

The European Court finds that Georgia is responsible for the violation of Giorgi Toroshelidze's right to life

On December 20, 2018, the European Court of Human Rights (ECtHR) delivered its judgment in the case of Maisuradze v. Georgia. The Court found violation of art.2 of the Convention by Georgia due to the State □□ failure to provide Giorgi Toroshelidze with timely and adequate treatment and conduct effective investigation into his death. The applicant was represented by GYLA and the European Human Rights Advocacy Center before the European Court.

According to the circumstances of the case, son of the applicant, Rusiko Maisuradze

had been serving his sentence in prison no.2 since July 7, 2008. On December 19, 2008, Toroshelidze was diagnosed with tuberculosis. Immediately after he was diagnosed, a test was ordered by prison doctors to determine whether the prisoner could have been treated with drugs provided under the DOTS programme. At the same time, he started to undergo the treatment under the DOTS programme pending the outcome of the test. In February 2009, the test results showed that the patient was resistant to the treatment under the DOTS programme. The doctors ordered another test to determine susceptibility of the patient to the second-line drugs under the DOTS+ programme. Notwithstanding the outcome of the first test, Toroshelidze continued to have treatment under the DOTS programme, which worsened his health. On April 10, 2009, the results of the second susceptibility test demonstrated that the disease was responding to the second-line drugs under the DOTS+ program. Nevertheless, the doctors did not start to provide the patient with treatment under this programme until May 4, 2009, almost a month after the test results were known. Toroshelidze died on May 19, 2009, of a massive pulmonary hemorrhage.

The same day, the Investigative Department of the Ministry of Corrections opened an investigation into the death of Giorgi Toroshelidze. Soon it terminated the investigation on account of the absence of a crime, indicating that Toroshelidze had died of a natural complication of tuberculosis.

In its judgment the ECtHR found violation of substantive limb of art.2 of the Convention and held that the respondent State was responsible for the death of Giorgi Toroshelidze. According to the Court, even though Toroshelidze was diagnosed with tuberculosis on December 19, 2008, he did not receive effective treatment for the disease for about four months and two weeks. The Court held that such a lengthy delay while the disease was progressing swiftly could not be justified by the late receipt of the results of the drug susceptibility test, especially since the test could have been ordered earlier. The Court subsequently found that Toroshelidze was deprived of effective medication for a prolonged period of time, which eventually led to his death.

The Court also found violation of procedural limb of art.2 of the Convention. It clarified that even though the investigation into Toroshelidze □□ death was opened immediately and investigative actions were performed in a timely manner, the Investigative Department made several important errors:

- It did not make genuine attempt to find out whether it was possible to order the second susceptibility test earlier, especially given that Toroshelidze □□ health was deteriorating on a daily basis;

- The Investigative Department did not inquire into the reasons behind the delay of 24 days in starting the treatment under the DOTS+ programme, after the results of the second susceptibility test were obtained.

- While the investigative measures were implemented by the Investigative Department operating under the very same Ministry whose employees were implicated in the death of Toroshelidze, the institutional connection between the investigative authorities and the persons involved in the incident raised serious suspicions about independence of the investigation.

The European Court awarded the applicant EUR 15 000 in respect of non-pecuniary damage.

GYLA will be actively observing any individual and general measures that the Government of Georgia will take for execution of the judgment of the Court.