



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

## FIFTH SECTION

### CASE OF OKROPIRIDZE v. GEORGIA

*(Applications nos. 43627/16 and 71667/16)*

### JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Impartiality of second jury that reached guilty verdict in retrial of applicant's case • Subjective test met • Lack of sufficient evidence establishing that second jury influenced by statements of individual high-ranking public officials on first jury's failure to reach a verdict • Presiding judge's handling of risks sufficient to dispel any objectively held fears or misgivings about the second jury's impartiality • Sufficient counterbalancing factors

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of indirect evidence at applicant's trial approached with sufficient caution by presiding judge • Admittance into evidence of an absent witness's statement which was important but not "determinative of the outcome of the case" and not sole or decisive basis for applicant's conviction • Sufficient factors counterbalancing any resulting difficulties for the defence • Overall fairness of the criminal proceedings not irretrievably prejudiced

Art 6 § 1 (criminal) • Fair hearing • Absence of reasons in jury verdict counterbalanced by applicant being allowed to choose between trial by jury or by professional judge, concrete safeguards throughout proceedings and examination of the merits of his appeal on points of law • Court of Appeal's decision sufficiently and adequately reasoned

STRASBOURG

7 September 2023

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



**In the case of Okropiridze v. Georgia,**

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

Georges Ravarani, *President*,

Lado Chanturia,

Carlo Ranzoni,

Stéphanie Mourou-Vikström,

María Elósegui,

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 43627/16 and 71667/16) 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 Giorgi Okropiridze (“the applicant”), on 22 July and 25 November 2016 respectively;

the decision to give notice to the Georgian Government (“the Government”) of the complaints under Article 6 §§ 1, 2 and 3 (d) of the Convention concerning alleged irregularities and procedural failures in jury trial proceedings conducted against the applicant and to declare the remainder of application no. 71667/16 inadmissible;

the parties’ observations;

Having deliberated in private on 4 July 2023,

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. In particular, the applicant complained under Article 6 § 1 of the Convention that his conviction had been based on a jury verdict that had not contained any reasons, that the jury had not been impartial and that his appeal on points of law had been dismissed by the appeal court in an unsubstantiated manner. The application also concerns, under Article 6 §§ 1, 2 and 3 (d) of the Convention, the alleged violation of the presumption of the applicant’s innocence and the issue of the admissibility in evidence of a statement of an absent witness and of a body of hearsay evidence.

## THE FACTS

2. The applicant was born in 1989 and is detained in Tbilisi. He was represented before the Court by Mr B. Botchorishvili, 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. APPLICANT'S ARREST

5. On 2 September 2014 at about 7.30 p.m., L.M. was shot dead in the centre of Tbilisi. On 12 September 2014 the applicant was arrested on suspicion of the aggravated murder of L.M. and unlawful acquisition, possession and carrying of firearms.

6. On the day of his arrest, the Ministry of the Interior released information about the applicant on its website (<http://www.police.ge>) and on social media. In a press release, the Ministry stated that the applicant had attempted to flee to the Tskhinvali region (South Ossetia<sup>1</sup>) and had been handed over to the Georgian police by the *de facto* authorities of the region. The Internet posts by the Ministry withheld the applicant's full identity and referred to him as Giorgi O. The video footage that accompanied the press release showed the applicant handcuffed and being conveyed by armed officers wearing camouflage uniforms. The applicant's face was fully visible on the footage. The video footage was accompanied by the following statement:

“As a result of joint operational investigative measures conducted by ..., Giorgi O., born in 1989 and previously convicted of murder, was arrested on charges of aggravated murder and unlawful acquisition, possession and carrying of firearms.

According to the findings of the investigation, on the night of 2 September 2014 in Abashidze Street, Vake, [the applicant] inflicted several gunshot wounds to L.M., born in 1987, who later died in hospital, while Giorgi O. fled the crime scene.

The accused attempted to abscond by going to the occupied territory of the Tskhinvali region, where he was detained by the *de facto* authorities ...”

7. The Ministry of the Interior deleted the news post from its website on 23 December 2015, but according to the applicant, the same content remained on social media thereafter.

8. Within a few hours following the applicant's arrest, the First Channel of the Georgian Public Broadcaster and other media outlets broadcast the information released by the Ministry. Most of the media identified the applicant by his full name in their reports.

9. On 13 September 2014 the applicant was charged with aggravated murder and unlawful acquisition, possession, and carrying of firearms – offences under Article 109 § 3 (e) and Article 236 §§ 1 and 2 of the Criminal Code respectively. The applicant protested his innocence. On the same day

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<sup>1</sup> The term “South Ossetia” refers to a region of Georgia which is currently outside the *de facto* control of the Georgian government.

the Tbilisi City Court, acting at the prosecution's request, ordered his pre-trial detention.

## II. PRE-TRIAL INVESTIGATION

10. On 3 September 2014 the applicant's girlfriend, T.A., was interviewed. According to the record of the interview, on 2 September 2014 she had spoken with the applicant by telephone and had then seen him shortly thereafter for a couple of minutes at a café in Tbilisi at around 8 p.m. At around 9.30 p.m. the applicant called her again, asking her to meet him at his grandmother's apartment. She went there straight away. Upon her arrival she noticed that the applicant had in the meantime changed his clothes; instead of a pair of short blue jeans and a light-coloured buttoned shirt that he had been wearing earlier that day, he was in a pair of dark trousers and a short-sleeve T-shirt. He said that he had to leave the city urgently and wanted to say goodbye. In reply to her question as to what was happening, he said that he would sort everything out. Later in the evening, she learnt from a friend that L.M. had been killed and she immediately thought that her boyfriend might have been somehow linked to the murder.

11. On the same date, after the above interview, the applicant's grandmother's apartment was searched. As a result, the police found a pair of blue jeans and a light-coloured buttoned shirt, both wet, hidden in a sofa. Several other items, such as an electric shock device, handcuffs, a firearms cleaning kit and a bulletproof vest, were also seized from the apartment.

12. On 4 September 2014 the police interviewed the applicant's friend, V.B. According to the latter's statement, on 2 September 2014 he had been with the applicant when the incident happened. Earlier that day V.B. had spent the afternoon driving in his car in central districts of Tbilisi with two other friends and the applicant. At some point, when they were in the Vake district, the two other friends left. V.B. and the applicant continued driving, as the applicant was waiting for his girlfriend's telephone call. They saw L.M. standing on the street with another man. According to V.B., the applicant asked him to make a U-turn and get closer to them. When they got closer, V.B. stopped the car; the applicant got out of the car and within seconds, having asked one or two questions to L.M., the applicant took a gun out of his belt and shot L.M. two or three times. L.M. fell to the ground while the applicant got back into the car and asked V.B. to drive away. They drove away and shortly thereafter the applicant got out of the car and asked V.B. to leave the city for a while. In reply to a specific question, V.B. said that he did not know whether the applicant had been in conflict with L.M. and that the applicant had never talked to him about the matter.

13. On various dates in September, October and November 2014, the competent investigator conducted several interviews with, among others, the applicant's friend G.A., the latter's mother, N.A. and her husband, M.Ts.

According to their statements, at around 11 p.m. on 2 September 2014 the applicant had gone to their home asking for help. He said that there had been a fight in the Vake district, that he had wounded someone and that he therefore had to leave Tbilisi. He asked N.A., who had relatives in the Tskhinvali region, to help him to go there, and that from there he would go to Russia. In their statements they explained how they had arranged for the applicant to travel to the Tskhinvali region. In an additional statement given on 9 November 2014, N.A. stated that the applicant had confessed to her that he had killed L.M.

14. On 7 October 2014 O.K., L.M.'s close friend, was interviewed. He said that his mother had called him late at night on 2 September 2014 and had told him about his friend being shot. O.K. had gone to the hospital, where he had learnt that the applicant had killed his friend and had then fled the crime scene in a car belonging to V.B.

15. On 14 October 2014 L.M.'s mother, N.D., was interviewed. According to her statement, it had become known in the neighbourhood that her son had been killed by the applicant. She said that she personally did not know him, nor did she know anything about her son's relationship with him or about any possible motive behind the murder.

16. On 30 October 2014 M.K. and R.K., two relatives of N.A. (see paragraph 13 above), were interviewed. They both confirmed N.A.'s version of how the applicant had travelled to the Tskhinvali region, noting that on the night of 3-4 September 2014 the applicant had slept over in their house in a village close to the Tskhinvali region.

17. During the relevant period, the investigative authorities carried out numerous other investigative measures, such as an examination of the crime scene, as a result of which two bullet cartridges were taken for ballistic examination; an examination of V.B.'s car, including a scent and fingerprint analysis, which confirmed the presence of traces left by the applicant in the car; the covert taping of certain telephone conversations; and the examination of recordings from various video surveillance cameras.

### III. PRE-TRIAL CONFERENCE

18. On 15 December 2014 the Tbilisi City Court held a pre-trial conference during which the applicant, assisted by three lawyers of his own choice, was advised about his right, in view of the nature and seriousness of the charges brought against him, to a jury trial under Articles 219 and 226 of the Code of Criminal Procedure ("the CCP", see the relevant provisions cited in paragraph 45 below). The judge informed him in detail of the relevant procedure, including the fact that under Article 266 § 2 of the CCP, a person found guilty of a crime by a jury had the right to a one-time appeal on points of law against that guilty verdict. After being informed about the relevant

procedure, and having consulted his lawyers, the applicant consented to having his case examined by a jury.

19. During the pre-trial conference, the court also heard applications by the parties on the admissibility of evidence. The pre-trial judge ruled the prosecution evidence admissible, except for additional interviews of N.A. and M.Ts. dated 23 October 2014, which he did not admit in evidence on procedural grounds. In connection with the defence's application not to admit O.K.'s statement into evidence on the ground that it had constituted hearsay evidence, the judge noted that it did not merely constitute hearsay evidence and that it provided information concerning other relevant circumstances of the case. All of the witnesses were allowed to testify before the jury.

#### IV. FIRST JURY TRIAL AND SUBSEQUENT PUBLIC STATEMENTS

20. During the trial the jury heard about a dozen prosecution witnesses, among them V.B., T.A. N.A., G.A., M.Ts., R.K., M.K., N.D. and O.K. The jurors were also presented with multiple expert and forensic reports and dozens of procedural documents concerning various investigative measures. On 1 June 2015 the applicant's defence lodged an application asking the presiding judge to reject as inadmissible in whole or in part the statements of the prosecution witnesses N.A., G.A., M.Ts., R.K., M.K., N.D. and O.K. on the ground that they constituted hearsay evidence. According to the defence, none of the persons concerned were witnesses to the events immediately relevant to the applicant's guilt; their statements simply contained accounts of the crime allegedly committed by the applicant as told to them by third persons or by the applicant himself (which he denied). In support of his application the applicant referred to the judgment of the Constitutional Court dated 22 January 2015, in which the court had concluded that the legal procedural framework concerning the admission of and reliance on hearsay evidence, as in force at the material time, did not offer sufficient procedural safeguards (see paragraph 48 below). Having heard the parties' arguments, the presiding judge dismissed the applicant's application in its entirety. She ruled, with reference to the above-mentioned judgment of the Constitutional Court, that it did not outlaw reliance on hearsay evidence as such, but simply refined the relevant procedure. She further noted that the statements in issue while being indirect were only partially hearsay, as they also provided information concerning other relevant circumstances of the case; and that it was beyond her judicial discretion to indicate to the jurors which parts of those statements to rely on, and which parts to neglect. According to the presiding judge, it was up to the jurors to hear such evidence and assess its relevance and reliability through the prism of other evidence presented to the parties and having regard to the directions of the presiding judge given on the matter. In that connection, with reference to the relevant case-law of the Court, she noted that precise and detailed directions concerning the rules on

the assessment of evidence had already been given to the jurors, and additional directions would be given in due course.

21. On 13 May 2015 the applicant requested, in line with Article 231 of the CCP, that certain changes be made to the jury instructions prepared by the presiding judge. Notably, he requested that detailed explanations be given to the jury concerning the nature of hearsay evidence, including with reference to the relevant judgment of the Constitutional Court. It appears from the case file that part of the changes proposed by the applicant was taken into account and incorporated into the jury instructions.

22. On 5 June 2015, following a trial that lasted several days, the jury failed to return a verdict. The applicant remained in detention. The presiding judge discharged the jury and scheduled hearings for the selection of a new jury. On the same day, various television channels, including the Public Broadcaster, aired an interview with the then Minister of Justice, in which she stated the following:

“The jury institution is alien to the Georgian legal system [and] to our legal traditions. At minimum, it requires a reform. We may even consider abolishing it in view of the problems we encounter in practice... I was surprised by the verdict that had been reached, and if I had been a juror today, I would have surely been among those seven who found Okropiridze guilty.”

23. On the same day, during a live broadcast of a talk show on the private television channel Imedi, the then first Deputy Chief Prosecutor stated the following:

Deputy Chief Prosecutor: “... the prosecution service of Georgia is very disappointed with the result of the trial. Sadly, we lacked one juror’s vote for [the jury to return] a guilty verdict. It was something we had not really expected in view of the evidence that we had collected in the criminal case and the strong evidence showing that L.M. had been murdered by Giorgi Okropiridze. ... We put ample effort into the case. We did everything possible to achieve a guilty verdict. However, it did not happen, but we hope that in the next jury trial we will be able to make it happen, and justice will be served. ...”

Journalist: “I wonder why the prosecution service failed to achieve a guilty verdict. Did the prosecution case lack something that led the jury to deliver such a decision regarding Okropiridze?”

Deputy Chief Prosecutor: “A jury trial is completely different from an ordinary trial. In this instance, a decision is made not by professional lawyers, but by lay persons. In some cases, it may not be important whether there is enough evidence and whether the prosecution case is supported by a sufficient body of evidence, but some other circumstances may matter. This is particularly true if we take into account the usual mentality of Georgians. Speaking from a professional lawyer’s perspective, there are many questions regarding the institution [of the jury trial]. This category of cases – involving very serious crimes – must be tried by professional judges ...”

24. On 7 June 2015 a relative of L.M. stated in a televised interview that one of the jurors had visited the victim’s mother at home and had discussed the details of the jury deliberations with her. On 9 June 2015 the Tbilisi



prosecutor's office initiated an investigation into the possible offence of breach of secrecy of jury deliberations (Article 367(1) of the Criminal Code) and the possible offence of obstructing legal proceedings (Article 364 of the Criminal Code). According to the case file, those proceedings are still pending.

25. On 8 June 2015 various media outlets, including the private television channel Rustavi 2, broadcast an interview with the then Prime Minister, who stated:

“It is outrageous that a person accused of murder could not be brought to justice. We witnessed the entire collapse and the fiasco of ... the institution of a jury trial. We must review this and rectify the flaws in [this institution]. The family of the victim – L.M.'s family – of course has an absolutely fair demand that the criminal be punished. The State must be there to ensure this. How? By what methods? There are competent authorities to do this. It is unacceptable to me that this institution has in reality failed. This is a total collapse, and we have to address it as soon as possible.”

26. On 8 June 2015 the applicant was charged, in the course of a separate criminal case, with false accusation of alleged ill-treatment against him in prison. On 9 June 2015 the Tbilisi City Court remanded him in pre-trial detention in connection with the second set of criminal proceedings. On 17 September 2015 the applicant applied to the Tbilisi City Court requesting that the second detention order be set aside. In that connection, on 18 September 2015 the prosecutor D.N., in reply to a question from an Internet news agency, InterPressNews, stated the following:

“... Bearing that in mind, and also taking into account the fact that Giorgi Okropiridze has committed serious crimes and is a threat to society, we do believe that the court will not grant the request for his release and will keep him in detention.”

27. On the same date, the prosecutor D.N. made a similar statement in an interview with a private television company, Maestro, in which he asserted that the applicant had “committed a crime” but referred to him as “the accused”.

28. On 9 June 2015 the Tbilisi City Court issued a statement asking the media, the parties to the proceedings and all those otherwise related to the ongoing trial of the applicant to abstain from making any statements or comments on the case. The court noted that since the proceedings were continuing and a new jury was to be selected, any such statements and public debates concerning the case could adversely affect the administration of justice.

## V. SECOND JURY TRIAL

29. On 10 June 2015 a new jury selection process began, with several hearings held between June and November 2015. The presiding judge closed the hearings to the public, reasoning that the measure was necessary in view of “the events that had unfolded after the first jury trial” and in order to

prevent undue pressure on potential jurors. When selecting the jurors, the presiding judge listed all the criteria that jury candidates had to satisfy, including that a candidate who had expressed personal views concerning the pending criminal case or whose personal experience might render his or her participation in the trial unfair could not serve on the jury. The trial judge subsequently approved the withdrawal of one of the candidates in view of her declaration that she could not be objective on account of having been exposed to media coverage of the case. Eventually, fifteen jurors (twelve jurors and three substitutes) were selected.

30. The jury trial started on 2 December and opened with the presiding judge reading out the charges against the applicant and the legal basis thereof. Then she addressed the jury, providing them with a short description of the relevant factual circumstances (as narrated by the prosecution), followed by instructions concerning, *inter alia*, the elements of the offences in question, the principle of the presumption of innocence, and the rules regarding assessment of evidence. In respect of the latter issue, the presiding judge explained that not everything that was going to be discussed during the trial constituted evidence; that the parties' opening statements and concluding arguments, as well as the questions they would put to witnesses, did not constitute evidence; and that anything the jurors might hear outside the courtroom was to be ignored, including information coming from the parties to the proceedings. At the request of the defence, the presiding judge also instructed the jurors on the meaning of hearsay evidence. The jurors were then individually given a copy of written instructions. The presiding judge also warned the jury not to discuss the case outside of the jury room.

31. During the second trial the applicant reiterated his request, with reference to, *inter alia*, the judgment of the Constitutional Court of Georgia of 22 January 2015 (see paragraph 48 below), that the following items of prosecution evidence be declared inadmissible: O.K.'s statement and certain parts of the statements of N.A., G.A., M.Ts., M.K., R.K. and N.D. as being hearsay evidence; and various statements of V.B. given at the pre-trial investigation and trial stages, as being contradictory. In connection with the evidence given by V.B., the presiding judge concluded that, in the absence of manifest contradiction between his statements (Article 75 § 2 of the CCP), it was within the competence of the jury to decide on the credibility and reliability of the witness and to assess the strength of his evidence. As regards the statements of O.K., N.A., G.A., M.Ts., M.K., R.K. and N.D., the presiding judge noted that along with certain hearsay evidence, the above-mentioned witnesses had provided other important factual information relevant to establishing the circumstances of the case. Accordingly, it was within the competence of the jury to hear and examine their evidence. She stressed in that connection that in line with the requirements of Article 231 of the CCP (instructions to the jury by the presiding judge), she was expected to give

them explicit and direct instructions concerning the nature of hearsay evidence and the manner in which it should be assessed.

32. During the second trial the applicant had also complained of a breach of the presumption of his innocence on account of the statements made by high-ranking public officials concerning the outcome of the first jury trial, and of a breach of the secrecy of jury deliberations and voting during the first trial. His request to admit into evidence the impugned statements, as well as information about the criminal investigation that had been initiated, was rejected by the presiding judge.

33. During the trial the prosecution informed the presiding judge that on 10 May 2015 witness T.A. had left Georgia to go to the United States. The prosecution lodged an application requesting on the basis of Article 243 of the CCP (cited in paragraph 47 below) that a written statement and a video-recorded statement of T.A. be admitted into evidence. The prosecution explained that, because of the time difference, she could not participate in the trial remotely and, therefore, she had decided to record her interview with a notary present. The presiding judge dismissed an application by the defence for the statement and the video recording not to be admitted into evidence. At the same time, she gave the following directions to the jury:

“For the attention of the jury, I would like to provide an explanation about what we have just heard. We have just examined and listened to a recording that has been certified by notarial deed. However, this is not a testimony, and we should not treat it as such, since a testimony is given by a witness under oath. ... this is merely a statement, as it was not given under oath ... you should treat this document as one of the items containing information – as a piece of evidence concerning the case, but not as a testimony. In the event that the court decides to read out the testimony [which T.A. gave before the investigative authorities], you will have the opportunity to compare, analyse and assess the credibility of T.A.’s video statement *vis-à-vis* her testimony.”

34. In her video-recorded statement, T.A. confirmed the accuracy of her initial statement given during the pre-trial investigation stage. She stated that at around 9.30 p.m. on the day of the murder, the applicant had called her from an unknown mobile telephone number and asked her to go and meet him at his grandmother’s apartment. When she got there, she noticed that he had changed out of the clothes he had been wearing earlier during the day – a short-sleeved, light-coloured buttoned shirt and denim shorts. He said that he had been experiencing some difficulties and had to leave the city. T.A. recalled that in July 2014 the applicant and L.M. had had a conflict. She also noted that the applicant had an explosive character and that she had tried to persuade him to get psychiatric help. She stated that his behaviour had been getting out of control for no reason and, as a result, their relationship had been suffering.

35. All the remaining prosecution and defence witnesses, thirty-four altogether, were heard by the jury during the retrial of the applicant’s case. In particular, V.B. reiterated his statements given at the pre-trial investigation stage that he had been with the applicant during the events and had seen him

shoot the victim (see paragraph 12 above), while N.A., G.A., M.Ts., M.K. and R.K. reiterated their version of how the applicant had travelled to the Tskhinvali region. The jurors were also presented with various forensic reports, including alternative expert reports prepared by the defence, and dozens of procedural documents concerning various investigative measures. The applicant chose to remain silent. At the same time, as it appears from the case material, throughout the trial the defence referred several times to the applicant's possible alibi without providing its details and failing to identify potential alibi witnesses.

36. After the final submissions of the prosecution and the defence had been heard, the jury was called to answer the following "yes or no" questions put to it by the presiding judge:

- 1) Did the applicant commit the following offences or not?
  - unlawful acquisition and possession of a firearm (an offence under Article 236 § 1 of the Criminal Code of Georgia);
  - unlawful carrying of a firearm (an offence under Article 236 § 2 of the Criminal Code of Georgia);
- 2) Did the defendant commit or not commit intentional murder as a repeat offender (an offence under Article 109 § 3 (e) of the Criminal Code)?

37. On 25 December 2015 the second jury found the applicant guilty of aggravated murder (an offence under Article 109 § 3 (e) of the Criminal Code) by ten votes to two. At the same time, they found him not guilty of unlawful acquisition and possession of a firearm (an offence under Article 236 § 1 of the Criminal Code) by nine votes to three, and not guilty of unlawful carrying of a firearm (an offence under Article 236 § 2 of the Criminal Code) by eight votes to four.

38. On 26 December 2015 the Tbilisi City Court convicted the applicant on the basis of the jury's verdict and sentenced him to twenty years' imprisonment. The sentence was passed in the absence of the jury, as requested by the defence.

## VI. APPEAL PROCEEDINGS

39. On 25 January 2016 the applicant appealed on points of law against the guilty verdict. The applicant argued that he was unable to understand the verdict on account of, *inter alia*, the lack of reasons and the allegedly mutually exclusive findings in respect of his guilt. He further disputed the admission into evidence of the statements given by N.A., G.A., M.Ts., R.K., M.K., N.D. and O.K., asserting that they had constituted hearsay evidence. He submitted that with that procedural decision, the presiding judge had acted in breach of Article 266 § 2 (a) and (b) of the CCP and the relevant judgment of the Constitutional Court. He also asserted that the admission into evidence of the video statement of an absent witness, T.A., had violated his right to equality of arms, as he had not been allowed to cross-examine her. Among

many other allegations, the applicant maintained that the statements of various public officials, including the then Prime Minister and the Minister of Justice, had unduly influenced the jury and violated the presumption of his innocence and that the pre-deliberation jury instructions had been unlawful, as the judge had told the jurors not to be influenced by emotion or sympathy for the applicant.

40. Throughout the following months the applicant made several written submissions to the court to supplement his appeal. In one of those submissions, he alleged that it was V.B. who had committed the murder.

41. On 21 July 2016 the Tbilisi Court of Appeal, sitting as a panel of three judges, dismissed the applicant's appeal on points of law without holding an oral hearing. By way of introduction, the Tbilisi Court of Appeal noted that it had been the applicant's choice to have his case decided by a jury; he had been informed in detail about the legal implications of his decision during the pre-trial conference on 15 December 2014, including the fact that the jury's verdict would contain no reasons. The appeal court further held that the presiding judge had not breached any procedural rules concerning the conduct of jury trials, and that the equality of arms between the parties had been ensured. With regard to the admission and assessment of the evidence, it held as follows:

"... As regards the defence's allegation that part of the evidence ... did not prove any circumstances and that certain statements were, *inter alia*, contradictory, repeatedly changed, not accurate, and at variance with other evidence, the foregoing does not constitute grounds for declaring the evidence inadmissible. At the outset, the panel would note that the circumstances noted above represent an opinion of the defence and [are subject in their entirety] to the rules on the assessment of evidence. It should be noted that the defence availed itself of the right to make an opening statement and closing argument. In addition, the rules on the assessment of evidence were explained to the jury in a rather detailed manner.

... The jurors were also provided with detailed explanations concerning indirect (hearsay) evidence ... Accordingly, the fact that the presiding judge did not reject as inadmissible at the very first hearing the witness statements obtained during the investigation, and other evidence at the subsequent hearings, did not constitute an unlawful decision."

42. In connection with the video-recorded statement of T.A., the Tbilisi Court of Appeal held:

"As regards the showing of the video of the statement of the witness [T.A.], recorded before a notary, the panel notes that a document constitutes evidence if it contains information essential for the establishment of the factual or legal circumstances of a criminal case. A document is any source in which information is recorded in the form of words and signs and/or photo, film, sound, or other forms of recording, or through other technical means. In accordance with the first paragraph of Article 78 of the [Criminal] Code of Procedure, a document shall have an evidentiary value, at the request of a party, if its origin is known and it is authentic. A document or other physical evidence is admissible in evidence if a party can examine as a witness the person who obtained/created and/or kept the evidence ..."

The court further held that the video-recorded statement of 15 December 2015 had been admitted into evidence on the basis of Article 239 of the CCP and that the parties had had adequate means at their disposal to challenge its relevance, admissibility and accuracy.

43. The Tbilisi Court of Appeal further noted that in line with the requirements of Article 231 of the CCP, the defence had been given a written copy of the jury instructions prepared by the presiding judge and had been invited to make comments or to request any changes to the instructions; the defence had availed itself of that opportunity and most of its comments had been taken into consideration. In accordance with Article 231 § 2 of the CCP, the defence was thus prevented from complaining in its appeal on points of law that the jury instructions had been unfair and unlawful.

44. As regards the allegations of the breach of the applicant’s presumption of innocence, the appeal court held:

“As to the allegations of the applicant concerning the breach of the presumption of his innocence by public officials, [their] groundless accusations and other related circumstances, the panel cannot entertain those, because the appeal on points of law is examined having regard to the concrete grounds referred to in Article 266 of the Code of Criminal Procedure of Georgia.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### DOMESTIC LAW AND PRACTICE

#### A. Trial by jury

45. The nature and workings of the jury trial system introduced in Georgia on 1 October 2010 were described in *Kikabidze v. Georgia* (no. 57642/12, §§ 21-24, 16 November 2021) and *Rusishvili v. Georgia* (no. 15269/13, §§ 27-30, 30 June 2022). The relevant Articles of the Code of Criminal Procedure (“the CCP”) concerning jury trial proceedings, as in force at the material time, read as follows:

#### **Article 219. Pre-trial conference**

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

#### **Article 226. Jury trial**

“1. If the charges involved attract a custodial sentence, the case shall be heard by a jury, unless the defendant requests that the case be examined without the participation of a jury. If, in view of the seriousness and nature of the offence, a threat could be posed

to the life or health of jurors or if their inviolability could otherwise be compromised, or if the conduct of a jury trial substantially breaches the right to an objective and fair trial, the court dealing with the case shall, at the request of a party to the proceedings and with the consent of the President of the Supreme Court of Georgia, decide to hear the case without a jury.

2. The composition of a jury trial shall guarantee its independence and impartiality ...”

**Article 231. Instructions to the jury by the presiding judge**

“1. The presiding judge shall instruct the jury on the applicable law at the opening of the trial and before the jury retires to the deliberation room. The instructions given by the presiding judge shall not contradict the Constitution of Georgia, this Code or the international obligations undertaken by Georgia. The instructions shall also be given to the jury in writing.

2. These instructions shall also be given to the parties in writing a reasonable time in advance. The parties may request the presiding judge to make amendments or additions to the instructions. If the parties fail to avail themselves of this right before the jury retires to the deliberation room, they shall be prohibited from raising a complaint in any appeal on points of law concerning the fairness and lawfulness of the instructions.

3. Before the jury retires to the deliberation room, the presiding judge may briefly instruct the jurors on the rules for assessing the evidence examined at the trial. He or she shall give these instructions in accordance with the rule set out in paragraph 2 of this Article. When instructing the jury, the presiding judge shall not express in any way his or her personal position with respect to the issues which fall within the competence of the jury.

4. The presiding judge shall instruct the jury on the following:

- (a) the content of the charges and their legal basis;
- (b) the main rules concerning the evaluation of evidence;
- (c) the concept of the presumption of innocence and the principle that any doubt shall require a decision in favour of the defendant;
- (d) that a guilty verdict shall be based on the law as explained by the presiding judge and the body of incontrovertible evidence examined during the trial;
- (e) that the jurors have the right to make notes and use them during the trial;
- (f) that the verdict shall be based only on the evidence presented at the trial, that no evidence shall be taken into consideration on the instruction of others, and that the verdict shall not be based on assumptions or on inadmissible evidence;
- (g) the rule on returning a verdict in respect of each count of the charges;
- (h) that the jury shall first vote on the verdict of not guilty on all charges. If that verdict is not reached, then the jury shall vote on the verdict of guilty in respect of each of the charges in order of ascending gravity;
- (i) that the jury shall sign only one verdict form in respect of each of the charges – either ‘not guilty’ or ‘guilty’.

5. The presiding judge shall, at the end of the instructions, remind the jurors that they are under oath.

6. After hearing the presiding judge's instructions, the jury may address the latter with additional questions in writing. Additional instructions shall be given in accordance with the procedure provided in the first paragraph of this Article.

7. The presiding judge shall be obliged, at the request of a party, to explain to the jury that the defendant may have committed a less serious offence, the constituent elements of which form the basis of the offence with which the defendant is charged. In such a circumstance, the jury shall be provided with an additional form on which to declare a 'not guilty' verdict as provided for in paragraph 4 (i) of this Article."

#### **Article 235. Rights of the jury**

"...

5. The judge shall inform jurors about their right to make notes during the trial. Before the jury retires to the deliberation room, the jurors shall be given the transcript of the hearing, except for any parts which concern inadmissible evidence."

#### **Article 261. Verdict of the jury**

"1. The jury shall examine the facts of a case and make a decision on the basis of those facts. The jury's decisions concerning the facts shall be taken on the basis of the decisions and instructions given by the presiding judge in relation to the legal issues.

2. The jury shall decide on the issue of innocence or guilt with respect to each count of the charges.

...

7. The presiding judge may overturn a guilty verdict returned by a jury and set a date for the selection of a new jury if the verdict manifestly contradicts the body of evidence and is groundless and the overturning of the guilty verdict is the sole avenue for the exercise of fair justice. The presiding judge shall not be authorised to exercise the [above-mentioned] right ... simply because he or she disagrees with the assessment of the credibility of a witness statement or with the assessment of the weight of any evidence."

#### **Article 266. Appeal against a decision given at a jury trial**

"1. A not guilty verdict in a jury trial shall be final and not subject to appeal.

2. A party may appeal once on points of law to a 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 an application by a party and that decision substantially violated the adversarial principle;
- (c) the presiding judge made a substantial mistake when instructing the jury before it retired to the deliberation room;
- (d) the presiding judge failed to base his or her decision either in part or in full on the verdict returned by the jury;
- (e) the presiding judge based his or her decision on a verdict which was reached in violation of the requirements provided in this Code.
- (f) the sentence is unlawful or/and manifestly unsubstantiated; or



(g) the presiding judge did not follow the jury's recommendation 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 retrial ...”

46. The relevant Articles of the Criminal Code, as in force at the material time, read as follows:

**Article 364 – Obstructing legal proceedings or investigation**

“...

21. Unlawful interference with the functioning of a jury (or a prospective jury member) in any manner in order to influence the legal proceedings shall be punishable by a fine or by up to two years' imprisonment.”

**Article 367(1) – Breach of secrecy of jury deliberations and voting**

“A breach of secrecy of jury deliberations and voting shall be punishable by a fine or by two years' imprisonment.”

**B. Admissibility of evidence**

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

**Article 13. Evidence**

“1. Evidence has no predetermined probative value.

2. ... Conviction shall be based on a body of consistent, clear and convincing evidence which establishes, beyond reasonable doubt, the guilt of a person.”

**Article 14. Direct and oral examination of evidence**

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

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

**Article 72. Inadmissible evidence**

“1. Evidence obtained in substantial violation of this Code, as well as any lawfully obtained evidence based on such evidence, if such evidence worsens the legal status of a defendant, shall be inadmissible and shall have no legal force.

...

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

...

5. The court shall decide on the issue of the inadmissibility of evidence. [Its] decision shall be reasoned.”

**Article 75. Witness statement**

“1. A witness statement shall not serve as evidence if the witness is unable to indicate the source of the information provided ...

2. If the information provided by a person when interviewed and his or her [witness] statement, or his or her [witness] statements [between themselves], are manifestly contradictory, a party may lodge an application requesting that the judge dismiss the statement(s) as inadmissible evidence.”

**Article 76. Hearsay witness statement**

“1. Hearsay is the restatement by a witness of another person’s statement.

2. Hearsay shall be admissible evidence only if the witness giving the evidence specifies the source of the information and if that source can be identified and the information verified.

3. Hearsay may be admitted in evidence at the trial on the merits if it is corroborated by other evidence that is not hearsay.”

**Article 169. Charging of a person**

“1. The body of evidence gathered during an investigation shall serve as a basis for bringing charges against a person if it is sufficient to show a reasonable suspicion that that person has committed an offence.”

**Article 219. Pre-trial conference**

“...

4. The pre-trial conference judge shall:

(a) examine the parties’ applications in respect of the admissibility of evidence ...

(e) decide on the issue of referring the case for examination on the merits ...”

**Article 239. Lodging applications and ruling on them**

“... 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 its reasons for not having presented it before the main hearing and shall rule on the admissibility or otherwise of the evidence accordingly.

... 5. A request lodged during a trial concerning the obtaining of new evidence shall be allowed if it is established that it was objectively impossible either to obtain the impugned evidence or lodge a relevant application in accordance with the procedure provided for by the Code. If the request is allowed, the evidence shall be obtained in a manner in accordance with the provisions of this Code ...”

**Article 243 – Examination of a [deposited] interview record of a witness and distance examination of a witness**

“1. The reading out in public at a court hearing of a statement given by a witness during the [pre-trial] investigation, and also the playing of an audio or video recording of such an interview, shall be allowed if the witness has died, is outside Georgia, his or her location is unknown or all reasonable means of bringing him or her before the court have been exhausted and the examination was conducted in the manner prescribed by this Code.”

**C. Judgment of the Constitutional Court (Plenary) of 22 January 2015 in the case of *Zurab Mikadze v. the Parliament of Georgia*, no. 1/1/548**

48. In its judgment of 22 January 2015, the Constitutional Court of Georgia held that, while the Code of Criminal Procedure, as in force at the material time, allowed for the admission of hearsay evidence to a certain extent, it did not contain adequate safeguards to ensure the fairness of a trial. The relevant parts of the judgment read as follows:

“28. The Code of Criminal Procedure lays down a rule which, on the one hand, treats a hearsay witness statement (if an identifiable source [of information] is indicated) as admissible for the purpose of bringing charges or reaching a conviction, and [on the other hand] provides for an additional precondition at the stage of the examination on the merits: that the hearsay witness statement be corroborated by other evidence which is not in itself hearsay. At the same time, the provisions regulating the admissibility of evidence do not contain any additional ... rules as to how a hearsay statement may be used when bringing charges or reaching a conviction. Accordingly, it is possible for [a person] to be charged or convicted on the basis of evidence which does not solely consist of a hearsay statement, but which is primarily hearsay in essence ...

29. A court’s admission into evidence of statements which are based on information provided by others entails many risks ...

52. Hearsay witness statements are, in general, less reliable as evidence. Allowing such evidence at a trial entails the risk of misconception and, therefore, it should only be admitted in exceptional circumstances strictly prescribed by law and should be accompanied by adequate constitutional safeguards, [which do] not exist within the framework of the Code of Criminal Procedure as it currently stands.

53. In view of all the foregoing, the Constitutional Court considers that the normative substance of Article 13 § 2 and Article 169 § 1 of the Code of Criminal Procedure, in so far as it allows a decision concerning the criminal liability of a person to be taken on the basis of a hearsay statement ... is unconstitutional.”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

49. Having regard to the related subject matter of the applications, which concern the same criminal proceedings and the same applicant, the Court finds it appropriate to examine them jointly in a single judgment.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (IMPARTIALITY OF THE JURY)

50. The applicant complained that his trial had not been fair because the jury which had reached a guilty verdict in his case had not been impartial. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

“1. 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

51. The Court notes that the above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

52. The applicant submitted that the Prime Minister, the Minister of Justice and the Deputy Chief Prosecutor, through their explicit criticism of the jury trial system in general and the not guilty verdict returned by the first jury in particular, had prejudiced the impartiality of the second jury. This, combined with multiple instances of breaches of the presumption of his innocence, which had occurred against the background of the virulent media campaign concerning his trial and the allegations of a breach of secrecy of deliberations in the context of the first jury trial, had irretrievably undermined the overall fairness of the second jury trial.

53. The Government submitted that the relevant domestic legislative framework in Georgia was sufficiently efficient to minimise any possible bias on the part of the jury. During the second jury selection process, the presiding judge had explained to each candidate that the applicant was to be considered innocent until proven guilty and that the burden of proof rested with the prosecution, that the jury members had to ignore everything they had heard or seen outside the courtroom concerning the case, and that their decision had to be based exclusively on the evidence heard in the courtroom. The presiding judge had approved the withdrawal of one of the candidates in view of her declaration that she could not be objective on account of having been exposed to media coverage of the case. The presiding judge had closed all jury selection hearings to the public in order to protect the potential jurors from any external influence and had issued a press statement urging the media and the parties to refrain from making any statements that could undermine the administration of justice in the present case. The Government also stressed

that the prosecution had asked all the jury candidates individually whether they had seen or read any news concerning the applicant's case and, if so, whether they could have somehow been influenced in that respect. All the selected jurors had taken an oath to perform their duties with honesty and impartiality.

54. As regards the allegations of a breach of secrecy of the first jury's deliberations and of unlawful interference with its functioning, the Government noted that criminal proceedings in respect of that matter, initiated on 9 June 2015, were still ongoing. With reference to the interviews conducted by the prosecution authorities with all the members of the first jury, the Government maintained that no instance of outside influence, coercion or otherwise tampering with the jury deliberations had been established.

55. As to the negative media campaign and the individual statements of high-ranking public officials, the Government noted that conduct of that kind was not as such attributable to the authorities. They further submitted that the presiding judge had instructed the jurors to ignore everything they had seen or heard in connection with the case outside the courtroom. She had also instructed them about the meaning of the principle of presumption of innocence.

## 2. *The Court's assessment*

### (a) **General principles**

56. 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 *Ilenseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 287, 4 December 2018).

57. 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).

58. 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).

59. 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).

60. 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).

61. 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* 1998-VIII; *Micallef*, cited above, § 98; and *Morice*, cited above, § 78).

62. 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).

63. The above principles apply equally to jurors as to professional and lay judges (see, among many other authorities, *Hanif and Khan v. the United Kingdom*, nos. 52999/08 and 61779/08, 20 December 2011; *Mustafa (Abu Hamza) v. the United Kingdom* (dec.), no. 31411/07, 18 January 2011; and *Ekeberg and Others v. Norway*, nos. 11106/04 and 4 others, § 31, 31 July 2007, with further references). Not every irregularity in a jury trial will result in that trial being unfair. For instance, in *Hanif and Khan* (cited above) the Court recognised that, while the need to ensure a fair trial might, in certain circumstances, require a judge to discharge an individual juror or an entire jury, it should also be acknowledged that this might not always be the only means to achieve this aim. In other circumstances, the presence of additional safeguards will be sufficient.

64. One such safeguard is the trial judge's summing-up: it is reasonable to assume that a jury will follow the directions given by the judge in the absence of any evidence suggesting the contrary (see *Abdulla Ali v. the United Kingdom*, no. 30971/12, § 89, 30 June 2015, with further references, and, *mutatis mutandis*, *Firkins v. the United Kingdom* (dec.), no. 33235/09, 4 October 2011). It was for this reason that in *Mustafa (Abu Hamza)* the Court considered it appropriate to reiterate that it required cogent evidence that concerns as to the impartiality of jurors were objectively justified before any breach of Article 6 § 1 could be found (see *Mustafa (Abu Hamza)*, cited above, § 39, with further references).

65. It is also appropriate to reiterate that, when criticism is made by an applicant of the manner in which a trial judge handled a jury trial, the Court will attach particular weight to the assessment of the national appellate court, which, because of its knowledge and experience of the conduct of jury trials, is especially well placed to determine whether a trial judge's handling of a trial resulted in unfairness (see *C.G. v. the United Kingdom*, no. 43373/98, § 36, 19 December 2001, and *Betson and Cockram v. the United Kingdom* (dec.), no. 12710/04, 8 November 2005).

66. While the trial judge's directions to the jury and other such safeguards in the trial process are central to its assessment in the context of jury cases, the Court has also looked to other indications of objective impartiality, such as the length of time the jury deliberated in the case (see *Pullicino v. Malta* (dec.), no. 45441/99, 15 June 2000) and whether it returned rationally coherent verdicts on the various charges faced by the applicant and, where relevant, his co-defendants (see *Mustafa (Abu Hamza)*, § 38, and *Abdulla Ali*, § 98, both cited above).

67. Lastly, where misgivings concerning the jury's impartiality stem from public statements and publications to which the jurors might have been exposed, the Court has stated that there is general recognition of the fact that the courts cannot operate in a vacuum. Where prejudicial public comments that may potentially affect the fairness of the trial have been made, domestic courts need to be attentive. The direction which the trial judge gives to the jury must be considered as a safeguard against the possible intrusion of extraneous and biased reporting into the jury's own assessment of the issues raised by the trial (see *Pulicino*, cited above).

**(b) Application of the above principles to the circumstances of the present case**

68. The Court notes that the applicant relied on three factors which, taken cumulatively, in his view had had an adverse impact on the impartiality of the second jury: firstly, prior to the trial, various officials had made a series of public statements in violation of the presumption of his innocence; secondly, some of those statements made by high-ranking government officials had contained inappropriate criticism of the first jury and the jury system in general; and thirdly, the secrecy of the first jury's deliberations had allegedly been breached and no adequate investigation had been conducted in that regard.

69. The applicant did not argue as such that there had been personal bias or prejudice on the part of the second jury or any individual member of it. The personal impartiality of a jury must be presumed until there is proof to the contrary (see the relevant general principles cited in paragraph 57 above). There is no such proof in the present case. The Court finds that the test for the subjective impartiality of the jury has therefore been met.

70. It remains for the Court to consider the objective test: whether there were sufficient guarantees to exclude any legitimate doubts as to the jury's impartiality. The Court notes in this connection that it has previously acknowledged, in cases concerning the fairness of proceedings, that public statements made by high-ranking politicians might, in view of their content and the manner in which they were made, be seen as attempts to exert undue influence on judges and, therefore, constitute an element to be examined in determining whether the right to an "independent and impartial tribunal" within the meaning of Article 6 § 1 of the Convention has been respected in the circumstances of the respective case (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 80, ECHR 2002-VII; *Kinský v. the Czech Republic*, no. 42856/06, §§ 94-95, 9 February 2012; *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 162, 1 July 2014; *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, §§ 146-48, 21 January 2016; and *Čivinskaitė v. Lithuania*, no. 21218/12, § 119, 15 September 2020). Also, the fact that criminal proceedings have been accompanied by a virulent press campaign could, in certain circumstances, prejudice the fairness of the trial by influencing public opinion and, consequently, the jurors called upon to



decide on the guilt of a defendant (see *Rywin v. Poland*, nos. 6091/06 and 2 others, § 232, 18 February 2016, with further references). The Court has also held that what may be at stake in some cases is not actual proof of influence or pressure, but the importance of the appearance of impartiality (see, *mutatis mutandis*, *Kinský*, cited above, § 98). It will accordingly examine whether such a risk to the appearance of impartiality existed in the present case and whether it was averted or at least minimised by various procedural safeguards put in place (see *Mustafa (Abu Hamza)*, cited above, §§ 39-40; see also *Danilov v. Russia*, no. 88/05, § 95, 1 December 2020, with further references).

71. The Court notes that the first jury trial was concluded on 5 June 2015 and was followed by extensive media coverage of the applicant's trial containing criticism voiced against the jury trial system in general and the applicant's jury trial in particular; this included statements by the Minister of Justice, the Prime Minister and the Deputy Chief Prosecutor of Georgia, made on 5, 7, and 8 June 2015 respectively (see paragraphs 20-23 and 25 above). The Court observes that the media interest in the case was high, not least because the jury had failed to reach a verdict. While various State officials discussed the applicant's case in the media, it cannot be said that the coverage was prompted by the authorities, it was rather their reaction to the media interest in the case (see *Beggs v. the United Kingdom* (dec.), no. 15499/10, § 124, 16 October 2012); nor did the applicant allege otherwise.

72. As to the concrete statements, the Government did not dispute that the then Prime Minister, the then Minister of Justice and the then Deputy Chief Prosecutor had made negative statements about the system of jury trials. The officials in question voiced their concerns not in the framework of a general public debate on jury trials, but in the context of their disappointment with the failure of the first jury to reach a verdict in the applicant's case (see paragraphs 20-23 and 25 above). While it is understandable that the fact that a second jury trial had to be organised could give, as a consequence, rise to a more general discussion on the drawbacks of the system of jury trials, it is noteworthy that the officials in question did not limit their comments to such questions but clearly expressed their preference for a guilty verdict. Noting the very short period of time within which the second jury selection started on 10 June 2015, and the fact that, unlike professional judges, jurors do not have judicial training and experience and may therefore be seen, in general, as being more vulnerable to outside influence (see *Craxi v. Italy* (no. 1), no. 34896/97, § 104, 5 December 2002; and *Paulikas v. Lithuania*, no. 57435/09, § 62, 24 January 2017), the Court considers that the impugned statements by the highest representatives of the executive authority could have made the jurors believe that their actions in the applicant's trial were being closely monitored and assessed. This was particularly worrying against the background of the allegations of a breach of secrecy of the deliberations in the first jury trial. The fact that no swift investigation was conducted by

the competent authorities into the above-mentioned allegations could have potentially affected the serenity and independence with which the jurors during the second trial needed to approach their task.

73. As to whether sufficient counterbalancing factors were put in place to exclude any objectively justified or legitimate doubts as to the impartiality of the jury (see *Gregory v. the United Kingdom*, 25 February 1997, § 45, *Reports* 1997-I) and to ensure that the proceedings as a whole were fair (see *Paulikas*, cited above, § 58, and *Mustafa (Abu Hamza)*, cited above, §§ 39-40), the Court notes that on 9 June 2015, the day before the selection of the second jury started, the Tbilisi City Court had issued a statement asking the media and the parties to the proceedings to abstain from making any statements or comments in connection with the applicant's trial (see paragraph 28 above). Furthermore, all jury selection hearings had been closed to the parties (see paragraph 29 above). During the jury selection process potential jurors were explicitly asked whether they had heard or read anything about the case, and one such person had been dismissed from the jury specifically on that ground (see paragraphs 29 and 53 above).

74. During the actual trial the presiding judge did not explicitly address the issue of the interplay between the statements of individual high-ranking public officials and the applicant's right to be presumed innocent or his right to a fair and impartial court in general. The jurors were warned, however, that they were required to decide the case on the evidence presented in court only and to disregard any extraneous material which had come to their attention (see paragraph 30 above). There is nothing in the circumstances of the case to suggest that the jury could not be relied upon to follow the judge's instructions to try the case only on the evidence heard in court. The Court further notes that the defence was invited, in line with Article 231 § 2 of the CCP, to request amendments or additions to the instructions, and it did avail itself of that opportunity, failing, however, to bring the issue of potential outside influence on the jury to the attention of the court (see paragraph 21 above). Accordingly, this was an important procedural safeguard available to the applicant, which he failed to duly employ (see in this connection *Rusishvili v. Georgia*, no. 15269/13, § 67, 30 June 2022).

75. To sum up, the Court's assessment of the facts leads it to conclude that in the instant case, there is insufficient evidence to establish that the second jury, in reaching the verdict on the applicant's guilt, was influenced by the statements of the individual high-ranking public officials. In circumstances such as those in issue, the Court considers that the judge's handling of the risks was sufficient to dispel any objectively held fears or misgivings about the impartiality of the jury. The Court accordingly finds no violation of Article 6 § 1 of the Convention on account of the lack of impartiality of the jury.

### III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION (ADMISSIBILITY OF EVIDENCE)

76. The applicant complained of a breach of the principles of the adversarial nature of proceedings and equality of arms on account of the admission into evidence of a video statement of an absent witness and a considerable body of indirect evidence. He relied on Article 6 §§ 1 and 3 (d) of the Convention, the relevant parts of which read 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:

(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**

77. The Court notes that the above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### **B. Merits**

##### *1. The parties' submissions*

78. The applicant maintained that the presiding judge had accepted the reason given by the prosecution for T.A.'s non-attendance at the trial – that she had left the country – without considering alternative arrangements for her examination. He noted that, despite the time difference between the two countries, T.A. had arranged for the recording of her statement with a notary in Georgia; hence the same could have been done for the purposes of her examination in the course of the jury trial. In view of the resulting lack of opportunity for the applicant to cross-examine T.A., the admission into evidence of her pre-trial interview and statement recorded before the notary, both given without an oath, had been unjustified. He also reiterated his complaint about the abundance of hearsay evidence at his trial and about the jury being misguided about relevant factual circumstances as a result.

79. The Government submitted, with reference to Article 243 of the CCP, as in force at the material time, that in view of T.A.'s travel to the United States, it had been lawful to show her video statement to the jurors. According to the Government, the prosecution authorities had repeatedly tried to arrange for her to be examined remotely; however, this had turned out to be

impossible on account of her unavailability. Furthermore, her statement had been of a merely corroborative nature, as she had not directly incriminated the applicant in the murder. The information provided by her had been relevant only as regards the applicant's plan to leave Tbilisi and his changing his clothes on the day of the murder. T.A. had also spoken about the alleged conflict between the applicant and L.M.; however, she had confirmed that she did not know any of the details. Hence, her evidence had neither been the "sole" nor the "decisive" piece of evidence against the applicant. The Government also asserted that when examining the admissibility of the video recording, the presiding judge had addressed the issue of its authenticity and reliability, and that the actual recording of T.A.'s statement had been shown to the jury, allowing them to observe her demeanour while giving the statement. All of this had had the cumulative effect of counterbalancing the applicant's lack of opportunity to examine T.A. in court. As to the so-called hearsay evidence, the Government, with reference to the reasoning of the presiding judge and the appeal court, argued that the statements in question had been directly relevant to the examination of the factual circumstances of the criminal case, and that in any event they had been corroborated by other direct and strong incriminating evidence.

## 2. *The Court's assessment*

### (a) **General principles**

80. The Court reiterates that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that Article which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see *Schatschaschwili v. Germany* [GC], no. 9154/10, § 101, ECHR 2015, and *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, with further references). In making this assessment the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interests of the public and the victim(s) that crime is properly prosecuted (see *Schatschaschwili*, cited above, §101, and *Gäfgen v. Germany* [GC], no. 22978/05, § 175, ECHR 2010) and, where necessary, to the rights of witnesses (see, among many authorities, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011). It is also notable in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court's only concern is to examine whether the proceedings have been conducted fairly (see *Gäfgen*, cited above, § 162, and the references cited therein).

81. In *Al-Khawaja and Tahery* (cited above, §§ 119-47) the Grand Chamber clarified the principles to be applied when a witness does not attend

a public trial. These principles may be summarised as follows (see *Seton v. the United Kingdom*, no. 55287/10, § 58, 31 March 2016):

- (i) the Court should first examine the preliminary question of whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance;
- (ii) typical reasons for non-attendance are, as in *Al-Khawaja and Tahery* (cited above), the death of the witness or the fear of retaliation. There are, however, other legitimate reasons why a witness may not attend trial;
- (iii) when a witness has not been examined at any prior stage of the proceedings, allowing the admission of a witness statement in lieu of live evidence at trial must be a measure of last resort;
- (iv) the admission as evidence of statements of absent witnesses results in a potential disadvantage for the defendant, who, in principle, in a criminal trial should have an effective opportunity to challenge the evidence against him or her. In particular, he or she should be able to test the truthfulness and reliability of the evidence given by the witnesses, by having them orally examined in his or her presence, either at the time the witness was making the statement or at some later stage of the proceedings;
- (v) according to the “sole or decisive” rule, if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom the accused is unable to question at any stage of the proceedings, his or her defence rights are unduly restricted;
- (vi) in this context, the word “decisive” should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case. Where the untested evidence of a witness is supported by other corroborative evidence, the assessment of whether it is decisive will depend on the strength of the supportive evidence: the stronger the other incriminating evidence, the less likely that the evidence of the absent witness will be treated as decisive;
- (vii) however, as Article 6 § 3 of the Convention should be interpreted in the context of an overall examination of the fairness of the proceedings, the “sole or decisive” rule should not be applied in an inflexible manner;
- (viii) in particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. At the same time, where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. Because of the dangers of the admission

of such evidence, it would constitute a very important factor to balance in the scales and one which would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance to the case.

82. Those principles have been further clarified in *Schatschaschwili* (cited above, §§ 111-31), in which the Grand Chamber confirmed that the absence of good reason for the non-attendance of a witness could not, of itself, be conclusive of the lack of fairness of a trial, although it remained a very important factor to be weighed in the balance when assessing the overall fairness, and one which might tip the balance in favour of finding a breach of Article 6 §§ 1 and 3 (d). Furthermore, given that its concern was to ascertain whether the proceedings as a whole were fair, the Court should not only review the existence of sufficient counterbalancing factors in cases where the evidence of the absent witness was the sole or the decisive basis for the applicant's conviction, but also in cases where it found it unclear whether the evidence in question was sole or decisive but nevertheless was satisfied that it carried significant weight and its admission might have handicapped the defence. The extent of the counterbalancing factors necessary in order for a trial to be considered fair would depend on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair.

83. In *Schatschaschwili* (cited above, §§ 125-31), the Court identified some of the counterbalancing factors to compensate for the handicaps under which the defence laboured as a result of the admission of untested witness evidence at the trial. These counterbalancing factors must permit a fair and proper assessment of the reliability of that evidence. They include the following:

- (i) whether the domestic courts approached the untested evidence of an absent witness with caution, having regard to the fact that such evidence carries less weight, and whether they provided detailed reasoning as to why they considered that evidence to be reliable, while having regard also to the other evidence available. Any directions given to the jury by the trial judge regarding the absent witnesses' evidence is another important consideration;
- (ii) the reproduction at the trial of a video recording of the absent witness's questioning at the investigation stage in order to allow the court, prosecution and defence to observe the witness's

demeanour under questioning and to form their own impression of his or her reliability;

- (iii) the availability at trial of corroborative evidence supporting the untested witness statement, such as statements made at trial by persons to whom the absent witness reported the events immediately after their occurrence; further factual evidence, forensic evidence and expert reports; similarity in the description of events by other witnesses, in particular if such witnesses are cross-examined at trial;
- (iv) the possibility for the defence to put its own questions to the witness indirectly, for instance in writing, in the course of the trial;
- (v) the possibility for the applicant or defence counsel to question the witness during the investigation stage. The Court has found in that context that where the investigating authorities had already taken the view at the investigation stage that a witness would not be heard at the trial, it was essential to give the defence an opportunity to have questions put to the victim during the preliminary investigation;
- (vi) the opportunity for the defendant to give his or her own version of the events and to cast doubt on the credibility of the absent witness, pointing out any incoherence or inconsistency with the statements of other witnesses. Where the identity of the witness is known to the defence, the latter is able to identify and investigate any motives the witness may have for lying, and can therefore contest effectively the witness's credibility, albeit to a lesser extent than in a direct confrontation.

**(b) Application of the general principles to the present case**

*(i) Indirect evidence*

84. The Court notes that the presiding judge considered that while the evidence of N.A., G.A., M.Ts., R.K., M.K., N.D. and O.K. contained in part hearsay evidence, it also constituted relevant circumstantial evidence in the applicant's trial. Having regard to the case material, the Court sees no basis to disagree with that assessment. The impugned evidence established important collateral facts, such as, for example, an alleged attempt by the applicant to flee Georgia. The Court has consistently found that domestic courts' reliance on such indirect evidence is not as such incompatible with the Convention (see *Haas v. Germany* (dec.), no. 73047/01, 17 November 2005; *Baybasin v. Germany* (dec.), no. 36892/05, 3 February 2009; and *Baduashvili v. Georgia* (dec.), no. 18720/08, § 74, 29 November 2018). Moreover, the admissibility of evidence is primarily a matter for regulation by national law (see the relevant general principles cited in paragraph 80 above). Having regard to the nature of other evidence available in the case

and to the instructions given by the presiding judge to the jurors in this respect, also noting the position of the Tbilisi Court of Appeal (see paragraph 42 above) and the Constitutional Court on the matter (see paragraph 48 above), the Court is satisfied that in the present case the presiding judge approached the admission of the so-called indirect witnesses' statements into evidence with the required caution. The jurors were informed of the particularities of indirect evidence, including hearsay evidence, and this could have guided them in assessing the value and significance of the information provided by those witnesses.

(ii) *T.A.'s video-recorded statement*

85. As regards the video-recorded statement of T.A., the applicant did not have an opportunity to examine the absent prosecution witness at any stage of the proceedings and the interview was recorded without the applicant and his lawyer being present. The presiding judge seems to have accepted the following reasons for not examining T.A. in court: the witness's inability to be present owing to her being in the United States; and, in view of the time difference between the two countries, the unfeasibility of examining her remotely. The Court notes the Government's argument that Article 243 of the CCP allowed for the inclusion in evidence of a statement of a witness who had left the country (see as cited in paragraph 47 above). However, it has repeatedly noted that departure abroad does not in itself constitute sufficient reason to justify the absence of the witness concerned from the trial (see *Seton*, cited above, § 61; see also *Gabrielyan v. Armenia*, no. 8088/05, § 78, 10 April 2012, and *Al Alo v. Slovakia*, no. 32084/19, §§ 48-52, 10 February 2022). In the present case the witness's whereabouts were known to the authorities. The nine-hour time difference between Georgia and the United States could not *per se* justify the lack of any effort on the part of the presiding judge to organise the remote examination of the witness. The present case was clearly an instance of a witness being available but reluctant, and in the light of the strict approach it has adopted in some previous cases, the Court is not persuaded that "all reasonable efforts" can be said to have been made to secure the examination of T.A. in the presence of a jury (compare *Simon Price v. the United Kingdom*, no. 15602/07, § 119, 15 September 2016). The Court accordingly concludes that there was no good reason justifying the admission into evidence of the absent witness's video-recorded statement. The lack of a good reason for a prosecution witness's absence is a very important factor to be weighed in the balance when assessing the overall fairness of a trial, and one which may tip the balance in favour of finding a breach of Article 6 §§ 1 and 3 (d) (see the general principles cited in paragraph 82 above).

86. Turning to the question as to whether T.A.'s evidence was the sole or decisive evidence in the applicant's conviction or whether it carried significant weight, the Court notes that in the absence of reasons given for the



jury's verdict and of any reasoning in the appeal judgment as to the weight given to T.A.'s recorded statement, it would be difficult for the Court to decide which evidence could be considered to have constituted the decisive basis for the applicant's conviction (see *Pichugin v. Russia*, no. 38623/03, § 196, 23 October 2012).

87. The Court notes, nonetheless, that many witnesses were questioned at the applicant's trial and that one witness, V.B., claimed to have witnessed the incident directly and seen the applicant shooting the victim two or three times (see paragraphs 12 and 35 above). There was also important physical evidence in the case file, such as the applicant's fingerprints in V.B.'s car (see paragraph 17 above), recordings from video surveillance cameras and the applicant's clothes found in his grandmother's apartment on a tip-off from T.A. (see paragraphs 10 and 11 above). The remaining evidence was of a corroborative and/or hearsay nature (see paragraphs 13-15 above).

88. Although T.A. did not implicate the applicant in the murder, her testimony weighed heavily against him. She stated that the applicant was impulsive and unpredictable by nature and that he had had a conflict with L.M. She also testified about the applicant's behaviour on the day of the murder and noted that he had changed his clothes after the incident (see paragraph 10 above). However, as noted above, the physical evidence found at the applicant's grandmother's flat corroborated the latter evidence given by T.A.

89. The Court considers therefore that there is little in the case file to support a finding that the testimony of T.A. could be described as "determinative of the outcome of the case" and finds that it was not the sole or decisive basis for the applicant's conviction. Nonetheless, since the evidence given by T.A. was definitely important, it remains for the Court to determine, given the need under Article 6 to assess the fairness of the proceedings taken as a whole, whether there existed sufficient factors counterbalancing any handicaps that the admission of that evidence might have entailed for the defence (see *Schatschaschwili*, cited above, §§ 111-31, *Seton*, cited above, § 64, and *Simon Price*, cited above, § 127).

90. The Court starts by noting that the directions of the presiding judge concerning T.A.'s recorded statement were somewhat unclear and deficient (see paragraph 33 above). While accepting it as a piece of evidence and presenting it as such to the jurors, the presiding judge directed the jurors not to treat T.A.'s statement as a witness statement. As a result, she did not warn the jury as to the limitations inherent in evidence which had not been subjected to full cross-examination or to the dangers in accepting that evidence (see *Lawless v. the United Kingdom* (dec.), no. 44324/11, §§ 35-36, 16 October 2012; contrast *Simon Price*, cited above, § 130). The Court is also not convinced that the appellate court's reasoning on the issue was sufficient as it did not proceed with the three-stage analysis required by the Court's case-law on the matter (see paragraph 42 above).

91. At the same time, the Court notes that the applicant had the opportunity to give his own version of the events of 2 September 2014 and thereby to cast doubt on the credibility of T.A. It is noteworthy in this regard that T.A.'s recorded statement did not appear to have substantially differed in any material aspect from those she gave at the preliminary investigation stage and in respect of which the applicant was free to seek the collection of evidence disproving them. It further observes that T.A.'s statement was recorded in the presence of a notary and that the applicant did not challenge the authenticity of her statement; and the actual video recording was shown to the jury, enabling the latter to observe the witness's demeanour. Finally, the fact that the applicant's clothes were found in his grandmother's apartment after T.A.'s initial statement of 3 September 2014 and corresponded to the description given by T.A., indicates that the domestic courts had before them evidence corroborating the absent witness's statements.

92. To sum up, the Court considers that the above factors, when taken with the strength of the other evidence for the prosecution, meant that the jury's ability to conduct a fair and proper assessment of the evidence in the present case was not undermined by the difficulties related to the applicant's inability to cross-examine T.A.

*(iii) Conclusion*

93. The Court thus finds that the examination of indirect evidence at the applicant's trial and the admittance into evidence of a statement of an absent witness did not irretrievably prejudice the overall fairness of the criminal proceedings conducted against him. There has accordingly been no violation of Article 6 §§ 1 and 3 (d) of the Convention in this respect.

#### IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (ABSENCE OF REASONS FOR THE JURY'S VERDICT AND ALLEGED INSUFFICIENT REASONS ON APPEAL)

94. The applicant complained that his conviction had been based on a guilty verdict that had not contained any reasoning and that the decision of the Tbilisi Court of Appeal to dismiss his appeal on points of law had not contained sufficient and appropriate reasons. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

##### **A. Admissibility**

95. The Government did not raise any objection as to the admissibility of the above complaints. The Court notes that the 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. The parties' submissions*

96. The applicant argued that he had been unable to understand why the jury had found him guilty because the evidence that had been examined in the course of the jury trial had been contradictory and inconsistent, and the jury verdict had contained no reasons. Apart from the evidence given by V.B., the remaining evidence for the prosecution had been indirect evidence and thus unreliable. The appeal court, according to the applicant, could not remedy the situation, as it could not clarify the basis for the applicant's conviction. Furthermore, he alleged that the decision of the Tbilisi Court of Appeal dismissing his appeal on points of law had not been sufficiently reasoned and that his allegations of the breach of his presumption of innocence, the lack of impartiality of the second jury and other serious procedural violations, had been dismissed in an arbitrary manner.

97. The Government firstly noted that, in accordance with Article 219 of the CCP, the applicant had been advised at the pre-trial conference, in view of the charges brought against him, of his right to a jury trial. The presiding judge had informed him in detail of the relevant procedure, including the fact that the jury verdict would not contain any reasons and that a person found guilty of a crime by a jury had the right to a one-time appeal on points of law only. The applicant had chosen to have his case heard by a jury; thus, he had made a voluntary and informed choice by which he had waived his right to be provided with a reasoned judgment.

98. As to concrete procedural safeguards, the Government submitted that upon the opening of the jury trial and before the jurors had retired to deliberate, the presiding judge had given them detailed oral instructions concerning the general procedure and the applicable law, covering issues such as the main rules concerning the evaluation of evidence, the elements of the relevant offences, the applicant's procedural rights, including the right to be presumed innocent and that any doubt should be resolved in favour of the defendant, and the rules for arriving at a verdict. A written copy of the instructions had also been given to the members of the jury before they retired to the deliberations room. In this connection, the Government noted that the defence's comments concerning the substance of those instructions had been taken into consideration by the presiding judge. Accordingly, it had been the presiding judge's instructions and guidance which had created the legal framework on which the jury's verdict had been based. The fact that the instructions had been provided to the jurors in written form and that the jurors had been allowed to take written notes during the trial had constituted two particularly strong safeguards put in place to assist the jury in its task.

99. The Government further submitted that the presiding judge had read out the applicant's indictment to the jurors and the parties, explaining the charges and their legal basis. The applicant had been the sole defendant in the proceedings, and accordingly, the indictment had been individual and specific, setting out the facts of the case and identifying the items of evidence that the prosecution was relying upon against the applicant. It must have been clear to the applicant that the guilty verdict returned against him for aggravated murder indicated that the jury had accepted the evidence in respect of the relevant charges in the indictment and, by implication, rejected his version of the events. In support of their arguments, the Government submitted a copy of the audio recording of the jury proceedings, including the instructions given to the jurors and the statements given by the witnesses.

100. The Government also asserted that the prosecution had presented the jury with ample evidence, which had not been rebutted by the defence. Without submitting any strong evidence in his defence, the applicant's sole argument had been that it had been V.B. who had shot L.B. and that the investigating authorities had tampered with the evidence. They further referred to the fact that the applicant had been represented by lawyers of his own choosing; that all witnesses, with one exception, had been heard during the trial and the defence had had the unimpeded opportunity to cross-examine all of them; that the statements of those witnesses, alongside other evidence in the case, had been more than sufficient to demonstrate the applicant's guilt; that the jury trial had lasted for less than two weeks; and that the jury had had to answer only one question – guilty or not guilty – with respect to each of the charges.

101. Lastly, the Government stressed that the Tbilisi Court of Appeal had entertained the applicant's appeal on points of law on the merits, and having carefully examining his main arguments, answered them in a reasoned manner.

## *2. The Court's assessment*

### **(a) General principles**

102. The relevant general principles were most recently summarised in the case of *Rusishvili* (cited above, §§ 58-62 and §§ 74-75).

### **(b) Application of the above principles to the circumstances of the present case**

103. The Court has already examined a case against Georgia concerning the alleged unfairness of a jury trial on account of the lack of reasons in the jury verdict, and found that, in the circumstances of that case, the fact that the applicant had been allowed to choose between trial by jury and trial by a professional judge, coupled with the concrete procedural safeguards that he had been afforded throughout the proceedings, was sufficient to counterbalance the lack of reasons in the jury verdict (see *Rusishvili*, cited

above, §§ 63-71). While the circumstances of the present case are somewhat different, the decisive elements in the court's analysis remain the same.

104. To start with, the applicant, like all defendants charged with murder in Georgian criminal proceedings, was provided with detailed information about the workings and implications of a jury trial, including the nature of the verdict and the possibility of lodging an appeal, before opting to be tried in this way (see paragraph 18 above; see *Rusishvili*, cited above, § 63). The charges against the applicant were read out in full by the presiding judge at the opening session of the jury trial; subsequently, all the evidence was the subject of adversarial argument, with each item of evidence being examined in the presence and with the participation of the defence. The jury retired to deliberate immediately after the oral proceedings had ended, without having access to the case file. Thus, their decision could only have been based on the evidence examined by the parties during the trial.

105. Furthermore, the jurors were given instructions twice – at the opening session of the trial and before retiring to the deliberation room. The instructions were provided not only orally but in writing. On both occasions the defence was invited, in line with Article 231 § 2 of the CCP, to request amendments or additions to the instructions; it availed itself of that opportunity and its comments were partly taken into consideration. As already stated in *Rusishvili*, the Court considers that giving instructions at the beginning of the trial allowed the jurors to have a framework in which to understand the trial, while the instructions at the end of the trial ensured that the jurors stayed focused on their task and on the evidence heard in court (*ibid.*, § 67).

106. Concerning the questions, the Court notes that the applicant was the only defendant in the jury trial in question and was facing three specific charges. The applicant did not advance any “self-defence” argument; rather, his main line of reasoning was simply factual – that he had not committed the crime.

107. Lastly, as regards avenues of appeal, as already concluded by the Court in *Rusishvili*, the rights of appeal available under Georgian law are capable of providing a remedy against any improper verdict returned by a jury (*ibid.*, § 70). In the present case the Tbilisi Court of Appeal entertained the applicant's appeal on points of law on the merits and rejected it in a reasoned manner, answering all the main arguments advanced by him (contrast *Kikabidze v. Georgia*, no. 57642/12, § 20, 16 November 2021, and *Rusishvili*, cited above, § 26). While certain aspects of the reasoning of the appeal court have been looked at by the Court within the context of the examination of the applicant's complaints under Articles 6 §§ 1, 2 and 3 (d) of the Convention (see paragraphs 84 and 90 above, and paragraph 114 below), the Court recalls that it cannot act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly

unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015). In the circumstances of the present case, the Court sees no issue of arbitrariness arising with respect to the decision of the Tbilisi Court of Appeal to dismiss the applicant's appeal on points of law.

108. To sum up, the fact that the applicant was allowed to choose between trial by jury and trial by a professional judge, coupled with the concrete procedural safeguards that he was afforded throughout the proceedings, including the fact that his appeal on points of law against the guilty verdict had been entertained on the merits, was sufficient to counterbalance the absence of reasons in the jury verdict. Furthermore, the reasoning of the Tbilisi Court of Appeal was sufficient and adequate to meet the requirements of Article 6 § 1 of the Convention.

109. The Court thus finds that there has been no violation of Article 6 § 1 of the Convention in this respect.

## V. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

110. The applicant alleged that the presumption of his innocence had been violated on account of a series of public statements made by various public officials prior to and during the trial and on account of the video footage published by the Ministry of the Interior in connection with his arrest. He relied on Article 6 § 2 of the Convention, which reads:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law ...”

### **Admissibility**

#### *1. The parties' submissions*

111. The Government submitted that the applicant's complaint under Article 6 § 2 of the Convention was inadmissible for failure to exhaust domestic remedies. They referred to Article 18 of the Civil Code as a potential avenue of redress by which the applicant could have instituted civil proceedings against the officials concerned and the Ministry of the Interior. In support of their argument, they submitted several domestic court decisions concerning private disputes regarding alleged violations of honour and dignity in the media. Alternatively, the Government submitted that the applicant's complaint had been lodged out of time, as it had not been lodged within six months from the date when the relevant video recording had been released to the public or the dates on which the statements by the public officials had been made (12 September 2014 and 5 and 8 June and 18 September 2015 respectively).

112. The applicant submitted that the compensatory remedy proposed by the Government was irrelevant and insufficient in view of the purely criminal nature of the right to be presumed innocent in criminal proceedings. He

maintained that no compensation could undo the damage that the video footage and the statements of the high-ranking officials had done to his right to a fair trial by way of violating the presumption of his innocence. The applicant also noted that he had duly raised the complaint of a violation of his right to the presumption of innocence in the context of his criminal trial; hence no issue arose concerning compliance with the six-month time-limit under Article 35 § 1 of the Convention.

## 2. *The Court's assessment*

113. The Court starts by noting that the allegations of external influence on the jury and the effects of the alleged breach of the presumption of the applicant's innocence on the jury's impartiality have already been examined by the Court under Article 6 § 1 of the Convention (see paragraphs 68-75). As to the remaining elements of the applicant's relevant complaint, the Court notes that in its recent judgment in *Mamaladze v. Georgia* (no. 9487/19, 3 November 2022) it examined a similar objection by the Government (*ibid.*, §§ 63-67) and noted, in so far as the statements of public officials were concerned, that the civil-law remedy could in principle provide adequate and sufficient redress to the applicant (*ibid.* at 65). It found, however, in the particular circumstances of that case, that where the applicant's complaint of a breach of his right to be presumed innocent was primarily formulated as a procedural guarantee in the context of a criminal trial itself, it was not unreasonable for the applicant to pursue the matter as part of the criminal proceedings without availing himself of another remedy (*ibid.*, §§ 63-67).

114. The Court considers that the circumstances of the present case are different from those in *Mamaladze* (cited above). In that case the allegation of a breach of the presumption of the applicant's innocence stemmed primarily from the fact that the trial judge had closed the criminal trial to the public and imposed an obligation of non-disclosure on the defence in the context of public officials making public statements and disseminating incriminating covert material, which had contributed significantly to the creation of a public perception that the applicant was guilty (*ibid.*, § 66). In the present case there was no action or decision taken by the trial judge in the course of the trial itself which had an impact on the applicant's presumption of innocence (compare *Hajnal v. Serbia*, no. 36937/06, § 121, 19 June 2012). The issues at the heart of the applicant's complaint were solely the various statements that public officials had made outside the trial concerning the first jury trial of the applicant and the video-recording of his arrest. The Court considers that the criminal proceedings against the applicant could not, in principle, provide an adequate forum in respect of those statements and/or the video-recording (see, for instance, *Kasatkin v. Russia* (dec.), no. 53672/14, §§ 20-22, 22 June 2021), as the trial judge lacked jurisdiction to entertain the applicant's grievance and to impose sanctions on the public officials concerned or to award damages. This view was confirmed by the Tbilisi Court of Appeal,

which noted that it was beyond its competence to examine the allegations of a breach of the applicant's presumption of innocence (see paragraph 44 above). The Court, accordingly, considers that criminal proceedings could neither put an end to the alleged violation of the applicant's presumption of innocence nor offer any meaningful redress. In such circumstances, only the civil-law remedy could, on the basis of the criteria set out in the Court's case-law, provide adequate and sufficient redress (see *Lakatoš and Others v. Serbia*, no. 3363/08, §§ 108-11, 7 January 2014; *Januškevičienė v. Lithuania*, no. 69717/14, § 59, 3 September 2019, with further references). The examples of domestic case-law which the Government submitted to the Court appear to be sufficient to demonstrate that civil defamation proceedings under Article 18 of the Civil Code could be instituted in respect of allegations pertaining to a breach of an applicant's right to be presumed innocent. The applicant did not argue that the civil-law remedy as such had been ineffective; he was thus expected to avail himself of it.

115. The Court, therefore, accepts the Government's objection concerning the applicant's failure to exhaust domestic remedies. This part of the application must thus be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* admissible the complaints under Article 6 §§ 1 and 3 (d) of the Convention concerning the alleged partiality of the jury, the examination of the evidence, the absence of reasons in the jury verdict, and the alleged insufficient reasoning in the appeal court's judgment, and declares inadmissible the remainder of the applications;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the lack of impartiality of the jury;
4. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the use of an absent witness evidence and of indirect evidence;
5. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the absence of reasons in the jury verdict and the reasoning of the appeal court.



OKROPIRIDZE v. GEORGIA JUDGMENT

Done in English, and notified in writing on 7 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller  
Deputy Registrar

Georges Ravarani  
President