



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

THIRD SECTION

CASE OF ISMAILAJ AND OTHERS v. ALBANIA

(Application no. 28873/22)

JUDGMENT

Art 6 § 1 (criminal) • Lack of impartiality of the Supreme Court judge having previously examined the merits of closely related first-instance proceedings against two of the applicants • Similar underlying legal issues considered in each of the proceedings and, at the very least, related • Objectively justified doubts regarding possible preconceived view held by judge • No measures taken to enable the applicants to raise the question of impartiality in due time

Art 46 • Execution of judgment • Individual measures • Retrial or reopening of the proceedings, if requested, most appropriate way of ending violation and affording redress

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 July 2025

FINAL

08/10/2025

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

In the case of Ismailaj and Others v. Albania,

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

Peeter Roosma, *President*,

Lətif Hüseynov,

Darian Pavli,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović,

Vasilka Sancin, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 28873/22) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Albanian nationals, Mr Kastriot Ismailaj and Ms Lutfije Ismailaj, and Adriatic Development Corporation Ltd SHPK (“the applicants”) on 1 June 2022;

the decision to give notice to the Albanian Government (“the Government”) of the complaint concerning the alleged impartiality of the tribunal and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 17 June 2025,

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

INTRODUCTION

1. The case concerns the alleged partiality of a Supreme Court judge in the proceedings for the confiscation of the applicants’ assets pursuant to a non-conviction-based confiscation regime provided under the so-called “Anti-mafia Act” (Law no. 10192 of 3 December 2009, as amended, “On preventing and combatting organised crime and trafficking through measures against assets”).

THE FACTS

2. Mr Kastriot Ismailaj (the first applicant) is the son of Ms Lutfije Ismailaj (the second applicant) and sole shareholder and director of Adriatic Development Corporation Ltd SHPK (the third applicant), a company established under Albanian law. The applicants were represented by Mr A. Saccucci and Ms G. Borgna, lawyers practising in Rome.

3. The Government were represented by their Agent, Mr O. Moçka, General State Advocate.

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

I. THE CIRCUMSTANCES OF THE CASE

5. In 2008 and 2012, the Tirana Prosecutor's office launched two criminal investigations against the first applicant on suspicion that he had laundered the proceeds of criminal activities contrary to Article 287 of the Criminal Code (Laundering of the proceeds of crime). The investigations were discontinued in 2010 and 2012 for lack of evidence and elements disclosing a criminal offence, respectively. In 2014, a new money-laundering investigation (no. 6381/2014) was launched against the first applicant, to which the two prior investigations were also joined. This was followed by the initiation of two corresponding preventive proceedings for the confiscation of assets under the Anti-mafia Act, which relied on the findings of the 2014 criminal investigation.

II. FIRST SET OF PROCEEDINGS FOR THE CONFISCATION OF ASSETS

6. On 27 April 2016, the Court of First Instance for Serious Crimes ("the First-Instance Court") accepted an application by the special prosecution for the confiscation of a number of assets (bank accounts) belonging to the first and the third applicants on account of the commission by the first applicant of serious crimes, asserting that the three conditions required by section 24(1) of Law no. 10192 of 3 December 2009 (as amended) had been cumulatively met (see paragraph 19 below).

7. The three-judge bench of that court, which included judge K.K., found that there was a reasonable suspicion, supported by evidence, regarding the involvement of the first applicant in money-laundering activities covered by Article 287 of the Criminal Code, and that the criminal activity had been carried out as far back as 2006, from the time of the establishment of the third applicant and the transfer of the first sums of money to that company. That finding was predominantly based on the conclusions of the criminal investigations that had been launched between 2008 and 2014 against the first applicant. In particular, the court found that the third applicant was a sham company which had been created for the sole purpose of committing the offence of money-laundering. The financial transactions generated through this company, which had had no economic logic, were found to have originated from dubious financial sources that were used to cover allegedly unlawful criminal activities. The company had had no discernible commercial activity and zero profit, yet the financial transactions from their accounts were in the range of millions of euros with companies operating from a fiscal haven (Gibraltar).

8. Furthermore, the court found that the first and the third applicants had not discharged their burden of proof, as they had failed to prove that the contested assets had been acquired through lawful means. Lastly, the third

condition provided for by law, pursuant to which the assets had to be in the full possession of the person subjected to the measure, was also found to have been met.

9. The decision of the Court of First Instance on the confiscation of the applicants' assets was subsequently upheld on appeal by the Court of Appeal for Serious Crimes and the Supreme Court in 2016, and had, therefore, become final and enforceable.

III. SECOND SET OF PROCEEDINGS FOR THE CONFISCATION OF ASSETS

A. First-instance and appeal proceedings

10. On 16 June 2015 the Prosecutor's Office for Serious Crimes brought a claim with the First-Instance Court, requesting, under the Anti-mafia Act, the confiscation of several additional bank accounts and a car belonging to the applicants. Following the delivery of an expert's report on the applicants' assets and income, on 17 March 2016, the First-Instance Court accepted the claim.

11. With reference to the criminal investigations (no. 6381/2014) that had been launched between 2008 and 2014 against the first applicant, the court found that there existed a reasonable suspicion, supported by evidence, that he had been involved in the criminal activities set out in Article 287 of the Criminal Code since 2006 – the time of the establishment of the third applicant and the transfer of the first sums of money to that company. In particular, the court noted that the third applicant was a sham company which had been created for the sole purpose of committing the offence of money-laundering. All the financial transactions generated through that company, as well as by other companies created and administered by the first applicant, had no economic logic and were linked to suspicious sources; there was no discernible commercial activity, yet the financial transactions in their accounts were in the range of millions of euros with companies created in a fiscal haven (Gibraltar).

12. The court also found that the second and the third applicants were persons connected with the first applicant within the meaning of the Act and could, therefore, be considered subjects of the confiscation measure. Lastly, the court found that under the Act the burden of proof rested with the applicants and they had not proved that the funds in the bank accounts, which totalled approximately one million United States dollars, had been earned lawfully. The possession of such assets was considered not to correspond to the level of income, profits or lawful activities as declared by the applicants, nor had they been justified by them in circumstances where the profit from their lawful activity or activities amounted to zero.

13. On 24 May 2016 the First-Instance Court's decision was upheld by the Court of Appeal for Serious Crimes. Its conclusions were based on the evidence gathered in the course of criminal investigation no. 6381/2014 (see paragraph 5 above) against the first applicant. The appeal court considered that such evidence was sufficient to prove both the reasonable suspicion that the first applicant had committed a criminal offence and the unlawful origin of the confiscated assets.

B. Supreme Court proceedings

14. On 22 June 2016, the applicants lodged a cassation appeal with the Supreme Court against the decisions of the First-Instance Court and Court of Appeal for Serious Crimes, listing a number of complaints, which related in essence to the assessment of facts and evidence used by those courts in reaching their respective verdicts. The applicants alleged, *inter alia*, that the prosecution had failed to establish a reasonable suspicion of the applicants' involvement in criminal activities, to identify the assets acquired from suspicious sources, and to prove the rational link between these two elements.

15. On 4 May 2021, the Supreme Court, sitting *in camera* as a criminal bench of three judges, which included judge K.K., dismissed the applicants' cassation appeal as inadmissible. There is no indication in the file materials that the parties had been notified of the upcoming hearing and/or the composition of the bench. In declaring the appeal inadmissible, the Supreme Court noted that it did not meet any of the criteria for admitting such an appeal under Article 432 of the Code of Criminal Procedure. In particular, it stressed that it was not for the Supreme Court to re-examine evidence or points of fact and its jurisdiction was confined to legal arguments alone. The Supreme Court also added that it was satisfied that the legal conditions under the Anti-mafia Act for the confiscation of the applicants' properties were fulfilled.

16. The relevant parts of the judgment read as follows:

“30. The Criminal Bench maintains that none of the claims raised in the cassation appeal refer to any of the grounds for a cassation appeal provided for in Article 432 of the Code of Criminal Procedure. Although the Bench does not examine evidence, it considers that the lower courts have correctly assessed the conditions for the confiscation of the [applicants'] assets, as provided for by Law no. 10192, dated 3 December 2009 ... The Bench considers that all claims raised in the cassation appeal have also been raised in the Court of Appeal for Serious Crimes and have received a reasoned response from it...

32. The Criminal Bench considers that the complaints related to the misinterpretation of the evidence and the facts shall not be taken into consideration by it, since the assessment of evidence is a matter that falls outside the exclusively legal jurisdiction of the Supreme Court. However, the Bench considers that the decisions of the lower courts are exhaustively reasoned and create the conviction of the Bench that the confiscation of assets meets the conditions set out in Law no. 10192.”

C. Constitutional Court proceedings

17. The applicants lodged a constitutional complaint against the judgment of the Supreme Court. They alleged, *inter alia*, that their cassation appeal had not been adjudicated by an impartial tribunal on account of the earlier involvement of judge K.K. in related proceedings against the applicants (see paragraphs 6-9 above), which had concerned the same factual and legal issues underpinning the case on appeal.

18. On 2 December 2021, the Constitutional Court dismissed the applicants' constitutional complaints, including the complaint regarding the alleged lack of impartiality of the Supreme Court on account of the participation in the proceedings of judge K.K., who in 2016 had sat as first-instance court judge in a case against the first and the third applicants and had ordered the confiscation, under the Anti-mafia Act, of some bank accounts belonging to them. In this connection the Constitutional Court found that the assets (bank accounts) confiscated under those two separate proceedings were entirely different and concluded that there could be no objective doubts about K.K.'s impartiality.

RELEVANT LEGAL FRAMEWORK

19. Law no. 10192 of 3 December 2009, (the "Anti-mafia Act"), as in force at the relevant time, sets out the conditions for the confiscation of assets allegedly acquired through unlawful means. The relevant part of that Law reads:

Section 3 Scope

"...

2. The provisions of this law shall also apply to the assets of:

(a) Close relatives ... of the persons indicated in paragraph 1 of this section [the primary suspects];

(b) Natural or legal persons, for whom there is sufficient evidence that their assets or activities are owned, partially or entirely, directly or indirectly, or have been used, facilitated, or in some way influenced the commission of illegal activities by the persons referred to in paragraph 1 of this section."

Section 5 Relationship with criminal proceedings

"1. The procedure for the imposition and execution of preventive measures, according to this law, is independent from the status, level, or outcome of any criminal proceedings conducted against persons subject to this law.

2. The verifications, investigations, and adjudication, according to this law, shall follow the procedural rules of this law, as supplemented by rules specified in the Code of Civil Procedure.”

Section 24
Grant of the request for confiscation

“1. The court shall decide on the confiscation of assets when all the following conditions are met:

(a) there are reasonable doubts, based on evidence [*indicie*], regarding the person’s involvement in any of the criminal activities specified in section 3 of this law;

(b) it is not proven that the assets have a lawful origin, or the person does not justify the possession of assets or revenue that are manifestly disproportionate to their [previously] declared lawful revenue, profits, or activities ...; and

(c) it is proven that the assets are, directly or indirectly, in the partial or full possession of the person.”

20. Section 5, paragraph 2, of the Anti-mafia Act was subsequently amended by Law no. 70/2017, as follows:

“2. The verification, investigation and adjudication according to this law shall follow the procedural rules of this law, as complemented by rules stipulated in the Code of Criminal Procedure, as the case may be. Data [*të dhënë*] obtained from criminal proceedings [may be] used in the procedure provided for by this law.”

21. Article 472 of the Code of Civil Procedure, as in force at the time of the applicants’ lodging of their appeal with the Supreme Court, read as follows:

Article 472
Judgments subject to appeal [*rekurs*]

“Judgments of a court of appeal or a court of first instance may be appealed to the Supreme Court, in the cases provided for in this Code, [and] only on the following [grounds]:

(a) non-compliance with or incorrect application of the law;

(b) serious breaches of procedural norms

...”

22. The relevant provisions of the Code of Criminal Procedure (CCP), as in force at the time of the hearing of the applicant’s appeal by the Supreme Court, read as follows:

Article 15

Incompatibility due to participation in the proceedings

“1. A judge who has delivered or participated in the adoption of a judgment in an instance of the proceedings shall not exercise the functions of a judge in the other instances, nor take part in a retrial or revision after the quashing of the judgment. ...”

Article 17

Withdrawal

“1. A judge shall be obliged to withdraw from the adjudication of a specific case when:

...

(c) [he or she] has provided advice or expressed an opinion on the subject matter of the proceedings; ...

(ë) there exist other important reasons of partiality.

2. A statement of withdrawal shall be presented to the chairperson of the respective court, who shall approve or reject the withdrawal by reasoned decision.”

Article 18

Recusal of a judge

“1. Parties may request the recusal of a judge:

(a) in the cases provided for in articles 15 ... and 17 [of this Code];

b) when during the exercise of his/her functions and before the delivery of the judgment, he or she has expressed an opinion on the facts or circumstances subject to the proceeding.”

Article 432

Appeals against judgments of the Court of Appeal

“1. An appeal to the Supreme Court against judgments delivered by the Court of Appeal may be lodged for the following reasons:

(a) non-compliance with or incorrect application of substantive or procedural law, which is important for the uniform interpretation [*njësimin*] or development of judicial practice;

(b) non-compliance with or incorrect application of procedural law, having as a consequence the quashing [*pavlefshmërinë*] of the judgment, the absolute invalidity of acts or inadmissibility of evidence;

(c) the judgment subject to appeal is contrary to the practice of the Criminal Bench or Joint Benches of the Supreme Court.

2. When it deems it necessary, the court shall request written memoranda from the parties.”

Article 433
Non-admissibility of an appeal

“1. An appeal shall not be admitted if it is lodged for reasons different from the ones allowed by law and if the Supreme Court decides that the case must not be reviewed by it pursuant to the provisions of Article 432 § 1 of this Code.

2. A judicial panel of three judges shall decide on the admissibility of the appeal in a closed session.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicants complained that their right to an impartial tribunal had been violated on account of the participation of judge K.K. in the cassation proceedings against them. This was contrary to the guarantees of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

24. The Government submitted that the applicants’ complaint was a “fourth-instance” complaint and that it constituted an abuse of the right of individual application under Article 35 § 3 of the Convention. With regard to the second applicant, the Government submitted that she lacked victim status for the purposes of Article 34 of the Convention, as she had not been a party to the proceedings at first instance with the participation of judge K.K.

25. The applicants submitted that the Government’s objections lacked any merit and were misplaced. With regard to victim status, the applicants asserted that the fact that judge K.K. had already formed a view as to the merits of the case on the basis of his adjudication in the first set of proceedings, in which the second applicant had not been involved, had also adversely affected the latter who had solely been involved in the second set of proceedings (see *Urgesi and Others v. Italy*, no. 46530/09, §§ 94-95, 8 June 2023).

26. The Court considers that despite not being a party to the first set of proceedings, the second applicant can still be deemed to have been affected by the alleged impartiality of judge K.K. on account of her being one of the subjects of the second set of proceedings, along with the two other applicants. In particular, both proceedings concerned the confiscation of various assets on account of the alleged criminal activity of the first applicant. The second applicant, his mother, was affected as a related person (see section 3 of the Anti-mafia Act, paragraph 19 above), through the confiscation of assets (bank

accounts) in her own name, allegedly deriving from proceeds of her son's criminal activities that gave rise to both sets of proceedings.

27. As to the Government's contention that the applicants had abused their right of application, the relevant principles are set out in, for example, *Gross v. Switzerland* ([GC], no. 67810/10, § 28, ECHR 2014). In particular, the Court stresses that an application may only be rejected as an abuse of the right of application in extraordinary circumstances, such as, for instance, if it was knowingly based on untrue facts (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Popov v. Moldova (no. 1)*, no. 74153/01, § 49, 18 January 2005). An applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross*, cited above, § 28). However, there is no such indication in the present case, therefore, this objection by the Government must also be rejected.

28. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The applicants complained that the Supreme Court, which had ruled on the application of the confiscation measure against them, had not been impartial, owing to the presence on the bench of judge K.K., who had previously expressed his opinion on the merits of their case and, in particular, on the main grounds on which the confiscation of their assets had been based, namely, the reasonable suspicion that the first applicant had been involved in criminal activities and the allegedly unlawful origin of their assets (first set of proceedings).

30. The applicants relied on the similarities between the two sets of proceedings, notably, that the relevant conclusions had been based on the same legal and factual assumptions and the fact that they had resulted from the same investigation of the first applicant's alleged involvement in criminal activities, drawn in both cases from the very same evidence. In that connection, they relied on *Indra v. Slovakia* (no. 46845/99, § 53, 1 February 2005) and *Urgesi and Others* (cited above, §§ 92 and 95). According to the applicants, the fact that the same wording had been used in the judgments of the Court of First Instance for Serious Crimes of Tirana in each of the two sets of proceedings was evidence of their similarity.

31. In particular, on the basis of the evidence gathered in the context of the criminal proceedings instituted against the first applicant, the domestic courts had found in both sets of proceedings that the third applicant had been a sham company which had been created for the sole purpose of committing

the offence of money-laundering and that the financial flows generated by such company and the assets accrued by the first applicant (and owned by the latter either directly or indirectly) after the beginning of the criminal activity (that is, after 2006) had all had to be regarded as having an unlawful origin.

32. Furthermore, the applicants, relying on *Toziczka v. Poland* (no. 29995/08, §§ 43-46, 24 July 2012) and *Indra* (cited above, § 53), submitted that judge K.K., when sitting on the bench of the Supreme Court that had adjudicated their case, had been called upon to decide whether or not his own legal interpretation of substantive law made in a previous judgment given in the same case was to be upheld or not. They asserted that the fact that the same judge had been called upon to decide whether or not he himself had committed an error of legal interpretation or application was sufficient to prove that fears as to his lack of impartiality were objectively justified. The applicants maintained that the Supreme Court bench that had adjudicated their case during the impugned proceedings had not confined itself to dismissing their appeal as inadmissible, but had expressly assessed the merits of their grounds of appeal (the applicants referred to paragraph 32 of the Supreme Court judgment – see paragraph 16 above).

33. The Government reiterated the arguments of the Constitutional Court in the present case, asserting that the two sets of proceedings had been entirely different since they had concerned the confiscation of different assets. In addition, they submitted that in the impugned proceedings the Supreme Court with the participation of judge K.K. had only decided on the admissibility of the cassation appeal, a procedural matter, and not on the merits of the case. They relied on *Morel v. France* (no. 34130/96, ECHR 2000-VI).

2. The Court's assessment

(a) General Principles

34. The Court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009; *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015; and *Ilseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 287, 4 December 2018).

35. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see *Kyprianou*, § 119; *Micallef*, § 94; and *Morice*, § 74, all cited above). The personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86, and *Morice*, cited above, § 74).

36. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Micallef*, cited above, § 96).

37. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber*, cited above, § 26). What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII; *Micallef*, cited above, § 98; and *Morice*, cited above, § 78).

38. The Court reiterates that the mere fact that a trial judge has made previous decisions concerning the same offence cannot be held as in itself justifying fears as to his or her impartiality. Likewise, the mere fact that a judge has already ruled on similar but unrelated criminal charges or that he or she has already tried a co-accused in separate criminal proceedings is not in itself sufficient to cast doubt on that judge's impartiality in a subsequent case (see *Meng v. Germany*, no. 1128/17, § 47, 16 February 2021, with further references).

(b) Application of the above principles in the present case

39. In the present case, the applicants did not provide any evidence that judge K.K. had displayed personal bias against them. The case must therefore be examined from the perspective of the objective impartiality test (compare *Teslya v. Ukraine*, no. 52095/11, § 42, 8 October 2020).

40. Concerning the substance of the complaint, the Court notes that the question of the alleged lack of judicial impartiality in the present case is functional in nature: that is, where the judge's personal conduct is not in any way impugned, but where, for instance, the exercise of different functions within the judicial process by the same person may objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the

Convention standard under the objective test (see *Kyprianou*, cited above, § 121, and *Morice*, cited above, §§ 73-78).

41. The Court observes that the applicants' concerns regarding the Supreme Court's impartiality originated in the fact that the same judge, K.K., who had previously examined the merits of closely related proceedings against two of the applicants, sat on the bench of that court. It can be accepted that this situation could raise doubts in the applicants' minds about the impartiality of that court. However, the Court has to decide whether those doubts were objectively justified (compare *Morel*, cited above, § 44, and *Toziczka*, cited above, § 38). The answer to this question depends on an assessment of the individual circumstances of each case (see *Borg v. Malta*, no. 37537/13, § 89, 12 January 2016). Therefore, the Court must assess whether the issues examined by the First-Instance Court against the applicant in separate proceedings were analogous to those considered by the Supreme Court in the disputed set of proceedings, and, if so, whether the apex court expressed itself on the merits of the same legal issues (see *Morel*, cited above, §§ 47-48).

42. The Court notes that on 27 April 2016, the First-Instance Court, in separate asset-recovery proceedings against two of the applicants, confiscated several of their bank accounts on the basis of Law no. 10192. In those proceedings, with the participation of judge K.K., the court found that the applicants had been unable to justify the lawful origin of the funds in those bank accounts. That judgment was subsequently upheld by the Court of Appeal for Serious Crimes and the Supreme Court in 2016.

43. The Court takes the view that the underlying legal issues considered by the Supreme Court in the disputed proceedings were similar and, at the very least, related to those dealt with by the lower courts in the first set of proceedings. The Government's argument that the cases were entirely different because they concerned different assets is not convincing. The Court considers that both sets of proceedings relied on evidence resulting from the same criminal investigation, related essentially to the same allegations involving money laundering by the individuals and companies concerned, and invoked similar legal grounds for the confiscation of the applicants' assets.

44. The Court notes that the applicants relied on a line of case-law in which the Court has found a violation of Article 6 § 1 of the Convention because a judge, who had previously been involved in some capacity in a case against the applicant(s), had subsequently heard an appeal on points of law in the Supreme Court (see *Indra*, cited above, §§ 51-55, and *Toziczka*, cited above, §§ 37-46). In particular, in those cases the Court considered that the contested proceedings had relied on the same set of facts and had involved the judge in question determining matters linked to their earlier adjudication. Similarly, in *Urgesi and Others* (cited above, §§ 90-97), the Court considered that the questions submitted to the judge in question for examination in each

of the two sets of proceedings (first in the capacity of prosecutor and then as judge), in respect of all the claimants, were essentially the same or, at the very least, strictly related.

45. The Court finds merit in the applicants' arguments. In the circumstances of the present case, it was not unreasonable for the applicants to consider that judge K.K., who sat as a judge in the Supreme Court, might have had a preconceived view of the merits of the case (that is, the overall legality of the confiscations) on account of his adjudication at first instance in very similar proceedings against two of the same parties. Therefore, objectively justified doubts would arise as to his impartiality. The Court is mindful of the fact that in the Albanian system of cassation review, the Supreme Court acts as a court of law, with a limited scope of review as to the application of substantive or procedural law by the lower courts. However, the Court notes that in the present case the Supreme Court bench did, in fact, express itself to some extent as to the merits of the case, in deciding on the admissibility of the appeal (see paragraph 16 above). Accordingly, the Court is of the view that judge K.K. found himself in a situation where he was, effectively, called upon to decide on his earlier legal interpretation or application of substantive law in closely related proceedings against the applicants (see *Toziczka*, cited above, § 43).

46. The Court further notes that there is no indication in the case file, nor have the Government claimed, that the applicants had been notified in advance of the hearing to be held on 4 May 2021 and/or the composition of the Supreme Court bench (see article 433 of the CCP, paragraph 22 above; see also *Croatian Golf Federation v. Croatia*, no. 66994/14, §§ 112-13, 17 December 2020). Likewise, there is no information as to whether the Supreme Court bench considered the potential conflict of interest *proprio motu*. In such circumstances, any judge in respect of whom there may be a legitimate reason to fear a lack of impartiality must consider the need to recuse himself from the proceedings (see *Castillo Algar*, cited above, § 45; *Morice*, cited above, § 78; and *Škrlj v. Croatia*, no. 32953/13, § 43, 11 July 2019). Such a possibility appears to be envisaged by the rules of criminal procedure in the domestic system (see article 17 of the CCP, paragraph 22 above). Specifically, it is the responsibility of the individual judge to identify any impediments to his or her participation and either to withdraw or, when faced with a situation in which it is arguable that he or she should be disqualified, although not unequivocally excluded by law, to bring the matter to the attention of the parties in order to allow them to challenge the participation of the judge (see *Sigríður Elin Sigfúsdóttir v. Iceland*, no. 41382/17, § 35, 25 February 2020). However, no such measures, which would have enabled the applicants to raise the question of impartiality in due time, appear to have been taken in the present case.

47. On the basis of the foregoing considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention as regards the requirement of an impartial tribunal.

II. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

48. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”

49. The applicants requested the re-examination or reopening of the domestic proceedings as the most appropriate individual measure for *restitutio in integrum* in order to remedy the procedural shortcomings and to re-establish the situation which would have existed if the violation had not occurred.

50. The Court has reiterated that, while it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing a violation of Article 6, especially in cases where the Court has found that the domestic tribunal did not meet the Convention requirements of independence and impartiality (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV, and *Urgesi and Others*, cited above, § 104). The Court notes that this is possible, in principle, in the Albanian legal system (*Hysi v. Albania*, no. 72361/11, § 43, 22 May 2018; *Meli v. Albania*, nos. 41373/21 and 48801/21, § 83, 16 July 2024; *Gaba v. Albania*, no. 33369/17, § 101, 17 December 2024).

B. Article 41 of the Convention

51. 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.”

1. Damage

52. The applicants claimed 45,000 euros (EUR 15,000 each) in respect of non-pecuniary damage on account of the distress, uncertainty and loss of procedural opportunity flowing from the outcome of the domestic proceedings at issue.

53. The Government submitted that the claims in respect of non-pecuniary damage were unfounded and exaggerated.

54. The Court awards the applicants a total sum of EUR 3,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. *Costs and expenses*

55. The applicants also claimed EUR 6,500 for the costs and expenses incurred before the domestic courts and EUR 41,880 for those incurred before the Court.

56. The Government submitted that the applicants had failed to provide any supporting evidence for expenses incurred before domestic courts (including invoices, which was a requirement under Albanian law) and that in any event, the applicants' claims were unreasonable.

57. As regards the expenses incurred before the Court, the Government argued that the information submitted by the applicants was very general, in that the applicants had not specified information such as the amount of working hours spent and by how many lawyers, and was not sufficient to determine whether it was reasonable to incur such expenses for the purposes of their representation before the Court. Furthermore, some expenses had not yet been incurred (about half) and the payments for those that had actually been incurred had been made by an unidentified person with no object specified for the transfers. Lastly, the Government maintained that those expenses were much higher than the normal rate in Albania and also surpassed the legal limit for such expenses (in accordance with a by-law of the Albanian National Advocates Chamber). The Government relied on *Bici v. Albania* (no. 5250/07, § 59, 3 December 2015).

58. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 5,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

- (a) that the respondent State is to pay the applicants jointly, 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 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five 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 8 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President

APPENDIX

List of applicants

No.	Applicant's Name	Year of birth/ registration	Nationality/ Incorporation	Place of residence
1.	Kastriot ISMAILAJ	1963	Albanian	Tirana
2.	Lutfije ISMAILAJ	1941	Albanian	Tirana
3.	ADRIATIC DEVELOPMENT CORPORATION LTD	2006	Albanian	Tirana