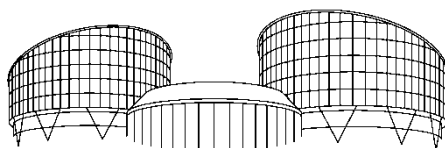


La CEDU sulla violazione dell'art. 6 della Convenzione.
(CEDU, sez. III, sent. 26 agosto 2026, ric. n. 84056/17)

Nel caso di specie, la Corte è chiamata a pronunciarsi sulla presunta violazione del diritto a un tribunale imparziale, come sancito dall'articolo 6 della Convenzione. Riconosciuta nel 2000 la proprietà di un terreno in favore dei ricorrenti, tale decisione fu successivamente annullata dall'Agenzia per la restituzione e il risarcimento dei beni, annullamento che i giudici interni, in risposta ai numerosi ricorsi presentati, confermarono. Anche il procedimento dinanzi alla Corte costituzionale si concluse nel 2017 con il definitivo rigetto, lasciando i ricorrenti privi del bene. I giudici di Strasburgo osservano come i dubbi dei ricorrenti sull'imparzialità della Corte costituzionale traevano origine dal fatto che tre dei suoi membri avevano già partecipato, in qualità di giudici della Corte Suprema, alla decisione sul medesimo caso qualche anno prima e avevano poi preso parte anche al procedimento costituzionale. In altri termini, gli stessi giudici chiamati a pronunciarsi dinanzi alla Corte costituzionale avrebbero dovuto valutare se le loro precedenti determinazioni avessero contribuito a violare i diritti costituzionali dei ricorrenti. Le considerazioni che precedono sono dunque sufficienti a indurre la Corte a ritenere che il procedimento costituzionale fosse privo delle necessarie garanzie di imparzialità e, di conseguenza, a dichiarare la violazione dell'articolo 6, paragrafo 1, della Convenzione.



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

THIRD SECTION

CASE OF XXX v. ALBANIA

(Application no. 84056/17)

JUDGMENT
STRASBOURG
26 August 2025

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 XXX v. Albania,

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

Ioannis Ktistakis, *President*,
Peeter Roosma,
Darian Pavli,
Úna Ní Raifeartaigh,
Mateja Đurović,
Canòlic Mingorance Cairat,
Vasilka Sancin, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 84056/17) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Albanian nationals, Mr “Omissis” and “Omissis” (“the applicants”), on 16 December 2017;

the decision to give notice to the Albanian Government (“the Government”) of the applicants’ complaints under Article 6 § 1 of the Convention concerning the alleged lack of impartiality of the Constitutional Court, a breach of the principle of legal certainty and a violation of their right of access to a court, and under Article 1 of Protocol No. 1 to the Convention of interference with their right to the peaceful enjoyment of their possessions, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 1 July 2025,

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

INTRODUCTION

1. The case concerns the applicants’ complaints of a violation of their right to an impartial tribunal by the Constitutional Court, a breach of the principle of legal certainty and a violation of their right of access to a court owing to the Constitutional Court’s tie vote. The case also concerns the applicants’ further complaint of interference with their right to the peaceful enjoyment of their possessions.

THE FACTS

2. The applicants were born in “Omissis” and “Omissis” respectively and live in “Omissis”. They were represented by “Omissis”, a lawyer practising in Tirana.
3. The Government were represented by their then Agents, Ms. A. Hicka and Mr. A. Metani, and subsequently by Mr O. Moçka, General State Advocate.
4. The facts of the case may be summarised as follows.

I. The circumstances of the case

5. On 26 August 2000 the Commission for the Restitution and Compensation of Property (“the Commission”) recognised “Omissis” ownership of a plot of land measuring 1,176 sq. m and granted her partial restitution by returning a plot of land measuring 974 sq. m. The remaining 202 sq. m would be compensated in one of the ways provided for by law. She would also have a right of first refusal in relation to a building situated on the plot. Furthermore, a building used by a private television station would be returned to her, and she would then receive rent payments under a lease between the television station and the public authorities. On 26 October 2000 “Omissis” sold the plot of land to the applicants, who registered their title with the Land Registry.

6. On 1 June 2007 the State Advocate’s Office requested the annulment of the Commission’s 2000 decision on the grounds that the property had not been free at the time of restitution, but had been (and continued to be) occupied by a public sports centre. It further argued that, at the time the Commission had made its decision, the Ministry of Public Economy and Privatisation (“the Ministry”) had already signed a long-term lease with a third party for the property.

7. On 8 August 2007 the Agency for the Restitution and Compensation of Property (“the Agency”), the administrative authority that had replaced the Commission, annulled the 2000 decision. It recognised “Omissis” ownership of the plot of land measuring 1,176 sq. m and, considering the plot of land ineligible for restitution, decided that she would be compensated in one of the ways provided for by law. The applicants’ title was removed from the Land Register.

8. On 29 May 2008 the property was sold to company M., the tenant under the lease with the Ministry, and a building permit was issued for a multi-storey building.

9. The applicants challenged the Agency’s decision before the Tirana District Court (“the District Court”), arguing that the Agency’s power to review and annul the Commission’s decisions of its own motion had meanwhile been declared unconstitutional (see paragraph 36 below). Additionally, contrary to the defendants’ arguments, the property in question was not being used for a public purpose, and there had therefore been no legal obstacle to its restitution.

10. On 31 May 2010 the District Court dismissed the applicants’ request for the annulment of the Agency’s decision, finding that the plot of land in question had not been eligible for restitution. The court further noted that the Constitutional Court’s ruling of 26 May 2010 (see 36 and 37 below) had not yet been published in the Official Gazette and was therefore not yet applicable. On 4 May 2011 the Tirana Court of Appeal upheld the District Court’s judgment.

11. The applicants lodged an appeal on points of law with the Supreme Court, arguing that the Agency’s decision – issued by its director – had violated their constitutional rights and had been adopted in breach of the law. They further argued that the lower courts’ judgments had failed to comply with the Constitutional Court’s ruling of 26 May 2010 (see paragraphs 36 and 37 below).

12. In July 2012 the Supreme Court, in a five-member panel, dismissed the applicants' appeal on points of law *de plano*, on the grounds that it did not contain any admissible arguments, in accordance with Article 472 of the Code of Civil Procedure.

13. The applicants lodged a constitutional complaint, alleging a lack of impartiality on the part of the Supreme Court, a violation of their right to be heard during the administrative proceedings and a breach of the principle of legal certainty.

14. On 21 March 2013 the Constitutional Court accepted the applicants' constitutional complaint and remitted the case to the Supreme Court. The Constitutional Court found a violation of the applicants' right to an impartial tribunal, as one of the members of the Supreme Court bench, Judge G.Z., was the former State Advocate who had requested the annulment of the Commission's 2000 decision. The Constitutional Court was unable to decide on the applicants' complaint concerning the principle of legal certainty for failure to reach the required five-member majority, as only four of the six panel members voted to accept it.

15. On 3 March 2016 the Supreme Court dismissed the appeal on points of law lodged by the applicants for a second time, in accordance with Article 472 of the Code of Civil Procedure (no valid grounds for appeal).

16. On 15 February 2016 the applicants lodged a new constitutional complaint with the Constitutional Court. They complained of a violation of their right to be heard during the administrative proceedings. They further alleged a breach of the principle of legal certainty, on the grounds that their ownership of the plot of land had already been established by the Commission's final decision and that the courts had had an obligation to act in accordance with the Constitutional Court's ruling of 26 May 2010.

17. The Constitutional Court notified the applicants twice about the adjournment of the hearing of their case, which was scheduled, respectively, for 22 June and 27 June 2017. The first hearing was adjourned because Judge V.T. had recused herself, having previously served as the applicants' lawyer. The second hearing was adjourned for unspecified "objective reasons".

18. On 24 July 2017 the Constitutional Court, sitting in camera in a formation of six out of nine judges, dismissed the applicants' constitutional complaint with prejudice following a three-to-three split. The court stated that a majority of five votes was required under section 73(4) of the Constitutional Court Act for such a complaint to be upheld. Where this was not achieved, the complaint had to be considered definitively dismissed (*rrëzuar*). Three members of the panel, Judges B.I., G.D. and F.L., all of whom had been part of the Supreme Court's bench in 2012, voted to dismiss the applicants' constitutional complaint.

II. composition of the Constitutional Court

19. Two judges did not take part in the adjudication of the applicants' case: Judge V.T., who had recused herself for being their former lawyer; and Judge A.Xh., who was absent for unspecified reasons. It appears that she returned to work in September 2017. Judge S.B.'s position, who had resigned in September 2016, was still vacant at the time.

20. The former Supreme Court judges (Judges B.I., G.D. and F.L.) who had heard the applicants' case in 2012 were appointed as Constitutional Court judges at the same time, after the end of their terms at the Supreme Court.
21. As to the other judges' mandates, Judge V.K.'s mandate ended on 25 April 2016, but he continued to perform his duties until 2 August 2017, when he resigned. He participated in the hearing of the applicants' case.
22. In February 2018 the President of the Republic opened the procedure to appoint a Constitutional Court judge to fill the position previously held by Judge S.B. This vacancy was filled in October 2019 by Judge B.M., who was dismissed a few weeks later for failing to pass the vetting process. In December 2020 he was replaced by Judge S.Bj.
23. In November 2019 Parliament (hereinafter also "the Assembly") appointed Judge E.T. as a replacement for Judge V.K. (see paragraph 21 above).
24. As a result of resignations and/or dismissals by the vetting bodies, the Constitutional Court lacked a quorum for full bench review from 23 March 2018 (when Judge F.L. was suspended and later dismissed by the vetting bodies) until 23 December 2020 (when the sixth new member, Judge P.K., was appointed).

RELEVANT Legal framework and practice and international material

I. Domestic law and practice

A. Constitution

25. The relevant parts of the Albanian Constitution read as follows:

Article 125

"1. The Constitutional Court shall consist of nine members. Three members shall be appointed by the President of the Republic, three shall be elected by the Assembly and three shall be elected by the Supreme Court. Members shall be selected from among the top three candidates on the list compiled by the Justice Appointments Council, in accordance with the law.

2. The Assembly shall elect a judge of the Constitutional Court by a majority of no less than three-fifths of its members. If the Assembly fails to elect the judge within thirty days from the submission of the list of candidates by the Justice Appointment Council, the candidate ranked first on the list shall be considered appointed.

3. Judges of the Constitutional Court shall hold office for a nine-year term, without the right to reappointment.

...

6. The composition of the Constitutional Court shall be renewed every three years by one-third, in accordance with the procedure defined by law.

7. A judge of the Constitutional Court shall remain in office until the appointment of a replacement, except in the cases provided for in Article 127 § 1 (c), (ç), (d) and (dh)."

Article 127

...

"3. If a judge's position becomes vacant, the appointing body shall appoint a new judge, who shall remain in office until the expiry of the outgoing judge's mandate."

Article 179

"1. The current members of the Constitutional Court shall continue [to serve] in accordance with their previous mandates.

2. The first member to be replaced in the Constitutional Court shall be appointed by the President of the Republic, the second shall be elected by the Assembly and the third shall be appointed by the Supreme Court. This order shall be followed for all future appointments made after the entry into force of this law.

3. To ensure the regular renewal of the composition of the Constitutional Court, the judge replacing the judge whose mandate ends in 2017 shall remain in office until 2025, and the new judge replacing the judge whose mandate ends in 2020 shall remain in office until 2028. The other Constitutional Court judges shall be appointed for the full duration of their mandates, in accordance with the law."

B. Constitutional Court Act (Law no. 8577/2000), as amended by Laws nos. 99/2016 and 45/2021

26. The Court decides on the merits of individual complaints as a full bench. The quorum of the plenary session is two-thirds of the full bench, or six judges (section 32(1)).

27. A Constitutional Court judge must request to recuse him or herself from examining a specific case when he or she has publicly expressed his or her position regarding the case, or when his or her impartiality is called into question for other reasons (section 36(1)(b), and (ç)).

28. In such cases, the judge must, within a reasonable time, submit a written request to withdraw from the case to the President of the Constitutional Court. The request is examined by the Meeting of Judges, which decides whether to accept or reject it (section 36(3)).

29. The parties have the right to request the recusal of judges at any stage of the proceedings when one of the situations provided for in section 36 exists and the judge does not recuse him or herself (section 37(1)). The decision is taken by a majority of the judges taking part in the examination of the case in question. The judge whose recusal is requested, after being heard by the panel, does not take part in the vote. In the event of a tie vote, the judge is considered recused.

30. The notification of the date and time of a public hearing (*seancë plenare*) or an in camera hearing (*mbi bazë të dokumenteve*) shall be carried out, as a rule, thirty days before the scheduled date, except in cases where the Constitutional Court decides otherwise (section 38(1)).

31. In cases of in camera hearings, the parties' failure to submit their observations within the set deadline and without justification, shall result in the adjudication of the case solely on the basis of the complaint and any evidence submitted at the time the case was registered (section 38(6)).

32. Decisions of the Constitutional Court are taken by a majority vote of the full bench and abstentions are not allowed (section 72(2)).

33. Section 73(4) of the Act provides that "where a five-judge majority is not achieved", the complaint is considered definitively dismissed (*rrëzuar*).

C. Code of Civil Procedure ("the CCP")

34. The relevant provisions of the CCP, as in force at the material time, provided as follows:

Article 472

Decisions against which an appeal can be lodged

"Decisions of the Court of Appeal and the District Court may be appealed against to the Supreme Court on the following grounds:

- (a) the law has not been complied with or has been applied erroneously;
- (b) there have been serious breaches of procedural rules (pursuant to Article 467 of the Code);
- (c) there have been procedural violations that have affected the adoption of the judgment.

..."

D. 2004 Property Act (Law no. 9235/2004 – as in force at the material time)

35. On 6 February 2007 the 2004 Property Act was amended (Law no. 9684). In particular, section 18 of the Act was reworded in relation to three main points. Firstly, the State Advocate's Office was granted the right to lodge an appeal with the central office of the Agency against decisions of regional branches of the Agency. Such appeals had to be lodged within thirty days of notification. Secondly, the State Advocate's Office was granted the right to lodge an appeal with the central office of the Agency against final decisions of former commissions. No time-limit was provided for such appeals. Thirdly, the director of the central Agency was authorised to review and potentially annul, of his or her own motion, final decisions of former property commissions and regional branches of the Agency. No time-limit was provided for such a review.

E. Constitutional Court practice

36. On 26 May 2010 the Constitutional Court issued a ruling declaring the Agency's power to review previous final decisions of its own motion unconstitutional.

37. It reasoned that a request lodged with a property commission was equivalent to a court claim and that, therefore, the decisions of commissions created the same expectations as court judgments. They were not mere administrative acts, but rather quasi-judicial decisions. It followed that only a judicial authority, not an administrative authority such as the Agency, could examine an action for review of a property commission's decision.

38. Following that ruling, on 22 July 2010 Parliament introduced amendments to the 2004 Property Act restoring the central Agency's powers to review prior decisions of commissions. On 6 October 2011 the Constitutional Court found those provisions to be unconstitutional, essentially for the same reasons as those described above.

II. Relevant International Material

A. Opinion on the Appointment of Judges to the Constitutional Court adopted by the Venice Commission on 19 June 2020

39. The relevant parts of the Opinion on the Appointment of Judges to the Constitutional Court of Albania read as follows:

"23. Justice Berberi resigned from duty on 14.09.2016, while justice Kristo was still in function. His vacancy was therefore the first to materialise in chronological order, so that, by operation of the sequence, his successor fell into the quota of the President. The successor to justice Kristo subsequently fell into the quota of the Assembly.

...

31. The Supreme Court, due to the vetting of its members, for quite a long time only had one judge in office out of 19 judges; this judge had remained in office after the expiry of his mandate in February 2014. The Supreme Court thus did not have the quorum to elect the three Constitutional Court members falling within its quota. On 10.03.2020, however, three new judges of the Supreme Court were sworn in by the President."

B. Material relating to the judiciary

40. Relevant international texts, such as extracts from the Bangalore Principles of Judicial Conduct, can be found in *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia* (no. 16812/17, § 224, 18 July 2019) and *Harabin v. Slovakia* (no. 58688/11, §§ 107-08, 20 November 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION concerning the right to an impartial tribunal

41. Relying on Article 6 § 1 of the Convention, the applicants complained of a violation of their right to an impartial tribunal by the Constitutional Court.

42. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

A. Admissibility

43. The Government submitted that the applicants had waived their right to an impartial tribunal by not requesting the recusal of the three judges of the Constitutional Court on the grounds of their previous involvement in the examination of their case before the Supreme Court. The applicants had known that the three judges would sit on the Constitutional Court's bench, considering that their case was to be examined by the whole panel. Since the composition of the Constitutional Court was public information, it had been up to the applicants to request the recusal of the three judges if they had doubted their impartiality.

44. The applicants disagreed. They argued that, considering the legal provisions in force, they had expected the three judges to recuse themselves, given that they had been part of the adjudicating panel of the Supreme Court in 2012.

45. The Court considers that the Government's objection is connected to the merits of the applicants' complaint and therefore decides to join it to the merits.

46. 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' submissions

47. The applicants argued that the participation of Judges B.I., G.D. and F.L. in the proceedings before the Constitutional Court had violated their right to have their case heard by an impartial tribunal because the same judges had also adjudicated their appeal before the Supreme Court in 2012. The judges had effectively adjudicated the same case twice, involving the same parties, the same facts and the same dispute. In their claim before the District Court, they had raised the same arguments raised in their appeal on points of law and later in their constitutional complaint, alleging a breach of the principle of legal certainty, interference with their right to the peaceful enjoyment of their possessions and a violation of their right to be heard. In their view, therefore, the three judges in question could not be considered impartial. Furthermore, given that the Constitutional Court had sat in a panel of six out of nine judges and the minimum vote required for finding a violation had been five members, the participation of three partial judges had been decisive and capable of influencing the whole outcome of the case. As a result, the whole bench could not be considered impartial.

48. As regards the waiving of their right to request the judges' recusal, the applicants argued that the Constitutional Court had not held a hearing in their case. They had therefore had no way of knowing that the three judges had not recused themselves from the proceedings.

49. The Government, for their part, argued that the participation of the same judges at different stages of the proceedings did not, in itself, constitute a violation of the right to an impartial tribunal. The Supreme Court's jurisdiction differed from that of the Constitutional Court and, therefore, the grounds on which members of each respective judicial body were required to express their positions also varied. The applicants' appeal on points of law had concerned the interpretation of property law by the administrative bodies, while the constitutional complaint had related to their right to a fair trial. Furthermore, the Government pointed out that in 2017 the Constitutional Court had assessed the constitutionality of the Supreme Court's 2016 judgment, a decision in which the three judges whose impartiality was now being contested by the applicants had not participated.

2. *The Court's assessment*

(a) **Impartiality**

50. As a rule, impartiality denotes the absence of prejudice or bias. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to (i) 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 (ii) an objective test, that is to say, by ascertaining whether, quite apart from the personal conduct of any of its members, the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, among other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009, with further references). However, there is no watertight division between subjective and objective impartiality, as the conduct of a judge may not only prompt objectively held misgivings as to the tribunal's impartiality from the point of view of the external observer (the objective test) but may also go to the issue of the judges' personal conviction (the subjective test) (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). 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). In this regard, 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". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015, and *Denisov v. Ukraine* [GC], no. 76639/11, §§ 61-63, 25 September 2018).

51. The assessment of whether the participation of the same judge at different stages of a civil case complies with the requirement of impartiality laid down by Article 6 § 1 is to be made on a case-to-case basis, regard being had to the circumstances of the individual case and, importantly, to the characteristics of the relevant rules of procedure applied to the case. In particular, it is necessary to consider whether the link between substantive issues determined at various stages of the proceedings is so close as to cast doubt on the impartiality of the judge participating in the decision-making at these stages (see *Indra v. Slovakia*, no. 46845/99, §§ 51-54,

1 February 2005; see also, *mutatis mutandis*, *Warsicka v. Poland*, no. 2065/03, § 40, 16 January 2007, *Toziczka v. Poland*, no. 29995/08, § 36, 24 July 2012; and, as regards constitutional review proceedings, *Scerri v. Malta*, no. 36318/18, § 76, 7 July 2020).

52. Turning to the circumstances of the present case, the Court observes that the applicants' concerns regarding the Constitutional Court's impartiality stemmed from the fact that Judges B.I., G.D. and F.L., who had been members of the panel of the Supreme Court in 2012 in the same case, also participated in the proceedings before the Constitutional Court. The Court agrees that this situation could have raised doubts in the applicants' minds about the impartiality of that court. It must therefore determine whether those doubts were objectively justified, which depends on the specific circumstances of the case. In this regard, the Court considers it appropriate to examine whether there was a close link between the issues examined by the Supreme Court dealing with the appeal on points of law in 2012 and those addressed by the Constitutional Court in its 2017 judgment.

53. The Court observes that on 11 July 2012 the Supreme Court dismissed the applicants' appeal on points of law. The main legal issue in their claim before the District Court related to the alleged violation of their property rights and the principle of legal certainty because of the annulment of the Commission's decision and the lack of compliance with the Constitutional Court's 2010 ruling. Both these issues were raised in the applicants' appeal on points of law and therefore the Supreme Court was called upon to address them. However, the Supreme Court's judgment, being a *de plano* judgment, did not contain any detailed reasoning in response to the applicants' complaints. It declared their appeal on points of law inadmissible in accordance with Article 472 of the Code of Civil Procedure, citing a lack of valid grounds for appeal. This amounted, in effect, to a ruling that the lower courts had applied substantive law correctly (see paragraph 34 above).

54. After the Constitutional Court had found a violation of the applicants' right to an impartial tribunal and remitted the case to the Supreme Court for a fresh examination, that court had to address the same issues as those previously addressed in 2012.

55. The Court observes that Judges B.I., G.D. and F.L. sat on the panel of the Constitutional Court in 2017. That court was called upon to decide whether the handling of the applicants' case by the lower courts complied with their constitutional rights. While it is true that the constitutional complaint heard by the three judges concerned the Supreme Court's 2016 judgment, both the 2012 and 2016 Supreme Court judgments concerned the same appeal on points of law and took the same approach towards it. Thus, the same judges sitting on the bench of the Constitutional Court were called upon to decide whether they themselves had previously adopted a position that had contributed to the breach of the applicants' constitutional rights (see *Scerri*, cited above, § 78). Furthermore, while recognising the different nature of cassation and constitutional proceedings, the Court notes that in the present case the judgments of both the Supreme Court and the Constitutional Court concerned closely related substantive issues, primarily relating to respect for the principle of *res judicata*, the quashing of the Commission's decision and compliance with previous Constitutional Court precedent.

56. When it is being decided whether, in a given case, there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports* 1996-III; *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII; *Kyprianou*, cited above, §§ 118-19; and *Driza v. Albania*, no. 33771/02, § 76, ECHR 2007-V (extracts)). In view of the participation of the three judges in question – in a six-judge formation – in the adjudication of the case, the Court finds that the circumstances described above are sufficient to consider that the applicants had a legitimate reason to fear a lack of impartiality on the part of the Constitutional Court. This issue gains further significance from the fact that the same three judges voted in favour of dismissing the applicants' constitutional complaint, in an evenly split bench.

57. The Court will therefore assess whether the judges were under an obligation to recuse themselves and what impact their recusal would have had on the panel.

(b) Judges' recusal and the doctrine of necessity

58. It must be emphasised, in this connection, that any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Micallef*, cited above, § 98). The impartiality of judges (*nemo iudex in causa sua*) is indeed one of the cardinal principles of a State governed by the rule of law.

59. 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 *Harabin*, cited above, §§ 130-32 and 135-40). The Constitutional Court sat in a panel of six out of nine judges (the full bench). The applicants claimed that three of those judges had not been impartial. Under section 36(1)(b) and (c) of the Constitutional Court Act (see paragraph 27 above), any judges who have publicly expressed their position regarding the case or whose impartiality is called into question for other reasons must recuse themselves from the case. 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, Series A no. 53 and *Harabin*, cited above, § 132).

60. Even assuming that the three conflicted judges could not recall sitting on the Supreme Court's bench in 2012, they should have become aware of their previous involvement in the same case when studying the case file, which included the judgment in question. The Constitutional Court did not hold a public hearing in the applicants' case, or notify them in advance of the composition of the bench that would hear the case in a closed hearing. Although the applicants were presumably aware of the usual composition of its bench, they were not informed of any possible absences or of the fact that the three judges had not recused themselves. In that connection, and with regard to the Government's objection that the applicants had not requested the recusal of the three judges, the Court notes that they became aware of the composition only when the Constitutional Court's judgment was served on them.

Furthermore, the applicants were not given an opportunity to make submissions on the impartiality question in good time (see *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 35, 25 February 2020). The Government's preliminary objection in respect of this issue must therefore be dismissed.

61. In several of its cases, the Court, when addressing issues related to the principle of judicial impartiality, has referred to the Bangalore Principles of Judicial Conduct, which provide that extraordinary circumstances may require a departure from the principle of impartiality. Specifically, the doctrine of necessity cited in the Bangalore Principles enables a judge, who would otherwise be disqualified, to hear and decide a case only where failure to do so would result in injustice – particularly where an adjournment or mistrial would cause severe hardship. Such cases are described as “rare and special” (see references in paragraph 40 above). The Venice Commission, referring to that doctrine, has opined that it applies only if disqualification might result in a denial of justice, noting that a broad margin of discretion in deciding a case may argue in favour of disqualification. However, in situations where the constitutional question is rather clear and judicial review does not involve any value judgment by the judge concerned, the effective functioning of a constitutional court as a democratic institution should prevail (see *Alvina Gyulumyan and Others v. Armenia*, no. 25240/20 (dec.), §§ 52 and 81, 21 November 2023).

62. In the case at hand, the issue of the judges' impartiality was not raised *proprio motu* and, as a result, the Court has been provided with no information as to whether it was discussed within the Constitutional Court or on what grounds it was decided to proceed with the same composition. There is nothing in the case file to suggest that Judges B.I., G.D. and F.L. considered the possibility of withdrawing from the case or that they had informed the President of the Constitutional Court of their prior involvement in the related proceedings, even though the relevant procedural rules appeared to provide for such a possibility (see paragraph 28 above; and *Golubović v. Croatia*, no. 43947/10, § 58, 27 November 2012).

63. As a result, the Constitutional Court did not avail itself of the opportunity to determine whether the alleged reasons for their lack of impartiality justified the exclusion of the three judges or whether the court's ability to determine the matter should have also been considered in the circumstances. Therefore, the Court takes the view that the requisite procedural review was not carried out by the Constitutional Court.

(c) The Constitutional Court's quorum and vacancies on its bench

64. The Court notes that one of the contributing reasons as to why the Constitutional Court sat in an incomplete panel of six judges in the applicants' case, thereby complicating its decision-making process, was the extensive delays in the election or appointment of its new members (see also *Meli and Swinkles Family Brewers v. Albania*, nos. 41373/21 and 48801/21, § 65, 16 July 2024).

65. The three judges challenged by the applicants for their lack of impartiality had been appointed at the same time, after the end of their terms as Supreme Court judges (see

paragraph 20 above). The Court acknowledges that it is for the Member States to determine the criteria for appointing members of the highest courts. Nevertheless, the Court considers that, within the relevant institutional arrangement at national level, issues might arise in the event of the simultaneous appointment of multiple (former or sitting) Supreme Court judges to the Constitutional Court. Given that the Constitutional Court is composed of nine judges, with a quorum of six judges, and there are no provisions for substitute judges or similar arrangements, such appointments might hinder its decision-making when issues of impartiality arise. This is apparent from the fact that in most individual complaint cases, the constitutional complaint is brought against judgments of the Supreme Court as the highest ordinary court.

66. Another relevant issue concerns the time it took the national appointing authorities to appoint new judges to the Constitutional Court after the completion of the existing members' terms. The Court notes that when the applicants' case was adjudicated, the terms of Judges S.B. and V.K. had come to an end more than fifteen months earlier. Their successors were appointed only four years and seven months later and three years and six months later, respectively (see paragraphs 22 and 23 above). Similar delays affected the appointment of the entire next generation of Constitutional Court judges, as only one of the sitting judges at the time of the 2016 justice reforms was confirmed by the vetting bodies. As a result of these developments, it became difficult for the Constitutional Court to consider whether adjudication of the present case might have been adjourned until that court obtained a quorum without the participation of the three conflicted judges, also taking account that the case had already been pending for one year and a half.

67. As a result of resignations and/or dismissals by the vetting bodies, the Constitutional Court lacked a quorum for full bench review from 23 March 2018 until 23 December 2020 (see paragraph 24 above).

68. The Constitutional Court did not address these aspects in its decision-making, these being factors that were structural and institutional in nature and cannot, in any way, be attributed to the applicants.

(d) Conclusion

69. The above considerations are sufficient for the Court to conclude that the proceedings before the Constitutional Court lacked the necessary guarantees of impartiality. This conclusion is based on the existence of objectively justified fears about the impartiality of Judges B.I., G.D. and F.L., and the court's failure to properly address that question. The structural deficiencies surrounding the timely filling of vacancies on its bench contributed to the situation in which that court found itself in deciding the applicants' case.

70. For the reasons set out above, the Court dismisses the Government's preliminary objection and finds that the applicants' right to a hearing by an impartial tribunal was not respected in the domestic proceedings. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The applicants also complained, under Article 6 § 1 of the Convention, of a violation of their right of access to the Constitutional Court and a breach of the principle of legal certainty and, under Article 1 of Protocol No. 1 to the Convention, of interference with their right to the peaceful enjoyment of their possessions.

72. Having regard to its finding concerning the applicants' right to an impartial tribunal under Article 6 § 1 (see paragraph 70 above), the Court notes that the applicants now have an opportunity to seek the reopening of the proceedings before the Constitutional Court (see paragraph 76 below). That would, in principle, allow for an examination of the applicants' remaining complaints under the Convention by an impartial tribunal. In these circumstances, and in line with its subsidiary role, the Court considers that it is not necessary to consider the applicants' remaining complaints at this time. It remains open to them to lodge a new application with the Court, as the case may be, following a fresh determination of their constitutional complaints at the national level.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

74. The applicants claimed 6,000,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

75. The Government submitted that the amounts claimed were unfounded and excessive.

76. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. Given the nature of the applicants' complaints and of the violation found, the Court reiterates, as it has in many previous cases where the domestic proceedings were found to be in breach of the Convention, that the most appropriate form of reparation for the violations found would be the reopening of those domestic proceedings (compare *Sevdari v. Albania*, no. 40662/19, §§ 144-45, 13 December 2022). In this connection, the Court notes that section 71(c) of the Constitutional Court Act provides that proceedings before the Constitutional Court may be reopened if an international court with binding jurisdiction over the Republic of Albania finds that an individual's fundamental rights or freedoms have been violated owing to a prior judgment of the Constitutional Court (see *Besnik Cani v. Albania*, no. 37474/20, §§ 57 and 149, 4 October 2022).

77. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicants. It therefore rejects this claim. On the other hand, the Court considers that the applicants must have suffered some non-pecuniary damage as a result of the

violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards to each of the applicants EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicants also claimed EUR 5,730 for costs and expenses incurred before the Court.

79. The Government contested that claim.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly EUR 4,000 in respect of costs and expenses, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objection concerning the applicants' failure to challenge the judges whom they considered biased, and *dismisses* it;
2. *Declares* the applicants' complaint under Article 6 § 1 of the Convention concerning the right to an impartial tribunal admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of impartiality of the Constitutional Court;
4. *Holds* that there is no need to examine the other complaints;
5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,600 (three thousand six hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros), jointly to the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 August 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar

Ioannis Ktistakis President