

IN THE HUMAN RIGHT COMMITTEE

ALEKSANDR BANDIUKOV

(The Author)

-v-

GEORGIA

(The Respondent Government)

**REJOINDER OF THE GOVERNMENT OF GEORGIA ON THE AUTHOR'S
COMMENTS**

Department of State Representation to International Courts

Ministry of Justice of Georgia

12 September 2022

CONTENTS

I. INTRODUCTION	3
II. THE GOVERNMENT’S COMMENTS ON THE ADMISSIBILITY OF THE CASE. 3	3
III. THE GOVERNMENT’S COMMENTS ON THE MERITS OF THE CASE	5
A. Alleged violation of Articles 9, 13 and 14 of the ICCPR	6
1. <i>Asylum Proceedings</i>	<i>6</i>
2. <i>Extradition Proceedings.....</i>	<i>10</i>
B. Alleged violation of Article 6 in conjunction with Article 2 of the ICCPR and Article 10 of the ICCPR.....	17
1. <i>Preliminary Objections</i>	<i>18</i>
2. <i>Medical services provided to the author at the Penitentiary Facility N 8</i>	<i>21</i>
3. <i>Medical services provided to the complainant at the Penitentiary Facility N 6.....</i>	<i>27</i>
4. <i>Complainant’s presence at the court hearings</i>	<i>29</i>
C. Alleged violation of Article 17 of the ICCPR.....	30
IV. CONCLUSION	30
LIST OF ANNEXES.....	32

I. INTRODUCTION

1. The Government of Georgia (“the Government”/“the Respondent Government”) present below their submissions on the additional observations of the author - Mr. Aleksandr Bandiukov (“the complainant”/“the author”) on the communication No.3842/2020 submitted before the Human Rights Committee (“the Committee”/“the HRC”).

2. The communication concerns the extradition proceedings initiated against the complainant, the international protection requested by the latter and his medical treatment during the pre-extradition detention. The complainant alleges that the Respondent Government violated Articles 2, 6, 9, 10, 13, 14 and 17 of the International Covenant on Civil and Political Rights (“the Covenant”/“the ICCPR”) while examining his legal status under international protection and his possible extradition to the Russian Federation.

3. The Government in their initial observations of 6 September 2021 challenged a number of factual circumstances submitted by the complainant as inaccurate and/or misleading. The Government further emphasized that the complainant gave distorted description of the events. Therefore, without further reiteration, the Government refer the Committee to paragraphs 2-19 of their initial observations illustrating the accurate facts of the case.¹

II. THE GOVERNMENT’S COMMENTS ON THE ADMISSIBILITY OF THE CASE

4. In paragraphs 20-63 of their initial observations the Government substantiated that the present communication is inadmissible for the following grounds:

- The complaints under Articles 2, 6, 9, 10, 13, 14 and 17 of the Covenant are manifestly ill-founded and inadmissible in accordance with Article 2 of the Optional Protocol to the Covenant;
- The complaints are inadmissible for non-exhaustion of domestic remedies under Article 5 (2) (b) of the Optional Protocol to the Covenant;
- The complaint constitutes an abuse of the right of submission and is inadmissible within the meaning of Article 3 of the Optional Protocol to the Covenant;
- The complaints are *ratione materiae* incompatible with Articles 2, 6, 10, 14 and 17 of the Covenant under Article 3 of the Optional Protocol to the Covenant.

¹ See, the Government’s observations, §§ 2-19.

5. In his additional observations **the complainant provided no argument with regard to the admissibility of the communication**, therefore without further reiteration of the Government's arguments in that regard, the latter respectfully refer the Committee to paragraphs 20-63 of their initial observations.²

6. With respect to the arguments of the Government as presented in the section of non-exhaustion of domestic remedies under Article 5 (2) (b) of the Optional Protocol to the Covenant the Government would like to provide the Committee with further renewed information.

7. As it was stated by the Government in their initial observations, on 12 February 2020, the Supreme Court declared that **the complainant's extradition to Russia was impermissible, since he enjoyed humanitarian status under the Law of Georgia on International Protection**. By its decision of 22 June 2021, the Migration Department further granted the author's request to extend the humanitarian status for one additional year until 22 June 2022 in accordance with Article 19 (2) of the Law of Georgia on International Protection.³

8. After one year elapsed, on 22 June 2022, the Migration Department decided not to extend the humanitarian status of the author since the grounds for granting such status no longer existed.⁴ On 21 July 2022 the author appealed the Decision of Migration Department of 22 June 2022 concerning non-extension of his humanitarian status before the Tbilisi City Court. **The case is pending before the Tbilisi City Court**.⁵

9. **Thus at the material time the author still enjoys the humanitarian status**. Only in case the complainant's humanitarian status is revoked by the final decision of the national court, **the renewed procedure** at the domestic level shall be initiated and **only after the finalization of such procedure the Minister of Justice can issue the decision with respect to the extradition of the author**. In particular, under Article 34 of the Law of Georgia on International Cooperation in Criminal Matters, the duly authorised prosecutor shall apply to the relevant district (city) court for a decision on the permissibility of extradition. The district (city) court shall, no later than 7 days after receiving the documents, set a date for a hearing on the matter. After hearing the parties' opinions,

² *Ibid*, §§ 20-63.

³ *Ibid*, § 7.

⁴ ANNEX 1 - Official Letter of the Migration Department of the Ministry of Internal Affairs of Georgia dated 28 July 2022 and Report of the Migration Department on the application of A. Bandiukov dated 27 May 2022.

⁵ ANNEX 2 - The complaint of the author dated 21 July 2022.

the court shall make a decision on the permissibility of extradition. The ruling of a district (city) court on the permissibility of extradition may, within 7 days after it is delivered, be appealed by the parties by way of a cassation appeal to the Criminal Chamber of the Supreme Court of Georgia, which shall set the date of the first hearing no later than 5 days after receiving the appeal. The Ministry of Justice of Georgia shall be notified of the final court decision on the permissibility of extradition within 5 days. If the relevant court finds it impermissible to extradite a person to a foreign State, the Minister of Justice of Georgia shall issue an order denying the request for extradition. If the court finds it permissible to extradite a person to a foreign State, the Minister of Justice of Georgia shall issue an order denying or granting the request for extradition. Consequently, the complainant does not face the risk of extradition to Russia as he is protected by humanitarian status until the proceedings come to an end.

10. **Considering above the Government submit that author's complaints are premature.**

III. THE GOVERNMENT'S COMMENTS ON THE MERITS OF THE CASE

11. In his initial application, the author submitted the following:

➤ The complainant stated that his arrest and subsequent detention was arbitrary and contravened the requirements of Articles 9, 13 and 14 of the Covenant. With respect to Articles 13 and 14 of the Covenant, the author's main argument was that the Georgian authorities and domestic courts improperly assessed his asylum application and extradition case;

➤ The author claimed that the Respondent Government is responsible for violation of Article 6 in conjunction with Article 2 of the Covenant. He further alleged that his treatment in a Penitentiary Facility was inhumane, violating Article 10 of the Covenant;

➤ Finally, the complainant alleged violation of Article 17 of the Covenant, however there was not a single argument presented by the author in that regard.

12. In paragraphs 64-97 of their initial observations, the Government substantiated that these complaints were entirely unsubstantiated and misleading. Therefore, without further reiteration of the Government's arguments, the latter refer the Committee to the afore-mentioned paragraphs.⁶

⁶ *Ibid*, §§ 64-97.

13. The present document is limited to addressing the complaints of the author as presented in his additional submissions of 13 May 2022, whereby he present his position with regards to the following matters: a) Asylum proceedings; b) Extradition proceedings and b) Medical treatment while in detention. In the following paragraphs, the Government shall address each indicated issue separately and examine every argument raised therein.

14. At the outset the Government emphasize that **the generalised character of the complainant's additional submissions, fails to demonstrate exactly which aspects of the Covenant's Articles were allegedly violated in his respect.** The author refers to the different factual circumstances sporadically, in an unorganized manner and contests the legality of every single decision that was delivered by the Georgian authorities in relation to his case without providing relevant evidence or even valid arguments.

A. Alleged violation of Articles 9, 13 and 14 of the ICCPR

1. Asylum Proceedings

15. Initially the Government, in paragraphs 11-13 below, briefly summarize the relevant updated information with regard to the asylum proceedings initiated by the author.

16. On 27 September 2018, the author applied for international protection at the Migration Department. On 24 July 2019, the Migration Department decided not to grant international protection to the complainant. The author appealed the decision before the Tbilisi City Court and afterwards before the Tbilisi Court of Appeals. By its judgment of 4 February 2020, the Tbilisi Court of Appeals overturned the decision of the Tbilisi City Court and ordered the Migration Department to grant the author humanitarian status in accordance with Article 19 of the Law of Georgia on International Protection. Pursuant to the judgment of the Tbilisi Court of Appeals dated 4 February 2020, the Migration Department issued a decision on granting humanitarian status to the author for the period of one year. After one year elapsed, on 27 January 2021 the Migration Department re-examined the application and decided not to extend the humanitarian status for one additional year until 22 June 2022. On 4 March 2021, the author presented new evidence - Forensic Report - before the Migration Department alleging that his long-term transportation to the Russian Federation or his placement in a Penitentiary Facility severely endangered his life or health. The Migration

Department decided to reassess the application on the extension of humanitarian status based on the newly discovered evidence and on 22 June 2021 granted the complainant's request.⁷

17. After one year elapsed, on 22 June 2022, the Migration Department decided not to extend the humanitarian status of the author since the grounds for granting such status no longer existed. On 13 July 2022 the complainant further submitted renewed application requesting extension of the humanitarian status which was rejected on 21 July 2022.⁸

18. On 21 July 2022 the author appealed the Decision of Migration Department of 22 June 2022 concerning non-extension of his humanitarian status before the Tbilisi City Court.⁹ **The case is pending before the Tbilisi City Court.**

19. Simultaneously, the author (while already being granted the humanitarian status) applied for the several times to the Migration Department requesting to be granted the **refugee status**. In particular:

- On 25 August 2021, the complainant - the humanitarian status holder, lodged an application before the Migration Department requesting the refugee status. It is worth noting that by its final decision of 4 February 2020, the Tbilisi Court of Appeals (while ordered the Migration Department to grant the author humanitarian status) partly upheld the judgment of the Tbilisi City Court and stated that there was no ground for granting the complainant the refugee status. Despite this fact the author still lodged renewed application without presenting new arguments in that regard. By its decision of 15 December 2021, the Migration Department rejected the complainant's request;¹⁰
- On 18 March 2022, the author repeatedly lodged application before the Migration department requesting the refugee status. By the decision of 2 May 2022, the request was rejected, since there were no new circumstances for granting the refugee status;¹¹
- On 18 May 2022 the author under Article 45 of the Law of Georgian on International Protection (*Article 45 – “Renewed application for international protection and procedural guarantees”*) lodged renewed application for international protection claiming that he was receiving

⁷ *Ibid*, §§ 4-7.

⁸ ANNEX 1 - Official Letter of the Migration Department of the Ministry of Internal Affairs of Georgia dated 28 July 2022 and Report of the Migration Department on the application of A. Bandiukov dated 27 May 2022.

⁹ ANNEX 2 - The complaint of the author dated 21 July 2022.

¹⁰ ANNEX 1 - Official Letter of the Migration Department of the Ministry of Internal Affairs of Georgia dated 28 July 2022 and Report of the Migration Department on the application of A. Bandiukov dated 27 May 2022.

¹¹ *Ibid*.

threat from the unidentified individuals. The Migration Department assessed the complainant's arguments and ruled that evidence provided by the latter was insufficient to prove the alleged threats. Moreover, the author linked the afore-mentioned threats to his alleged persecution due to the political opinion and the latter circumstance was already assessed by the Migration department in the decisions of 15 December 2021 and 2 May 2022 being reckoned as "*artificially created*". Considering above, by its decision of 27 May 2022, the Migration department rejected the complainant's request;¹²

➤ All of the aforementioned decisions of the Migration department dated 15 December 2021 and 2 and 27 May 2022 were appealed by the author before the Tbilisi City Court and are pending before the Administrative Chamber of the Tbilisi City Court.¹³

20. It is worth noting that in his additional submissions before the Committee **the author provided no information with regard to the above proceedings.** There is no indication that the complainant has initiated simultaneous proceedings on the national level requesting the refugee status and that there are three active cases pending before the national courts. The Government further draw the Committee's attention to the fact **that lodging identical simultaneous applications before the Migration Department and afterwards before the national courts clearly illustrates bad faith on the part of the author** to abuse and exploit the asylum system and humanitarian purpose it has.

21. The only complaint adduced by the author in his additional submissions with regard to the asylum proceedings concerns the decision of the Migration Department dated 27 January 2021.¹⁴ The complainant alleges that the afore-mentioned decision was "*illegal*", since it relied on the guarantees provided by the Russian Federation of 13 June 2019 (in relation to the proper medical treatment of the complainant at the Russian Penitentiary Facility). In this regard, the author claims that by the judgment of the Tbilisi Court of Appeals dated 4 February 2020 the domestic courts already overturned the previous decision of the Migration Department and ordered the latter to grant him the humanitarian status. Thus, the author submits that since the Tbilisi Court of Appeals in the afore-mentioned judgment rendered different conclusion, from the Migration Department, with regard to the conditions in Russian prisons, the reasoning of the court shall be regarded as

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ See, the Government's observations, Annex 6.

established fact - *res judicata* - for the purposes of all subsequent decisions of the Migration Department, including the one dated 27 January 2021.¹⁵

22. In response the Government submit the following:

23. **First of all**, the judgment of 4 February 2020 had binding effect over the parties in question within the specific case resolved. It is unreasonable to assert that judgment had any effect on any other future dispute with regard to the humanitarian status of the author. By its judgment of 4 February 2020 the Tbilisi Court of Appeals assessed the factual circumstances and reasonableness of granting the humanitarian status to the author at the material time. As a result, the Migration Department was ordered to grant the author status for one year which was performed by the latter. Thus, the judgment was executed.

24. Under the Law of Georgia on international Protection: “*Humanitarian status is granted for the period of one year. It can be extended with the decision of the Ministry, for the same time repeatedly **if the grounds for granting such status still exist**””. Thus, the humanitarian status is “temporal” and after each year the Migration Department is obliged to reassess whether the conditions granting individual such status still exist. Accordingly, after the afore-mentioned one year elapsed, the Migration Department, in accordance with Article 19 of the Law of Georgia on International Protection, reassessed the status of the author. In this process it was not bound by any other previous decision/judgment since otherwise the whole mechanism and nature of this status would be pointless.*

25. **Secondly**, the complainant’s allegation that the guarantees provided by the Russian Federation (with regard to his proper treatment), was “*annulled*” by the judgment of the Tbilisi Court of Appeals of 4 February 2020 – **is false and legally inaccurate**. The Tbilisi Court of Appeals (or any other Georgian national court) does not have competence to “*annual*” guarantees provided by foreign State. Furthermore, it is worth noting that in its judgment the court did not assess the legality or even factual accuracy of the provided guarantees. The court even partly shared the arguments of the respondent party, however in light of the new evidence which illustrated that complainant’s medical condition was worsened it was established that he qualified for the humanitarian status.¹⁶

¹⁵ See, complainant’s additional observations, pp. 2-3.

¹⁶ See, the Government’s observations, Annex 6.

26. **Thirdly**, the decision of the Migration Department of 27 January 2021 **did not rely** on the guarantees provided by the Russian Federation on 13 June 2019, which was used by the latter previously and thus was referred to in the judgment of the Tbilisi Court of Appeals (dated 4 February 2020). Before delivering its decision of 27 January 2021, the Migration Department received the new guarantees from the Russian Federation on 4 January 2021.

27. **Finally**, it is worth noting that in its decision of 27 January 2021, the Migration Department carefully assessed the existing condition of the complainant at a material time, updated information with regard to the prison conditions and considered the new guarantees of 4 January 2021 which specifically related to the proper medical treatment of the complainant. After this assessment, the Migration Department decided not to extend the humanitarian status since the grounds for granting such status no longer existed. However, **on 4 March 2021**, when the author presented relevant evidence - forensic expert analysis report alleging that his long-term transportation to the Russian Federation severely endangered his life or health, the Department immediately decided to reassess the case based on the newly discovered evidence in accordance with Article 102 of the Administrative Code of Georgia. The fact that by its decision of 22 June 2021, the Migration Department granted the complainant's request to extend the humanitarian status **clearly illustrates that there is no bad faith on its part** and that the latter carefully examines each piece of evidence presented by the author.

2. *Extradition Proceedings*

28. Initially the Government in paragraphs 24-15, below, briefly summarize the relevant updated information with regard to the extradition proceedings initiated with respect to the complainant.

29. On 16 May 2019, the Tbilisi City Court ordered the author's detention pending extradition to the Russian Federation for the period of three months. The complainant was subjected to detention until 10 February 2020. On the latter date, the Tbilisi City Court allowed the author's release on bail in the amount of 50 000 GEL with additional guarantees. On 18 January 2020, the Tbilisi City Court decided that the complainant's extradition to the Russian Federation was permissible. However, by its judgment of 12 February 2020, the Supreme Court of Georgia overturned the judgment of 18

January due to the fact that, the complainant was granted humanitarian status. Thus, his extradition was impermissible in the period he enjoyed the humanitarian status.¹⁷

30. Considering that currently the author appealed the decision of the Migration Department (dated 22 June 2022) concerning denial to extend his humanitarian status, before the final decision at the domestic level is rendered, the complainant is regarded as a person holding the humanitarian status. Consequently, under the judgment of the Supreme Court of Georgia dated 12 February 2020, the author's extradition is at the moment impermissible.¹⁸

31. The complaints adduced by the author in his additional submissions with regard to the extradition proceedings are the following:

32. The author alleges that by the judgment of the Supreme Court of Georgia dated 12 February 2020, the court denied the extradition of the complainant which constitutes final decision at domestic level. Therefore, it shall be regarded that proceedings at a national level are finalized at this point and there is no legal grounds for subjecting the complainant to the extradition proceedings. The author further alleges that since there is no relevant decision by the Ministry of Justice of Georgia with regard to the "*deferred extradition*" within the meaning of Article 33 of the Law of Georgia on International Cooperation in Criminal Matters, the legal ground for continuing extradition procedure does not exist.¹⁹

33. In response the Government reiterate that relevant explanation in that regard was provided to the complainant by the letter of the Ministry of Justice of Georgia dated 29 September 2020.²⁰ The Ministry explained that pursuant to Article 34 (13) of the Law of Georgia on International Cooperation in Criminal Matters, the Minister issues an order denying the request for extradition if there is a final decision of the relevant court on the impermissibility to extradite a person to a foreign State. However, the author's extradition was deemed impermissible for **only a limited period of time** until he enjoyed the humanitarian status, which was granted for the period of one year. In particular, by its judgment of 12 February 2020, the Supreme Court declared that the author's extradition was impermissible **only in the period he enjoyed humanitarian status** in accordance with Article 19 of the Law of Georgian on International Protection. Accordingly, since there was no

¹⁷ See, the Government's observations, §§ 8-11.

¹⁸ See, the Government's observations, Annex 1.

¹⁹ See, the complainant's additional observations, pp. 3-4.

²⁰ See, the Government's observations, Annex 21.

final decision of the court on the impermissibility of extradition, the Minister of Justice, at this stage, would be unable to issue such an order. Thus, at the domestic level the afore-mentioned proceedings **are not finalized.**²¹

34. The author falsely claims that at the material time the Minister of Justice of Georgia is authorised to issue decision under Article 34 (13) of the Law of Georgia on International Cooperation in Criminal Matters. According to the domestic legislation the Minister is authorised to issue such decision **only** “*If the relevant court finds it impermissible to extradite a person to a foreign state*”. According to the Supreme Court’s Decision of 12 February 2020 after the complainant’s humanitarian status is revoked, the renewed procedure at the domestic level shall be initiated and only after the finalization of such procedure the Minister can issue the decision in question.

35. As for the author’s referral to Article 33 of the Law of Georgia on International Cooperation in Criminal Matters concerning “*deferred extradition*”, the Government submit that the latter is not relevant to the case at hand, since the Supreme Court of Georgia in its judgment of 12 February 2020 decided not to “*defer*” (the deferral of the extradition is regulated under Article 33 of the Law of Georgia on International Cooperation in Criminal Matters, according to which if a person whose extradition is requested is serving a sentence for any other crime committed in the territory of Georgia, the extradition of that person may be deferred until such person has served the sentence or until the person has been released from serving the sentence. The extradition of a person to a foreign State may be deferred for humanitarian reasons as well and the decision on deferring the extradition of a person to a foreign State shall be made by the Minister of Justice of Georgia) the extradition of the complainant, **but to deny** it until the cessation of his humanitarian status. **The complainant further presents no argument of the relevance of such decisions to him - how it could in any sense have a positive effect over the author’s legal status.**

36. In his additional submissions the author further challenges the judgment of the Supreme Court of Georgia by alleging that the court only ruled with regard to his extradition and did not examine the issue of measure of restraint the complainant was subjected to (The allegations regarding the proceedings in relation to the measure of restraint are comprehensively addressed in the Government’s Observations on the Complainant’s Additional Claims). The Government clarify that Supreme Court of Georgia was limited to assess the appealed decision before it – the judgment

²¹ *Ibid.*

of Tbilisi City Court dated 18 January 2020. The afore-mentioned judgment related solely to the permissibility of the extradition and thus the court ruled only on the following issue: [*“The extradition of the Aleksandr Bandiukov to the Russian Federation shall be permitted, for the purposes of the criminal prosecution initiated against the latter, for the crimes illustrated in the indictment dated 22 October 2018 issued by the Sakhalin Regional Investigative Department of the Russian Federation...”*].²² No other conclusion was made by the Tbilisi City Court in the afore-mentioned judgment. Thus it is irrational to challenge the judgment of the Tbilisi Court of Appeals on that ground.

37. The Government further draw the Committee’s attention to the fact that issues of the measure of restraint and author’s complaints with regard to the annulment of the latter **was subject to different set of proceedings on the national level, as well as subject to Author’s Additional Submission of 25 January 2022 before this Committee.** His each allegation with regard to the latter is thus addressed in the Government's Observations on the Author’s Additional Submission. Therefore in the paragraphs 33-34, below, the Government will briefly summarize national proceedings in that regard.

38. From the outset it shall be noted that on 9 February 2020, the POG submitted a motion to Tbilisi City Court to amend the measure of restraint and to release the author on bail with additional requirements and guarantees. On 10 February 2020, the Tbilisi City Court granted the motion. The complainant was allowed two weeks to deposit the monetary sum. On 22 February 2020, the author’s lawyer submitted a motion to the Tbilisi City Court requesting the sequestration of immovable property to secure the bail instead of a monetary sum. The immovable property belonged to the complainant’s wife L.B. Having carefully considered the request, the court granted the motion.²³

39. Afterwards from August 2021 to May 2022, the author applied before the Criminal Investigative Panel of the Tbilisi City Court with several motions under Article 206 of the CCP **requesting the annulment of the measure of restraint imposed upon him.** Each of the complainat’s motions were addressed comprehensively by the both instances of the national courts:

²² *Ibid*, Annex 20.

²³ ANNEX 3 - Decision of the Tbilisi City Court of 22 February 2020 on the author’s Motion to Deposit the Immovable Property as Bail instead of a Monetary Sum.

- On 16 August 2021, the author applied before the Criminal Investigative Panel of the Tbilisi City Court with a motion to annul the measure of restraint imposed upon him. On 18 August 2021, the judge of the Investigative Panel of the Tbilisi City Court, declared his motion inadmissible.²⁴ On 20 August 2021, the complainant appealed the judgment of 18 August 2021 to the Criminal Chamber of the Tbilisi Court of Appeals. On 25 August 2021, Investigative Panel of the Tbilisi Court of Appeals issued a decision declaring his appeal inadmissible. Both instances of the national court comprehensively explained that in order for the motion under mentioned provision to be admissible it shall contain **new and essential circumstance** which can have effect over the legality of application of the measure of restraint to the individual. As a new circumstance for annulment of the measure of restraint the complainant referred to the judgment of 12 February 2020 of the Supreme Court, where the court declared that the author’s extradition was impermissible **in the period he enjoyed humanitarian status** in accordance with Article 19 of the Law of Georgian on International Protection. Based on this judgment the complainant believed that the measure of restraint applied to the latter should have been annulled since the Supreme Court of Georgia rendered the final decision of “*denying*” his extradition and thus at this point proceedings on a domestic level were finalised. However, the court established that afore-mentioned circumstance did not constitute new essential issue which could arise the **possibility to change or annul the measure of restraint applied.** The court clarified that as it was evident from the Supreme Court’s judgment the complainant’s extradition **was deemed impermissible for only a limited period of time.** In particular, by its judgment of 12 February 2020, the Supreme Court declared that the author’s extradition was impermissible **only in the period he enjoyed humanitarian status, which was granted for the period of one year.** Thus, as it was evident the extradition proceedings were not finalized at a domestic level and therefore no new circumstance **that might have indicated the possibility to change or annul the measure of restraint existed.**²⁵
- On 8 October 2021, the complainant repeatedly filed similar motion before the Criminal Investigative Panel of the Tbilisi City Court requesting the annulment of the measure of restraint again by referring to the judgment of the Supreme Court of Georgia dated 12

²⁴ ANNEX 4 - Decision of the Tbilisi City Court dated 18 August 2021.

²⁵ ANNEX 5 - Decision of the Tbilisi Court of Appeals dated 25 August 2021.

February 2020. On 9 October 2021, the Investigative Panel of the Tbilisi City Court, declared his motion inadmissible.²⁶ On 11 October 2022, the author appealed the decision of the Tbilisi City Court. On 15 October 2022, the Investigative Panel of the Tbilisi Court of Appeals, declared the appeal inadmissible;²⁷

- On 12 May 2022, the author again applied to the Criminal Investigative Panel of the Tbilisi City Court with a motion requesting annulment of measure of restraint. On 13 May 2022 the Investigative Panel of the Tbilisi City Court, declared his motion inadmissible.²⁸ On 15 May 2022, the complainant appealed the judgment of 13 May 2022 to the Criminal Chamber of the Tbilisi Court of Appeals.²⁹ On 20 May 2022 the complainant's appeal was rejected. Namely in the new motion the author stated that he needed certain financial assets for the medical treatment and therefore requested annulment of the measure of restraint – the bail in order to release the property which had been seized to secure the latter. However both of the instances of the national courts noted that issue in question was already examined during the application of the measure of restraint.³⁰

40. Finally, the complainant submits that he for several times unsuccessfully requested Georgian authorities to assess the legality of the extradition materials presented by the Russian Federation. It is worth noting that the author does not present any evidence or even relevant arguments in that regard and simply refers to the Author's Additional Submissions of 25 January 2022 submitting that aforementioned issue is covered within the scope of the latter. Therefore, the complainant's allegations in that regard is addressed in Government's Observation on the Author's Additional Submissions, which is a separate document.

41. Considering above, the Government submit that **the author failed to substantiate his complaint within Article 9, 13 and 14 of the Covenant.**

42. **Article 9** protects liberty and security of a person, which is not absolute. Article 9 recognizes that sometimes deprivation of liberty is justified, for example, in the enforcement of criminal laws.³¹ However, paragraph 1 requires that deprivation of liberty must not be arbitrary, and must be carried

²⁶ ANNEX 6 - Decision of the Tbilisi City Court dated 9 October 2021.

²⁷ ANNEX 7 - Decision of the Tbilisi Court of Appeals dated 15 October 2021.

²⁸ ANNEX 8 - Decision of the Tbilisi City Court dated 13 May 2022.

²⁹ ANNEX 9 - The appeal dated 14 May 2022.

³⁰ ANNEX 10 - Decision of the Tbilisi Court of Appeals dated 20 May 2022.

³¹ General comment No. 35 Article 9 (Liberty and security of person), CCPR, § 10.

out with respect for the rule of law. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with procedure established by law.³²

43. In his additional submissions the complainant provided no arguments with regard to the legality of his detention under Article 9 of the Covenant, therefore the Government respectfully refers the Committee to paragraphs 81-96 of their initial observations.

44. **Article 13** regulates the procedure (and not the substantive grounds) for expulsion. However, by allowing only those carried out “*in pursuance of a decision reached in accordance with law*”, its purpose is clearly to prevent arbitrary expulsions. Article 13 also encompasses the right of an individual to submit reasons against expulsion and to have the decision reviewed as well as to be represented before the competent authority. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one.³³

45. **Article 14** combines various guarantees with different scopes of application, which *inter alia*: sets out a general guarantee of equality before courts and tribunals applicable regardless of the nature of proceedings before such bodies; entitles individuals to a fair and public hearing by a competent, independent and impartial tribunal established by law, if they face any criminal charges or if their rights and obligations are determined in a suit at law; provides procedural guarantees available to persons charged with a criminal offence.³⁴

46. As illustrated above:

➤ The complainant’s asylum claim has been on multiple times assessed by the Migration Department as well as by the national courts. At every stage of the proceedings the complainant was able to present any argument or evidence and each piece of evidence was examined carefully by the domestic authorities. Furthermore, as stated above, the author currently appealed the decision of the Migration Department (dated 22 June 2022) concerning denial to extend his humanitarian status, before the final decision at the domestic level is rendered, the complainant is regarded as a person holding the humanitarian status.

³² *Ibid.*

³³ CCPR General Comment No. 15: The Position of Aliens under the Covenant, CCPR, § 9.

³⁴ General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR, § 3.

➤ As for the extradition proceedings, author's case was heard by the Tbilisi City Court and later by the Supreme Court of Georgia in full compliance with the domestic legislation as well as standards established by the Committee. At each stage of the proceedings the complainant had an opportunity to present multiple motions and as well as advance any argument with respect to the case. Moreover, on 12 February 2020, the Supreme Court declared that the complainant's extradition to Russia was impermissible, since he enjoyed humanitarian status under the Law of Georgia on International Protection. As noted above, currently the complainant appealed the decision of the Migration Department (dated 22 June 2022) concerning denial to extend his humanitarian status, and before the final judgment of the court in that regard is rendered, **he still enjoys the humanitarian status**. Only in case the complainant's humanitarian status is revoked by the final decision of the national court, the renewed procedure at the domestic level shall be initiated and **only after the finalization of such procedure the Minister can issue the decision in question**. Consequently, the author does not face the risk of extradition to Russia as he is protected by humanitarian status until the proceedings come to an end.

B. Alleged violation of Article 6 in conjunction with Article 2 of the ICCPR and Article 10 of the ICCPR

47. In his additional submissions, the author failed to present any new argumentation to substantiate his claims concerning the alleged violation of Articles 2, 6 and 10 of the Covenant other than those already dealt with in the Government's initial observations of 6 September 2021. Thus, the Government maintain their previous position and below, they shall deal only with a limited number of issues arising from the author's additional comments, considering that the remainder of the submissions is entirely groundless or irrelevant.

48. The complainant argues that the Government is responsible for violation of Article 6 (right to life) in conjunction with Article 2 of the Covenant (non-discrimination). He further alleges that his treatment in a Penitentiary Facility was inhumane, violating Article 10 of the Covenant. The Government note at the outset that the submissions of the author lack any reasonable foundation, largely fall outside the scope of the present case and are misleading.³⁵

49. Initially the Government in paragraphs 43-44 below, briefly summarize the relevant

³⁵ See, complainant's additional observations, pp. 5-17.

information with regard to the medical services provided to the complainant during his detention, as already submitted in their initial observations.

50. The author was transferred to the Penitentiary Facility N 8 on 17 May 2019 and was medically examined promptly on the same day. The author was medically inspected by a family physician on several occasions and given special nutrition for diabetes, but, nonetheless, he violated the prescribed diet. On 22 June 2019, the author was transferred to the Penitentiary Facility N 6, where he was examined by the family physician and was prescribed the necessary treatment. In Penitentiary Facility N 6, the complainant was under constant supervision and was physically examined at least 12 times by a doctor between 25 June 2019 and 19 September 2019. On 20 August 2019, the author felt severe pain in the chest area and hypertension. He was transferred to the Chapidze Emergency Cardiology Centre for diagnosis and treatment, where he remained until 3 September 2019. During his stay in the Cardiology Centre, he underwent clinical and laboratorial examinations. On 3 September 2019, the author was relocated to the Medical Facility N 18, where he was regularly supervised by the medical staff. **The expenses for the author's medical treatment amounting to around 16,221 GEL was fully covered by the State. Moreover, all of the medical examinations, consultations and treatment in the penitentiary facilities was provided to the author free of charge.**³⁶

51. **On 10 February 2022 the complainant was released from the pre-extradition detention following the decision of the Tbilisi City Court dated 10 February 2020 on the replacement of imprisonment with bail as the Measure of Restraint.**³⁷

1. *Preliminary Objections*

52. At the outset the Government submit that the author's complaints with regard to the medical treatment during the pre-extradition detention shall be dismissed as inadmissible for the following reasons:

53. The Government **draw the Committee's attention to the following proceedings initiated by the complainant at domestic level with regard to the pecuniary and non-pecuniary damages allegedly suffered as a result of the (alleged) insufficient medical care during the whole period**

³⁶ See, the Government's observations, §§ 12-19.

³⁷ See, the Government's observations, Annex 18.

of pre-extradition detention. It shall be emphasized that there is no indication in the author's lengthy submissions of these proceedings, described below.

54. Namely, on 17 June 2019 the author applied to the Tbilisi City Court against Special Penitentiary Service of the Ministry of Justice of Georgia *inter alia* requesting compensation for the damages allegedly suffered as a result of insufficient medical treatment at Penitentiary Facility N 8.³⁸ On 18 June 2019 the court rendered a decision on the deficiency of the claim since the complainant failed to provide any piece of evidence substantiating the factual circumstances presented in the complaint.³⁹ On 9 September 2019 the author presented renewed application.⁴⁰ However he failed to provide accurate information with regard to the damages requested - whether he was claiming pecuniary or non-pecuniary damages. Thus, on 13 September 2019 the court rendered another decision on the deficiency of the claim.⁴¹ On 26 March 2021 the complainant presented the statement before the court specifying the nature of the damages (he further increased the amount of damages claimed).⁴² On 1 April 2021 the complaint was admitted.⁴³ On 10 February 2022 an advance first hearing was held.⁴⁴

55. Moreover, on 23 February 2022 the author filed another specified/completed complaint before the Tbilisi City Court against the Ministry of Justice of Georgia and Special Penitentiary Service of the Ministry of Justice of Georgia *inter alia* requesting compensation for the material and moral damages allegedly suffered as a result of the insufficient medical treatment in the whole period of 16 May 2019 to 20 February 2020.⁴⁵ On 28 February 2022 the court rendered a decision on the deficiency of the claim.⁴⁶ On 21 March 2022 the complainant remedied the deficiency.⁴⁷ On 24 March 2022 the complaint was admitted.⁴⁸ **The case is pending before the Tbilisi City Court.**

56. **The case is in its active phase of adjudication.**

³⁸ ANNEX 11 - Application lodged before the Tbilisi City Court dated 17 June 2019.

³⁹ ANNEX 12 - Decision of the Tbilisi City Court dated 18 June 2019.

⁴⁰ ANNEX 13 - Application lodged before the Tbilisi City Court dated 9 September 2019.

⁴¹ ANNEX 14 - Decision of the Tbilisi City Court dated 13 September 2019.

⁴² ANNEX 15 - Statement lodged before the Tbilisi City Court dated 26 March 2021.

⁴³ ANNEX 16 - Decision of the Tbilisi City Court dated 1 April 2021.

⁴⁴ ANNEX 17 - Record of the preparation hearing dated 10 February 2022.

⁴⁵ ANNEX 18 - Application lodged before the Tbilisi City Court dated 23 February 2022.

⁴⁶ ANNEX 19 - Decision of the Tbilisi City Court dated 28 February 2022.

⁴⁷ ANNEX 20 - The application lodged before the Tbilisi City Court dated 21 March 2022.

⁴⁸ ANNEX 21 - Decision of the Tbilisi City Court dated 24 March 2022.

57. Considering above the Government wish to draw the Committee's attention to the following circumstances.

58. **First of all**, as it is evident from above, the proceedings with regard to the issues raised in the instant communication is being adjudicated at a national level. Thus, the author of the communication **has not exhausted effective and available domestic remedies in Georgia and prematurely submitted his complaint before the Committee.** According to Article 5 (2) (b) of the Optional Protocol to the International Covenant on Civil and Political Rights: "*The Committee shall not consider any communication from an individual unless it has ascertained that: (b) the individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.*" Moreover, Article 2 of the Optional Protocol requires that individuals who submit communications to the Committee must have exhausted all available domestic remedies.⁴⁹ It is well-established in the Committee's case law that the purpose of the requirement of Article 5 (2) (b) of the Optional Protocol is to preclude the Committee from considering any communication, unless the complainant has exhausted all available domestic remedies.⁵⁰

59. **Secondly**, the complainant concealed the afore-mentioned important facts of his case in an attempt to mislead the Committee during the consideration of his communication. There is no indication in the author's submissions that there is ongoing national proceedings with respect to the compensation for the material and moral damages allegedly suffered as a result of the insufficient medical treatment during the pre-extradition proceedings.

60. Under Article 3 of the Optional Protocol and Rule 99 (c) of the Committee's Rules of Procedure: "*The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.*"

61. The Committee has noted that, in order for there to be abuse of the right to raise a matter before the Committee the submission of a matter to the Committee must amount to malice or a

⁴⁹ General Comment No. 33, Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, § 5.

⁵⁰ *S.S.F. et al. v. Spain*, Communication No. 2105/2011, CCPR, § 8.3.

display of bad faith or intent at least to mislead, or be frivolous.⁵¹ Stemming from the above, the Respondent Government firmly believe that the communication constitutes an abuse of the right of submission under Article 3 of the Optional Protocol.

2. *Medical services provided to the author at the Penitentiary Facility N 8*

62. In his additional submission the author reiterates that he was not provided with proper medical treatment at the Penitentiary Facility N 8. The only position adduced by the complainant in reply to the Government's submissions are the reiteration of the unsubstantiated allegations already addressed by the Government.

63. In particular, the complainant alleges the following:

- Considering his medical condition the authorities after being introduced with his anamnesis (a patient's account of their medical history) were obliged to immediately transfer him from Penitentiary Facility N 8 to Penitentiary Facility N 18 (No.18 Prison Hospital);
- Conditions existing in the Penitentiary Facility N 8 did not comply with the relevant sanitary standards and treatment received therein was insufficient;
- The complainant, upon placement in Penitentiary Facility N 8, did not undergo proper medical screening, *inter alia*, with regard to the tuberculosis;
- The complainant was left in a vulnerable condition when medical staff of Penitentiary Facility N 8 delayed drug treatment.

64. In response to the author's **first and second arguments** the Government submit the following:

65. The author was transferred to the Penitentiary Facility N 8 on 17 May 2019, after he underwent laparoscopic cholecystectomy (surgical excision of gallbladder) on May 16, 2019. **He was medically examined promptly on the same day.**⁵²

66. According to the Medical Reference submitted from the hospital (Form 100/a), the recommendation to continue further treatment of the complainant specifically in stationary

⁵¹ *Rizvan Taysumov, Salman Temirbulatov, Khamit Barakhayev, Arzu Yusupov, Magamed Alarkhanov and Tamerlan Yashuev v. the Russian Federation*, communication no. 2339/2014, CCPR, § 8.2; *Eglė Kusaitė v. Lithuania*, communication no. 2716/2016, CCPR, § 7.4.

⁵² ANNEX 22 - Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia dated 8 September 2022.

conditions (in the hospital - which in the present case would have been Prison Hospital N18) was not issued. His general condition corresponded to the severity of the surgery he underwent (it should be noted that the surgery performed by the laparoscopic method classifies as the so-called “*less invasive surgery*”), was satisfactory and thus it was completely permissible to manage the patient’s condition on an outpatient-ambulatory manner. The sanitary and hygienic conditions existing in the Penitentiary Facility N 8 fully met the relevant standards and the author could be fully managed under the supervision of the medical staff working in the facility.⁵³

67. In an ordinary, standard situation, each individual having similar medical condition and having undergone similar surgery, continues treatment at home under ambulatory supervision. The author’s (chronic) diseases (indicated in his anamnesis - diabetes mellitus, arterial hypertension), which were not **in the stage of exacerbation** (as of 17 May 2019) - **did not constitute a necessary condition for hospitalization.**⁵⁴

68. **Thus there existed no medical ground for transferring the author to Penitentiary Institution N 18** (No.18 Prison Hospital), which was further illustrated by the fact that the author received all the necessary medical treatment in the Penitentiary Facility N 8.⁵⁵

69. In particular, upon being admitted to the Penitentiary Facility N 8, the author underwent an initial medical examination and initial mental health screening. The doctor on duty gave a recommendation - to consult a cardiologist, an endocrinologist and a surgeon.⁵⁶

70. All of the recommendations rendered were duly implemented by the medical staff of N8 facility:

- Aseptic treatment of the wound by the surgeon was performed on 20 May 2019, 22 May 2019, 24 May 2019, 27 May 2019;
- On the 14th day after the surgery (31 May 2019), the stitches were removed by medical staff (the postoperative period **was not characterized** with complications, the wound healed with initial tension);

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

- The author was medically inspected by a family physician for multiple times on 20 May 2019, 23 May 2019, 18 June 2019, etc.;
- Conservative treatment was carried out according to the prescription of the consulting specialist;⁵⁷
- The author was further examined by endocrinologist and cardiologist and underwent numerous lab tests (blood tests, biochemical blood test, coagulation, etc.). Based on this assessment, the author was given appropriate medical treatment and underwent all the necessary laboratory-instrumental examinations;⁵⁸
- The author was given special nutrition for diabetes, but, nonetheless, he violated the prescribed diet. Despite warnings by the medical staff, he continued eating during night-time.⁵⁹

71. The complainant yet again complains of insufficient medical treatment in detention. He complains of the conditions in the cell and describes it as “*extremely unsanitary*”. Despite stating the latter twice in his additional comments, the author does not specify what is meant under “*unsanitary*” and instead of clarifying how the conditions in the cell were not apposite to the international standards (such as United Nations General Assembly resolution №37/194 and Nelson Mandela Rules brought forth by him in numerous paragraphs of his additional observations), he proceeds with unsubstantiated accusations without providing a single piece of evidence or even argument in that regard.

72. Contrary to the author’s submissions, the Government refer to the “*Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*”. In its Report, the CPT after follow-up visit to Prison No. 8 in Gldani (Tbilisi) no noteworthy problems were observed as regards access to a shower and the provision of bedding, hygiene items and food. Moreover, according to the Report - Prison No. 8 had 26 full-time and 44 full-time nurses. There were five psychologists and out of all other Penitentiary Facilities, only Prison No. 8 had full-time psychiatrists on its payroll (three doctors). Finally, the CPT further noted that number of prisoners requested transfer to Prison No. 8 and 17 prisoners had been transferred to Prison No. 8 upon their own request in the period

⁵⁷ *Ibid.*

⁵⁸ See, the Government’s observations, §13.

⁵⁹ *Ibid.*

between 1 January and 1 September 2018.⁶⁰ Thus, Prison No. 8 met all the international standards even before the complainant's placement in the establishment.

73. **In response to the author's third argument**, concerning the medical screening, the Government submit the following.

74. On 17 May 2019, upon being admitted to Penitentiary Facility N 8, according to the existing protocol, the author underwent initial medical examination (despite the fact that a complete medical form N100/a filled out on the same day was submitted from the hospital covering all the major aspects of the complainant's health condition) and a special questionnaire was filled out to detect probable case of tuberculosis (which is one of the component of the initial medical examination and the outpatient medical card).⁶¹

75. The afore-mentioned questionnaire is drafted by the International Committee of the Red Cross (ICRC) in accordance with the recommendations of the World Health Organization (WHO) and constitutes one of the constituent element of tuberculosis screening. The questionnaire includes the anamnestic, symptomatic labour/strength index sections as well as final section filled by the attending physician. The questionnaire is tested and successfully used to identify potential risk factors and outcomes of tuberculosis. The questionnaire contains 9 questions, the survey process can be conducted in a short period of time, which is one of its advantages.⁶²

76. It is worth noting that in 2011 Memorandum of Cooperation was signed between the National probation Agency, Ministry of Health, Labour and Social Affairs of Georgia and the National Centre of Tuberculosis and Lung Diseases - with regard to the permanent tuberculosis screening in Penitentiary Establishments. On 31 December 2016 joint Decree of the Ministry of Probation and the Ministry of Health, Labour and Social Affairs of Georgia was issued on the measures of control of tuberculosis in Penitentiary Establishments.⁶³

77. In the instant case, the author was not considered as suspicious for a possible mycobacterial infection, therefore the deeper examination was not conducted at that stage (there was no reason to conduct additional clinical and laboratory studies). **However, subsequently, the complainant was**

⁶⁰ Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), available at: <https://rm.coe.int/1680945eca>

⁶¹ ANNEX 22 - Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia dated 8 September 2022.

⁶² *Ibid.*

⁶³ *Ibid.*

repeatedly subjected to various types of examinations (inpatient, on-site outpatient) including advanced technological examinations in accordance with the tuberculosis screening standards, which finally ruled out the possibility of the tuberculosis (both active and latent).⁶⁴

78. Thus author's allegations with regard to his medical screening is completely unsubstantiated.

79. As for his **fourth argument**, the complainant submits that when he was admitted to the Penitentiary Facility N 8 he was left in a vulnerable condition due to delayed drug treatment. Apart from the complaints that have already been fully addressed by the Government in their initial observations, the complainant bases his new piece of claim solely on the fact that the doctor on duty did not provide prescribed drugs to him for **three days** after he underwent laparoscopic cholecystectomy (surgical excision of gallbladder) on 16 May 2019.⁶⁵ The author further provides erroneous information regarding the factual event in question and speculates that the Government failed to provide him with adequate medical treatment for five days. In reality, the number of days he spent without treatment did not exceed three days, namely, the delay lasted from 18th to 20th of May, 2019.⁶⁶

80. Besides, as clarified in the initial observations, the Government reiterate that the misdemeanour occurred due to the busy work schedule and lack of time of the doctor in charge – Z.B. and the conduct did not go unpunished, since Z.B. was sanctioned for the misconduct in question.⁶⁷ Additionally, as it is clear from the initial observations, contrary to the claims made by the author in his additional comments, namely that he was “*on the verge of death*” - **his health was not negatively affected in any way and no post-operational complications were detected either.**⁶⁸

81. In fact, on 20 May 2019, the author was re-examined by the doctor of Penitentiary Facility N 8 who concluded that his health condition was positive and no post-operational complications were detected. **Under these circumstances, minor delay of post-operational drug treatment did not have any negative impact on his health.**

⁶⁴ *Ibid.*

⁶⁵ *See*, the Government's initial observations, Annex 24.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

82. Since the obligation of State parties to respect and ensure the right to life extends to **reasonably foreseeable threats** and life-threatening situations that can result in loss of life,⁶⁹ the Government submit that no violation can be claimed solely based on the events of 18-20 May provided above, as no threat, let alone a foreseeable one has existed with regard to the complainant's life.

83. In this connection, the European Court of Human Rights ("the ECtHR") has considered that where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, matters such as an error of judgment on the part of a health professional or negligent coordination among health professionals in the treatment of a particular patient cannot be considered sufficient to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the European Convention on Human Rights ("the ECHR").⁷⁰

84. Finally, the complainant further argues that he underwent "*a severe moral suffering*" due to the aforementioned delay and experienced "*a sense of fear for myself and loved ones, a burning sense of injustice and hopelessness.*" In response, the Government relying on the case-law of the ECtHR, stress that moral suffering is sustained, if it is demonstrated in any of the following forms: evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity.⁷¹ In the given case, there is no evidence of the trauma or suffering sustained by the author on any of the objective grounds, since the author received a comprehensive examination as well as clinical treatment, including numerous surgeries, right after the incident in question and throughout the period of the pre-extradition detention.⁷² Therefore, claiming "*a severe moral suffering*" on the grounds of the delay of receiving medical treatment for three days, when no negative consequences have followed, is clearly "*artificial complaint*".

⁶⁹ General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR, § 7.

⁷⁰ *Powell v. the United Kingdom*, application no. 45305/99, judgment of 4 May, 2000 (dec.); *Dodov v. Bulgaria*, application no. 59548/00, judgment of 17 January, 2008, § 82; *Kudra v. Croatia*, application no. 13904/07, judgment of 3 July, 2012, § 102; *Lopes de Sousa Fernandes v. Portugal*, application no. 56080/13, judgment of 15 December, 2015, § 187.

⁷¹ *Elsholz v. Germany*, application no. 25735/94, judgment of August, 2000, § 70; *Selmouni v. France*, application no. 25803/94, judgment of May, 1999, § 123; *Smith and Grady v. the United Kingdom*, application nos. 33985/96 and 33986/96, judgment of September, 2000, § 12.

⁷² See, the Government's initial observations, Annex 22.

3. *Medical services provided to the complainant at the Penitentiary Facility N 6*

85. In his additional submission the author complains with regard to the alleged insufficient treatment received at Penitentiary Facility N6. He advances the argument that he was placed in the solitary cell unlawfully since due to his health conditions, being placed in an isolated cell is contrary to Georgian legislation, international standards and Mandela Rules.

86. In response, the Government reiterate the position articulated in their initial observations and clarify that the author in his initial position complained of the presence of other inmates in his cell, while on page 27 of the initial observations and throughout his additional comments, he shows strong discontent with an isolated cell in the Penitentiary Facility N 6. Furthermore, as specified in the letter of the Special Penitentiary Service, the author was transferred from Penitentiary Facility N 8 to the Penitentiary Facility N 6 due to prison overcrowding and he was provided with appropriate conditions.⁷³

87. Moreover, the Government submit that any chronic disease (including complainant's condition) in the non-aggravation phase, i.e. in the compensatory stage - is managed mainly on an outpatient basis, only in case of exacerbation (decompensation) the question of hospitalization of the patient in the clinic arises. The medical unit/point of the Penitentiary Facility N6 is staffed by certified medical personnel and functions according to the principle of the primary healthcare unit. The detained person/patient is provided with constant, dynamic medical supervision, all necessary laboratory tests and consultation of a doctor-specialist of various profiles are guaranteed. In case of objective need, the patient is referred (transferred) either to the N 18 Prison Hospital or to the civil sector clinic. The mentioned approach was upheld with regard to the author as well. In cases of deterioration of his health condition and for the purpose of conducting the necessary examinations, he was taken to different hospitals for the several times and after the completion of the treatment and the stabilization of his condition, he was returned to the Penitentiary Facility under ambulatory supervision. During 9 months of imprisonment the complainant spent over 6.5 months in civil clinics and N 18 facility. Based on the above-mentioned author's transfer the Penitentiary Facility N 6 was medically acceptable and safe.⁷⁴

⁷³ *Ibid*, Annex 29.

⁷⁴ ANNEX 22 - Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia dated 8 September 2022.

88. It is further clarified that complainant's placement in a single cell (and **not** in a solitary cell) in the Penitentiary Facility N 6 was fully in accordance with the national legislation.⁷⁵

89. In particular, under Article 14 (1) of the Rules of Procedure adopted under Decree N108 of the Ministry of Corrections and Probation of Georgia dated 27 August 2015, the following individuals are placed in Penitentiary Facility N 6: high risk convicts as well as defendants who have been sentenced to imprisonment by the court as a preventive measure and/or transferred to a prison institution in accordance with Article 55 of the Prison Code. In accordance with paragraph 2 of the same provision, the accused is placed in a special cell in the institution, where he is monitored and controlled by visual and/or electronic means in accordance with Article 54 of the Prison Code.⁷⁶ Taking into account all of the above, placing the complainant in a single cell in Penitentiary Facility N 6 is in full compliance with the requirements defined by the legislation of Georgia.

90. The Government further wish to make reference to the case-law of the Committee. Contrary to *Lantsova v. Russian Federation*, where the author's son received medical care only during the last few minutes of his life and was refused care during the preceding days,⁷⁷ the Mr Bandiukov received medical treatment throughout the entire period of detention. Besides, no fatal deterioration has ever occurred and the State has at all times kept track of health of the complainant taking all the appropriate measures to protect his life.⁷⁸

91. In this connection, the Government likewise make reference to *Tarariyeva v. Russia* adjudicated by the ECtHR, where the latter found fault in the medical treatment administered to a person deprived of his liberty where authorities, *inter alia*, despite been fully aware of his medical issues, failed to properly examine and provide medical treatment to a convict with chronic illnesses.⁷⁹ Contrary to *Tarariyeva*, it is evident from the Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia dated 5 March 2021 that the medical treatment provided to the author throughout the timeframe in question was comprehensive and of high-quality. It is evident from the facts of the case, not challenged by the complainant, that the Respondent Government was at all times aware of the medical condition and provided full and comprehensive treatment according to his needs. Namely, the author was provided with clinical treatment, hospital care, high-tech and

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), § 9.2.

⁷⁸ See, the Government's initial observations, Annex 22.

⁷⁹ *Tarariyeva v. Russia*, application no. 4353/03, Judgment of 12 December, 2006, §§ 88-89

accurate lab services, medical surgery, pharmacotherapy, full body screening and consultations of highly qualified medical personnel of leading Georgian medical-diagnostic institutions.⁸⁰ In the course of nine months of his pre-extradition detention, the author underwent several surgical procedures, received constant medical supervision and top-quality treatment from professional medical specialists, among others, a cardiologist, neurologist, traumatologist, endocrinologist, urologist, dermatologist, rheumatologist, neurosurgeon and epileptologist completely free of charge.⁸¹ In fact, all of the expenses for his complex clinical treatment amounting to 16,221 GEL was covered by the State – a fact intentionally concealed by the author both in his initial application and additional comments.⁸² In addition, medical examinations, consultations and treatment in the penitentiary facilities was also provided for free.⁸³ Hence, medical treatment provided to the author **was in no way insufficient.**

92. **Detailed information with regard to the treatment received by the complainant in the period of his pre-trial detention is illustrated in Annex 23 of the present document.**

4. *Complainant's presence at the court hearings*

93. In his additional submissions the complainant further submits that medical staff at the Penitentiary Institutions neglected his health conditions and allowed him to attend the court hearings.

94. In response the Government submit that first of all, the complainant could provide complaint with respect to this issue on a domestic level. Secondly, on each occasions the complainant, before attending the court proceedings, was examined by a doctor. According to the record in the medical history, there was identified no impediment, objective medical factor or parameter of contraindication to participation in the court process. Accordingly, no recommendation was made regarding the impossibility of attending the trial. The instant worsening of the complainant's condition during the court hearings was caused by the nervous and emotional tension during the hearings and was completely unforeseeable.⁸⁴ Moreover, during each incident the complainant was

⁸⁰ See, the Government's initial observations, Annex 22.

⁸¹ *Ibid.*

⁸² See, the Government's initial observations, Annex 22.

⁸³ *Ibid.*

⁸⁴ ANNEX 22 - Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia dated 8 September 2022.

afforded proper emergency care, which is illustrated in his additional submissions, and after the incidents further continued his treatment at prison hospital.⁸⁵

95. **To sum up**, in response to the allegations made with regard to Article 6 of the Covenant, the Government further make note that the complainant was not denied access to emergency treatment at any time throughout the period of his detention. Denial of life-saving emergency treatment takes place when: firstly, the acts and omissions of the health-care providers go beyond a mere error, where despite being fully aware of the respective risks the medical assistance is not provided; secondly, the impugned dysfunction has to be objectively and genuinely identifiable as systemic or structural in order to be attributable to the State authorities; thirdly, there has to be a link between the impugned dysfunction and the harm sustained; and finally, the dysfunction must result from the failure of the State to meet its obligation to provide a regulatory framework in the broader sense.⁸⁶ In the present case, not only has the author not sustained any type of physical injury due to the conduct of the State, but the State has met its obligation to provide a comprehensive legislation regulating its obligation with respect to the right to life and acted according to the law to ensure the health and safety of the author.

96. Lastly, the complainant yet again failed to give any explanation, evidence or arguments regarding his claim on the alleged violation of Article 2 of the Covenant. Hence, the Government will not comment on this matter.

C. Alleged violation of Article 17 of the ICCPR

97. The Government further reiterate that there was not a single argument presented by the complainant in regards to Article 17 of the Covenant, which protects the right to privacy, family, home and correspondence. Thus, the Government will refrain from commenting upon this matter.

IV. CONCLUSION

98. Having regard to the Government's above submissions together with their initial observations of 6 September 2021, the Committee is respectfully requested to adjudge and declare that:

⁸⁵ *Ibid.*

⁸⁶ *Lopes de Sousa Fernandes v. Portugal*, §§ 191-196.

- The complaints under Articles 2, 6, 9, 10, 13, 14 and 17 of the Covenant are manifestly ill-founded and inadmissible in accordance with Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights;
- The complaints are inadmissible for non-exhaustion of domestic remedies under Article 5 (2) (b) of the Optional Protocol to the Covenant;
- The complaint constitutes an abuse of the right of submission and is inadmissible within the meaning of Article 3 of the Optional Protocol to the Covenant;
- The complaints are *ratione materiae* incompatible with Articles 2, 6, 10, 14 and 17 of the Covenant and inadmissible under Article 3 of the Optional Protocol to the Covenant;
- In case the Committee decides otherwise, there has not been a violation of Articles 2, 6, 9, 10, 13, 14 and 17 of the Covenant.

LIST OF ANNEXES

ANNEX 1 - Official Letter of the Migration Department of the Ministry of Internal Affairs of Georgia dated 28 July 2022 and Report of the Migration Department on the application of A. Bandiukov dated 27 May 2022;

ANNEX 2 - The complaint of the author dated 21 July 2022;

ANNEX 3 - Decision of the Tbilisi City Court of 22 February 2020 on the author's Motion to Deposit the Immovable Property as Bail instead of a Monetary Sum;

ANNEX 4 - Decision of the Tbilisi City Court dated 18 August 2021;

ANNEX 5 - Decision of the Tbilisi Court of Appeals dated 25 August 2021;

ANNEX 6 - Decision of the Tbilisi City Court dated 9 October 2021;

ANNEX 7 - Decision of the Tbilisi Court of Appeals dated 15 October 2021;

ANNEX 8 - Decision of the Tbilisi City Court dated 13 May 2022;

ANNEX 9 - The appeal dated 14 May 2022;

ANNEX 10 - Decision of the Tbilisi Court of Appeals dated 20 May 2022;

ANNEX 11 - Application lodged before the Tbilisi City Court dated 17 June 2019;

ANNEX 12 - Decision of the Tbilisi City Court dated 18 June 2019;

ANNEX 13 - Application lodged before the Tbilisi City Court dated 9 September 2019;

ANNEX 14 - Decision of the Tbilisi City Court dated 13 September 2019;

ANNEX 15 - Statement lodged before the Tbilisi City Court dated 26 March 2021;

ANNEX 16 - Decision of the Tbilisi City Court dated 1 April 2021;

ANNEX 17 - Record of the preparation hearing dated 10 February 2022;

ANNEX 18 - Application lodged before the Tbilisi City Court dated 23 February 2022;

ANNEX 19 - Decision of the Tbilisi City Court dated 28 February 2022;

ANNEX 20 - The application lodged before the Tbilisi City Court dated 21 March 2022;

ANNEX 21 - Decision of the Tbilisi City Court dated 24 March 2022;

ANNEX 22 - Letter of the Special Penitentiary Service of the Ministry of Justice of Georgia dated 8 September 2022.