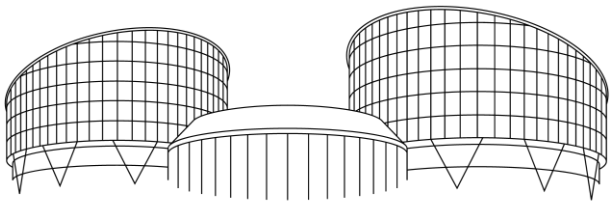

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF IRAKLI MINDADZE v. GEORGIA

(Application no. 17012/09)

JUDGMENT

STRASBOURG

11 December 2012

FINAL

11/03/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Irakli Mindadze v. Georgia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 20 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 17012/09) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Irakli Mindadze ("the applicant"), on 29 December 2008.

2. The applicant was represented by Mr Jason Beselia, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

3. On 14 March 2011 the Court decided to communicate the complaint under Article 3 of the Convention concerning the alleged lack of adequate medical care in prison to the Government (Rule 54 § 2 (b) of the Rules of Court). It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The Government and the applicant each submitted observations on the admissibility and merits of the communicated complaint (Rule 54 (a) of the Rules of Court). The Government submitted additional comments on the applicant's submissions on 14 October 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and is currently serving a prison sentence in a medical establishment of the Ministry of Penitentiary, Probation and Legal Assistance ("the prison hospital").

A. The criminal proceedings against the applicant

6. The applicant and an acquaintance (co-accused in subsequent criminal proceedings) were arrested in the latter's flat on 31 March 2007 for unlawful purchase and possession of a particularly large quantity of drugs with the intention to sell, an offence under Article 260 § 3 (a) of the Criminal Code of Georgia. According to the relevant search record, the police discovered some 80 grams of heroin in the flat, and, in addition, according to the record of the body search of the applicant, 1.6150 grams of heroin were found in a pocket of his jacket.

7. Prior to the arrest of the applicant and his acquaintance, two other people had been arrested while leaving the same flat. They were both released the same evening, after making incriminating statements against the applicant and the co-accused. At a later stage of the proceedings, notably during the trial, they retracted their initial incriminating statements, claiming that they had been coerced by the police into making them (see paragraph 11 below).

8. The case file did not contain a copy of the record of the applicant's body search. However, the applicant claimed that he had refused to sign it, since, according to him, heroin had been planted on his person by police officers during his transfer from the impugned flat to the Ministry of Internal Affairs. The applicant maintained in this connection that he had never waived his right to be searched in the presence of independent witnesses, contrary to what was noted in the search record.

9. On 28 December 2007 the Tbilisi City Court convicted the applicant of unlawful purchase and possession of a particularly large quantity of heroin, which had been found in the flat and on his person, with the intention to sell and sentenced him to seventeen years in prison. The first-instance court dismissed as unsubstantiated the applicant's allegation that heroin had been planted on him by the police.

10. Following the applicant's appeal, the prosecution dropped the charges concerning the heroin found in the flat. Subsequently, on 12 September 2008 the Tbilisi Court of Appeal convicted the applicant of unlawful purchase and possession of 1.6150 grams of heroin found on his person only and reduced his sentence to twelve years' imprisonment.

11. The applicant's conviction was primarily based on the record of his body search, the results of the chemical examination of the seized substance and the statements of the three police officers who had conducted the body search. In reaching their conclusion, the domestic courts also relied on the pre-trial incriminating statements of the two witnesses arrested during the police operation and released shortly afterwards. The court gave precedence to the statements they had made during the pre-trial investigation as it considered that the withdrawal of their initial statements had been unjustified, as they had not proved that they had been coerced into making them. The court specifically noted the fact that neither of the two witnesses had lodged any subsequent complaints regarding the alleged coercion exerted on them.

12. By a decision of 7 May 2009 the Supreme Court of Georgia dismissed that applicant's appeal on points of law.

B. The applicant's state of health

1. Prior to the applicant's arrest

13. Copies of medical records submitted to the Court indicate that prior to his arrest, in 2006 the applicant was diagnosed as suffering from viral hepatitis C (HCV) and B, acute erosive peptic ulcer, second degree arterial hypertension, ischemic heart disease and angina pectoris. From 10 to 17 March 2006 the applicant underwent clinical treatment for gastroduodenal bleeding. At the same time he was involved in a drug rehabilitation program. In June 2006 the applicant was additionally diagnosed with dysbacteriosis.

2. After the arrest

14. On 17 August 2007 the head of the medical unit of Tbilisi no. 5 Prison, where the applicant was placed at the material time, in reply to the applicant's lawyer's request, issued a medical certificate according to which the applicant did not require treatment on an in-patient basis. It was noted in the certificate that the applicant had been examined on 14 August 2007 by a group of medical specialists who had diagnosed him with second degree arterial hypertension, chronic inactive HCV infection and a peptic ulcer.

15. On 18 July 2008 the applicant was transferred to Rustavi no. 6 Prison. On 15 October 2008, in view of a deterioration in the applicant's medical condition, his lawyer requested the head of the prison department of the Ministry of Justice, the authority in charge of the prison system at the material time, to transfer the applicant to the prison hospital for medical examination and treatment. In support of the request, the applicant's lawyer submitted a copy of the applicant's medical records confirming his diagnosis. On 20 October 2008 the Ministry of Justice forwarded the

request to the Governor of Rustavi no. 6 Prison and to the head of the medical group of the prison department requesting that action be taken accordingly. The applicant claimed that he had never received a reply to his request, which fact the Government disputed. Although they failed to submit a copy of the relevant letter in support of their contention, the Government provided the Court with an extract from the log book of Rustavi no. 6 Prison, according to which a letter of reply had been sent to the applicant on 5 November 2008. Further, according to the Government, the applicant subsequently underwent various medical examinations; notably, he had blood and urine tests, including a blood test for HCV, a fibrogastroduodenoscopy and an electrocardiography. He was also consulted by a pathologist, a therapist and a cardiologist and prescribed drug-based treatment for his various conditions.

16. On 16 June 2010 the applicant was transferred to Rustavi no. 16 Prison, where he stayed for almost one year. According to the case file, the chief doctor of the above facility issued an undated medical record, which confirmed the applicant's diagnosis of chronic HCV, second degree arterial hypertension, peptic ulcer and angina pectoris. The chief doctor made no mention of the treatment, if any, administered to the applicant at the material time.

17. On 5 May 2011, following the communication of the case to the respondent Government, the applicant was placed in the prison hospital, where he underwent extensive clinical examinations and his final diagnosis was defined as follows: first degree arterial hypertension, chronic superficial gastroduodenitis, chronic HCV with moderate pathological activity, a cyst on the right kidney, spinal osteochondrosis, disc hernia, varicose veins in the lower limbs and chronic venous insufficiency.

18. The applicant started receiving an anti-viral treatment on an in-patient basis in the prison hospital. In September 2011 he was additionally diagnosed with sputum negative pulmonary tuberculosis. The decision was, therefore, taken to suspend his anti-viral treatment. On 12 September 2011 the applicant was included in the DOTS programme (Directly Observed Treatment, Short-course – the treatment strategy for the detection and cure of tuberculosis recommended by the World Health Organisation).

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL REPORTS

19. The relevant legal provisions concerning the protection of prisoners' rights, as well as excerpts from the Public Defender's report for the second half of 2007 bearing on medical problems in prison, including those created by viral Hepatitis C, were cited in the case of *Poghosyan v. Georgia* (no. 9870/07, §§ 20-22, 24 February 2009).

A. The right to health and problems related to the exercise of that right within the prison system of Georgia – Special Report by the Public Defender of Georgia, covering 2009 and the first half of 2010

20. The relevant excerpts from the above-mentioned report read:

"**Viral Hepatitis**

The problem of viral hepatitis remains one of the most acute issues within the establishments of the Georgian prison system. About 40% of the inmates who died in 2009 were suffering from viral hepatitis. 15% of the deceased had cirrhosis of the liver and related complications such as bleeding from the upper part of the gastrointestinal tract, which in several instances was the direct cause of the inmates' death. As regards the statistical data for 2010, 47.4% of the prisoners who died in the first half of 2010 were diagnosed as suffering from viral hepatitis; some of them had developed life-threatening complications. The monitoring carried out by the National Preventive Mechanism revealed that the chief doctors of the prison establishments recognised viral hepatitis as one of the most widespread diseases. However, no accurate record is maintained concerning instances of viral hepatitis infection; nor is any other type of statistical data gathered in the prisons of Georgia. The [prison] doctors have information only concerning cases where the hepatitis diagnosis has been confirmed by lab results. The monitoring revealed that a lot of prisoners who had clinically apparent signs of liver damage had not been examined for the presence of viral hepatitis at all."

B. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

21. The European Prison Rules lay down the following guidelines as concerns healthcare services in prisons:

"*Admission*

15.1 At admission the following details shall be recorded immediately concerning each prisoner: ...

f. subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others. ...

16. As soon as possible after admission:

a. information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42; ...

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary. ...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to: ...

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment."

C. Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf/E (2002) 1 - Rev. 2010)

22. The following are the relevant extracts concerning health care services in prisons:

"33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention ... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay ...

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment. ...

54. A prison health care service should ensure that information about transmittable diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and to prison staff. Where appropriate, medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out."

D. Report of 25 October 2007 (CPT/Inf (2007) 42) on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT") from 21 March to 2 April 2007

23. The relevant parts of the report read as follows:

"76. Despite the goodwill and commitment of health-care staff at the penitentiary establishments visited, the provision of health care to prisoners remained problematic, due to the shortage of staff, facilities and resources. The delegation heard a number of complaints from prisoners at all the establishments visited concerning delays in access to a doctor, the inadequate quality of care (in particular, dental and psychiatric care) and difficulties with access to outside specialists and hospital facilities. ...

78. Prisoners in need of hospitalisation were transferred to the Central Penitentiary Hospital, upon recommendation by the prison doctor. Some complaints were heard at the establishments visited of long delays in securing such transfers, due to a limited capacity. Inmates who could not be admitted to the Central Penitentiary Hospital depended financially on their families (including, apparently, to cover the cost of escort to the hospital). The CPT recommends that measures be taken to ensure that prisoners in need of hospital treatment are promptly transferred to appropriate medical facilities.

79. As a result of the insufficient number of doctors and nurses, the medical examination upon admission was superficial, if it took place at all. The only establishment at which prisoners were systematically screened upon arrival was Prison No. 5 in Tbilisi, where new arrivals were undressed and screened for injuries by a doctor or a nurse, and all cases of injuries and complaints of ill-treatment were immediately reported to the Prosecutor's Office. However, in other aspects the initial medical examination was cursory and did not identify detained persons' health-care needs. At the rest of the establishments visited, there was no routine medical examination on arrival. A prisoner could be seen by a doctor if he/she had a particular health complaint and specifically requested an examination. ...

80. No progress had been made since the previous visit in respect of medical documentation. Only a small number of prisoners (i.e. those who had a particular medical problem) had a medical file worthy of the name. In line with its previous recommendations, the CPT recommends that the Georgian authorities take steps to open a personal and confidential medical file for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of his treatment, including any special examinations he has undergone. ...

... [R]ecommendations

- the Georgian authorities to take steps to ensure that all newly arrived prisoners are seen by a health-care staff member within 24 hours of their arrival. The medical examination on admission should be comprehensive, including appropriate screening for transmissible diseases (paragraph 79); ...

- the Georgian authorities to take steps to open a personal and confidential medical file for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of his treatment, including any special examinations he has undergone (paragraph 80)."

E. Report of 21 September 2010 (CPT/Inf (2010) 27) on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010

24. The relevant excerpts from the above-mentioned report, bearing on the problem of medical care in Georgian prisons, read:

"iii. Medical records and confidentiality

92. The delegation noted as a positive development the recent introduction (at the end of 2009) of new personal medical files for prisoners. However, at the Ksani establishment, due to the large number of prisoners – and the limited number of nurses – the process of creating personal files was rather slow.

As regards the keeping of other medical records, it remained substandard and often lacking in detail, including in relation to traumatic injuries. ...

The CPT recommends that steps be taken to improve the medical record-keeping, in the light of the above remarks. ..."

THE LAW

I. THE SCOPE OF THE CASE

25. After the communication of the application to the respondent Government concerning the alleged lack of adequate medical treatment to the applicant in prison, the applicant introduced new grievances concerning his alleged infection with pulmonary tuberculosis and the inadequacy of the medical treatment provided to him after his transfer to the prison hospital. The Court observes that the initial application form and correspondingly the complaints communicated to the Government concerned only the period when the applicant was kept in normal prison cells and was allegedly not provided with the medical assistance he needed and asked for. Therefore, in the Court's view, the new grievances cannot be considered as an elaboration of the applicant's original complaint on which the parties have commented and hence these matters cannot be taken up in the context of the present application (see, for instance, *Saghinadze and Others v. Georgia*, no. 18768/05, § 72, 27 May 2010, and *Kats and Others v. Ukraine*, no. 29971/04, § 88, 18 December 2008). The scope of the Court's analysis will, thus, be confined to the assessment of the adequacy of the medical care in relation to the applicant's viral hepatitis C and B, angina pectoris and heart problems before his transfer to the prison hospital.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained under Article 3 of the Convention of a lack of adequate medical care for his various conditions in prison and a failure on the part of the prison authorities to promptly transfer him to the prison hospital, where adequate medical treatment could be dispensed. Article 3 of the Convention provides:

Article 3

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

A. Admissibility

1. The parties' submissions

27. The Government argued that there were several effective domestic remedies that had not been used by the applicant in the present case. In the first place, they alleged that the applicant had not requested a domestic court, under Article 24 and 33(1) of the Code of Administrative Procedure, to order the relevant authorities to take additional measures for the protection of his health in prison. Secondly, according to the Government the applicant should have sued the relevant State authority and requested compensation for non-pecuniary damage under Article 207 of the General Administrative Code and Article 413 of the Civil Code. Since neither of these judicial remedies were resorted to by the applicant, the Government were of the opinion that the complaint under Article 3 of the Convention should be rejected under Article 35 §§ 1 and 4 for non-exhaustion of domestic remedies.

28. The applicant did not comment on the Government's non-exhaustion plea.

2. The Court's assessment

29. The Court reiterates that Article 35 § 1 of the Convention requires those seeking to bring their case against a State to use first those remedies provided by the national legal system, including available and effective appeals. Complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law. Article 35 § 1 further requires that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). In such situations, the Court is called on to examine whether, in all the circumstances of a case, the applicants have done everything that could reasonably be expected of them to exhaust domestic remedies (see *Baumann v. France*, no. 33592/96, § 40, 22 May 2001).

30. The Court also considers that an important question in assessing the effectiveness of a domestic remedy for a complaint under Articles 2 and 3 of the Convention concerning lack of sufficient care for an applicant suffering from a serious illness in prison is whether that remedy can bring direct and timely relief. Such a remedy can, in principle, be both preventive and compensatory in nature. However, where the applicant has already resorted to either of the available remedies, considering it to be the most appropriate course of action in his or her particular situation, the applicant should not then be reproached for not having pursued an alternative

remedial course of action (see *Goginashvili v. Georgia*, no. 47729/08, § 49, 4 October 2011).

31. Turning to the circumstances of the present case, the Court notes that it is not disputed that the applicant complained to the administration of respective prisons about his poor medical condition and that the prison authorities were well aware that the applicant was suffering from HCV and several other medical problems (see paragraphs 14-15 above). The relevant authorities were thereby sufficiently informed of the applicant's situation and had an opportunity to offer redress (see *Melnik v. Ukraine*, no. 72286/01, § 70, 28 March 2006; *Sławomir Musiał v. Poland*, no. 28300/06, § 74, ECHR 2009-... (extracts); and *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 92, 29 November 2007). While it is true that the applicant did not use the official complaint procedure under the Code of Administrative Procedure as suggested by the Government, the Court notes that the problems arising from the alleged lack of proper medical treatment for contagious diseases, including HCV, in Georgian prisons were of a structural nature at the material time and did not only concern the applicant's personal situation (see *Poghosyan*, cited above, § 69, and *Ghavtadze v. Georgia*, no. 23204/07, § 104, 3 March 2009). Moreover, the Court has already found the above-suggested administrative complaints procedure *vis-à-vis* the prison authorities to fall foul of the requirements of an effective domestic remedy for the purpose of Article 3 of the Convention, within the meaning of Article 35 § 1 (see *Goginashvili*, cited above, §§ 53-54).

32. The Court, therefore, considers that the applicant had placed the relevant national authorities sufficiently on alert with respect to his medical condition. He sought a preventive remedial action for the grievance alleged in the present case and cannot be reproached for not requesting monetary compensation for the State's failure to protect his health (see *Goginashvili*, cited above, §§ 51-52 and 57 and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, §§ 54-55, 22 November 2011).

33. The Court, thus, dismisses the Government's non-exhaustion plea. It further considers that the applicant's complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. In the Government's view, they had complied with their positive obligation to protect the applicant's well-being and health in prison. The Government submitted that the applicant had been under effective medical

supervision throughout his detention. As regards the applicant's stay in Rustavi no. 6 Prison, they claimed that the medical unit of this prison was adequately equipped to provide the applicant with the requisite medical treatment. That treatment included regular medical check-ups and consultations with relevant specialists and a prompt response to any health grievance the applicant had. In support of their submission the Government produced a copy of the medical certificate issued on 29 June 2011 by the chief doctor of Rustavi no. 6 Prison providing a general overview of the treatment administered to the applicant between 18 July 2008 and 16 June 2010.

35. In connection with the treatment provided to the applicant specifically for his arterial hypertension, the Government additionally submitted two handwritten notes accounting for the applicant's consultations with a cardiologist on 23 January and 20 July 2010 respectively. According to the notes, the applicant, along with being recommended a special diet, was also prescribed drug-based treatment. The Government also claimed that the applicant's diagnosis of ischemic heart disease and angina pectoris had not been confirmed.

36. As regards the applicant's HCV, the Government explained that following his request of 15 October 2008 (see paragraph 15 above), the applicant underwent all the required medical examinations and was diagnosed with low-activity HCV. The diagnosis of hepatitis B was not confirmed. The applicant was prescribed hepatotropic drugs, including Carsil. Following his transfer to the prison hospital on 5 May 2011, the applicant's anti-vital treatment plan was drawn up and on 16 June 2011 he started receiving anti-viral drugs, copegus and pegasys.

37. The Government also submitted a complete medical file accounting for the treatment provided to the applicant for all of his medical grievances after his transfer to the prison hospital.

38. The applicant, for his part, did not comment on the detailed medical information submitted by the Government. He merely provided the Court with his latest medical record, according to which he has additionally been diagnosed with pulmonary tuberculosis.

2. The Court's assessment

(a) The general principles

39. The Court notes that Article 3 of the Convention imposes an obligation on States to protect the physical well-being of persons deprived of their liberty (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). At the same time, it cannot be construed as laying down a general obligation to release detainees on health grounds. Rather, the compatibility of a detainee's state of health with his or her continued detention, even if he or she is seriously ill, is contingent on the State's

ability to provide relevant treatment of the requisite quality in prison (see *Goginashvili*, cited above, §§ 69-70, and *Makharadze and Sikharulidze*, cited above, §§ 71-73, with further references).

40. The Court has held in its case-law that the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov*, cited above, § 116). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII (extracts)); that the diagnoses and care are prompt and accurate (see *Hummatov*, cited above, § 115, and *Melnik*, cited above, §§ 104-106); and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a therapeutic strategy aimed, to the extent possible, at curing the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114; *Isayev v. Ukraine*, no. 28827/02, § 58, 28 May 2009; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov,* cited above, § 116, and *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006). At the same time the Court notes that in the assessment of the adequacy of the treatment it must be guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one of means, not of result (see, *Goginashvili*, cited above, § 71).

(b) Application of the above principles to the circumstances of the current case

41. According to the case file, the applicant was arrested on 31 March 2007 and placed in Tbilisi no. 5 Prison. The relevant prison authorities claimed that already on 14 August 2007 the applicant, in response to his complaint, had been examined by a group of specialists, who had concluded that he did not require treatment on an in-patient basis (see paragraph 14 above). The Court notes that the Government failed to submit the relevant medical records detailing the type and the exact dates of the medical tests the applicant had allegedly had in Tbilisi no. 5 Prison. Information pertinent to the applicant's treatment on an out-patient basis is also lacking.

42. On 18 July 2008 the applicant was transferred to Rustavi no. 6 Prison. The Government maintained that the applicant had been placed under permanent medical supervision and had benefited from the required treatment on the premises of the medical unit of the prison. The main piece of evidence provided in support of the above submission is the medical certificate issued by the chief doctor of Rustavi no. 6 Prison on 29 June 2011. The Court has several reservations concerning the accuracy of this certificate.

43. Notably, the certificate, whilst describing in detail the capabilities of the medical unit at Rustavi no. 6 Prison, provides rather vague information concerning the medical supervision and treatment the applicant was able to individually benefit from throughout his stay in that facility. Moreover, the certificate is dated 29 June 2011, and there is no other written medical record accounting in detail for the treatment the applicant has allegedly been receiving in Rustavi no. 6 Prison between 18 July 2008 and 16 June 2010. In the absence of any detailed medical history, it is highly doubtful that the chief doctor could have recapitulated the medical treatment administered to the applicant throughout his two-year stay in Rustavi no. 6 Prison by heart.

44. In this connection, the Court has difficulty in subscribing to the Government's argument that the applicant had comprehensive medical examinations following his complaint of 15 October 2008 (see paragraphs 15 and 36 above). It suffices to note that the only piece of evidence submitted by the Government in support of the above assertion is the medical certificate of 29 June 2011. In view of the comprehensiveness, complexity and the importance of those medical tests for the final diagnosis and treatment plan of the applicant, the Court does not understand why the relevant prison authorities would have carried out these tests without adding the corresponding medical records to the applicant's medical file.

45. With respect to the HCV specifically, the Court would further note that in view of the seriousness of the disease, it is essential that a patient undergo an adequate assessment of his or her state of health in order to be provided with adequate treatment. In the present case, such an assessment could be obtained from a liver biopsy and relevant blood tests determining the viral genotype and viral load (see *Poghosyan*, cited above, § 57). As already observed above (paragraphs 43-44 above), the Government failed to prove that any of the above mentioned medical tests were indeed performed on the applicant within the relevant period of time. The Court, therefore, considers that by leaving the infected applicant, despite his HCV diagnosis, without appropriate diagnostic examination for over three years, the relevant authorities put his health and well-being at risk (see *a contrario*, *Goginashvili*, cited above, § 80). The applicant was also left without relevant information in respect of his illness, and was thus deprived of any control over it (see *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007). In this respect the Court considers irrelevant the Government's submission, unsupported by relevant medical evidence, that the applicant had been receiving hepatoprotectives, since as a consequence of the lack of adequate medical examinations, the exact effect of chronic hepatitis on the applicant's health had not been established and he could not have been provided with adequate medical care (see *Testa*, cited above, § 52, and *Poghosyan*, cited above, §§ 57-58).

46. Lastly, the Court notes that the parties are in disagreement about the applicant's other conditions, with the Government claiming that the

diagnosis of ischemic heart disease, angina pectoris and viral hepatitis B has not been confirmed. In this connection, the Court would observe the following: with respect to the applicant's heart problems, the applicant was first examined by a cardiologist only on 23 January 2010 (see paragraph 35 above) that is almost three years after the applicant's detention. As for angina pectoris and viral hepatitis B, it appears that no medical tests were carried out within the relevant period of time. The Court notes that the applicant entered the prison system with a serious diagnosis made by outside medical specialists. In such circumstances, even if it accepts the Government's argument that the above-mentioned diagnosis was only of a preliminary nature, the Court considers that the relevant prison authorities were under an obligation to promptly verify it in order to properly plan the applicant's future treatment.

47. To conclude, the Court considers that apart from the two reports on consultations with a cardiologist he underwent on 23 January and 30 July 2010, the applicant's medical file for the relevant period of time does not contain any records. The Court hence considers, that the Government failed in discharging their burden of proof concerning the availability of adequate medical supervision and treatment to the applicant in prison (see, *Malenko v. Ukraine*, no. 18660/03, §§ 55-58, 19 February 2009; *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 112, 15 June 2010, and, *a contrario, Goginashvili*, cited above, § 72).

48. The Court thus concludes that there has been a violation of Article 3 of the Convention on account of the lack of adequate care for the applicant in prison.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant complained under Article 6 § 1 of the Convention about the outcome of the criminal proceedings conducted against him, alleging in particular that the domestic courts had based his conviction on unlawfully obtained evidence and had further disregarded evidence in his favour. The Court finds, in light of all the material in its possession, that the applicant's submissions under Article 6 § 1 of the Convention do not disclose any appearance of an arguable issue under this provision and must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

51. The applicant claimed pecuniary damage on the basis of an alleged average monthly income of EUR 500. He further claimed EUR 100,000 in respect of non-pecuniary damage.

52. The Government submitted that the applicant's claims for pecuniary damage were unsubstantiated. Further, regarding the applicant's claim for non-pecuniary damage, the Government noted that as a basis for this claim the applicant relied on his arrest rather than inadequate medical treatment. Hence, there was no reason to grant it. Alternatively, the Government considered the amount requested exorbitant.

53. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis and taking all the circumstances of the case into account, it awards the applicant EUR 5,000 in respect of non-pecuniary damage suffered as a result of the lack of adequate medical treatment in prison.

B. Costs and expenses

54. The applicant claimed reimbursement of EUR 2,800 for the costs and expenses incurred in the proceedings before the domestic courts. He failed to submit any documents in support of his claim.

55. The Government claimed that the costs were unsubstantiated.

56. The Court decides, in view of the absence of relevant financial documents, that no award shall be made in respect of the reimbursement of legal fees claimed.

C. Default interest

57. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of adequate medical treatment in prison admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequate medical treatment provided to the applicant in prison;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President