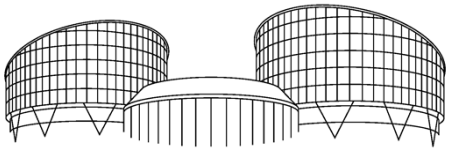

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TESLYA v. UKRAINE

(Application no. 52095/11)

JUDGMENT

Art 6 § 1 (criminal) • Impartial tribunal • Members of Supreme Court panel upholding applicant's conviction and life-imprisonment sentence already having examined his earlier appeal • Mere fact that judges were twice members of panel reviewing verdict insufficient to show objective impartiality • Judges not bound by earlier ruling • Cassation appeal proceedings compliant with domestic law which provided adequate procedural safeguards for judge impartiality

STRASBOURG

8 October 2020

FINAL

08/01/2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Teslya v. Ukraine,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Latif Hüseynov,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 52095/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Ukrainian national, Mr Ivan Ivanovych Teslya ("the applicant"), on 10 August 2011;

the decision to give notice to the Ukrainian Government ("the Government") of the complaint concerning the impartiality of the Supreme Court and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 8 September 2020,

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

INTRODUCTION

1. The applicant complained under Article 6 § 1 of the Convention that the panel of the Supreme Court, which had upheld his conviction and life-imprisonment sentence on 10 February 2011, had not been impartial given the fact that two out of its three members including the judge presiding over the panel had earlier examined his criminal case in the same capacity and had expressed their view concerning the applicant's sentence.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant was born in 1975 and is serving a sentence of life imprisonment in Berdychiv. He was represented by Mr A.I. Vins, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

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

5. In May 1996 certain K. and G. were murdered. The suspicion fell on their acquaintances – the applicant, V. and Y. – in whose company the

victims had last been seen alive and with whom they had had an ongoing conflict.

6. On 1 December 1998 the Kyiv Regional Court of Appeal ("the Regional Court"), sitting as a court of first instance, found V. and Y. guilty of aggravated murder and sentenced them to death. While the judgment referred to the applicant as the "third perpetrator", the proceedings in respect of that part were severed in the light of the fact that the applicant had been wanted by the police since 1997. On 1 April 1999 the Supreme Court upheld the above-mentioned judgment. In 2000, after the Constitutional Court of Ukraine declared the death penalty unconstitutional and after the entry into force of the respective legislative amendments, the death penalty in respect of V. and Y. was commuted to a life sentence.

7. In May 2007 the applicant was arrested in Russia. He held a passport that was in a different person's name and indicated a different year of birth.

8. On 8 December 2008 the Regional Court, sitting as a court of first instance, found the applicant guilty of the aggravated murder of K. and G. under Article 93 (a) and (d) of the Criminal Code of 1960 (see paragraph 16 below) and sentenced him to fifteen years' imprisonment, with confiscation of his property. It relied, in particular, on the confessing statement made by V. after his arrest in July 1997, according to which he and the applicant had agreed, for remuneration, to help their friend Y. with settling a debt-related dispute with G. (assisted from his side by K.) or, if that had turned out to be impossible, to kill G. and K. As V. had explained in the course of his own trial in 1998, he, the applicant and Y. had taken the victims to a forest in the applicant's car, had killed them and had buried their bodies there. They had used a metal cable and a shovel, which had been in the car trunk. The Regional Court also referred to the report on the crime scene inspection conducted with V.'s participation, in the course of which he had shown to the police where the bodies had been buried. Furthermore, it relied on the statements of several witnesses, according to which the victims had last been seen getting into the applicant's car driven by him, in the company of V. and Y. Some other witnesses confirmed the existence of a conflict between Y., V. and the applicant from one side, and G. and K. from the other side. In addition, the trial court referred to the post-mortem reports in respect of the victims' injuries, which had been found to confirm V.'s account of the events. It also held, in general terms, that the applicant's guilt was confirmed by the findings of the verdict of 1 December 1998 (see paragraph 6 above). Although the applicant denied his involvement in the crimes imputed to him, the Regional Court considered that his behaviour had indicated the contrary. It observed in that connection that the applicant had been on the run for many years and that he had forged his identity documents by gluing his photograph into the passport of a different person. In determining the sentence, the Regional Court held that there were no aggravating circumstances. At the same time, it noted that the applicant had

had no previous criminal record and that he had a minor child to take care of. The trial court considered those circumstances as mitigating. It further observed that the applicant had positive character references both at his place of residence and at his place of detention.

9. The prosecutor and members of the families of the murdered persons appealed in cassation, arguing, in particular, that the sentence was too lenient. The applicant also lodged a cassation appeal with the Supreme Court, arguing that his sentence was too severe. The case file before the Court does not contain copies of those appeals in cassation.

10. On 19 March 2009 the Supreme Court, sitting as a panel of three judges presided over by R. and also including judge K., examined the above-mentioned cassation appeals in a court hearing. It allowed both the prosecutor's and the victims' appeals in cassation, quashed the above judgment, and remitted the case to the first-instance court for retrial. The Supreme Court stated, in particular, that the Regional Court had wrongly relied on the statements made by V. during his own trial in 1998, without questioning him in the court hearing within the applicant's 2008 trial, which had been in breach of Article 323 of the Code of Criminal Procedure (see paragraph 21 below). Likewise, certain witnesses had not been summoned before the Regional Court, without any explanation being provided to that effect in the verdict. The Supreme Court additionally criticised the trial court for not having specified the applicant's property for confiscation. Furthermore, the Supreme Court held as follows:

> "Having found [the applicant] guilty of [aggravated murder] the court sentenced him to a fixed term of imprisonment without providing proper reasoning for that sentence.
>
> According to the charges against the applicant, which the court found to be proved, [the applicant] committed, together with [Y.] and [V.], premeditated murder of two persons for profit, having conspired [to do so] in advance.
>
> However, in setting the sentence for [the applicant], the court did not fully take into account the severity of the committed crime, or the fact that it fell under the category of particularly serious crimes. Nor did [the first-instance court] take into consideration the information [provided] regarding the convicted person's character or the circumstances under which the crime had been committed.
>
> The case file contains material indicating that [the applicant] had been absconding from the investigation and trial for a long time, which was why the police had declared him a wanted person; he had been living in Russia under a different family name.
>
> Having concluded that [the applicant] had positive character references by the place of his detention and the place of his residence, the court relied on his character reference made by the [Svyatoshynskyy Temporary Detention Facility]. However, as noted therein, the applicant was detained there for a short period of time. In other words, that document cannot be regarded as providing sufficient information on [the applicant's] character ...
>
> The panel of judges considers that, having regard to the crime committed by [the applicant] and the information about his character, the sentence imposed is

insufficient to ensure his rehabilitation and to prevent him from committing further crimes. Therefore, the judgment in the present case shall be quashed on the grounds of substantial breaches of the criminal procedural legislation and the inconsistency, on account of being too lenient, of the sentence with the gravity of the crime and [the applicant's] character.

During the retrial, it is necessary to take all the legally envisaged measures with a view to establishing all the circumstances of the case in a comprehensive ... and objective manner and in compliance with the rules of legal procedure. If [the applicant] is found guilty of the criminal offences committed under the circumstances as imputed to him, he should be sentenced in compliance with Article 65 § 2 of the Criminal Code of Ukraine, i.e. his sentence should be necessary and sufficient for ensuring his correction and for preventing him from committing new crimes.

Relying on the above grounds and being guided by Articles 395 and 396 of the Code of Criminal Procedure, the panel of judges

RULES:

to allow the cassation [appeals] by the prosecutor and the victims [...] and to dismiss the cassation appeal of the convict.

To quash the verdict of the [Regional Court] of 8 December 2008 in respect of [the applicant] and to remit the case for re-trial."

11. On 21 December 2009 the Regional Court, following a hearing with the participation of the applicant and his lawyer, delivered a new verdict, by which it found the applicant guilty as charged and sentenced him to life imprisonment. This time the applicant admitted in the court hearing having participated, together with V. and Y., in a fight with the victims, which had resulted in the death of the latter. He insisted, however, that they had had no intention of killing K. and G. The trial court questioned in the hearing V., who submitted that he, Y. and the applicant had taken G. and K. to a forest, in the applicant's car, in order to have a discussion concerning an ongoing conflict with them. He further stated that a fight had sparked in the course of that conversation and that G. and K. had been killed. Referring to the fact that many years had elapsed since the events in question, V. denied recalling any further details, but noted that he had given all the details at the material time. The Regional Court therefore also relied on his earlier statements as well (see paragraph 8 above). It heard a number of witnesses in the hearing, who confirmed their earlier statements (ibid.). Having regard to the undisputed existence of an ongoing conflict at the material time between Y., V. and the applicant from one side and G. and K. from the other side, as well as the fact that the applicant with his two friends had deliberately taken the victims to a remote and isolated area and that they had prepared in advance a metal cable and a shovel, the trial court dismissed the applicant's argument that G. and K.'s death had resulted from an unfortunate turn of events.

12. It was noted in the verdict that there were no mitigating or aggravating circumstances in the case.

13. The reasoning provided by the trial court in support of the sentence imposed was as follows:

> "... the court considers that [the applicant] poses a particularly serious danger for the society, given that he committed a particularly serious crime and, as indicated by his partial confession, has no remorse. Nor has he drawn any lessons for himself. Having regard to the nature and the seriousness of the crime committed, the information about the character of the convict, the circumstances of the crime, as well as the convict's behaviour after its commission, the panel of judges considers that fixed-term imprisonment would not be sufficient to ensure his correction and to prevent him from committing further crimes in the future. It therefore imposes on [the applicant] a sentence of life imprisonment, with confiscation of all his personal property."

14. The applicant appealed in cassation. He has not provided the Court with a copy of his cassation appeal. As follows from its summary provided in the Supreme Court's ruling (see paragraph 15 below), his main argument was that after the Constitutional Court had declared the death penalty unconstitutional in 2000, the maximum possible penalty applicable in his case was fifteen years' imprisonment rather than life sentence.

15. On 10 February 2011 the Supreme Court, following a hearing in which the applicant and his lawyer participated, upheld the judgment. It sat as a three-judge panel which, as before, included R. (the president of the panel) and judge K.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code of 1960 (repealed with effect from 1 September 2001)

16. The relevant provision read as follows:

Article 93. Aggravated murder.

> "Murder: (a) for profit; [and/or]... (d) of two or more persons ... , -
>
> shall be punishable by imprisonment for eight to fifteen years or by life imprisonment, with confiscation of property in case referred to in point (a) of this Article."

B. Criminal Code of 2001

17. The relevant provisions read as follows:

Article 12. Classification of crimes.

> "Depending on their seriousness, criminal offences are divided into: minor criminal offences, those of medium seriousness, serious and particularly serious.
>
> ...
>
> A criminal offence is serious if it is punishable by imprisonment of up to ten years.

A criminal offence is particularly serious if it is punishable by imprisonment of more than ten years or by life imprisonment."

Article 65. General principles of sentencing.

"1. The court shall establish a sentence:

(1) within the limits provided by the sanction under the [applicable] article of the Special Part of this Code stipulating the liability for a crime committed;

(2) in compliance with the General Part of this Code;

(3) taking into consideration the seriousness of the committed crime, the character of the convicted person, and the mitigating and aggravating circumstances.

2. A sentence to be imposed shall be necessary and sufficient for correction of the convicted person and prevention of new crimes. A more severe penalty from those envisaged for the crime in question shall be imposed only where a more lenient penalty would be insufficient for the person's correction and for preventing him/her from committing new crimes. ..."

C. Code of Criminal Procedure of 1960 (repealed with effect from 19 November 2012)

18. Article 54 § 1 provided that a judge was precluded from participating in a trial in the following instances:

"(1) if he or she [was] a victim, a civil claimant, a civil defendant, or a relative of anyone of them, or a relative of the investigator, of the inquiry officer, of the prosecutor or of the accused;

(2) if he or she [had] already participated in the proceedings as a witness, an expert, a specialist, an interpreter, an inquiry officer, the investigator, the prosecutor, a defence counsel or a representative of the victim, of the civil claimant or of the civil defendant;

(2-1) if during the pre-trial investigation he or she: [had] ordered searches, seizures or inspections; [had] ordered, changed or discontinued preventive measures or [had] extended time-limits for detention on remand; [had] examined complaints against arrest warrants or [had] examined appeals against the discontinuation of criminal proceedings;

(2-2) if during the pre-trial investigation he or she [had] examined the issue of [the removal of the defence counsel from the proceedings];

(3) if he or she, or his or her relatives, [had an interest] in the outcome of the proceedings;

(4) if there [were] other circumstances giving rise to doubts about the impartiality of the judge ..."

19. Under Article 55 §§ 1-3, a judge who examined a case in cassation was not entitled to participate in the examination of the same case in a court of first instance or an appellate court or in fresh examination in cassation of the same case, where a resolution (or ruling) delivered with his or her participation had been quashed.

20. Article 56 provided that, in cases covered by Articles 54 and 55, a judge was obliged to recuse himself. The prosecutor, the convict or his or her representative, the victim or his or her representative, a civil claimant or a civil defendant could request withdrawal of a judge on the same grounds.

21. Article 323 § 2 obliged courts to base their verdicts only on evidence explored in the court hearing.

22. Article 383 § 1 provided that verdicts of appellate courts delivered at first instance could be reviewed under the cassation-appeal procedure. As further stipulated in Article 401 § 1, such verdicts became final either in the absence of any cassation appeals within the legally established time-limit or after the examination of the case by a court of cassation. Thereafter they could only be reviewed under the extraordinary review procedure (where there were newly-discovered facts (Article 400-5); or where there was a finding by an international judicial body, which jurisdiction was accepted by Ukraine, of a violation by Ukraine of its international obligations during the judicial examination of the case (Article 400-12)).

23. Article 395 regulated the permissible scope of the examination of a case in cassation. It provided that a cassation court was to review the lawfulness and the reasoning of a judgment solely in respect of the issues raised in the cassation appeal. Reviewing anything other than those issues was allowed only if that would not worsen the convict's situation.

24. Article 396 listed the following possible results of case examination by a cassation court: (1) upholding the verdict and rejecting the appeals in cassation; (2) quashing the verdict and remitting the case for fresh pre-trial investigation or for retrial; (3) quashing the verdict and discontinuing the proceedings; or (4) changing the verdict.

25. Article 397 prohibited a cassation court from worsening the situation of a convicted person. It read as follows:

> "A cassation court is not entitled to increase a sentence or to apply a law concerning a more serious category of crime.
>
> A guilty verdict delivered by an appellate or a local court may be quashed in view of the necessity to apply a heavier penalty only if the prosecutor or a victim ... lodged a cassation appeal seeking that end. ..."

26. Article 398 listed the grounds on which a verdict could be quashed. Those were: (1) a substantial breach of the criminal procedural legislation; (2) a misapplication of the criminal law; and (3) an inconsistency between the penalty set and the gravity of the crime on the one hand and the convicted person's character on the other hand.

27. Article 399 read as follows:

Binding nature of the cassation court's directions

> "Directions given by the cassation court are binding on ... the first-instance court where the case was remitted for retrial."

28. The "Scientific and Practical Commentary on the Code of Criminal Procedure of Ukraine" (*Науково-практичний коментар Кримінально-процесуального кодексу України, 5-те вид., перероблене та доповнене / За заг. ред. В.Т. Маляренка та В.Г. Гончаренка. – Київ: Юристконсульт*, 2008) stated, in respect of Article 399, in particular, as follows:

> "1. When quashing a verdict and remitting the case for fresh investigation or fresh examination before the first-instance or appellate court, the cassation court must indicate in its ruling which violations of law had caused the quashing and which circumstances should be clarified during fresh investigation or retrial. It may also indicate which procedural actions should be carried out.
>
> 2. During retrial, the court ... must comply with the directions made by the cassation court.
>
> 3. The failure to comply with [those] directions provides grounds for quashing the judgment. Exceptions are possible where it is impossible to clarify the circumstances referred to by the cassation court for objective reasons (because of the death of a witness, a loss of documents, and so on).
>
> 4. The binding nature of the cassation court's directions does not mean that during fresh investigation or retrial they may limit the right of the investigating authority or the court to assess evidence in accordance with their inner conviction based on the comprehensive, complete and impartial examination of all the circumstances of the case in their totality, and being guided by law. No evidence shall have any predetermined probative value ...
>
> 5. During retrial, the court delivers a verdict on the basis of the evidence explored during the fresh judicial investigation.
>
> ...
>
> 9. When agreeing with the arguments of the prosecutor's or the victim's cassation appeal on inconsistency, on account of being too lenient, of the sentence with the gravity of the crime and the convicted person's character, the cassation court is not entitled to establish which sentence should be imposed as a result of the fresh examination of the case."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that the three-judge panel of the Supreme Court, which had upheld in cassation proceedings his conviction and life sentence on 10 February 2011, had not been impartial. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

A. Admissibility

30. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

31. The applicant submitted that, when quashing the first verdict (by which he had been sentenced to fifteen years' imprisonment) and ordering his re-trial, the panel of the Supreme Court in its initial composition had explicitly stated that a fixed term of imprisonment was too lenient and had thus left the trial court with no other option than to sentence the applicant to life imprisonment. Given that two of the three judges that had sat on the original panel, including the president of the panel – namely R. and K. – had also been members of the new panel, the applicant feared that that new panel had lacked impartiality.

32. The Government contested those arguments. They drew the Court's attention to the fact that the issue of the severity of the penalty had been raised by the prosecutor in his cassation appeal. Accordingly, the Government maintained, the Supreme Court had been obliged to express its position on that issue and to quash the verdict on the grounds that the sentence imposed had been too lenient.

33. The Government furthermore submitted that the domestic legislation provided for sufficient safeguards for ensuring judges' impartiality and that the composition of the panel of the Supreme Court which had given its ruling on 10 February 2011 had been in compliance with the applicable rules.

34. Lastly, the Government noted that the applicant had not expressed any particular concerns about the judges' impartiality and had not requested the withdrawal of any judge, even though such a possibility had existed.

35. In reply to the Government's observations, the applicant submitted that he had not had sufficient legal training in order to seek the judges' withdrawal.

36. As regards the compliance of the panel's composition with the domestic legislation, the applicant noted that it did not necessarily mean its compliance with the standards enshrined in Article 6 § 1 of the Convention.

2. The Court's assessment

(a) General principles

37. The Court reiterates that impartiality normally denotes the absence of prejudice or bias and that 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 whereby regard must be had to the personal conviction and behaviour of a particular judge – that is to say whether that 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 as to exclude any legitimate doubt in respect of its impartiality. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], no. 55391/13, §§ 145, 148).

38. 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 *Ramos Nunes de Carvalho e Sá,* cited above, §§ 145-46). The personal impartiality of a judge must be presumed until there is proof to the contrary (see *Morice v. France* [GC], no. 29369/10, § 74, ECHR 2015).

39. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts that 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 panel 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 *Ramos Nunes de Carvalho e Sá,* cited above, § 147). The answer to that question depends on the circumstances of each particular case (see *Pastörs v. Germany*, no. 55225/14, § 55, 3 October 2019). This applies even where a situation complained of may in principle give rise to misgivings on the part of an applicant as to the impartiality of the tribunal dealing with his or her criminal case (see, for example, *Čudina v. Croatia* (dec.), no. 30370/13, § 37, 10 December 2019, with further references).

40. The mere fact that a trial judge has made previous decisions concerning the same offence cannot be held as in itself justifying fears as to his impartiality. No grounds for legitimate suspicion of a lack of impartiality can be discerned in the fact that the same judge participates in adopting a decision at first instance and then in fresh proceedings when that decision is quashed and the case is returned to the same judge for reconsideration (see *Marguš v. Croatia* [GC], no. 4455/10, § 85, ECHR--2014 (extracts), with further references).

41. In order that the courts may inspire in the public the confidence that is indispensable, account must also be taken of questions of internal organisation. 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. 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 that the courts in a democratic society must inspire in the public. The Court takes such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether an applicant's fears can be held to be objectively justified (see *Micallef v. Malta* [GC], no. 17056/06, § 99, ECHR 2009; and *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 50, 25 February 2020).

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

42. In the present case the applicant did not provide any evidence that judges R. and K. had displayed personal bias against him. The case must therefore be examined from the perspective of the objective impartiality test.

43. The applicant's fear that the Supreme Court might not be impartial in delivering its ruling of 10 February 2011 stemmed from the fact that judges R. and K. (two of the three members of the panel that upheld the applicant's conviction and life-imprisonment sentence) had earlier examined his cassation appeal. In that context, he argued that the Supreme Court had already taken an unfavourable stance concerning the sentence to be imposed (see paragraphs 10 and 15 above).

44. According to the Court's case-law, the mere fact that those judges were twice members of the panel of the Supreme Court reviewing in cassation the verdict in respect of the applicant did not suffice to raise objectively justified doubts as to their impartiality (see *Marguš*, cited above, § 85, and *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 288, 4 December 2018).

45. It is not clear to what extent and with which arguments the applicant contested the Regional Court's judgment. He did not provide the Court with a copy of his cassation appeal (see paragraph 14 above). Be that as it may, the Supreme Court judges in question were in no way bound by their first cassation ruling delivered on 19 March 2009 by which they quashed the verdict of 8 December 2008 and remitted the case. In the above-mentioned ruling the Supreme Court's panel criticised the verdict in respect of several serious procedural failures, including the trial court's reliance on important witness evidence without having questioned those witnesses (in particular, V.) in the court hearing and therefore drawing unfounded conclusions on the applicant's character and the circumstances under which the crimes had been committed (see paragraph 10 above). The Supreme Court panel found the sentence of fixed-term imprisonment to be too lenient under the circumstances, given the facts as then established by the Regional Court. However, given the nature and context of that finding, which was in the

form of a cassation ruling, it remained open to the Regional Court to rehear the case and deliver a new verdict rectifying all the mentioned procedural shortcomings in accordance with national law and, consequently, providing better reasons for a fixed-term imprisonment sentence instead of imposing a life-imprisonment sentence on the applicant depending on the facts as newly established. While the trial court was bound by the Supreme Court's directions in relation to the requirements of national law (see paragraphs 27-28 above), the latter had not strictly imposed the adoption of a harsher sentence and had not explicitly relied on Article 397 of the Code of Criminal Procedure (see paragraph 26 above). In other words, by the first ruling the panel of the Supreme Court simply fulfilled its legal task to assess the compliance of the verdict with domestic law. The fact that the judges sat twice in the same capacity in the criminal proceedings against the applicant was an integral part of the system of cassation review and did not as such cast doubts on their impartiality.

46. The Court furthermore notes that the applicant did not contest the Government's submission that the cassation-appeal proceedings in his case had complied with the applicable domestic legal provisions (see paragraph 36 above). Domestic law provided for adequate procedural safeguards with a view to ensure impartiality of judges (see paragraphs 18-20 above). The applicant did not explain whether and if so, why he considered those safeguards to have been insufficient. Nor is it clear what prevented him from raising at the domestic level his concerns regarding the alleged lack of impartiality of judges R. and K. According to the applicant, he did not have the requisite knowledge of the applicable legislation (see paragraph 35 above). However, as confirmed by the case-file material and not contested by the applicant, during the hearing before the Supreme Court on 10 February 2011 he was assisted by a professional lawyer of his choice (compare *Zahirović v. Croatia*, no. 58590/11, § 31, 25 April 2013). The Court considers that in the circumstances of the present case that court did not lack the guarantee of impartiality.

47. The above considerations are sufficient for the Court to conclude that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 8 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President