



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

FIFTH SECTION

CASE OF KIKABIDZE v. GEORGIA

(Application no. 57642/12)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (b) • Fair hearing • Applicant not afforded adequate time and facilities to prepare defence against murder charge in an effective manner • Delayed access to the case file

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Presiding judge's rejection of defence witness list in its entirety resulting from an excessively formalistic and restrictive application of domestic law to the applicant's detriment • Lack of sufficiently detailed reasoning on such an important procedural defence right particularly troubling given absence of established judicial practice following implementation of cardinal reform of the criminal procedure shortly before the applicant's trial

Art 6 § 1 (criminal) • Fair hearing • Lack of sufficient reasoning in Appellate Court's decision dismissing applicant's appeal on points of law

STRASBOURG

16 November 2021

FINAL

16/02/2022

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

In the case of Kikabidze v. Georgia,

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

Síofra O’Leary, *President*,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić,
Mattias Guyomar, *judges*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the application (no. 57642/12) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Georgian national, Mr Levan Kikabidze (“the applicant”), on 29 August 2012;

the decision to give notice to the Georgian Government (“the Government”) of the complaints under Article 6 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 12 October 2021,

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

INTRODUCTION

1. The present application concerns the alleged unfairness of the criminal proceedings conducted against the applicant. He complains under Article 6 §§ 1 and 3 (b) and (d) of the Convention about the allegedly inadequate time and resources afforded for the preparation of his defence; the alleged unfairness of the procedure concerning the admissibility of evidence; and the lack of reasons in the decision rejecting as inadmissible his appeal on points of law.

THE FACTS

2. The applicant was born in 1974 and is detained in Tbilisi. He was represented by Mr G. Chopliani, 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, as submitted by the parties, may be summarised as follows.

I. PRE-TRIAL INVESTIGATION

5. On 7 September 2004 a prisoner, N.M., was found dead in a cell with more than seventy prisoners in Tbilisi Prison no. 1. A preliminary investigation was started immediately but was discontinued on 1 October 2004, with the finding that N.M. had killed himself.

6. In March 2011 the investigation into the circumstances of N.M.'s death was reopened on the basis of a statement by a prisoner, V.P., who had allegedly witnessed the 2004 incident. While in prison V.P. expressed his willingness to cooperate with the investigation into the incident.

7. On 3 October 2011 the applicant, who was at the material time serving a prison sentence for drug offences, was questioned as a witness as part of the reopened criminal proceedings. On 11 October 2011 he was formally charged, along with several other persons, with the aggravated murder of N.M. He was provided at that stage with a legal aid lawyer. According to the examination report of the applicant in the status of an accused, he chose to remain silent. While being informed of his right to appoint a lawyer of his own choosing, he made a note on the report in question giving his consent to be represented by G.G., a legal aid lawyer.

8. On 12 October 2011 the legal aid lawyer was provided with a list of evidence gathered against the applicant as well as copies of the relevant pieces of evidence. The next day a pre-trial detention hearing was held at which the applicant was represented by the legal aid lawyer together with his newly appointed private lawyer, G.Ch. During the hearing the applicant did not request the replacement or removal of the legal aid lawyer.

9. On 21 October 2011 the applicant wrote a letter to the prosecutor in charge, asking to provide his private lawyer, G.Ch. with copies of all the evidence the prosecutor had against him, under Article 83 of the Code of Criminal Procedure ("the CCP"). According to the applicant, on 22 October 2011, his two private lawyers met the prosecutor in charge in person, in order to hand over to him the above-mentioned letter along with the authority forms signed by the applicant. As there was no reply, on 3 and 4 November 2011 the lawyers lodged further requests. They maintained in those requests that they had continually contacted the prosecutor on the telephone in order to have access to the case file, however this had been in vain. On 7 November 2011 the prosecutor in charge wrote to the applicant's private lawyer, G.Ch., informing him that he could come to the prosecutor's office in order to have immediate access to the case file.

10. According to the case file, late in the evening on 8 November 2011 the applicant's private lawyers were provided with a copy of the applicant's case file. A report was drawn up concerning an exchange of information between the parties about potential evidence (see Article 83 of the CCP as cited in paragraph 23 below), in which the lawyers listed two persons, alongside the applicant, whom they were intending to examine in court.

They further noted that they were not in a position to indicate other witnesses as they were not yet familiar with the case file.

11. On 9 November 2011, the applicant applied to the Tbilisi City Court for a postponement of the pre-trial conference, which was due to take place on 14 November 2011. He argued that in view of the belated access to the prosecution evidence that he and his lawyers had been given, they had not had adequate time to prepare the defence. They were, thus, not ready to provide a list of the witnesses or other pieces of evidence which they were willing to present and examine at the trial. The applicant maintained that the prosecution had acted in breach of Article 83 of the CCP by preventing timely access to the case file. He further argued that, given that the case file consisted of two volumes, he and his lawyers required a reasonable additional amount of time to study it. In support of the application, the applicant submitted copies of all of his requests for access to the case file.

12. On 11 November 2011 the applicant applied to the trial court again, that time challenging the admissibility of the prosecution evidence against him on, *inter alia*, the following grounds: the applicant's defence rights had been restricted on account of his belated access to evidence in the case; his right to have a lawyer of his own choice had been breached; and key prosecution witnesses had been questioned late at night under serious psychological pressure. In connection with the belated access to the case file the applicant noted in addition that copies of the prosecution evidence had been provided on a compact disc ("CD"). When visiting the applicant in prison, his lawyers had not been allowed to enter with a laptop computer; hence they had been prevented from studying the prosecution evidence with the applicant. Moreover, 12 and 13 November had fallen on the weekend, which suggested that the lawyers would not have been able to see the applicant in prison and prepare the defence with him.

II. PRE-TRIAL CONFERENCE

13. The pre-trial conference which opened on 14 November 2011 was adjourned twice, once at the request of the prosecution and once because the applicant and his two co-defendants had not been brought to the court.

14. On 17 November 2011 the applicant's lawyers applied to the trial court requesting the questioning of four former co-prisoners of the applicant. On 21 November 2011 the applicant's lawyers provided the trial court with an additional list of witnesses to be questioned on behalf of the defence. The witnesses named were mainly prisoners who had been sharing the cell with the applicant and N.M. when the latter had died.

15. On 22 November 2011 the pre-trial conference resumed. The prosecution requested that the list of defence witnesses to be summoned for the trial be declared inadmissible for being submitted out of time, beyond the five-day time-limit as provided for in Article 83 § 6 of the CCP. The

applicant argued in reply that he and his lawyers had been late in providing the list because of the delayed access to the prosecution evidence. In response to the presiding judge's specific question, the applicant's lawyer noted that he had never asked the legal aid lawyer for a copy of the case file. He also confirmed that the applicant had never requested that the legal aid lawyer be recused. Having heard the parties, the judge decided to reject the list of defence witnesses to be summoned for the trial as inadmissible. The judge concluded that the list had not been exchanged with the prosecution according to the procedure provided for in Article 83 § 6 of the CCP. In this connection the presiding judge noted that the applicant's legal aid lawyer had already duly been given access to the case file on 12 October 2011; that neither the applicant nor his private lawyers had at any stage challenged the efficiency of the legal aid lawyer or asked for her recusal; that the private lawyers had failed to ask for a copy of the case file from the legal aid lawyer; and that moreover they had failed to substantiate their argument that the prosecution had prevented them from having access to the case file in the period between 22 October and 8 November 2011. The presiding judge also noted that the applicant and his lawyers had failed to show compelling reasons for the delay in exchanging the information about defence evidence with the prosecution and the court, and that in the absence of circumstances triggering the application of the exceptional right of the defence under Article 84 of the CCP (see as cited in paragraph 23 below) their request for the admission of the evidence had to be dismissed.

16. As to the prosecution evidence, the judge dismissed the applicant's argument that that evidence should have been declared inadmissible, concluding, *inter alia*, that the applicant via his legal aid lawyer and two private lawyers had had adequate access to the evidence in the case and had hence enjoyed adequate time and facilities for the preparation of the defence.

17. At the pre-trial conference the applicant and his two co-defendants were advised, in accordance with Article 219 of the CCP, that in view of the seriousness of the charges brought against them, they had the right to a jury trial. After being informed about the relevant procedure, the applicant and his co-defendants all consented to having their case heard by a jury.

III. JURY VERDICT AND APPEAL ON POINTS OF LAW

18. By a verdict of 15 December 2011, the jury, by a majority of ten to two, found the applicant guilty of the aggravated murder of N.M. The presiding judge, acting on the recommendation of the jury, sentenced him to thirteen years and three months' imprisonment. The final sentence, which included the unserved part of the applicant's previous sentence, was set at twenty-two years and thirteen days. Twenty-three witnesses for the prosecution were summoned and examined during the jury trial.

19. The applicant lodged an appeal on points of law. He maintained, *inter alia*, under Article 266 § 2 (b) of the CCP that the judge's decisions concerning the admissibility of evidence were unlawful and that the principle of adversarial proceedings and equality of arms had been breached. He argued, in that connection, that on 11 October 2011, during his first questioning as an accused, he had been prevented from contacting a lawyer of his own choosing and instead, a lawyer from the legal aid scheme had been imposed on him. He further maintained that his request for a copy of the case file dated 21 October 2011 had been duly handed over to the prosecutor on 22 October 2011, and that the prosecutor had simply ignored it. The prosecutor had ignored in the same way their subsequent requests for the case file in the period between 3 and 7 November 2011. The belated access to the case file had eventually prevented the applicant's lawyers from exchanging information with the prosecution about the potential defence evidence within the fixed time-limit, which had rendered the defence evidence inadmissible in its entirety.

20. By a decision of 29 February 2012, the Tbilisi Court of Appeal did not allow the applicant's appeal on points of law. The court concluded the following with reference to Article 266 § 2 and Article 303 §§ 2 and 4 of the CCP:

“The appellate court considers that in the criminal case at hand none of the grounds [provided for in Article 266 § 2] are present.

... the appellant failed to prove that the Tbilisi City Court committed serious legal or procedural violations in its examination of the case; this could also not be established as a result of examining the case.”

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

21. On 1 October 2010 a new Code of Criminal Procedure (“the CCP”) entered into force in Georgia, marking the transition from a largely inquisitorial to a purely adversarial system of criminal justice. One of the stated objectives of the reform was to restrict the role of the prosecutor, put in place enhanced rights for the defence, in particular, concerning access to evidence at the pre-trial stage of the investigation, and provide for a new, more neutral role of the judge, centred on supervision and ensuring the procedural fairness of the judicial proceedings. With the adoption of the CCP, trial by jury was introduced in Georgia for a certain category of crimes under a model in which the jury alone retains the exclusive function of determining the defendant's guilt or innocence. Twelve jurors sit in a criminal trial and one judge presides. After the trial, the jurors deliberate in private, in the absence of the judge. If the jury cannot reach a unanimous

verdict within three hours of the deliberations, then a verdict arrived at by majority vote may be returned.

22. The relevant provisions concerning the appointment of a lawyer, as provided in the CCP at the material time, read as follows:

Article 38. Rights and duties of an accused

“...

5. An accused has a right to choose and be represented by a lawyer, and a right to replace a chosen lawyer at any stage; or if he or she does not have one, a right to be represented by a lawyer at the expense of the State. An accused shall have reasonable time and means to prepare for his or her defence. Communication between an accused and his or her lawyer shall be confidential. No restrictions shall be imposed on communication between an accused and his or her lawyer which would impede the exercise of the defence in a proper manner.

...

13. An accused, with his or her lawyer, has a right, within the limits and in the manner provided for by the present Code, to acquaint himself or herself with the prosecution evidence and to be provided with copies of the evidence and criminal case materials.”

Article 45. Mandatory defence

“1. It shall be mandatory for an accused to have a defence lawyer:

...

(e) if the offence ... attracts life imprisonment.”

23. The relevant provisions describing the procedure for admission of evidence, as provided in the CCP at the material time, read as follows:

Article 14. Direct and oral examination of evidence

“1. Evidence shall not be presented to a court (jury) unless the parties have been given an equal opportunity to examine evidence directly and orally, except for in the cases provided for in this Code.

2. A party has a right to request the examination of a witness and to present its own evidence at the trial.”

Article 72. Inadmissible Evidence

“...

3. A prosecutor shall bear the burden of proof for arguing for the admissibility of the evidence for the prosecution and the inadmissibility of the evidence for the defence.

...

5. The court shall decide on the issue of inadmissibility of evidence.”

Article 83. Exchange of Information between the parties about potential evidence

“1. At any stage of criminal proceedings a request by the defence to acquaint itself with the information the prosecution intends to present as evidence in court shall be granted immediately. The prosecution is also obliged, in cases provided for in this paragraph, to hand over to the defence any exculpatory evidence in its possession.

2. After granting the request of the defence, the prosecution is authorised to obtain from the defence the information they intend to present as evidence in court.

3. After the request for the exchange of information has been made, failure to provide the other party with all the material available by the relevant time shall result in that material being found inadmissible as evidence.

4. A report on the exchange of information between the parties as provided for in paragraphs 1 and 2 of this Article shall be drawn up; a copy of the report shall be sent to the court together with the criminal case file.

...

6. At the latest five days prior to the pre-trial conference the parties must provide each other and the court with all the information at their disposal which they intend to present as evidence at the trial.

7. The parties shall exchange with each other at their own expense information in the form of copies of documents, or if there are other kinds of material, in the form of a notice. It is permitting to inspect physical evidence, provided that there is no risk of damaging or destroying the evidence or any traces left on it.

8. Prior to the first appearance of the defendant in court the parties are each obliged to allow the other party to acquaint themselves with the information and evidence which they intend to present at trial, as well as to hand over copies of written pieces of evidence.”

Article 84. Exceptional right of the defence

“Failure on the part of the defence to exchange one [piece of] evidence which has particular importance for the exercise of the defence shall not lead to the inadmissibility of such evidence in court when examining the merits of the case. In such a case the presiding judge shall order the defence to pay a fine and bear the procedural costs. The amount of the fine shall be of a preventive nature, shall be proportionate to the damage caused, and shall correspond to the financial situation of the party concerned. The order shall be subject to a single appeal to the judge presiding over the decision-making court; that judge is authorised to examine the appeal without holding an oral hearing.”

Article 219. Pre-trial conference

“... 3. If a defendant is charged with an offence which attracts a jury trial, the judge is obliged to explain to the defendant the provisions concerning the jury trial and his or her related rights. The judge shall then enquire whether the parties agree to have the case heard by jurors. If the parties do not jointly reject jury trial, the judge shall appoint a date for the selection of jurors.

4. The pre-trial conference judge shall

a) examine applications by the parties on the admissibility of evidence ...”

Article 239. Lodging applications and ruling on them

“1. ...

2. If additional evidence is presented during a main hearing, the court shall examine, at the request of the [relevant] party, the admissibility of the evidence and shall clarify the reasons for not presenting it before the main hearing, and shall rule on the admissibility or otherwise of the evidence accordingly.”

24. As regards the avenues of appeal against a jury verdict, the CCP states the following:

Article 266. Appeal against a decision taken by a jury trial

“1. A not-guilty verdict in a jury trial is final and is not subject to appeal.

2. A party may appeal once on points of law to the court of appeal against a guilty verdict if:

a) the presiding judge made an unlawful decision about the admissibility of evidence;

b) the presiding judge made an unlawful decision when examining a party’s application and that decision substantially violated the principle of adversarial proceedings;

c) the presiding judge made a substantial error when instructing the jury before its retirement to the deliberation room;

d) the presiding judge failed to base his or her decision either in part or in full on the verdict reached by the jury;

e) the presiding judge based his or her decision on a verdict which was adopted in violation of the requirements provided for in the present Code;

f) the sentence is unlawful and/or manifestly unsubstantiated;

g) the presiding judge did not follow the recommendation of the jury concerning mitigation or aggravation of the sentence.

3. If an appeal on points of law lodged on the basis of paragraph 2 (a-e) is allowed, the case shall be transferred to a new panel of jurors for a new trial ...”

Article 303. Decision on allowing an appeal on points of law

“1. ...

2. The cassation court may examine the admissibility of an appeal on points of law without holding an oral hearing.

3. The appeal on points of law shall be admissible, if:

(a) the case is important for the development of law and for the establishment of uniform judicial practice;

(b) the decision of an appellate court differs from the Supreme Court case law ...

(c) an appellate court examined the case with serious legal or procedural violation ...

4. The decision rejecting as inadmissible an appeal on points of law is final and no appeal lays against it.”

II. RELEVANT INTERNATIONAL MATERIAL

25. In its Joint Opinion on the Criminal Procedure Code of Georgia (Opinion-Nr.: CRIM -GEO/257/2014 [RJU]), issued on 22 August 2014, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe stated the following:

“5.4 Equality of Arms

50. At the outset, it is noted that in the Code, the role of the judge in ensuring equality of arms between parties is very limited (see Article 23 and Article 25 par 2 on the role of the judge in particular), and most of the initiative to ensure that this principle is upheld must come from the parties. Although this adversarial system is generally recognized under international standards, it should be noted that there remains a risk in such systems, especially where defence counsel does not fulfill their duties properly, that the rights of the defendant are not sufficiently safeguarded.

51. There is, generally speaking, a significant imbalance in power between the prosecutor, who has the backing of state resources, and the defendant, who does not necessarily have similar financial or other means. It is therefore recommended that consideration be given to adding to the tasks of the presiding judge, for example in Article 25, that he or she should ensure that the rights of the defendant, including equality of arms, are sufficiently safeguarded during the trial.

...

55. Under Article 83 par 6, the parties are obliged to present to each other and to the court, no later than five days prior to the pre-trial conference, all the information available in their possession which they intend to submit as evidence. The obligation to share information does not end there, but should be a continuous one, as appears to be foreseen by Article 83 par 1. However, it should be clear from the wording of this provision that the prosecution is under an obligation to share all information spontaneously, and that the defence should be under an obligation only to the extent that fair notice is required for the prosecutor to allow further investigations to take place. It is recommended to amend Article 83 accordingly.”

THE LAW

I. SCOPE OF THE CASE

26. In his observations submitted in reply to those of the Government, the applicant complained under Articles 3 and 6 § 2 of the Convention of having been handcuffed during the jury trial in court. He further alleged in connection with the trial that the hearings had been scheduled every day from 10 a.m. till 6 p.m. The lawyers had not been allowed to see him in prison in the evenings. Accordingly, throughout the whole jury trial he had been prevented from freely communicating with his lawyers and coordinating his line of defence with them.

27. The Court notes that the applicant introduced the above complaints only in his observations following the communication of the application.

They cannot be considered as an elaboration of his original complaints. Consequently, they fall outside the scope of the current application (see *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 71 and 72, 27 May 2010 with further references therein).

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (b) AND (d) OF THE CONVENTION

28. The applicant complained that because of his belated access to the prosecution evidence he had not had sufficient time and facilities to prepare his defence. He also alleged in that connection that the presiding judge had given unlawful decisions regarding the admissibility of evidence, and that the refusal of the appellate court to allow his appeal on points of law had been unreasoned. The applicant relied on Article 6 §§ 1 and 3 (b) and (d) of the Convention, which, in the relevant parts, reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

...

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

...

(b) to have adequate time and facilities for the preparation of his defence

...

(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 ...”

A. Admissibility

29. The Government did not raise any objection as to the admissibility of the complaints. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. *Submissions by the parties*

(a) **The applicant**

30. The applicant maintained that his lawyers had been given access to the case material on 8 November 2011 at 08.50 p.m. and had not had accordingly sufficient time to acquaint themselves with the prosecution evidence and to submit their own list of evidence, including the list of witnesses. He submitted that by delaying the defence’s access to the case

file, the prosecutor had acted in breach of Article 83 of the Code of Criminal Procedure (“the CCP”), thus on the one hand rendering the prosecution evidence inadmissible, and on the other hand hindering the efforts of the defence to prepare their case. The applicant argued that he could not have relied for the purposes of the preparation of his defence on a copy of the case file given to G.G., the legal aid lawyer, as he had not trusted her. He had therefore never asked her to give him a copy of the case file. He argued, with reference to Article 46 § 1 (a) of the CCP, that he had in any event never requested the appointment of a lawyer under the legal aid scheme. The fact that he had remained silent during his first questioning as an accused, in the presence of the legal aid lawyer, did not amount to his consent to the involvement of the legal aid lawyer.

31. He dismissed as untrue the Government’s assertion that his private lawyers had not requested a copy of the case file until 3 November 2011 (see paragraph 35 below). He referred in this connection to his letter of 21 October 2011, in which he had requested the prosecutor in charge to give his private lawyers access to the case material. He also noted that during his trial his private lawyers had sufficiently shown that they had continually contacted the prosecutor on the telephone in order to request access to the case file, however this had been in vain.

32. As to the decision of the Tbilisi Court of Appeal to reject his appeal on points of law as inadmissible, the applicant stressed that this was only the second case in the history of Georgia that had been adjudicated by jury trial. The rejection of his appeal without sufficient reasoning being given, and in the absence of any relevant court practice, was therefore arbitrary.

33. Lastly, the applicant also submitted that in 2012 his co-defendants, whose evidence had laid the basis for his conviction, had complained to various Georgian authorities alleging that their inculpatory evidence had been obtained by coercion and ill-treatment. He did not, however, submit any evidence in support of this allegation.

(b) The Government

34. The Government argued, on the basis of a fourfold argument, that the applicant’s right to a fair trial, including the principle of equality of arms, had not been violated. Firstly, according to them, the applicant was assigned a legal aid lawyer under the mandatory defence rule in accordance with Article 45 of the CCP as, given the charges brought against him, he was facing life imprisonment. For that procedure to apply the applicant’s consent was irrelevant, as was his financial situation. They argued, with reference to the applicant’s examination report of 11 October 2011, that he had in any event explicitly consented to being assigned the legal aid lawyer.

35. Secondly, as far as the access to the case material was concerned, the Government maintained that on 12 October 2011, that is more than one month before the pre-trial conference, all relevant documents had already

been handed over to the legal aid lawyer. Accordingly, the applicant had had sufficient time and facilities to prepare his defence. The relevant case material had also been handed over to the applicant's private lawyers five days before the pre-trial conference, that is on 8 November 2011. The Government stressed in that connection that the two private lawyers had not requested a copy of the case file until 3 November 2011; thus, there was no basis to argue that the prosecution had hindered the applicant's access to the prosecution case file, thereby obstructing him in the preparation of his defence.

36. Thirdly, the Government noted that the applicant had failed to provide the prosecution and the trial court with the information regarding potential defence evidence at the latest five days prior to the pre-trial conference, thereby breaching the procedure provided for under Article 83 § 6 of the CCP. They submitted that the presiding judge's reasoning in the decision on the inadmissibility of the evidence, in reply to the lawyers' various arguments, had been very detailed and thorough. As to the application of the clause relating to the exceptional right of the defence under Article 84 of the CCP, the Government argued, with reference to two domestic court decisions in other unrelated cases, that there were certain preconditions for that provision to apply. For example, the defence had to show compelling reasons for their failure to exchange the information about potential defence evidence with the prosecution and the court in a timely manner, which the applicant in the current case had failed to do.

37. In the two judicial decisions submitted by the Government as examples of domestic judicial practice on the application of Article 84 of the CCP, the domestic courts ruled that the exceptional right of the defence under Article 84 of the CCP was applicable since the defence had shown the importance of the evidence for the case. Thus, in its decision of 13 December 2012 the Gurjaani District Court while granting the defendant's request made under Article 84 of the CCP, concluded the following:

“Since, according to the defence, the evidence at stake is of particular importance ... the court grants the request of a representative ... to examine in court the father of the accused ...”

Similarly, in its decision of 26 August 2014 the Akhaltsikhe District Court noted:

“According to Article 84 of the Code of Criminal Procedure of Georgia, the failure to [exchange] evidence which has particular importance for the exercise of the defence shall not lead to the inadmissibility of such evidence in court.

In the current case, the defence has invoked that right, the submitted information is relevant ..., accordingly, the request of the defence shall be granted ...”

38. Lastly, the Government submitted that the applicant's appeal on points of law had not met the admissibility criteria as provided for in

Article 266 and 303 of the CCP, and had accordingly been declared inadmissible. In view of all the above arguments, they maintained that the overall fairness of the criminal proceedings in the current case had not been undermined.

2. *The Court's assessment*

39. The Court notes that the applicant's complaints essentially give rise to different but interrelated issues, namely (i) the allegedly insufficient time and facilities for the preparation of the defence; (ii) the resulting problem of the inadmissibility of the list of witnesses to be called on behalf of the defence; and (iii) the lack of sufficient reasons in the rejection by the appellate court of the applicant's appeal on points of law as inadmissible. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine each of these complaints under those two provisions taken together (see, among many others, *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015, and *Idalov v. Russia* [GC], no. 5826/03, § 169, 22 May 2012).

(a) **Alleged insufficient time and facilities for the preparation of the defence**

(i) *General principles*

40. In accordance with the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent. In this context, importance is attached to appearances as well as to the increased sensitivity to the fair administration of justice (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 140, ECHR 2005-IV; see also *Bulut v. Austria*, 22 February 1996, *Reports of Judgments and Decisions* 1996-II, p. 359, § 47, and *Moiseyev v. Russia*, no. 62936/00, § 203, 9 October 2008).

41. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However, whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment on them (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 91, 18 December 2018; see also *Zahirović v. Croatia*, no. 58590/11, § 42, 25 April 2013).

42. The right to a fair trial also implies the right of access to the case file. The Court has already found that unrestricted access to the case file and unrestricted use of any notes, including, if necessary, the possibility of obtaining copies of relevant documents, are important guarantees of a fair

trial. The failure to afford such access has weighed, in the Court's assessment, in favour of the finding that the principle of equality of arms had been breached (see *Beraru v. Romania*, no. 40107/04, § 70, 18 March 2014). In this context, importance is attached to appearances as well as to the increased sensitivity to the fair administration of justice. The respect for the rights of the defence requires that limitations on access by an accused or his lawyer to the court file must not prevent the evidence being made available to the accused before the trial and the accused being given an opportunity to comment on it through his lawyer in oral submissions (see *Öcalan*, cited above, § 140).

43. Article 6 § 3 (b) implies that the substantive defence activity on behalf of an accused may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the ability to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996; *Mayzit v. Russia*, no. 63378/00, § 78, 20 January 2005, and *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008). When assessing whether the accused had adequate time for the preparation of his defence, particular regard has to be had to the nature of the proceedings, as well as the complexity of the case and stage of the proceedings (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 41, Series A no. 58, and *Gregaćević v. Croatia*, no. 58331/09, § 51, 10 July 2012).

44. The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case (see *Iglin v. Ukraine*, no. 39908/05, § 65, 12 January 2012).

(ii) *Application of the above principles to the circumstances of the current case*

45. The applicant complained that he had had belated access to the prosecution evidence that had resulted in his having had insufficient time and facilities to prepare his defence. In view of the particular circumstances of the current case, the Court considers that it has first to clarify the circumstances surrounding the appointment of a legal aid lawyer and her role alongside the applicant's private lawyers; in doing so it will be guided by the case-law on the "denial of choice" in respect of legal representation (see *Dvorski v. Croatia* [GC], no. 25703/11, §§ 81-82, ECHR 2015).

46. To start with, the Court notes that on 11 October 2011, when being formally questioned as an accused in the presence of a legal aid lawyer, the applicant signed the relevant examination report and made a note indicating his consent to being represented by that specific lawyer (see paragraph 7 above). By that time the applicant had already been informed about his right to appoint a lawyer of his own choosing. On 12 October 2011 the applicant's legal aid lawyer was provided with a list of evidence against the

applicant as well as copies of the relevant pieces of evidence. It appears from the case file that on the very same day at 1 p.m. the applicant had appointed a private lawyer, G.Ch. On 13 October 2011 a pre-trial detention hearing was held at which the applicant was represented by the legal aid lawyer together with his private lawyer. At no point during the hearing did the applicant express his wish to either replace or remove the legal aid lawyer. Nor did he allege that the former was failing to represent his interests effectively. That issue was carefully assessed by a judge during the pre-trial conference in the course of the applicant's criminal trial (see paragraph 15 above). In these circumstances, the Court does not see any issue arising in respect of the applicant's legal representation as far as the initial stage of criminal proceedings against him was concerned (see *Almaši v. Serbia*, no. 21388/15, §§ 112-13, 8 October 2019; contrast *Lobzhanidze and Peradze v. Georgia*, nos. 21447/11 and 35839/11, §§ 85-86, 27 February 2020). There is accordingly no basis to conclude that by giving a copy of the criminal case file and the list of the prosecution evidence to the legal aid lawyer, the prosecution had somehow acted in an arbitrary manner or had aimed to obstruct the defence.

47. As to the subsequent period, according to the pre-trial conference judge, the applicant's lawyers had failed to substantiate their claim that the prosecution had prevented them from accessing the case file between 22 November and at least early November (see paragraph 15 above). The Court has insufficient information in this regard and therefore has no basis on which to disagree with the above finding of the judge. Moreover, the Court notes that while the applicant contended, in the proceedings before the Court, that he had not trusted the legal aid lawyer, he never voiced similar allegations at the domestic level (*ibid.*). The Court concludes, therefore, that the applicant's allegation that the authorities denied his right of access to the case file in the period between 21 October – 3 November 2011 remains unproven.

48. As to the period between 3 and 8 November 2011, the Court notes that there was no explanation as to why it was not possible for the prosecutor to act immediately on the private lawyers' requests of 3 and 4 November 2011. It notes in this connection that the first paragraph of Article 83 of the CCP guarantees, at the request of the defence, "immediate" access to the prosecution evidence "at any stage of the proceedings" (see paragraph 23 above). While it is understandable that the relevant administrative steps may have required at least some time, the prosecution, with the pre-trial conference approaching within ten days, should have demonstrated more diligence in not hindering the applicant's preparation of his defence. The legal aid lawyer's access to the evidence at an early stage of the investigation had no bearing whatsoever on the prosecution's continuous obligation under Article 83 § 1 of the CCP to allow the defence access to the case file. Indeed, the fact that the prosecution eventually

provided the defence, at their request, with a copy of the case file, implied that they did not question as such the nature of their obligation to act at the request of the defence.

49. Against this background, it is particularly regrettable that the pre-trial conference judge did not elaborate on the “immediacy” requirement provided for in the above domestic law provision (see Article 83 § 1, as cited in paragraph 23 above) and left the applicant’s relevant argument unanswered (see paragraph 15 above). The Court reiterates in this connection that effective access to a case file is an important factor in its assessment of how the principle of equality of arms has been applied. In the current case the prosecution had no explicit obligation, under Article 83 of the CCP, to share evidence with the defence on its own initiative until five days prior to the pre-trial conference. However, with the five-day time limit being by definition rather short and with the defence being limited in, if not completely prevented from, submitting any evidence after that deadline (see in this connection Article 83 § 6 of the CCP, as cited in paragraph 23 above and the Court’s reasoning in paragraphs 56-60 below), it was incumbent on the presiding judge to satisfy himself that the prosecution had acted promptly and diligently in providing access to the case file at the request of the defence under Article 83 § 1 of the CCP. In his reasoning the presiding judge stressed that the applicant’s legal aid lawyer had been given access to the case file already on 12 October 2011, that is one month before the pre-trial conference, and that the defence had failed to prove that the prosecution authorities had denied their right of access to the case file in the period between 21 October and 8 November 2011. The legal aid lawyer was not, however, involved in the representation of the applicant after the pre-trial hearing. And, in any event, the apparent lack of cooperation and diligence on the part of the applicant’s legal aid and private lawyers cannot by itself absolve the State and its agents of their responsibility to act diligently. Seen in this light, the Court considers that the presiding judge was expected to ensure that the difficulties allegedly experienced by the defence in the course of preparation for the jury trial were not such as to affect the essence of the applicant’s rights under Article 6 of the Convention (see *Öcalan*, cited above, § 147; see also *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, §§ 540, 20 September 2011; see also the Joint Opinion of the ODIHR and the CoE, as cited in paragraph 25 above). All in all, the delayed access to the prosecution evidence was exactly the reason advanced by the applicant’s defence lawyers in seeking the admission into evidence of the belated list of defence witnesses. Furthermore, as highlighted above, one of the stated objectives of the 2010 reforms was to enhance the rights of the defence.

50. To sum up, cumulatively, in view of the nature of the proceedings and the complexity of an almost decade-old prison murder case, and also having regard to the sequence of events as a whole, the Court considers that

the applicant was not afforded sufficient time and facilities to allow him to prepare his defence in an effective manner. The Court, concludes, therefore, that there has been a violation of Article 6 §§ 1 and 3 (b) of the Convention.

(b) Allegedly unlawful and arbitrary refusal to admit the defence evidence

(i) General principles

51. The Court reiterates that under Article 6 of the Convention the admissibility of evidence is primarily a matter for regulation by national law and the Court's task is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 50, *Reports* 1997-III, and *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). Article 6 § 3 (d) of the Convention does not require the attendance and examination of every witness on the accused's behalf, the essential aim of that provision, as indicated by the words "under the same conditions" is to ensure a full "equality of arms" in the matter (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22; *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B; and *Murtazaliyeva*, see above, § 139).

52. In *Murtazaliyeva v. Russia* [GC] (cited above, § 158) the Court has formulated the following three-pronged test for the assessment of whether the right to call a witness for the defence under Article 6 § 3(d) has been complied with: (1) whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation; (2) whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial; and (3) whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings.

53. In respect of the first element the Court held that it is necessary to examine whether the testimony of witnesses was capable of influencing the outcome of a trial or could reasonably be expected to strengthen the position of the defence. The "sufficiency" of reasoning of the motions of the defence to hear witnesses will depend on the assessment of the circumstances of a given case, including the applicable provisions of the domestic law, the stage and progress of the proceedings, the lines of reasoning and strategies pursued by the parties and their procedural conduct (*ibid.*, §§ 160-61).

54. As to the second element of the test, the Court explained that generally the relevance of testimony and the sufficiency of the reasons advanced by the defence in the circumstances of the case will determine the scope and level of detail of the domestic courts' assessment of the need to ensure a witness' presence and examination. Accordingly, the stronger and weightier the arguments advanced by the defence, the closer must be the

scrutiny and the more convincing must be the reasoning of the domestic courts if they refuse the defence's request to examine a witness (*ibid.*, § 166).

55. With regard to the overall fairness assessment as the third element of the test, the Court stressed that compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident. While the conclusions under the first two steps of that test would generally be strongly indicative as to whether the proceedings were fair, it cannot be excluded that in certain, admittedly exceptional, cases considerations of fairness might warrant the opposite conclusion (*ibid.*, §§ 167-68).

(ii) Application of the above principles to the circumstances of the current case

56. In the current case the applicant's application to admit in evidence the list of witnesses to be called on behalf of the defence was rejected on procedural grounds. The presiding judge concluded, applying Article 83 § 6 of the CCP, that the list had been produced after the expiry of the time-limit of five days before the pre-trial conference, and did not accept the applicant's argument that this had been the result of the authorities having delayed his access to the case file. In view of its findings in paragraphs 48-50 above, the Court considers that the above decision of the judge was the result of an excessively formalistic and restrictive application of the terms of domestic law to the detriment of the applicant.

57. It cannot, thus, overlook the fact that the *de facto* outcome of the above decision was that in the course of the jury trial against the applicant not a single witness was heard on behalf of the defence. That state of affairs must be considered troubling, particularly given the nature of the subject matter of the criminal case, an aggravated murder committed in prison in the presence of some seventy prisoners, the absence of evidence other than witnesses, and given the fact that the case was decided by a jury. Therefore, from the point of view of the Convention requirements of fair trial and the applicant's right to "obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him", as guaranteed by Article 6 §§ 1 and 3 (d), the Court considers that the decision to exclude all witnesses proposed by the defence had to be motivated by weighty reasons going beyond the issue of the applicant's compliance with a procedural time-limit.

58. The Court notes in this respect that the CCP, in particular Article 84 – as in force at the material time – provided for the possibility of admitting evidence which was of particular importance for the exercise of the defence, even if information about that evidence had not been exchanged with the prosecution in accordance with Article 83 § 6 of the CCP (see paragraph 23 above). The Government argued that the application of an exceptional right

of the defence under Article 84 of the CCP was dependent on the existence of compelling reasons which could have justified the delay on the part of the defence. During the pre-trial conference the judge likewise referred to the lack of compelling reasons justifying the delay of the defence (see paragraph 15 above). The Court notes that the Government provided two first-instance court decisions in support of their argument. Careful reading of those decisions (see paragraph 37 above) and of the provision itself (see paragraph 23 above), however, does not lead the Court to the same conclusion. The only precondition for the application of the clause providing for the exceptional right of the defence, according to the wording of Article 84 of the CCP applicable at the material time, was the importance of the evidence for the case at issue (compare and contrast with Article 239 of the CCP, cited in paragraph 23 above, which concerned evidence presented once the hearing had started and which explicitly required the relevant party to clarify the reasons for not presenting the evidence earlier). The Government were unable to provide the Court with the relevant judicial practice of the Supreme Court on the issue, despite being explicitly requested to do so. While it is not for the Court to decide on the correct interpretation of domestic law, the Government failed to convince it that it had been legally impossible under the Georgian law to allow the questioning of the witnesses called by the applicant.

59. The Court notes that the applicant and his lawyers failed to request in a sufficiently express and reasoned manner the application of the exceptional right of the defence under Article 84 of the CCP. Nonetheless, the relevant judge reasoned that the preconditions for the application of the exceptional right of the defence to submit belated evidence had not been met (see paragraph 15 above *in fine*). In such circumstances, the Court considers that the presiding judge, despite the nature of the charges and the fact that the outcome of the case was obviously heavily dependent on witness testimony, opted for a rather rigid and restrictive approach, which clearly resulted in shifting the balance in favour of the prosecution. In view of the effect this might have had on the overall fairness of the proceedings, notably the fact that the applicant was deprived of the opportunity to effectively adduce witness evidence and rely on it in arguing his case, the presiding judge, being the ultimate guardian of the fairness of the proceedings, was expected to measure carefully the consequences of his procedural decisions on the applicant's defence rights and to provide detailed reasoning to that effect (see in this respect the Joint Opinion of the ODIHR and the CoE, as cited in paragraph 25 above). In the Court's view, the lack of sufficiently detailed reasoning on such an important procedural right of the defence was particularly troubling, since the cardinal reform of the criminal procedure had been implemented shortly before the jury trial of the applicant was conducted, and there was no established judicial practice on the matter.

60. These considerations are sufficient for the Court to conclude that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the manner in which the presiding judge rejected the list of the defence witnesses in its entirety.

(c) Allegedly unreasoned decision to declare inadmissible the applicant's appeal on points of law

(i) General principles

61. The manner of application of Article 6 § 1 to proceedings after appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the procedural system in the domestic legal order and of the role of the particular court therein (see, *inter alia*, *Botten v. Norway*, 19 February 1996, § 39, Reports of Judgments and Decisions 1996-I; and *Lazu v. the Republic of Moldova*, no. 46182/08, § 33, 5 July 2016).

62. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001; and *Stepanyan v. Armenia*, no. 45081/04, § 35, 27 October 2009).

(i) Application of the above principles to the circumstances of the current case

63. The Court observes that in the present case the applicant was found guilty in a jury trial. In such circumstances, the new CCP, which had entered into force shortly before the events in the present case, provided for an appeal on points of law under Article 266 of the CCP. This procedure of appeal, applicable in jury trials, is distinct from a cassation procedure as provided for in Article 303 of the CCP. While the latter refers to rather standard admissibility criteria (see paragraph 3 of Article 303 as cited in paragraph 24 above), Article 266, shaped by the particularities of a jury trial, focuses on the role the presiding judge has played *vis-à-vis* the jury specifically and in ensuring the procedural fairness of the trial in general (*ibid.*). Thus, along with purely procedural issues, such as the issue of unlawfulness of the presiding judge's decision regarding the admissibility of evidence, the grounds of appeal under Article 266 of the CCP also included "substantial error of the presiding judge when instructing the jury." Further, the Court notes that the appeal on points of law under Article 266 of the CCP leads to a full retrial by a new jury in case it is established, at the stage when the appellate court decides whether to allow it or not, that any of the grounds listed in paragraph 2 (a) – (e) of that provision are found to exist. Therefore, in view of the nature and role of a decision on allowing an appeal

under Article 266 of the CCP, the Court considers that the jurisdiction of the appellate court went beyond the classical admissibility proceedings for an appeal on points of law. The present case is, thus, different in this respect from the previous cases against Georgia examined by the Court which concerned a standard cassation procedure that had existed prior to the enactment of the new CCP in October 2010 (see *Tortladze v. Georgia*, no. 42371/08, § 77, 18 March 2021, with further references therein).

64. This leads the Court to the next point. In the present case, the applicant lodged an appeal on points of law alleging, *inter alia*, a violation of his defence rights and a breach of the principle of equality of arms on the basis of concrete facts, such as the decisions of the presiding judge regarding access to the case file and examination of witnesses for the defence. Thus, the legal issues raised by the applicant in his appeal concerned, in particular, the grounds provided for in Article 266 § 2 (a) and (b) for allowing the appeal on points of law (see paragraph 24 above). Without in any way taking a stand on the correct interpretation of the domestic law, the Court considers that the issues raised by the applicant before the appellate court were at least legally relevant and did not immediately appear to be manifestly devoid of any merit. Furthermore, they clearly raised, in view of the particular circumstances of the current case, fundamentally important legal issues (see, *mutatis mutandis*, *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, §§ 170-71, 7 May 2021). It was, thus, the appellate court's duty to use all the means at its disposal to dispel any doubts as to the validity and nature of the applicant's allegations, particularly in view of the fact that these allegations had not been adequately examined in the course of the jury trial (see, for example, *Timofeyev v. Russia* [Committee], no. 16887/07, §§ 22-24, 14 November 2017; contrast with *Talmane v. Latvia*, no. 47938/07, §§ 31-32, 13 October 2016, where the Court found that the relevant complaints of the applicant were duly examined by two court instances with full jurisdiction and that the lower courts provided proper reasoning; see also *Vyerentsov v. Ukraine*, no. 20372/11, §§ 87-88, 11 April 2013, and *Mrazovic and Others v. Croatia* ((dec.) [Committee], no. 25149/19, § 42, 17 December 2019)). While it may well be that the appellate court had conducted such a check, its decision remained silent as to why it considered that the applicant's allegations were ill-founded and the appeal must not be allowed. The Court finds this situation particularly unfortunate in view of the importance it attaches to the existence of avenues of appeal in the context of jury trials (see *Taxquet v. Belgium* [GC], no. 926/05, §§ 92 and 99, ECHR 2010; see also *Lhermitte v. Belgium* [GC], no. 34238/09, § 68, 29 November 2016).

65. To sum up, the fact that it was only the second case decided by a jury in Georgia; that there was apparently no established practice of the domestic courts on a number of procedural issues raised by the applicant in the current case, and that the presiding judge did not address those

procedural issues in a sufficiently detailed and reasoned manner in the course of the jury trial (see in this connection the Court's reasoning in paragraphs 49 and 56-60 above); and given what was at stake for the applicant, particularly in view of the fact that his case was examined by a jury with essentially no examination of any defence evidence, the Court considers that the applicant's arguments raised in his appeal on points of law merited a thorough and detailed reply in the reasoning of the decision taken by the Tbilisi Court of Appeal. The failure to provide any meaningful reasoning leads the Court to a conclusion that there has been a violation of Article 6 § 1 of the Convention in respect of the duty to provide reasoned decisions, inherent in that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 35,000 euros (EUR) in respect of pecuniary damage and an additional EUR 35,000 in respect of non-pecuniary damage.

68. The Government submitted that the applicant's pecuniary claims were wholly unsubstantiated, while the non-pecuniary claims were excessive as to quantum.

69. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

70. The applicant claimed, without submitting a contract or any other relevant legal or financial document, EUR 8,000 for the legal costs in respect of his two lawyers, incurred before the domestic courts and before the Court. The applicant also requested the reimbursement of certain administrative expenses, including postal and translation fees, in the amount of about EUR 200. He submitted a number of receipts in support.

71. As to the reimbursement of legal costs, the Government submitted that, in the absence of any proof, the claim was wholly unsubstantiated. As for the administrative expenses, they noted that it was up to the Court to determine the amount having regard to the evidence submitted in support.

72. 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 rejects the claim for legal costs in the domestic proceedings and in the proceedings before the Court. It considers, however, that it is reasonable to award the sum of EUR 200 on account of the various administrative expenses, plus any tax that may be chargeable.

C. Default interest

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (b) of the Convention in respect of the alleged delayed access to the case file;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the manner in which the presiding judge rejected the list of the defence witnesses in its entirety;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of sufficient reasoning in the decision of the appellate court;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, 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 5,000 (five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 200 (two hundred euros), plus any tax that may be chargeable to the applicant, 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

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rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_1}

{signature_p_2}

Victor Soloveytkhik
Registrar

Síofra O'Leary
President