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

FOURTH SECTION

DECISION

Applications nos. 11025/22 and 11032/22
Irakli PIRTSKHALAVA against Georgia
and Y against Georgia

The European Court of Human Rights (Fourth Section), sitting on 4 November 2025 as a Chamber composed of:

Jolien Schukking*, President*,
Lado Chanturia,
Faris Vehabović,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,

and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to the above applications lodged on 4 February 2022 and 16 February 2022 respectively,

Having regard to the decision to give notice to the Georgian Government ("the Government") of the complaints under Article 6 of the Convention concerning the lack of an "independent and impartial tribunal established by law" and certain aspects of the alleged procedural unfairness in application no. 11025/22, and to declare inadmissible the remainder of application no. 11032/22,

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

Having deliberated, decides as follows:

INTRODUCTION

1. The present case primarily concerns the applicants' allegations that the Criminal Chamber of the Supreme Court which examined their respective cases was not an "independent and impartial tribunal established by law" given that one of the judges in the panels that rejected their appeals was a former Prosecutor General of Georgia who had allegedly been elected to the

Supreme Court in violation of a statutory eligibility criterion. The applicants relied on Article 6 of the Convention.

THE FACTS

2. The applicant in the first case (no. 11025/22), Mr Irakli Pirtskhalava ("the first applicant"), is a Georgian national, who was born in 1968 and lives in Tbilisi. He was represented before the Court by Ms A. Ilauri, a lawyer practising in Tbilisi.

3. The applicant in the second case (no. 11032/22), Y. ("the second applicant"), is a Georgian national, who was born in 1988 and lives in Tbilisi. The President granted his request for his identity not to be disclosed to the public (Rule 47 § 4 of the Rules of Court). The second applicant was represented before the Court by Mr A. Baramidze, a lawyer practising in Tbilisi.

4. The Georgian Government ("the Government") were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

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

A. Judicial competition in 2019

1. Background

6. In 2012 Georgia embarked on a major reform of its justice system, intended, among other aims, to introduce the principle of lifetime appointment of judges, to amend the procedure for the appointment and promotion of judges, and to increase and strengthen the role and functional independence of the High Council of Justice ("the HCJ"), a constitutional body mandated with oversight of the judiciary. The HCJ's role in the judicial appointment process was reinforced through amendments to the Constitution and to the Law of 13 June 1997 on Courts of Ordinary Jurisdiction ("the Courts Act"). Among other important changes to the HCJ's composition and mandate, the amendments extended its remit to include the nomination of Supreme Court judges. Thus, the HCJ was given the power to nominate judicial candidates for subsequent appointment by Parliament, a role which had previously belonged to the President.

7. On 16 December 2018 constitutional amendments entered into force, which changed the composition of the Supreme Court and the procedure for the selection and appointment of judges. The minimum number of Supreme Court judges increased from sixteen to twenty-eight and the ten-year term of office was replaced with a lifetime appointment.

8. On 1 May 2019 the Courts Act was amended again, as were the Rules of Procedure of Parliament, in order to introduce a new procedure for the selection and appointment of Supreme Court judges. A new multi-stage

selection, nomination and appointment process was created. The first phase, conducted by the HCJ, entailed: (i) registration of eligible candidates on the basis of application forms; (ii) secret voting on a shortlist of eligible candidates equal to 2.5 times the number of vacancies, whereby each member of the HCJ voted for up to as many candidates as there were vacancies; (iii) background checks on the shortlisted candidates by the HCJ secretariat; (iv) interviews, conducted by the HCJ; (v) assessment and scoring, by secret vote, of the candidates on the basis of competency and integrity criteria; and (vi) ranking, by secret vote, of the highest scoring candidates, with the names of those who received at least two-thirds of the votes being forwarded to Parliament. The second phase of the competition entailed: (i) a public interview with each nominee by the parliamentary legal affairs committee, which then voted on recommendations for appointment; and (ii) the final appointment, discussed and voted on in a plenary sitting of Parliament.

2. Judge Sh.T.'s election to the Supreme Court

9. On 11 May 2019 a call for applications was issued by the HCJ for the posts of twenty judges at the Supreme Court of Georgia.

10. On 7 June 2019 a list of 144 formally registered candidates, among them Sh.T., the then Prosecutor General of Georgia who had held this position since July 2018, was published on the HCJ's website. On the same date 139 candidates were deemed eligible by the HCJ in a single unanimous vote. Following the withdrawal of two eligible candidates 137 candidates remained.

11. On 20 June 2019 the HCJ shortlisted, through a secret ballot, 50 candidates, including Sh.T. The HCJ secretariat then carried out background checks on all the shortlisted candidates and the information obtained as a result was made available to the HCJ members five days before the interviews.

12. All the interviews with the candidates were public and broadcast live on social media by the Public Broadcaster; they were attended by representatives of various international organisations, the Public Defender of Georgia's Office and domestic human-rights non-governmental organisations (NGOs). The audio recordings were subsequently posted on the HCJ's website.

13. On 23 July 2019 the HCJ interviewed Sh.T.

14. Three weeks after the completion of all the interviews, on 3 September 2019, the consolidated points received by each candidate on the basis of the assessment of integrity and competency criteria were made public on the HCJ's website. On 4 September 2019 the HCJ members made a second shortlist, by way of a secret ballot, of twenty candidates whose names were to be transmitted to Parliament, among them Sh.T. The number of votes received by each candidate was not published. The list of nominees did not

coincide with the top twenty candidates who had received the highest scores after the interviews.

15. On 12 September 2019 a working group was set up at the legal affairs committee of Parliament to verify whether the nominated candidates met the requirements of the judicial post. At the same time, the Public Defender of Georgia and the Coalition for an Independent and Transparent Judiciary (a coalition of NGOs) raised concerns about several nominees who, in their submission, did not possess the required level of education, including the former Prosecutor General of Georgia, Sh.T. They called on Parliament to suspend consideration of his candidacy while the extent of his legal education was being verified. On an unidentified date the working group asked the National Centre for Educational Quality Enhancement ("the NCEQE") to verify that each of the nominees put forward for appointment to the Supreme Court held a Master of Laws or equivalent. In addition, it was requested, in view of the allegations voiced, to check the authenticity of Sh.T's law diploma. On 20 September 2019 the working group confirmed the eligibility of all the nominees without waiting for the reply of the NCEQE.

16. On 23 September 2019 the legal affairs committee started public interviews of the twenty candidates. On 7 October 2019 Transparency International Georgia ("TI Georgia") published a statement questioning the accuracy of Sh.T.'s diploma.

17. On 8 October 2019 the Public Defender of Georgia published a monitoring report on the first phase of the judicial selection procedure conducted by the HCJ. Among other problems, the Public Defender noted that the HCJ had failed to properly verify the educational qualifications of the fifty shortlisted candidates and that the eligibility and qualifications of at least five of them, including Sh.T., were highly questionable.

18. On 9 October 2019 Sh.T. was interviewed by the parliamentary legal affairs committee. In reply to a question concerning his diploma, he explained that he had studied at the relevant university between 1994 and 1998 and had sat and completed the fifth-year examinations as an external student during the 1997-1998 academic year. He referred to legislation in force at the material time which allowed any student to complete any course in a university in the form of an external examination and to graduate from university one year early. Sh.T. acknowledged that he had no document in his possession confirming that he had passed the external examinations. However, at the request of the committee, he subsequently produced a letter from the NCEQE, dated 29 October 2019, according to which the minutes of the State Examination Commission of the Tbilisi Humanities Institute, dated 23 June 1998, mentioned Sh.T. among the students who had successfully completed a law degree.

19. On 8 November 2019 all the interviews were completed. On 12 December 2019 the legal affairs committee voted for fourteen candidates out of the nineteen, including Sh.T. One of the candidates withdrew his

candidacy after the hearings. On the same date, Parliament, sitting in plenary, voted and confirmed the fourteen candidates recommended by the legal affairs committee.

20. On 12 December 2019 Sh.T. was formally confirmed a judge of the Supreme Court. On 16 December 2019 he was elected chairman of the Chamber of Criminal Cases consisting of five judges, including him. On 19 December 2019 he was elected deputy chairman of the Supreme Court.

B. Criminal proceedings against the first applicant

1. Proceedings before the Tbilisi City Court and the Tbilisi Court of Appeal

21. On 18 December 2018 the Tbilisi City Court convicted the first applicant of exceeding official authority by using violence and violating personal dignity. He was sentenced to five years and three months' imprisonment and was deprived of the right to hold public office for a period of two years and three months. Of his four co-accused, three individuals were convicted, and one entered into a plea-bargain agreement with the prosecution service and received a reduced sentence. At the material time the first applicant was the head of the Didube Chughureti district office (police station) of the Ministry of Internal Affairs. His co-accused were also high-ranking officers of the Ministry of Internal Affairs ("the MIA").

22. In its judgment the trial court found that at 2 a.m. on 24 November 2004 the police stopped a car with six occupants (including the driver). As the individuals stepped out of the car, the two officers who had pulled them over considered them suspicious and called for back-up. Two more police officers, accompanied by a journalist and a cameraman working with the MIA, arrived. The newly arrived officers ordered the individuals, at gunpoint, to raise their hands, and proceeded to search them. None of the individuals were found to have been carrying any illicit items, as documented by the journalist and the cameraman filming the procedure, but the officers started to arrest them nonetheless. One of the officers kept his gun out and ready to fire while handcuffing the individuals, and while doing so he unintentionally discharged his gun, hitting A.R., who died at the scene. The officers verbally and physically abused the remaining individuals. Soon after the incident, the first applicant, along with his co-accused, arrived at the scene. After verifying that the arrested individuals had not been carrying any firearms and being told about the unintentional shot which had resulted in A.R.'s death, the first applicant and the other officers decided to cover up the crime. They took the recording filmed by the cameraman and instructed him to film a new sequence to show that the arrested individuals had carried firearms and had assaulted the police officers, justifying the latter's use of force against A.R. Accordingly, weapons and ammunition were planted and a new recording of the crime scene was made and later shown to the public.

23. The circumstances of the incident, as established by the trial court (see the previous paragraph) in its 73-page judgment, were attested to by multiple witness statements, including the statements given by the victims, the two police officers who had initially pulled the car over, the officers who had been called as back-up (including the one whose unintentional shot had killed A.R.), the journalist who had been there at the time of the incident, and an investigator who had interacted with the applicant at the crime scene during the cover-up. The judgment also relied on multiple expert examinations and other documents.

24. The first applicant personally participated in all the hearings before the trial court except one, on 26 November 2018, which he could not attend on health grounds. The trial court found it unnecessary to postpone the hearing as it was dedicated to the closing arguments of the prosecution; the applicant's lawyer was present at it. The applicant was subsequently provided with a copy of the written transcript of the hearing. He delivered his closing statement at a hearing on 5 December 2018.

25. On an unspecified date, but within a month from the delivery of the Tbilisi City Court's judgment on 18 December 2018, the first applicant lodged an appeal against his conviction.

26. During the proceedings before the Tbilisi Court of Appeal the applicant stated that he had been unable to present video evidence to ten witnesses he had examined at the trial stage and requested that he be allowed to question them anew with the possibility of presenting the video evidence to them. That request was granted in respect of four witnesses for whom the applicant had duly submitted requests at the trial stage, and rejected in so far as the other witnesses were concerned.

27. On 15 April 2020 the Tbilisi Court of Appeal approved plea-bargain agreements struck by two more of the first applicant's co-accused (G.D. and Z.M.) with the prosecution service. The agreements resulted in reduced sentences for G.D. and Z.M. Subsequently, the case involving the first applicant and his remaining co-accused, D.I., was assigned to a different composition of the Tbilisi Court of Appeal.

28. On 1 February 2021 the Tbilisi Court of Appeal upheld the trial court's judgment against the first applicant.

2. Proceedings before the Supreme Court

29. On 26 February 2021 the first applicant lodged an appeal on points of law with the Supreme Court.

30. On 23 March 2021 his case was assigned to Judge L.P. as the presiding judge (and judge rapporteur) on the basis of the principle of a random allocation of cases. On an unspecified date the first applicant became aware of the assignment of his case to L.P.

31. In written submissions dated 2 August 2021 the first applicant addressed L.P. and requested to have G.D. and Z.M. questioned as witnesses.

32. On 23 September 2021 the Supreme Court declared the first applicant's appeal on points of law inadmissible. The relevant panel consisted of Judges L.P. (presiding), M.G. and Sh.T. The applicant was notified of the decision on 12 October 2021.

33. The Supreme Court addressed the first applicant's complaints, including as regards the questioning of witnesses, the use of the plea-bargaining procedure and the first applicant's inability to attend the trial court's hearing on 26 November 2018. It found, as regards the applicant's alleged inability to have video evidence presented during the examinations of all ten witnesses, that the appellate court had granted the request in respect of only four witnesses owing to the first applicant's failure to duly lodge the request in respect of the remaining six witnesses at the first instance. Regarding the plea-bargain agreements, the Supreme Court noted that the appellate court's composition had been changed following the approval of those agreements and that the statements made by the first applicant's co-accused as part of that procedure had not been used in the criminal proceedings against him. The Supreme Court emphasised that the first applicant's conviction was based on evidence unrelated to that procedure (see paragraphs 22-23 above), and that his request to have his former co-accused questioned before the Supreme Court had been unsubstantiated as regards the relevance of their statements. As for the first applicant's claim that he had been unable to attend an important hearing during the trial at first instance, the Supreme Court accepted the trial court's reasoning on the matter (see paragraph 24 above) and found the complaint unsubstantiated. The Supreme Court also found to be unsubstantiated the first applicant's submissions as regards the admissibility of various items of evidence in his case and the application of domestic law by the lower courts.

C. Criminal proceedings against the second applicant

34. On 11 November 2019 the Tbilisi City Court convicted the second applicant of indecent behaviour, rape, drug offences and engaging minors in anti-social activities. The conviction was based, *inter alia*, on photo and video evidence, biological material and witness statements. He was sentenced to sixteen years' imprisonment. The second applicant appealed against his conviction but on 16 March 2021 the Tbilisi Court of Appeal rejected that appeal.

35. On an unspecified date, but within a month from the Tbilisi Court of Appeal's judgment of 16 March 2021, the second applicant lodged an appeal on points of law with the Supreme Court.

36. On 27 May 2021 the case was allocated to the Judge M.G. as the presiding judge (and judge rapporteur) on the basis of the principle of random allocation of cases.

37. On 3 June 2021 the second applicant's representative inquired with the Supreme Court whether the appeal on points of law lodged by him had been received. The representative asked to be informed, in case of a positive answer to his inquiry, of the identity of the judge to whom the case had been allocated and the contact information of the judge's assistant.

38. On 4 June 2021 the second applicant's representative received a reply from S.G., who appears to have been Judge M.G.'s assistant, informing him that Judge M.G. had been designated as the presiding judge (and judge rapporteur) in his case.

39. On 9 November 2021 the Criminal Chamber of the Supreme Court declared the second applicant's appeal on points of law inadmissible. The relevant panel consisted of Judges M.G (presiding), M.V. and Sh.T. The second applicant was notified of the decision on 22 November 2021.

D. Subsequent development

40. On 30 December 2024 Judge Sh.T. left the Supreme Court to accept an appointment as Deputy Minister of Internal Affairs.

RELEVANT LEGAL FRAMEWORK

41. Article 22 § 7 (composition of courts) of the Code of Criminal Procedure of 2009 ("the CCP") provides that "the Criminal Chamber of the Supreme Court of Georgia considers an appeal on points of law in a panel of three judges, and the Grand Chamber [of the Supreme Court] does so in a panel of nine judges." Article 304 of the CCP provides that a panel of three judges to which a case has been assigned may relinquish jurisdiction in favour of the Grand Chamber of the Supreme Court if (a) the resolution of the case is of particular importance for ensuring the consistency of judicial practice, or (b) if the case presents an unusual legal issue.

42. Article 59 (circumstances precluding the participation of a judge, juror, prosecutor, investigator, or a secretary of a court session in criminal proceedings), in so far as relevant, provides 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 ..."

43. Under Article 63 (procedure for filing a motion for recusal) of the CCP:

"1. If any circumstance exists precluding the participation of a participant of the criminal proceedings, as defined by this Code, and the participant has not recused him or herself, the parties shall have the right to submit a motion for recusal.

2. A motion for recusal must be submitted without delay, at the earliest possible opportunity, upon [a party] becoming aware of the grounds for recusal. Otherwise, the motion shall not be considered.

3. A motion for the recusal of a judge, juror, prosecutor, court secretary, defence lawyer, or interpreter [that a party might wish to submit] after judicial consideration of a case has begun shall be submitted to the [relevant] court by the persons authorised to do so.

..."

44. Article 303 § 8 of the CCP provides that the Supreme Court "shall deliver a final decision [on a case] not later than six months after [its] having been lodged".

45. The relevant legal framework concerning election to the Supreme Court has been summarised in the case of *Ugulava v. Georgia (no. 2)* (no. 22431/20, §§ 24-25, 1 February 2024).

46. The relevant legal framework concerning the structure of the Prosecutor General's Office in Georgia and the role and powers of the Prosecutor General has been summarised in the case of *Kezerashvili v. Georgia* (no. 11027/22, §§ 55-67, 5 December 2024).

COMPLAINTS

47. The applicants complained under Article 6 of the Convention that the Criminal Chamber of the Supreme Court which had examined their respective cases had not been an "independent and impartial tribunal established by law" given that one of the judges in the composition (Sh.T.) was a former Prosecutor General of Georgia and, in the applicants' submission, he had supervised the submission of appeals by the prosecution service in their respective cases. Furthermore, he had allegedly been elected to the Supreme Court in violation of a statutory eligibility criterion.

48. Relying on Article 6 §§ 1 and 3 (d) of the Convention, the first applicant also complained that he had been unable to question two of his co-accused as witnesses once they had reached plea-bargain agreements with the prosecution, and that he had been unable to present video evidence to ten witnesses. He also complained about the hearing before the trial court on 26 November 2018 having gone ahead in his absence. Lastly, the first applicant additionally raised other complaints concerning the administration

of the proceedings, the assessment of the evidence against him and the application of the domestic law by the courts.

THE LAW

A. Joinder of the applications

49. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Alleged violations of Article 6 of the Convention

50. Relying on Article 6 § 1 of the Convention, the applicants alleged that their respective cases were not heard by an "independent and impartial tribunal established by law" owing to the participation of judge Sh.T. in the panels of the Criminal Chamber of the Supreme Court that decided their cases. The first applicant additionally complained, under Article 6 §§ 1 and 3 (d) of the Convention that the criminal proceedings against him had been unfair. The provision in question, in so far as relevant, reads as follows:

> ""1. In the determination ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

1. Judge Sh.T.'s participation in the composition of the Supreme Court

(a) The parties' submissions

(i) The Government

51. The Government submitted that the applicants had failed to exhaust effective domestic remedies in respect of their complaint. In that regard the Government referred to the case of *Croatian Golf Federation v. Croatia* (no. 66994/14, § 112, 17 December 2020), in which the Court found that where no further remedy is available because an applicant alleges a violation of Article 6 § 1 of the Convention on account of the composition of the last-instance judicial authority of the domestic legal system, the principle of subsidiarity may require special diligence from an applicant in complying with the obligation to exhaust domestic remedies. In that respect, the Government underlined that the applicants sought to "shift the burden of

proactive notification [of the identities of the judges sitting in the relevant composition] onto the Supreme Court" when such an obligation was not envisaged under domestic law.

52. They contended that the applicants had failed to inquire about the composition of the three-judge panels after their respective cases had been registered by the Supreme Court and then to submit applications seeking Judge Sh.T.'s recusal. The Government submitted in that connection that the applicants were represented by counsel "who were fully aware of the adjudication procedures at the Supreme Court level, including [as regards] the court's composition, but [who had] failed to obtain complete information regarding the judges comprising the chamber."

53. In order to illustrate their argument, they submitted several illustrative examples of written exchanges from 2023 to 2025 involving inquiries by different appellants or their lawyers as to the composition of the panel to which their cases had been assigned. In the majority of cases the registry of the Supreme Court duly informed the relevant individuals of the full composition of the panel. In two of these exchanges the appellants were informed that, apart from the presiding judge, the other members of the panel had not yet been designated, that there was no pre-defined composition of the panel, and that the Supreme Court had six months to consider the matter. The documents submitted by the Government also included an explanatory note by the registry of the Supreme Court noting that there had been two criminal cases involving the first applicant, both of which had been adjudicated by a panel of the Supreme Court including Judge Sh.T. The final decisions in those cases were delivered on 27 January and 23 September 2021, respectively.

54. The Government also submitted a decision of the Supreme Court dated 20 December 2024 in which the court had emphasised "a well-established practice of the Supreme Court of providing the interested party with information about the composition of the court [to which the case had been assigned]".

55. Lastly, they referred to the case of *Kezerashvili v. Georgia* (no. 11027/22, § 31, 5 December 2024) in which the applicant's representative had been successful in obtaining information about the full composition of the panel that included judge Sh.T. They also submitted that in *Kezerashvili* (ibid.) and in *Ugulava v. Georgia (no. 2)* (cited above) the respective applicants had been afforded "unlimited opportunities" to lodge motions requesting the recusal of the very same judge.

(ii) The applicants

56. The applicants submitted that they had been unaware of the composition of the Supreme Court panels deciding their cases until after they had been notified of the final inadmissibility decisions. They further asserted that they could not have known the composition of the panels beforehand. When a case was registered at the Supreme Court it was initially assigned

solely to the presiding judge, who also acted as the judge rapporteur for that case. That procedure was set out in section 4(9) of Decision no. 1/56 of the High Council of Justice of Georgia on the Approval of the Rule for the Automatic Distribution of Cases through an Electronic System in the Common Courts of Georgia. Accordingly, only that information was, and could have been, requested by the applicants, as no other rule regulating the matter was, as they contended, publicly available.

57. The applicants maintained, in this respect, that there was no publicly accessible internal regulation setting out the timing and procedure for the assignment of the remaining two judges to the panel. Their selection was reportedly based on undisclosed internal practices based on factors such as availability and workload. As a result, the identities of the other judges on the panel might have remained unknown until the final decision was delivered, unless an oral hearing was held. The applicants contended that such a lack of transparency was in itself an issue under Article 6 § 1 of the Convention.

(b) The Court's assessment

(i) General principles

58. The obligation to exhaust domestic remedies requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 139, 27 November 2023).

59. The Court reiterates that, when the domestic law offers a possibility of eliminating concerns regarding the impartiality of a court or a judge, it is expected that an applicant who truly believes that there are arguable concerns on that account would raise them at the first opportunity. This would above all allow the domestic authorities to examine the applicant's complaints at the relevant time, and ensure that his or her rights were respected (see, for example, *Miljević v. Croatia*, no. 68317/13, § 88, 25 June 2020, and *Katsikeros v. Greece*, no. 2303/19, § 86, 21 July 2022). For example, where no further remedy is available because an applicant alleged a violation of Article 6 § 1 of the Convention on account of a lack of impartiality on the part of the last-instance judicial authority of the domestic legal system, the Court has found that the principle of subsidiarity may require special diligence from the applicant in complying with the obligation to exhaust domestic remedies. In such cases preventive remedies are of particular importance (see *NDI SOPOT S.A v. North Macedonia*, no. 6035/17, § 89, 26 November 2024). Naturally, these considerations apply only if an applicant knew or could have known of the composition of the court in question (see *Croatian Golf Federation*, cited above, §§ 112-13).

(ii) Application of these principles to the present case

60. The Court has previously held that applicants complaining about the composition of the Supreme Court in Georgia were expected to first raise the matter with that court (see *Ugulava (no. 2)*, cited above, §§ 21-22 and 39-43, and *Kezerashvili*, cited above, §§ 32-33 and 72-74). However, the Court's approach was predicated on the fact that the applicants in those cases had been informed of the composition of the relevant panels before the final decisions were delivered in their respective cases.

61. In the present case it is undisputed that the applicants were not notified of the composition of the three-judge panels of the Supreme Court deciding their respective cases until after they had been notified of the final decisions. The applicants thus submitted that they became aware of Judge Sh.T.'s inclusion in the panels belatedly, which deprived them of their right to request his recusal. By contrast, the Government argued that it had been the applicants' due diligence obligation to inquire as to the composition of the Supreme Court panels that would decide their respective cases. The Court is thus called upon to determine whether, in view of the fact that the proceedings in question were at the final instance, the applicants ought to have exercised special diligence, in the circumstances, in complying with the obligation to exhaust domestic remedies (see paragraph 59 above).

62. Against this background, the Court cannot overlook the broader context behind the applicants' complaint, namely Judge Sh.T.'s election to the Supreme Court and his previous role as the Prosecutor General of the country. Both of those elements, which constitute the basis for the applicants' complaints under Article 6 § 1 of the Convention, were publicly known facts of which the applicants must have been aware as early as the date of Sh.T.'s election on 12 December 2019 as judge of the Supreme Court (see paragraphs 9-20 above). Thus, by the time their respective appeals on points of law were lodged with the Supreme Court in the spring of 2021 (see paragraphs 29 and 35 above), the defence had been put on notice of the grounds giving rise to the applicants' complaints, namely their misgivings as regards the lawfulness of Judge Sh.T.'s appointment and his impartiality (compare and contrast *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 35, 25 February 2020).

63. Moreover, the Court observes that, following Sh.T.'s election, the Criminal Chamber of the Supreme Court was composed of five judges (see paragraph 20 above). As appeals on points of law were decided by a panel of three judges (see paragraph 41 above), it was more likely than not that the panels would include Judge Sh.T. (see *Katsikeros*, cited above, § 93, compare and contrast *Croatian Golf Federation*, cited above, § 118). In fact, the available material suggests that a panel of the Supreme Court which included Judge Sh.T. had already adjudicated another case involving the first applicant over seven months before the criminal case giving rise to the present application was declared inadmissible (see paragraph 53 above). In any event,

and even if there was no procedure for notifying the parties of the composition of the panel in advance when cases were to be decided by means of written proceedings (see paragraph 51 above), the Court cannot overlook the fact that 99% of cases before the Supreme Court, a figure that the Government provided in *Kezerashvili v. Georgia* (cited above, § 98), were decided by means of written proceedings. In such circumstances, and given the specific context behind the present applicants' misgivings concerning Judge Sh.T.'s inclusion in the panels (see paragraph 62 above), the Court considers that the applicants – and especially the first applicant, whose previous case had been decided with Judge Sh.T.'s participation – were required to show special diligence in complying with the obligation to exhaust domestic remedies in the present case. It was, therefore, up to the applicants to raise their concerns with the Supreme Court and enable the latter to address the matter of Judge Sh.T.'s likely inclusion in the panels before putting the Court in the position of a first-instance court (compare and contrast, *HIT d.d. Nova Gorica v. Slovenia*, no. 50996/08, §§ 28-29, 5 June 2014).

64. Despite that, the applicants neither inquired about the panels' composition – either following the assignment of their cases to the presiding judges or subsequently, closer to the expiration of the six-month time-limit for the Supreme Court to decide on their cases (see paragraph 44 above) – nor did they submit anticipatory recusal requests, in view of the likelihood of Judge Sh.T.'s inclusion on the panels (see paragraph 63 above). Having regard to the foregoing considerations and the practice of the Supreme Court referred to by the Government (see paragraphs 53-55 above), the Court does not find the applicants' inaction regarding their misgivings about Judge Sh.T.'s potential inclusion on the panels justified in the particular circumstances of the present case (see, *mutatis mutandis*, *Juričić v. Croatia*, no. 58222/09, §§ 61-63, 26 July 2011, and *Katsikeros*, cited above, § 93; compare and contrast *NDI SOPOT S.A*, cited above, § 91).

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

66. It follows that the Government's objection must be accepted and the applicants' complaints concerning the composition of the Supreme Court be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

2. Alleged procedural unfairness of the proceedings against the first applicant

67. The first applicant reiterated his complaints (see paragraph 48 above).

68. The Government submitted that the first applicant had failed to substantiate his complaints as (a) the applicant's own lack of diligence at the trial stage had led to the granting only in part of his request to question witnesses anew at the appellate stage and to present video evidence to them;

(b) his absence from the hearing of 26 November 2018 had not resulted in him being unable to have prosecution witnesses cross-examined or respond to evidence; and (c) the judgments against him had not even mentioned the statements of his two co-accused who had reached plea-bargain agreements with the prosecution.

69. The Court, having regard to the relevant factual circumstances, including the applicant's conduct at the relevant procedural stages of the proceedings and the domestic courts' reasoning concerning his complaints (see paragraphs 21-24, 26-27 and 33 above), finds that the facts underlying the first applicant's complaints regarding the alleged unfairness of the proceedings do not disclose any appearance of a violation of his rights under Article 6 of the Convention.

70. It follows that the first applicant's complaints under that head are 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,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 27 November 2025.

Simeon Petrovski Deputy Registrar	Jolien Schukking President