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

FIFTH SECTION

CASE OF KEZERASHVILI v. GEORGIA

(Application no. 11027/22)

JUDGMENT

Art 6 § 1 (criminal) • Impartial tribunal • Inclusion of the former Prosecutor General on the Supreme Court bench that ruled on points-of-law appeal in applicant's case sufficient to cast doubt on objective impartiality of that court • Judge at issue held position of Prosecutor General during the period the points-of-law appeal was pending before the Supreme Court • Regard given to the Prosecutor General's prominent role and extensive powers within the prosecution service and the high-profile nature of the trial conducted in a politically sensitive context
Art 6 § 1 (criminal) and Art 6 § 3 • Reversal of the applicant's acquittal by the Supreme Court by means of written proceedings • Applicant did not participate in any oral hearings held by the lower courts, explicitly mandating lawyers of his choice to represent his interests and consenting to his trial *in absentia* • Written procedure in case-circumstances sufficient to account for the possibility of a conviction and sentence by the Supreme Court • Supreme Court's findings in convicting the applicant not arbitrary or manifestly unreasonable to the point of prejudicing the proceedings or resulting in a "denial of justice"
Art 6 § 2 • Insufficient basis to consider that the Prime Minister's statement during a parliamentary speech raised an issue as to the applicant's presumption of innocence or the Supreme Court's impartiality • Manifestly ill-founded
Art 18 (+ Art 6) • Restriction for unauthorised purposes • Insufficient evidence to substantiate applicant's allegation of an ulterior motive behind his prosecution and conviction • Manifestly ill-founded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 December 2024

FINAL

05/03/2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kezerashvili v. Georgia,

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

Mattias Guyomar*, President*,
Lado Chanturia,
Stéphanie Mourou-Vikström,
Kateřina Šimáčková,
Stéphane Pisani,
Úna Ní Raifeartaigh,
Artūrs Kučs*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 11027/22) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian and Israeli national, Mr David Kezerashvili ("the applicant"), on 17 February 2022;

the decision to give notice to the Georgian Government ("the Government") of the application;

the parties' observations;

the Chamber's ruling that no hearing on the merits was required (Rule 59 § 3 *in fine*)

Having deliberated in private on 10 September and 12 November 2024,

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

INTRODUCTION

1. The present case concerns the applicant's allegation that the Criminal Chamber of the Supreme Court which examined his case was not an "independent and impartial tribunal established by law". It also concerns his conviction by the Supreme Court by means of written proceedings following his acquittals by the lower courts, the alleged lack of reasons in the relevant judgment and his allegation that there was an ulterior motive behind his prosecution. He relied on Articles 6 and 18 of the Convention.

THE FACTS

2. The applicant was born in 1978 and lives in London. He was represented by Mr J. Jowell, a lawyer practising in London.

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

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

I. BACKGROUND INFORMATION

5. The applicant is a founding member of the United National Movement ("the UNM"), a political party which governed the country between November 2003 and October 2012.

6. Between 2004 and 2006 he was Director of the Financial Police of the Ministry of Finance. He then served as Minister of Defence between November 2006 and December 2008.

7. On 5 December 2008, following a cabinet reshuffle, the applicant stepped away from politics and became a businessman.

8. The applicant left Georgia in 2012, allegedly around the time that the current ruling party won the elections. On an unspecified date he settled in the United Kingdom.

9. Since 2019 he has been the founder and shareholder of a Georgian media company, Formula TV, which has an editorial line critical of the ruling party.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

10. Between 2013 and 2015 five sets of criminal proceedings were instituted against the applicant.

11. It appears from the parties' submissions and the case material that he was acquitted in three of those. They appear to have involved charges of corruption, embezzlement and money laundering, and extortion. The fourth set of proceedings, concerning alleged abuse of official authority, appears to be ongoing.

12. The present application concerns only the fifth set of proceedings. The applicant was tried and convicted *in absentia* of embezzlement under Article 182 §§ 2 (d) and 3 (b) of the Criminal Code (see paragraph 46 below) and acquitted with respect to Article 182 § 2 (a) which pertains to the commission of embezzlement by a group acting in prior agreement. He had chosen not to appear and had explicitly mandated lawyers of his choice to represent his interests before the domestic courts.

13. The relevant facts are set out below.

A. Charges against the applicant

14. On 7 May 2014 the applicant and A.N., former Director of the State Procurement Department of the Ministry of Defence ("the Ministry"), were charged with aggravated embezzlement. The charges related to a contract concluded by the Ministry in 2008 with an offshore company to provide combat training to the Ministry's defence units. According to the charges, the Ministry paid 5,060,000 euros (EUR) for services which were never provided.

15. The material available to the Court does not contain a copy of the domestic criminal case file. Nor does it include the document setting out the charges against the applicant. The content of that document, as reproduced in the domestic courts' judgments, is summarised below.

16. According to the charges, between 2007 and 2008 the Ministry planned and implemented combat training for the armed forces. The training was implemented by foreign instructors chosen by the applicant, who, at the time, was Minister of Defence. In 2007 the Ministry signed agreements with Defensive Shield Georgia Ltd (a company registered in Georgia) and Defensive Shield Ltd (a company registered outside Georgia). From July 2007 to August 2008 these companies fulfilled their obligations under the agreement, the costs of which were fully reimbursed.

17. On 10 January 2008 the applicant issued Order no. 08 on the signing of a contract with Girwood Business Corporation ("Girwood"), a company registered in the British Virgin Islands. He verbally instructed A.N. (see paragraph 14 above) to immediately ensure the conclusion of the contract regarding the combat training of various Ministry defence units. The value of the contract was set at EUR 5,685,000. The assignment was, according to the charges, performed by A.N. in gross violation of the requirements of the regulations of the State Procurement Department. In particular, before entering into the contract, A.N. did not carry out a background check on the company, assess the market value of the services offered or consult with the relevant departments of the Ministry and the Joint Staff of the Armed Forces. Nor did he obtain bank or other guarantees from the company, despite the fact that the contract had provided for advance payments.

18. According to the charges, the contract contained a detailed training programme and a list of the units that would benefit. However, they deliberately overlapped with existing training programmes designed and implemented in line with other contracts previously concluded by the Ministry (see paragraph 15 above) in order to eventually create a false impression of the provision of those services.

19. The contract provided for the payment of an advance fee of EUR 1,421,250 without any guarantee. This sum was transferred to Girwood's bank account on 16 January 2008. On 20 February 2008 an additional EUR 909,687 was transferred. As a condition for payment of the remaining amount, the contract required the company to submit an interim report to the Ministry. According to the charges, A.N. forged this document on the applicant's instructions. As a result, on 15 May 2008 the Ministry transferred an additional EUR 2,729,062 to Girwood.

20. The prosecution alleged that the company in question had been paid a total of EUR 5,060,000 from the State budget even though the service provided for in the contract – implementation of combat training – was never actually provided.

21. The prosecution argued that A.N. and the applicant had jointly intended to embezzle the funds of the Ministry and had acted in concert.

B. Judgment of the Tbilisi City Court

22. On 30 August 2017 the Tbilisi City Court found that A.N. did not fall within the personal scope of the offence of embezzlement and reclassified the charge as neglect of official duties. He was sentenced to a one-and-a-half year suspended sentence. The applicant was acquitted. The trial court's 81-page judgment addressed various items of evidence available in the case file, including statements given by over thirty witnesses and an expert, and a number of documents.

23. The trial court established, among other things, that the applicant's order of 10 January 2008 (see paragraph 17 above) had not been unlawful. As to the implementation of the resulting contract, multiple training courses had been carried out during the period in question and witnesses had been unable to identify which company had implemented them. The trial court held that Girwood and Defensive Shield Georgia Ltd, whose performance of its contractual obligations had never been contested (see paragraph 15 above), had both been represented by the same individual, O.Sh., who had confirmed the implementation of training courses by both companies. The trial court also held that the prosecution had failed to present evidence containing a detailed comparison of the training programmes of the different companies to assess any overlap or differences between them. For the trial court, therefore, the question of whether the implemented training courses had been offered by Girwood or another company had not been answered convincingly.

24. The court noted that only one interim report, dated 4 April 2008, had been submitted to the Ministry, which had specified that Girwood had started implementing the project. The court did not find the allegation that the report had been forged to be substantiated. It also found it undisputed that the final quarterly report and delivery and acceptance certificate to be concluded with the Ministry upon completion of the training programme provided for in the contract had been missing from the documents relating to its implementation. The court therefore held that the fulfilment of the contract had not been proven by documentary evidence. This was, in its view, attributable to A.N.'s negligence in supervising the contract's implementation. However, the trial court concluded that the absence of documents confirming the completion of the training programme provided for in the contract did not indicate beyond reasonable doubt that the training had not actually been implemented.

25. The trial court took note of an expert report and the expert's subsequent witness statement that the signature on page five of the contract did not belong to O.Sh. As regards O.Sh.'s signatures on other documents such as invoices and the interim report of 4 April 2008, the expert had been

unable to reach a conclusion on the matter. The court stated that the expert's conclusion that a signature had not belonged to O.Sh. was unconvincing, since she had been called on to assess the authenticity of a signature apparently made in Hebrew even though she was not proficient in that language. The trial court also responded to an argument by the prosecution that O.Sh. had been the applicant's close friend. It stated that the case material suggested that O.Sh. had been a reliable partner of the Ministry owing to the previous contracts implemented by him. This did not, in the court's view, warrant a conclusion that the link between O.Sh. and the applicant had been so close as to suggest that he had wished to provide O.Sh. with unlawful advantages.

26. As to the applicant in particular, the trial court found that the evidence presented by the prosecution failed to show that he had intentionally given A.N. any instructions to provide advantages to Girwood. The court also did not find proven the allegation that the applicant had been aware, when approving the transfer of funds to the company, of the latter's alleged non-performance of its obligations towards the Ministry. Stating that a conviction could not be based on conjecture, the trial court held that there was no basis for finding the applicant guilty of embezzlement. Nor could he be held accountable for A.N.'s neglect of official duties.

C. Judgment of the Tbilisi Court of Appeal, the prosecution's appeal on points of law and the applicant's written reply

27. On 23 May 2018 the Tbilisi Court of Appeal upheld the lower court's judgment in full. The judgment set out the official charges against the applicant and A.N., as well as the trial court's findings and the content of the appeal lodged by the prosecution service. The latter disagreed with the trial court's reasoning on almost all legal and factual points. As far as the applicant was concerned, the prosecutors emphasised, among other things, the undisputed absence of documentary evidence confirming the implementation of the impugned training programme. The appellate court reviewed the evidence available in the case file and confirmed the trial court's findings (see paragraphs 22-26 above). It found, among other things, that the prosecution had not presented "incontrovertible evidence confirming that training [provided for in the contract] had not been carried out".

28. On 22 June 2018 a prosecutor from the investigative unit of the General Prosecutor's Office lodged an appeal against that judgment with the Supreme Court, arguing that it contained errors of law and fact, which warranted its reversal. The prosecution argued, among other things, that, contrary to the lower courts' findings, A.N. had been the subject of the offence of embezzlement; the applicant had been the ultimate authority responsible for managing the funds of the Ministry and should have borne responsibility for any mismanagement; A.N. and the applicant had jointly

intended to embezzle the funds of the Ministry and had acted in concert; the witness evidence confirmed that, contrary to normal procedure, the applicant had involved himself in the control of the process and ascertainment of whether funds had been transferred to the contractor company, showing his extraordinary interest in and control over the process; the contract had been concluded hastily, in disregard of all procedure; and the applicant had played a direct role in the conclusion of the contract and the transfer of various funds to the company, which had been a shell company with no record of prior experience in the field or subsequent proof of work carried out in accordance with the contract, in circumstances where the General Staff of the Defence Forces had not even been aware that the contract had been concluded. The prosecution also referred to the applicant's friendship with O.Sh., the allegedly forged signatures in the contract and interim report, and O.Sh.'s alleged inability to have been a party to the contract, as he had only become the company's director afterwards. They also referred to information apparently contained in the evidence about the subsequent fate of the funds transferred to the company, claiming that they had ended up in the private accounts of O.Sh. and someone else. The prosecution also disagreed with the lower court's finding that insufficient information had been provided to enable a comparison of the training programmes provided for in the various contracts.

29. On 3 July 2018 the applicant submitted a 24-page written reply containing various factual and legal points. He submitted that the appeal on points of law was inadmissible. In the alternative, he stated, among other things, that it was undisputed that training had been carried out by Israeli instructors in the spring of 2008. He further claimed that the prosecution had failed to substantiate its claim that the training had been similar to that carried out under other contracts. Moreover, it had been unable to account for the provision of training in circumstances where all other contracts had expired. He also stated that training had been carried out in sub-units and locations not covered by any contract other than the one with Girwood. The applicant also addressed other arguments of the prosecution, relying mainly on the lower courts' findings in this regard and on witness statements available in the case file. He emphasised, among other things, that the Ministry had concluded another contract with the company in question, which had provided for the supply of certain technology. It had been fully implemented. Therefore, the allegations that money had been transferred to a shell company were unfounded. The applicant stated that the fact that there had been no joint criminal intent between him and A.N. had already been addressed by the lower court and that the prosecution's allegations were unfounded. He also stated that some witnesses had been unaware of who had supplied the training as the contract had been classified in order to protect military information, and that any claims by the prosecution that the contract had been fictitious had no factual basis. The applicant concluded by stating that he should not

have been compelled to assert his innocence. Proving his guilt was something the prosecution should have done, but had failed to do.

D. Proceedings before the Supreme Court

30. On 30 August 2021 the applicant's lawyer was informed that the Supreme Court would consider the prosecution's appeal on 7 September 2021 by means of written proceedings.

31. On 4 September 2021 the applicant's lawyer telephoned the Supreme Court's registry and learned that Sh.T. would be sitting on the bench with two other judges.

32. On 7 September 2021 the applicant submitted an application requesting the recusal of Judge Sh.T. from the bench on the basis of Article 59 § 1 (e) of the Code of Criminal Procedure (see paragraph 47 below). The application contained a review of the general principles concerning judicial impartiality and stated as follows:

> "In the present case, the grounds for Judge [Sh.T.'s] recusal is that from 2018 to 2019 he held the position of [Prosecutor General]. The prosecution in the present case has been supported since the date of the opening of the case (in 2014) precisely by this authority – the Chief (General) Prosecutor's Office of Georgia.
>
> This fact creates a legitimate and reasonable doubt as to Judge [Sh.T.'s] independence and impartiality."

33. On the same day the Criminal Chamber of the Supreme Court, sitting as a bench of two judges without the participation of Judge Sh.T., examined and dismissed the application as unsubstantiated. It noted that the applicant's case had been assigned to Sh.T. on 23 January 2020 on the basis of the principle of random allocation of cases. As regards the question of Sh.T.'s impartiality, it took note of the fact that the prosecution's appeal on points of law in the applicant's case had been lodged on 22 June 2018, but that Sh.T. had not started his tenure as Prosecutor General until 16 July 2018. Accordingly, it ruled that the applicant had failed to present any arguments or evidence to cast doubt on Sh.T.'s impartiality.

34. On the same day, 7 September 2021, the Supreme Court, sitting as a bench of three judges, one of whom was Sh.T., delivered its 11-page judgment following written proceedings. It upheld the lower courts' reasoning regarding A.N. (see paragraphs 22 and 27 above). As regards the applicant, the Supreme Court overturned the appellate court's judgment and found him guilty of embezzlement under Article 182 §§ 2 (d) and 3 (b) of the Criminal Code (see paragraph 46 below). He was acquitted with respect to Article 182 § 2 (a) due to the absence of evidence of prior agreement by a group. He was sentenced to five years' imprisonment and banned from holding a position in public office for eighteen months.

35. The Supreme Court's reasoning in relation to the applicant's conviction and sentence was as follows:

"5.4. The Court of Cassation has assessed, in accordance with Articles 259 and 300 of [the Code of Criminal Procedure], the lawfulness of the Tbilisi Court of Appeal's judgment of 23 May 2018, which was the subject of [an appeal on points of law], and finds that the judgment in respect of David Kezerashvili is unlawful because it was adopted [in breach] of the requirements provided for in the legislation of Georgia [and] during the adoption of the judgment there was a substantial breach of the requirements of the [Code of Criminal Procedure].

5.5. The Court of Cassation finds that the judgment of the Tbilisi Court of Appeal of 23 May 2018 is not duly reasoned in respect of the accused David Kezerashvili given that the conclusions and decisions concerning the unproven [nature] of the charge against him are of a generic and vague nature.

5.6. Under section 3(3)(d), (e) and (m) of the Regulations of the Ministry of Defence, adopted by Decree no. 119 of the President of Georgia of 5 April 2004, the Minister of Defence of Georgia coordinates the activities of the structural sub-units of the Ministry; supervises the decisions and conduct of the relevant position holders of the Ministry and abolishes, in the manner provided by law, [the decisions and conduct of such individuals] on the grounds of their [un]lawfulness or [in]expediency; issues normative legal acts in accordance with the legislation of Georgia and supervises their implementation; decides on the proper use of the State budget and is responsible for the precise and appropriate expenditure of the Ministry's budget[.] Accordingly, the Court of Cassation finds that, in accordance with the legislation of Georgia, it was precisely Mr David Kezerashvili, in his capacity as Minister of Defence, who lawfully possessed and managed the budgetary resources of the Ministry[.] He was the decision-maker and [person] responsible for financial expenditure and, precisely for this reason, it was [him] who was the subject of Article 182 of the Criminal [Code] and not any other head of a structural sub-unit [of the Ministry].

5.7. Pursuant to Order no. 291 of the Prime Minister of Georgia of 10 November 2006 David Kezerashvili served as Minister of Defence from 10 November 2006 to 6 December 2008. A witness statement given by [V.Dz., the then Deputy Minister of Defence] shows that the Minister of Defence was to issue an order concerning unplanned training on the basis of a request [to that effect from] the General Staff [of the Defence Forces of Georgia]. On 10 January 2008 the Minister of Defence issued Order no. 08 without such a request. On the same day, pursuant to the aforementioned order, contract no. 38 was concluded between the Ministry of Defence and Girwood Business [Corporation]. Witness statements given by [Z.G., Sh.T. and G.T., representatives of the General Staff indicate] that the leadership of the General Staff at the time knew nothing about this order and the contract but were aware of other training carried out by international partners ... Witness statements by [V.Dz., G.B. and O.Sh.] reveal that despite the fact that Girwood Business [Corporation] had not presented the fourth quarterly report and the Ministry of Defence had not concluded a delivery and acceptance certificate with them, the relevant structural sub-units [of the Ministry] transferred to Girwood Business [Corporation], on David Kezerashvili's verbal instruction and in breach of procedure, EUR 1,421,250 on the basis of their claim no. 10 of 16 January 2008, EUR 909,687.50 on the basis of claim no. 70 of 20 February 2008, and EUR 2,729,062.50 on the basis of claim no. 182 of 15 May 2008, amounting to a total of EUR 5,060,000.

5.8. The court does not accept other evidence available in the case file (statement by witness [O.Sh.]) indicating that the training provided for in contract no. 38 of 10 January 2008 was fully implemented. The fact that training has been carried out on the basis of a contract [can only be] established on the basis of the relevant report and the delivery and acceptance certificate, which were not submitted to the Ministry of

Defence. The Court of Cassation clarifies that in cases belonging to a similar category, when comparing the legal force of the witness statements and documentary evidence available in a case file, the documentary evidence takes precedence. The criminal case file in question does not contain the documentary evidence provided for in the contract which would, on the one hand, prove the fact that training has been carried out and, on the other hand, constitute grounds for the distribution of the budgetary resources.

5.9. The [Court of Cassation] considers that the Minister's dereliction, during the period [specified in] the contract, of his own duties [and] obligations to coordinate and supervise the conduct of the Procurement, Finance and Administration [Departments], and to have reacted appropriately, must be assessed as a criminal offence.

5.10. The [Court of Cassation] notes that following the expiry of the contract, when no final delivery and acceptance certificate [had been concluded] between the Ministry of Defence ... and Girwood Business [Corporation], the appropriate legal mechanisms were not used to [ensure] that Girwood Business [Corporation] paid the debt. All this, given the direct powers of the Minister of Defence ... constituted post-offence conduct by David Kezerashvili.

5.11. The Court of Cassation notes that the totality of acts described in paragraphs 5.7, 5.9 and 5.10 [relating to the offence and period after the offence] points to David Kezerashvili's direct intent to embezzle, by using his official position [and] in large quantities, the budgetary resources of the Ministry of Defence ... that had been in his lawful possession and control.

5.12. The Court of Cassation points out that the constituent elements of embezzlement are as follows:

- the offender must have ... the property in his lawful possession or control;

- the offender must exercise the lawful possession of the property by means of a legal relationship with the owner [such as] an official duty;

- the offender must have the actual ability to exercise control over the property;

- the offender must be aware that his conduct will cause damage to the owner of the property and must wish to cause such damage.

5.13. After analysing the existing legislation, factual circumstances and the evidence available in the case file [which are] consistent, clear and convincing, the Court of Cassation concludes that:

- David Kezerashvili had in his lawful possession and control the budgetary resources of the Ministry of Defence ... was taking decisions regarding their purposeful use and was responsible for their precise and purposeful expenditure;

- For the court, it is a factual presumption that David Kezerashvili, as Minister of Defence, was well aware that by his actions [such as] issuing the order without [due] procedure and concluding the contract, transferring large sums of budgetary funds without [requesting] a guarantee and [without receiving] the delivery and acceptance certificate, [and] by not requesting [recovery of] the debit debt [owed by the company], he was causing damage to the State and wished to cause such damage.

5.14. The court considers the question of friendly relations between David Kezerashvili and the [company director O.Sh.] irrelevant and clarifies that the offence of embezzlement with which the [applicant has been charged] is considered to have been committed from the moment of the [mis]management of the property in the [defendant's] lawful possession or control, and that the third person to whom the property was transferred is not relevant for the definition of the offence. Embezzlement

is an intentional act by an individual [to whom such property has been entrusted], aimed at depriving the owner of the property of its ownership.

5.15. In the light of the foregoing, the Court of Cassation considers that based on the joint analysis of the legislation of Georgia and the mutually consistent, clear and convincing items of evidence, it has been established beyond reasonable doubt that David Kezerashvili committed a criminal offence under Article 182 § 2 (d) and § 3 (b) of the Criminal Code.

6. Reasoning as regards the sentence

6.1. The Court of Cassation has fully assessed and taken into account, as required under Article 53 of the [Criminal Code], the mitigating and aggravating factors in respect of David Kezerashvili's responsibility and notes that the case file does not contain [information] on mitigating factors ...; as regards aggravating [factors], as 'use of official authority' and 'a large amount [of money]' were part of the definition of the offence [with which the applicant had been charged], the same circumstances were not taken into account when determining the sentence.

6.2. The Court of Cassation takes into account the *nature of the breach* by [the applicant] of [his] duties as a Minister and clarifies that the higher the career level of an official who is a subject of the criminal offence and the more public responsibility [such an individual carries] ... the higher the degree of danger [to the public posed] by [his or her] breach of duties.

6.3. In the light of the foregoing, the court considers that [the applicant should be sentenced to] ten years' imprisonment and, as an additional sanction, [should be] deprived of the right to hold a [position] in public office. [The Supreme Court then applied an Amnesty Act in operative paragraph no. 6 of the judgment and reduced the sentence to five years' imprisonment and the prohibition to hold public office for a year and six months.]"

III. CIVIL PROCEEDINGS

36. On unspecified dates in 2022 and 2023 the Tbilisi City Court and the Tbilisi Court of Appeal adopted judgments allowing the Ministry of Defence's civil claim against the applicant and A.N. for EUR 5,060,000. The proceedings appear to be ongoing before the Supreme Court.

IV. PRIME MINISTER'S SPEECH IN PARLIAMENT

37. On 25 June 2021, while the proceedings against the applicant were pending before the Supreme Court, the Prime Minister, I.G., delivered his annual report to Parliament.

38. Members of parliament put questions to the Prime Minister, to which he responded. One of the questions concerned alleged corruption in the military. It was asked by a representative of the former ruling party in whose government the applicant had served as a minister. The Prime Minister replied:

"I did not expect a question from you ... as I know of serious offences committed when your [party] was in power. Especially when it comes to the army, you must

remember that I know very well what was happening in the army during the time of the previous government. When you ask me what is happening in the army and [raise] questions about corruption ... I will remind the public, and I [also] openly talked about it, that there are cases which are being handled by the prosecutor's office, judgments have been delivered, people have been arrested. Mr [I.B., Chairperson of the Parliamentary Defence and Security Committee] is here, you can ask him to convene a discussion in which you [and your party members] will attend [in your capacity as] former government officials, together with the current minister and deputies, and they will demonstrate to you how much damage ... the previous government, namely Mr Kezerashvili [the applicant] and his predatory policy, did to the State ... [Millions] have been transferred to offshore [accounts] ... I am talking about facts ... We are ready ... here is the format of the Trust Group as part of which you can discuss these issues ... As a former military yourself, ... what is your reaction to [these serious offences]? ..."

39. After a comment (inaudible in the recording) was made on the topic, the Prime Minister responded as follows:

"... [stop] the demagogy [and] lies... 240 people have been ... arrested and [were ordered to return sums of money]. ... Kezerashvili, who is actively financing politics from abroad with stolen money, ... including television and [political] parties, [should] return one billion Georgian laris..."

Replying to an inaudible comment from members of parliament, the Prime Minister said:

"Not during my time, not Kezerashvili, you probably acquitted him after I left, now they will take care of it, as it seems you don't know and there is complete information, if you are interested, ask for it and let's ask [the Chairperson of the Parliamentary Defence and Security Committee] one more time ... No, no, they will take care of this information, they will present it to you ... calm down ... calm down ..."

Noise was heard in the recording. The Prime Minister stated:

"I gave you an explanation [addressing the MP who had posed the initial question regarding alleged corruption – see paragraph 37 above], you are a military man ... and that is the reason why I told you. For this purpose, I asked [the Chairperson of the Parliamentary Defence and Security Committee] to look into this issue and carry out a review. You can twist my words however you want, with the words 'they will take care of it' I meant that [the Chairperson of the Parliamentary Defence and Security Committee] will take care of it, look into the matter and provide you with detailed information about the plundering and damage to the interests of the army ..."

V. JUDGE SH.T.'S ELECTION TO THE SUPREME COURT

40. From 16 July 2018 to 12 December 2019 Sh.T. served as Prosecutor General.

41. On 12 December 2019 he was elected by Parliament as a judge of the Supreme Court. On 19 December 2019 he was elected Deputy Chairman of the Supreme Court.

42. Background information concerning Sh.T.'s election to the Supreme Court is summarised in *Ugulava v. Georgia (no. 2)* (no. 22431/20, §§ 8-15, 1 February 2024).

VI. EXTRADITION PROCEEDINGS AND INTERPOL RED NOTICE

43. On 27 February 2014 the Court of Appeal of Aix-en-Provence (France) refused to extradite the applicant to Georgia. It found that the request was time-barred and that, in view of the multiple prosecutions of former UNM officials and the applicant's former position within that political movement, there were serious reasons to believe that, if extradited, his situation would worsen owing to his political beliefs. The extradition request concerned two different sets of criminal proceedings in which he was subsequently acquitted.

44. On 23 July 2015 Interpol decided to delete all information relating to the applicant from its files. The decision noted that "even though common law criminal elements exist[ed] [as regards the allegations against Mr Kezerashvili], the political elements surrounding the case [predominated] over these common law criminal elements". The Commission for the Control of Interpol's Files also noted, among other things, that in cases of doubt, it had to decide in the interest of the party seeking deletion.

45. On 21 March 2016 the Westminster Magistrates' Court (the United Kingdom) refused to extradite the applicant to Georgia in relation to the criminal proceedings at the core of the present application. Having heard the authorities and witnesses, and after considering various items of documentary evidence, the chief magistrate found that the evidence cast "considerable doubt over the basis of the case against Mr Kezerashvili." The decision refusing the applicant's extradition concluded as follows:

> "On the facts as found above ... I am not sure that the request for Mr Kezerashvili's extradition is for the purpose of prosecuting or punishing him on account of his political opinions. I am aware that the requests may have been made for entirely proper purposes. The evidence may be there to sustain one or more convictions. However that is not the test. On balance I consider it more likely than not that the desire to prosecute former UNM politicians is a purpose behind these requests. It may not be the only purpose, but without that factor I do not believe, on balance, that these requests would have been made and pursued in the way they have been.
>
> As for the future, I have considerable respect for the judiciary of Georgia. I believe it is likely that the judiciary will successfully resist pressure on them from the administration, through the public prosecutors. However, looking at what has happened to others, I am satisfied that there is a reasonable chance, a serious possibility, that this defendant's liberty will be restricted (and in particular that he may be detained in pre-trial detention) because of a flawed prosecution process motivated by a desire to obtain a conviction of a UNM politician, or by a desire to obtain evidence from Mr Kezerashvili that can be used against senior former colleagues. This decision is supported by, but not dependent on, the decisions of other European courts, and Interpol."

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL CODE OF 22 JULY 1999

46. Article 182 of the Criminal Code provides as follows:

Article 182 – Misappropriation or embezzlement

"1. Unlawful appropriation or embezzlement of another person's property or property rights, if such property or rights are lawfully held or managed by the person in question, shall be punished by a fine or house arrest for a duration of six months to two years, or by three to five years' imprisonment.

2. The same act [committed]:

(a) with prior agreement by a group,

...

(d) using an official position,

shall be punished by a fine or by four to seven years' imprisonment, with the deprivation of the right to hold office or to carry out activities for up three years.

3. The conduct described in paragraphs 1 or 2 of this article, when committed:

...

b) in large quantities; ... shall be punished by seven to eleven years' imprisonment or by deprivation of the right to hold office or to carry out activities for up to three years ..."

II. CODE OF CRIMINAL PROCEDURE OF 9 OCTOBER 2009

47. Article 59 of the Code of Criminal Procedure sets out the circumstances in which a judge, juror, prosecutor, investigator or secretary of a court session may be excluded from a criminal trial. It reads, in so far as relevant, as follows:

"1. A judge, juror, prosecutor, investigator or secretary of a court session may not participate in criminal proceedings if:

(a) [he or she] has not been appointed or elected to the position in a manner prescribed by law;

(b) [he or she] participates or has participated in the case at issue as an accused person, defence counsel, a victim, an expert, an interpreter or a witness;

...

(e) there are other circumstances that cast doubt on [his or her] objectivity and impartiality.

2. A judge may not take part in the examination of a criminal case on the merits if [he or she] has been involved in the case as an investigator, prosecutor ..."

48. Article 259 provides as follows:

"1. A court judgment shall be lawful, reasoned and fair.

2. A court judgment shall be considered lawful if it has been rendered in accordance with the Constitution of Georgia, international treaties of Georgia and other normative acts, including this Code and other laws of Georgia, the provisions of which were applied during the criminal proceedings.

3. A court judgment shall be considered reasoned if it is based on the total of all evidence which has been assessed during court hearings [and which excludes] any reasonable doubt [as to the guilt of the convicted person]. All conclusions and decisions in a court judgment shall be reasoned.

4. A court judgment shall be considered fair if the sentence imposed corresponds to the character of the convicted person and the seriousness of the crime [he or she] has committed."

49. Article 300 § 1 provides that an appeal may be lodged against a judgment of an appellate court if the appellant considers it to be unlawful. It further provides that a judgment is unlawful if:

"(a) there has been a substantial violation of the Code of Criminal Procedure ... which was not established by a first-instance [and/or] appellate court or which was committed by the latter during the [adjudication] of a case;

(b) the convicted person's conduct has not been given correct [legal] classification;

(c) the type or degree of punishment imposed is clearly inconsistent with the nature of the conduct and the character of the convicted person."

50. Under Article 303 § 3, an appeal on points of law is admissible if the appellant proves that:

"(a) the case concerns a legal issue, the resolution of which would contribute to the development of the law and the establishment of uniform judicial practice;

(b) the Supreme Court of Georgia has not previously taken a decision on a similar legal matter;

(c) the Supreme Court of Georgia, as a result of considering the [appeal on points of law], is likely to adopt a decision in the case which would differ from its previous practice in similar legal matters;

(d) the decision of an appellate court differs from the Supreme Court of Georgia's previous practice in similar legal matters;

(e) an appellate court has considered the case in substantial violation of substantive and/or procedural law norms, and this could have affected the outcome of the case;

(f) the decision of an appellate court contradicts the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights;

(g) the appellant convicted person is a minor."

51. Under Article 303 § 5, if the Supreme Court finds the appeal on points of law admissible, it will set a date for a hearing. Article 303 § 6 provides that it may also review a case on the merits without an oral hearing. Under Article 303 § 7, the appellant has the right to withdraw the cassation appeal [at any time] before the final judgment has been delivered.

52. Article 306 provides, in so far as relevant, as follows:

"1. The presiding judge shall determine whether the parties have appeared at the hearing.

2. At this point, the parties shall make their statements. The appellant shall make his or her statement first.

3. The burden of proving the unlawfulness of the [lower court's] judgment shall rest with the appellant.

4. The appeal on points of law shall be reviewed within the scope of the appeal and the response [thereto] ...

5. After the parties make their statements, the appellant has the right to reply first, then the opposing party.

6. If the convicted ([or] acquitted) person is present during the hearing, [his or her] right to a closing statement shall be guaranteed.

..."

53. Article 307 provides as follows:

"1. The court of cassation shall, in its judgment, take one of the following decisions:

(a) overrule the appellate court's judgment of conviction and render a judgment of acquittal instead;

(b) overrule the appellate court's judgment of acquittal and render a judgment of conviction instead;

(c) make changes to the appellate court's judgment;

(d) uphold the appellate court's judgment and dismiss the [appeal on points of law].

2. The court of cassation's judgment shall replace the judgment rendered by the appellate court.

3. The court of cassation's judgment shall be final and may not be appealed against."

54. Under Article 308 § 1 (prohibition of *reformatio in peius*), the Supreme Court may not render a judgment of conviction in place of a judgment of acquittal or deliver any other decision that is unfavourable to an individual in the absence of an appeal submitted by the prosecution. Under Article 308 § 2, the Supreme Court may render a judgment of conviction instead of a judgment of acquittal, apply a stricter provision of the Criminal Code of Georgia, impose a harsher sentence or otherwise put the convicted person in a worse position (compared to the appellate judgment) if the prosecution has filed the appeal on points of law with this very request and if it has maintained such a position in the first-instance and appellate courts.

III. LAW OF 30 NOVEMBER 2018 ON THE PROSECUTOR'S OFFICE (AS IN FORCE AT THE MATERIAL TIME – "THE PROSECUTOR'S ACT")

55. The relevant sections of the Prosecutor's Act, which establish the internal structure of the General Prosecutor's Office, define the role and

functions of the Prosecutor General and regulate issues of internal subordination, read as follows:

Section 5. Principles underlying the operation of the prosecution service

"The principles underlying the operation of the prosecution service are the following:

(a) lawfulness and fairness;

(b) objectivity and impartiality;

(c) professionalism and competence;

(d) unity and centralisation, subordination of all prosecutors and other employees of the prosecutor's office to the Prosecutor General;

(e) protection of the rights and freedoms and inviolability of the dignity of an individual;

(f) political neutrality."

Section 6. Status and independence of the prosecutor's office

"1. The prosecutor's office of Georgia is a unified, centralised system which is independent in its activities and is accountable only to the law. It shall be inadmissible to interfere in the activities of the prosecutor's office, and [to carry out] any other actions which may encroach on its independence.

2. It shall be inadmissible to request a report on the activities of the prosecutor's office, unless expressly provided for by the Constitution of Georgia and this [Act.]

..."

Section 9. Subordination and delegation of powers

"1. All prosecutors and other employees of the prosecutor's office are subordinate to the Prosecutor General.

2. The lower-ranking prosecutors' subordination to senior prosecutors implies the following:

(a) the fulfilment of instructions given by a senior prosecutor to a subordinate prosecutor concerning the organisation and activities of the prosecutor's office is mandatory;

(b) a subordinate prosecutor is accountable to a senior prosecutor when performing his or her official duties;

(c) when necessary, a senior prosecutor may exercise the powers of a subordinate prosecutor or may delegate [to him or her] certain of his or her own powers;

(d) a senior prosecutor may revoke or amend a subordinate prosecutor's decisions and acts, or may replace them with another decision or act;

(e) a senior prosecutor examines complaints filed against decisions or acts of a subordinate prosecutor;

(f) a subordinate prosecutor reports to a senior prosecutor concerning his or her work, and [provides] information concerning cases and materials;

3. Prosecutor General may introduce other forms of subordination between senior and subordinate prosecutors which shall not be contrary to the Constitution of Georgia and this [Act].

4. A subordinate prosecutor and any other employee of the prosecutor's office are obliged to fulfil all lawful requests and instructions of a senior prosecutor.

..."

Section 10. General Prosecutor's Office

"1. The General Prosecutor's Office is a prosecutor's office which is led by the Prosecutor General.

2. The Prosecutor General has a first deputy and [other] deputies, who are appointed and removed [from office] by the Prosecutor General.

...

4. The structural units of the General Prosecutor's Office are departments and divisions, which are led by heads and in certain cases by deputy heads ...

5. The employees of the departments and divisions are appointed and removed [from their positions] by the Prosecutor General."

Section 15. Prosecutor General

"1. The Prosecutor's Office of Georgia is headed by the Prosecutor General.

2. The Prosecutor General:

(a) appoints, promotes, removes from a position, and dismisses the employees of the Prosecutor's Office;

(b) defines the authorities of the first deputy Prosecutor General and the Deputy Prosecutor General;

(c) issues normative and individual administrative acts;

...

(f) is responsible for the work of the Prosecutor's Office;

...

(j) implements other procedural actions provided for by law;

..."

IV. OTHER RELEVANT DOCUMENTS

56. On 5 November 2019 Sh.T., in his capacity as the Prosecutor General, issued Order no. 157-G concerning the distribution of work between the Prosecutor, his first deputy and the remaining deputies. In accordance with the Order, the Prosecutor General was responsible for overseeing the work of public prosecutor's offices, the General Inspectorate at the General Prosecutor's Office, the departments for strategic planning and for supervision of prosecutorial conduct, and the investigative unit within the State Inspector's Service, and to perform other functions as provided for in

the Prosecutor's Act. The first deputy Prosecutor General was responsible, among other duties, for supervising the investigative unit at the General Prosecutor's Office.

57. On 17 December 2018 the Venice Commission adopted Opinion no. 937/2018 concerning the draft Prosecutor's Act, in which it noted the following:

> **2. Subordination of prosecutors – role of the Prosecutorial Council**
>
> "22. The model chosen by Georgia – a centralised, hierarchical prosecution led by a Prosecutor General elected by Parliament – implies the subordination of all prosecutors and other employees of the prosecution service to the Prosecutor General.
>
> 23. However, this model, and the subordination of prosecutors, should not lead to the total subordination of prosecutors. Some level of internal independence, at least the opportunity to express professional positions, should be ensured."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

58. The applicant raised four complaints under Article 6 §§ 1, 2, and 3 of the Convention. He alleged, in particular, that:

(i) the Criminal Chamber of the Supreme Court which had examined his case had not been an "independent and impartial tribunal established by law", given that one of the judges had been appointed to the Supreme Court in violation of the statutory eligibility criteria;

(ii) the Criminal Chamber of the Supreme Court had not been an "independent and impartial tribunal established by law" also in view of the fact that the same judge had previously served as Prosecutor General;

(iii) the statement made by the Prime Minister in Parliament on 25 June 2021 had violated his right to be presumed innocent and had influenced the Supreme Court; and

(iv) he had not had a fair hearing in the determination of the criminal charges against him because his acquittal at two levels of jurisdiction had been reversed by the Supreme Court by means of written proceedings and without sufficient reasons being given.

59. Article 6 of the Convention, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

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

..."

A. Admissibility

1. The parties' submissions

(a) The Government

60. The Government submitted that Article 6 § 2 of the Convention was not applicable to the applicant's complaint concerning the alleged breach of the right to be presumed innocent. In this connection, they pointed to the scope of the complaint as described by him in his submissions to the Court (see paragraph 64 below). In the alternative, they submitted that he had never brought his complaint before the civil courts.

61. The Government also submitted that the applicant had not argued before the domestic authorities, either expressly or in substance, that the composition of the Criminal Chamber of the Supreme Court did not meet the inherent requirements of "a tribunal established by law" within the meaning of Article 6 § 1 of the Convention. In particular, they argued that the applicant had never raised the issue of Sh.T.'s eligibility for office before the Supreme Court. He had had an opportunity to raise the issue in his application for the recusal of Judge Sh.T. under Article 59 § 1 (a) of the Code of Criminal Procedure, but had failed to do so. Relying on the Court's finding in the case of *Ugulava v. Georgia (no. 2)* (no. 22431/20, §§ 36-43, 1 February 2024), in which a similar objection was upheld, the Government submitted that there were no reasons to reach a different conclusion in the present case. In this connection, and in response to the applicant's argument that the Supreme Court had not been competent to deal with the matter (see paragraph 65 below), the Government provided the Court with a copy of a Supreme Court decision dated 2 June 2023 addressing, among other things, an objection regarding the alleged unlawfulness of another individual's election as a Supreme Court judge. In that decision, the Supreme Court, referring to the conclusions of the Constitutional Court regarding the lawfulness of the selection procedure, dismissed the objection, *inter alia*, on the grounds that it failed to demonstrate the unlawfulness of the judge's election. The Government therefore argued that the Court's finding in *Ugulava* that the applicant had at least been required to test the effectiveness of an apparently available and adequate remedy also applied in the present case. As regards the expert opinion submitted by the applicant (ibid.), the Government stated that only domestic courts had been competent to interpret the law.

62. The Government also argued that despite being made aware of the Supreme Court's intention to consider his case without an oral hearing, the applicant had failed to request such a hearing.

63. In the alternative, they stated that all four of the applicant's complaints were manifestly ill-founded.

(b) The applicant

64. The applicant disagreed. He submitted that the civil remedy had been ineffective as his claim regarding the right to be presumed innocent had not concerned his reputation as such as the statement in question had not "even necessarily impl[ied]" that he was guilty. Rather, the statement had suggested, in his submission, that the Supreme Court had been instructed to "convict [the applicant] whether or not he was guilty". He stated, among other things, that the prosecution's appeal on points of law had been pending before the Supreme Court since 22 June 2018 and that it had been the Prime Minister's statement of 25 June 2021 which had led to the eventual deliberation and adoption of a judgment in his case on 7 September 2021.

65. As to the Government's objection concerning his alleged failure to exhaust domestic remedies in respect of his complaint regarding Sh.T.'s eligibility to be a judge of the Supreme Court, the applicant argued that they had confused recusal with ineligibility for office and that there was no effective remedy at domestic level for the latter. He submitted that the Court's finding in *Ugulava* (cited above, §§ 36-43) should not be applied in the present case. In support of this, the applicant submitted an opinion issued by a legal expert (a professor, former President of the Constitutional Court of Georgia and former member of the Venice Commission). The opinion stated, among other things, that Article 59 § 1 (a) of the Code of Criminal Procedure (see paragraph 47 above) only applied to the procedural aspect of the appointment of judges to a bench rather than the lawfulness of the judicial appointment/election in general. In the expert's opinion, this was because, among other things, any other interpretation would imply that acts of Parliament were open to a challenge in ordinary criminal proceedings and that Supreme Court judges could be impeached by the ordinary courts, which would be contrary to the Constitution. The opinion did not contain references to domestic case-law. As to the Government's reliance on an illustrative case to argue that the Supreme Court was capable of addressing the merits of a complaint under Article 59 § 1 (a) of the Code of Criminal Procedure (see paragraph 61 above), the applicant submitted, *inter alia*, that in that case the Supreme Court had merely referred to the conclusions of the Constitutional Court regarding the general lawfulness of the procedure for judicial appointment and had not engaged in a fresh or case-specific assessment of the merits of the relevant complaint concerning the judge in that case. The applicant reiterated in this respect the opinion of the expert that ordinary courts did not have jurisdiction to assess the lawfulness of the election of

judges by Parliament. In the alternative, he argued that there had been insufficient time at domestic level to properly challenge the lawfulness of Sh.T.'s election as Judge of the Supreme Court on the basis of his alleged ineligibility for office.

66. The applicant also stated that he had not been required to request an oral hearing before the Supreme Court in circumstances where he had been acquitted at two levels of jurisdiction, and that none of his complaints were manifestly ill-founded.

2. The Court's assessment

(a) Alleged breach of the right to the presumption of innocence and alleged undue pressure on the Supreme Court

67. The Court notes that in its judgment in the case of *Mamaladze v. Georgia* (no. 9487/19, 3 November 2022) it examined a similar objection by the Government (ibid., §§ 63-67) and found, in so far as the statements of public officials were concerned, that civil proceedings could in principle provide adequate and sufficient redress to the applicant in that case (ibid., § 65). However, it also held that, in the particular circumstances of that case, and with the presumption of innocence viewed as a procedural guarantee in the context of a criminal trial itself, it had not been unreasonable for him to pursue the matter as part of the criminal proceedings without availing himself of another remedy (ibid., §§ 63-67).

68. The Court considers that the circumstances of the present case are different from those in *Mamaladze* (cited above). In the present case, there was no action or decision taken by the trial judge in the course of the trial itself which had an impact on the applicant's right to be presumed innocent (compare *Mamaladze*, cited above, § 66, and *Hajnal v. Serbia*, no. 36937/06, § 121, 19 June 2012). Therefore, in principle, he should have availed himself of the civil remedy.

69. However, the Court notes the applicant's contention that his complaint under Article 6 § 2 did not relate to a statement implying guilt as such, but to the alleged implication in the impugned statement that his acquittal would be reversed by the Supreme Court. In this connection, the Court observes that the applicant based his complaint on one phrase by the Prime Minister – "they will take care of it" – which was uttered as part of a wider political debate regarding the financial dealings of former UNM officials (see paragraphs 38-39 above).

70. The Court will examine the applicant's complaint under Article 18 of the Convention about an ulterior motive behind the Supreme Court's decision to convict him (see paragraphs 127-133 below). For the purposes of the applicant's Article 6-related complaint, and leaving aside the question of whether the issue falls under Article 6 § 2 or concerns the impartiality of the Supreme Court and hence Article 6 § 1, the Court cannot overlook the broader

context behind that statement – a heated parliamentary exchange – and the fact that, moments after the Prime Minister uttered the phrase in question, he warned against his words being twisted. He then explained that what he had meant was that the matter – allegations of mismanagement and corruption in relation to the applicant – would be taken up by the relevant parliamentary committee (see paragraph 39 above). In such circumstances, and having assessed the Minister's speech in its totality, the Court is not convinced that there is sufficient basis to consider that the statement in question raises an issue as to the applicant's presumption of innocence or the Supreme Court's impartiality.

71. Accordingly, in so far as the applicant complained that the Prime Minister's statement had been causally linked to his conviction by the Supreme Court, the Court finds this complaint manifestly ill-founded. It must therefore be rejected in accordance with Article 35 § 3 (a) of the Convention.

(b) Allegedly unlawful appointment of Judge Sh.T.

72. The Court notes that it addressed a similar objection in the case of *Ugulava* (cited above, §§ 39-43), where it found that a failure to request Judge Sh.T.'s recusal under Article 59 § 1 (a) of the Code of Criminal Procedure (see paragraph 47 above) had not been justified.

73. Having regard to the parties' submissions on this point (see paragraphs 61 and 65 above), and emphasising that interpretation and application of domestic law is primarily a matter for the national courts to resolve (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011), the Court sees no reason to reach a different conclusion in the present case.

74. Accordingly, the Government's objection regarding the applicant's failure to exhaust domestic remedies must be upheld and the present complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(c) Alleged partiality of Judge Sh.T.

75. The Court considers that the applicant's complaint concerning the alleged partiality of Judge Sh.T. raises complex issues of fact and law which cannot be determined without an examination on the merits. It thus finds that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

(d) Reversal of the applicant's acquittal by means of written proceedings and reasoning of the relevant judgment

76. As to the applicant's remaining complaint under Article 6 of the Convention regarding the fairness of the criminal proceedings against him, it

has two aspects: the reversal of his acquittal by the Supreme Court by means of written proceedings and the reasoning of the relevant judgment. As regards the Government's objection of non-exhaustion of domestic remedies relating to the first aspect of the complaint (see paragraph 62 above), the Court finds that the applicant's failure to request an oral hearing, in circumstances where he had been acquitted by the lower courts, cannot be held against him for the purposes of admissibility (see, for instance, *Gómez Olmeda v. Spain*, no. 61112/12, § 32, 29 March 2016). The Government's objection should therefore be rejected.

77. The Court further finds that the two aspects of the applicant's complaint are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

3. Conclusion regarding admissibility

78. The Court declares the applicant's complaints concerning (i) the alleged partiality of Judge Sh.T. and (ii) the reversal of the acquittal by the Supreme Court by means of written proceedings and an insufficiently reasoned judgment admissible and declares the remaining complaints under Article 6 of the Convention inadmissible.

B. Merits

1. Alleged partiality of Judge Sh.T.

(a) The parties' submissions

(i) The applicant

79. The applicant submitted, among other things, that although Sh.T. had become Prosecutor General after the appeal against his acquittal had been lodged with the Supreme Court, given the highly politically sensitive context of his case and the internal organisation of the prosecutor's office, Sh.T. must at least have been privy to the internal information about the strategy of the prosecution service in handling the criminal proceedings once he had become Prosecutor General.

80. The applicant also stated that a number of other elements would have caused an objective observer to doubt Sh.T.'s impartiality, including his allegedly close links to the ruling political party, the hasty treatment of the applicant's case following the Prime Minister's statement of 25 June 2021, and the Supreme Court's decision to deliberate on the case by means of written proceedings.

(ii) The Government

81. The Government submitted, among other things, that Sh.T. had not been the direct superior of the prosecutors who had led the investigation and the applicant's prosecution and had not had authority either to review or correct submissions or to influence in any way the activities of the prosecutors acting in the applicant's case. They further emphasised that by the time Sh.T. had started his tenure as Prosecutor General, the appeal on points of law in the applicant's case had already been referred to the Supreme Court. Accordingly, at no point in the preparation of the prosecution's case against the applicant had Sh.T. been serving as Prosecutor General. In this regard, the Government emphasised that the mere fact that a judge had once been a member of the public prosecutor's office was not a reason for fearing that he lacked impartiality. Accordingly, the present case was different, in their submission, from the situation in *Ugulava (no. 2)* (cited above, § 63), in which a violation of Article 6 § 1 had been found. The Government added that the applicant's application for recusal had been formulated in general terms.

82. The Government also stated that the applicant's case had been assigned to Sh.T. electronically on the basis of the principle of random allocation of cases (see paragraph 33 above). This had been an automated process excluding any risk of interference. They further noted that the interval between the prosecution's filing of the appeal on points of law and the delivery of a judgment by the Supreme Court could be explained by a shortage of judges and an increase in the Supreme Court's caseload. The appointment of judges in December 2019 had resulted in a gradual reduction in that caseload and the eventual delivery of a judgment in the applicant's case.

(b) The Court's assessment

(i) General principles

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

ECHR 2015; and *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 287, 4 December 2018).

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

85. In the vast majority of cases raising impartiality issues the Court has focused on the objective test (see *Micallef*, cited above, § 95). However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (see *Kyprianou*, cited above, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III, and *Morice*, cited above, § 75).

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

87. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings. It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Morice*, cited above, § 77).

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

89. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation (see *Piersack v. Belgium*, 1 October 1982, § 30 (d), Series A no. 53). The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns (see *Zahirović v. Croatia*, no. 58590/11, § 35, 25 April 2013). In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. The Court will take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see *Micallef*, cited above, § 99).

(ii) Application of these principles to the present case

90. The Court observes that in the present case the applicant's misgivings about Judge Sh.T.'s impartiality stemmed from the fact that he had previously held the position of Prosecutor General, specifically during the period when the appeal on points of law relating to the applicant's case was pending before the Supreme Court. The applicant raised this objection before the Supreme Court, requesting Sh.T.'s recusal from the cassation proceedings. The Supreme Court, sitting as a bench of two judges, dismissed the applicant's request, finding that his fears concerning Sh.T.'s impartiality were not justified (see paragraphs 32-33 above). No other grounds were raised in the applicant's application for recusal (compare paragraphs 32 and 79 above).

91. On the basis of the material before it, the Court considers that there is nothing to indicate that Judge Sh.T. acted with personal prejudice in the proceedings concerned. Consequently, his personal impartiality must be presumed (subjective test). Therefore, and having regard to the scope of the applicant's objection made before the Supreme Court (see the preceding paragraph), the Court will limit its assessment to the question whether, in the particular circumstances of the present case, Sh.T.'s tenure as Prosecutor General cast doubt on the impartiality of the Supreme Court, within the meaning of Article 6 § 1 of the Convention (objective test). For this purpose, the Court is concerned with determining whether there was an appearance of partiality supported by ascertainable facts.

92. The Court notes that the applicant did not submit any evidence showing that Judge Sh.T. had in fact played a dual role in the criminal proceedings against him. In this regard, the mere fact that a judge was once a member of the public prosecutor's office is not a reason for fearing that he or she lacks impartiality (see *Piersack*, cited above, § 30(b); see also *Paunović v. Serbia*, no. 54574/07, § 41, 3 December 2019, and the references cited

therein). Indeed, in several judicial systems of the Contracting States, transfers between roles in the public prosecutor's office and positions as judges are a frequent occurrence (see *Piersack*, cited above, § 30(b)). That said, the Court is mindful of the fact that, in the present case, the judge in question had previously held the office of Prosecutor General, the most senior prosecutorial position in the country.

93. The Court also takes note of the fact, undisputed by the parties, that by the time Sh.T. commenced his tenure as Prosecutor General, the prosecution service had already lodged its appeal on points of law with the Supreme Court (see paragraphs 28 and 40 above). The applicant's written reply had also already been submitted (see paragraph 29 above; compare and contrast *Ugulava (no. 2)*, cited above, §§ 62-64).

94. However, the Court has already examined, in the context of the objective test of impartiality addressed in *Ugulava (no. 2)* (cited above, §§ 60-62), the hierarchical structure of the General Prosecutor's Office in Georgia, the prominent role and extensive powers of the Prosecutor General under the relevant domestic legislation, and the relevance of the politically sensitive context in a high-profile trial. As regards the Government's objection that the present case differed substantially from *Ugulava (no. 2)* on account of the timeline of events (see paragraphs 81 and 93 above), the Court does not consider this to be the case. In particular, the Court cannot overlook the closeness in time between the submission of the appeal on points of law on 22 June 2018 and Sh.T.'s appointment as Prosecutor General less than a month later. Once appointed, Sh.T. became answerable for the activities of the prosecution service, including in relation to the ongoing cases. The Court also takes note of the possibility for the prosecution service to withdraw a cassation appeal that has not yet been examined (see paragraph 51 above).

95. The combination of the above elements may have created the impression that Sh.T. continued to support the appeal on points of law in the applicant's high-profile case during his tenure as Prosecutor General, while having access to internal information about the prosecution service's strategy in handling the criminal proceedings against the applicant, given his prominence and the political sensitivity of the criminal proceedings against him. Accordingly, and reiterating the importance of appearances for ensuring objective impartiality and, therefore, confidence in the justice system (see *Ugulava (no. 2)*, cited above, § 64), the Court finds that the inclusion of the former Prosecutor General in the bench of judges which heard the applicant's case was sufficient, in the circumstances of the present case, to cast doubt on the objective impartiality of the Supreme Court in ruling on the appeal on points of law in the applicant's case.

96. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 6 § 1 of the Convention on account of the lack of objective impartiality.

2. Reversal of the applicant's acquittal by the Supreme Court by means of written proceedings and the reasoning of the relevant judgment

(a) The parties' submissions

97. The applicant submitted that the Supreme Court's judgment in his case had concerned both legal and factual elements and that an oral hearing had therefore been necessary in his case. In particular, the court had essentially decided a question of fact as to whether the training provided for in the disputed contract had actually been implemented and answered it in the negative, resulting in the reversal of his acquittal without his participation or an examination of the credibility of the relevant witnesses. Moreover, its conclusion that no mitigating factors had existed at the time of his sentencing had also required that he be heard on the matter. Lastly, he argued that the judgment convicting him had lacked sufficient reasons because, among other things, his arguments submitted as part of the written response to the prosecution's appeal had not been addressed in the Supreme Court's judgment.

98. The Government submitted that the written proceedings before the Supreme Court had been sufficient in the particular circumstances of the applicant's case since the matter under consideration had been limited to legal issues and had not required the examination of facts or new evidence. The dispensation with oral hearings in such cases was aimed at promoting judicial efficiency and economy, and had been standard practice at the Supreme Court. Between 2020 and 2023 99% of cases were decided without a hearing. With regard to the cases in which judgments had been overturned or modified without an oral hearing, the Government submitted that forty-two such judgments had been adopted in 2018, thirty-four in 2019, forty-one in 2020, fifty-four in 2021, fifty-seven in 2022 and fifteen in 2023. They also argued that the applicant's lawyer had had an opportunity to present the defence arguments and elaborate on all legal issues, including in the course of oral hearings before the lower courts. Lastly, they submitted that the Supreme Court's judgment had contained sufficient reasons and set out conclusively the legal basis for overturning the findings of the lower courts.

(b) The Court's assessment

(i) General principles

(α) General considerations

99. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see *O'Halloran and Francis v. the United Kingdom* [GC], nos. 15809/02 and 25624/02, § 53, ECHR 2007-III). The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings

(see, among many other authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010; *Schatschaschwili v. Germany* [GC], no. 9154/10, § 101, ECHR 2015; and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, 13 September 2016).

(β) Right to an oral hearing and presence at the appeal hearing

100. An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 (see *Findlay v. the United Kingdom*, 25 February 1997, § 79, *Reports of Judgments and Decisions* 1997-I), and where an applicant has an entitlement to have his case "heard", with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses (see *Jussila v. Finland* [GC], no. 73053/01, § 40, ECHR 2006-XIV).

101. That said, the obligation to hold a hearing is not absolute (see *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A). There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see *Jussila*, cited above, § 41, with further references).

102. The Court reiterates that the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial hearing (see *Kamasinski v. Austria*, 19 December 1989, § 106, Series A no. 168). The manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see *Ekbatani v. Sweden*, 26 May 1988, § 27, Series A no. 134; *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56, Series A no. 115; and *Hermi v. Italy* [GC], no. 18114/02, § 60, ECHR 2006-XII).

103. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given an opportunity of being heard in person by the appeal or cassation court, provided that a public hearing was held at first instance (see, among other authorities, *Monnell and Morris*, cited above, § 58, as regards the issue of leave to appeal, and *Sutter v. Switzerland*, 22 February 1984, § 30, Series A no. 74, as regards the court of cassation). However, in the latter case, the underlying reason was that the courts concerned did not have the task of establishing the facts of the case, but only of interpreting the legal rules involved (see *Ekbatani*, cited above, § 31).

104. Even where the court of appeal has jurisdiction to review the case both as to facts and as to law, Article 6 does not always require a right to a public hearing, still less a right to appear in person (see *Fejde v. Sweden*, 29 October 1991, § 31, Series A no. 212-C, and *Hermi*, cited above, § 62). In order to decide this question, regard must be had, among other considerations, to the specific features of the proceedings in question and to the manner in which the applicant's interests were actually presented and protected before the appellate court, particularly in the light of the nature of the issues to be decided by it (see *Helmers v. Sweden*, 29 October 1991, §§ 31-32, Series A no. 212-A) and of their importance to the appellant (see *Kremzow v. Austria*, 21 September 1993, § 59, Series A no. 268-B; *Kamasinski*, cited above, § 106 *in fine*; *Ekbatani*, cited above, §§ 27-28; and *Hermi*, cited above, § 62).

105. However, where an appellate court has to examine a case as to the facts and the law and make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Hermi*, cited above, § 64; see also, *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004, and *Zahirović v. Croatia*, no. 58590/11, § 56, 25 April 2013).

106. Likewise, where the appellate court is called upon to examine whether the applicant's sentence should be increased and when the appeal proceedings are capable of raising issues including such matters as the applicant's personality and character, which makes such proceedings of crucial importance for the applicant since their outcome could be of major detriment to him, the Court considers that the appellate court cannot examine the case properly without having heard the applicant directly and gaining a personal impression of him (see *Hermi*, cited above, § 67; see also *Kremzow*, cited above, § 67; *Cooke v. Austria*, no. 25878/94, § 42, 8 February 2000; and *Talabér v. Hungary*, no. 37376/05, § 28, 29 September 2009).

(γ) Reasoning of judgments

107. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A). It must be clear from the decision that the essential issues of the case have been addressed (see *Taxquet v. Belgium* [GC],

no. 926/05, § 91, ECHR 2010). In view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 305 *in fine*, 26 September 2023, with further references). Moreover, in cases relating to interference with rights secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017, with further references).

(ii) Application of these principles to the present case

108. At the outset, the Court observes that the two aspects of the applicant's complaint under Article 6 of the Convention – the reversal by the Supreme Court of his acquittal by means of written proceedings and the alleged lack of sufficient reasons in the eventual judgment convicting him – are, in the particular circumstances of the case, somewhat linked. The Court will address them in turn.

109. The first aspect of the complaint raises the question of whether the Supreme Court was required to hold a public hearing in the applicant's case. In this connection, the Court will have regard to the specific features of the proceedings in question and the manner in which the applicant's interests were actually presented and defended before the Supreme Court, particularly in the light of the nature of the issues to be decided by it (see paragraph 104 above).

110. Within this context, the Court observes that the Supreme Court of Georgia, unlike the lower courts, does not carry out a full review of a case, such as the assessment of facts and evidence relied on by the former, the scope of its consideration being limited to specific legal matters (see *Kadagishvili v. Georgia*, no. 12391/06, § 175, 14 May 2020; see also paragraphs 49-52 above). It also has the power to dispense with an oral hearing (see paragraph 51 above). However, given its power to overturn a judgment of acquittal and render, for the first time, a decision on the sentencing of an individual (see paragraphs 49-50 and 54 above), the Supreme Court may, depending on the particular nature of the issues to be addressed in a case, be required, within the meaning of the Convention, to hold an oral hearing with the participation of the defendant (see paragraphs 104-106 above).

111. In the present case, the Supreme Court justified its decision to overturn the lower courts' judgments of acquittal by stating that the latter were unlawful. In particular, the court found that the judgments acquitting the applicant had been adopted in violation of the relevant legislation, as they contained generic conclusions as regards the unproven nature of the charge against him (see paragraph 34 above, points 5.4 and 5.5). The Supreme Court

then addressed what it apparently considered to be a legal rather than a factual issue. Namely, it determined, as a matter of principle, the type of evidence – specific documents as opposed to witness statements – that was indispensable to establish a fact on which the applicant relied in his defence. Given the undisputed absence of such documents in the evidence, the court effectively treated the witness evidence available in the case file as irrelevant. Therefore, at first glance, it would appear that no issue of witness credibility arose in the present case and that the Supreme Court's legal assessment merely led to a different outcome in the applicant's case.

112. Nonetheless, in cases such as the present one, the facts and legal interpretation can be so intertwined that it is difficult to separate the two (see also *Suuripää v. Finland*, no. 43151/02, § 44, 12 January 2010). Although the Supreme Court examined the case only from a legal point of view and the facts established by the first-instance court or the Court of Appeal were not necessarily disputed, it had to a certain extent made its own assessment for the purposes of determining whether the facts provided a sufficient basis for convicting the applicant (ibid.; see also *Júlíus Þór Sigurþórsson v. Iceland*, no. 38797/17, § 42, 16 July 2019). This is especially true with regard to the question of intent and the appropriateness of the relevant sentence, which the Supreme Court was called on to assess for the first time.

113. Accordingly, the Supreme Court may have been required, in principle**,** to hold an oral hearing with the applicant's participation.

114. However, the applicant did not personally participate in any of the oral hearings held by the lower courts as he had chosen not to appear and had explicitly mandated lawyers of his choice to represent his interests before the domestic courts, consenting to his trial *in absentia* (see, *mutatis mutandis*, *Lamatic v. Romania*, no. 55859/15, §§ 46-48, 1 December 2020). As a result, and in so far as the applicant is understood to be complaining that the Supreme Court's decision not to hold an oral hearing interfered with his right to be present at such a hearing (see paragraph 97 above), the Court considers that it has not been shown that an issue arises under Article 6 of the Convention on that account.

115. The Court reiterates, at the same time, that Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial, which is not limited to his or her right to be present (see, for instance, *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 70, 18 December 2018). Therefore, considering that the applicant took part in the proceedings through lawyers of his choice, it is necessary to assess whether the Supreme Court, in dispensing with an oral hearing in the applicant's case, gave him an adequate opportunity to react to the fact that it was going to convict and sentence him (see, for instance, *Suuripää*, cited above, § 46).

116. In this connection, the Court notes that the applicant was able to submit a written response to the appeal on points of law lodged by the prosecution authorities (see paragraph 29 above). It takes into account the fact

that he had chosen not to participate personally in the proceedings (see paragraph 114 above; compare *Suuripää*, cited above, § 46) and that he had been made aware of the prosecution's position – which the latter had maintained throughout the proceedings at all three levels of jurisdiction and to which the applicant's lawyers had responded during the oral hearings at the trial and appellate stage – before submitting his detailed written reply. The Court also takes note of the fact that the applicant was duly warned that the Supreme Court was going to consider his case by means of written proceedings. In this connection, it cannot overlook the relevant statistical information (see paragraph 98 above), of which the applicant's lawyers must have been well aware, indicating the Supreme Court's apparently common practice of overturning judgments of acquittal by means of written proceedings. The applicant, who had been duly represented, did not, however, raise any objections in this regard. The Court thus considers that the written procedure was, in the particular circumstances of the present case, sufficient to account for the possibility that the Supreme Court was going to convict and sentence him.

117. As regards the second aspect of the applicant's complaint, the Court takes note of the fact that the key argument raised by him before the Supreme Court was addressed, albeit implicitly. The applicant had maintained throughout the proceedings that he could not be held accountable for embezzlement because some training had actually been provided, as evidenced by witness statements. The Supreme Court addressed this, but took the view that the witness statements were irrelevant to determining whether the contract had been implemented (see paragraph 35 above, points 5.7 and 5.8). In effect, the court's determination of the necessary evidentiary framework applicable in the applicant's case rendered his arguments irrelevant for the outcome of the proceedings. In this connection, the Court emphasises that the absence of the relevant documents – the final quarterly report and the delivery and acceptance certificate to be concluded with the Ministry of Defence upon completion of the training programme – which the Supreme Court considered to be the crucial element warranting the applicant's conviction, was not disputed by the applicant at any stage of the proceedings against him.

118. The Supreme Court's approach may arguably be open to some criticism, particularly as regards its relatively brief treatment of the question of whether both the *actus reus* and *mens rea* of the criminal offence of embezzlement had been made out in respect of the applicant in view of the apparent diversity of the evidence on these issues. However, having reviewed the relevant judgment and the reasons contained therein (see paragraph 35 above), it does not appear to the Court that the Supreme Court's findings were arbitrary or manifestly unreasonable to the point of prejudicing the fairness of the proceedings or resulting in a "denial of justice" (see *Moreira Ferreira*, cited above, § 85). In such circumstances, the Court is not in a position to

assume the role of a fourth-instance body by embarking on a review of any particular alleged errors of fact or those of law allegedly committed by the cassation court.

119. The foregoing considerations are sufficient to enable the Court to conclude, regard being had to the proceedings as a whole, that there has been no violation of Article 6 §§ 1 and 3 of the Convention on account of the Supreme Court's reversal of the applicant's acquittal by means of written proceedings and the reasoning of the relevant judgment, in the particular circumstances of the present case.

II. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

120. The applicant complained that the dominant purpose of his conviction had been political, in breach of Article 18 of the Convention, read in conjunction with Article 6. Article 18 reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. The parties' submissions

1. The Government

121. The Government submitted that Article 6 did not contain express or implied restrictions that could form the subject of the Court's examination under Article 18 of the Convention, and that the applicant's complaint was therefore incompatible *ratione materiae* with the provisions of the Convention.

122. In the alternative, the Government argued that the complaint was manifestly ill-founded. They submitted that the applicant had failed to present any convincing arguments or evidence to show that he had been politically persecuted. As regards the refusal of his extradition requests by the French and United Kingdom courts, the Government stated that the extradition request before the French court had not concerned the present proceedings. As to the findings of the Westminster Magistrates' Court, they relied on the case of *Merabishvili v. Georgia* ([GC] no. 72508/13, §§ 275 and 330, 28 November 2017), arguing that the decisions refusing to extradite the applicant did not provide a sufficient basis for establishing a breach of Article 18 of the Convention. This was because the evidence and arguments before those courts could have differed from those before the Court and, in any event, the standard of proof applied by the Court in Article 18 cases was very high. Referring to *Merabishvili* (cited above, § 330), the Government submitted that "the extradition courts [had been] in essence assessing a future risk, whereas the Court [was] concerned with past facts; that colour[ed] their

respective assessment of inconclusive contextual evidence." They submitted that the same considerations applied in the applicant's case.

123. The Government added, in reply to the applicant's allegation that his conviction by the Supreme Court had been linked to the Prime Minister's speech in Parliament (see paragraph 126 below), that the gap between the prosecution's filing of the appeal on points of law and the delivery of a judgment by the Supreme Court could be explained by a shortage of judges and an increase in the caseload. The appointment of judges in December 2019 had resulted in a gradual reduction in that caseload and the delivery of a judgment in the applicant's case.

124. Lastly, the Government noted that since *Merabishvili* the Court had dealt with a number of complaints under Article 18 raised by other UNM figures (see *Akhalaia v. Georgia (dec.),* nos. 30464/13 and 19068/14, 7 June 2022; *Ugulava v. Georgia*, no. 5432/15, 9 February 2023; and *Melia v. Georgia*, no. 13668/21, 7 September 2023), and that no improper motives were found behind the relevant criminal prosecutions.

2. The applicant

125. The applicant maintained that the dominant purpose of the restrictions imposed on his rights under Article 6 of the Convention had been to silence or marginalise him as a political opponent on account of his association with the UNM. In that connection, he pointed to the findings of the French and United Kingdom courts in the extradition proceedings against him (see paragraphs 43 and 45 above) and to Interpol's decision to delete all data relating to him (see paragraph 44 above).

126. The applicant submitted that, following his acquittal first by the Tbilisi City Court and subsequently by the Tbilisi Court of Appeal, the prosecution's appeal on points of law had not been considered by the Supreme Court for over three years. Its decision to consider the prosecution's appeal on points of law had, in his submission, been taken shortly after the Prime Minister's speech in Parliament (see paragraphs 30 and 38-39 above). The close timing and the nature of the statement, along with Sh.T.'s links to the ruling party and the flawed judicial selection process through which he had been elected implied, in the applicant's submission, that his eventual conviction had been the result of political considerations. He also added that the Supreme Court had failed to hold an oral hearing, despite the fact that he had been acquitted by the lower courts, and that the eventual judgment of conviction had lacked sufficient reasons.

B. The Court's assessment

127. The Court refers to the general principles concerning the interpretation and application of Article 18 of the Convention set out in its judgments in *Merabishvili* (cited above, §§ 287-317); *Navalnyy v. Russia*

([GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018); and *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, § 421-22, 22 December 2020).

128. Applying these principles to the circumstances of the present case, and reiterating that, as a matter of principle, a breach of Article 18 can be found even if there is no breach of the Article(s) in conjunction with which it applies (see, for instance, *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 315, 18 July 2019), the Court notes, in reply to the Government's first objection to admissibility (see paragraph 121 above), that Article 18 may be applied in conjunction with Article 6 (see *Ukraine v. Russia (re Crimea)* [GC], nos. 20958/14 and 38334/18, § 1338, 25 June 2024). The Court will thus address the Government's second objection that the applicant has not sufficiently substantiated his complaint.

129. The Court observes that the applicant mainly referred to the findings of Interpol and the French and United Kingdom courts in the extradition proceedings against him (see paragraphs 43-45 above). It is true that Interpol deleted all data relating to the applicant and that those courts turned down requests from the Georgian authorities for his extradition on the basis, *inter alia*, that the criminal prosecutions against him were politically motivated (ibid.). However, as noted in *Khodorkovskiy v. Russia* (no. 5829/04, § 260, 31 May 2011), that element alone does not necessarily determine the Court's assessment, as the extradition courts were essentially assessing a future risk, whereas the Court is concerned with past facts.

130. The Court does take note of the political events that took place in Georgia between 2012 and 2014 (see *Merabishvili*, cited above, § 320), to which the above-mentioned decisions also referred. It understands that there might be a degree of suspicion that there was a political impetus behind the charges brought against the applicant – even if the charges themselves were not overtly political. However, there is no right as such under the Convention not to be criminally prosecuted, which is why the factors deriving from the broader political context in which the criminal case was brought against the applicant are insufficient to be regarded as proof in that respect (see, for a similar conclusion regarding the same political context, *Merabishvili*, cited above, §§ 320 and 322, and *Saakashvili v. Georgia*, nos. 6232/20 and 22394/20, § 161, 23 May 2024).

131. The Court will therefore address the other points raised by the applicant to see whether, taken separately or in combination with each other, they may support an arguable claim that the criminal proceedings against him pursued a purpose not prescribed by the Convention.

132. In this connection, the applicant's allegations relating to Sh.T.'s links with the ruling party were never raised at domestic level, despite the fact that he was in a position to do so (see paragraphs 32 and 90 above). Furthermore, the applicant alleged that the Prime Minister's speech in Parliament had been causally linked to his conviction and therefore to the present complaint.

However, as noted above, there is insufficient basis to support the applicant's interpretation of the meaning of the impugned words (see paragraph 70 above). In the absence of evidence, in the legal sense, that the judicial authority had not been sufficiently independent of the executive branch in the case at hand, the Court considers that a political statement made by the Prime Minister in the context of heated parliamentary debates cannot, as such, lead to the conclusion that the courts that dealt with the applicant's criminal cases were driven by the improper ulterior purpose of removing him from the political scene (see *Saakashvili*, cited above, § 161). The relative closeness in time between the speech and the Supreme Court's judgment is an insufficient basis for a finding that there was an ulterior motive behind the latter's decision to convict the applicant. Having regard to the grounds on which the Court found a violation of Article 6 § 1 of the Convention in the present case, there is nothing in that finding either that would suffice to establish the existence of an ulterior motive contrary to Article 18 of the Convention.

133. In the light of the foregoing, the Court finds that there is insufficient evidence to substantiate the applicant's allegation of an ulterior motive behind his prosecution and conviction. Consequently, upholding the Government's second objection (see paragraph 122 above), the Court concludes that the complaint under Article 18 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

136. The Government stated that the claim was excessive.

137. The Court considers that, in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Costs and expenses

138. The applicant did not claim any costs and expenses. There is, therefore, no call to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 §§ 1 and 3 of the Convention concerning the lack of impartiality, the reversal of the applicant's acquittal by the Supreme Court by means of written proceedings and the reasoning of the relevant judgment admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of objective impartiality;

3. *Holds* that there has been no violation of Article 6 §§ 1 and 3 of the Convention on account of the Supreme Court's reversal of the applicant's acquittal by means of written proceedings and the reasoning of the relevant judgment;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President