

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

SECOND SECTION

CASE OF TALESKI AND OTHERS v. NORTH MACEDONIA

(Applications nos. 34261/23 and 7877/24)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Legislative intervention with retrospective effect permitting the annulment of the presidential pardons granted to the applicants and the continuation of the criminal proceedings leading to their conviction • Principles of legal certainty and the rule of law not breached • In case-circumstances, legislative intervention based on compelling grounds of general interest • Pardons, having been issued on the basis of a provision which had ceased to be part of the domestic legal order, tainted by a fundamental defect • Pardons exempted serious wrongdoing from scrutiny, undermining the rule of law • Need to maintain accountability of public officials and to ensure they were not placed above the law • Legislative intervention foreseeable • Absence of any *res judicata* effect arising from annulments • Gravity of situation and ensuing political crisis justifying the adoption of exceptional legislative measures targeting a small group of individuals with the aim of restoring the rule of law • Departure from principle of legal certainty justified
Art 6 § 1 (criminal) • Fair hearing • Failure to serve two of the applicants with a copy of the high prosecutor's submissions in the appeal proceedings in breach of their right to adversarial proceedings • Conclusions reached in *Bosak and others v. Croatia* followed • Disproportionate burden would be placed on the defence by making its knowledge of the prosecution's observations entirely contingent upon its presence at the appeal hearing and did not necessarily ensure a real opportunity to comment on them • Extraordinary review proceedings did not remedy the shortcomings in the appeal proceedings resulting from non-communication of the high prosecutor's submissions

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 June 2026

FINAL

02/11/2026

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



In the case of Taleski and Others v. North Macedonia,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the applications (nos. 34261/23 and 7877/24) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the three Macedonians/citizens of the Republic of North Macedonia listed in the appended table ("the applicants"), on the dates indicated therein;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints concerning several alleged violations of fair trial guarantees and to declare inadmissible the remainder of application no. 34261/23;

the parties' observations;

the withdrawal of Judge Jovan Ilievski, the judge elected in respect of North Macedonia, from sitting in the case (Rule 28 § 3 of the Rules of Court) and the decision of the President of the Chamber to appoint Judge Oddný Mjöll Arnardóttir, to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 of the Rules of Court);

Having deliberated in private on 26 May 2026,

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

INTRODUCTION

1. The case concerns a legislative intervention affecting the criminal proceedings against the applicants, which permitted the annulment of the presidential pardons granted to them and their subsequent conviction. It also raises issues regarding the alleged lack of impartiality of the Supreme Court, specifically the participation of a judge who had previously made public statements regarding the applicants' cases. Lastly, the case concerns the failure to serve two of the applicants with a copy of the higher prosecutor's submissions in the appeal proceedings.

THE FACTS

2. The applicants were represented by Mr V. Ilievski, a lawyer practising in Skopje. Mr Vladimir Taleski ("the first applicant), introduced application no. 34261/23, while Mr Mile Janakieski ("the second applicant") and Mr Kosta Mitrovski ("the third applicant") introduced application no. 7877/24. Their years of birth and places of residence are indicated in the appended table.

3. The Government were represented by their Agent, Ms D. Djonova.

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

I. BACKGROUND TO THE CASE

5. For the background to the case, see *Taleski and Others v. North Macedonia* ((dec.), nos. 77796/17 and 5 others, §§ 4-25, 24 January 2023).

6. All three applicants were members of the then ruling political party (*Внатрешно-Македонска Револуционерна Организација-Демократска Партија за Македонско Национално Единство* – "the VMRO-DPMNE").

II. STATEMENTS BY JUDGE M.L.T.

7. On 12 April 2016 President I. (elected as the candidate of the VMRO-DPMNE) issued 51 individual pardons accompanied by 107 individual rulings exempting 56 people, including the applicants, from criminal prosecution in relation to the specific alleged offences identified in the rulings (for more details, see *Taleski and Others*, cited above, §§ 9 and 12). As regards the applicants, the pardons and rulings concerned the following offences: abuse of official position and authority and various electoral offences (see paragraphs 13, 33 and 34 below).

8. On 6 and 15 May 2016 Judge M.L.T. made public statements concerning the pardon decisions issued by the President on 12 April 2016. She stated that his decision to grant a collective pardon to 56 individuals had been unusual, bearing the characteristics of an amnesty rather than a pardon. She emphasised that, under the Constitution, the power to grant amnesty rested exclusively with Parliament and was not within the President's competence. She further stated that collective measures of this nature were inconsistent with the principles of a parliamentary democracy and could reasonably be suspected of being discriminatory. She urged the Constitutional Court to "rule on the matter of the President's potential overreach of constitutional powers" *("произнесување на Уставниот суд по однос на пречекорување на ингеренциите на Претседателот*") and resolve the conflict of competences between the executive and the legislature. She concluded that the President's decision had dealt a serious blow to an already fragile legal system.

9. In February 2020 Judge M.L.T. was appointed as a judge of the Supreme Court.

10. On 2 November 2022 Judge M.L.T. gave a television interview. She stated, among other things, that the 2016 pardon decisions resembled an amnesty more than individual pardons. She also analysed the Court's judgment in *Lexa v. Slovakia* (no. 54334/00, 23 September 2008). She further stated that the central question was whether section 11 of the 1993 Pardon Act (see paragraph 55 below) had been valid at the time of the pardons. She explained that she was not currently in a position to answer that question and did not wish to prejudge its judicial determination, while observing that the Constitutional Court could not assume the role of the legislature by reinstating a legal provision that had previously been repealed. She declined to analyse the matter further.

11. In accordance with the Supreme Court's 2023 and 2024 annual work schedules, five judges were assigned to the Criminal Division of the Supreme Court, including Judge M.L.T. The annual work schedules were published on the Supreme Court's official website.

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

A. The first applicant, Mr Taleski (application no. 34261/23)

12. From 2005 to 2017 the first applicant was the mayor of Bitola. He was suspected of rigging the procurement process for school transport contracts (known as the "Transporter" case).

1. The presidential pardon and its revocation

13. On 12 April 2016 the President issued a decision exempting the first applicant from prosecution (*ослободува од гонење*) for abuse of official position and authority (Article 353 of the Criminal Code) initiated before the Bitola prosecutor's office and subsequently transferred to the Special Public Prosecutor's Office ("the SPO", see *Taleski and Others,* cited above, § 8). By the same decision, the President granted him a pardon (*помилување*) in respect of the same offence (see paragraph 7 above). The decision relied on sections 1 and 11 of the 1993 Pardon Act (see paragraph 55 below).

14. On 18 April 2016 the first applicant submitted a written request to the President seeking the annulment of the pardon granted to him, stating that he wished to prove his innocence.

15. On 12 May 2016 the first applicant asked the SPO to discontinue the investigation (*истражна постапка*) on account of the presidential pardon granted to him. In the absence of any reply, on 18 May 2016 he lodged a complaint with the Public Prosecutors Council ("the PPC" – *Совет на Јавни Обвинители*), alleging that the SPO had violated the law by failing to discontinue the investigation. He also stated that on 17 May 2016 the SPO

had verbally informed him that no decision to discontinue the investigation had been issued.

16. On 27 May 2016 the President declared the pardon decision in respect of the first applicant null and void (*поништи*) pursuant to the 2016 Pardon Act (see paragraph 60 below).

2. The opening of an investigation and the first-instance judgment

17. On 2 June 2016 the SPO opened an investigation (*истражна постапка*) against the first applicant on suspicion of abuse of official position and authority.

18. On 9 June 2016, in response to the first applicant's request of 12 May 2016 (see paragraph 15 above), the SPO stated that there had been no ongoing investigation at the time the pardon had been granted and that, accordingly, no decision to discontinue the investigation had been required.

19. On the same day the SPO requested the trial court to order the first applicant's detention pending the investigation, pointing out that the pardon granted to him had been declared null and void (see paragraph 16 above). By a decision of 16 June 2016 a three-judge panel of the trial court ordered the placement of the first applicant under house arrest, which was upheld on appeal on 27 June 2016. His house arrest, which was extended on two occasions and lasted until 19 September 2016, was based on the risk that he might abscond, interfere with the investigation or reoffend. In oral submissions before the first-instance and appellate courts on 13 and 27 June 2016 respectively, the first applicant referred to the SPO's failure to take into consideration the pardon granted to him and to discontinue the investigation on that basis. However, he did not explicitly ask the court to declare his house arrest unlawful on those grounds. In appeals against the orders extending his house arrest, the first applicant made no reference to the pardon granted to him.

20. On 13 June 2016 the first applicant requested the trial court to find, under section 290 of the Criminal Proceedings Act (see paragraph 65 below), that the SPO had violated the law by not discontinuing the proceedings on account of the pardon granted to him. He referred to a press conference on 3 June 2016 at which the SPO had confirmed that it had not discontinued the investigation. On 6 April 2017 a pre-trial judge of the trial court rejected that request as out of time, holding that the eight-day time-limit laid down in section 290 of the Criminal Proceedings Act had started to run on 17 May 2016. That decision was upheld on appeal on 9 May 2017.

21. On 5 April 2017 the SPO indicted the first applicant for abuse of official position and authority. On 23 May 2017 he filed an objection to the indictment, relying on Article 118 of the Constitution (see paragraph 53 below), the Convention and the Court's case-law (reference was made to *Lexa*, cited above). He submitted that, under the legislation in force at the time the pardon had been granted, it could not be annulled. Accordingly, the

pardon had conferred upon him an irrevocable right not to be prosecuted or tried for the offence to which it related. The subsequent annulment of that pardon pursuant to the 2016 Pardon Act – which had introduced the possibility of retrospective annulment – amounted to a violation of the Convention, which was directly applicable.

22. On 5 June 2017 a three-judge panel of the trial court dismissed the objection with final effect, on the grounds that the pardon had been annulled.

23. During the trial, the first applicant argued that his prosecution had been barred by the presidential pardon, which, under the law in force at the time, had been final and irrevocable. In his view, the subsequent annulment of the pardon had been unconstitutional, in violation of the principle of legal certainty and contrary to the Court's case-law. The amendments to the Pardon Act permitting the annulment of pardons had been introduced after the pardon had already been granted to him. These amendments had been applied retrospectively to his detriment, which was contrary to the principle that criminal law could not be enforced to worsen the legal position of a defendant.

24. On 31 March 2020 the trial court convicted the first applicant as charged and sentenced him to eight years' imprisonment. In reply to his arguments that his prosecution had been barred by the presidential pardon, the trial court stated that the pardon had been annulled pursuant to the 2016 Pardon Act (see paragraph 16 above).

3. The first applicant's appeal

25. On 16 and 20 July 2020 the first applicant appealed against his conviction, arguing, among other things, that the pardon granted to him had been irrevocable and that the prosecution authorities had been required by law to discontinue the criminal proceedings against him (see a summary of the relevant domestic legal provisions in paragraphs 64 and 66 below). He further argued that the annulment decision should be disregarded because it had been taken on the basis of the 2016 Pardon Act, which had been retrospectively applied to his detriment. Lastly, he argued that his prosecution and trial had been contrary to the Court's case-law concerning similar situations (reference was made to *Lexa*, cited above).

26. On 8 April 2022 the Skopje Court of Appeal (hereinafter "the Court of Appeal") upheld the first applicant's conviction. It held, among other things, that since the presidential pardon had been annulled, it could not affect the outcome of the criminal case. The court also reduced his sentence to seven years' imprisonment.

4. The first applicant's request for extraordinary review

27. On 22 March 2023 the first applicant lodged a request for extraordinary review of a final judgment (*барање за вонредно*

преиспитување) with the Supreme Court, advancing the same arguments as those raised in his appeal (see paragraph 25 above).

28. On 26 June 2023 the Supreme Court, sitting as a panel of five judges, including Judge M.L.T., confirmed the first applicant's conviction. It found that the pardon in substance amounted to an attempt at amnesty, a power vested exclusively in Parliament, and that, accordingly, the President had acted entirely without legal basis or effect. The pardon, based on Article 11 of the 1993 Pardon Act (see paragraph 55 below), had been null and void *ab initio*, since that provision had ceased to form part of the legal order, as confirmed by Parliament's Legislative Committee (see paragraph 59 below) and the case-law of the Constitutional Court (see paragraph 69 below). The first applicant had submitted a written request to the President seeking the annulment of the pardon granted to him (see paragraph 14 above), and the President had then annulled it pursuant to the 2016 Pardon Act (see paragraph 16 above; reference was made to the Constitutional Court's rulings in similar cases summarised in paragraphs 62, 63 and 68 below). The Supreme Court further found that in *Lexa* (cited above), there had been no dispute as to the validity of the amnesty, which distinguished it from the first applicant's case, where the pardon had been granted without any legal basis. The court concluded that the pardon had had no legal effect, as it had been granted under section 11 of the 1993 Pardon Act, a provision which, at the material time, had ceased to form part of the legal order. It then concluded as follows:

> "Accordingly, the defence's submission that the decision to annul the pardon retrospectively and adversely affected the rights of the convicted person is unfounded. The convicted person never acquired any entitlement to exemption from criminal prosecution, as the pardon lacked a lawful basis and therefore had no legal effect."

29. The first applicant received a copy of the Supreme Court's judgment on 17 July 2023.

30. On 25 July 2024 the trial court ordered that the first applicant be conditionally released and placed on probation until 30 December 2026 in view of his frail health, good behaviour and the fact that he had already served more than half of his sentence. That decision was upheld on appeal on 2 October 2024, with the appellate court stating that he would be released on 2 June 2025.

31. On 21 October 2024 the President granted the first applicant a pardon and released him from serving the remainder of his prison sentence.

B. The second and third applicants, Mr Janakieski and Mr Mitrovski (application no. 7877/24)

32. From August 2006 to May 2015 the second applicant was the Minister for Transport. The third applicant was a public official and also served as chair of the local electoral committee for the municipality of Centar during the local elections held from 27 March to 7 April 2013.

1. The opening of an investigation, the presidential pardons and their revocation

33. On 12 February 2016 the SPO opened an investigation (*истражна постапка*) against the second and third applicants on suspicion of multiple electoral offences (known as the "Titanic 1" case). The second applicant was, *inter alia*, suspected of criminal association (Article 394 § 1 of the Criminal Code), while both he and the third applicant were suspected of tampering with or destruction of electoral documents (Article 164 § 2 of the Criminal Code).

34. On 12 April 2016 the President issued a decision exempting the second and third applicants from prosecution (*ослободува од гонење*) and granting them a pardon (*помилување*) for the offences mentioned in paragraph 33 above (see paragraph 7 above). Other decisions exempting prosecution taken in respect of the second applicant also concerned other offences – criminal proceedings (*кривична постапка*) that had originally been initiated before the Skopje prosecutor's office or the Office for the Prosecution of Organised Crime and Corruption and that had later been transferred to the SPO – in particular, the offence of violation of voters' freedom of choice under Article 160 of the Criminal Code. All these decisions were based on sections 1 and 11 of the 1993 Pardon Act (see paragraph 55 below).

35. On 18 May 2016 the second and third applicants lodged a complaint with the PPC. They submitted that they had requested the SPO to discontinue the investigation on account of the presidential pardons granted to them but had received no response. They further complained that the SPO had violated section 304 of the Criminal Proceedings Act (see paragraph 66 below) by failing to discontinue the investigation.

36. On 27 May 2016 the President declared the pardon decisions in respect of the second and third applicants null and void (*поништи*), pursuant to the 2016 Pardon Act (see paragraph 60 below).

37. In a letter dated 8 July 2016 the PPC responded to the applicants' complaint of 18 May 2016 (see paragraph 35 above), stating that, in the light of the President's annulment decisions of 27 May 2016, the fact that the SPO had not dismissed the charges or discontinued the investigation had not violated their rights.

38. In the meantime, on 13 June 2016, the second and third applicants requested the trial court to establish, under section 290 of the Criminal Proceedings Act (see paragraph 65 below), that the SPO had violated the law by not discontinuing the proceedings on account of the pardons granted to them. They referred to a press conference on 3 June 2016 at which the SPO had confirmed that it had not discontinued the investigation. On 13 March 2019 a pre-trial judge of the trial court rejected their application as out of time, holding that the eight-day time-limit laid down in section 290 of the Criminal Proceedings Act had started to run on 3 June 2016.

2. The indictment and the first-instance judgment

39. On 28 July 2017 the SPO indicted the second applicant, *inter alia*, for criminal association (Article 394 § 1 of the Criminal Code) and violation of voters' freedom of choice (Article 160 of the Criminal Code). Both he and the third applicant were indicted for tampering with or destruction of electoral documents (Article 164 § 2 of the Criminal Code).

40. On 28 July and 4 August 2017 the second and third applicants filed an objection to the indictment, advancing the same argument as the first applicant (see paragraph 21 above). On 28 December 2017 a three-judge panel of the trial court dismissed their objection as unfounded, with final effect, without providing any further reasoning.

41. During the trial the second and third applicants pleaded guilty. They both stated, however, that they should not have been prosecuted, as they had been pardoned by the President.

42. On 28 February 2022 the trial court convicted the second applicant of criminal association, violation of voters' freedom of choice and tampering with or destruction of electoral documents. He was sentenced to four and a half years' imprisonment. The third applicant was convicted of tampering with or destruction of electoral documents and was sentenced to three years' imprisonment. The court did not comment on the pardons.

3. The second and third applicants' appeal

43. On 4, 5 and 18 April 2022 the second and third applicants appealed against their convictions. They argued, among other things, that Article 84 § 1 (9) of the Constitution (see paragraph 52 below) conferred upon the President the power to grant pardons, but not the power to annul them. The 2016 Pardon Act (see paragraph 60 below) therefore conferred upon the President powers which exceeded the constitutional limits of presidential authority. The second and third applicants further argued that the 2016 Pardon Act also violated the rule of law by operating retrospectively and allowing rights to be deprived that had been lawfully acquired and were irrevocable under the law as applicable at the time they were acquired. They also relied on the case of *Lexa* (cited above).

44. The higher prosecutor made submissions. The second and third applicants were not served with a copy. A copy was nevertheless provided to the Court by the Government. The higher prosecutor submitted that the defendants' appeals were without merit, as they had voluntarily pleaded guilty (see paragraph 41 above) and the court had correctly applied the law in determining their sentences, taking into account all mitigating and aggravating circumstances. He further maintained that the pardons had been annulled (see paragraph 36 above). In addition, he addressed other arguments advanced in the appeal submissions, contending, in particular, that the prosecutors had acted within their lawful authority, that any allegation of

misidentification regarding the offences to which the defendants had pleaded guilty was unfounded, and that any numbering discrepancies in the case files were purely technical and did not undermine the legal validity of the judgment.

45. At the appeal hearing, the higher prosecutor presented his written submissions. The second applicant and his lawyers, as well as the third applicant's lawyer, were in attendance. They raised no objections either to the higher prosecutor's oral submissions or to the fact that a copy of the higher prosecutor's written submissions had not been served on them.

46. On 18 May 2023 the Court of Appeal upheld the convictions on appeal. On the issue of pardons, it held that although the defendants had initially argued that the proceedings should be discontinued because of the presidential pardon decisions, they had subsequently pleaded guilty, implicitly waiving the substantive objections previously submitted. The court also reduced the second applicant's sentence to three years and six months' imprisonment.

4. The second and third applicants' request for extraordinary review

47. On 6, 13 and 17 July 2023 the second and third applicants lodged a request for extraordinary review of a final judgment (*барање за вонредно преиспитување*) with the Supreme Court, advancing the same arguments as those raised in their appeal (see paragraph 43 above). They further argued that their convictions had violated the principle that no individual could be prosecuted again for an offence in respect of which a final judicial decision had already been rendered, bearing in mind that a presidential pardon in criminal proceedings carried the same legal force and effect as a court judgment. As regards the court's duty to give effect to the pardon decisions, it was, in their view, immaterial whether the accused had pleaded guilty. The guilty plea did not constitute a waiver of the right to rely on the pardon decisions, as the second and third applicants had expressly invoked the pardon both when entering their plea (see paragraph 41 above) and again through their lawyers' closing submissions prior to the delivery of the judgment. They had never indicated any intention to waive the application of the pardon. In any event, the trial court had been under a legal obligation to take the pardon decisions into account, pursuant to section 402(1)(6) of the Criminal Proceedings Act (see paragraph 67 below). The legal effect of a pardon did not depend on the will of the person to whom it applied and, as such, its application could not be waived. The second applicant further complained that he had not been served with a copy of the higher prosecutor's written submissions to the Court of Appeal (see paragraph 44 above), in breach of the equality-of-arms and adversarial principles.

48. The prosecutor made submissions. She stated, in particular, that in its judgment in the first applicant's case the Supreme Court had already found that the pardons had never had any legal effect (see paragraph 28 above). The

second and third applicants' lawyers received those submissions on 25, 26 and 27 September 2023.

49. On 24 January 2024 the Supreme Court, sitting as a panel of five judges, including Judge M.L.T., confirmed the second and third applicants' convictions. As regards the pardons, the court stated that it had already expressed its position in the first applicant's case (see paragraph 28 above) and that there was no reason to reach a different conclusion in the case under consideration. The court also found that, at the appeal hearing and in the presence of those attending, the higher prosecutor had presented his submissions to the Court of Appeal (see paragraph 45 above). There had therefore been no breach of the principle of equality of arms, since the defence had been made aware of the higher prosecutor's submissions. The Supreme Court also rejected the applicants' arguments concerning the prosecutors' lack of authority, the alleged misidentification regarding the offences to which the defendants had pleaded guilty and numbering discrepancies in the case files. It further held that, under section 465 of the Criminal Proceedings Act (see paragraph 88 below), its jurisdiction in matters of sentencing was confined to determining whether the lower courts had exceeded their statutory powers when imposing a sentence and did not extend to a reassessment of aggravating or mitigating circumstances. In the case at hand, the lower courts had not exceeded their statutory powers in relation to sentencing.

50. The second and third applicants received a copy of the Supreme Court's judgment on 26 February and 4 March 2024 respectively.

51. On 13 February 2024 the trial court ordered that the second applicant be conditionally released and placed on probation until 16 May 2025 in view of his good behaviour and the fact that he had already served more than half of his sentence. That decision was upheld on appeal on 6 March 2024, with the Court of Appeal stating that he would be released on 17 June 2024.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. PARDONS

A. The 1991 Constitution

52. Article 84 § 1 (9) provides that the President may grant a pardon (*помилување*) in accordance with the law.

53. Article 118 of the Constitution provides that international agreements ratified in accordance with the Constitution form part of the domestic legal order and may not be amended by statute.

B. The Criminal Code (*Кривичен Законик*)

54. Under Article 114 of the Criminal Code, a pardon entails, *inter alia*, the exemption from prosecution of a specific individual (*поименично определено лице*).

C. The Pardon Acts (*Закон за помилување*)

1. *The 1993 Pardon Act (Official Gazette no. 20/93)*

55. Section 1 of the 1993 Pardon Act provides that the President may grant pardons to specifically named persons for criminal offences set out in national laws, in accordance with the provisions of the Criminal Code and the 1993 Pardon Act. Under section 3, pardon proceedings for exemption from criminal prosecution can be initiated *proprio motu* at any stage of criminal proceedings. The initial wording of section 11 of the Act read as follows:

> "The President of the State can grant pardons to individuals, exceptionally and without conducting pardon proceedings specified by this Act, when the interests of the State or specific circumstances pertaining to the person concerned and the criminal offence so require".

56. By a decision of 15 September 1999 (U.br.144/1999) the Constitutional Court found section 11 compatible with the Constitution. On 21 March 2018 the Constitutional Court rejected a fresh application for a constitutional review of section 11 of the 1993 Pardon Act as *res judicata*, finding no grounds to depart from the reasons given in decision U.br.144/1999 (U.br.96/2016).

2. *The 2009 Act amending the 1993 Pardon Act ("the 2009 Pardon Act", Official Gazette no. 12/2009, 28 January 2009)*

57. Section 10 of the 2009 Pardon Act repealed section 11 of the 1993 Pardon Act.

58. By a decision of 16 March 2016 (U.br.19/2016), adopted by a majority, the Constitutional Court struck down (*укинува*) the 2009 Pardon Act as unconstitutional. In the decision, which mainly concerned how the 2009 Pardon Act made it impossible for pardons to be granted in respect of certain offences, the court held that the 2009 Pardon Act violated the principles of separation of powers and equality of citizens. The court stated, *inter alia*:

> "a pardon ... is an irrevocable and final act of clemency by the President of the Republic, who does not make a decision as a judicial authority, but as a State body that has obtained its legitimacy from citizens through direct elections. A pardon is an undisputed constitutional and lawful right of the President which is at his disposal and can be used in accordance with the procedure specified by law and for reasons which are not necessarily of a legal nature (for example social, medical, political [reasons] or reasons of fairness) ... A pardon can be granted before the imposition of a sentence in

the form of exemption from criminal prosecution, or after a final judgment and sentence have been given."

59. Two members of parliament requested that Parliament provide, under Article 68 of the Constitution, an authentic interpretation of section 11 of the 1993 Pardon Act (see paragraph 55 above). On 4 December 2019 the Legislative Committee held that the request was unjustified (*не е оправдано*), stating, *inter alia*, the following:

"... The Pardon Act was amended in 2009, in that section 11, which provided for the granting of a pardon in the absence of pardon proceedings, was repealed ...

In March 2016 the Constitutional Court struck down the 2009 Pardon Act entirely ... but [that action] is not tantamount to a restoration of section 11.

...

... it is noted that legal theory makes a distinction as to the legal effect of an annulment and a striking down of decisions. If a law is declared null and void (*поништен*), earlier provisions are restored. If the Constitutional Court adopts a decision declaring an act null and void, the derogative effect of the annulled law is stopped and the earlier law is restored.

It is undisputed that the decision of the Constitutional Court by which the 2009 Pardon Act was struck down ... did not revive section 11 of the 1993 Pardon Act. That means that the President of the Republic was [and is] not entitled, either at the time or now, to grant a pardon without conducting pardon proceedings under that provision.

All pardons of the President of the Republic based on section 11 of the 1993 Pardon Act ... after 2009 are unlawful and null and void.

In view of the above, the Legislative Committee ... has found that the request for an authentic interpretation ... is unjustified, since section 11 of the 1993 Pardon Act ... is no longer part of the legal order, which means that it is inapplicable. Accordingly, an authentic interpretation cannot be provided in respect of a statutory provision that does not exist ..."

3. The 2016 Act supplementing the 1993 Pardon Act ("the 2016 Pardon Act", Official Gazette no. 99/2016, 20 May 2016)

60. The 2016 Pardon Act reads as follows:

Section 1

"In the Pardon Act (Official Gazette no. 20/1993), after section 11, a new section 11-a is added, which reads as follows:

Section 11-a

'The President of the State can, within thirty days of the enactment of this law, declare a pardon granted without preliminary pardon proceedings null and void (*поништи*).

The President is not required to provide reasons for a decision given under subsection 1.

A person who has received a pardon is entitled to submit a request to the President of the State seeking the annulment of the pardon.

The President of the State is required to declare the [pardon] null and void within thirty days of a request under subsection 3 being submitted'"

Section 2

"This law enters into force on the day of its publication in the 'Official Gazette of the Republic of Macedonia'"

61. As stated in the explanatory report of the 2016 Act, its aim was to "create a legal basis for the annulment of a pardon granted by President of the Republic without preliminary proceedings, within certain time-limits, and without the requirement to provide any reasons".

62. In response to an application by a certain Z.S., on 27 November 2019 the Constitutional Court instituted proceedings to examine the constitutionality (*поведува постапка за оценување на уставноста*) of the 2016 Pardon Act. Referring, *inter alia*, to the judgment of this Court in *Lexa* (cited above) and to the comparative law "of several member States of the European Union, which were requested to provide an opinion", the Constitutional Court indicated that a pardon granted by the President of the State was irrevocable and could not be annulled by a law or decision. In particular, it stated "the exceptional pardon granted ... *proprio motu* [under section 11 of the 1993 Pardon Act] is not dependent on the will of the person concerned ...". Article 84 of the Constitution authorised the President to grant a pardon, but not revoke it. According to the court, there were grounds to suggest that the 2016 Pardon Act was in violation of the principle of the rule of law, legal certainty and equality of citizens.

63. On 18 November 2020 the Constitutional Court terminated the proceedings (*се запира постапката*) to assess the constitutionality of the 2016 Pardon Act. The relevant parts of the ruling read as follows:

"Taking into account sections 1 and 2 [of the 2016 Pardon Act], it is undisputed that the Act is legally effective for only thirty days after its publication, [meaning that] the actions provided for in the disputed Act can be taken only within thirty days of the date of its publication, namely 20 May 2016.

...

Under Rule 47 § 1 (3) of the Rules of Procedure of the Constitutional Court of the Republic of North Macedonia, the Constitutional Court shall terminate proceedings initiated on the basis of erroneous facts.

...

... the court has found that during the proceedings [before the Constitutional Court] the application of the disputed Act was extinguished owing to the temporary nature [of the Act] and that [the Act] can no longer have legal effect, which constitutes a procedural obstacle to the proceedings continuing.

Accordingly, the initiation of the proceedings [before the Constitutional Court] by the ruling of 27 November 2019, [which] did not take into account the temporary nature of the disputed Act, ... was based on erroneous facts ..." (U.br.163/2016)

D. The Criminal Proceedings Act (Official Gazette no. 150/2010)

64. Under section 288(1) of the Criminal Proceedings Act, a public prosecutor shall reject criminal charges if, *inter alia*, the criminal offence in question is subject to an amnesty or a pardon.

65. Under section 290, any person who believes that his or her rights have been violated by any action or measure taken in pre-investigation proceedings can challenge the legality of that action or measure before the pre-trial judge within eight days of learning about it. The person concerned will be entitled to seek legal protection of his or her rights by other means.

66. Section 304(1)(3) provides for a public prosecutor discontinuing an investigation (*запирање на истражната постапка*) if there are grounds that preclude a criminal prosecution.

67. Under section 402(1)(6), a court shall dismiss charges (*одбивање на обвинението*) if a defendant has been exempted from prosecution by an act of amnesty or a pardon, or if criminal prosecution is not possible owing to a statute of limitation, or if there are any other grounds that preclude criminal prosecution.

E. Other rulings of the Constitutional Court

68. By a ruling of 5 October 2016 the Constitutional Court rejected an application lodged by two physical persons for a constitutional review of the pardons of 12 April 2016. The court noted that each pardon had identified individuals who had been exempted from prosecution. The individual rulings on the same date had specified the state of the criminal proceedings against each person concerned, the criminal offence(s) concerned and the applicable statutory provision. Making reference to the annulment decisions of 27 May and 7 June 2016 (see *Taleski and Others*, cited above, § 17), the court found that the pardons "were not part of the legal order", that is, "they [had] ceased to exist" and that accordingly there were procedural obstacles to reviewing their constitutionality and legality (U.br.95/2016). The court reiterated those findings in a ruling of 14 October 2020 following a further application by a physical person for a constitutional review of the pardons of 12 April 2016 (U.br.122/2016).

69. The Government submitted copies of several rulings in which the Constitutional Court had rejected applications for constitutional reviews where it had found that such applications aimed to restore provisions repealed by the disputed normative acts. In the rulings, the court held that it did not have regulatory competence (*законодавна функција*) to create provisions, nor was it competent to restore statutory provisions repealed by a subsequent law. It also added that a repealing provision did not regulate matters and accordingly was not suitable for constitutional review (U.br.254/2001; U.br. 44/2003; U.br.166/2003; U.br.198/2007; U.br.163/2008;

U.br.200/2008; U.br.24/2011; U.br.97/2011; U.br.154/2011; U.br.156/2011; U.br.85/2012; U.br.176/2012; U.br.7/2015; U.br.45/2018 and U.br.59/2021).

F. Earlier pardons granted under section 11 of the 1993 Pardon Act

70. On 7 April 2003, relying on section 11 of the 1993 Pardon Act and Article 114 of the Criminal Code, the then President of the respondent State, in the absence of pardon proceedings, granted pardons exempting two individuals (a former minister and a high-ranking official in the Ministry of the Interior) from criminal prosecution. By a ruling of 9 July 2003 the Constitutional Court rejected an application against those pardons, holding that they concerned specific individuals and were therefore not suitable for constitutional review. The court also added that a pardon could entail exemption from prosecution and could be granted at any stage of criminal proceedings (U.br.81/2003).

71. On 2 August 2008 the then President of the respondent State, in the absence of pardon proceedings, granted a pardon exempting six people from criminal prosecution.

72. Initiatives by members of parliament to bring impeachment proceedings against both of the above-mentioned Presidents in relation to the pardons granted in 2003 and 2008 were to no avail.

II. COMPOSITION OF THE SUPREME COURT

A. Criminal Proceedings Act (Official Gazette nos. 150/2010, 100/2012, 142/2016 and 198/2018)

73. Section 25(3) of the Criminal Proceedings Act provides that, in third-instance proceedings, cases are heard before a panel consisting of five judges.

74. Section 33(1) lists the grounds on which a judge is precluded from performing judicial functions (*не смее да врши судиска должност*) in a specific case. Section 33(2) provides that a judge may also be disqualified from performing judicial functions (*изземен од вршење на судска должност*) if circumstances arise that may reasonably give rise to doubts as to his or her impartiality.

75. Section 34 provides that the recusal procedure (*постапка за изземање*) must be initiated by a judge immediately upon becoming aware of any of the grounds under section 33(1). The judge is obliged to cease all work on the case in question and notify the president of the court, who will appoint a replacement.

76. Section 35 provides that either party may request the disqualification (*изземање по барање на странките*) of a judge (section 35(1)). Such a request must be made before the start of the trial hearing (*главната расправа*). If grounds under section 33(1) are discovered at a later stage, the

party must submit the request without delay upon becoming aware of those grounds (section 35(2)). A request to disqualify a judge of a higher court may be included in the appeal or in the response to the appeal (section 35(3)). A party may seek disqualification only of a specifically named judge involved in the proceedings or of a judge of a higher court (section 35(4)). The party must set out in the request the circumstances relied upon as constituting statutory grounds for disqualification (section 35(6)). No appeal may be lodged against a decision refusing a request for disqualification (section 35(7)).

77. Section 36 provides that a request for disqualification (*барање за изземање*) submitted under section 35 is decided by the president of the relevant court. If the request concerns the president of a court, the decision is taken by the president of the immediately higher court. If the request concerns the President of the Supreme Court, the decision is taken at its Plenary Session. If a request for disqualification is submitted under section 33(2), the proceedings continue without interruption. The president of the court must decide the request immediately and no later than three days from the date of its submission. If a judge is disqualified by the president of the court, the case is assigned to the next judge under the internal work schedule. No appeal may be lodged against a decision granting a request for disqualification. A decision rejecting such a request may be appealed against within three days of its issuance. If a judgment is delivered before the request for disqualification is decided, the party may raise the grounds and supporting evidence for disqualification in the appeal against the judgment.

78. Section 37 provides that where a judge becomes aware that a request for his or her disqualification has been submitted, he or she must immediately cease all work on the case. However, if the request for disqualification is based on section 33(2) (see paragraph 74 above), the judge may, until a decision on the request is made, carry out only those procedural actions that cannot be postponed.

B. Courts Act (Official Gazette nos. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018, 198/2018 and 96/2019)

79. Section 39(4) of the Courts Act provides that the assignment of judges is conducted in accordance with the annual work schedule established by the president of the court, following consultation with a session of judges or, in the case of the Supreme Court, its Plenary Session. In this process, consideration is given to each judge's area of specialisation, whether in criminal, civil, commercial, administrative or other areas of law.

C. Rules of Court (Official Gazette no. 66/2013)

80. Rule 66 of the Rules of Court provides that work in the courts is generally carried out in specialised court divisions. Court divisions are established for criminal, civil and administrative matters, as well as for judicial practice. A court division is established where more than five judges are assigned to cases of that type.

D. Rules of the Supreme Court (Official Gazette no. 14/2022)

81. Rule 19 of the Rules of the Supreme Court provides that, within the Supreme Court, the following four divisions are established: the Criminal Division, the Civil Division, the Division for the Right to a Trial within a Reasonable Time, and the Division for Judicial Practice. Rule 20 provides that the Criminal Division comprises its president, judges, professional judicial officers assigned under the annual work schedule to perform duties within its panels, and administrative staff serving in its registry.

82. Rule 22 provides that panels hear specific Supreme Court cases. The President of the Supreme Court, through the annual work schedule, determines the number and composition of panels, appoints presidents and members of panels, and appoints substitutes in cases of absence or incapacity.

E. 2019 Judicial Code of Conduct (*Кодекс за Етика на Судиите и Судиите Поротници*)

83. Paragraph 2.3 of the 2019 Judicial Code of Conduct provides that a judge must carefully consider recusal where he or she is unable to reach an impartial decision in a particular case, or where his or her continued involvement may create the impression that he or she is unable to judge impartially. Paragraph 2.4 establishes an open-ended list of circumstances in which a judge is required to recuse him or herself.

84. Paragraph 2.5 provides that during proceedings or in anticipation of future proceedings, a judge must refrain from making public statements or other comments that could influence the outcome of the proceedings or compromise their fairness.

III. APPEAL PROCEDINGS

85. Under section 381(4) of the Criminal Proceedings Act, a defendant who has entered a guilty plea during the trial hearing is precluded from appealing against the judgment, or any part thereof, on the grounds that the facts were incorrectly established.

86. Section 420 of the Criminal Proceedings Act provides that the first-instance court must, without delay, forward a copy of the appeal to the opposing party, who may submit a reply to the court within eight days of

receiving it. The appeal and any reply, together with the complete case file, must then be forwarded by the first-instance court to the second-instance court within three days of receiving the reply or, as the case may be, upon expiry of the time-limit for submitting the reply. Section 421 provides that, when the case file and the appeal are received by the appellate court, a judge rapporteur must be designated within three days of receipt of the file. If the case concerns a criminal offence prosecuted at the request of the prosecutor, the judge rapporteur must, without delay, forward the file to the competent prosecutor, who must examine it and return it to the court without delay and, in any event, within 15 days (30 days in more complex cases). On returning the case file, the prosecutor must submit written submissions to the court or inform the court that he or she will submit written submissions at the appeal hearing.

IV. EXTRAORDINARY REVIEW PROCEEDINGS

87. Section 459(2) of the Criminal Proceedings Act (applicable *mutatis mutandis* to extraordinary review proceedings by virtue of section 467) provides that if the court finds that the grounds on which it based its decision in favour of the convicted person are equally applicable to any co-convicted persons who did not lodge a request for the protection of legality, it is required to act of its own motion as if such a request had been lodged.

88. Section 465 of the Criminal Proceedings Act provides that a request for extraordinary review of a final judgment may be submitted: (1) for a breach of the Criminal Code to the detriment of the convicted person, within the meaning of section 416(1) to (4), or for a breach under section 416(5) where the court has exceeded the authority conferred upon it by law in relation to the decision on the sentence, an alternative measure, or confiscation of property or proceeds, including the seizure of items or benefits derived therefrom; (2) for a breach of the provisions of criminal procedure set out in section 415(1)(1),(5),(8),(9) and (10); and (3) for a breach of the rights of the defence, or a breach of the provisions of criminal procedure in the appeal proceedings, where such a breach affected or could have affected the legality and correctness of the judgment or the accused's right to a fair trial.

89. Section 461 of the Criminal Proceedings Act (applicable *mutatis mutandis* to extraordinary review proceedings by virtue of section 467) provides that (1) where the court finds that a request for the protection of legality is well-founded, it delivers a judgment by which, depending on the nature of the violation, it either amends the final decision, or quashes, in whole or in part, the decisions of the first-instance and appellate courts, or only the decision of the appellate court, and remits the case for a new decision or retrial to the first-instance or appellate court, or it may limit itself solely to establishing that a breach of the law has occurred; (2) where a request for the

protection of legality has been lodged to the detriment of the convicted person and the court finds it to be well-founded, it confines itself to establishing that a breach of law exists, without altering the final decision. Section 467 explains that, in applying section 461(1) to extraordinary review proceedings, the court may not limit itself solely to establishing that a breach of the law has occurred, and that Article 461(2) applies only in so far as it concerns the imposition of the sentence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LEGISLATIVE INTERVENTION PERMITTING THE ANNULMENT OF THE PRESIDENTIAL PARDONS AND THE CONTINUATION OF CRIMINAL PROCEEDINGS

90. The applicants complained that the criminal proceedings pursued against them after the pardons had been contrary to the principles of legal certainty and the rule of law. The decisions granting them pardons – which, at the time, had been final and irrevocable, and had conferred upon them the right not to be prosecuted – had been annulled pursuant to a retrospective law specifically targeting them. They relied on Article 6 § 1 of the Convention, the relevant parts of which read 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

91. The Government submitted that the second and third applicants had failed to comply with the four-month time-limit for applying to the Court, contending that the relevant period had started to run no later than at the end of 2024. They argued that, prior to delivering the judgment in their case, the Supreme Court had adopted and published two judgments – dated 26 June 2023 (in respect of the first applicant, see paragraph 28 above) and 20 December 2023 – addressing, *inter alia*, identical arguments raised by the defence concerning the pardons. Both judgments had been the subject of media coverage. The Government further pointed out that the second and third applicants had been served with a copy of the prosecutor's submissions to the Supreme Court referring to the judgment in the first applicant's case (see paragraph 48 above). In the Government's view, they should therefore have understood that their own identical arguments concerning the pardons would have no realistic prospects of success, and they should not have awaited the outcome of the extraordinary review proceedings prior to lodging

their application with the Court, since that outcome had been effectively determined by the Supreme Court's judgments in similar cases.

92. The applicants submitted that the Government's objection as to non-compliance with the four-month rule was inconsistent with the Court's established practice and its decision in *Taleski and Others v. North Macedonia* ((dec.), nos. 77796/17 and 5 others, 24 January 2023). In that case, the Court had held that the applications had been premature because the applicants had failed to exhaust all available domestic remedies. It had previously held that a request for extraordinary review of a final judgment was a remedy to be exhausted (see *Mamudovski v. North Macedonia* (dec.), no. 49619/06, 10 March 2009), and that mere doubts about the prospects of success of a remedy, where it was not manifestly futile, did not justify a failure to exhaust domestic remedies (the applicants quoted, in this respect, *Milošević v. the Netherlands* (dec.), no. 77631/01, 19 March 2002).

93. The relevant Convention principles regarding the close interplay between the exhaustion of domestic remedies and the then six-month time-limit for applying to the Court, in particular with relation to cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective, have been summarised in *Jeronovičs v. Latvia* ([GC], no. 44898/10, § 75, ECHR 2016).

94. The Court notes that the first and second applicants, together with other individuals, had previously lodged applications with the Court while the criminal proceedings against them were still ongoing before the Court of Appeal. The Court rejected their complaints under Article 6 § 1 concerning their prosecution despite presidential pardons as premature. It noted, in particular, that the criminal proceedings were still ongoing and that the issues relating to the pardons could be raised before the domestic criminal courts, including in extraordinary review proceedings before the Supreme Court (see *Taleski and Others*, cited above, §§ 101 and 102). The present applications were lodged after the applicants' convictions were upheld with final effect by the Supreme Court.

95. The Court reiterates that Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his or her complaint before his or her position in connection with the matter has been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached (see, among many other authorities, *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018, and *Vlaisavljevikj v. North Macedonia*, no. 23215/21, § 33, 25 June 2024). Accordingly, it considers it reasonable that the second and third applicants awaited the Supreme Court's decision in their criminal case, given that a request for extraordinary review constituted an effective remedy when admissible (see, *mutatis mutandis*, *Mamudovski*, cited above, and *Zahariev v. North Macedonia*, no. 26760/22, § 38, 5 November 2024). The Court considers that

the Supreme Court's case-law relied upon by the Government (see paragraph 91 above), which was handed down while the case involving the second and third applicants was still pending, cannot lead to a different conclusion (compare *Vlaisavljevikj*, cited above, § 33). Accordingly, their complaint cannot be rejected for non-compliance with the four-month time-limit.

96. The Court therefore rejects the Government's inadmissibility objection. It further considers 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. Submissions by the parties

(a) The Government

97. Relying on the Supreme Court's judgment in the first applicant's case (see paragraph 28 above), the Government submitted that the pardon decisions had been null and void *ab initio* and had therefore never had any legal effect. They had been based on section 11 of the 1993 Pardon Act (see paragraph 55 above), a provision which, at the material time, had ceased to form part of the legal order. Article 11 had been repealed by the 2009 Pardon Act and had not been reinstated by the Constitutional Court's decision of 16 March 2016 (see paragraphs 57 and 58 above), as it was a longstanding and well-established principle of national constitutional law that the Constitutional Court had no competence to reinstate a legislative provision that had previously been repealed (see paragraph 69 above). Both Parliament and the Supreme Court had consistently maintained that section 11 had not been reinstated and that there had been no legal basis for its application in 2016 (paragraphs 28 and 59 above). Although certain lower courts had – in the immediate aftermath of the President's pardon decisions in 2016 – interpreted the same legal issue differently (see the decisions in unrelated cases summarised in *Taleski and Others*, cited above, §§ 18 and 19), it was the Supreme Court's position that had been authoritative, as the court of last resort and the authority responsible for ensuring consistency in the interpretation of domestic law, in accordance with the principles of legal certainty and the rule of law.

98. The Government submitted that the 2016 Pardon Act (see paragraphs 60 and 61 above) and the President's subsequent annulment decisions (see paragraphs 16 and 36 above) had had no bearing on the applicants' position, as they had not altered – and could not alter – the legal reality that they had never been granted a valid pardon and that the so-called "pardon decisions" had never had any legal effect. In the Government's view, the President's annulment decisions had been unnecessary and had not produced any new

legal consequences; the applicants' prosecution, trial, and conviction had been permissible not because of the annulment decisions, but because the purported pardons had never had legal force. Consequently, the question of whether the pardon decisions had been irrevocable did not arise, nor was it necessary to examine whether the 2016 Pardon Act had had retrospective effect. The applicants had never enjoyed any right to exemption from prosecution, trial or conviction in respect of the offences covered by the President's pardon decisions and annulment decisions. Their prosecution, trial and conviction had therefore been compatible with the principles of the rule of law and legal certainty.

99. As an alternative argument, the Government submitted that the annulment of the pardons had been compatible with the principles of the rule of law and legal certainty. It had not affected any final judicial decisions, as none of the domestic courts that had examined the applicants' cases had found that the purported pardons constituted a bar to their prosecution, trial, or conviction under domestic law. Moreover, the Constitution did not preclude annulment or restrict Parliament's competence to enact legislation conferring upon the President the authority to annul pardons, including those granted prior to the enactment of such legislation. The annulment decisions had had a clear legal basis in the 2016 Pardon Act then in force, which had expressly empowered the President to annul pardons, and they had concerned pardons that had been void *ab initio*. Accordingly, there had been no retrospective application of the law. The 2016 Pardon Act had been neither of an individualised character nor directed at specific individuals: it had not identified anyone, whether by name or otherwise, whose pardon was to be annulled, and had merely vested in the President a discretionary power of annulment, exercisable for a limited period. Furthermore, the pardons had been annulled promptly, within less than eight weeks of their issuance. The applicants could not reasonably have arranged their affairs on the assumption of immunity from prosecution, and they had produced no evidence to the contrary.

100. The Government also argued that the principle of legal certainty was not absolute and that departure from it could be justified by substantial and compelling reasons (the Government quoted, in this respect, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 238, 1 December 2020). In their view, such reasons had existed in the applicants' case: the need for the prompt annulment of presidential pardons granted *ultra vires*. Those pardons, exempting apparently systemic and serious wrongdoing at the heart of the State's political establishment from criminal scrutiny, had been contrary to the rule of law. In such circumstances, the exceptional legal measures taken had been justified and, accordingly, consistent with the principles of legal certainty and the rule of law.

101. Lastly, the Government stressed that the first applicant had expressly requested the annulment of the pardon granted to him (see paragraph 14

above), and that his request should be regarded as a waiver of any rights in that regard.

(b) The applicants

102. The applicants submitted that the Constitutional Court had repealed the entire 2009 Pardon Act, including section 10 (which had deleted section 11 of the 1993 Pardon Act), on the grounds that it was unconstitutional (see paragraphs 57 and 58 above). However, if, as the Government had argued (see paragraph 97 above), that repeal had not reinstated section 11 of the 1993 Pardon Act, the unconstitutional 2009 Pardon Act would nevertheless have continued to produce legal effects, while the Constitutional Court's ruling would have failed to create any legal consequences. Such an interpretation was contrary to legal certainty and the rule of law.

103. The applicants further submitted that the domestic courts' positions regarding the legality of the pardon decisions had been inconsistent. Unlike the Supreme Court, some lower courts had regarded the pardons as legally valid until they had been formally annulled (they referred to the decisions in unrelated cases summarised in *Taleski and Others*, cited above, §§ 18 and 19, and to the decision rejecting the first applicant's objection to the indictment, see paragraph 22 above). The Constitutional Court had also held that the pardons had ceased to form part of the legal order because they had been annulled, rather than because they had been void *ab initio* (see paragraph 68 above).

104. The applicants argued that the pardons had been irrevocable, as confirmed by the Constitutional Court (see paragraph 58 above). The authorities, primarily out of concern for the potential escalation of protests, had retrospectively established a legal basis for revoking the pardon decisions through the enactment of the 2016 Pardon Act, a legislation targeting specific persons, in contravention of the principles of the rule of law and legal certainty. They questioned why the 2016 Pardon Act had been enacted and the pardon decisions annulled, if, as claimed by the Supreme Court, they had been without legal effect from the outset.

105. Lastly, the applicants submitted that the Government had not provided a convincing justification for a departure from the principle of legal certainty (see the Government's arguments summarised in paragraph 100 above). They had not explained how the annulment of the pardons could correct a judicial error or a miscarriage of justice. Furthermore, the annulment decisions had failed to maintain a fair balance between the interests of the individual and the need to uphold the effectiveness of criminal justice, as the applicants' interests had been disregarded. The applicants also maintained that the first applicant's request to annul the pardon granted to him (see paragraph 14 above) had not reflected his free will and, in any case, had been irrelevant.

2. The Court's assessment

106. The Court notes that the crux of the applicants' complaint is that their pardon decisions – which, at the time, were final and irrevocable and conferred upon them the right not to be prosecuted – were annulled pursuant to a retrospective law specifically targeting them. The annulment of the presidential pardons made possible the continuation of the criminal proceedings against them, in contravention of the principles of legal certainty and the rule of law.

107. The Court reiterates in this regard that the right to a fair trial under Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. The principle of the rule of law encompasses a number of other equally important principles, which, although interrelated and often complementary, may in some circumstances come into competition. One of them is the principle of legal certainty which is implicit in all the Articles of the Convention. Under Convention law, the principle of legal certainty manifests itself in different forms and contexts, such as requiring the law to be clearly defined and foreseeable in its application, or requiring that where the courts have finally determined an issue, their ruling should not be called into question (see *Guðmundur Andri Ástráðsson*, cited above, §§ 237 and 238, with further references). The principle that the law, and in particular criminal law, does not have retrospective effect is likewise intended to ensure legal certainty (see *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 115, 3 November 2022).

108. The general principles applicable to the use of retrospective legislation which has the effect of influencing the judicial determination of a criminal case have been summarised by the Court in *Vegotex International S.A.* (cited above, §§ 92-94). In this regard, the Court reiterates that only compelling grounds of general interest can justify interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute (ibid., § 102).

109. The applicants in the present case were subject to criminal proceedings for offences relating either to corruption or to electoral misconduct (see paragraphs 13 and 33 above). On 12 April 2016 they were granted presidential pardons not following trial and conviction, but for the specific purpose of preventing the continuation of criminal proceedings against them (see paragraphs 13 and 34 above). On 20 May 2016 Parliament enacted the 2016 Pardon Act, which conferred on the President the power to annul a pardon under certain conditions (see paragraphs 60 and 61 above). On 27 May 2016 the President declared the pardons in respect of the applicants null and void (see paragraphs 16 and 36 above). The applicants were then convicted of criminal offences. In the criminal proceedings against the first applicant, the trial and appellate courts held that he could lawfully be

prosecuted following the annulment of the pardon (see paragraphs 22, 24 and 26 above). In the criminal proceedings against the second and third applicants, the appellate court held that by pleading guilty they had implicitly waived their substantive objections concerning the pardons (see paragraph 46 above). In both cases, the Supreme Court held that the pardon decisions had been null and void *ab initio* and had never had any legal effect, as they had been granted without any legal basis (see paragraphs 28 and 49 above). It did not endorse the lower court's finding that the applicants had waived their objections.

110. The question arises whether the legislative intervention, through the 2016 Pardon Act applied retrospectively to annul the pardons granted to the applicants, undermined the fairness of the criminal proceedings against them by influencing their outcome while the proceedings were ongoing.

111. The Court notes that, under the domestic law applicable when the pardons were granted, they constituted final and irrevocable acts of clemency by the President (see paragraph 58 above). There was, in particular, no legal mechanism for challenging, revoking or setting aside pardons. Such a mechanism was subsequently introduced by the 2016 Pardon Act, notably by giving the President temporary exceptional power to annul a pardon granted without prior proceedings. The President was not required to provide reasons for the annulment decision. Given that the mechanism remained in force for only 30 days (see section 11-a of the 2016 Pardon Act, cited in paragraph 60 above), it was clear that it was intended to apply to past pardons rather than to future ones. It therefore had retrospective effect.

112. The parties disagreed as to whether the 2016 Pardon Act and the annulment decisions taken pursuant to it had influenced the outcome of the criminal proceedings against the applicants. The Government argued that the 2016 Pardon Act and the President's annulment decisions had been unnecessary and had not affected the applicants' position because the permissibility of their prosecution, trial and conviction had not been attributable to those annulment decisions, but rather to the fact that the purported pardons had been void *ab initio* and had therefore had no legal effect (see paragraphs 97 and 98 above). The Supreme Court's judgments lend support to their position (see paragraphs 28 and 49 above; see also, in the same vein, a trial court's judgment in an unrelated case summarised in *Taleski and Others*, cited above, § 21).

113. The applicants, for their part, argued that the Government's claim that the pardon decisions had been void *ab initio* was difficult to reconcile with the enactment of the 2016 Pardon Act and the annulment of those decisions (see paragraph 104 above). The Court notes that Parliament indeed considered it necessary to introduce a legal mechanism for annulling the pardons and accordingly enacted the 2016 Pardon Act for that purpose. The applicants' position is further supported by the fact that both the trial and appellate courts in the first applicant's case held that his prosecution had been

rendered permissible by the annulments (see paragraphs 22, 24 and 26 above). In other cases, the domestic courts likewise found that the pardons had been valid until annulled (see *Taleski and Others*, cited above, §§ 18-20). It follows that Parliament and at least some domestic courts regarded the formal annulment of pardons as a necessary precondition for rendering prosecution legally possible.

114. The Court reiterates that its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, amongst many other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V, and *Pacifico v. Italy* (dec), no. 17995/08, § 62, 20 November 2012). In view of the divergent opinions at domestic level, particularly between Parliament and the Supreme Court, the Court does not consider it necessary to resolve the disagreement between the parties on the issue of interpretation of domestic law described above (see, *mutatis mutandis* and within the ambit of Article 1 of Protocol No. 1, *Valle Pierimpiè Società Agricola S.p.a. v. Italy*, no. 46154/11, §§ 44-45, 23 September 2014). Even assuming that the 2016 Pardon Act influenced the outcome of the criminal proceedings against the applicants – by enabling the annulment of previously irrevocable pardons and the continuation of criminal proceedings that would otherwise have been discontinued – the Court considers that, in the circumstances of the present case, the legislative intervention in question was based on compelling grounds of general interest (see the case-law quoted in paragraph 108 above) for the following reasons.

115. The Government argued that the annulment decisions taken pursuant to the 2016 Pardon Act had been based on compelling grounds of general interest, as the pardons – granted *ultra vires* – had exempted serious systemic wrongdoing from criminal scrutiny, undermining the rule of law (see paragraph 100 above). The Court will assess the compelling nature of the relevant grounds referred to above as a whole (see paragraphs 116 to 118 below), taking into account the following elements: the manner and timing of the enactment of the legislation and the foreseeability of the legislative intervention (see paragraph 119 below), the scope of the legislation (see paragraphs 120-121 below), and its effects (see paragraph 122 below; compare *Vegotex International S.A.*, cited above, § 108).

116. The Court reiterates that a departure from the principle of legal certainty may be justified when made necessary by circumstances of a substantial and compelling character, such as the correction of fundamental defects or a miscarriage of justice. These notions do not, however, lend themselves to precise definition; the Court has to decide, in each case, to what extent the departure from the principle of legal certainty is justified (see

Guðmundur Andri Ástráðsson, cited above, § 238; see also *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 62, 11 July 2017).

117. The Supreme Court, after an extensive analysis, found that the pardons had been without any legal basis, as they had been granted under section 11 of the 1993 Pardon Act, a provision which, at the material time, had ceased to form part of the legal order (see paragraphs 28 and 49 above). The Court notes that this provision was repealed by the 2009 Pardon Act (see paragraph 57 above). On 16 March 2016 the Constitutional Court repealed the 2009 Pardon Act on the ground that it was unconstitutional (see paragraph 58 above). The Supreme Court found that the Constitutional Court's decision had not restored section 11 of the 1993 Pardon Act, relying on the Constitutional Court's settled case-law which held that it had no competence to restore legal provisions once repealed (see paragraph 69 above) and on Parliament's Legislative Committee's opinion to the same effect (see paragraph 59 above). The Court does not see any reason to question the findings of the Supreme Court (see the case-law cited in paragraph 114 above). It therefore considers that the pardons, having been issued on the basis of a provision which had ceased to form part of the domestic legal order at the material time, were tainted by a fundamental defect capable of justifying a departure from the principle of legal certainty.

118. As regards the principle of the rule of law, relied on by both the applicants and the Government in support of their opposing arguments (see paragraphs 90 and 100 above), the Court observes that the present case involves a tension between two of its elements: legal certainty, on the one hand, and accountability and equality before the law, on the other. As regards the latter element, the Court reiterates that addressing impunity is essential to upholding the rule of law (see, *mutatis mutandis*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 192, ECHR 2012, and, *mutatis mutandis*, *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 260, 28 June 2018). It is significant that the legislature, by enacting the 2016 Pardon Act, sought to restore the rule of law by ensuring that public officials, including those of the highest rank, who had been granted immunity from prosecution by the President acting without a valid legal basis, were brought to justice. The Court therefore considers that, in the present case, the need to maintain the accountability of public officials and ensure that they were not placed above the law outweighed the need to safeguard legal certainty.

119. The Court also attaches importance to the fact that doubts as to the validity of the pardons became immediately apparent, and that calls for their annulment promptly ensued (see *Taleski and Others*, cited above, §§ 14-16). It was therefore foreseeable that steps would be taken to set them aside. It is important to note that the legislative intervention took place following an extensive public debate and a search for a balanced solution. The 2016 Pardon Act was enacted less than six weeks after the pardons had been granted, and

the annulments followed a week thereafter (see paragraphs 13, 16, 34, 36 and 60 above; see also *Taleski and Others*, cited above, § 17). During that period, the criminal proceedings against the applicants were still ongoing. No decision to discontinue them was taken by the investigating authorities or by the courts. During the short period before their annulment, the presidential pardons were therefore not given any practical effect by a judicial decision, still less by one possessing *res judicata* effect (compare *Vegotex International S.A.*, cited above, §§ 113 and 121).

120. In so far as the applicants claimed that the 2016 Pardon Act had specifically targeted them, the Court has already held that laws which are directed against specific persons are contrary to the rule of law (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 269, 22 December 2020, and *Grzęda v. Poland* [GC], no. 43572/18, § 299, 15 March 2022). However, in certain exceptional situations it has been prepared to accept, albeit implicitly, the existence of special laws laying down specific conditions that apply to one or more named individuals (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 99, 25 October 2012, with further references). In the case of *Vegotex International S.A.* (cited above, § 103), for example, the Court found that a legislative intervention that affected only "a relatively small number of cases" did not violate Article 6 § 1.

121. In the present case, the principal purpose of the 2016 Pardon Act was to enable the annulment of presidential pardons in certain situations (see paragraphs 60 and 61 above). One of these situations concerned pardons granted without preliminary pardon proceedings, which could be declared null and void without any reasons being provided within 30 days of its enactment. Given the very limited number of pardons ever granted without preliminary pardon proceedings (see paragraphs 70-72 above), this provision of the 2016 Pardon Act affected a small, easily identifiable group and was clearly aimed at the pardons granted on 12 April 2016 to 56 people, including the applicants (see *Taleski and Others*, cited above, § 12; see also paragraph 7 above). The Court takes into account the exceptional nature of the situation created by the then President's decision to grant pardons to public officials, including senior figures from his own political party, without a valid legal basis (see the Supreme Court's judgments summarised in paragraphs 28 and 49 above) and in breach of the rule of law. The gravity of the situation and of the ensuing political crisis justified the adoption of exceptional measures in the form of legislation targeting a small group of individuals who would otherwise have benefited from unlawful pardons, with the aim of restoring the rule of law.

122. As regards the effects of the impugned legislation, the Court notes that the pardons were never given practical effect, as the criminal proceedings were not discontinued (see paragraph 119 above). Accordingly, the legislative intervention did not have the effect of allowing the reopening of proceedings previously terminated with *res judicata* effect. Furthermore, it is

important to note that the 2016 Pardon Act had no bearing on the substantive determination of the cases, as it did not alter the basis of criminal liability for the offences attributed to the applicants or the penalties applicable to them. Consequently, it did not influence the judicial determination of the case in any substantive respect (compare *Chim and Przywieczerski v. Poland*, nos. 36661/07 and 38433/07, § 204, 12 April 2018).

123. Lastly, the Court notes that the present case is different from *Lexa v. Slovakia* (no. 54334/00, 23 September 2008), which concerned the lawfulness of the applicant's detention, under Article 5 § 1 of the Convention, rather than a legislative intervention during the proceedings, under Article 6 § 1. Accordingly, the sole issue before the Court was whether the applicant's detention complied with the procedure prescribed by law, and no considerations relating to legislative intervention in pending proceedings arose. In *Lexa*, the Court held that the applicant's detention, following the discontinuance of the criminal proceedings against him with *res judicata* effect after a decision granting him amnesty, was not permissible under domestic law. As the acting President's decision to revoke the amnesty lacked any legal foundation, as confirmed by the domestic courts, it could not serve as a lawful basis for the applicant's prosecution and related detention (see *Lexa*, cited above, §§ 127-42). In addition to the different legal issues to be examined under Articles 5 and 6, the facts of the two cases also differ on several key points. In *Lexa*, the amnesty decision was clearly lawful, and its subsequent revocation was plainly unlawful under domestic law, whereas in the present case the situation was reversed. Furthermore, unlike in the present case, the criminal proceedings against the applicant in *Lexa* were resumed after being discontinued with *res judicata* effect. The Court therefore considers that its findings in *Lexa* are irrelevant to the present case.

124. Having regard to the specific circumstances of the present case, the Court finds that the legislative intervention was justified on compelling grounds of general interest and accordingly cannot be regarded as having breached the principles of legal certainty or the rule of law.

125. In view of this finding, the Court does not consider it necessary to examine whether the applicants waived their right to a fair trial as a result of requesting to annul the pardon (the first applicant – see paragraph 14 above) or pleading guilty (the second and third applicants – see paragraph 41 above).

126. Accordingly, there has been no violation of Article 6 § 1 of the Convention on account of the legislative intervention permitting the annulment of the presidential pardons granted to all three applicants and the continuation of the criminal proceedings against them.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE RIGHT TO AN INDEPENDENT AND IMPARTIAL TRIBUNAL

127. The applicants complained of a violation of their right to an independent and impartial tribunal under Article 6 § 1 of the Convention, on account of Judge M.L.T.'s participation in the Supreme Court panel despite her having previously made public statements relating to their cases (see paragraphs 7 to 10 above).

A. The parties' submissions on admissibility

1. The Government's objection of non-exhaustion of domestic remedies

128. The Government argued that the applicants had failed to exhaust the available domestic remedies. They submitted a copy of the Supreme Court's 2023 and 2024 annual work schedules (published on its official website) showing that Judge M.L.T. had been one of the five members of its Criminal Division (see paragraph 11 above). Given that requests for extraordinary review of a final judgment were examined by five-judge panels (see paragraph 73 above) and that judges were only replaced on rare occasions, the applicants' lawyers ought to have been aware that Judge M.L.T. would almost certainly be sitting on the panel hearing their clients' cases. The Government also submitted copies of judgments showing that, between 2020 and 2023, the applicants' lawyers had, on several occasions, acted as legal representatives in extraordinary review proceedings before the Supreme Court. The judgments in those proceedings had been rendered by a five-judge criminal panel, composed in accordance with the court's annual work schedules, consisting of the same judges that had subsequently delivered the judgments in the applicants' cases. Given that the applicants' lawyers had known that Judge M.L.T. would almost certainly be sitting on the panel hearing the applicants' cases, they should have requested her disqualification under section 35 in conjunction with section 33(2) of the Criminal Proceedings Act (see paragraphs 74 and 76 above). Alternatively, they should have raised the issue of the panel's alleged partiality while the case had still been pending before the Supreme Court. The Government also provided documentary evidence demonstrating that, contrary to the applicants' assertions (see paragraph 130 *in fine* below), the Supreme Court had responded on 8 April 2025 – its letter being delivered on 14 April – to the lawyers' request for information regarding the composition of the panel in an unrelated case. There had therefore been sufficient opportunities for the parties to ascertain the composition of the panel that would be examining their cases, either before lodging a request for extraordinary review of a final judgment or within a short period during the proceedings before the Supreme Court.

129. The Government submitted that parties to proceedings had the right to request the disqualification of judges of higher courts, including Supreme Court judges, under section 35(3) and for the reasons set out in section 33(1) and (2) of the Criminal Proceedings Act (see paragraphs 74 and 76 above). Although section 35 referred only to appeal proceedings, requests for disqualification were likewise permissible in extraordinary review proceedings before the Supreme Court by analogous application. In support of the effectiveness of this remedy, the Government referred to a decision in which the defendant's request in a criminal case to disqualify a Supreme Court judge from extraordinary review proceedings – on the grounds that the judge was a relative of the victim – was granted under section 33(1) of the Criminal Proceedings Act. They also submitted a copy of the Supreme Court's 2023 Annual Report, which stated that eight requests to disqualify Supreme Court judges had been lodged that year and that 194 requests for recusal had been submitted by Supreme Court judges in the same period. They further submitted copies of three Supreme Court decisions demonstrating that requests for recusal by Supreme Court judges had been granted under section 33(2) of the Criminal Proceedings Act. They acknowledged that, in the Supreme Court's practice, there had been no cases in which a party had sought disqualification under section 33(2) of the Criminal Proceedings Act. However, they maintained that this did not negate the availability of such a remedy under domestic law, as section 35(3) of the Criminal Proceedings Act – which concerned the parties' right to request the disqualification of a judge in higher courts, including the Supreme Court – did not draw any distinction between the grounds set out in section 33(1) and those in section 33(2). It had therefore been in the applicants' interests to apply to the competent domestic authority, thereby affording it the opportunity to develop existing rights through its interpretative powers (the Government cited, in this respect, *Delijorgji v. Albania*, no. 6858/11, § 58, 28 April 2015, with further references).

2. The applicants reply to the Government's objection

130. The applicants submitted that they had not known, and could not have known, the composition of the Supreme Court bench that would be hearing their cases. The Supreme Court was not, under domestic law, required to notify the parties of the composition of the bench examining a request for extraordinary review of a final judgment. As the proceedings before the Supreme Court had been conducted in writing, they had not been able to ascertain the composition of the panel during the hearing either. The Supreme Court disregarded requests for information concerning the personal composition of the panel in cases before it. The applicants provided a copy of one such request, sent on 21 March 2025 by one of their lawyers in an unrelated case. As of 11 April 2025, they had not received any reply.

131. The applicants also submitted that it was not ordinarily expected of parties to judicial proceedings to ascertain the composition of the Supreme Court by browsing the internet and consulting its annual work schedule, which was subject to *ad hoc* amendments. This was particularly true of the first and second applicants, who, at the relevant time, had been in prison without any internet access. Nor could such steps have been reasonably expected of the applicants' lawyers, whose sole task at that stage had been to prepare and submit the request for extraordinary review to the Supreme Court. In any event, the applicants could not be certain whether Judge M.L.T. would be sitting on the panel hearing their cases, given the established practice whereby judges from the Civil Division frequently substituted for judges from the Criminal Division when the latter were absent owing to illness, annual leave, recusal, study visits or other reasons. The Supreme Court's 2023 Annual Report (see paragraph 129 above) indicated that nine judges had heard criminal cases that year: five from the Criminal Division and four from the Civil Division.

132. The applicants further submitted that it was evident from section 35 of the Criminal Proceedings Act (see paragraph 76 above) that a request to exclude a judge on the grounds set out in section 33(2) – the only provision relevant to them – had to be submitted before the start of the trial hearing. Once the hearing had begun, only requests based on the grounds specified in section 33(1) were permitted, and those grounds were not applicable to their case. Section 35 also set out the procedure for disqualifying a judge in appeal proceedings, but it did not provide for any such procedure in extraordinary review proceedings before the Supreme Court. The decision referred to by the Government (see paragraph 129 above) concerned disqualification under section 33(1) of the Criminal Proceedings Act and was therefore irrelevant to their situation, which fell under section 33(2). The Supreme Court's 2023 Annual Report (see paragraph 129 above) made no reference to the grounds on which the requests for disqualification had been based.

133. The applicants concluded that, given the particular features of the domestic legal system outlined above, a party to proceedings could not reasonably be criticised for failing to submit a request for disqualification. They argued that a judge in respect of whom there existed a legitimate reason to fear a lack of impartiality should be obliged to withdraw from the case, but that the domestic law did not impose such an obligation in circumstances falling under section 33(2) of the Criminal Proceedings Act.

B. The Court's assessment

1. General principles

134. The general principles concerning exhaustion of domestic remedies are summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-145, 27 November 2023. The

Court reiterates, in particular, that the obligation to exhaust domestic remedies requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. That being said, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (ibid., §§ 139 and 142). On the contrary, it is in the applicant's interests to apply to the appropriate court to give it the opportunity to develop existing rights through its power of interpretation (see *Ciupercescu v. Romania*, no. 35555/03, § 169, 15 June 2010; *Delijorgji*, cited above, § 58; and *Janakieski v. North Macedonia*, nos. 57325/19 and 16291/20, § 54, 14 November 2023).

135. The Court reiterates that when the domestic law offers a possibility of eliminating concerns regarding the impartiality of a court or a judge, it is expected that an applicant who truly believes that there are arguable concerns on that basis would raise them at the first opportunity. This would, above all, allow the domestic authorities to examine the applicant's complaints at the relevant time, and ensure that his or her rights were respected. For example, where no further remedy is available because an applicant alleged a violation of Article 6 § 1 of the Convention on account of a lack of impartiality on the part of the last-instance judicial authority of the domestic legal system, the Court has found that the principle of subsidiarity may require special diligence from the applicant in complying with the obligation to exhaust domestic remedies. In such cases, preventive remedies are of particular importance. Naturally, these considerations apply only if an applicant knew or could have known of the composition of the court in question (see *NDI SOPOT S.A. v. North Macedonia*, no. 6035/17, § 89, 26 November 2024, with further references, and *Pirtskhalava and Y v. Georgia* (dec.), nos. 11025/22 and 11032/22, § 59, 4 November 2025).

2. Application of these principles to the present case

136. The Court notes at the outset that, under domestic law, judges are required to recuse themselves immediately upon becoming aware of any of the grounds under section 33(1) of the Criminal Proceedings Act (see paragraph 75 above). No such obligation exists in respect of the grounds under section 33(2) – the provision relevant to the applicants. It was therefore for the applicants to raise their arguable concerns about Judge M.L.T.'s alleged lack of impartiality by asking for her disqualification from the case (compare and contrast *Škrlj v. Croatia*, no. 32953/13, §§ 43-45, 11 July 2019, with further references).

137. The Court will next examine whether a request to disqualify a Supreme Court judge on grounds of lack of impartiality was an effective remedy to be exhausted for the purposes of Article 35 § 1 of the Convention.

138. Section 35 of the Criminal Proceedings Act sets out the procedure for a judge's disqualification (see paragraph 76 above). The applicants did not dispute the general effectiveness of that remedy but maintained that the procedure in question was not applicable to extraordinary review proceedings before the Supreme Court, as section 35, while expressly referring to appeal proceedings, contained no reference to extraordinary review proceedings (see paragraph 132 above). The Government submitted evidence demonstrating that requests to disqualify Supreme Court judges were routinely considered by the President of the Supreme Court (see paragraph 129 above; see also section 36 of the Criminal Proceedings Act, summarised in paragraph 77 above, which refers to the disqualification procedure in respect of the President of the Supreme Court). There is therefore no reason to doubt that it was possible to lodge a request to disqualify a Supreme Court judge in extraordinary review proceedings.

139. In so far as the applicants argued that a request to disqualify a Supreme Court judge in extraordinary review proceedings could only be made under section 33(1) of the Criminal Proceedings Act, and not under section 33(2) – the provision relevant to their cases (see paragraph 132 above) – the Court notes that the Government acknowledged that, in the Supreme Court's practice, there had been no cases in which a party had sought disqualification under section 33(2). They did, however, submit examples of recusal requests by Supreme Court judges granted under that provision (see paragraph 129 above), showing that section 33(2) was applicable to proceedings before the Supreme Court. The applicants did not advance any convincing arguments to show that there were legal obstacles to lodging a request to disqualify a Supreme Court judge under section 33(2). While the Court cannot speculate on the prospects of success in the absence of any examples of successful requests for disqualification, the failure to submit such a request meant that it was not possible to test the effectiveness of what appears to have been an available and adequate remedy, which was, moreover, successfully used for disqualifications under section 33(1). The Court considers that, in the circumstances, the applicants should have at least tried that avenue and given the domestic authorities an opportunity to put matters right through their own legal system (compare *Ugulava v. Georgia (no. 2)*, no. 22431/20, §§ 40 and 41, 1 February 2024, and *Mansouri v. Italy* (dec.) [GC], no. 63386/16, §§ 99, 105 and 106, 29 April 2025; see also, by contrast, *Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, nos. 24159/22 and 25751/22, § 48, 16 April 2024).

140. The Court also notes that it has previously held that in North Macedonia a request to exclude a judge does not constitute an effective remedy where the applicant has no real opportunity to learn that the judge in

respect of whom impartiality concerns arise will be sitting on the judicial panel hearing his or her case (see *Stoimenovikj and Miloshevikj v. North Macedonia*, no. 59842/14, § 30, 25 March 2021, and *NDI SOPOT S.A.*, cited above, § 90). The Court must therefore examine whether the applicants knew, or could have known, that Judge M.L.T. would be sitting on the Supreme Court panel hearing their cases.

141. It is undisputed that the applicants were not informed of the composition of the five-judge Supreme Court panel hearing their respective cases until after they had been served with the final judgments. The Government argued that the applicants should nevertheless have been aware that Judge M.L.T. would almost certainly be sitting on the panel (see paragraph 128 above). The Court is therefore called upon to determine whether, given that the proceedings in question were before the final-instance court, the applicants should have exercised special diligence, in the circumstances, in complying with the obligation to exhaust domestic remedies (see the case-law quote in paragraph 135 above; see also *Pirtskhalava and Y*, cited above, § 61).

142. The applicants did not dispute that they had been aware of the circumstances allegedly casting doubt on Judge M.L.T.'s impartiality when they had lodged their requests for extraordinary review of a final judgment with the Supreme Court (see paragraphs 7, 10, 27 and 47 above; compare and contrast *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 35, 25 February 2020).

143. The Court further observes that, at the material time, the Supreme Court's Criminal Division was composed of five judges, including Judge M.L.T. That information was published on the Supreme Court's official website and was therefore publicly accessible (see paragraph 11 above). Given that requests for extraordinary review of a final judgment were examined by five-judge panels (see paragraph 73 above), it was highly probable that Judge M.L.T. would be sitting on the panel hearing the applicants' cases. In fact, the available material indicates that a Supreme Court panel including Judge M.L.T. had already decided other cases involving the applicants' lawyers (see paragraph 128 above), who were therefore well aware of the high probability of her inclusion in panels hearing criminal cases. The material submitted by the parties also indicates that it was possible to send a request for information regarding the composition of the panel hearing a case (see paragraph 128 above).

144. The Court is therefore convinced by the Government's argument that there were sufficiently available opportunities for the applicants to ascertain the composition of the panel that would be examining their cases. The applicants – who, given that the proceedings in question were before the final-instance court and conducted in writing, were required to show special diligence in complying with the obligation to exhaust domestic remedies –

offered no convincing explanation for failing to inquire about the composition of the panel, despite raising concerns regarding Judge M.L.T.'s impartiality.

145. The Court notes that the present case is similar to *Pirtskhalava and Y* (cited above, §§ 60-66). As in *Pirtskhalava* and *Y.*, the applicants' inaction regarding their concerns about Judge M.L.T.'s potential inclusion in the panels cannot be considered justified in the circumstances of the present case. Had they acted diligently, they could have known that Judge M.L.T. would be sitting on the Supreme Court panel hearing their cases.

146. In the light of the foregoing, the Court finds that the applicants failed to show the special diligence expected of them, in the circumstances, in complying with the obligation to exhaust domestic remedies.

147. It follows that the Government's objection must be upheld and that this complaint must be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE RIGHT TO AN ADVERSARIAL TRIAL (APPLICATION NO. 7877/24)

148. Relying on Article 6 § 1 of the Convention, the second and third applicants complained that the criminal proceedings against them had been unfair, as they had not been served with a copy of the higher prosecutor's submissions in the proceedings before the Court of Appeal.

A. Admissibility

149. The Government submitted that the third applicant had not, in his extraordinary review request before the Supreme Court, raised the issue of the failure to provide him with a copy of the higher prosecutor's appeal submissions. The fact that his co-defendant had raised that issue in his own request (see paragraph 47 *in fine* above) could not absolve the third applicant (who had been represented by a lawyer) of the obligation to properly exhaust domestic remedies by lodging specific complaints with the domestic courts. Accordingly, he had not exhausted domestic remedies.

150. The applicants submitted that, given that the second applicant had raised a complaint before the Supreme Court that the proceedings had not been adversarial in nature, the high jurisdiction had been afforded the opportunity to rule on the issue. The third applicant's failure to raise the same complaint based on the same facts would not have affected the outcome, as the court would have applied the same reasoning to him as it had done to the second applicant.

151. The Court sees no reason to believe that the Supreme Court would have reached a different decision had the third applicant, whose situation was comparable to that of the second applicant, also raised before the Supreme

Court a complaint concerning the failure to provide him with a copy of the higher prosecutor's submissions, already raised by the second applicant. It therefore considers that, in the particular circumstances of the case, the fact that the third applicant did not raise that complaint before the Supreme Court cannot be regarded as a failure on his part to exhaust domestic remedies (see, *mutatis mutandis*, *Laska and Lika v. Albania*, nos. 12315/04 and 17605/04, §§ 46-48, 20 April 2010; *Vasilkoski and Others v. the former Yugoslav Republic of Macedonia*, no. 28169/08, § 46, 28 October 2010; and *Elmazova and Others v. North Macedonia*, nos. 11811/20 and 13550/20, § 63, 13 December 2022; compare and contrast *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 81-84, 27 May 2010, where the applicants' legal situations differed in a way that could affect the outcome of the proceedings in respect each of them).

152. The Court further observes that, under domestic law, had the Supreme Court found that the failure to provide the higher prosecutor's submissions constituted a violation of the second applicant's rights, it would have reached the same conclusion in respect of the third applicant, even though he had not raised that argument himself (see Section 459(2) of the Criminal Proceedings Act, summarised in paragraph 87 above).

153. The Court therefore dismisses the Government's objection.

154. The Court further 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. Submissions by the parties

(a) The Government

155. The Government submitted that although the higher prosecutor's written submissions had not been provided to the second and third applicants' lawyers (see paragraph 44 above), the proceedings had remained adversarial for the following reasons. The higher prosecutor had presented his written submissions during the appeal hearing, which had been attended by the second applicant together with his and the third applicant's lawyers (see paragraph 45 above). The third applicant had been duly summoned to the appeal hearing but had chosen not to attend. The applicants and their counsel had therefore been afforded the opportunity, during the hearing, to hear the higher prosecutor's submissions and present their arguments in reply. According to the record of the hearing, the applicants had raised no objections either to the higher prosecutor's oral submissions or to the fact that a copy of the higher prosecutor's written submissions had not been served on them (see paragraph 45 above). Nor had they sought an adjournment in order to have additional time to examine the submissions and prepare a response. The

present case was therefore different from those in which applicants had had no prior knowledge of the other party's submissions or their content before the final judgment had been delivered and where, moreover, despite a public hearing, the prosecutor's written submissions had not been presented at the hearing (the Government quote, in this respect, *Zahirović v. Croatia*, no. 58590/11, 25 April 2013; *Bosak and Others v. Croatia*, nos. 40429/14 and 3 others, 6 June 2019; and *Bajić v. North Macedonia*, no. 2833/13, 10 June 2021).

156. The Government further submitted that the higher prosecutor had merely proposed that the applicants' appeals be dismissed as unfounded, without introducing any new evidence or advancing legal arguments other than those already addressed at first instance. The Government also argued that, unlike in *Bajić* and *Zahirović* (both cited above), the Court of Appeal had not increased the applicants' sentences but had merely upheld their convictions and had also reduced the second applicant's sentence (see paragraph 46 above). Lastly, the applicants had subsequently lodged requests for extraordinary review with the Supreme Court (see paragraph 47 above) in which they had been able to respond to the higher prosecutor's submissions (to be contrasted with *Bajić*, cited above, which concerned a prosecutor`s submissions before the Supreme Court as the final judicial instance). The Supreme Court had also carefully considered and rejected the argument that the failure to provide the higher prosecutor's written appeal submissions prior to the appeal hearing had amounted to a breach of the adversarial principle (see paragraph 49 above).

(b) The second and third applicants

157. The second and third applicants submitted that they had been denied the right to an adversarial trial because the domestic court had failed to serve them with a copy of the higher prosecutor's submissions, thereby preventing them from preparing comments for the hearing before the Court of Appeal. Attendance at the hearing had not been sufficient to satisfy the adversarial principle, as they had been unable to defend themselves effectively without prior knowledge of the submissions. In response to the Government's arguments concerning the content of the higher prosecutor's submissions (see paragraph 156 above), the applicants maintained that it was for the defence to determine whether submissions warranted a response (they refer, in this respect, to *Zahirović*, cited above). The Supreme Court had failed to acknowledge the procedural error committed by the Court of Appeal and to remedy the breach of the adversarial principle. The reduction of the second applicant's sentence had been minimal, and the conviction had been otherwise upheld.

2. The Court's assessment

158. The relevant principles on equality of arms and the right to an adversarial trial in the context of a failure to serve submissions on a defendant in a criminal case have been summarised in *Zahirović* (cited above, §§ 42-43). The Court stresses, in particular, that it does not need to determine whether the failure to provide the relevant document caused the applicant any prejudice, as the existence of a violation is conceivable even in the absence of prejudice. As emphasised several times already, it is for the applicant to judge whether or not a document calls for comments on his or her part. The onus is therefore on the domestic court to afford the applicant an opportunity to take cognisance of the written observations of the prosecution prior to its decision (see *Zahirović*, § 48, and *Bajić*, § 59, both cited above).

159. It is not disputed between the parties that the higher prosecutor filed submissions before the Court of Appeal suggesting that the applicants' appeal should be dismissed as unfounded, and that the submissions were not served on the second and third applicants' lawyers (see paragraph 44 above). In this regard, the Court notes that the domestic law makes no mention of the issue of serving a higher prosecutor's submissions before the Court of Appeal on the defence (see paragraph 86 above). While it is true that the domestic law did not prevent the Court of Appeal from serving the higher prosecutor's submissions on the applicants and affording them an opportunity to reply, the absence of any express provision obliging it to do so undoubtedly contributed to the situation complained of (see, *mutatis mutandis*, *Bajić*, cited above, § 57).

160. The Government argued that the adversarial principle had nonetheless been complied with, as the second applicant, together with his own counsel and that of the third applicant, had attended the appeal hearing at which the higher prosecutor had presented his submissions. They could therefore have responded to those submissions immediately during the hearing or requested an adjournment but had not done so (see the Government's arguments, summarised in paragraph 155 above). The Court has already rejected similar arguments in the case of *Bosak and Others* (cited above, §§ 94-100). It found, in particular, that making the defence's knowledge of the prosecution's observations entirely contingent upon its presence at the appeal hearing placed a disproportionate burden on the defence and did not necessarily ensure a real opportunity to comment on those observations. In other words, it did not guarantee an unconditional right of the defence to have knowledge of, and comment on, the prosecution's submissions in the appeal proceedings (ibid., § 100). The Court sees no reason to reach a different conclusion in the present case.

161. Lastly, the Court will examine the Government's argument that the applicants had subsequently lodged requests for extraordinary review with the Supreme Court in which they had been able to respond to the higher prosecutor's submissions (see paragraph 156 above). The Court observes that

the Supreme Court refused to quash the impugned judgment and confirmed the second and third applicant's convictions (see paragraph 49 above). It reiterates that the issue to be examined is whether, in the applicants' case, the defence was afforded an effective opportunity to familiarise itself with the prosecution's submissions and to comment on their content in an appropriate form and within an appropriate time frame before the appeal judgment was given. The criminal justice system is based, among other things, on the assumption that the accused would be afforded the opportunity to express their views on every document in the case file concerning their appeal against the first-instance judgment (see, *mutatis mutandis*, *Bosak and Others*, cited above, § 97) and the right of the defence to have knowledge of, and comment on, the prosecution's submissions is unconditional (ibid., § 100). Indeed, the existence of a violation is conceivable even in the absence of prejudice (see the case-law quoted in paragraph 158 above). In any event, even assuming that failure to serve the prosecutor's submissions on a defendant may, in principle, be remedied by the possibility of discussing the same issues before a higher court (compare *M.S. v. Finland*, no. 46601/99, § 35, 22 March 2005, and *Köksoy v. Turkey*, no. 31885/10, § 36, 13 October 2020, both concerning a failure to provide documentary evidence; see also *Bacaksız v. Turkey*, no. 24245/09, § 57, 10 December 2019, concerning a trial *in absentia*), the Court must examine whether, given the Supreme Court's scope of review, all the issues raised in the higher prosecutor's submissions could be indeed re-examined in the extraordinary review proceedings. It is true that, in the present case, the second and third applicants were precluded from appealing on factual grounds because they had pleaded guilty during the trial (see paragraph 85 above). Their appeals therefore concerned points of law only. The fact that the Supreme Court's jurisdiction did not extend to factual matters was therefore irrelevant to the present case. However, in his submissions to the Court of Appeal the higher prosecutor also commented, among other legal issues, on the proportionality of the sentences (see paragraph 44 above). Given that the Supreme Court's jurisdiction in matters of sentencing was confined to determining whether the lower courts had exceeded their statutory powers when imposing a sentence, and did not extend to assessing the proportionality of sentences (see paragraphs 49 and 88 above), that issue was finally determined in the appeal proceedings and could not be re-examined by the Supreme Court. Accordingly, the extraordinary review proceedings did not remedy the shortcomings of the appeal proceedings in this regard. The only possible means of remedying the defects in the appeal proceedings would therefore have been for the Supreme Court to quash the appeal judgment and to refer the case back to the Court of Appeal. By not doing so, the Supreme Court failed to redress the violation of the applicants' right to adversarial proceedings (compare *Idalov v. Russia* [GC], no. 5826/03, § 180, 22 May 2012, concerning the right to participate in the trial hearing at first instance).

162. The foregoing is sufficient for the Court to conclude that there has been a violation of Article 6 § 1 of the Convention as regards the second and third applicants' right to an adversarial trial.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION (APPLICATION NO. 7877/24)

163. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

164. The second applicant claimed 5,000 euros (EUR) and the third applicant claimed EUR 4,000 in respect of non-pecuniary damage arising from the alleged violations of their right to a fair trial.

165. The Government submitted that the applicants had not submitted any evidence of the alleged suffering.

166. The Court awards the second and third applicants EUR 3,600 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

167. Relying on a legal fee agreement, invoices and payment orders, the second applicant claimed 370,000 Macedonian denars (MKD – approximately EUR 6,000) for legal fees incurred in the domestic first-instance proceedings. Relying on a pro forma invoice, he also claimed MKD 129,000 (EUR 2,095) for legal fees incurred in the proceedings before the Court. Lastly, relying on a postal invoice, he claimed MKD 2,000 (EUR 32) for postal expenses.

168. Relying on invoices, the third applicant claimed MKD 259,576 (EUR 4,220) for legal fees incurred in the domestic first-instance proceedings. Relying on a pro forma invoice, he also claimed MKD 129,000 (EUR 2,095) for legal fees incurred in the proceedings before the Court. Lastly, he claimed MKD 2,000 (EUR 32) for postal expenses.

169. The Government submitted that, as the applicants had not provided their lawyers' timesheets, they had not demonstrated that the legal fees incurred before the domestic courts had been reasonable as to quantum. Some of the invoices submitted by the second applicant were not relevant to the present case. The third applicant had not submitted a legal fee agreement or any proof of payment. In any event, the legal fees claimed related to the entirety of the criminal proceedings, which were not subject to assessment by the Court. As regards the legal fees incurred in the proceedings before the

Court, the applicants had not provided legal fee agreements or any evidence that they had paid the sums claimed. Moreover, the claims were substantially higher than the applicable domestic bar tariffs and partly related to the complaints which had been declared inadmissible at the communication stage. The postal invoice submitted by the second applicant did not indicate that it was relevant to the present case.

170. 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 considers it reasonable to award the second and third applicants jointly the sum of EUR 64 for postal expenses, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT,

1. *Decides*, unanimously, to join the applications;

2. *Declares,* unanimously, the complaints concerning the legislative intervention affecting the proceedings involving all three applicants and the right to an adversarial trial of the applicants in application no. 7877/24 admissible, and the complaint concerning the right to an independent and impartial tribunal inadmissible;

3. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention on account of the legislative intervention permitting the annulment of the presidential pardons granted to all three applicants and the continuation of the criminal proceedings against them;

4. *Holds*, by five votes to two, that there has been a violation of Article 6 § 1 of the Convention as regards the right to an adversarial trial on account of the failure to serve the second applicant with a copy of the higher prosecutor's submissions (application no. 7877/24);

5. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention as regards the right to an adversarial trial on account of the failure to serve the third applicant with a copy of the higher prosecutor's submissions (application no. 7877/24);

6. *Holds*, by five votes to two,
   (a) that, in application no. 7877/24, the respondent State is to pay, 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 3,600 (three thousand six hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 64 (sixty-four euros) to the second and third applicants jointly, plus any tax that may be chargeable to them, 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;

7. *Holds*, unanimously,

(a) that, in application no. 7877/24, the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred euros) to the third applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Arnfinn Bårdsen President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Bårdsen joined by Judge Pisani is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE BÅRDSEN, JOINED BY JUDGE PISANI

1. I agree with the majority on all accounts, except for its finding of a violation of Article 6 § 1 as regards the right to an adversarial trial on account of the failure to serve the second applicant with a copy of the higher prosecutor's submissions (application no. 78877/24). I refer to the judgment's operative provisions nos. 4 and 6.

2. The present case may, in so far as the second applicant is concerned, be distinguished from previous comparable cases where the Court has found a violation of Article 6 § 1, such as *Bosak and Others v. Croatia* (nos. 40429/14 and 3 others, 6 June 2019) and *Bajić v. North Macedonia* (no. 2833/13, 10 June 2021) – on which the majority relied –, owing to the *combined existence* of the following factors.

3. The second applicant and his lawyer were both present at the hearing before the Court of Appeal (see paragraph 45 of the judgment). They were aware that the higher prosecutor had filed written submissions. They were also aware of the content of these submissions, since the prosecutor presented them in their presence at the opening of the hearing before the Court of Appeal. Furthermore, the second applicant and his lawyer were given the opportunity to comment on the submissions. They chose not to. Nor did they object to the fact that the written submissions had not been made available to them prior to the hearing. Moreover, they neither argued before the Court of Appeal that, for this reason, the applicant had not had a reasonable opportunity to prepare his defence, nor asked that court for an adjournment.

4. Under such circumstances, and notwithstanding that it would clearly be advisable that an accused be given access to any written submissions from the higher prosecutor in advance of a hearing, what ultimately counts under Article 6 § 1 is that the accused in a particular case has had a fair chance of defending himself or herself. In the present case, I see no reason, for my part, to disagree with the Supreme Court (see paragraph 49 of the judgment) in its finding that the second applicant had been afforded such a fair chance of defending himself before the Court of Appeal, including in adversarial proceedings.

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
1.	34261/23	Taleski v. North Macedonia	30/08/2023	**Vladimir TALESKI** 1959 Prilep	Vlatko ILIEVSKI
2.	7877/24	Janakieski and Mitrovski v. North Macedonia	18/03/2024	**Mile JANAKIESKI** 1978 Skopje **Kosta MITROVSKI** 1983 Struga	Vlatko ILIEVSKI