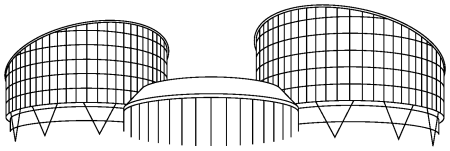

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KARTVELISHVILI v. GEORGIA

(Application no. 17716/08)

JUDGMENT

STRASBOURG

7 June 2018

FINAL

07/09/2018

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

In the case of Kartvelishvili v. Georgia,

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

André Potocki, *President,*
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 15 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 17716/08) 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 Giorgi Kartvelishvili ("the applicant"), on 3 April 2008.

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

3. The applicant made, in particular, a number of complaints about the conditions of his detention and the lack of adequate medical treatment for his diseases in prison, and also complained of his inability to obtain, during his criminal trial, the attendance of the witnesses on his behalf under the same conditions as those called against him. He relied on Article 3 and Article 6 §§ 1 and 3 (d) of the Convention.

4. On 8 February 2010 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicant was born in 1978 and lives in Tbilisi.

6. On 23 January 1998 he was arrested on suspicion of manslaughter.

7. On 24 October 2000 the Tbilisi Court of Appeal convicted the applicant of murder and sentenced him to nine years' imprisonment.

8. Subsequently, the applicant was further convicted, by virtue of the judgment of the Krtsanisi-Mtatsminda District Court of 24 December 2004, of refusal to comply with an order of a prison officer at the prison where he was serving his murder sentence. His initial term of imprisonment was consequently extended by one year.

B. Relevant criminal proceedings in the present case

9. On 6 January 2006 the applicant was placed in Tbilisi prison no. 7("prison no. 7") to serve the sentences referred to in paragraphs 7-8 above.

10. On 8 August 2006, at approximately 7.30 p.m., prison officers entered the applicant's cell (no. 2) to conduct a surprise search. All the inmates, including the applicant, were ordered to vacate the cell and wait in the adjacent corridor for the search to finish.

11. The search was filmed by a cameraman from the Prison Service ("the video recording"). Upon completion of the search, a prison officer drew up a written report, according to which a penknife had been discovered "under the mattress on a bed in the cell"; the knife was seized as evidence. It later became apparent that the bed in question belonged to the applicant. The applicant was never presented with the written record on the discovery of the knife and thus did not sign the document.

12. On 11 August 2006 the applicant was charged with possessing an item prohibited under the prison regulations (the offence proscribed by Article 378 § 2 of the Criminal Code), and on 4 September 2006 the prosecutor sent the case to the Tbilisi City Court for trial.

13. The trial started on 12 February 2007. The prison officers who had conducted the search on 8 August 2006 were summonsed by the trial court as witnesses for the prosecution.

14. On the same day, 12 February 2007, the applicant applied to have the Tbilisi City Court examine the seven inmates who had been sharing cell no. 2 with him at the material time. He explained that the cellmates could describe the exact circumstances in which the search of the cell had been conducted. That information was essential for the purposes of assessing whether or not the search had been conducted in a manner involving an abuse of his rights. He brought the court's attention to the fact that the charge against him was based only on the statements of the prison officers who had conducted the search in question, and who had already been summonsed as witnesses for the prosecution, and that the cellmates had never been interviewed at the pre-trial stage. The applicant referred in that regard to the principle of the equality of arms and his right to have witnesses

on his behalf give testimony under the same conditions as those against him, within the meaning of Article 6 §§ 1 and 3 (d) of the Convention. He also cited Article 18 of the Code of Criminal Procedure, pursuant to which the trial court was obliged to take all necessary procedural measures aimed at the establishment of the relevant circumstances of the case in a comprehensive and objective manner.

15. In reply to the applicant's application, the prosecutor argued that examining the cellmates would not be justified, given that all of them were serving criminal sentences. However, the prosecutor reaffirmed the importance of examining the prison officers who had conducted the search of the cell on 8 August 2006.

16. Having heard the parties' pleadings, the Tbilisi City Court decided by its ruling of 12 February 2007 to refuse the applicant's application for the cellmates to be examined as unsubstantiated. The court stated that the accused had not sufficiently demonstrated the necessity for summonsing those witnesses who, it should be noted, were not trustworthy people as they had criminal convictions.

17. As is apparent from the transcript of the trial, when questioned in the period between 12 and 21 February 2007 by the trial court as witnesses for the prosecution, the prison officers gave statements concerning the exact circumstances in which the knife had been discovered that were somewhat different. In particular, one of the officers submitted that the knife had been found "in the bed, between the mattress and the blanket, closer to the footboard" while another stated that it had been hidden "in [the applicant's] bed, between the mattress and the sheet, closer to the headboard, near the pillow"; yet another officer stated that "the knife fell onto the floor the moment we took the mattress off the bed". That inconsistency was seized upon by the applicant before the trial court. The prison officers also submitted that, in so far as the door of the cell had been left open during the search, the cellmates could have observed the process from the adjacent corridor (see paragraph 10 above).

18. The video recording was shown during the trial on 23 February 2007. The applicant objected that the recording did not necessarily establish that the knife had fallen from his mattress (the recording is described in more detail in paragraphs 25-26 below). As is apparent from the transcript of the trial, the public prosecutor conceded that the video recording of the search did not establish with certainty where exactly the knife had been found. However, the prosecutor argued again that the prison officers' statements before the trial court confirmed that the knife had been discovered in the applicant's possession.

19. The applicant further complained during his last pleading before the trial court on 23 February 2007 of the inability to have the witnesses on his behalf, the seven cellmates, examined under the same conditions as those for the prosecution. Notably, he argued that, even assuming that the knife

had indeed been found in his bed by the prison officers, that fact did not necessarily mean that he had owned it; the prohibited item could have been discreetly planted in his bed by a cellmate or cellmates the moment the prison officers entered the cell with the intention of conducting a search. Therefore, in order for the trial court to obtain the fullest possible picture of the situation, it was essential to examine all of his cellmates. He also reiterated that his cellmates might have been a source of information about any possible abuses committed by the prison officers during the search.

20. By a judgment of 1 March 2007 the Tbilisi City Court convicted the applicant of possessing a prohibited item in prison (the offence proscribed by Article 378 § 2 of the Criminal Code). He was sentenced to three years in prison. The court confirmed that the prison officers' statements, the video recording and the written record of the search of the cell and the seizure of the knife constituted the incriminating evidence.

21. On 30 March 2007 the applicant lodged an appeal against the judgment of 1 March 2007, reiterating all the arguments that he had made during the trial. In particular, in his complaint about the lower court's refusal to examine his cellmates, he asked the Tbilisi Court of Appeal to do so. Reiterating his previous arguments as to why he considered the cellmates to be important witnesses (see paragraph 19 above), he argued that, without examining them, it would not be possible for the appellate court to establish objectively the real circumstances surrounding the search of 8 August 2006. The applicant also requested that the video recording be reviewed by the appellate court as it did not necessarily establish that the knife had been found in his bed.

22. The public prosecutor's office also appealed against the sentence imposed by the judgment of 1 March 2007, requesting that, given the applicant's previous criminal record, a more severe punishment be imposed.

23. By a judgment of 3 October 2007 the Tbilisi Court of Appeal dismissed the applicant's appeal and upheld that of the public prosecutor. As regards the applicant's procedural application for summonsing his cellmates as witnesses, the appellate court rejected it as unsubstantiated. It further confirmed that the criminal case file contained sufficient incriminating evidence against him. The court, informed by the consideration of the applicant's previous criminal record, decided to increase the sentence from three to four years.

24. The applicant lodged an appeal on points of law, reiterating all his above-mentioned complaints and arguments, was rejected as inadmissible by the Supreme Court of Georgia on 11 February 2008. The cassation court dispensed with an oral hearing and delivered its final decision on the basis of the written procedure only.

C. Video recording of the search of the applicant's cell on 8 August 2006

25. The recording showed how several plain-clothes individuals, identifiable as prison officers by their manner, conducted a search of a prison cell.

26. In one of the scenes, the officers took the mattress, whose cover seemed to be intact, from the metal bed frame in the cell. Holding it approximately 1 metre above the floor, the officers started examining the mattress with their hands and a metal detector. Suddenly, there was a sound of metal hitting the floor, and an officer picked up an object, which resembled a small penknife. It was not clear from the recording whether or not that object had fallen from the mattress.

D. The applicant's state of health in prison

27. According to the medical documents available in the case file, on 7 November 2007 the applicant complained for the first time to the prison administration of a high fever and a dry cough. On 10 November he was transferred to the prison hospital.

28. Between 10 and 13 November 2007 the applicant was subjected to a number of laboratory tests, including a full biochemical analysis of his blood samples, and consultations with various medical specialists. The resulting opinion, dated 13 November 2007, diagnosed the applicant with pulmonary tuberculosis (TB), with the upper part of his left lung already seriously affected by the disease (in an advanced stage of disaggregation). The applicant was occasionally coughing up blood. The opinion further diagnosed the applicant with viral hepatitis C (HCV), with the disease in its early stage at that time.

29. Having regard to the medical opinion of 13 November 2007, a panel of doctors of the prison hospital elaborated a treatment plan for the applicant's TB and HCV. Notably, given the stages of the two diseases at that time and the known side-effects of the anti-TB and anti-HCV drugs, the doctors recommended that the applicant firstly be provided with anti-TB medication under the DOTS programme (Directly Observed Treatment, Short-course – the treatment strategy for detection and cure of TB recommended by the World Health Organisation). He was prescribed daily doses of conventional antibiotics such as isoniazid (300 mg), ethambutol (1,100 mg), rifampicin, pyrazinamide (1,600 mg) and streptomycin (1,000 mg). Only upon completion of the anti-TB treatment, could the applicant start receiving, in the doctors' view, antiviral drugs for his HCV, such as interferon alpha-2b and ribavirin; the exact dosage of the intake of the latter drugs were to be determined in due course.

30. According to his medical file, the applicant started receiving the anti-TB medication under the DOTS programme from 13 November 2007. During the intensive period of the treatment, which lasted three months, the applicant was kept in the prison hospital under the close supervision of medical personnel with the appropriate training. Upon completion of the intensive phase of the treatment, the applicant was transferred on 12 February 2008 back to prison no. 7, where he continued his course of antibiotics under the supervision of a doctor of that prison for an additional five months.

31. Throughout his treatment, both at the prison hospital and in prison no. 7, the Prison Service arranged regular tests of the applicant's sputum culture and bacterial sensitivity to be carried out by the National Centre for Tubercular and Lung Diseases. The results of those tests showed that the sputum culture was already negative and also established that the applicant's TB bacteria were still sensitive to the administered antibiotic drugs, which confirmed the suitability of the ongoing treatment.

32. Upon completion of the DOTS programme on 13 January 2008, the applicant's sputum culture was subjected to another set of comprehensive laboratory tests, the results of which confirmed that TB bacilli were no longer present in the applicant's organism. The results of an X-ray examination of the applicant's thorax further confirmed that there were no new tubercular signs in the applicant's lungs.

33. Subsequently, on 5 December 2008 and 11 February 2010, the applicant repeatedly underwent additional medical check-ups, which included the relevant laboratory tests and X-ray examinations, the results of which excluded any signs of a recurrence of the tuberculosis.

34. In May 2010, in line with the medical opinion of 13 November 2007 (see paragraph 28 above), the Prison Service arranged for a full biochemical analysis of the applicant's blood for the purpose of elaboration of a specific treatment plan for his HCV. The results of the blood analysis, dated 17 May 2007, showed that the viral activity in the applicant's organism was low.

35. Based on the above-mentioned blood test, an infectologist and a hepatologist called in by the Prison Service from civilian hospitals prescribed the applicant on 2 June 2010 a specific dosage of the relevant anti-HCV drugs. He was extensively informed by the doctors of the possible strong neurological side-effects of the prescribed drugs. Having regard to those side-effects, as well as the fact that the viral activity of the HCV was still low at that time, the applicant decided to postpone the treatment. He wrote a note to that effect, which was dated 2 June 2010.

36. The case file does not contain any other information on the applicant's state of health as of June 2010.

II. RELEVANT DOMESTIC LAW

37. Article 18 of the Code of Criminal Procedure (which was in force between 20 February 1998 and 1 October 2010) read, at the material time of the events in question, as follows:

Article 18 – The obligation to elucidate the circumstances of a case in a complete, objective and thorough manner

"2. Factual circumstances of a criminal case should be examined [by an investigator, public prosecutor, judge and court] in a complete, objective and thorough manner. All the circumstances, both inculpating and exonerating the accused from the commission of an offence, aggravating and mitigating the criminal responsibility for the offence, must always be given equal consideration.

3. Every complaint and request made by a suspect, accused or his or her lawyer that is aimed at proving innocence or reducing guilt, shifting the criminal responsibility onto other people or pointing at possible procedural irregularities made during the criminal proceedings must always be carefully examined [by an investigator, public prosecutor, judge or court]."

38. Article 232 of the above-mentioned Code of Criminal Procedure read, at the material time, as follows:

Article 232 – Deciding on a procedural application

"1. A procedural application aimed at facilitation of the task of elucidation of all the circumstances of the case in a complete, objective and thorough manner must be granted.

2. Procedural applications made by the public prosecution and the defence must always be given equal consideration. ...

6. A decision on rejecting a procedural application must contain reasons."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

39. The applicant made three distinct complaints under Article 3 of the Convention: he alleged (i) that the material conditions of his detention in prison no. 7 had been poor; (ii) that he had contracted pulmonary tuberculosis there; and (iii) that he had not been provided with appropriate medical care for his various diseases in prison. The relevant provision reads as follows:

Article 3

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

A. Material conditions of the applicant's detention

40. Noting that the applicant had never contested the alleged inadequacy of the material conditions of his detention before any of the authorities, the Government objected to that particular complaint on the grounds of non-exhaustion of domestic remedies. In that connection, they also observed that the applicant had not provided individual accounts of what exactly the material conditions of his detention in the relevant prisons had been. In contrast, the Government submitted a letter dated 11 June 2010 from the governor of prison no. 7. That letter gave the identification number of the cell in which the applicant had been detained (cell no. 2), and provided a detailed description of the material conditions therein at the time of the applicant's detention. In that regard, cell no. 2 had had a window providing access to natural light and fresh air, had been clean and had had a toilet in an acceptable state of repair and cleanliness and which had been duly isolated from the living area. The applicant had had the opportunity to take a shower once a week, had been served a meal three times a day, the quality of which had never been contested by him or any other prisoner, and had benefited from an hour's daily walk, as provided for by law. Thus, the Government considered that at all times the material conditions of the applicant's detention in cell no. 2 of prison no. 7 had been in compliance with the relevant international standards.

41. In reply, the applicant maintained, in general terms, that he had been detained in conditions which had not been compatible with his human dignity. He did not provide a detailed individual account of the material conditions of his cells.

42. Referring to its relevant case-law in respect of conditions of detention in Georgian custodial institutions at the material time, the Court reiterates the rule that whenever an applicant wished to challenge allegedly poor material conditions of detention in a Georgian prison, even if such complaints did not call for the full and meticulous exhaustion of any specific criminal or civil remedies (see, for comparison, *Aliev v. Georgia*, no. 522/04, § 62 and 63, 13 January 2009, and *Goginashvili v. Georgia*, no. 47729/08, §§ 54 and 57, 4 October 2011), it was still required, at the very minimum, that at least one of the responsible State agencies must have been informed of the applicant's subjective assessment that the conditions of the detention in question constituted a lack of respect for, or diminished, his or her human dignity. Without such basic conduct at the domestic level by a person who wished to challenge the conditions of his or her detention in Strasbourg, the Court would necessarily have difficulty in evaluating the credibility of an applicant's allegations of fact in that connection (see *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007, and *Janiashvili v. Georgia*, no. 35887/05, § 70, 27 November 2012).

43. Having regard to the material available in the case file, the Court notes that the applicant never informed any of the relevant authorities of his dissatisfaction with any particular aspect of the material conditions of his detention in prison no. 7. However, it observes that, even supposing that, at the relevant time, the applicant had had an effective domestic remedy at his disposal which he could have exhausted (see paragraph 42 above), in the proceedings before the Court, he limited his submissions to vague and general statements only. Consequently, the Court finds that the applicant has failed to discharge his burden of proof and substantiate his complaint properly (compare, amongst many other similar authorities, *Muršić v. Croatia* [GC], no. 7334/13, § 127, ECHR 2016; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 122, 10 January 2012; and *Ildani v. Georgia*, no. 65391/09, §§ 26 and 27, 23 April 2013).

44. It follows that the applicant's complaint under Article 3 of the Convention concerning the material conditions of his detention in prison no. 7 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged contraction of pulmonary TB in prison

45. As regards the applicant's alleged infection with TB in prison, the Government submitted that the complaint was inadmissible for non-exhaustion of domestic remedies, as the applicant had not attempted to bring a civil claim for damages against the Prison Service for the alleged harm allegedly done to his health.

46. The applicant disagreed.

47. The Court notes that the applicant has never attempted to bring a civil claim for damages for his alleged infection with pulmonary TB in prison. However, it has previously examined similar situations and persistently found that a civil claim for damages under Article 207 of the General Administrative Code and Article 413 of the Civil Code was the most effective remedy to be used with respect to that particular health complaint (see *Goloshvili v. Georgia*, no. 45566/08, §§ 24-25 and 32-33, 23 October 2012; *Jeladze v. Georgia*, no. 1871/08, § 35, 27 November 2012, and also *Ildani*, § 28). The Court sees no reason to depart from its previous conclusions and considers that this complaint under Article 3 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

C. Alleged lack of adequate medical care in prison

48. As regards the medical care which the applicant received, the Government submitted a full copy of his medical file (see paragraphs 27-35 above) and stated that he had been provided with all the requisite treatment

by the Prison Service and that the relevant complaint was therefore manifestly ill-founded.

49. The applicant stated in reply, without submitting any supporting evidence, that the medical care for his various health problems – in particular his TB – had been deficient. His arguments about the alleged inadequacy of the medical care were limited in time until June 2010 (see also paragraph 36 above).

50. The Court reiterates that when assessing the adequacy of medical care in prison, it must, in general, show sufficient flexibility when defining the required standard of health care, which must accommodate the legitimate demands of imprisonment but remain compatible with human dignity and the due discharge of positive obligations by States. In that regard, it is incumbent upon the relevant domestic authorities to ensure, in particular, that 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. The mere fact of a deterioration of an applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the applicant's treatment in prison, cannot suffice by itself for a finding of a violation of the State's positive obligations under Article 3 of the Convention, if, otherwise, it can be established that the relevant domestic authorities have in a timely fashion provided all the reasonably available medical care in a conscientious effort to hinder the development of the illness in question. A penal authority's failure to keep comprehensive records concerning a detained applicant's state of health or a respondent Government's failure to submit such records in their entirety would consequently allow the Court to draw inferences as to the merits of the applicant's allegations of a lack of adequate medical care (see, for instance, *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135‑140, ECHR 2016, with further references therein; *Jashi v. Georgia*, no. 10799/06, § 61, 8 January 2013; *Goginashvili*, cited above, §§ 71‑81).

51. Returning to the circumstances of the present case, the Court firstly notes that the applicant's complaint about the alleged lack of medical care stretches from November 2007 to June 2010 (see paragraphs 27, 36 and 49 above). Following notification of the present application, the Government submitted a copy of the medical file on the applicant's treatment, fully accounting for the period in question. In other words, 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, assisting the Court in its task of factual determination, and the applicant's subsequent objections must be treated with caution (see *Goginashvili*, cited above, § 72).

52. Having regard to the applicant's medical file, the Court observes that the Prison Service responded promptly to the applicant's first medical

complaint of 7 November 2007 by transferring him, as early as 10 November 2007, to the prison hospital (see paragraph 27 above). During his time in hospital, which lasted three months, the prison's medical staff took good care of the applicant by having him undergo various laboratory screenings and tests and consultations with various medical specialists. Having been diagnosed with TB and HCV, the relevant specialists set out a particular plan of treatment for the applicant, which was then duly implemented by the prison medical staff. As a result of that treatment, the applicant's condition related to his TB significantly improved, which resulted in his discharge from the prison hospital on 12 February 2008 (see paragraph 30 above; compare *Jashi*, cited above, §§ 67-69, and *Goginashvili*, cited above, §§ 73-81; and contrast, for instance, *Poghosyan v. Georgia*, no. 9870/07, § 57, 24 February 2009, and *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007). After the applicant's discharge from the prison hospital, the medical personnel of prison no. 7 continued providing him with the relevant antibiotics for an additional five months. Throughout the period of his treatment, both on an inpatient and outpatient basis, the Prison Service regularly arranged for the applicant's sputum culture and sensitivity to be tested by the National Centre for Tubercular and Lung Diseases. The results of those tests confirmed the suitability of the ongoing treatment. All in all, upon completion of the relevant treatment plan, the applicant was cured of TB, a fact which was confirmed by the repeated sets of medical tests conducted between December 2008 and February 2010 showing no traces of the disease in his system.

53. The Court attaches further significance to the fact that the Prison Service did not leave the applicant's HCV untreated either. Thus, as early as November 2007, the relevant medical specialists opined that, given an incompatibility between the side-effects of anti-HCV drugs and the needs of the treatment against TB, as well as the fact that at that time the applicant's HCV was in a very early stage, the treatment for the latter infection should be postponed until after the completion of the anti-TB treatment. In November and May 2007 and June 2010, additional biochemical tests of the applicant's blood samples confirmed that the HCV's activity in the applicant's organism was consistently low. Being guided by the professional caution of the attending doctors, who informed the applicant of the possible side-effects of the anti-HCV treatment, the applicant made, in June 2010, a fully informed decision about the further postponement of the proposed treatment. All those circumstances clearly suggest that the Prison Service made use of a truly comprehensive therapeutic strategy to address the applicant's HCV (compare *Jashi*, cited above, § 69; *mutatis mutandis*, *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006).

54. In those circumstances, the Court considers that the Prison Service showed a sufficient degree of diligence, providing the applicant with

sufficiently prompt, regular and strategically planned treatment for his various health issues (compare *Janiashvili*, cited above, §§ 75-79). It follows that this aspect of the applicant's complaint under Article 3 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

55. The applicant complained, under Article 6 §§ 1 and 3 (d) of the Convention, that his right to a fair trial had been infringed on account of the domestic courts' refusal to examine witnesses on his behalf. These provisions, in so far as relevant, read as follows:

> "1. In the determination of any criminal charge against him, everyone is entitled to a fair hearing by [a] tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

A. Admissibility

56. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

57. The applicant maintained that his conviction had been unfair since the domestic courts had refused to examine his cellmates as witnesses on his behalf under the same conditions as those for the prosecution, that is to say the prison officers who had conducted the search. He submitted that he had explained to the domestic courts why it had been important to have his cellmates' evidence heard. By rejecting his procedural application in decisions which had contained very superficial reasoning, the trial and the appellate courts had breached both domestic legislation (Article 18 and 232 of the Code of Criminal Procedure) and the requirement contained in Article 6 § 3 (d) of the Convention. Lastly, he also stressed that apart from the statements of the prison officers on the purported discovery of the knife in his bed, there had been no other direct and decisive piece of evidence to conclude that he had been guilty.

58. The Government submitted that, looking at the criminal proceedings taken as a whole, the applicant had had a fair trial. They argued that the trial court had not been under an obligation to examine all the applicant's chosen witnesses. The refusal to issue summons to specific witnesses – his cellmates – had been reasoned, and those reasons had been then upheld by the higher courts. The Government also claimed that the applicant had failed to show before the domestic court what the relevance and probative value of the information that his cellmates could have provided had been. They also referred to the fact that the applicant's conviction had been confirmed by the collection of the relevant evidence: the statements of the prison officers who had conducted the search of the applicant's cell, the video recording of the search and the written record of the search and discovery of the knife.

2. The Court's assessment

(a) General principles

59. The Court reiterates that the guarantees contained in Article 6 § 3, including those enunciated in sub-paragraph (d), are constituent elements of the concept of a fair trial set forth in Article 6 § 1 (see *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015). Its essential aim, as is indicated by the words "under the same conditions", is full "equality of arms" in the matter. With this proviso, it leaves it to the competent national authorities to decide upon the relevance of proposed evidence, in so far as this is compatible with the concept of a fair trial, which dominates the whole of Article 6 (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22, and *Gregačević v. Croatia*, no. 58331/09, § 60, 10 July 2012).

60. The admissibility of evidence is primarily a matter for regulation by national law. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports of Judgments and Decisions* 1997‑III). In particular, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. Article 6 § 3 (d) leaves it to them to assess whether it is appropriate to call witnesses (see *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003‑V, and *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235‑B).

61. It is accordingly not sufficient for a defendant to complain that he or she has not been allowed to question certain witnesses; he or she must, in addition, support his or her request by explaining why it is important for the witnesses concerned to give evidence and why their evidence must be necessary for the establishment of the truth (see *Perna*, cited above, ibid.;

Guilloury v. France, no. 62236/00, § 55, 22 June 2006; and *Borisova v. Bulgaria*, no. 56891/00, § 46, 21 December 2006). Thus, when a defendant has made an application to have witness evidence heard, which is not vexatious, and which is sufficiently reasoned, relevant to the subject matter of the accusation and could arguably have strengthened position of the defence or even led to the defendant's acquittal, the domestic authorities must provide sufficient and relevant reasons for dismissing such an application (see *Polyakov v. Russia*, no. 77018/01, §§ 34-35, 29 January 2009, and *Poropat v. Slovenia*, no. 21668/12, § 42, 9 May 2017).

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

62. The Court considers that in order to decide whether the applicant in the instant case was afforded an opportunity to present his case without being placed at a disadvantage *vis-à-vis* the prosecution, and whether the proceedings were conducted fairly as a whole, it must first address what the accusations against the applicant were grounded on (see, for instance, *Popov*, cited above, § 180, and *Destrehem v. France*, no. 56651/00, § 43, 18 May 2004). In this regard, it observes that the charge for possession of an illicit object in prison – the offence laid down in Article 378 § 2 of the Criminal Code – was confirmed, firstly, by the purported discovery of the knife in the applicant's bed by the prison officers during the search of his cell and, secondly, by the associated inference drawn by the domestic courts from the former fact that the knife necessarily belonged to the applicant. Consequently, and given in particular, the domestic courts' duty under national law to take into consideration all the circumstances of a criminal case, both for and against the accused, in an objective and thorough manner (see paragraphs 37, 38 and 57 above), any physical evidence and/or witness statements that could corroborate or refute the above-mentioned fact and inference were obviously relevant for the purposes of a fair trial. A similar duty is furthermore embodied in Article 6 § 1 of the Convention as well, whereby a criminal court, bound by a fundamental principle of *in dubio pro reo*, is expected to conduct a trial free from any preconceived idea of guilt of the accused and, in the event of doubt, always to decide in the latter's favour (compare, amongst other authorities, *Topić v. Croatia*, no. 51355/10, § 45, 10 October 2013, and *Melich and Beck v. the Czech Republic*, no. 35450/04, § 49, 24 July 2008).

63. The Court further observes that in his defence, the applicant chose to question the validity of both the search conducted by the prison officers and the inference that the discovered knife had necessarily belonged to him. To do so, he applied to have the domestic courts hear evidence from his cellmates. He explained, in particular, that, as his cellmates had had the possibility to observe the search, a fact acknowledged by the prison officers themselves (see paragraph 17 above), their testimonies might arguably have contained indications about possible arbitrary actions committed by the

officers during the search. Alternatively, assuming that the knife had been found in his bed as a result of a faultlessly conducted search, the applicant asked the domestic courts not to make hasty conclusions about the identity of the owner of the weapon; he suggested that the knife in question could have been planted in his bed by somebody else the moment the prison officers entered the cell with the intention of conducting a search. In the light of the foregoing, the Court considers that the applicant's application to have his cellmates examined before the court was not at all vexatious, but that it was directly relevant to the factual basis of the accusation against him as it could arguably have strengthened his line of defence (compare, *mutatis mutandis*, *Polyakov*, cited above, § 34, and *Kuveydar v. Turkey*, no. 12047/05, § 42, 19 December 2017). In circumstances where the charge against the applicant was grounded on the assumption of his possessing an illicit object in his prison cell, the latter's wish to have his cellmates heard was nothing else but a reasonable attempt to challenge that key assumption in an effective manner (compare, *mutatis mutandis*, *Popov*, cited above, § 183, and *Topić*, cited above, §§ 43 and 45). This is particularly so in the light of the three following facts that rendered the overall fairness of the proceedings questionable. Firstly, the witnesses for the prosecution, the prison officers who had conducted the search of the applicant's cell, gave clearly inconsistent statements concerning the exact circumstances in which the penknife had been discovered. Secondly, the public prosecutor conceded himself during the trial that the video recording of the search did not establish with certainty whether the penknife had been found in the applicant's bed (see paragraphs 17 and 18 above). Lastly, there was an apparent contradiction between the above-reffered video recording and the report on the search, which stated that the penknife had been found under the mattress on a bed (see paragraph 11 above).

64. The first-instance and appellate courts dismissed the applicant's application to have the witnesses on his behalf summonsed, noting that either he had failed to explain why it had been important to hear evidence from the witnesses concerned, or that the witnesses in question were not trustworthy people because they were serving criminal sentences (see paragraph 16 above) or that the facts had already been sufficiently established (see paragraph 23 above). However, such grounds for the refusal, apart from constituting a negation of the above-mentioned duty to examine the case without any preconceived idea about the accused's guilt or innocence and always to decide in the event of any possible remaining doubt in the latter's favour (see paragraph 62 above), cannot be taken, in the light of the Court's relevant case-law under Article 6 §§ 1 and 3 (d) of the Convention, as adequate and sufficient reasons (compare, for instance, *Polyakov*, cited above, § 35; *Gregačević*, cited above, § 56; and *Poropat*, cited above, § 45). As a result of the domestic courts' unjustified refusal to hear evidence from the witnesses on the applicant's behalf, the latter was

stripped of the only opportunity he had to challenge effectively the backbone of the accusation put forward against him. As to the remaining evidence mentioned by the Government – the video recording and the written record of the search of the applicant's cell and seizure of the knife – these two items, did not represent any additional, stand-alone direct evidence, and were therefore inconclusive of the applicant's guilt and cannot thus affect the assessment of the overall fairness of the procedure (contrast, *mutatis mutandis*, *Dorokhov*, no. 66802/01, §§ 74 and 75, 14 February 2008, and *Polyakov*, cited above, § 36).

65. All in all, having due regard to what constituted the grounds for the applicant's conviction, the Court finds that the domestic courts' refusal to examine the defence witnesses without any regard to the potential relevance of their testimony rendered the trial as a whole unfair and that there has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. Relying on Article 6 § 1 of the Convention, the applicant also complained of a violation of his right of access to a court, in view of the refusal of the Supreme Court to consider his case on the merits (see paragraph 24 above), as well as about the overall length of the criminal proceedings which had lasted between 11 August 2006 and 11 February 2008 (see paragraphs 12 and 24 above).

67. As regards the complaint about access to the Supreme Court, the Court restates that the same issue was already examined in the context of the relevant Georgian procedural law and practice and found to have been, in similar factual circumstances, fully compatible with Article 6 § 1 of the Convention (see *Kuparadze v. Georgia*, no. 30743/09, §§ 75-77, 21 September 2017; and compare, *mutatis mutandis*, *Tchaghiashvili v. Georgia* (dec.), no. 19312/07, § 34, 2 September 2014.)

68. As to the remaining complaint concerning the length of the domestic proceedings, the Court, in the light of all the material in its possession, and in so far as the matter complained of is within its competence, finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

69. It follows that this part of the application, consisting of the above-mentioned two separate complaints under Article 6 § 1 of the Convention, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government argued that the claim was excessive.

73. The Court considers that the applicant must have suffered distress and anxiety on account of the violation which has been found. Ruling on an equitable basis, it awards the applicant EUR 2,500 in respect of non-pecuniary damage.

74. Furthermore, the Court notes that in case of a finding of a violation of Article 6 of the Convention on account of the unfairness of the domestic proceedings, there is a possibility under the relevant domestic law to request a retrial (see *Taktakishvili v. Georgia* (dec.), no. 46055/06, §§ 22 and 23, 16 October 2012; compare *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 154, 1 June 2017; *Flisar v. Slovenia*, no. 3127/09, § 47, 29 September 2011; and *Şaman v. Turkey*, no. 35292/05, § 44, 5 April 2011).

B. Costs and expenses

75. The applicant also claimed 680 Georgian laris (GEL) (approximately EUR 300 at the relevant time) for the costs and expenses incurred before the domestic courts and the Court. In support of this claim, he submitted a number of legal and financial documents (a contract, invoices and receipts) confirming that the relevant legal, postal and translation services were actually provided to him in relation to the present application.

76. The Government argued that the applicant's claim was mostly unsubstantiated.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the claimed amount in full.

C. Default interest

78. 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 under Article 6 §§ 1 and 3 (d) of the Convention concerning the applicant's inability to obtain the attendance of witnesses on his behalf under the same conditions as the witnesses against him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

André Potocki
President