



Insufficient safeguards against judge partiality in cases concerning dismissals from Georgian electricity company Telasi

In today's **Chamber** judgment¹ in the case of [Tsulukidze and Rusulashvili v. Georgia](#) (application nos. 44681/21 and 17256/22) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the alleged lack of impartiality of a Supreme Court judge who was a member of three-judge panels which rejected claims brought by the applicants and whose judicial assistant was the daughter of the lawyer of the respondent party, the Telasi electricity distribution company, in those proceedings.

The Court found in particular that the fact that the judge's judicial assistant was the daughter of Telasi's legal representative, coupled with the broad mandate given to judicial assistants in the Georgian judicial system, had created a situation which legitimately could raise doubts as to the impartiality of Judge L.M. The applicants had not known to what extent the judicial assistant had actually been involved in their cases, and the Supreme Court had failed to elucidate the circumstances of her involvement, thereby failing to dispel their doubts concerning the impartiality of that judge. The Court therefore found that their doubts were objectively justified and that they had not been provided with sufficient procedural safeguards in this respect.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants, Mr Zurab Tsulukidze and Mr Levan Rusulashvili, are Georgian nationals who were born in 1959 and 1973 respectively and live in Tbilisi.

They were both managers at the Joint Stock Company Telasi, the main electricity distribution company in Tbilisi when the company was restructured in early 2016 and their departments disbanded. As a result, Mr Rusulashvili's contract was terminated on 4 March 2016, with him receiving two months' salary as severance pay. On 8 August 2016, Mr Tsulukidze was offered another position within the company, but he declined that offer and he was dismissed from the company at the end of the month.

On 7 September 2016 the latter brought civil proceedings against Telasi, requesting that he be reinstated in his previous position and paid salary arrears. On 1 November 2018 the Tbilisi City Court rejected his claim, finding his dismissal legal in view of the restructuring and the fact he had been offered an alternative position. Mr Tsulukidze appealed against that decision, but it was upheld in full by the Tbilisi Court of Appeal the following month.

He then lodged an appeal on points of law with the Supreme Court of Georgia. The case was assigned to a formation of three judges with Judge L.M. presiding and acting as rapporteur.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Tsulukidze requested the recusal of Judge L.M, alleging that he was not impartial because his judicial assistant was the daughter of the lawyer representing Telasi in the proceedings, who happened to be also the company's in-house lawyer, and had been the person in charge of preparing the decision dismissing him from the company. On 4 June 2020 the Civil Chamber of the Supreme Court, sitting in a panel of two judges without Judge L.M., examined and dismissed as unsubstantiated Mr Tsulukidze's request for Judge L.M.'s recusal.

In March 2021 Mr Tsulukidze lodged another application in which he requested the recusal not only of L.M., but of all three judges on the panel. He submitted that the other two judges on the panel were acquaintances of the Telasi company's lawyer, and also referred to a previous decision of the Supreme Court in an unrelated case in which it had considered problematic the fact that a judge's judicial assistant had been married to a legal representative of one of the parties to the proceedings. With reference to that precedent, he again requested the withdrawal of Judge L.M.

Two days later, the chamber, with all three judges sitting, rejected the request as unsubstantiated. It concluded that no bias had been proven and judges knowing someone related to either of the parties to the proceedings did not automatically constitute a ground for their removal. As to the allegations concerning the judicial assistant, the chamber noted that the factual circumstances indicated by Mr Tsulukidze were not sufficient to show that she had influenced Judge L.M. The Civil Chamber of the Supreme Court, with Judge L.M. presiding and acting as rapporteur, rejected the applicant's appeal on points of law as inadmissible.

In the meantime, on 5 June 2018 Mr Rusulashvili lodged a civil complaint against Telasi, requesting that he be reinstated in his previous position and be paid salary arrears. On 26 October 2018 the Tbilisi City Court granted his claim in part and awarded him 27,360 Georgian laris (roughly 9,500 euros) in compensation. His request for reinstatement was dismissed. On appeal, in July 2020, the Tbilisi Court of Appeal confirmed in full the first-instance court decision.

Mr Rusulashvili lodged an appeal on points of law with the Supreme Court of Georgia. The case was assigned to a panel of three judges, which included Judge L.M. He requested the recusal of the three judges examining his case. He also alleged that the panel's impartiality was undermined because the judicial assistant of Judge L.M., was the daughter of the lawyer representing Telasi in the proceedings, and stressed that that lawyer was also the head of Telasi's legal department and reported directly to its director general. As to the remaining two judges on the panel, the second applicant alleged that they were "close acquaintances" of Telasi's legal representative.

On 5 March 2021 the Supreme Court, with the same three judges on the panel, dismissed Mr Rusulashvili's request and allegation that the judicial assistant had had access to the judicial process as unsubstantiated. The chamber considered that it had not been proven that the assistant had influenced the judge. On 24 November 2021 the Civil Chamber of the Supreme Court, with Judge L.M. in the composition, rejected an appeal on points of law as inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial) of the European Convention, the applicants complained that the Supreme Court's impartiality had been compromised because the daughter of the Telasi company's lawyer was the judicial assistant of one of the judges on the panel which had examined their cases and rejected them as inadmissible.

The applications were lodged with the European Court of Human Rights on 10 August 2021 and 24 March 2022. In view of their similar subject matter, the Court joined the applications.

Judgment was given by a Chamber of seven judges, composed as follows:

Mattias **Guyomar** (France), *President*,
Lado **Chanturia** (Georgia),

Mārtiņš Mits (Latvia),
 Stéphanie Mourou-Vikström (Monaco),
 María Elósegui (Spain),
 Kateřina Šimáčková (the Czech Republic),
 Mykola Gnatovskyy (Ukraine),

and also Victor Soloveytschik, *Section Registrar*.

Decision of the Court

The Court uses two tests to check impartiality for the purposes of Article 6 § 1 - first a subjective test to assess whether a judge has shown any personal prejudice or bias in a given case, and then an objective test to ascertain whether the tribunal itself and, among other aspects, its composition offered sufficient guarantees to exclude any legitimate doubt as to its impartiality. In most cases, the Court focuses on the objective test which mainly concerns hierarchical or other links between the judge and other people involved in the proceedings. In each case it has to be decided whether the relationship in question is such as to indicate a lack of impartiality on the part of the tribunal. Any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. "Justice must not only be done, it must also be seen to be done".

In addition to ensuring the absence of actual bias, the existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, are directed at removing any appearance of partiality and promote public trust in the court system. The Court takes such rules into account when making its own assessment.

The Court observed that judicial assistants in the Georgian system are civil servants appointed by the presidents of the respective courts. They are selected from a pool of lawyers with at least one to two years' relevant professional experience who have undergone a special preparatory training programme. Their responsibilities include the provision of administrative assistance to judges and, at a judge's request, the performance of legal tasks, such as drafting statements of facts, conducting legal research, or preparing certain procedural documents. Judges may also ask them to prepare a case for examination by the court, and their responsibility can go as far as drafting decisions and judgments. The Court found that they might be considerably involved in the judicial process and anybody performing such tasks had to be impartial for the proceedings to be Article 6-compliant.

In attempting to ascertain what the actual role and nature of the judicial assistant's involvement in these particular proceedings before the Supreme Court had been, the Court observed that none of the parties had provided any evidence in that respect. At the same time, it had not been unreasonable for the applicants to assume that the judicial assistant would be providing Judge L.M. with administrative and/or legal support in the preparation of their cases for examination. As her father was acting as the Telasi company's legal representative in both sets of proceedings, a situation had been created that involved a possible conflict of interest which should have been dealt with appropriately by the Supreme Court.

The Court noted that there was no procedure in Georgian law governing the removal of judicial assistants, as distinct from other court officials. **Error! Reference source not found.** **Error! Reference source not found.** **Error! Reference source not found.** **Error! Reference source not found.** The only remedy the applicants had had at their disposal was a recusal request in respect of Judge L.M. However, the judicial panels which had dealt with the applicants' requests for Judge L.M.'s withdrawal had simply concluded, without examining the nature and scope of the judicial assistant's involvement in the proceedings and the ensuing potential conflict of interest, that the fact of her "influencing" the judicial process and, in particular, Judge L.M., had not been established.

The Court noted that from the perspective of the objective impartiality test, the issue was not one of

“influence”, as formulated by the Supreme Court, but whether there was anything which might raise doubts as to the court’s impartiality from the point of view of an external observer. More specifically, the Supreme Court should have considered whether the applicants’ misgivings might be justified. It could have analysed the role and functions of the legal assistant concerned and applied internal procedures setting relevant professional and ethical standards. The rather cursory examination of the allegations had failed to alleviate the applicants’ doubts. The Court reiterated that the concept of fair trial inherent in Article 6 implied, among other things, the impartiality of the judicial process as a whole in order to promote public trust in the justice system.

Moreover, as regards the recusal requests that concerned not only Judge L.M., but also the other two judges on the panel, the fact that the three judges concerned had decided on the application for their own recusals, although in accordance with an express provision of the Code of Civil Procedure, it itself had raised an issue of potential conflict of interest.

The Court reiterated that under the objective impartiality test, the applicants had to show that there was an appearance of partiality supported by ascertainable facts, rather than to prove that a judge was actually biased or prejudiced. In the Court’s view, the participation of Judge L.M. in the adjudication of their cases, given the fact that his judicial assistant was the daughter of Telasi’s legal representative, coupled with the broad mandate given to judicial assistants in the Georgian judicial system, had created a situation which could raise legitimate questions as to the impartiality of Judge L.M. The applicants had not known to what extent the judicial assistant had actually been involved in their cases, and the Supreme Court had failed to elucidate the circumstances of her involvement, thereby failing to dispel their doubts concerning the impartiality of Judge L.M. The Court therefore found that their fears had been justified and that they had not been provided with sufficient procedural safeguards in this respect.

There had therefore been a violation of Article 6 § 1 of the Convention in respect of both applicants.

Just satisfaction (Article 41)

The Court held that Georgia was to pay each applicant 3,600 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 each in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.