

February 2009

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## ***Poghosyan v. Georgia - 9870/07***

Judgment 24.2.2009 [Section II]

### **Article 46**

#### **Article 46-2**

#### **Execution of judgment**

Structural inadequacy of medical care in prisons, in particular as regards the treatment of Hepatitis C: *indication of appropriate legislative and other measures*

*Facts:* Whilst serving a prison sentence, the applicant complained of pain and was taken to the prison hospital, where he underwent a surgical operation. One month later he returned to prison. According to him the scar had not yet fully healed. Blood tests revealed that the applicant had contracted viral hepatitis C, and his lawyer asked the prison authorities to place her client in the prison hospital to undergo the necessary examinations and receive effective medical treatment. She also complained that her client had been sent back to prison too soon after his operation, before the scar had properly healed. Blood tests subsequently revealed the presence of an inflammation. When her request for proper medical treatment for her client remained unanswered, she again requested his transfer to the hospital. The prison Governor informed her that her client had undergone general and serological blood tests, but that a biochemical analysis was also needed. The result of that would determine what treatment was needed. The analyses revealed the presence of viral hepatitis C antibodies in the blood and a sedimentation rate twice as high as the normal upper limit. New blood tests were carried out. The enzyme count they revealed was well in excess of the normal upper limit. In the meantime the lawyer drew the prison Governor's attention to the fact that his establishment employed no hepatologist, and requested authorisation to have the applicant examined by an outside specialist. He replied that the applicant had been examined by a hepatologist, who had detected the presence of chronic viral hepatitis C but found that it was not very active. Out-patient treatment should suffice. The lawyer replied that according to the medical documents she had submitted, the applicant was suffering from acute viral hepatitis C, and questioned the professional competence of the specialist who had examined her client. She complained that the findings of the examination concerned and the treatment recommended had not been communicated to her. She again requested authorisation to have the applicant examined by a specialist of her choice. She complained that the applicant had been incarcerated with an open wound without any treatment to prevent infection. In addition, all her complaints about this had gone unanswered. Lastly, the lawyer asked the Governor to take the necessary measures prescribed by law to enable the applicant to receive adequate and effective medical treatment. Her request went unanswered.

*Law:* Article 3 – (a) *Post-operative care:* Before being sent back to prison the applicant had received the medical care which was necessary and appropriate, his return had been justified with regard to his state of health and his health had continued to be monitored once he was back in prison.

*Conclusion:* no violation (unanimously).

(b) *Viral hepatitis C:* The three series of tests had confirmed that the applicant had viral hepatitis C. The file did not indicate, however, that once that diagnosis had been made the authorities had taken the trouble to evaluate the need for further appropriate analyses to be carried out in order to determine what treatment should be administered and what the chances of recovery were, as each genotype responded differently to treatment. These tests had proved all the more necessary as a hepatologist had found that the disease was chronic and the virus was continuing to multiply. As it was not possible to prescribe the right treatment without knowing the extent of the damage to the liver, and the genotype and blood levels of the virus, the authorities had not taken proper care of the applicant. It was not enough to have the patient examined and a diagnosis made. To protect the prisoner's health it was essential to provide treatment corresponding to the diagnosis, as well as proper medical supervision.

*Conclusion:* violation (unanimously).

Article 46 – This was not a unique case. At the time forty-odd applications concerning lack of medical care in Georgian prisons were pending before the Court. More than thirty of them had already been brought to the attention of the respondent Government. In about eighteen cases the applicants were suffering from viral hepatitis C, amongst other ailments. Without prejudging the merits of those cases, their number appeared to indicate that the problem of medical care in prisons, particularly care administered to detainees suffering from viral hepatitis C, *inter alia*, was a structural one. That was not only an aggravating factor with regard to the State's responsibility under the Convention, but also a threat to the future effectiveness of the Convention machinery. That being so, the Court considered, with no doubt whatsoever, that general measures were called for at the national level in connection with the enforcement of its judgment in this case. The necessary legislative and administrative measures should therefore be taken without delay in order to prevent the spread of viral hepatitis C in Georgian prisons, introduce a screening system and guarantee the prompt and effective treatment of the disease.

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