



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

FIFTH SECTION

CASE OF KHACHAPURIDZE AND KHACHIDZE v. GEORGIA

(Applications nos. 59464/21 and 13079/22)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) and (d) • Fair hearing • Defence in person • Examination of witnesses • Obtain attendance of witnesses • Procedural rights of first two applicants adversely affected by a combination of deficiencies and to such an extent as to undermine overall fairness of proceedings against them • Domestic courts' failure to give sufficient reasons for their refusal to hear a main defence witness • Reliance on statements of absent witnesses, whose evidence carried significant weight, without sufficient counterbalancing factors to compensate for handicaps caused to the defence • Insufficient reasons for complete exclusion from remaining trial of applicants for disorderly conduct • As applicants attending via remote connection, in principle, it should have been possible to limit allegedly disruptive effect of their behaviour while ensuring their right to hear and follow proceedings • Appeal hearing did not remedy trial defects

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 August 2024

FINAL

29/11/2024

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

In the case of Khachapuridze and Khachidze v. Georgia,

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

Mattias Guyomar, *President*,
Carlo Ranzoni,
Mārtiņš Mits,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
Françoise Tulkens, *ad hoc judge*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 59464/21 and 13079/22) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Georgian nationals, Ms Tamar Khachapuridze, Mr Kakhaber Khachidze and Mr Davit Khachidze (“the applicants”), on the dates indicated in the appendix;

the decision to give notice to the Georgian Government (“the Government”) of the complaints under Article 3, Article 6 §§ 1 and 3 and Article 8 of the Convention and to declare inadmissible the remainder of the applications;

the parties’ observations;

Considering that Mr Lado Chanturia, the judge elected in respect of Georgia, was unable to sit in the case (Rule 28) and that the President of the Chamber decided to appoint Ms Françoise Tulkens to sit as an *ad hoc* judge (Rule 29);

Having deliberated in private on 9 July 2024,

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

INTRODUCTION

1. The case concerns the first and second applicants’ alleged inability, in the criminal proceedings against them, to obtain the attendance of witnesses on their behalf under the same conditions as witnesses against them, the domestic courts’ reliance on statements of absent witnesses as evidence, and the above-mentioned applicants’ removal from the trial. It also concerns the alleged ineffectiveness of a criminal investigation into the third applicant’s injuries. The first and second applicants relied on Article 6 §§ 1 and 3 of the Convention, while the third applicant relied on Articles 3 and 8 of the Convention.

THE FACTS

2. The first applicant is Ms Tamar Khachapuridze, who was born in 1970; the second applicant is Mr Kakhaber Khachidze, who was born in 1969; and the third applicant is Mr Davit Khachidze, who was born in 2003. The first and second applicants are spouses, and the third applicant is their son. They were represented by Mr Y. Boychenko, a lawyer practising in Strasbourg.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. INCIDENT OF 26 AUGUST 2016

5. On 26 August 2016 two reports were made to the police about an incident at Gonio Beach near the city of Batumi. The first report was made by the first applicant, who complained that Judge G.M., the then President of the Tbilisi City Court, had verbally and physically assaulted her and her son (the third applicant). The second report was made approximately forty minutes later by G.M., who complained that he had been the victim of a physical and verbal assault by the first applicant and her family.

II. CRIMINAL PROCEEDINGS AGAINST THE FIRST AND SECOND APPLICANTS

A. Opening of a criminal investigation

6. A criminal investigation was opened the same day. Initially, it was based on Article 125 of the Criminal Code (“battery” – see paragraph 81 below), but later that day it was reclassified under Article 365 §§ 3 and 5(a) of the Criminal Code (“threats or violence with respect to legal proceedings, the investigation or conduct of the defence” – *ibid.*).

7. In the early hours of 27 August 2016 the first and second applicants were arrested and charged under Article 365 of the Criminal Code. On 28 August 2016 the second applicant was released on bail while the first applicant was placed in pre-trial detention. She was released on bail on 21 September 2016.

B. Evidence obtained by the authorities

8. Immediately following the incident, on 26 and 27 August 2016, the investigating authorities interviewed witnesses, with the exception of the third applicant for whom a forensic medical examination was ordered (see paragraph 63 below).

9. G.M. stated that in 2015 he had heard an administrative case brought by the first applicant and had delivered a judgment unfavourable to her. Afterwards, she had started to make insulting comments about him on social media. As to the incident at the beach, he had been on holiday with his wife and two children, accompanied by a friend and his family. According to G.M., at the time of the incident he was in the sea with his children, who could not swim independently. The first applicant approached him, spat at him and began shouting insults and threats. She claimed that he was unworthy of being a judge. She was soon joined by the second and third applicants, who started insulting him and attempting to hit him. He was hit several times. V.B. (G.M.'s friend) and others had to intervene to restrain them. G.M. stated that the second applicant had claimed that the family had been ruined by his decision in their case. Fearing for the safety of his children and wife, G.M. was forced to leave the area. M.K. (G.M.'s wife) and V.B. made similar statements.

10. The first and second applicants protested their innocence, claiming that G.M. had sworn at the first applicant, triggering the incident. They claimed they had not hit or threatened G.M., and that the third applicant had been hit and injured by G.M.

11. Six eyewitnesses, whose statements were later read out at the trial (see paragraph 50 below), were questioned by an investigator. Of these six, three were Georgian nationals (T.A., Z.Tch., and B.Tch.), one was an Armenian national (L.A.) and two, a husband and wife, were Russian nationals (A.G. and L.G.). The latter three witnesses were questioned with the help of an interpreter; they all stated that they were on holiday in Georgia. The witness interview reports did not contain their telephone numbers; the reports on the two Russian nationals contained personal identification numbers and detailed addresses, and the report on the Armenian national contained the city and neighbourhood in which the witness lived. The three witnesses were all warned that they could be summoned to appear before a magistrate judge.

12. N.G., a paramedic and M.M., a lifeguard, also gave statements (see paragraphs 48-49 below).

13. Two other witnesses gave statements. Witness D.G. stated that he had heard noise and seen a commotion on the beach from a bungalow. When he approached the scene, a woman and a boy were insulting a man. He did not witness any physical assault. Witness A.D. stated that he had gone to the beach after breakfast and seen a woman leaving the beach shouting something. He later learned of the incident. These statements were not read out at the trial. A request by the applicants to compel these witnesses to appear and testify was dismissed (see paragraph 39 below).

14. On 26 August 2016 M.K. submitted two video-recordings she had made with her mobile phone to the investigating authorities. On 6 October 2016 they were admitted into evidence by the Khelvachauri Regional Court.

15. The first video-recording available in the case file shows all three applicants and G.M. standing in the water, close to the shore. Some holidaymakers can be seen in the water in the background. The recording begins with the second applicant standing close to G.M. and actively shouting and gesticulating at him. The first and third applicants are standing nearby. The second applicant appears to swear at G.M. For a second, a bystander blocks the view, following which G.M. can be seen stumbling in the water. Immediately afterwards, the third applicant, who was thirteen years old at the time, makes a rapid charge towards G.M., who raises his hands, seemingly in self-defence. The third applicant appears to hit G.M., swearing at him. G.M.'s simultaneous right-hand movement suggests that he could have hit the third applicant on the left side of his face. The second applicant then grabs the third applicant and pulls him away from G.M. The first applicant immediately moves in G.M.'s direction, waving her hand at him, causing the water to splash him, and says some inaudible phrases. She is pulled away by the second applicant, who can be seen attempting to hold her back. The third applicant breaks free and, while hurling insults at G.M. and attempting to charge at him, is then restrained by two other individuals, one of whom appears to be G.M.'s friend V.B. It appears that G.M. swears at the third applicant at that point. The video ends with a child crying (apparently the first and second applicants' daughter) and G.M. coming out of the water, while two individuals are actively restraining the third applicant.

16. The second video-recording shows the first applicant sitting on a sunbed surrounded by the second and third applicants and two young children. She yells "I will cut him with a knife if given the opportunity, easily." A man's voice (either that of V.B. or G.M.) can be heard saying "that's up to you." She then says "bastard". The first applicant addresses the person filming her (apparently M.K.) saying, among other things, that she can keep filming.

C. Proceedings before the first-instance court

17. On 28 August 2016 the Khelvachauri Regional Court (hereinafter also "the trial court"), sitting in a single-judge formation, set 18 October 2016 as the date for the first pre-trial hearing in the applicants' case. The parties were ordered to exchange, no later than five days before that hearing, information regarding all evidence which they were planning to rely on during the trial. As it appears from the case-file material, the list of evidential material submitted by the first and second applicants indicated the third applicant as a witness for the defence.

18. As it appears from the case file material, at least three pre-trial hearings were held with the applicants' and their lawyers' participation on 18 October, 1 November, and 30 November 2016. The trial court considered various applications lodged by the parties, including those concerning the

admissibility of evidence. The content of the pre-trial hearings of 18 October and 1 November is not fully clear. It appears that on the latter date the first and second applicants submitted requests to have certain material admitted into evidence. The matter was addressed during the pre-trial hearing of 30 November 2016 (see paragraph 19 below).

19. During the pre-trial hearing of 30 November 2016 the trial court addressed, among other issues, the first and second applicants' request to admit into evidence the written record (dated 11 October 2016) of the third applicant's questioning which had been carried out by a defence lawyer specialising in youth justice. The trial court rejected the request which it found to have been submitted in breach of procedural rules. Specifically, the record had been drawn up in respect of a witness by an individual who was not a party to the proceedings against the first and second applicants. The record was therefore inadmissible evidence. On that date the trial court admitted into evidence, despite the prosecutor's objections, other material (mostly medical documents and various media material) submitted by the first and second applicants.

20. On the same date – 30 November 2016 – the trial court concluded the pre-trial stage of the proceedings and the case was set down for trial on 9 December 2016. The content of the hearing of 9 December 2016 and the extent of the applicants' participation in it are unclear.

21. In 2017 the applicants left Georgia and settled in the United Kingdom (and were subsequently granted refugee status). On an unspecified date the trial court granted a request by the first and second applicants to participate in the trial remotely, by means of a video link.

22. It appears from the case-file material that thirteen trial hearings were held in total. In addition to the one of 9 December 2016 (see paragraph 20 above), twelve trial hearings appear to have taken place on the following dates in 2018: 30 April; 10, 14 and 22 May; 1, 12, 13 and 22 June; and 6, 13, 16, and 23 July. The case file material contains somewhat limited information regarding these hearings. The first and second applicants participated in the hearings by means of the video link until their removal on 22 June 2018 (see paragraphs 31-35 below). Their two lawyers were personally present at the hearings.

23. The trial court warned the parties before the start of each hearing that they had to maintain order and comply with its instructions, and that contempt of court would result in sanctions.

24. On 10 May 2018 three investigators were heard, and the trial court granted the first and second applicants' application to have the forensic report concerning the third applicant's injuries (see paragraph 63 below) obtained and admitted into evidence.

25. On 14 May 2018 two other investigators and N.G. gave evidence.

26. On 1 June 2018 M.M. was heard and video evidence was assessed.

27. On that same date the prosecutor requested that the six eyewitness statements given at the investigation stage (see paragraph 11 above) be read out at the trial. According to the prosecutor, witnesses A.G. and L.G. lived in the Russian Federation, while witness L.A. lived in Armenia so “their appearance before the court would [have] involve[d] an unreasonable effort.” As regards the other three witnesses, who were Georgian nationals, it was noted that B.Tch. could not be located, that T.A. had recently given birth to a child and could not appear at the trial and that the whereabouts of Z.Tch., who had crossed the border on 11 May 2018, were unknown.

28. The applicants disagreed, arguing that, contrary to the procedural legislation in force, the non-Georgian witnesses had not been summoned to appear before a magistrate judge, despite it being obvious that they would leave Georgia. As regards the other three witnesses, the applicants stated that the prosecution had not made all reasonable efforts to locate them. Relying, *inter alia*, on the case of *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, ECHR 2011), the first and second applicants requested that the statements of the absent witnesses not be read out.

29. On 22 June 2018 the trial court granted the prosecutor’s request to have the six eyewitness statements given at the investigation stage read out at the trial. It held that Article 114 of the Code of Criminal Procedure (“the CCP” – see paragraph 82 below) provided that a party to the proceedings had a right, rather than an obligation, to have a witness examined before a magistrate judge. It then noted that, in any event, the reading out at trial of witness statements given to an investigator or evidence given before a magistrate judge was governed by Article 243 of the CCP (*ibid.*). Pointing out that the statements of absent witnesses could not be the sole basis for a conviction, and citing the case of *Al-Khawaja and Tahery* (cited above), the trial court found that the conditions for reading out the statements of the six witnesses in question had been met. Specifically, witnesses A.G., L.G. and L.A. were foreign citizens whose whereabouts were unknown. The whereabouts of B.Tch. and Z.Tch. were also unknown. As far as T.A. was concerned, the court noted that she had just given birth and that the explanation for her inability to travel 400 kilometres to attend the trial was understandable. The court concluded, without further elaboration, that “there were procedural guarantees for a fair and appropriate assessment of the evidence [and that] a conviction could not be based on such evidence.”

30. On the same day – 22 June 2018 – G.M., M.K. and V.B. were questioned.

31. G.M. gave evidence to the trial court in his capacity as a victim, in the presence of the first and second applicants (via video link) and their lawyers. For approximately thirty minutes, the applicants’ lawyers put multiple questions to G.M. regarding the incident. The first applicant then asked questions. She was warned against disorderly conduct, apparently for

speaking out of turn, and was told that if she continued such behaviour she would be removed from the hearing (in which she was taking part remotely). After she had finished asking questions, the second applicant took over. The first applicant interjected with an inaudible phrase while G.M. was answering the second applicant's question. She was warned by the judge against disorderly conduct and the risk of being removed from the hearing. She interjected again with an inaudible phrase when the second applicant was putting a question to G.M. The judge stated as follows:

“Ms Tamar, you are now expelled from the courtroom and it is possible that you will be subjected to pecuniary sanctions for failing to maintain order in the courtroom. Ms. Tamar was expelled for breaching the order despite repeated warnings. A respective decision will be handed over to you and you will be allowed to appeal.”

Her connection was then cut off. She did not lodge a separate appeal against her removal.

32. The judge asked the second applicant to continue asking his questions in isolation from the first applicant (who was apparently in the same room) because of her removal. The second applicant started asking a question and the first applicant was heard interjecting. The second applicant was warned that he would also be removed from the hearing if the first applicant continued being disruptive, and that the trial would continue with only their defence lawyers' participation. The second applicant replied that he understood the content of the warning and finished putting questions to the victim.

33. The trial court then heard the victim's wife, M.K. When the second applicant started putting questions to the witness, he uttered a phrase mentioning, without naming any individuals, “the leading figures in the country”. The judge interrupted and told him to refrain from making political statements. The second applicant started a sentence with “you always, since day one, [and] for two years ...”, which the judge interrupted, reminding him not to make political statements in a court of law, in reply to which the second applicant uttered an inaudible phrase and was immediately removed from the hearing.

34. V.B. was heard with the participation of the first and second applicants' lawyers who put questions to him.

35. It appears that a request made by the applicants the same day – 22 June 2018 – to be allowed back into the hearing was rejected by the trial court. The reasons for that remain unclear.

36. During the trial hearing of 6 July 2018 the defence lawyers lodged a request to have the third applicant examined remotely, stating that he would give information relating to the findings of the forensic medical examination in respect of his injury and “the factual circumstances which he [had] witnessed ... on 26 August 2016”. His testimony would therefore help to establish the truth.

37. The judge rejected the request the same day. He reasoned that the whereabouts of the minor witness were unknown. His identity could therefore

be called into question by the prosecution. Furthermore, a witness had to be warned of possible criminal liability and, in the absence of an address, no such document could be drawn up or signed by him. Lastly, the judge held that, as the witness was a minor, he could only give evidence in the presence of his legal guardians. Given that they were the accused, he would have to do so in the presence of a court-appointed legal representative. Taking into account an earlier submission by the first and second applicants that the third applicant had been undergoing psychological rehabilitation, and in the absence of an identifiable address, the court considered that it was not possible to ensure his best interests by appointing a representative to hear him remotely.

38. On an unspecified date the prosecution removed A.D. and D.G. (see paragraph 13 above) from its list of witnesses. The defence then requested, without explaining their relevance to the applicants' case, that they be called as witnesses for the defence. The request was granted by the trial court.

39. During the hearing of 16 July 2018 the defence claimed that witnesses A.D. and D.G. had agreed to appear but had failed to do so. The related request to compel them to appear was rejected on the grounds that, although the reason for their failure to appear before the court was not clear, they had not refused to appear and give evidence. According to the judge, this was not disputed by the defence. It was therefore for the defence to ensure the witnesses' attendance or to explain the reason for their absence.

40. On 16 July 2018 the trial court examined the first and second applicants' application, lodged by their lawyers, to postpone the trial so that the third applicant could appear in person. The application referred to the possibility of his travelling to Georgia between 10 and 17 August 2018, during the school holidays, or between 17 and 24 September 2018. The prosecutor objected. He stated that the applicants had been obliged to present their own witnesses. Yet, they had failed to do so in so far as the third applicant was concerned. The prosecutor claimed, without elaborating further, that the investigative authorities had tried, to no avail, to question the third applicant both as part of the case against the first and second applicants and within the context of the separate criminal investigation involving the third applicant's injuries. The trial court rejected the application on the grounds that it was the parties' obligation to present the evidence of which the defence had been aware and had an opportunity of doing so earlier. In the absence of any guarantees that the witness would actually appear during the specified period, the request was found to have been submitted with the purpose of delaying the criminal proceedings.

41. On the same day the prosecutor made his closing statement. The first and second applicants' lawyers requested a postponement to prepare the closing statements. The request was granted.

42. On 23 July 2018 the first and second applicants' lawyers made the closing statements on behalf of the said applicants.

D. Judgment of the trial court

43. On 23 July 2018 the Khelvachauri Regional Court delivered its judgment. Both applicants were found guilty under Article 239 of the Criminal Code (“hooliganism” – see paragraph 81 below). In reclassifying the charges, the trial court referred to the practice of the Supreme Court in such matters and explained that courts could reclassify charges if the facts established during the proceedings so warranted. The court then explained the objective and subjective elements of the offence in question.

44. The first and second applicants were sentenced to a criminal fine of 3,000 Georgian laris (GEL – approximately 1,050 euros (EUR)) and GEL 2,500 (approximately EUR 875) respectively. According to the trial court, it was not necessary to impose a custodial sentence because the applicants had two minor children and a fine would sufficiently serve the purpose of punishment.

45. The trial court summarised the facts of the case as follows:

“At approximately 10 a.m. on 26 August 2016, Tamar Khachapuridze [the first applicant] and Kakhaber Khachidze [the second applicant], as a group of individuals with prior agreement, together with their minor 13-year-old son, attacked G.M. in the Gonio settlement of Batumi ... at the seaside while he was there on holiday, and verbally abused him[.] At the same time, Kakhaber Khachidze and his 13-year-old son used physical violence against G.M., while Tamar Khachapuridze threatened to kill him[.] With [such conduct] they grossly violated public order and showed clear disrespect for the public gathered on the beach. While the holidaymakers who witnessed the incident attempted to shield G.M. from the assault, Tamar Khachapuridze continued with her threats and verbal abuse, and Kakhaber Khachidze, together with his 13-year-old son, resorted to physical violence, forcing G.M. to leave the beach with his family members.”

46. In reaching its verdict, the trial court relied on the statements given by the victim and witnesses to the incident, as well as the video footage. The victim’s statement was described as follows:

“According to the witness statement of the victim [G.M.], Tamar Khachapuridze [the first applicant] had been making insulting comments about him on social media after he had dealt with her case in 2015 [and] had never responded [to her statements]. On the morning of 26 August 2016 he was at the beach ... in the Gonio settlement with his wife, his two minor children and his friend’s minor children. While he was in the sea with his children, Tamar Khachapuridze spat at him and started swearing and threatening him in a loud voice[.] Her husband [the second applicant] and her minor son [the third applicant] also went into the sea. Kakhaber Khachidze also started swearing at him and making threats, while their minor son tried to hit him. This was heard and seen by his minor children and the holidaymakers in the vicinity, some of whom intervened in the fight and attempted to get hold of Tamar Khachapuridze’s minor son and lead him away. Because he had been accompanying his two minor children in the water [and] one of them could not swim, [G.M.] was in a difficult situation and tried to avoid [it] and take his children to the hotel. He did not assault anyone either physically or verbally. The assault [against him] continued on the shore[:.] Kakhaber Khachidze was swearing at him [and] pushing him and the [first and second applicants’] minor child managed, with the encouragement of Tamar Khachapuridze,

and despite the efforts of people gathering there to restrain him, to kick [G.M.] several times for 10-15 minutes [and] he was forced to leave the beach and return to the hotel with [his and his friend's family] ...”

47. Statements by G.M.'s wife (M.K.) and friend (V.B.) were formulated in similar terms. According to the text of the judgment, M.K. had explained that the applicants had sworn at G.M. referring to his position as a judge and accusing him of having ruined their family. She had also stated that all three applicants had tried to physically assault her husband, but the third applicant had been particularly aggressive, encouraged by his mother. People gathered there had intervened to end the incident. The first applicant had threatened to “cut” her husband. The judgment further mentioned that according to V.B., by the time he had reached the beach G.M. had been already in the water, and a man and a child had been attempting to hit him. When he had seen this, he had immediately run towards him to help. The subsequent developments had been described by V.B. in a similar way to G.M. and M.K.'s account.

48. The witness statement given by N.G., a paramedic called to the scene of the incident, was described as follows: “... the child had a small laceration on his lip. The lady [the first applicant] asked that the fact that G.M. had assaulted them physically and that the child had been punched during the breaking up [of the incident] be reflected [in the report].”

49. The witness statement given by M.M., a lifeguard, was described as follows: “witness M.M. stated that ... on 26 August 2016 he ... heard noise and sounds of a quarrel and saw people gathered on the shore[. He] heard threatening words from a woman unknown to him, saying [“I will cut you”]. ...”

50. The trial court also relied on the six pre-trial statements read out during the trial (see paragraph 11 above). The statements were summarised in the judgment as follows:

“It has been established from the pre-trial statement given ... by A.G. on 26 August 2016 [read out] during the trial that ... while swimming in the sea, A.G. saw people gathered on the shore and guessed that an incident was taking place there, so he swam towards the shore and saw a woman, a man and a boy of approximately 15 years of age shouting loudly[.] However, as he did not speak the language, he did not understand [what they were saying]. They were yelling at a young man in the water and attempting to physically assault him, but the man in question was not entering into a fight with them and was attempting to get rid of them. The incident lasted for approximately fifteen minutes and the people gathered on the shore managed to break [it] up.”

It has been established from the pre-trial statement given ... by L.G. on 26 August 2016 [read out] during the trial that ... she heard noise while swimming in the sea [and] could not understand it because she did not speak the language [but as] she saw people gathered on the shore, it was apparent that an incident was taking place among them. When she came out of the water, she saw a boy aged between approximately fourteen and sixteen and dressed in shorts waving his hands at a young man who was in the sea, while the latter was attempting to avoid him. During the incident, a woman and the young boy were active and made their way towards the young man and attempted to assault him. The man being attacked was calm and did not react. The incident lasted

approximately fifteen minutes and the people gathered on the shore managed to break [it] up.

It has been established from the pre-trial statement given ... by T.A. on 26 August 2016 [read out] during the trial that ... she saw a woman in a swimsuit standing on the seashore and loudly swearing at a man in the sea. Among other things, she heard several Georgian [phrases] “I will cut you” [and] “I will not let you live”. There was a boy, approximately fifteen years of age and acting in a very aggressive manner, swearing at the man and attempting to physically assault him, which he did, hitting him with his hand and leg several times. There was also [another] man involved in the incident, who [the witness] believed to be the woman’s husband, who also threatened [the man in the sea]. The man who was attacked did not physically assault any of [these individuals], on the contrary, he was calm and did not react. The incident lasted approximately fifteen minutes and the people gathered on the shore managed to break [it] up.

According to the pre-trial statement given ... by L.A. on 26 August 2016 [read out] during the trial ... she [witnessed] a woman standing on the seashore loudly yelling at a man standing in the sea and expressing aggression[.] At the same time, the man accompanying her hit the one in the water with his hand. This made [the witness] feel uncomfortable and she moved to a different spot.

It has also been established from the pre-trial statement given ... by B. Tch. on 27 August 2016 [read out] during the trial that ... she witnessed ... violent behaviour by Tamar Khachapuridze, her husband and her son against G.M., during which those individuals were acting aggressively, swearing at and insulting [G.M.] and trying to physically assault him. The incident lasted approximately fifteen minutes and the people gathered there because of the noise managed to break [it] up.

It has also been established from the pre-trial statement given ... by Z. Tch. on 26 August 2016 [read out] during the trial that ... he witnessed the violence aimed at G.M. which caused a commotion among the holidaymakers and when he reached the spot, he saw that G.M. was in low spirits and was being insulted.”

51. The trial court also noted, without elaborating further, that the investigators in the case had given exhaustive information regarding the evidence they had obtained.

52. It then described the content of the video-recordings submitted by M.K., stating as follows:

“The first recording shows that while coming out of the sea, [G.M.] is met by Kakhaber Khachidze [who], by moving his hands, starts a fight with him. At the same time, Kakhaber Khachidze’s wife Tamar Khachapuridze and their minor son run into the water. The [recording] shows all three individuals waving their hands to hit [G.M.]; swearing and threats can be heard. People run into the sea to protect G.M. and attempt to restrain Tamar Khachapuridze, but first and foremost her minor son. The second recording shows Tamar Khachapuridze making insulting comments to G.M. and threatening to cut him with a knife. The people gathered there ask her to calm down.”

53. As regards the assessment of the evidence available in the case file, the trial court held as follows:

“... the court clarifies that particular attention should be drawn to statements given by eyewitnesses, as they are characterised by their informative value in respect of the circumstances of a case and constitute an important source of evidentiary material. The court takes into consideration the statements of so-called neutral witnesses who are not

interested in the outcome of the case and [who] give a statement as to what they really saw and perceived. It is specifically by combining facts perceived by eyewitnesses and the victim [one the one hand] and the established societal customs [on the other] that the degree of disrespect for the public is established [and] the extent of the disturbance of public order is assessed.”

54. Lastly, the trial court addressed the first and second applicants’ argument about the third applicant’s injury and the first applicant’s submission that what she had said to G.M. (see paragraph 16 above) had been her emotional reaction to the injury observed on her son. The court held as follows:

“The court will not leave without assessment the report of the forensic medical examination submitted by the defence stating that Davit Khachidze had a laceration (ბეჭდვო) measuring 0.8 x 0.7 centimetres on his lower lip ... and a similar elongated laceration on the upper right thigh ... and the argument of the defence that the threat to G.M.’s life uttered by the accused Tamar Khachapuridze had been a maternal reaction to G.M.’s injury of her son[.] The court clarifies that the evidence presented during the trial, including the video footage of the incident, which is consistent with the information given by the witnesses questioned, has established that it was precisely G.M. ... who was the target of the attack ... The [three] individuals, including the [accused’s] minor son, attempted to assault him from three sides. Tamar Khachapuridze’s actions cannot be explained by any maternal instinct for the simple reason that it was precisely the accused and their 13-year-old son who carried out a violent act and assault against G.M. Anyone, including G.M., had the right to defend himself against an unlawful attack and to repel the attackers, but all the eyewitnesses have explained that G.M. only attempted to distance himself and did not assault anyone. Their statements and the video-recording also confirm that the individuals who witnessed the incident, including V.B., attempted to forcibly restrain Tamar Khachapuridze’s minor son. These circumstances completely disprove the defence’s version, given that it was the accused and their minor son who attacked G.M. and grossly violated public order using violence and threats of violence, showing clear disrespect for the public.”

E. Judgment of the Court of Appeal

55. On 20 and 21 August 2018 the first and second applicants lodged an appeal against the trial court’s judgment. They submitted, among other things (a) that there had been insufficient evidence to convict them; (b) that the trial court had erred in reclassifying the charges and assessing the elements of the offence; (c) that while there had been an incident between G.M. and their 13-year-old son, it had started because the latter had sworn at the first applicant; (d) that what the first applicant had said had not been a threat but an emotional reaction to seeing her son’s bleeding lip; (e) that the third applicant’s injury and the video-recording showing this had not been given due consideration by the trial court, which was linked to G.M.’s post as Secretary of the High Council of Justice; (f) that there had been no evidence to demonstrate the second applicant’s guilt, either as regards any threats or any violent behaviour; (g) that their conviction had been based on the

statements of absent witnesses (the only neutral witnesses, according to the applicants), whose statements had been taken in breach of the procedure relating to the examination of witnesses before a magistrate judge and the requirements of Article 6 of the Convention; (h) that the prosecution authority had not exhausted all possible efforts to locate the absent witnesses; (i) that the applicants had been unable to call their own witnesses, who would have provided important evidence to establish the circumstances of the case (the third applicant, who had been injured and insulted during the incident and A.D. and D.G., who had been eyewitnesses); (j) that the statements given by M.M. and N.G. had been misrepresented in the judgment; (k) that the authenticity of the video-recordings had been dubious; and (l) that the first and second applicants had been unable to participate in the proceedings effectively owing to their unjustified removal from the proceedings. The appeal also stated that the following sequence of events had been established by the evidence available in the case file: the first applicant had spat “into the sea, which [had not constituted] threatening conduct, followed by [G.M.’s] swearing, resulting in the confrontation with the minor [son] and the bodily injury inflicted on the minor”. This was followed, according to the applicants, by the first applicant’s maternal, emotional reaction (see paragraph 16 above) to seeing blood on her son’s face. The applicants requested, among other things, to be allowed to attend the appellate hearings, to have the witnesses G.M., M.K., and V.B. examined anew, and to have the absent witnesses called and examined in their presence.

56. On 16 November 2018 the Kutaisi Court of Appeal adopted its judgment following an oral hearing attended by the applicants via a video link. It summarised, among other things, the applicants’ arguments, but stated that it was upholding the lower court’s findings in their entirety. The judgment reproduced the witness statements and the description of the video footage from the trial court’s judgment (see paragraphs 46-52 above). The court then rejected a request by the prosecutor to impose a harsher sentence on the first and second applicants. As regards the latter’s complaint regarding the alleged violation of Article 6 of the Convention on account of the trial court’s reliance on statements given by absent witnesses, the appellate court stated that the statements in question were consistent with other evidence given by “the victim and the eyewitnesses”. Pointing out that the defence had been given an unlimited opportunity to present evidence, the court stated that the statements of absent witnesses had been relied on “along with other evidence” and that the trial court had not breached Article 243 of the CCP in assessing them. Furthermore, the appellate court stated that the first and second applicants’ conduct had been evidenced by the video-recordings available in the case file and assessed during the proceedings before the trial court.

57. The Kutaisi Court of Appeal agreed with the lower court that the facts of the case revealed, beyond reasonable doubt, that the two applicants had

acted as a group and that their conduct towards G.M. had grossly violated public order on the beach and disturbed the holidaymakers there. There was no explicit reply to the applicants' argument about the trial court's refusal to allow the third applicant to give evidence.

F. Decision of the Supreme Court

58. On 8 and 11 December 2018 the applicants lodged an appeal on points of law. They reiterated their earlier complaints (see paragraph 55 above).

59. On 7 June 2021 the appeal on points of law was rejected by the Supreme Court. As regards the applicants' argument regarding the absent witnesses, the court stated as follows:

“The evidence in the case (including statements given by the victim [and] witnesses [M.K., V.B., M.M.], written records of witness interviews with [L.A., A.G., B.Tch., L.G., and T.A.], [and] the video-recordings) leads to [the conclusion] that the commission of hooliganism by Tamar Khachapuridze and Kakhaber Khachidze has been established beyond reasonable doubt.

The court ... does not share the position of the defence regarding the reading out of the statements of absent witnesses at the trial hearing and notes that, under Article 243 § 1 of the CCP, the written records of witness interviews may be read out during a trial hearing if a witness is not in Georgia and the statement was taken in accordance with the procedure laid down in the CCP. In the given situation, the evidence available in the case file does not confirm that the witnesses ([A.G., L.G., L.A., B.Tch., T.A., Z.Tch.]) were interviewed in breach of [that] procedure.

The court observes that the investigating authority has an obligation to make a reasonable effort to ensure the appearance of such witnesses at the trial hearing and to ensure that they are examined; however, the absence of a good reason for the non-attendance of a witness cannot *a priori* lead to the unfairness of a trial (see [*Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 105-107 and 113, ECHR 2015]). The court takes into account, on the one hand, [the fact] that in the present case the written records of witness interviews were read out at the trial and that the defence had the possibility of contesting them and, on the other hand, that the evidence in question – written records of witness interviews – was neither sole nor decisive incriminating evidence for Tamar Khachapuridze and Kakhaber Khachidze. [Their] commission of criminal acts, in addition to the statements given by the victim and individuals close to him, is confirmed by a neutral witness [M.M.] and the video-recordings in the case file.

The court also takes into account that the written records of witness interviews read out at the trial are consistent with each other and with [other] evidence assessed during the trial, including the statements given by the victim [and] witnesses [M.K., V.B., M.M.] and the video-recordings.”

60. The Supreme Court also responded, *inter alia*, to the applicants' arguments regarding their removal from the courtroom during the trial hearing, stating as follows:

“The court also cannot share the defence's position that the non-attendance of Tamar Khachapuridze and Kakhaber Khachidze at a number of hearings resulted in a violation of the principles of adversarial proceedings and equality of arms. The court takes into account, on the one hand, of the duty of the parties to the proceedings to maintain order

during a court hearing and the possibility for a court to take the measures provided for in Article 85 of the CCP if there are appropriate grounds for doing so and, on the other hand, the duty to ensure the right to defence even if an accused is removed from a hearing.

In the present case, on 22 June 2018, during a hearing before the Khelvachauri Regional Court (Tamar Khachapuridze and Kakhaber Khachidze were taking part in the hearings remotely) the judge warned Tamar Khachapuridze at 14:53:10 against disorderly conduct. Given that Tamar Khachapuridze, despite several warnings, continued disrupting the hearing and impeding the examination of a witness, the judge removed her from the courtroom at 14:54:29 in accordance with Article 85 of the CCP (remote participation).

The judge also warned Kakhaber Khachidze [against disorderly conduct] (at 14:54:41) as Tamar Khachapuridze, despite having been removed from the courtroom, continued being disruptive, hindering the conduct of the hearing [from his computer]. At 15:58:40 the judge warned Kakhaber Khachidze again and at 15:59:00 removed him from the hearing (remote participation) because he did not stop being disruptive.

The court takes into account that, following the removal of the accused, the defence lawyers [S.K. and P.D.] had the opportunity to participate in the examination [of the witnesses] and put questions to the witnesses. Accordingly, the interests of the accused were protected by the lawyers of their own choosing. Furthermore, it has not been established that, following their removal, [the applicants] were limited in their ability to communicate with their lawyers (the court takes into account that the defence did not request, for instance, a break in the hearing to consult with the accused). Furthermore, the video-recording submitted as part of the case was assessed in the presence of Kakhaber Khachidze. Accordingly, the court cannot share the position of the defence regarding a violation of the principles of adversarial proceedings and equality of arms.”

61. As to the applicants’ argument that the video-recordings had not been obtained in compliance with the relevant procedure, the court stated as follows:

“The court also cannot share the defence’s position regarding the unlawfulness of [the manner in which] the video-recording was obtained. The court takes into account that the video-recording [in question] was obtained pursuant to a decision by the Khelvachauri Regional Court of 6 October 2016, in accordance with the procedure [laid down in the CCP]. The court also takes into account that the defence could have assessed the recording and ordered an expert examination in accordance with the procedure laid down in the CCP if they [had wished] to contest the veracity of the circumstances of the recording.”

62. The Supreme Court did not address the applicants’ complaint regarding the lower courts’ refusal to allow the third applicant to give evidence.

III. CRIMINAL INVESTIGATION INTO THE THIRD APPLICANT’S INJURIES

63. The criminal investigation opened on 26 August 2016 in respect of the incident of the same day (see paragraphs 6-14 above) was apparently also tasked with investigating the injuries observed on the third applicant. On that

date the authorities set up a special investigative group which included an investigator specialised in juvenile justice, and ordered a forensic medical examination of the third applicant.

64. Immediately following the incident the first and second applicants and a number of witnesses were questioned (see paragraphs 6-14 above). While the third applicant appears to also have been at the police station on that day, he was not questioned. The reason remains unclear.

65. On 14 September 2016 the forensic examination report was received in respect of the third applicant's injuries. It stated that the third applicant had a laceration (ბაჭყალი) measuring 0.8 x 0.7 centimetres on his lower lip and a similar elongated laceration on his upper right thigh. The injuries were classified as minor and found not to have caused any deterioration in his health.

66. On 11 October 2016 the criminal investigation into the incident of 26 August 2016 was split. The case involving the charges against the first and second applicants on account of the alleged assault against G.M. was sent to trial. The investigation of the third applicant's injuries continued separately in respect of conduct prohibited under Article 125 § 1 of the Criminal Code (see paragraph 81 below).

67. On 3 November 2016 the investigating authorities contacted the first applicant as a legal guardian of the third applicant with a request that he attend questioning on 5 November 2016. The first applicant stated that she was unable to accompany her son on non-working days and requested a formal summons for questioning on working days.

68. On 7 November 2016 the investigating authorities sent a summons to the first applicant requesting her to accompany her son for questioning on 12 November 2016.

69. On 7 November 2016 the first applicant telephoned the investigating authorities and notified them that her son was ill and could not appear for questioning.

70. On 25 January 2017 the investigating authorities sent a further summons to question the third applicant, requesting the first applicant to accompany him on 27 January 2017.

71. On 27 January 2017 the third applicant appeared for questioning, accompanied by a lawyer and a social worker. He said that he was unable to testify since he was undergoing rehabilitation and was not feeling well. The third applicant requested that his questioning be postponed.

72. In July 2017 the third applicant left Georgia.

73. According to the case-file material, on 16 November 2017 the third applicant, assisted by a lawyer, requested that he be granted a procedural status of a victim. The application was rejected as unsubstantiated on 18 November 2017. The lawyer's appeal to a superior prosecutor did not refer to the fact that the third applicant had not given a statement, nor did it request that he be allowed to do so remotely. It stated that the third applicant had been

undergoing psychological rehabilitation in view of the incident of 26 August 2016 and the injuries he had received on that day. In his submission, there had been sufficient grounds, on account of the findings of the report of 14 September 2016 (see paragraph 65 above), to grant him a procedural status of a victim. The application was rejected as unsubstantiated on 27 December 2017.

74. On 3 July 2018 the third applicant's lawyer lodged another application requesting the granting of a procedural status of a victim. He noted that the third applicant's parents had been participating in their trial remotely and that "such form of communication [was] also possible with respect to [the third applicant]." On 5 July 2018 the prosecutor replied that the application had not revealed any new elements following the rejection of a similar application on 18 November and 27 December 2017.

75. On 23 July 2018 the third applicant's representative reiterated the request for victim status on the basis that on 26 August 2018 the investigation into the alleged crime committed against the third applicant would become time-barred. That request was rejected in October 2018. No explicit reply was provided regarding the limitation period of the alleged criminal offence.

76. On 7 August 2018 the third applicant's lawyer lodged a new application concerning the procedural status of a victim. He referred to the written record (dated 11 October 2016) of the third applicant's questioning which had been carried out by a defence lawyer specialising in youth justice (see paragraph 19 above) as the new factual element warranting, in his submission, the granting of the procedural status of a victim. On 31 December 2018 the lawyer was informed that the earlier decisions on the matter still stood and the application was rejected as unsubstantiated.

77. In September 2018 the third applicant's lawyer inquired about the progress of the ongoing investigation. He was told that the third applicant did not have an appropriate procedural status to receive such information.

78. The requests for victim status were resubmitted in 2020 and 2021. The request of 7 July 2021 noted the third applicant's readiness to give a statement remotely, claiming that the authorities had not explored this possibility while he had "always" expressed willingness to cooperate. The applications were all rejected on the grounds that the evidence collected during the investigation did not warrant granting such status to the third applicant. On 27 July 2021 the third applicant instituted judicial proceedings against the prosecutor's office and requested the victim status. He repeated the content of his request of 7 July 2021.

79. On 27 September 2021 the Batumi City Court concluded that there was insufficient evidence indicating that the third applicant had been a victim of a criminal offence. In doing so, the court referred, on the one hand, to the criminal case file material available in respect of the third applicant and, on the other hand, to the separate proceedings against his parents and the findings of the trial court regarding the third applicant's role in the incident (see

paragraph 54 above). For the court, that material did not warrant a decision to limit the prosecution authorities' discretion in granting victim status.

80. At the date of the latest information available to the Court, the criminal investigation into the third applicant's injuries was still ongoing.

RELEVANT LEGAL FRAMEWORK

81. The relevant provisions of the Criminal Code provided as follows at the material time:

Article 125 - Battery

"1. Battery or other violence that has caused physical pain to the victim, but has not resulted in the consequences provided for in Article 120 of this Code, shall be punishable by a fine, 120 to 180 hours' community service or up to 15 months' corrective labour.

2. The same act knowingly committed against a minor shall be punishable by a fine, 15 to 24 months' corrective labour or up to one year's imprisonment."

Article 239 - Hooliganism

"1. Hooliganism, that is, an act that grossly violates public order and shows clear disrespect for the public, using violence or threats of violence, shall be punishable by a fine, 120 to 180 hours' community service, up to one year's corrective labour, six months to two years' house arrest or up to one year's imprisonment.

2. The same act committed:

a) by a group of persons with prior agreement;

b) against a representative of the public authorities or a person preventing hooliganism;

...

shall be punishable by a fine, 180 to 200 hours' community service, one to two years' corrective labour or two to five years' imprisonment.

..."

Article 365 - Threats or violence with respect to legal proceedings, the investigation or conduct of the defence

"1. Any threat to kill, harm or destroy the property of a member of the Constitutional Court, a judge, a juror or their close relatives in connection with the consideration of a court case or case material shall be punishable by a fine or up to three years' imprisonment.

...

5. The acts referred to in paragraphs 1 or 2 of this Article committed:

a) jointly by more than one person;

b) repeatedly;

shall be punishable by seven to ten years' imprisonment ..."

82. The relevant provisions of the Code of Criminal Procedure provided as follows at the material time:

Article 85 – Liability for non-performance of procedural duties and for disrupting order in a courtroom

“...

2. If a participant in the proceedings or a person attending a court hearing disrupts order during a hearing, disobeys an order of the presiding judge or shows disrespect for the court, the presiding judge shall give [him or her] a verbal warning and ask [him or her] to stop the inappropriate behaviour. If the person fails to comply with the above request, the presiding judge shall, by deliberation in the courtroom, impose a fine and/or remove the person from the courtroom. If the person removed still continues disrupting order, the court bailiff shall, on the order of the judge, remove the person from the court (building); in addition, this person may [be fined as] provided for in this Article or detained.

...

5. An individual shall be deemed to have been removed from the courtroom until the hearing of the case on the given charges has been completed in the court at the same level of jurisdiction. The presiding judge may, following a reasoned request by a party, allow the removed person to return to the hearing. The removed person shall also be returned to the hearing if the relevant court upholds an appeal by that person for recognition of [his or her] removal from a courtroom as unlawful ...

...”

Article 113 – Procedure for interview

“1. Any person who may have information that is essential for the case may be voluntarily interviewed by the parties. An interviewee may not be forced to provide evidence or disclose information ...”

Article 114 – Procedure for witness examination during [pre-trial] investigation

“1. At the [pre-trial] investigation stage, a person may be examined as a witness, at the request of the defence or the prosecution, before a magistrate judge according to the place of the investigation or the location of the witness if:

...

(b) he or she intends to leave Georgia for a long period;

...”

Article 118 – Examination of a witness during a hearing on the merits

“...

3. A witness who is not able to appear before a court for examination owing to circumstances provided for by Article 114 § 1 (a), (b) and (d) of this Code shall not be examined. In such a case, his or her pre-trial statement shall be made public at the hearing on the merits. Such a statement may not serve as a ground for conviction, unless it is corroborated by other evidence that proves the guilt of a person.”

Article 243 – Examination of interview records and statement given during [pre-trial] investigation; remote examination of a witness

“1. If a witness fails to appear before the court at the hearing on the merits to give evidence, the information obtained at the time of his or her interview or the statement given in accordance with Article 114 of this Code during the [pre-trial] investigation may be publicly read out, and the audio or video-recording of the information/testimony obtained may be played (shown) only if the witness has died, is outside Georgia, his or her whereabouts are unknown or all reasonable ways to bring him or her before the court have been exhausted and the interview/examination was conducted in the manner prescribed by this Code. This evidence alone may not serve as grounds for a conviction.

...

3. A witness may be examined remotely, using special technical means, from within the same court, from another court or from another location, on the basis of a court decision taken at the request of [the defence or the prosecution to that effect]. [T]he parties shall be notified in advance [of such a decision].”

THE LAW

I. JOINDER OF THE APPLICATIONS

83. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

84. The first and second applicants complained (i) that they had been unable to obtain the attendance of witnesses on their behalf under the same conditions as witnesses against them; (ii) that their conviction had been based, to a decisive extent, on the statements of absent witnesses; and (iii) that their exclusion from the trial had been incompatible with the guarantees of a fair trial under the Convention. They relied on Article 6 §§ 1 and 3 of the Convention, the relevant parts of which 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:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(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

85. The Government submitted that by failing to lodge a separate appeal against the trial court's decision regarding their removal from the hearing, the first and second applicants had failed to exhaust domestic remedies in respect of their complaint in that regard.

86. The applicants stated that since the matter had been brought to the attention of the appellate court and the Supreme Court, they had exhausted domestic remedies.

87. The Court notes that the applicants' complaint regarding their removal was examined and explicitly addressed by the Supreme Court. Reiterating that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008), the Court finds that the applicants did provide the domestic authorities with the opportunity to put right the alleged violation.

88. It follows that this complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.

89. Furthermore, the first and second applicants' complaints under Article 6 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

90. The Court notes that the requirements of Article 6 § 3 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1. The Court will, accordingly, examine each of the three limbs of the first and second applicants' complaints (see paragraph 84 above) under those two provisions taken together (see, among many other authorities, *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015, and *Idalov v. Russia* [GC], no. 5826/03, § 169, 22 May 2012). It will then proceed with assessing their impact on the overall fairness of the criminal proceedings (see *Khavshabova v. Georgia*, no. 26134/19, §§ 28 and 56, 29 June 2023).

1. The first and second applicants' alleged inability to obtain the attendance of witnesses on their behalf under the same conditions as witnesses against them

(a) The parties' submissions

(i) The first and second applicants

91. The applicants argued that, by refusing to hear the third applicant and to compel witnesses A.D. and D.G. (see paragraph 13 above) to appear at the trial, the domestic courts had failed to ensure the attendance of witnesses on their behalf under the same conditions as witnesses against them. They submitted that the third applicant's witness testimony would have been crucial to establishing the truth in their case for two reasons: it would have confirmed that the first applicant had not meant what she had said to G.M. (which the domestic courts had interpreted as a threat), since it had been a mere emotional reaction to seeing her son bleeding; and it would have exonerated the second applicant, as it would have confirmed that he had not participated in the fight but had tried to calm the first and third applicants down. The applicants submitted that evidence in this regard would have refuted the prosecution's version that the offence had been committed as part of a group. The applicants stated that the judge had given formal reasons for refusing to allow the third applicant to testify remotely. The alternative proposal of the defence to postpone the trial for only twenty-three days to allow him to appear in person had also been rejected without due justification.

92. Furthermore, as regards witnesses A.D. and D.G., the applicants stated that the prosecutor's decision to remove them from the witness list had created a reasonable doubt that they would have provided the trial court with information that could have led to an acquittal. They submitted that the trial court had erroneously interpreted the legal provisions that the court could only compel witnesses to appear if it had their explicit refusal to do so. This had not been corrected at the appellate stage, as their request to have these witnesses examined had been rejected.

(ii) The Government

93. The Government submitted that the third applicant had been admitted as a witness for the defence since 30 November 2016. However, the defence had failed to ensure his presence at the trial. As regards his remote examination, they submitted that the Khelvachauri Regional Court had provided sufficient reasons to justify its finding that this had not been in the interests of the proper administration of justice or in the interests of the third applicant, a minor at the time. In any event, the request to call the third applicant as a witness had not been sufficiently substantiated since all possible versions of the incident had been fully disclosed to the domestic

courts and all relevant evidence, including video footage, had already been assessed.

94. As to witnesses A.D. and D.G., the trial judge had ascertained that neither of them had refused to appear before the court so as to trigger the procedure to compel their appearance. Moreover, in view of their pre-trial statements, their examination would not, according to the Government, have affected the outcome and the fairness of the proceedings.

(b) The Court's assessment

(i) General principles

95. The Court reiterates that under Article 6 of the Convention the admissibility of evidence is primarily a matter for regulation by national law and the Court's task 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 1997-III, and *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). Article 6 § 3 (d) of the Convention does not require the attendance and examination of every witness on the accused's behalf, the essential aim of that provision, as indicated by the words "under the same conditions" is to ensure a full "equality of arms" in the matter (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22; *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B; and *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 139, 18 December 2018).

96. In *Murtazaliyeva* (cited above, § 158) the Court has formulated the following three-pronged test for the assessment of whether the right to call a witness for the defence under Article 6 § 3(d) has been complied with: (1) whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation; (2) whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial; and (3) whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings.

97. In respect of the first element the Court held that it is necessary to examine whether the testimony of witnesses was capable of influencing the outcome of a trial or could reasonably be expected to strengthen the position of the defence. The "sufficiency" of reasoning of the motions of the defence to hear witnesses will depend on the assessment of the circumstances of a given case, including the applicable provisions of the domestic law, the stage and progress of the proceedings, the lines of reasoning and strategies pursued by the parties and their procedural conduct (*ibid.*, §§ 160-61).

98. As to the second element of the test, the Court explained that generally the relevance of testimony and the sufficiency of the reasons advanced by the

defence in the circumstances of the case will determine the scope and level of detail of the domestic courts' assessment of the need to ensure a witness' presence and examination. Accordingly, the stronger and weightier the arguments advanced by the defence, the closer must be the scrutiny and the more convincing must be the reasoning of the domestic courts if they refuse the defence's request to examine a witness (*ibid.*, § 166).

99. With regard to the overall fairness assessment as the third element of the test, the Court stressed that compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident. While the conclusions under the first two steps of that test would generally be strongly indicative as to whether the proceedings were fair, it cannot be excluded that in certain, admittedly exceptional, cases considerations of fairness might warrant the opposite conclusion (*ibid.*, §§ 167-68).

(ii) Application of these principles to the present case

100. At the outset, in so far as witnesses A.D. and D.G. are concerned, the Court observes that the trial court granted the request to allow them to testify (see paragraph 38 above) but eventually decided not to compel them to appear after these witnesses failed to do so (see paragraph 39 above). However, the Court takes into account the fact that the applicants failed to explain why those two witnesses needed to appear. Additionally, the content of their pre-trial statements does not seem to reveal any added value for their presence (see paragraph 13 above). In such circumstances, the trial court's decision not to compel the said witnesses' appearance did not undermine the fairness of the proceedings.

101. As regards the applicants' complaint that they had been unable to obtain the third applicant's attendance as a witness in their case, the Court observes that the trial court did not allow the third applicant to be examined remotely, nor did it postpone the trial for a period of just over three weeks to allow him to appear in person. In this connection, the Court takes note of the Government's argument that the third applicant's testimony would not have been crucial to establishing the truth in the case against the first and second applicants considering, among other things, that there was video footage of the incident (see paragraph 15 above). In order to assess whether the right to call a witness for the defence under Article 6 § 3 (d) was complied with, the Court will first consider whether the request to examine the witness was sufficiently reasoned and relevant to the subject matter of the accusation.

102. In this regard, it is true that the request for the third applicant to be heard at domestic level was not, unlike the first and the second applicants' submissions to the Court, accompanied by detailed reasons (compare paragraphs 36 and 91 above). However, and while the third applicant's involvement in the incident was indeed captured in the video-recording

available in the case file, he had been the main witness for the defence and the request to hear him was not *a priori* vexatious. Rather, as one of the principal actors in the incident involving the first and second applicants, the relevance of his testimony was, in the particular circumstances of the case, somewhat self-evident (see *Murtazaliyeva*, cited above, § 161).

103. Against this background, the Court observes that the domestic courts did not consider the relevance of the third applicant's testimony. On the contrary, the requests to hear him were rejected by the trial court on procedural grounds.

104. In that connection, the Court notes, firstly, that the domestic legislation explicitly provided for the possibility of hearing witnesses remotely (compare and contrast *Bátěk and Others v. the Czech Republic*, no. 54146/09, § 61, 12 January 2017). The trial court found that this procedure could not be employed in respect of the third applicant. Namely, given that the applicants had failed to provide an identifiable address in his respect, the trial court considered that his identity could be called into question. Nor could he be served a document warning him of possible criminal liability. It was also noted that a special legal representative had to be appointed owing to the fact that the witness was a minor but such an appointment could not have taken place remotely (see paragraph 37 above).

105. As for the request to postpone the trial to allow the third applicant to appear in person, the applicants may be criticised for having submitted it rather late in the proceedings. Namely, while the third applicant had been designated as a witness for defence since October 2016 (see paragraphs 17 and 20 above), the first and second applicants' application to question him was presented in July 2018, at one of the final hearings (see paragraphs 22 and 36 above). However, the request to postpone the hearing was reasoned and did not seek a lengthy postponement (see paragraph 40 above). In such circumstances, and considering the importance of the testimony of the third applicant, the domestic court did not give sufficient reasons for its decision not to allow an opportunity for his appearance.

106. The Court additionally notes that the appellate and the cassation courts left the first and second applicants' complaints in this regard unanswered.

2. *Reliance on statements of absent witnesses*

(a) **The parties' submissions**

107. The first and second applicants submitted that the only neutral evidence relied on by the domestic courts had been the statements of absent witnesses read out at the trial. In this regard, they stated that the domestic procedure for taking the statements had been breached – the witnesses had not been summoned to appear before a magistrate judge – and that, in the

absence of valid reasons for refusing to call the witnesses in question, their statements should not have been relied on for the applicants' conviction.

108. The Government submitted that (a) there had been good reasons for the non-attendance of the six absent witnesses; (b) the relevant statements had not been the sole or decisive evidence for the conviction; and (c) there had been sufficient counterbalancing factors in that the applicants had been represented by a lawyer of their choice; had had unlimited opportunity to question the credibility of the absent witnesses; and the latter's statements had been corroborated by other evidence, including video-recordings and statements of witnesses who had been cross-examined by the defence during the trial.

(b) The Court's assessment

(i) General principles

109. The general principles with regard to complaints relating to the examination of absent witnesses and the use by the courts of the evidence given by those witnesses may be found in *Schatschaschwili* (cited above, §§ 100-131) and *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; see also *Seton v. the United Kingdom*, no. 55287/10, §§ 57-59, 31 March 2016).

110. Referring to *Faysal Pamuk v. Turkey* (no. 430/13, §§ 45-49, 18 January 2022) these principles may be summarised as follows: they lay down a tripartite test whereby the Court is required to examine (i) whether there was a good reason for the non-attendance of the absent witness at the trial; (ii) whether the evidence given by the absent witness was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard; and (iii) whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured *vis-à-vis* the evidence given by the absent witness. Moreover, the Court has also pointed out that, as with all complaints under Article 6 § 3, the defendant's inability to examine a witness should be assessed in the light of the impact that it has had on the overall fairness of his trial (see *Šmajgl v. Slovenia*, no. 29187/10, § 61, 4 October 2016). The Court has already held that the same principles will be applicable in respect of the examination of a witness in the course of the trial, including the relevant modalities thereof (see *Chernika v. Ukraine*, no. 53791/11, § 46, 12 March 2020; *Ürek and Ürek v. Turkey*, no. 74845/12, § 49, 30 July 2019; and *Cherpion v. Belgium* (dec.), no. 47158/11, §§ 35-41, 9 May 2017).

111. The Court reiterates that Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given

an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of the proceedings (see *Schatschaschwili*, cited above, § 103, and *Lucà v. Italy*, no. 33354/96, § 39, ECHR 2001-II).

112. Under certain circumstances, it may be necessary for the courts to have recourse to statements made during the criminal investigation stage. If the accused had sufficient and adequate opportunity to challenge such statements, at the time they were taken or at a later stage of the proceedings, their use does not run counter to the guarantees of Article 6 §§ 1 and 3 (d) of the Convention (see *Berhani v. Albania*, no. 847/05, § 51, 27 May 2010, with further references therein). In that connection, the Court further reiterates that evidence obtained from a witness under conditions in which the rights of the defence cannot be secured to the extent normally required by the Convention should, however, be treated with extreme care (see *Visser v. the Netherlands*, no. 26668/95, § 44, 14 February 2002, and *S.N. v. Sweden*, no. 34209/96, § 53, ECHR 2002-V). While it is true that the admission of such evidence will not automatically result in a breach of Article 6, the Court must subject the proceedings to the most searching scrutiny where a conviction is based solely or decisively on the evidence of absent witnesses or where such evidence carried significant weight in respect thereof (see *Al-Khawaja and Tahery*, cited above, §§ 118-47). The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case (*ibid.*, § 147).

(ii) *Application of these principles to the circumstances of the present case*

113. The Court notes that, in convicting the first and second applicants, the domestic courts relied on the statements of the six absent witnesses, in addition to two video-recordings of the incident (see paragraphs 15-16 and 52 above) and the statements given by N.G. (see paragraph 48 above), M.M. (see paragraph 49 above), the victim (see paragraphs 9 and 46 above), and his wife and his friend (see paragraphs 9 and 47 above).

114. The six absent witnesses, and those who did testify during the trial (see the previous paragraph), were eyewitnesses of the incident involving the applicants.

(α) Whether there was a good reason for the non-attendance of the six absent witnesses at the trial

115. With regard to the question of whether there was a good reason for the non-attendance of the six absent witnesses at the trial, the Court observes that the reason accepted by the national courts in respect of the three non-Georgian witnesses was that they lived abroad. As to the remaining three

witnesses, two were found to be impossible to locate and one was considered to have a good reason for not appearing as she had recently given birth and lived some 400 kilometres from the trial court. The Court will address these arguments below.

– *Three absent witnesses living abroad*

116. As regards the three non-Georgian witnesses living abroad, the Court reiterates that departure abroad does not in itself constitute a sufficient reason to justify the absence of the witness concerned from the trial (see *Seton*, cited above, § 61; *Paić v. Croatia*, no. 47082/12, § 38, 29 March 2016; and *Al Alo v. Slovakia*, no. 32084/19, §§ 48-52, 10 February 2022). As required in cases concerning the absence of prosecution witnesses, the Court must examine whether the relevant authorities made all reasonable efforts to secure the witnesses' attendance (see *Schatschaschwili*, cited above, § 120).

117. While the trial court accepted the fact that the said witnesses did not live in Georgia as sufficient grounds for reading out their statements, it is not clear from the case material what specific measures, if any, the domestic authorities took to ensure the witnesses' attendance during the proceedings. It is true that a detailed address was taken for the two witnesses living in the Russian Federation but there is no indication that any attempt had been made to contact them. For unclear reasons, the exact address of the witness living in Armenia was not taken (see paragraph 11 above). No telephone or e-mail details were taken for any of these three individuals despite the fact that their statements were clear as regards the imminence of their departure from Georgia.

118. In view of these elements, noting that the national authorities omitted to undertake certain obvious steps and did not even attempt to contact the three witnesses living abroad, the Court finds that the authorities did not make reasonable efforts within the existing legal framework to secure those witnesses' attendance. On this basis, without there being a need to speculate on the chances of obtaining such attendance in practice had the witnesses in question been contacted, the Court concludes that the domestic courts did not proceed on the basis of good reasons for the non-attendance of the three witnesses living abroad.

– *The remaining absent witnesses*

119. As regards the remaining three witnesses, the Court can accept that the authorities could no longer locate witnesses B.Tch. and Z.Tch. However, while the trial court stated in respect of witness T.A. (see paragraph 29 above) that she lived some 400 kilometres from the court, this reason alone is not sufficient to justify her not being heard during the trial. As she had given birth shortly before the trial, the authorities could have explored the possibility –

expressly provided for by law (see paragraph 82 above) – of hearing her remotely. No reasons were given for not having explored this possibility.

120. The Court thus concludes that as witness T.A. was concerned, the trial court proceeded without good reason for her non-attendance.

- (β) Whether the evidence of the absent witnesses was the sole or decisive basis for the first and second applicants' conviction

121. The Court sees no reason to disagree with the Supreme Court's conclusion that the evidence given by the six absent witnesses did not constitute the sole evidence against the first and second applicants (see paragraphs 59 and 113 above).

122. However, and notwithstanding the availability of other evidence to convict the applicants, the Court takes note of the fact that the statements of the absent witnesses were reproduced and expressly relied on in the judgments convicting the applicants. The statements in question complemented the content of the video-recordings available in respect of the incident, especially as regards the second applicant's conduct (compare paragraphs 15-16 and 50 above, particularly with respect to the statements given by T.A. and L.A.). In this regard, and considering the detailed account of the incident by the absent witnesses, it could be argued that their testimonies influenced significantly the interpretation of the other evidence in the case against the applicants.

123. Therefore, even accepting that the evidence given by the absent witnesses was neither sole nor decisive in view of the presence of other evidence in the case file, it undoubtedly carried significant weight and its admission may therefore have handicapped the defence (see *Schatschaschwili*, cited above, § 116).

- (γ) Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured

124. The Court reiterates that the extent of the counterbalancing factors necessary in order for a trial to be considered fair depends on the weight of the evidence in question. The more important that evidence, the more weight the counterbalancing factors will have to carry in order for the proceedings as a whole to be considered fair (see *Schatschaschwili*, cited above, § 116; see also *Chernika*, cited above, § 66, and *Faysal Pamuk*, cited above, § 63). Given the importance of the evidence given by the absent witnesses in the present case (see paragraphs 122-123 above), weighty counterbalancing factors were required to ensure the fairness of the proceedings. The Court has considered the following elements to be relevant in this context: the trial court's approach to the evidence in question; the availability and strength of further incriminating evidence; and the procedural measures taken to compensate for the lack of opportunity to directly cross-examine the witnesses at the trial (see *Schatschaschwili*, cited above, § 145).

125. As far as the domestic courts' approach to the untested evidence is concerned, the trial court pointed out, citing the case of *Al-Khawaja and Tahery* (cited above), that the evidence given by absent witnesses could not be the sole basis for a conviction (see paragraph 29 above). Additionally, the appellate and cassation courts noted the existence of other evidence in the case file and the applicants' ability to contest the veracity of the untested evidence (see paragraphs 56 and 59 above). Yet, the relevant judgments of the national courts do not suggest that these courts attached less weight to the evidence given by absent witnesses (compare, for instance, *Al-Khawaja and Tahery*, § 157; *Faysal Pamuk*, § 72; and *Khavshabova*, § 52, all cited above).

126. As regards the availability and strength of further incriminating evidence, the Court does not overlook the fact that the domestic courts also relied on neutral evidentiary material such as two video-recordings of the incident (see paragraph 113 above). It also takes note of the fact that the content of the impugned statements was corroborated by the account of the victim, his wife and his friend. However, considering the trial court's statement regarding the significance of neutral eyewitness evidence (see paragraph 53 above), and in view of the Court's finding above regarding the importance of the evidence given by the absent witnesses for the applicants' conviction (see paragraphs 122-123 above), the availability of other incriminating evidence in the criminal file as a potential counterbalancing factor for the handicaps under which the defence laboured should be approached with caution.

127. The Court also takes note of the argument that the applicants were duly represented and had the opportunity in the course of the domestic proceedings to give their own version of events and to cast doubt on the credibility of the absent witnesses. It has repeatedly held that such an opportunity to challenge and rebut absent witnesses' statements cannot, of itself, be regarded as a sufficient counterbalancing factor to compensate for the handicap for the defence created by their absence (see *Trampevski v. the former Yugoslav Republic of Macedonia*, no. 4570/07, § 49, 10 July 2012; *Riahi v. Belgium*, no. 65400/10, § 41, 14 June 2016; and *Chernika*, cited above, § 68).

128. As to the availability of any safeguards to the applicants at the pre-trial stage of the proceedings, the Court reiterates that it is vital for the determination of the fairness of the trial "as a whole" to ascertain whether, at the time the witnesses were heard at the investigation stage, the authorities were proceeding on the assumption that the witnesses would not be heard at the trial. Where the investigating authorities took the reasonable view that a witness would not be examined at the hearing in the trial court, it is essential for the defence to have been given an opportunity to put questions to the witness at the investigation stage (see *Schatschaschwili*, §§ 156-57, and *Khavshabova* § 54, both cited above).

129. In this regard, and so far as the applicants' complaint relates to the three witnesses living abroad (see paragraphs 116-118 above), the Court observes that it was obvious that they were tourists in Georgia and would have left the country soon after giving their statements (see paragraph 11 above). The procedural legislation – Article 114 § 1 (b) of the Code of Criminal Procedure (see paragraph 82 above) – provided for the possibility of summoning them to appear before a magistrate judge. In normal circumstances, the Court would consider such a procedure to afford strong procedural safeguards to an accused who is unable to examine witnesses during the actual trial (see *Khavshabova*, cited above, § 53). However, no explanation was provided as to why this procedural safeguard was not applied in respect of the three witnesses in question. By proceeding as they did, the investigating authorities took the foreseeable risk, which subsequently materialised, that the accused would not be able to put questions to the relevant witnesses at any stage of the proceedings (see *Khavshabova*, cited above, § 54). As regards T.A., neither the above possibility of questioning her before a magistrate judge nor that of hearing her remotely was explored (see paragraphs 119-120 above).

130. In such circumstances, the availability of other incriminating evidence including, importantly, video recordings that allowed to observe the unfolding of the altercation could not, in the particular circumstances of the present case, be considered a sufficient counterbalancing factor, given uncertainties about the interpretation of the images.

131. Accordingly, there were no sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured.

3. The first and second applicants' exclusion from the trial hearing

(a) The parties' submissions

132. The applicants submitted that they had not disregarded the elementary standards of proper conduct in the courtroom and that their behaviour had not been such as to justify their removal and the continuation of the trial in their absence. They had thus been deprived of their right to examine the witnesses for the prosecution: G.M., M.K. and V.B., and they had been unable to provide their concluding statements to the trial court.

133. The Government submitted that the applicants' exclusion from the trial had been in full compliance with the guarantees of fair trial since (a) their disruptive conduct had continued throughout the proceedings and had not been limited to the examination of the victim and his wife; (b) they had been given several warnings and could have foreseen the consequences of their disruptive conduct; (c) their legal representatives had still had the opportunity to take part in the examination of evidence; (d) the majority of the witnesses had been examined before their removal; and (e) they had been able to participate in the proceedings before the Court of Appeal.

(b) The Court's assessment*(i) General principles*

134. Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial, which includes, *inter alia*, not only his or her right to be present, but also to hear and follow the proceedings (see *Murtazaliyeva*, cited above, § 91). Such rights are implicit in the very notion of an adversarial procedure and can, in principle, also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6; “to defend himself in person”, “to examine or have examined witnesses”, and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court” (see *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A).

135. The Court has held that it is essential for the proper administration of justice that dignity, order and decorum be observed in the courtroom as the hallmarks of judicial proceedings. The flagrant disregard by a defendant of elementary standards of proper conduct neither can, nor should, be tolerated (*Idalov*, cited above, § 176). However, when an applicant's behaviour might be of such a nature as to justify his removal and the continuation of his trial in his absence, it is incumbent on the presiding judge to establish that the applicant could have reasonably foreseen what the consequences of his ongoing conduct would be prior to the decision to order his removal from the courtroom (*ibid.*, § 177). Furthermore, the relevant consideration is whether the applicant's lawyer was able to exercise the rights of the defence in the applicant's absence (see *Suslov and Batikyan v. Ukraine*, nos. 56540/14 and 57252/14, § 137, 6 October 2022, and *Marguš v. Croatia* [GC], no. 4455/10, § 90, ECHR 2014 (extracts)).

(ii) Application of these principles to the present case

136. Turning to the circumstances of the present case, the Court observes that the first and second applicants were both excluded from the courtroom for disorderly conduct. At the time, they were both taking part in the proceedings remotely.

137. As far as the first applicant is concerned, she was explicitly warned against speaking out of turn during the examination of the victim before being excluded. Following her exclusion, she continued to intervene in the proceedings, apparently because she was in the same room as the second applicant who had the floor at that moment (see paragraphs 31-32 above). The Court observes that the first applicant's behaviour may have been such as to justify her removal and the continuation of the trial in her absence. Furthermore, given the prior warnings given to her, she could have reasonably foreseen the consequences of her continued conduct prior to the judge's decision to order her removal from the courtroom.

138. As regards the second applicant's exclusion from the proceedings, he was twice instructed by the judge not to make political statements when making a general point and before putting a question to the witness. However, this was in reaction to unfinished phrases and it is not immediately apparent what the second applicant intended to say and whether the statement he was about to make was "political" in the sense of being unrelated to the trial against him. It was the presiding judge's duty to establish that the behaviour of the second applicant was indeed disruptive and, furthermore, that he could have reasonably foreseen the consequences of his continued conduct prior to deciding to order his removal from the courtroom (see *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003). However, the material in the Court's possession does not suggest that the judge either issued a warning explaining the type of statements that the accused must refrain from or considered taking less radical measures.

139. At any rate, it is important to note that, for reasons that are unclear, the applicants were not allowed to rejoin the remaining trial (see the factual description of the events in paragraphs 35-42 above). The Court cannot but note that their attendance was in any event by means of a remote connection. Therefore, in principle, it should have been possible to limit the allegedly disruptive effect of their behaviour while at the same time ensuring their ability to follow the proceedings, for example by putting them on "mute", and, at the very least, intervene via their lawyers.

140. In such circumstances, the Court is unable to conclude, even accepting both applicants' disruptive tendencies during the trial and the fact that their interests were represented by lawyers of their own choosing, that the trial court gave sufficient reasons for the applicants' complete exclusion from the remaining trial (see paragraph 139 above) and for the restriction of their corresponding right to hear and follow the proceedings.

141. As to the appellate proceedings, the applicants attended the hearing remotely and were able to present their case to the court. However, while the appellate court had the possibility of reviewing the evidence taken at trial, it rejected the application to review the evidence taken in the applicants' absence. In such circumstances, the appeal hearing could not remedy the defects of the trial.

4. *The overall fairness of the trial*

142. The Court reiterates that in cases under Article 6 of the Convention like the present one, its primary concern is to evaluate the overall fairness of the criminal proceedings. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings "as a whole", and not on the basis of an isolated consideration of one particular aspect or one particular incident (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, §§ 250-251, 13 September 2016). Thus, it may find a breach of Article 6 § 1

of the Convention if the proceedings taken as a whole did not satisfy the requirements of a fair hearing even if each procedural defect, taken alone, would not have convinced it that the proceedings were “unfair” (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 89, Series A no. 146; *Mirilashvili v. Russia*, no. 6293/04, § 165, 11 December 2008; and *Miracle Europe Kft v. Hungary*, no. 57774/13, § 46, 12 January 2016).

143. In assessing the overall fairness of the criminal proceedings against the first two applicants, the following shortcomings have been identified above: the domestic courts did not give sufficient reasons for their refusal to hear the third applicant as a witness for the defence; they relied on statements of absent witnesses without providing sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured; and they did not give sufficient reasons for the first and the second applicants’ complete exclusion from the remaining trial from 22 June 2018. It is the combination of these deficiencies which, despite the availability of several items of evidence in the criminal case file, leads the Court to conclude that the first and second applicants’ procedural rights were adversely affected to such an extent as to undermine the overall fairness of the proceedings. The Court accordingly finds a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 8 OF THE CONVENTION

144. The third applicant (application no. 13079/22) complained that the criminal investigation into his injuries had been ineffective. He relied on Articles 3 and 8 of the Convention.

A. The parties’ submissions

145. The Government submitted that the third applicant’s complaint concerning the ineffectiveness of the criminal investigation into the injuries he had sustained on 26 August 2016 had been submitted out of time, as he had not been diligent in pursuing the matter at domestic level and in lodging the complaint with the Court. Specifically, he had not cooperated with the relevant authorities by giving them a statement regarding his injuries. Moreover, he had been well aware, as he had indicated in his request to the authorities dated 23 July 2018, that the investigation would become time-barred on 26 August 2018. Accordingly, the applicant ought to have become aware of the ineffectiveness of the investigation on that date. In the alternative, the Government argued that the complaint was incompatible *ratione materiae* with the provisions of the Convention in question because the treatment inflicted on the applicant had not reached the minimum level of severity under either of the two provisions. They also stated that the third

applicant had failed to exhaust domestic remedies in respect of his complaint because he failed to bring a claim for damages against G.M.

146. The third applicant submitted that the criminal investigation had involved questions relating to his physical integrity and had therefore been the most appropriate remedy to be used. As regards the diligence with which he had pursued the proceedings, he submitted that he had enquired, through his lawyers, about the progress of the investigation on various occasions between 2016 and 2021, having suggested that he be questioned remotely. His last attempt had been in 2021, after he had turned 18. He argued that the application had been submitted within six months of the final decision rejecting his request to be granted procedural status as a victim in relation to the ongoing investigation. The third applicant also submitted, relying on the case of *Bouyid v. Belgium* ([GC], no. 23380/09, ECHR 2015), that the injury inflicted on him had – in view of his age at the time – constituted treatment reaching the minimum level of severity under Articles 3 and 8 of the Convention.

B. The Court's assessment

147. At the outset, the Court is mindful of the fact that the injuries – lacerations on the lower lip and thigh – were inflicted on the third applicant when he was thirteen years old. The Court has on numerous occasions stressed the vulnerability of minors in the context of Article 3 of the Convention (see *Bouyid*, cited above, § 109). Importantly, the latter consideration appears to have prompted the authorities' decision to investigate the matter with the participation of an investigator specialised in juvenile justice (see paragraph 63 above). However, the question of whether the applicant has made out a *prima facie* case of having been subjected to a treatment reaching the level of severity under Articles 3 and 8 of the Convention can be left open, as in any event the complaint is inadmissible for other reasons. Therefore, the Court proceeds on the assumption that the third applicant raised such an arguable claim under the said provisions and that the authorities were thus under an obligation to carry out an effective investigation into the injuries inflicted on him.

148. In this respect, the Court notes that the authorities opened a criminal investigation into the incident promptly (see paragraph 63 above), appointed an expert examination of the injuries observed on the third applicant immediately following the incident (*ibid.*), and obtained a large part of the evidential material without delay (see paragraph 64 above). While the authorities do not appear to have attempted to question the third applicant until approximately two months and a week after the investigation commenced (see paragraphs 63-67 above), the third applicant failed to cooperate with the investigating authorities once the latter did approach him for a statement.

149. Namely, the investigating authorities attempted to question the third applicant on three occasions. All these attempts failed because of his lack of cooperation (see paragraphs 67-71 above). Importantly, in January 2017 it was the third applicant who requested the postponement of his questioning and did not propose an alternative time for giving his statement. Thereafter, all three applicants left the country sometime in July 2017. Based on the case-file material it appears that it was almost two years following the incident and a year and half after the third applicant's refusal to give a statement that he raised a possibility, in rather vague terms, of being questioned remotely (see paragraph 74 above). In such circumstances, the very fact that the proceedings may have become time-barred in the meantime (see paragraph 75 above) would be largely attributable to the applicant's lack of cooperation during the crucial initial period of the investigation.

150. The Court notes that it was approximately five years after the incident that the third applicant complained about the authorities' failure to explore the possibilities of questioning him. However, the Court cannot overlook the fact that the third applicant grossly misrepresented his lack of cooperation by claiming that he had "always" expressed readiness to be questioned (see paragraph 78 above). In this respect, his apparent wish to be questioned as part of the criminal proceedings against his parents (see paragraph 105 above) is irrelevant for the finding that he had opportunities to assist the investigation concerning the alleged criminal offence against him – a separate issue – but failed to cooperate adequately.

151. Importantly, the Court takes into account the fact that the third applicant's misgivings regarding the investigative process were addressed by the domestic court. The latter, after having reviewed the criminal case file material available in his respect, including the video recording of the incident, concluded that there had been insufficient evidence warranting a conclusion that he had been the victim of a criminal offence (see paragraph 79 above).

152. In the light of the foregoing, while it is true that no decision has been issued in the ongoing investigation, this would not in itself be sufficient for the Court to find a violation of the procedural obligations of the respondent Government.

153. The Court therefore finds the third applicant's complaints under Articles 3 and 8 of the Convention manifestly ill-founded. They must accordingly be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

154. 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

155. The first and second applicants claimed 86,826 euros (EUR) in respect of pecuniary damage and EUR 100,000 each in respect of non-pecuniary damage.

156. The Government submitted that the applicants' claim in respect of pecuniary damage was irrelevant and that their claims in respect of non-pecuniary damage were excessive.

157. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, based on equity, it awards the first and second applicants EUR 1,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

158. The first and second applicants also claimed EUR 4,000 for the costs and expenses incurred before the Court.

159. The Government submitted that the applicants' claim in respect of costs and expenses was excessive. The Government invited the Court to either reject the claim or, in the alternative, to award a reduced, reasonable, amount.

160. 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, making its own estimate based on the information available and deciding on an equitable basis, the Court considers it reasonable to award the first and second applicants EUR 3,000, plus any tax that may be chargeable to the applicants, in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* application no. 59464/21 admissible and application no. 13079/22 inadmissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 1,000 (one thousand euros) each to the first and second applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, 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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 August 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Mattias Guyomar
President

KHACHAPURIDZE AND KHACHIDZE v. GEORGIA JUDGMENT

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	59464/21	Khachapuridze and Khachidze v. Georgia	04/12/2021	Tamar KHACHAPURIDZE 1970 United Kingdom Georgian Kakhaber KHACHIDZE 1969 United Kingdom Georgian	Mr Y. BOYCHENKO
2.	13079/22	Khachidze v. Georgia	10/03/2022	Davit KHACHIDZE 2003 United Kingdom Georgian	Mr Y. BOYCHENKO