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

FIFTH SECTION

DECISION

Application no. 9154/06
Aleksi MARIAMIDZE
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 19 September 2017 as a Committee composed of:

Síofra O'Leary, *President,*
Nona Tsotsoria,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 8 March 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksi Mariamidze, is a Georgian national, who was born in 1962 and lives in Gori. He was represented before the Court by Ms L. Mukhashavria, a lawyer practising in Tbilisi.

2. The Georgian Government ("the Government") were represented by their Agent, Mr D. Tomadze, of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 16 June 2002 the applicant was appointed judge of the Gori District Court by the President of Georgia for a ten-year term.

5. On 24 December 2004 the Supreme Council of Justice initiated disciplinary proceedings against the applicant on the grounds set out in

section 2(2)-(a) of the Act of 22 February 2000 on Disciplinary Proceedings against Judges of Ordinary Courts (hereinafter, "the Disciplinary Proceedings Act" – see paragraphs 13 and 14 below). He was accused in particular of having denied a person accused of an administrative offence, a case that had been examined by the applicant in his capacity of a judge in October 2004, a number of fair trial guarantees. That alleged judicial omission was qualified as a "manifest breach of the law" within the meaning of the above-mentioned provision of the Disciplinary Proceedings Act.

6. On 27 January 2005 a Panel of the Disciplinary Council of Judges (hereinafter, "the Panel"), composed of Mr K.K. (the President of the Panel and rapporteur), Mr G.Ch., Mr D.S. and Mr T.T, considered the case at an oral hearing and found the applicant guilty of the misconduct in question. Describing the mistake at issue as unacceptable, the Panel decided, in the light of the fact that the applicant had already received a disciplinary sanction in the past, to remove him from his judicial post.

7. The applicant lodged an appeal with the Disciplinary Council of Judges (hereinafter, "the Disciplinary Council") on points of fact and law. He questioned the assessment of the circumstances of the case and the application of the legal provisions to the established facts in the decision of 27 January 2005.

8. On 7 April 2005 the Disciplinary Council, sitting in a bench composed of eight members, including two members, Mr K.K. (President and rapporteur) and Mr G.Ch, who had sat at the first hearing, examined the applicant's appeal. Three other members of the bench were Mr N.G., Ms N.K. and Ms I.K. According to the minutes of the relevant hearing, the applicant challenged exclusively the assessment of the circumstances of the case and application of the law by the Panel. He did not call into question either the independence or impartiality or the lawfulness of the composition of the appellate bench.

9. By a decision delivered on the same day, 7 April 2005, the Disciplinary Council found that the applicant had committed "a manifest breach of the law" and upheld the Panel's decision of 27 January 2005.

10. On 17 May 2005 the applicant filed with the Supreme Court of Georgia an appeal on points of law, accusing the Disciplinary Council of erroneous application of the procedural and material law to the facts of the case. He did not call into question the independence or impartiality or the professional qualifications of any of the individual members of the appellate bench.

11. The Supreme Court examined the applicant's appeal at oral hearings on 5 and 25 July 2005. According to the minutes, the applicant, in his oral pleadings, did not make any complaint about the independence or impartiality or the lack of professional qualifications of any individual

members of the appellate bench of the Disciplinary Council which had examined his case on 7 April 2005.

12. In its judgment of 9 September 2005, the Supreme Court dismissed the applicant's appeal on points of law, finding that the case had been objectively and exhaustively examined by the disciplinary bodies and that the punishment imposed had been appropriate

B. Relevant domestic law

13. The relevant legal provisions on the guarantees on irremovability of judges of the Courts of Ordinary Jurisdiction as well as concerning the conduct of disciplinary proceedings against such judges, as they were in force at the time of the opening of the disciplinary proceedings against the applicant, were cited in the case of *Sturua v. Georgia* (no. 45729/05, §§ 13-14 and 16-18, 28 March 2017).

14. Two other relevant legal provisions from the Disciplinary Proceedings Act, Sections 25(1) and 35(1), read as follows:

Section 25(1)

"Any judge of an ordinary court ... and any Georgian national aged 25 years or over with a law degree and at least five years' relevant professional experience may be a member of the Disciplinary Council."

Section 35(1)

"The implicated judge ... shall have the right to request the withdrawal of one or all of the members of a Disciplinary Panel by providing reasoned grounds for the request..."

COMPLAINTS

15. Citing Article 6 § 1 of the Convention, the applicant complained that the Disciplinary Council that examined his case had allegedly lacked impartiality and independence and had not been established in accordance with law.

16. Relying on Articles 6 § 1, 13 and 14 of the Convention, the applicant further complained that he did not have access to a court and that the outcome of the disciplinary proceedings had been based on an erroneous assessment of the facts and a wrongful application of the law by the Disciplinary Council and the Supreme Court of Georgia.

THE LAW

A. As regards the complaints about the independence, impartiality and the lawfulness of the composition of the disciplinary bodies

17. The applicant made three distinctive complaints under Article 6 § 1 of the Convention:

i. that his case had not been heard by an impartial tribunal as the same two judges – Mr K.K. and Mr G.Ch. – had taken part in the first and appellate disciplinary proceedings;

ii. that the composition of the Disciplinary Council that examined his case at the appellate level on 7 April 2005 could not be considered to have been independent from the executive and legislative branches because three members of that composition – Mr N.G., Ms N.K. and Ms I.K – had allegedly been members of the political party, the United National Movement, the ruling force at the material time of the events;

iii. that the composition of the Disciplinary Council that examined his case at the appellate level on 7 April 2005 had not been "established by law" because two members – Mr K.K. and Ms N.K. – had allegedly lacked the qualifications – at least five years' professional experience in the legal field – required under Section 25(1) of the Disciplinary Proceedings Act (see paragraph 14 above).

18. The cited provision reads, in its relevant parts, as follows:

Article 6 § 1

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

1. The parties' arguments

19. The Government contended that Article 6 of the Convention did not apply in the present case. Among other arguments, they relied on the Court's decision in the case of *Pitkevich v. Russia* ((dec.), no. 47936/99, 8 February 2001) and maintained that disputes relating to dismissal from the judiciary fell outside the scope of the provision in question. They additionally argued that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, since he had never voiced any similar grievance, at least in remote terms, about either the lack of independence, impartiality or the requisite professional qualifications by the relevant individual members of the Disciplinary Council at the domestic level.

20. The applicant disagreed with the Government's objections, considering them to be misplaced and not supported by either the Court's relevant case-law or the relevant domestic law. With respect to the independence and impartiality and professional qualifications of Mr K.K.,

Mr G.Ch, Mr N.G., Ms N.K. and Ms I.K (see paragraph 17 above for a detailed description of the complaints), the applicant, conceding that he had not attempted to request their withdrawal on the relevant grounds at the domestic level, argued that he should be excused for not having do so because such a request for withdrawal would have had no real prospect of success.

2. The Court's assessment

21. As regards the Government's objection of incompatibility *ratione materiae*, the Court reiterates that in the leading and identical case of *Sturua v. Georgia*, (no. 45729/05, 28 March 2017) it already found that Article 6 § 1 of the Convention applied under its "civil" head to disciplinary proceedings conducted under the Disciplinary Proceedings Act against judges of the Courts of Ordinary Jurisdiction (see *Sturua*, cited above, §§ 23-30). The relevant objection of inadmissibility must therefore be dismissed in the present case.

22. As regards the objection of non-exhaustion of domestic remedies, the Court observes that there is, indeed, no indication that the applicant, at any stage of the domestic proceedings, challenged the participation of Mr K.K., Mr G.Ch, Mr N.G., Ms N.K. and Ms I.K on account of the lack of independence, impartiality or the professional qualifications required under Section 25(1) of the Disciplinary Proceedings Act (contrast with, for instance, *Jenița Mocanu v. Romania*, no. 11770/08, § 30, 17 December 2013, and compare with *Śliwa v. Poland* (dec.), no. 17519/08, §§ 18-20, 10 May 2012). This omission, which was conceded by the applicant in the proceedings before the Court, appears to be particularly problematic given that, in the context of issues affecting independence and impartiality or an alleged breach by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs, it is always important for the Court to have knowledge of the domestic courts' position on the matter (see *Dāvidsons and Savins v. Latvia*, nos. 17574/07 and 25235/07, § 39, 7 January 2016, and also *Biagioli v. San Marino* (dec.), no. 8162/13, § 75, 8 July 2014). As the applicant never called into question the independence or impartiality of the above-mentioned individual members of the Disciplinary Council at the domestic level on the grounds currently argued before the Court (contrast, in particular, with *Sturua*, cited above, §§ 11-12), and never raised his concerns about the alleged lack of professional qualifications by some of those members, the Court is now prevented from taking into consideration the relevant complaints (see, *mutatis mutandis*, *Smailagić v. Croatia* (dec.), no. 77707/13, §§ 31-36, 7 November 2015; *Zahirović v. Croatia*, no. 58590/11, § 36, 25 April 2013, and also *Pavletić v. Slovakia*, no. 39359/98, § 105, 22 June 2004).

23. For these reasons, the Court accepts the Government's objection of non-exhaustion of domestic remedies, and this part of the application must

be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. As regards the remaining complaints

24. Relying on Articles 6 § 1, 13 and 14 of the Convention, the applicant also complained, on the one hand, that he did not have access to a court and, on the other, that the outcome of the disciplinary proceedings had been based on an erroneous assessment of the facts and a wrongful application of the law by the Disciplinary Council and the Supreme Court of Georgia.

25. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court, having regard to some of its previous findings in its established case-law on the matter (see *Sturua*, cited above, §§ 37-42), finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

26. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 October 2017.

Anne-Marie Dougin Acting Deputy Registrar	Síofra O'Leary President