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What's in store for Georgia at the European Court? An analysis of recently communicated cases

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Despite years of reforming its law-enforcement bodies, Georgia still faces serious problems in ensuring the compliance of its criminal justice system with the European Convention on Human Rights (ECHR). In particular, it suffers from a low rate of acquittals which amount to less than 1% of contentious criminal cases (excluding the cases of plea bargain agreements). This depressing statistic makes the offer of a plea bargain hard to turn down since pleading not guilty and facing a full contentious trial, in nearly every case, leads to a conviction. Even though these statistics do not in themselves raise an issue under the ECHR, this situation affects the functioning of the criminal justice system as a whole. Among the most difficult issues are the fairness of proceedings and judicial reasoning. An analysis of recently communicated cases against Georgia[1] allows us to highlight the main areas

of concern for the country, which which ought to be addressed even before judgments at the ECtHR are passed down.

The issue of inadequate reasoning arises where the accused make allegations during trials concerning torture or police entrapment. The most serious issue is that judges either do not deal with allegations of torture during pre-trial investigations,[2] or do so inadequately. Thus, in dismissing the allegations of the accused, the judges rely on the testimonies of the police, but fail to explain why the latter should be given preference over the former.[3]

Policies of the Georgian government against drug users and organised crime do not come without issues for Strasbourg either. In drug-related cases, the alleged absence of procedural guarantees for persons subjected to searches raises an issue under Article 6 ECHR.[4] In one case, the trial and appeal judges allegedly failed to explain why they considered buprenorphine, used for the treatment of chronic pain and classified as a psychotropic substance under the 1971 Convention on Psychotropic Substances, as an illegal drug and convicted the accused accordingly.[5] With respect to organised crime, specific provisions punishing 'membership of the criminal world' and 'being a mafia boss' were introduced to the Criminal Code (article 223-1). However, the absence of any meaningful definition of the elements of these new crimes inevitably raises issues under Article 7 ECHR.[6] More generally, even the Supreme Court's reasoning in individual cases is alleged by applicants to be summary and fails to satisfy the requirements of Article 6 ECHR.[7]

Another particular problem in the Georgian legal system is the imposition of particularly long terms of administrative detention for minor ('administrative') offences, of up to 90 days imprisonment. Such offences clearly amount to 'criminal charges' under Article 6 ECHR, as is any offence punishable by deprivation of liberty. Trials of these offences also raise credible allegations of unfairness.[8]

However, the most important issue in terms of the quantity of cases is that of medical treatment for prisoners. The number and repetitive nature of these cases highlight the significance of this issue and the fact that the judgment in *Poghosyan v Georgia* (No. 9870/07) 24.02.2009 is yet to be fully implemented. In this case, the Court indicated that general measures should be undertaken by the Government in order to prevent the transmission of viral hepatitis C in prisons, to create a system of early detection and to guarantee prompt and effective medical assistance to those infected.[9]

Following *Poghosyan v Georgia,* several cases have been communicated, and some of them decided, concerning the lack of medical treatment in prison for hepatitis C,[10] AIDS,[11] tuberculosis,[12] mental disorders[13] and hypertension.[14] The continued reluctance of the Georgian judiciary to address these violations of Article 3 ECHR is evident in the recent case of *Baliashvili v Georgia* (No. 27842/11). The applicant in this case suffered renal failure, but the courts refused to release him pending trial, as the applicant's state of health was "not serious enough to call for release". Clearly these cases raise doubts as to the relevance and effectiveness of measures taken by the Georgian Government, and emphasise the importance of fully implementing the judgment in *Poghosyan v Georgia*.[15]

Given that friendly settlements are not infrequent in cases of medical treatment,[16] and indeed in other cases,[17] not every case will reach the stage of judgment on the merits. However, settling some cases will not prevent similar cases being brought before the Court – this can only be achieved by a thorough reform of the criminal justice system, to ensure that proceedings are of a fair and adversarial nature.

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1 Cases communicated before a certain date (late 2011) were removed from the Court's website after the HUDOC database was redesigned. Consequently, it is not possible to provide all the necessary details about these cases.

2 *Tchanturia v Georgia* (No. 2225/08) (not available on HUDOC at the time of writing).

3 See *Tabagari v Georgia* (No. 60870/11), communicated 26.01.12; *Kobakhidze and Ninua v Georgia* (No. 14929/09)(not available on HUDOC at the time of writing).

4 *Tchanturia v Georgia*, ibid; *Saria v Georgia* (No. 44987/07), communicated 19.01.12.

5 *Tsivtsivadze v Georgia* (No. 49098/10) (not available on HUDOC at the time of writing).

6 *Ashlarba v Georgia* (No. 45554/08), communicated 03.01.12.

7 *Oboladze and Lobzhanidze v Georgia* (No. 31197/06), communicated 10.04.12. In this case the applicants complain that the impartiality of the trial judge in their case was compromised by him retiring to the deliberations' room together with the prosecutor.

8 See *Tuskia v Georgia* (No. 14237/07) (not available on HUDOC at the time of writing).

9 *Poghosyan v Georgia* (No. 9870/07) 24.02.2009, para 70.

10 See *Kakoulia and Bouliskeria v Georgia* (No. 3486/06), communicated 24.05.12.

11 Two cases were settled, but no reference to any general measures has been made in the agreements between the parties: *Archaia v Georgia* (No. 6643/10), (dec) 14.12.2010; *Kotchlamazashvili v Georgia*, (No. 42270/10) (dec) 03.04.2012.

12 *Kikalishvili v Georgia* (No. 51772/08), communicated 24.05.12.

13 *Bakradze v Georgia* (No. 3568/10), communicated 03.01.12.

14 *Tchanturia v Georgia* (No. 50817/06), communicated 21.05.12.

15 See the Action Plan of the Georgian Authorities, CoE doc. no. DH-DD(2010)74F, 12.02.2010.

16 See *Kobakhidze and Ninua v Georgia* (No. 14929/09) (dec) 11.10.2011.

17 *Tchanturia v Georgia* (No. 2225/08) (dec) 18.10.2011. In this case and in the above-mentioned *Kobakhidze* and *Ninua* the Government undertook to affect an early release of the applicants.