and the administrative-offence reports, a copy of the record of the visual examination of the applicant in the temporary detention centre and a copy of other medical records. It appears from the case file, that the State Inspectorate's service requested footage from both the internal and external surveillance cameras at the Gori police station; however, that request was refused by the relevant service of the Ministry of Interior on the basis that the requested footage "could not be found on the hard disk of the recording equipment." Subsequently they clarified that the footage could not be retrieved because of a technical malfunction in the recording system.

10. On 30 June 2020 the prosecutor responsible for the investigation, rejected the applicant's request to be granted victim status given the lack of sufficient evidence. On 21 July 2020 the applicant wrote to the State Inspectorate's service reiterating his allegations of unlawful arrest and assault by police officers. He provided the authorities with a copy of his administrative case file, including the relevant court decision discontinuing the proceedings for lack of evidence, and he again requested that he be granted victim status and asked for an identification procedure to be organised in order to identify the police officers responsible. The applicant renewed his requests with the Prosecutor General on 10 and 22 October 2020.

11. On 2 November 2020 the prosecutor's office rejected the applicant's request for victim status, concluding that there was insufficient evidence to show that he had sustained any damage on account of unlawful acts by the police. That decision was upheld on appeal by the Tbilisi City Court on 7 December 2020. That court noted as follows:

"As noted above, an investigation is currently ongoing in the present criminal case and multiple investigative and procedural measures have already been undertaken. The entirety of facts and information available at this stage of the investigation is not sufficient to conclude that [the applicant] has suffered damage on account of unlawful acts of employees of the Ministry of the Interior."

12. According to the case file the investigation is still ongoing. The latest investigative measures, including the questioning of additional witnesses,

were undertaken between June and September 2021 (with the exception of one witness who was questioned in February 2022). On 23 February 2023 the applicant was granted access to the case file.

13. The applicant complained under Articles 3, 5 and 13 of the Convention that he had been unlawfully arrested and ill-treated by the police and that the authorities had failed to conduct an effective investigation in that regard.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

14. The Government submitted that the applicant's complaints were premature since the investigation in that connection was still ongoing. Alternatively, they argued that the applicant had failed to exhaust effective domestic remedies in the form a disciplinary complaint or a civil compensation claim. The applicant replied that the investigation had been ineffective. He also stated that against that background, the effectiveness of any other remedy was undermined. Having regard to the Court's relevant case-law and in view of the circumstances of the present case, the Court dismissed both inadmissibility pleas (see *Mikeladze and Others v. Georgia*, no. 54217/16, § 51, 16 November 2021; *Machalikashvili and Others v. Georgia*, no. 32245/19, § 69, 19 January 2023; and *Georgian Muslim Relations and Others v. Georgia*, no. 24225/19, § 67, 30 November 2023; see also *Baranin and Vukčević v. Montenegro*, nos. 24655/18 and 24656/18, § 146, 11 March 2021). It further considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

15. As to the merits, the applicant argued that the police had been violent towards him, and that the investigation into his allegations had been inadequate. The Government disagreed, asserting that the police measure had been lawful and proportionate, and the investigation had been prompt, adequate and effective.

16. The relevant general principles were summarised by the Court in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, 100-01, and 114-23, ECHR 2015; see also *Mikiashvili v. Georgia*, no. 18996/06, §§ 69-72, 9 October 2012).

17. In the present case it has not been disputed that the applicant was subject to the use of force by police officers in the course of his arrest. However, the facts are contradictory as to what conduct on his part, if any, justified that use of force (see paragraphs 2-3 above). The Court further notes that the applicant alleged that there had been two additional episodes of police violence – in the police car and upon his arrival at the police station.

18. The Court notes that objective medical evidence in the case file is scarce (see, for example, the record of the visual examination of the applicant, which refers simply to back pain (see paragraph 5 above)), although various minor scratches and bruises on the applicant were noted in the administrative-arrest report (see paragraph 4 above). Noting the applicant's consistent allegation that he had been verbally and physically assaulted during his arrest, which was supported by the evidence of two eyewitnesses (see paragraph 8 above) and in view of the severe back pain he had suffered from in the aftermath of his transfer to the temporary detention centre, and which eventually necessitated his transfer to hospital, the Court is ready to accept that the applicant had an arguable claim that he had been ill-treated by the police in breach of Article 3 of the Convention, requiring an effective official investigation.

19. The Court notes that the authorities promptly opened a criminal investigation into the incident, and a number of relevant and timely investigative measures were undertaken. The investigation was entrusted to the State Inspectorate's service, which is an independent body vis-à-vis the police.

20. The Court cannot overlook, however, that the investigation has failed to shed light on important questions regarding the applicant's allegations. Namely, the investigation has not assessed the extent of the applicant's alleged resistance during arrest; in particular, the circumstances of the arrest and the struggle over the mobile phone, or the manner in which the applicant's behaviour was allegedly aggressive or necessitated the use of force. The relevant procedural documents, including the testimony of the police officers, simply note that the applicant "resisted" arrest. At no stage was it claimed that any of the police officers were injured, a factor which should have been relevant to assessing whether the applicant had resorted to violence. The Court notes in this respect that the Gori District Court discontinued the administrative proceedings against the applicant on the charge of disobedience (see paragraph 8 above).

21. Another shortcoming of the investigation concerns the manner in which the forensic medical examination was conducted. It was ordered only in June 2020, that is, two months after the date of the alleged ill-treatment and was limited to the examination of the medical documents in the case file as opposed to a proper timely in-person medical examination of the applicant. It should also be noted that the administrative-offence report which listed the applicant's various injuries in the immediate aftermath of his arrest and transfer to the police department was not made available during the forensic examination.

22. Another deficiency in the investigation relates to the impossibility of gathering important video evidence from either the interior or the exterior of the police station. The Court finds that the explanation provided by the relevant authorities in that connection – the requested footage "could not be

found on the hard disk of the recording equipment” – unsatisfactory to say the least (see, in this connection, *Mukhtarli v. Azerbaijan and Georgia*, no. 39503/17, §§ 161-63, 5 September 2024).

23. Finally, the criminal investigation has been ongoing for over four years, with almost complete cessation of activity since September 2021 (see paragraph 12 above). No explanation has been provided by the Government in that regard. Noting the recurrent nature of the problem of protracted criminal investigations, particularly in cases concerning allegations of ill-treatment involving representatives of the law-enforcement authorities (see *Mikeladze and Others*, cited above, § 68, with further references), the Court finds this delay unjustified.

24. The foregoing considerations are sufficient for the Court to conclude that the criminal investigation into the applicant’s allegations of ill-treatment has not been effective, in breach of the procedural limb of Article 3 of the Convention.

25. As regards the substantive limb, the Court considers, in view of the material available in the case file, that it is not in a position to conclude “beyond reasonable doubt” that the applicant suffered treatment at the hands of the police contrary to Article 3 of the Convention as alleged. The Court therefore concludes that there has been no violation of Article 3 of the Convention under its substantive limb.

II. ALLEGED VIOLATION OF ARTICLES 5 AND 13 OF THE CONVENTION

26. Having regard to its relevant case-law, the Court finds the applicant’s complaint under Article 5 of the Convention inadmissible for non-exhaustion of domestic remedies (see *Dzerkorashvili and Others v. Georgia*, no. 70572/16, §§ 77-87, 2 March 2023). As regards the complaint under Article 13 of the Convention, in view of its finding of a violation of the procedural aspect of Article 3 above, the Court considers that the closely related complaint under Article 13 need not be examined separately (see *Baranin and Vukčević*, cited above, § 157).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government submitted that the amount claimed was highly excessive.

29. The Court awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 of the Convention admissible and the complaint under Article 5 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;
4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski
Deputy Registrar

Anne Louise Bormann
President