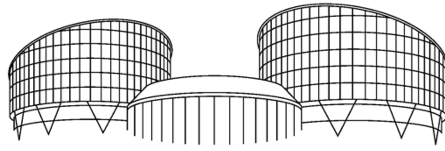

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TSULUKIDZE AND RUSULASHVILI v. GEORGIA

(Applications nos. 44681/21 and 17256/22)

JUDGMENT

Art 6 § 1 (civil) • Impartial tribunal • Objective test • Participation of judge on Supreme Court three-member panels rejecting applicants' respective claims, his judicial assistant being the daughter of the lawyer representing the respondent company • Judicial assistants' functions, as provided for in national legislation, not only administrative in nature • Participation of judge, coupled with broad mandate given to judicial assistants in Georgian judicial system, capable of raising legitimate fears as to his objective impartiality • Failure of Supreme Court to dispel applicants' doubts • Lack of sufficient procedural safeguards

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 August 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

In the case of Tsulukidze and Rusulashvili v. Georgia,

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

Mattias Guyomar, *President*,
Lado Chanturia,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 44681/21 and 17256/22) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Mr Zurab Tsulukidze ("the first applicant") and Mr Levan Rusulashvili ("the second applicant"), on 10 August 2021 and 24 March 2022 respectively;

the decision to give notice to the Georgian Government ("the Government") of the complaints under Article 6 § 1 of the Convention concerning the lack of impartiality of the Supreme Court and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 11 June and 9 July 2024,

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

INTRODUCTION

1. The case concerns the alleged lack of impartiality of a judge who was a member of three-judge panels of the Supreme Court which rejected claims brought by the applicants; the alleged lack of impartiality arose from the fact that his judicial assistant was the daughter of the lawyer representing the respondent company in both sets of proceedings. The applicants complained under Article 6 § 1 of the Convention.

THE FACTS

2. The applicants were born in 1959 and 1973 respectively and live in Tbilisi. The first applicant was represented before the Court by Mr A. Kaikatsishvili, Ms L. Zukhbaia and Mr K. Uridia, lawyers practising in Tbilisi. The second applicant was represented by Mr S. Makharadze, a lawyer practising in Tbilisi.

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. Both applicants were employed at the material time in managerial positions at the Joint Stock Company Telasi (hereinafter "Telasi"), the main electricity distribution company in Tbilisi. On 11 January 2016 the director general of the company initiated its reorganisation, as a result of which the applicants' departments were liquidated with their functions being transferred to other departments. On 8 August 2016 the first applicant was informed that his contract would be terminated, and he was offered another position within the company. He declined that offer and on 30 August 2016 was dismissed from the company. As for the second applicant, he was dismissed from the company when his contract was terminated on 4 March 2016. He received compensation amounting to two times his monthly salary.

II. CIVIL PROCEEDINGS LODGED BY THE FIRST APPLICANT

6. On 7 September 2016 the first applicant brought civil proceedings against his former employer, requesting the reinstatement in his previous position and the payment of salary arrears. On 1 November 2018 the Tbilisi City Court rejected his claim. The court found that the applicant's dismissal, in view of the reorganisation of the company and the ensuing liquidation of his department, had been legal. Moreover, he had been offered an alternative position, which he had declined. The applicant appealed against that decision, but it was upheld in full by the Tbilisi Court of Appeal on 23 December 2019.

7. The applicant 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. On 23 April 2020 the applicant requested the recusal of Judge L.M. In particular, he alleged that Judge L.M.'s impartiality was undermined because his judicial assistant, G.D., was the daughter of the lawyer representing Telasi in the proceedings. The applicant noted in that connection that that lawyer, who was also the company's in-house lawyer, had been personally in charge of preparing the decision dismissing him from the company.

8. On 4 June 2020 the Civil Chamber of the Supreme Court, sitting in a panel of two judges without Judge L.M. taking part, examined and dismissed as unsubstantiated the applicant's request for Judge L.M.'s recusal. The chamber ruled that the circumstances referred to in the application for recusal were insufficient to cast doubt on Judge L.M.'s impartiality on the basis of Article 31 § 1 (d) of the Code of Civil Procedure (see paragraph 20 below). In particular, it observed the following:

> "... In the present case, the appellant claims that ... [one of the judges is not impartial because of] the fact that the daughter of the employer's representative (who is at the

same time the head of the respondent party's legal service) is the assistant of Judge [L.M.], who is directly involved in the examination of the case.

... The mere fact that the daughter of the respondent party's representative is the assistant of Judge [L.M.] does not automatically create a basis for [his] recusal. The [Supreme Court] notes that the fact of the assistant influencing the conduct of the judge has not been proven. Accordingly, the factual circumstances referred to by the appellant are not sufficient to consider that the judge is biased."

9. On 3 March 2021 the applicant lodged another application in which he requested the recusal not only of L.M., but of all three judges on the panel. Along with reiterating his allegations concerning Judge L.M. and his judicial assistant, the applicant submitted that the other two judges on the panel were acquaintances of the respondent company's lawyer. He 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 the above precedent, he again requested the withdrawal of Judge L.M.

10. On 5 March 2021 the chamber, with all three judges sitting, rejected the applicant's request as unsubstantiated. While referring to the subjective and objective tests of impartiality as defined in the case-law of the Court, it concluded that the fact of bias on the part of the relevant composition of the Civil Chamber had not been proved. It further observed that the fact of judges knowing someone related to either of the parties to the proceedings did not automatically constitute a ground for their removal, since mere acquaintance did not imply that the judges concerned had an interest in the outcome of the case. As to the allegations concerning the judicial assistant of Judge L.M., the chamber simply noted that they had already been duly examined by the Civil Chamber on 4 June 2020 and that the factual circumstances indicated by the applicant were not sufficient to show that the judicial assistant had influenced L.M. Hence, there was no basis on which to call into question his impartiality. In that connection the chamber observed the following:

"... [T]he composition dealing with a case delivers a decision on the basis of the factual circumstances and evidence available in the case file. At the same time, judges have no right to disclose the substance of the deliberations (Article 28 of the Code of Civil Procedure). The secrecy of the deliberations guarantees the right of a judge to express freely and without any constraint his or her opinion about the decision or any related issue. The [deliberations] cannot become known to anyone, including judicial assistants. ... [S]ince the fact of the judicial assistant influencing the conduct of the composition of the [Civil Chamber] has not been proved, the allegation of the appellant that the [daughter] of the respondent party's lawyer had access to the judicial process is unsubstantiated."

11. On 5 March 2021 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. The applicant was notified of the decision on 25 July 2021.

III. CIVIL PROCEEDINGS LODGED BY THE SECOND APPLICANT

12. On 5 June 2018 the second applicant lodged a civil complaint against his former employer requesting reinstatement in his previous position and the payment of salary arrears. By a decision of 26 October 2018 the Tbilisi City Court granted the applicant's claim in part and awarded him compensation in the amount of 27,360 Georgian laris (about 9,500 euros). His request for reinstatement was dismissed. On appeal, on 16 July 2020, the Tbilisi Court of Appeal confirmed in full the first-instance court decision.

13. The applicant 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., with Judge M.E. presiding and acting as rapporteur. On 4 March 2021 he requested the recusal of the three judges examining his case on the basis of Article 31 § 1 (d) of the Code of Civil Procedure. In particular, he 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. He stressed that that lawyer was also the head of Telasi's legal department and was a direct subordinate of its director general. As to the remaining two judges on the panel, the second applicant alleged that they were "close acquaintances" of the legal representative of the respondent company.

14. In support of his request, the applicant referred to a previous decision of the Supreme Court in an unrelated case in which it had noted that a judicial assistant to a judge rapporteur could be tasked with the preparation of a case for examination by a court (see paragraph 27 below).

15. On 5 March 2021 the Supreme Court, with the same three judges on the panel, dismissed the second applicant's request as unsubstantiated. The panel noted the following:

> "The Supreme Court considers that in the present case the fact of the bias of the court composition is not proven. The ... [appellant's contention] that two of the judges examining his case are acquaintances of the lawyer representing the respondent party is only [the appellant's] subjective assumption. At the same time, even if true, [such acquaintance] does not necessarily constitute a ground for recusal since the fact of acquaintance [would] not [imply] that the judges [concerned] have an interest in the case ... and its outcome.
>
> ...
>
> ... The mere fact that the daughter of the respondent party's representative is the assistant of Judge [L.M.] does not automatically create a basis for [his] recusal. The [Supreme Court] notes that the fact of the assistant influencing the conduct of the judge has not been proved; accordingly, the factual circumstances referred to by the appellant are not sufficient to consider that the judge is biased.
>
> ... The panel notes that the composition examining the case takes a decision on the basis of the factual circumstances and the evidence present in the case file; at the same time, the judges do not have a right to make public the discussion they had during the court deliberations (Article 28 of the CCP of Georgia). The [principle of] secrecy of

deliberations guarantees a judge's freedom to express his or her own opinion about a decision or any other issue freely and without any pressure. [The opinion of a particular judge on a panel] cannot become known to anyone, including a judicial assistant."

16. The panel went on to conclude, with reference to the principle of the secrecy of deliberations and related judicial responsibilities, that the allegation that the judicial assistant had had access to the judicial process as such was unsubstantiated.

17. 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 by the applicant as inadmissible. The applicant was notified of that decision on 18 January 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. NATIONAL LEGISLATION

A. Constitution

18. Article 63 of the Constitution reads as follows:

Article 63. Judge

"1. A judge shall be independent in his or her functions/activities and shall abide by the Constitution and the law alone. Any pressure exerted on a judge or any interference with his or her functions/activities for the purpose of influencing his or her decision-making shall be prohibited and punishable by law. No one shall have a right to request a judge to report about a specific case. Any act that limits judicial independence shall be null and void.

..."

B. The Code of Civil Procedure

1. Rules on recusal

19. Article 28 of the Code of Civil Procedure ("the CCP") provides for the secrecy of judicial deliberations. In particular, it states that judges must not disclose the substance of such deliberations.

20. Article 29 of the CCP establishes the grounds precluding a judge from participating in a civil case. It states that a judge may not take part in the examination of a case at the appeal or cassation levels if he or she has previously participated in the same proceedings before a lower court. Article 30 of the CCP provides that judges who are related to one another may not sit on the same panel.

21. Article 31, which lists other grounds for the recusal of a judge, reads as follows, in so far as relevant:

Article 31 – Other grounds for recusing a judge

"1. A judge may not hear a case or take part in its examination if he or she:

(a) is a party [to the proceedings] ...;

(b) has participated in the case as a witness, an expert, a specialist, an interpreter, a legal representative, or a court secretary;

(c) is a relative of either of the parties or their legal representatives;

(d) is personally interested, either directly or indirectly, in the outcome of the case, or if another circumstance exists that might cast doubt on his or her impartiality;

..."

22. Article 34, which regulates the procedure for ruling on recusal requests, reads as follows, in so far as relevant:

Article 34 – Rule on deciding recusal requests

" ...

4. If a recusal request concerns one of the judges on a composition, the issue of [his or her] recusal shall be decided by the remaining judges without [his or her] participation. ...

5. If a recusal request concerns the entirety of a composition or its majority, the issue of the recusal shall be decided by a majority vote of that same composition. ..."

23. Article 35 of the CCP provides for the possibility of requesting the recusal of an expert, a translator, a specialist or a court secretary on the basis of the grounds provided for in Article 31 § 1 of the Code.

2. Preparation of cases and the role of judicial rapporteurs

24. Article 200 of the CCP, which regulates issues concerning the preparation of cases for examination by a court, states that if a case is examined by a panel of judges, its preparation is assigned to one judge from the composition. A judge may ask his or her judicial assistant to prepare the case for examination by the court.

25. Article 396 § 4 of the CCP states that it is the role of the judge rapporteur assigned to a specific case to verify that an appeal on points of law has been lodged with the Supreme Court in accordance with the procedure provided for by law, and that he or she is to decide on the above matter alone without oral deliberations. Article 408 of the CCP further states that a judge rapporteur prepares a case assigned to him or her for oral examination.

C. Law of 13 June 1997 on Courts of Ordinary Jurisdiction

26. Section 58 of the Law on Courts of Ordinary Jurisdiction reads as follows:

Section 58 – Judicial assistant and court secretary

"1. A judicial assistant shall receive citizens, accept their complaints and applications, prepare cases for court hearings, conduct research on relevant legal materials and court practice, draft relevant documents, and perform, at the request of a judge, other duties related to the examination of a case.

..."

D. Practice of the Supreme Court

27. In a decision of 30 July 2018 (no. a-5075-b-10-2017), the Supreme Court stated that it was the role of a judge rapporteur, in line with Article 396 § 4 of the CCP, to personally prepare a case for examination by a court. The Supreme Court further clarified that Article 200 of the CCP, which allowed a judge to delegate the preparation of a case for examination to his or her judicial assistant, concerned only judicial assistants to judge rapporteurs.

II. INTERNATIONAL MATERIAL

28. The relevant parts of Opinion no. 22 (2019) of the Consultative Council of European Judges (CCJE) on the role of judicial assistants (CCJE(2019)6, dated 7 November 2019) read as follows (footnotes omitted):

B. The role of the judge and the role of the judicial assistant

...

2. The role of the judicial assistant

"19. The role of the judicial assistant follows from the role of the judge. Judicial assistants must support judges in their role, not replace them. Whatever their duties are, they must be supervised by the judge or judges who remain responsible for the decision-making in all aspects. However, by supporting judges in their adjudicative process, judicial assistants are involved in the exercise of judicial tasks. Therefore, they must comply with the highest professional and ethical standards and thereby help to build high public trust in judicial institutions."

G. Professional conduct

1. Impartiality

"55. The parties coming to court will expect impartiality not only from the judge hearing their case but also from a judicial assistant supporting the judge working on the case. Therefore, judicial assistants have a duty to reveal any conflict of interest. Moreover, member States should consider introducing rules demanding that judicial assistants recuse themselves according to the same criteria as apply to the recusal of a judge. The CCJE recommends that member States consider introducing regulation allowing parties to challenge the participation of a judicial assistant."

29. The Bangalore Draft Code of Judicial Conduct 2001 (hereinafter "the Bangalore Principles") was adopted by the Judicial Group on Strengthening Judicial Integrity and revised at the Round Table Meeting of Chief Justices

held in The Hague in November 2002. The relevant principles contained therein read as follows:

> "**VALUE 2: IMPARTIALITY**
>
> Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made."

THE LAW

I. JOINDER OF THE APPLICATIONS

30. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. SCOPE OF THE APPLICATIONS

31. The Court notes that only the applicants' complaints under Article 6 of the Convention concerning the lack of impartiality of the Supreme Court were notified to the Government on 14 October 2021 (application no. 44681/21) and 15 November 2022 (application no. 17256/22). Therefore, the remaining complaints under Articles 6, 8, 13 and 14 of the Convention that were set out by both applicants in their observations (of 20 June 2022 and 3 July 2023 respectively) in reply to those submitted by the Government fall outside the scope of the present case.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicants complained under Article 6 § 1 of the Convention that the Supreme Court's impartiality had been compromised because the daughter of the respondent company's lawyer was the judicial assistant of one of the judges, L.M., on the panel which had examined their cases and rejected them as inadmissible. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. The parties' submissions

33. The Government submitted that the applicants had failed to comply with the six-month time-limit as their request for Judge L.M.'s recusal had been rejected by the Supreme Court in its decisions of 4 June 2020 (application no. 44681/21) and of 5 March 2021 (application no. 17256/22),

whereas the present applications had been lodged with the Court only after the termination of the relevant civil proceedings, that is to say, on 10 August 2021 and 24 March 2022 respectively. They also argued that the complaint under Article 6 § 1 of the Convention about Judge L.M.'s alleged lack of impartiality was inadmissible for failure to exhaust domestic remedies as the applicants had failed to seek the opening of disciplinary proceedings against Judge L.M. Alternatively, the Government submitted that the complaint was in any event manifestly ill-founded as the applicants' applications for Judge L.M.'s recusal, and in particular their allegations that L.M.'s judicial assistant had been involved in or otherwise influenced the relevant court proceedings, had been unsubstantiated. The applicants disagreed.

2. The Court's assessment

34. Starting with the Government's non-exhaustion objection, the Court notes that the applicants' complaint concerns the alleged lack of fairness of the domestic civil proceedings on account of the alleged bias of one of the Supreme Court judges. Such issues should be considered in the context of those same proceedings. The applicants complained of a lack of impartiality on the part of Judge L.M. by requesting his removal in the context of those proceedings. The bringing of a separate set of proceedings seeking a disciplinary sanction for the judge could not have remedied the situation complained of by the applicants (see *Golubović v. Croatia*, no. 43947/10, § 41, 27 November 2012). Hence, the only relevant and effective remedy was a request for recusal, of which they fully availed themselves. The Court therefore considers that the applicants properly exhausted the relevant domestic remedies.

35. As regards the objection concerning the six-month rule, the Court starts by noting that the final domestic decisions in the present two cases were adopted on 5 March 2021 (the first applicant's case) and 24 November 2021 (the second applicant's case) and notified to the applicants on 25 July 2021 and 18 January 2022 respectively. Since the relevant decisions were adopted before 1 February 2022, the cases fall to be examined under the six-month and not the four-month rule (see *Orhan v. Türkiye* (dec.), no. 38358/22, §§ 44, 6 December 2022). The Court further observes that in the context of Article 6 of the Convention the admissibility of any complaint, including compliance with the six-month rule, should be assessed taking into account the relevant proceedings in their entirety (see *Mityanin and Leonov v. Russia*, nos. 11436/06 and 22912/06, §§ 91-93, 7 May 2019). It notes that the applicants lodged their applications within six months of being notified of the respective decisions of the Supreme Court dismissing their appeals on points of law as inadmissible (decisions of 5 March 2021 and 18 January 2022 respectively). Those decisions were final. Therefore, as the main legal problem in the two cases was the alleged bias of Judge L.M., who was on the panel of the Supreme Court which ultimately decided the applicants' cases,

the Court concludes that they lodged their applications within the six-month time-limit as required by Article 35 § 1 of the Convention (see *Özdemir v. Turkey*, no. 59659/00, § 26, 6 February 2003, and *Sperisen v. Switzerland*, no. 22060/20, §§ 48-49, 13 June 2023; see also, *mutatis mutandis*, *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 28, 17 July 2007).

36. The Court further considers that the applications raise complex issues of facts and law which cannot be determined without an examination on the merits. It finds that the above complaint of the applicants is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicants maintained that Judge L.M.'s objectivity and impartiality had been compromised because his judicial assistant, who had aided him in the preparation and examination of their cases, was the daughter of the respondent party's lawyer. They stressed that the latter, who was at the same time the in-house lawyer of the respondent company, had been directly involved in the decision-making concerning the applicants' dismissals from their positions.

38. In the Government's view, there had been no violation of Article 6 § 1 of the Convention as a result of the participation of Judge L.M. in the examination of the applicants' civil cases. With reference to the relevant legal provisions, they submitted that the domestic legal system contained sufficient safeguards to ensure the independence and impartiality of judges. In connection with the applicants' specific allegations, they noted that the only issue that the Court had to examine was whether the existence of family ties between the judicial assistant of Judge L.M. and the respondent company's lawyer could cast doubt on the impartiality of the entire composition which had dealt with the cases and whether the applicants' fears were objectively justified in that respect. They noted that the automatic withdrawal of a judge from proceedings merely because of any family ties his or her judicial assistant might have with either party to the proceedings was not envisaged by the legislation. Furthermore, the introduction of such a requirement, in view of the fact that Georgia was a small country with a limited number of judges and lawyers, would be too far-reaching. The Government submitted that the applicants had failed to show that the judicial assistant concerned had been substantially involved in the legal aspect of the proceedings or had otherwise assisted L.M. to an extent that would influence the outcome of the cases. There was also no evidence suggesting that Judge L.M. had been biased, and mere assumptions, in their view, were not sufficient to objectively justify the applicants' fears.

39. As regards the role of a judicial assistant within the judicial system of Georgia, the Government characterised it as being of an administrative nature. They noted that the main functions of a judicial assistant, as provided for by law, were limited to providing logistical support to judges in order to ensure the smooth and speedy administration of justice (see paragraph 26 above). An administrative assistant could deal with legal issues only to the extent requested by a judge and under the judge's strict supervision. The Government submitted a letter from the High Council of Justice, according to which, in practice, there were two categories of judicial assistants. The first category concerned judicial assistants forming part of the secretariat of the chambers of the Supreme Court, whose functions included but were not limited to:

- registering incoming applications, complaints and written statements;
- conducting correspondence with parties to proceedings;
- filing and storing case materials;
- within their sphere of competence, checking the admissibility of complaints, applications and written statements and reporting on those questions to a judge;
- checking and coordinating the hearing dates and updating the judge concerned;
- producing draft judgments/decisions and presenting them to a court;
- drafting procedural documents;
- communicating with the parties, sending them complaints and other case materials; and
- ensuring prompt replies to applications and requests lodged by parties.

40. As to the second category of judicial assistants, namely chief consultant – judicial assistant, their main responsibilities included:

- studying case files and, if requested by a judge, preparing statements of facts;
- checking the admissibility of incoming applications, complaints and written statements and reporting on that question to a judge;
- producing draft decisions/judgments within the time-limits provided for by law;
- drafting procedural documents and submitting them to a judge;
- conducting research on relevant legal materials and case-law; and
- performing other tasks as provided for by law.

41. Without specifying which category the judicial assistant belonged to in the present case, the Government submitted that she had only performed administrative tasks and had had no influence whatsoever on the outcome of either case. In the absence of any evidence that the judicial assistant in question had performed significant legal tasks, the applicants' allegations, in the Government's view, were entirely unsubstantiated.

2. *The Court's assessment*

(a) General principles

42. 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).

43. 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).

44. 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).

45. 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).

46. 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).

47. 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).

48. 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).

(b) Application of those principles to the present case

49. In determining whether, in the domestic proceedings at issue, the Supreme Court panel which included Judge L.M. was impartial as required by Article 6 § 1 of the Convention, the Court, having regard to the material before it, considers that there is nothing to indicate that Judge L.M. acted with personal prejudice in the proceedings concerned. Consequently, the judge's personal impartiality must be presumed (subjective test). It will therefore address the question of the alleged lack of impartiality of Judge L.M. – on account of his judicial assistant's close family ties with the legal representative of the respondent party in the two sets of domestic proceedings at issue – in the light of the objective test.

50. As the Court has previously noted, while court officials are not impervious to the requirement of impartiality, the applicability of this

condition is dependent on the specificities of the role of the court official in question within the domestic legal and judicial system (see *Bellizzi v. Malta*, no. 46575/09, § 58, 21 June 2011).

51. The Court observes that in the Georgian system judicial assistants 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 organised by the High School of Justice. The responsibilities of a judicial assistant include the provision of administrative assistance to judges and, at the latter's request, the performance of legal tasks, such as drafting statements of facts, conducting legal research, or preparing certain procedural documents (see paragraph 39 above). As explained by the Government, while a judicial assistant's role is primarily administrative in nature, there is in practice a distinct group of chief consultant – judicial assistants, whose responsibilities primarily involve legal work, including the drafting of inadmissibility decisions, judgments, and other procedural documents in respect of the cases put to the court (ibid.).

52. As regards the relevant domestic legislation, the Court notes that Article 200 of the CCP explicitly states that a judge may ask his or her judicial assistant to prepare a case for examination by the court (see paragraph 24 above). Furthermore, according to the letter from the High Council of Justice submitted by the Government, the responsibilities of judicial assistants involve a mixture of administrative and legal work and could go as far as drafting decisions and judgments (see paragraph 39 above). That is true of both categories of judicial assistants (ibid.). Noting the broadly worded description of the judicial assistants' functions, as provided for in the national legislation, the Court considers that their work is not only administrative in nature. It finds that, depending on the specific tasks entrusted to a judicial assistant, his or her involvement may be of considerable significance to the judicial process, and consequently, an individual performing those tasks must be impartial for the proceedings to be compliant with Article 6 (compare *Bellizzi*, cited above, § 59; see also the CCJE Opinion on the role of judicial assistants cited in paragraph 28 above).

53. Turning to the circumstances of the present case, the Court notes that the Government did not dispute that Judge L.M.'s judicial assistant was the daughter of the lawyer representing the respondent company. Accordingly, what has to be ascertained is the actual role and nature of her involvement in the proceedings before the Supreme Court, and in particular whether she performed tasks that could be considered to fall within the remit of judges (see *Bellizzi*, cited above, § 58). The Court observes that the applicants simply pointed to G.D.'s general role as a judicial assistant to Judge L.M. None of the parties provided the Court with any evidence concerning her specific role and functions in the context of the proceedings in question.

54. The Court finds it difficult, in the absence of relevant information, to rule on the scope and nature of G.D.'s involvement in the impugned proceedings (contrast *Bellizzi*, cited above, § 61, where there was a clear statement by the Chief Justice that the judicial assistant concerned had not at any stage been involved in the relevant proceedings before the Constitutional Court; see also *Saakashvili v. Georgia*, nos. 6232/20 and 22394/20, § 128, 23 May 2024 [not final yet], where, in an admittedly different context, the domestic courts explicitly noted that the relevant judicial assistant's tasks had been limited to providing clerical and other technical assistance to the judges hearing the case). At the same time, the Court notes that G.D. was the judicial assistant to Judge L.M. while he was sitting on the three-judge panels in both cases. As far as the first applicant is concerned, L.M. was also the rapporteur in his case and the president of the formation (see paragraph 7 above). In such circumstances, it was not unreasonable for the applicants to assume that G.D., whose father was acting as the legal representative of the respondent party in both sets of proceedings, would be providing Judge L.M. with administrative and/or legal support in the preparation of their cases for examination. In the Court's view, that created a situation involving a possible conflict of interest which required an appropriate response from the Supreme Court, such as, for example, dealing with the matter by applying internal rules on professional and ethical standards (see also in this regard the CCJE Opinion on the role of judicial assistants cited in paragraph 28 above). The Court reiterates in that connection that the concept of fair trial inherent in Article 6 implies, among other things, the impartiality of the judicial process as a whole. What is at stake in such situations is the trust of the public in the justice system, where appearances have a high importance. Accordingly, the absence of internal procedural rules setting professional and ethical standards for judicial assistants and the failure to identify and regulate potential conflicts of interest (including, for example, on account of close family ties between a judicial assistant and a party to the proceedings or his or her legal representative) has the potential to taint the impartiality of the judicial process as such.

55. In the present case, the Court notes that as judicial assistants do not have a procedural status in the proceedings, there is no procedure in Georgian law governing their removal, as distinct from other court officials who do have such a status (for example court secretaries) (see Article 35 of the Code of Civil Procedure cited in paragraph 23 above). The only remedy the applicants had at their disposal was a recusal request in respect of Judge L.M. on the basis of Article 31 § 1 (d) of the Code of Civil Procedure (the existence of any other circumstance that might cast doubt on a judge's impartiality (see paragraph 21 above)). They availed themselves of that remedy, voicing their fears of a lack of impartiality on the part of Judge L.M. on account of his judicial assistant G.D.'s family ties with the other party's lawyer. However, the judicial panels which dealt with the requests for Judge L.M.'s withdrawal simply concluded, without engaging in an examination of the nature and

scope of G.D.'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 (see paragraphs 8-10 and 15-16 above). The Court notes that what was at issue in the applicants' cases was the alleged partiality of the panels from the perspective of the objective impartiality test. Hence, the issue was not one of "influence", as formulated by the Supreme Court, but one of appearances and of whether there were ascertainable facts which might raise doubts as to the court's impartiality from the point of view of an external observer (see the general principles cited in paragraphs 45-47 above). More specifically, the Supreme Court was expected to address the question whether the applicants' misgivings as to the impartiality of Judge L.M., stemming from his judicial assistant's potential conflict of interests, might be regarded as objectively justified. It could have done so by analysing the role and functions of the legal assistant concerned and applying internal procedures setting relevant professional and ethical standards. The Court reiterates the importance of appearances for ensuring objective impartiality and, therefore, confidence in the justice system, and considers that the rather cursory examination of the applicants' allegations, which omitted to consider the situation involving a potential conflict of interest of the judicial assistant concerned, failed to alleviate the applicants' fears concerning the impartiality of Judge L.M.

56. In this connection, and as regards the recusal procedure as such, the Court notes that the first applicant's second recusal request and the second applicant's recusal request were in respect not only of Judge L.M., but also of the other two judges on the panel, on the ground that they were "close acquaintances" of the legal representative of the respondent company (see paragraph 9 above). In such circumstances, the fact that the three judges concerned decided on the application for their own recusals, although in accordance with an express provision of the Code of Civil Procedure, raises an issue of potential conflict of interest (see *Debled v. Belgium*, 22 September 1994, § 37, Series A no. 292-B, and *A.K. v. Liechtenstein*, no. 38191/12, §§ 77-79, 9 July 2015).

57. The Court takes note of the Government's argument that a requirement for automatic disqualification of a judge on the mere ground of his or her judicial assistant's family ties with any parties to a case would be too sweeping, given the size of the country. However, in proceedings originating in an individual application the Court has to confine itself, as far as possible, to an examination of the concrete case before it. Moreover, the Court reiterates that the Contracting States are under the obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, impartiality being unquestionably one of the foremost of those requirements (see *Xhoxhaj v. Albania*, no. 15227/19, § 410, 9 February 2021, with further references). The Court notes in this connection that the

Government did not argue that there were any practical difficulties in finding a substitute for Judge L.M. among the other judges.

58. To sum up, the Court reiterates that under the objective test of impartiality the applicants were required 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 the applicants' cases, given the fact that his judicial assistant was the daughter of the respondent company's legal representative, coupled with the broad mandate given to judicial assistants in the Georgian judicial system, created a situation which was capable of raising legitimate fears as to the impartiality of Judge L.M. The applicants did not know to what extent G.D. was actually involved in their cases and the Supreme Court failed to elucidate the circumstances of her involvement, thereby failing to dispel the applicants' doubts concerning the impartiality of Judge L.M. The Court therefore finds that the applicants' doubts regarding the impartiality of Judge L.M. on this ground were objectively justified and that they were not provided with sufficient procedural safeguards in this respect.

59. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of both applicants.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. In respect of pecuniary damage, the first applicant claimed, without specifying the amount, payment of his salary arrears for the period between his dismissal and the delivery of the Court's judgment on the basis of his monthly salary of 3,927 Georgian laris (GEL). He further claimed GEL 200,000 in respect of non-pecuniary damage.

62. As far as the second applicant is concerned, he claimed, in respect of pecuniary damage (first) the payment of his salary arrears for the period between his dismissal and the delivery of the Court's judgment on the basis of his monthly salary of GEL 3,600; and (second) the payment of GEL 25,200 amounting to unpaid salary bonuses for the period between 2016 and 2022. He also claimed GEL 500,000 in respect of non-pecuniary damage.

63. The Government objected to their claims as unsubstantiated and exorbitant.

64. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicants 3,600 euros (EUR) each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

65. The applicants also claimed EUR 2,000 (the first applicant) and 4,000 United States dollars (the second applicant) for the costs and expenses incurred before the Court and GEL 550 (about EUR 220) each on account of the court fees paid to the domestic courts.

66. The Government submitted that the legal costs claimed were neither reasonably nor necessarily incurred.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each of the applicants the sum of EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of both applicants;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) each, plus any tax that may be chargeable to them, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 August 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Mattias Guyomar
Registrar	President