



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

SECOND SECTION

CASE OF LÁRUS WELDING v. ICELAND

(Application no. 24999/21)

JUDGMENT

Art 6 § 1 (criminal) • Independent tribunal • Appointment and participation of an expert lay judge in the applicant's trial did not disclose deficiencies of such a nature or degree as to be capable of undermining the tribunal's independence or its appearance of independence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 May 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lárus Welding v. Iceland,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Péter Paczolay,

Oddný Mjöll Arnardóttir,

Gediminas Sagatys,

Stéphane Pisani,

Juha Lavapuro, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 24999/21) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Icelandic national, Mr Lárus Welding (“the applicant”), on 10 May 2021;

the decision to give notice to the Icelandic Government (“the Government”) of the complaint concerning the judicial independence and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 20 January and 18 March 2026,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The application concerns the alleged violation of the applicant’s right to an independent tribunal within the meaning of Article 6 of the Convention, arising from the participation of an expert lay judge in the applicant’s trial and the statutory framework that governed her selection and appointment.

THE FACTS

2. The applicant was born in 1976 and lives in Reykjavík. He was represented by Óttar Pálsson, a lawyer practising in Reykjavík.

3. The Government were represented by Fanney Rós Þorsteinsdóttir, Agent.

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

5. On 10 February 2014 the applicant, together with two co-defendants, was committed for trial before the Reykjavík District Court on charges of fraud by abuse of position. The case was heard by a panel of three judges composed of professional judges S.S. and S.H., and one expert lay judge. Judge S.S., as presiding judge, summoned H.S.B., chair of the undergraduate

business studies department at Reykjavík University, to sit on the bench as the expert lay judge.

6. By judgment of 21 December 2015, the Reykjavík District Court convicted the defendants on all charges. However, on 1 June 2017 the Supreme Court quashed the conviction and remitted the case for reconsideration, on the basis that there were circumstances capable of casting doubt on the impartiality of District Court Judge S.H., warranting her withdrawal from the case.

7. For the re-trial, District Court Judge S.S. again summoned H.S.B. to sit as an expert lay judge on the panel of three judges. The applicant requested that H.S.B. be recused and argued that the legal framework and practical implementation of the selection, appointment and status of expert lay judges created legitimate doubts as to the independence of the bench in violation of his right to an independent tribunal.

8. By a ruling of 20 October 2017, the District Court rejected the request, holding that the system for selecting expert lay judges contained sufficient safeguards. Since expert lay judges participated in the conduct of proceedings and the drafting of judgments, enjoyed the same rights and bore the same obligations as the professional judges, and were bound by the constitutional duty to adjudicate solely on the basis of law, their independence was sufficiently protected.

9. On 22 October 2017 the applicant appealed against that decision to the Supreme Court, reiterating his arguments and adding that the *ad hoc* appointment of expert lay judges could be professionally and financially appealing to those seeking an appointment, creating strong incentives to please the presiding judge who summons them to serve. Expert lay judges were also dependent on the presiding judge for the determination of their remuneration. He further noted that H.S.B. had previously sat with Judge S.S. in the initial trial and in another trial against him, in which he had been convicted. He submitted that it appeared as if the expert lay judge had been selected for the re-trial because she had previously participated in two sets of proceedings resulting in his conviction.

10. On 2 November 2017 the Supreme Court upheld the decision, primarily relying on the reasoning set out in the District Court's ruling. The Supreme Court also reiterated that expert lay judges have the same authority as professional judges in adjudicating cases, and that their impartiality could be challenged before a higher court.

11. By judgment of 21 December 2017, the Reykjavík District Court again found the defendants guilty on all charges. The Court of Appeal upheld the conviction on 26 June 2020. The applicant's request for leave to appeal to the Supreme Court was rejected on 26 November 2020.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Constitution of the Republic of Iceland

12. Article 61 provides that, in the performance of their official duties, judges shall be guided solely by the law.

13. Article 70 provides that everyone has the right to a fair and public hearing by an independent and impartial tribunal, within a reasonable time, for the determination of their rights and obligations and of any criminal charge against them.

B. Criminal Procedure Act no. 88/2008 (“the CPA”)

1. As applicable at the time of the applicant’s trial

14. At the material time, the CPA contained provisions on the participation of expert lay judges in criminal proceedings. It allowed two such judges to be summoned to sit with one professional judge where specialist knowledge was considered necessary to resolve disputed facts. In cases of broad scope or of general importance, the president of the court could decide that the bench be composed either of three professional judges or of two judges together with one expert lay judge (Article 3(3) and (5)).

15. Eligibility criteria required sufficient maturity, mental and physical health, Icelandic citizenship, a minimum age of twenty-five as well as financial competence and legal capacity. Persons convicted of offences considered disgraceful, or otherwise displaying conduct undermining public trust in the judiciary, were excluded (Article 4(1)).

16. Expert lay judges were to take their seats no later than at the start of the main hearing, with the parties being informed in advance so they could raise objections to the proposed appointment (Article 5(1)). When serving for the first time they were required to sign a sworn declaration to perform their duties conscientiously, impartially and in full compliance with the law (Article 5(2)). They participated in the hearing and the compilation of the judgment with the same rights and obligations as the presiding judge, while the presiding judge directed the proceedings and acted alone in ruling on procedural matters other than the dismissal of the case (Article 5(3)). Their fees were determined by the presiding judge (Article 5(4)).

17. The CPA provided the same rules of recusal for judges and expert lay judges, including where circumstances exist that can justifiably raise doubts about their impartiality (Article 6(1)(g)).

18. Judges were required to assess their own competence *ex officio*, and the parties were entitled to request their recusal. The presiding judge was to assess the competence of expert lay judges. Recusal requests concerning a

judge or an expert lay judge were to be decided by the judge concerned, or by the presiding judge in a panel. In cases heard by three District Court judges, the ruling should be delivered jointly by all three (Articles 7(1) and (2)).

19. District Court rulings on recusal requests were subject to appeal to the Supreme Court (Article 192(1)(a)).

2. Subsequent amendments

20. The new Act on the Judiciary, no. 50/2016, entrusts the Court Administration with designating expert lay judges for a fixed term of five years and maintaining a roster of qualified experts in specified fields. Designations are to be made following a public advertisement or on the basis of judges' recommendations, subject to verification of the expert lay judges' professional competence. Eligibility criteria and the requirement of a sworn declaration largely mirror the previous requirements under the CPA (Article 39). When an expert lay judge is required in a particular case, the competent judge is to summon one or more experts from the roster, provided that they possess the specialist knowledge needed for the determination of the case. Should the judge consider that none have the requisite knowledge, he or she is to refer the matter to the Court Administration, which is to identify a suitable expert (Article 40). The Act also requires the Court Administration to issue binding rules on the assessment of their competence, remuneration and reimbursement of expenses. It further provides that the Court Administration shall take steps to ensure that expert lay judges have minimum knowledge of legal procedure (Article 41). The Explanatory Report to the Act noted that the new provisions were intended to accommodate the findings of the Council of Europe Group of States against Corruption ("GRECO") on the appointment of expert lay judges in Iceland (see paragraph 23 below).

21. In 2016, Articles 3 to 5 of the CPA were also amended. In the amended version, Article 3 largely mirrored the previous provisions on the appointment of expert lay judges (see paragraph 14 above), except for specifying that one expert lay judge could be summoned to sit with two professional judges unless expert knowledge in more than one field was considered necessary. The amended Article 4 mirrored the eligibility criteria provided in the new Act on the Judiciary (see paragraph 20 above) and added a cross-reference providing that other aspects of the selection of expert lay judges were to be governed by that Act. Article 5 likewise retained the rule that fees were determined by the presiding judge (see paragraph 16 above) but specified that this was to be done in accordance with rules set by the Court Administration.

22. The above amendments entered into force on 1 January 2018 and therefore did not apply during the applicant's trial.

II. COUNCIL OF EUROPE

23. In its Fourth Round Evaluation Report on Iceland, adopted at its 59th Plenary Meeting (Strasbourg, 18-22 March 2013), GRECO examined corruption prevention in respect of judges. It noted that in Iceland, district courts could summon experts to sit on the bench in both civil and criminal cases if specialist knowledge was required. Such experts enjoyed the same rights and obligations as professional judges and could theoretically determine the outcome against the vote of the professional judge. However, unlike professional judges, they were not subject to administrative scrutiny, and the appointing judge retained wide discretion in choosing the individuals who would serve. GRECO expressed concern that this procedure did not provide sufficient guarantees for judicial independence and recommended reform of the appointment process to ensure independence, impartiality and transparency (§§ 84-85).

24. In its Second Compliance Report, adopted at its 78th Plenary Meeting (Strasbourg, 4-8 December 2017), GRECO noted the legislative amendments introduced by the new Act on the Judiciary (see paragraphs 20-22 above). GRECO welcomed these reforms as significantly strengthening the transparency, independence and impartiality of the process (§§ 24-25).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant complained that his right to an independent tribunal had been violated due to the participation of expert lay judge H.S.B. in the tribunal at first instance. He relied on Article 6 § 1 of the Convention, which in its relevant part reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...”

A. Admissibility

26. The Court notes that this complaint 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

(a) The applicant

27. The applicant submitted that the District Court lacked the requisite independence owing to the participation of the expert lay judge, H.S.B.

28. He argued that the rudimentary legal framework and non-transparent procedure for the selection of such judges created structural deficiencies and did not provide safeguards against undue influence. In his submission, expert lay judges were appointed on an *ad hoc* basis at the sole discretion of the presiding judge without clear legal rules, rendering them structurally dependent on the appointing authority. This dependency, combined with the fact that their remuneration was determined by the presiding judge in a discretionary manner and that appointment and re-appointment carried professional and financial appeal, undermined the appearance of independence of the tribunal.

29. The applicant further pointed to the fact that H.S.B. had previously sat with the presiding judge in other proceedings against him, giving rise to objectively justified concerns that she had been selected due to their previously established working relationship and her personal views, as reflected in the previous judgments. The applicant also emphasised that expert financial knowledge was central to his defence. Therefore, it had been essential that any expert member of the bench be both fully independent and professionally competent.

30. The applicant relied on GRECO's criticism of Iceland's appointment system for expert lay judges (see paragraph 23 above), noting that subsequent legal reforms addressed these deficiencies only after his case had concluded at first instance (see paragraphs 20-22 above).

(b) The Government

31. The Government submitted that the participation of the expert lay judge H.S.B. was not in breach of Article 6 § 1 of the Convention. They maintained that the Criminal Procedure Act provided sufficient safeguards to ensure independence, noting that expert lay judges were required to sign a sworn declaration to perform their duties conscientiously, impartially and in full compliance with the law. Furthermore, expert lay judges enjoyed the same rights and obligations as professional judges, thereby ensuring compliance with the guarantees enshrined in Article 61 of the Constitution (see paragraph 12 above).

32. The Government further submitted that presiding judges did not hold a position of superiority over expert lay judges, who were not subject to their instructions. They emphasised that the careers of expert lay judges were independent of their service within the justice system and that their appointment to serve had minimal impact on their professional prospects. The pool of District Court judges was also broad enough to dispel suggestions that the views of one District Court judge could preclude future service as expert lay judge.

33. Regarding remuneration, the Government stated that the presiding judge did not have discretion to determine payment; instead, his role was to estimate and review the number of hours to be paid, rather than to determine

a reasonable hourly rate. They further submitted that the role of an expert lay judge was supplementary and infrequent in nature, with minimal bearing on financial or professional prospects.

2. *The Court's assessment*

(a) **General principles**

34. The legislation of the Council of Europe's member States affords many examples of tribunals in which professional judges sit alongside specialists in a particular sphere whose knowledge is desirable and even essential in settling disputes (see, for example, *Ettl and Others v. Austria*, 23 April 1987, § 40, Series A no. 117; and *Pabla Ky v. Finland*, no. 47221/99, § 32, ECHR 2004-V).

35. The principles established in the Court's case-law concerning independence and impartiality are to be applied to lay judges in the same way as to professional judges (see *Cooper v. the United Kingdom* [GC], no. 48843/99, § 123, ECHR 2003-XII; *Suren Antonyan v. Armenia*, no. 20140/23, § 98, 23 January 2025, and the authorities cited therein). The decisive issue is whether their appointment follows a rigorous and transparent process based on objective criteria of merit, it being understood that different selection criteria may apply to non-professional judges (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 222, 1 December 2020).

36. The concepts of "independence" and "impartiality" are closely linked, and depending on the circumstances, may require joint examination (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 150, 6 November 2018). "Independence" refers to the necessary personal and institutional independence that is required for impartial decision-making and is thus a prerequisite for impartiality. It characterises both a state of mind which denotes a judge's imperviousness to external pressure as a matter of moral integrity, and a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit – which must provide safeguards against undue influence and/or unfettered discretion of other State powers, both at the initial stage of the appointment of a judge and during the performance of his or her duties (see *Guðmundur Andri Ástráðsson*, cited above, § 234).

37. In determining whether a body can be considered as "independent" regard must be had, *inter alia*, to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 78, Series A no. 80; *Findlay v. the United Kingdom*, 25 February 1997, § 73, *Reports of Judgments and Decisions* 1997-I; and *Maktouf and*

Damjanović v. Bosnia and Herzegovina [GC], nos. 2312/08 and 34179/08, § 49, ECHR 2013 (extracts)).

38. Judicial independence must be protected not only from undue influences outside the judiciary, but also from within. This internal judicial independence requires that individual judges must be free from directives or pressures from the fellow judges or those holding administrative authority within the court such as the president of the court (see *Daktaras v. Lithuania*, no. 42095/98, § 36, ECHR 2000-X; and *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 86, 22 December 2009).

39. It is the role of the domestic courts to manage their proceedings with a view to ensuring the proper administration of justice. The assignment of a case to a particular judge falls within the margin of appreciation enjoyed by the domestic authorities in such matters. There is a wide range of factors, such as, for instance, resources available, qualification of judges, conflict of interests, accessibility of the place of hearings for the parties etc., which the authorities must take into account when assigning a case. Although it is not the role of the Court to assess whether there were valid grounds for the domestic authorities to (re)assign a case to a particular judge or court, the Court must be satisfied that such (re)assignment was compatible with Article 6 § 1, and in particular, with its requirements of objective independence and impartiality (see *Moiseyev v. Russia*, no. 62936/00, § 176, 9 October 2008).

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

40. The Court notes at the outset that the applicant did not allege that the expert lay judge H.S.B. lacked professional competence, acted under the direction of the presiding judge, or displayed personal bias. Nor is the case concerned with any allegations of judicial dependence on the executive or the parties. The applicant's complaint centres on the claim that the statutory framework and the *ad hoc* method of appointment, taken together with the presiding judge's discretion over remuneration and the repeated appointment of the same expert lay judge, created systemic deficiencies undermining the appearance of independence, particularly *vis-à-vis* the presiding judge (see the applicant's arguments, summarised in paragraphs 28 and 29 above).

41. The Court observes that under the CPA, the presiding District Court judge could summon an expert lay judge where specialist knowledge was deemed necessary and enjoyed wide discretion in doing so (see paragraph 14 above). GRECO expressed concern in 2013 that this discretion risked undermining independence, noting also the theoretical possibility of two expert lay judges deciding the case against the vote of the professional judge (see paragraph 23 above). Subsequent reforms in 2016, which entered into force on 1 January 2018 (see paragraphs 20-22 and 24 above) strengthened the safeguards. While taking due note of GRECO's observations, from the perspective of corruption prevention, on the domestic legal framework at the

material time, the Court recalls that its task is to determine compliance with Article 6 § 1 in the case before it (compare *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 126, 14 December 2023, and *Muršić v. Croatia* [GC], no. 7334/13, § 112, 20 October 2016). The Court further recalls that in cases arising from individual applications, it must as a rule focus its attention not on the law as such but on the manner in which it was applied to the applicant in the particular circumstances of the case (see *Ships Waste Oil Collector B.V. and Others v. the Netherlands* [GC], nos. 2799/16 and 3 others, § 167, 1 April 2025). Against that background, the Court must assess whether the arrangements, taken as a whole, disclosed deficiencies of such a nature and degree as to be capable of undermining the independence, or the appearance of independence, of the bench in the applicant's case.

42. The Court notes that, under the domestic law applicable at the material time, the CPA established conditions for the participation of expert lay judges (see paragraphs 14-18 above). Their involvement was envisaged only in cases requiring specialist knowledge, and eligibility was subject to general criteria, such as citizenship, good character, financial competence and legal capacity. They were bound by the same recusal rules as professional judges and participated in hearings and deliberations with equal rights to the presiding judge (see paragraph 16 above). At the commencement of their duties, they provided a sworn declaration to adjudicate conscientiously, impartially and in accordance with the law. These safeguards are consistent with the constitutional duty set out in Article 61, which states that judges be guided solely by the law (see paragraph 12 above). They also align with the guarantees that the Court has previously accepted as adequate (see, *mutatis mutandis*, *Maktouf and Damjanović*, cited above, § 51). The Court further observes that the appointment of expert lay judges was intended to bring specialist knowledge to the assessment of complex cases. When exercised within the safeguard framework described above, such participation cannot, in and of itself, be regarded as undermining judicial independence (compare *Haarde v. Iceland*, no. 66847/12, §§ 105-06, 23 November 2017; *Maktouf and Damjanović*, loc.cit.; and *Pabla Ky*, cited above, § 32).

43. The Court observes that the decision to summon an expert lay judge was taken within the judiciary and formed part of the organisation of the proceedings rather than involving appointment by the executive or the parties. Under the applicable legal framework, the presiding judge did not exercise any disciplinary or appraisal authority over the expert lay judge. The Court also attaches importance to the fact that there is no indication that the presiding judge had a personal or institutional stake in the outcome or issued directions to the expert lay judge (contrast with *Agrokompleks v. Ukraine*, no. 23465/03, § 138, 6 October 2011, in which the court president gave direct instructions to his deputies; *Moiseyev*, cited above, §§ 181-82, in which the court president enjoyed unfettered discretion to replace or re-assign judges based on reasons unknown; and *Daktaras*, cited above, §§ 33-36, in which

the President of the Criminal Division petitioned the court to quash a lower court's judgment while also appointing the judge rapporteur and constituting the chamber). Nothing of this nature is apparent in the present case. Rather, the appointment formed part of the ordinary exercise of judicial functions under the applicable procedural framework.

44. As regards the operation of the above safeguards in the present case, the Court observes that the CPA required that the parties be informed in advance of the proposed appointment of an expert lay judge, thereby enabling them to raise objections at an early stage (see paragraph 16 above). The applicant made use of the available mechanisms by seeking recusal before the District Court, and pursuing the matter before the Supreme Court, with the result that his complaint about the lack of independence of the expert lay judge was examined at two levels of jurisdiction (see paragraphs 7-10 above). In that context, the existence of domestic procedures enabling doubts as to independence to be raised and examined is an additional element relevant to the Court's assessment of whether the arrangements, taken as a whole, provided sufficient guarantees for independence (see, *mutatis mutandis*, *Nicholas v. Cyprus*, no. 63246/10, §§ 55 and 64, 9 January 2018).

45. At this juncture, the Court reiterates that appearances are of importance as "justice must not only be done, it must also be seen to be done" (see *Ramos Nunes de Carvalho e Sá*, cited above, § 149, and *Suren Antonyan*, cited above, § 117). It therefore remains to be determined whether, notwithstanding the safeguards described above, there remained any objectively justified doubts as to the appearance of independence of the expert lay judge vis-à-vis the presiding judge.

46. The Court has held that where at least half of a tribunal is composed of qualified judges, this may constitute a strong indicator of impartiality and independence (see *Denisov v. Ukraine* [GC], no. 76639/11, § 68, 25 September 2018). While not decisive, and of limited relevance in situations where the impartiality of a member of the bench is open to doubt (see *Morice v. France* [GC], no. 29369/10, § 89, ECHR 2015, and *Suren Antonyan*, cited above, § 139), this is a factor to be taken into account in the overall assessment of whether the bench presents an appearance of independence (see *Denisov*, cited above, § 70; *Suren Antonyan*, cited above, § 118, and *Pabla Ky*, cited above, § 32). In the present case, therefore, the fact that the expert lay judge sat alongside two professional judges provided an additional safeguard against any appearance of dependence.

47. Turning to remuneration, the Court observes that under the CPA, the fee was determined by the presiding judge (see Article 5(4) of the CPA, cited in paragraph 16 *in fine* above). At the material time, the domestic law did not lay down further rules or guidelines governing the determination of such fees. The Court notes the Government's explanation that, in practice, the presiding judge's role was limited to reviewing the number of hours to be remunerated, rather than setting the hourly rate (see paragraph 33 above), while the

applicant emphasised that no such limitation existed in law. In the absence of material enabling it to verify the existence of any binding criteria or guidelines at the relevant time, the Court will proceed on the basis that the presiding judge enjoyed some discretion within the statutory scheme. However, the expert lay judge served on an occasional basis in cases where her specialist knowledge was required. Her primary profession was outside the judiciary and the remuneration received for sitting as an expert lay judge did not constitute her main source of income. Moreover, such remuneration was not tied to performance or outcome, was occasional in nature and did not confer material advantages likely to generate structural dependence. Accordingly, and in the absence of any indication that remuneration was used to influence the exercise of the expert lay judge's judicial functions, the Court considers that this arrangement was not such as to cast doubt on her independence.

48. As to career advancement, service as an expert lay judge was only occasional, and future participation depended only marginally on the presiding judge, as it could equally be offered by any other judge. She was therefore not reliant on the presiding judge for career advancement or discipline, which are the factors most capable of undermining internal independence (compare with *Drago Tadić v. Croatia*, no. 25551/18, §§ 74-78, 28 November 2023; in which internal independence was not considered compromised by the fact that the President of the Supreme Court held defined but limited authority in matters of suspension, career advancement and panel assignment, and *Parlov-Tkalčić*, cited above, §§ 92-93, in which court presidents held limited powers in terms of appraisals, career progression and discipline). Since the presiding judge's authority was limited to *ad hoc* designation, it did not amount to hierarchical control or structural subordination.

49. The applicant also submitted that the expert lay judge's repeated appointments by the same presiding judge created the appearance of dependence, suggesting that they had established a working relationship and that she had been chosen for the re-trial based on her views in the previous proceedings against him (see the applicant's arguments summarised in paragraph 29 above). The Court considers that the mere fact that a trial judge has made previous decisions concerning the same or a similar offence, or that a case is remitted to the same judge after quashing, cannot in and of itself justify fears as to independence (compare, in the context of impartiality, *Marguš v. Croatia* [GC], no. 4455/10, §§ 85-86, ECHR 2014 (extracts); *Alexandru Marian Iancu v. Romania*, no. 60858/15, § 63, 4 February 2020; and *Teslya v. Ukraine*, no. 52095/11, §§ 45-47, 8 October 2020). In the Icelandic judicial system, re-trials may be conducted by the same panel where the flaw leading to quashing does not relate to impartiality or independence of the judge in question. In the present case, the expert lay judge did not contribute to the procedural defect that led to the re-trial, nor is there any

evidence that her reappointment was based on anything other than considerations of professional competence and practical continuity.

50. Finally, the Court does not consider that the mere fact of judges having sat together in more than one set of proceedings, in itself, implies a lack of independence. This is particularly true in more compact judicial systems, where some repetition of panel compositions or appointments is unavoidable. While repeated involvement must be assessed in context, there is no factual or legal basis in the present case for concluding that it created objectively justified doubts as to the tribunal's independence.

51. Having regard to the foregoing considerations, the Court is satisfied that the discretion available to the presiding judge at the material time was sufficiently counterbalanced in the applicant's case by the statutory safeguards, taken together with the presence of a majority of professional judges on the bench and the absence of any indication that the presiding judge had a personal or institutional stake in the outcome of the case. The appointment and participation of the expert lay judge therefore did not disclose deficiencies of such a nature or degree as to be capable of undermining the tribunal's independence or its appearance of independence.

52. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by four votes to three, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 5 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Arnfinn Bårdsen
President

LÁRUS WELDING v. ICELAND JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Bårdsen;
- (b) joint dissenting opinion of Judges Paczolay, Sagatys and Pisani.

CONCURRING OPINION OF JUDGE BÅRDSSEN

1. I voted in favour of not finding a violation of Article 6 § 1 of the Convention in the present case, for the following reasons.

2. It is true that the Icelandic procedural framework for the appointment of *ad hoc* expert lay judges in criminal cases at the material time comprised safeguards to protect the internal independence of such judges vis-à-vis the presiding judge. I refer to the criteria for the appointment of *ad hoc* expert lay judges under the CPA, to the fact that such judges were bound by the same rules of recusal as professional judges and to the fact that they participated in hearings and deliberations on an equal footing with professional judges (see paragraph 42 of the judgment). The appointment of a particular *ad hoc* expert lay judge could, moreover, be challenged by way of a specific interlocutory remedy.

3. However, that framework also had some obvious and serious shortcomings. The presiding judge's wide discretion in the choice of the *ad hoc* expert lay judge from case to case and the lack of a proper regulatory framework for his or her determination of the *ad hoc* expert lay judge's fee considerably heightened the risk of undue influence, whether conscious or unconscious. I note that, given the District Court's three-judge formation, the presiding judge and the *ad hoc* expert lay judge would, if voting in concert, represent a majority. Moreover, it cannot go unnoticed that the overall configuration of the system exposed the judiciary to criticism domestically and internationally, thereby also tending to undermine the trust that courts, given their key role in a democratic society, must inspire in the accused and in the public at large.

4. Accordingly, my starting point in this case is that the composition of the Reykjavik District Court when finding Mr Welding guilty as charged was incompatible with Article 6 § 1 of the Convention. This was so even in the absence of any proven adverse effect in the applicant's individual case before the Reykjavik District Court, i.e., irrespective of any actual undue influence by the presiding judge vis-à-vis the *ad hoc* expert lay judge H.S.B.

5. However, what is crucial in Mr Welding's case is that, having been convicted by the Reykjavik District Court, he appealed to the Court of Appeal. The Court of Appeal, which had full jurisdiction in respect of both facts and law, did, in fact, conduct a total rehearing of all charges brought against Mr Welding. There is, moreover, no indication whatsoever that these proceedings – which in effect represented a completely new trial in the applicant's case – were not carried out in full compliance with the requirements of Article 6 § 1 of the Convention. Nor has it been argued that the Reykjavik District Court's judgment in any way contaminated the proceedings before the Court of Appeal or that court's own assessment of the

charges brought against Mr Welding, including its fresh assessment of the evidence.

6. Accordingly, the applicant's case falls within the particular category of cases where a defect at first instance was effectively remedied, not by way of an appeal court's quashing of the first-instance judgment and remittal of the case back to the lower court, but via a completely new trial by the appeal court itself (for comparison and further references, see, for example, *Toivanen v. Finland*, no. 46131/19, § 38, 9 November 2023, and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 134, ECHR 2005-XIII). It is true that Mr Welding was ultimately convicted. But this does not alter the fact that in doing so the tribunal determining the criminal charges brought against him – i.e., the Court of Appeal – complied with the requirements of Article 6 § 1.

JOINT DISSENTING OPINION OF JUDGES PACZOLAY,
SAGATYS AND PISANI

1. We respectfully disagree with the judgment in the present case. In our opinion, the key arguments in the judgment are not sufficiently substantiated or persuasive to conclude that the repeated appointment and participation of the expert lay judge did not reveal deficiencies of such a nature or degree as to undermine the court's independence or its appearance of independence for the purposes of Article 6 § 1 of the Convention. Furthermore, we believe that the defect at first instance could not effectively be remedied by the subsequent proceedings before the Court of Appeal.

2. As noted in paragraph 41 of the judgment, in cases arising from individual applications, the Court must as a rule focus its attention not on the law as such but on the manner in which it was applied to the applicant in the particular circumstances of the case. The present case does not concern the initial appointment of the expert lay judge during the first set of criminal proceedings, but her subsequent appointment by the same presiding judge following the quashing of the original judgment by the appellate court and the remittal of the case to the first-instance court. In his application form the applicant alleged, among other things, that having regard to the nearly unfettered discretion of the presiding judge in choosing H.S.B. and determining her remuneration, the existence of a working relationship previously established between them, and the presiding judge's awareness of H.S.B.'s personal views as reflected in the previous judgments against the applicant, in the absence of proper safeguards against external pressure, his doubts as to the independence and impartiality of the court were objectively justified. In the present case the Court's task is not therefore to decide, *in abstracto*, whether the national legal framework concerning the appointment and remuneration of expert lay judges complied with the requirements of Article 6 § 1 of the Convention. The central issue is whether the repeated appointment of H.S.B. as an expert lay judge in the same criminal case by the same presiding judge, despite the alleged deficiencies concerning the presiding judge's discretion over the appointment and remuneration of expert lay judges, created the appearance of her dependence on the presiding judge and (or) a lack of impartiality for the purposes of Article 6 § 1 of the Convention.

3. The reasoning of the judgment is structured in the following way. First, the judgment addresses the allegation that the statutory framework and the *ad hoc* method of appointment, taken together with the presiding judge's discretion over remuneration and the repeated appointment of the same expert lay judge, created systemic deficiencies undermining the appearance of independence, particularly *vis-à-vis* the presiding judge. It assesses whether the national arrangements, taken as a whole, disclosed deficiencies of such a nature and degree as to be capable of undermining the independence, or the

appearance of independence, of the bench in the applicant's case. This allegation is dismissed on the basis of an assessment of the domestic arrangements concerning the conditions for participation of lay judges in cases; the eligibility criteria for lay judges; their status in hearings and deliberations; the presence of two professional judges on the bench; H.S.B.'s remuneration and the prospect of her career advancement; and the fact that there is no indication that the presiding judge had a personal or institutional stake in the outcome or issued directions to the expert lay judge (see paragraphs 40-48).

4. Second, the judgment addresses the allegation that the expert lay judge's repeated appointments by the same presiding judge created the appearance of dependence, suggesting that they had established a working relationship and that she had been chosen for the retrial based on her views in the previous proceedings against the applicant. This allegation is dismissed by taking note of the Court's case-law, according to which the mere fact that a trial judge has made previous decisions concerning the same or a similar offence, or that a case is remitted to the same judge after quashing, cannot in and of itself justify fears as to independence; and which, in principle, does not prohibit judges from sitting together in more than one set of proceedings (which is particularly relevant in more compact judicial systems, where some repetition of panel compositions or appointments is unavoidable). In dismissing the allegation, the Court also relies on the fact that in the present case the expert lay judge did not contribute to the procedural defect that led to the retrial, nor is there any evidence that her reappointment was based on anything other than considerations of professional competence and practical continuity (see paragraphs 49-50).

5. This twofold reasoning is followed by the conclusion that the appointment and participation of the expert lay judge did not disclose deficiencies of such a nature or degree as to be capable of undermining the tribunal's independence or its appearance of independence (see paragraph 51).

6. We cannot agree with this finding.

7. First, there is good reason to believe that the chosen structure of the reasoning has stopped the Court from properly addressing the heart of the applicant's complaint. As previously mentioned, the judgment considers two allegations and dismisses them individually: first, it dismisses the allegation that the national arrangements, taken as a whole, disclosed deficiencies of such a nature and degree as to be capable of undermining the independence, or the appearance of independence, of the bench in the applicant's case (see paragraphs 40-48) and, second, it dismisses the allegation that the appearance of dependence was created by the expert lay judge's repeated appointments by the same presiding judge (see paragraphs 49-50). Even though in the applicant's complaint those two allegations were inextricably intertwined, the structure of the reasoning provides little ground to believe that the assessment

of the former allegation had any meaningful impact on the assessment of the latter. This is evidenced by the fact that despite recognition that “repeated involvement must be assessed in context” (see paragraph 50), the context in which the repeated appointment of the expert lay judge in the present case is assessed is very narrow. Notably, it is limited to the fact that in more compact judicial systems some repetition of panel compositions or appointments is unavoidable and to the fact that the expert lay judge did not contribute to the procedural defect that led to the retrial, nor is there any evidence that her reappointment was based on anything other than considerations of professional competence and practical continuity. There is an invisible firewall between the context in which the repeated appointment of the expert lay judge is assessed (see paragraphs 49-50) and the assessment of the presiding judge’s discretion over the appointment and remuneration of the expert lay judge (see paragraphs 40-48). The concern that the repeated appointment in the present case is assessed in a context that does not entail the presiding judge’s discretion over the appointment and remuneration of the expert lay judge is only strengthened by the fact that the assessment is based on the case-law referred to in paragraph 49, which does not concern either the repeated involvement of expert lay judges, or the scope of discretion afforded to the person responsible for reappointment, as in the present case.

8. Second, there is a close interrelationship between the guarantees of an “independent” and an “impartial” tribunal under Article 6 § 1 of the Convention. For this reason, the Court commonly considers the two requirements together (see *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, § 192, ECHR 2003-VI). However, even though in the present case the applicant alleged that his doubts as to the independence and impartiality of the court might be said to have been objectively justified, the judgment concentrates solely on the assessment of the element of independence. This results, *inter alia*, in a lack of account of case-law in which the Court took into consideration in its examination of a domestic court’s impartiality whether the judge who had participated in both sets of proceedings was a professional judge who could be considered more prepared than a lay judge or juror to disengage himself or herself from the experience and findings in the previous trial (see *Miminoshvili v. Russia*, no. 20197/03, § 120, 28 June 2011; *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 547 and 555, 25 July 2013; and *Bezek v. Germany* (dec.), nos. 4211/12 and 5850/12, § 38, 21 April 2015).

9. Third, although it is true that the Court is not obliged to act on the observations of the Council of Europe Group of States against Corruption (GRECO), which has considered that “[i]t is clear that the selection and appointment of experts does not offer the necessary guarantees to preserve judicial independence” (Fourth Round Evaluation Report on Iceland, adopted by GRECO at its 59th Plenary Meeting, Strasbourg, 18-22 March 2013, paragraph 84), it may nonetheless be noted that observations emanating from

the same international organisation as the Court do not appear to have been addressed in detail.

10. The judgment disposes, with notable brevity, of the issue whether the presiding judge’s role in determining the fees of the expert lay judge was capable of giving rise to doubts as to the latter’s independence. It does so on the ground that the expert lay judge maintained a separate principal professional activity and that her remuneration in a non-professional judicial capacity did not constitute her sole or main source of income (see paragraph 47). Those considerations, however, are neither substantiated nor reflected in the established facts of the case but appear solely within the Court’s reasoning. In the absence of evidentiary support, they are insufficient to exclude the possibility that the remuneration in question constituted a material advantage capable of creating a relationship of dependence *vis-à-vis* the presiding judge. Furthermore, the judgment contains no information as to either the amount of that remuneration or the economic and personal circumstances of the expert lay judge. Such factors are plainly relevant, as both comparatively high remuneration and comparatively modest remuneration – depending on the individual’s overall financial situation, including potential hardship notwithstanding other professional activity – may give rise to legitimate doubts as to independence. While the Government submitted that the presiding judge’s role in setting fees was limited, they failed to adduce evidence in support of that assertion.

11. Beyond any economic stake, the prestige or simply the experience gained by expert lay judges in sitting may encourage them to follow the presiding judge’s opinion, because it is the latter who summoned them and could do so again. The judgment considers that “future participation depended only marginally on the presiding judge, as it could equally be offered by any other judge” (see paragraph 48). But it also observes that Iceland has a “compact judicial system” (see paragraph 50). In this context, the influence of the presiding judge – who had already summoned the expert judge once – on the likelihood that the latter would be summoned again was all the greater, be it through appointments or recommendations. The term “marginally” appears here to be speculative.

12. The judgment is further grounded in the assertion that “there is no indication that the presiding judge had a personal or institutional stake in the outcome or issued directions to the expert lay judge” (see paragraph 43), a consideration that appears to have been determinative, as reflected elsewhere in the judgment (see paragraph 51). As regards the first limb, the existence of any such stake would, in itself, amount to a violation of the right to a fair trial and thus cannot serve as a meaningful criterion for excluding lesser, yet still relevant, concerns. As to the second, the absence of evidence of formal or explicit instructions is not dispositive in the present context, where no such allegation has been made. The possibility that influence might be exercised through informal or personal exchanges – by their nature difficult to

establish – cannot be disregarded; indeed, the subsequent discovery of such exchanges would aggravate the situation. Conversely, the applicant’s inability to demonstrate the existence of such instructions cannot be taken to establish the presiding judge’s good faith or, by extension, the independence of the expert lay judge. Reasoning *a contrario* in this manner disregards the requirements inherent in the theory of appearances. The judgment likewise emphasises “the absence of any indication that remuneration was used to influence the exercise of the expert lay judge’s judicial functions” (see paragraph 47). The formulation “was used” is, however, problematic, since any such use would in itself constitute a manifest breach of the principles of independence and impartiality, potentially engaging considerations akin to corruption. The absence of evidence of such an additional and more serious violation cannot logically suffice to demonstrate the existence of independence, there being no necessary correlation between the two.

13. The judgment also relies on the presence of a second professional judge on the bench, concluding that a majority of professional judges was capable of counterbalancing the presiding judge’s discretionary powers (see paragraph 46). That reasoning is unpersuasive. If an expert lay judge aligns with the presiding judge, the two together form a majority, thereby neutralising the purported counterweight. The argument is thus undermined by the very circumstance it is intended to address. Moreover, the requirement under Icelandic law that a bench be composed of three judges appears designed not to guard against individual bias – presumed to be absent – but to ensure a more robust and deliberative judicial outcome. That objective is liable to be compromised where, in appearance, the presiding judge exercises a *de facto* preponderant influence over the decision-making process.

14. Lastly, we cannot consider that the appeal lodged by the applicant with the Court of Appeal, which had full jurisdiction in respect of both facts and law, was likely to effectively remedy the defect at first instance. In the judgment in *De Cubber v. Belgium* (26 October 1984, § 33, Series A no. 86), the Court asked itself: “had not ‘the subsequent intervention’ of the Ghent Court of Appeal ‘made good the wrong’ or ‘purged’ the first-instance proceedings of the ‘defect’ [consisting in a lack of impartiality] that vitiated them?” In that case, the Court considered that, although “a higher or the highest court might, in some circumstances, make reparation for an initial violation of one of the Convention’s provisions [and] this [was] precisely the reason for the existence of the rule of exhaustion of domestic remedies”, “the defect [had] involved matters of internal organisation and the Court of Appeal [had] not cure[d] that defect since it [had] not quash[ed] on that ground the [previous judgment] in its entirety” (ibid.). In other words, the possibility to plea does not, in itself, constitute a legal safeguard capable of counterbalancing a lack of independence and (or) impartiality within the first court that ruled on the case. Such reasoning protects the right of the litigant

to benefit from a two-tier “trial”, within the meaning of Article 6 § 1 of the Convention, and not only a single one before the court of appeal.

15. Even assuming that, in some circumstances, proceedings before an appellate court with full jurisdiction over both facts and law might counterbalance a lack of judicial independence in the first-instance court, in the present case, the appeal procedure is all the less likely to have compensated for one of the District Court judge’s lack of independence given, in particular, that it concerned the lack of independence of an external expert appointed as a lay judge. This means that if the Court of Appeal’s judgment was based on the expert’s opinion, it would be affected by the same defect. Even though the District Court’s judgment could have been quashed by the Court of Appeal – which it was not – the lay judge’s expert assessment was not excluded from the proceedings and no counter-expert evaluation appears to have been ordered, so the lack of independence that affected the expert opinion could not have been compensated. So, neither the prior application to the Supreme Court, which did not concern the substantive issue, nor the appeal, allowed an examination of the substance of the expert assessment in the light of the question of independence, while only that would have made it possible to reveal a lack of independence on the part of the expert lay judge.