FIFTH SECTION

**CASE OF GABAIDZE v. GEORGIA**

*(Application no. 13723/06)*

JUDGMENT

STRASBOURG

12 October 2017

*This judgment is final but it may be subject to editorial revision.*

In the case of Gabaidze v. Georgia,

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

 Síofra O’Leary, *President,* Nona Tsotsoria, Lәtif Hüseynov, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 September 2017,

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

PROCEDURE

1.  The case originated in an application (no. 13723/06) 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 Zurab Gabaidze (“the applicant”), on 10 March 2006.

2.  The applicant was represented by Mr N. Kvaratskhelia, a lawyer practising in Tbilisi. The Georgian Government (“the Government”) were represented by their Agent, Mr D. Tomadze, of the Ministry of Justice.

3.  The applicant alleged that, contrary to Article 6 § 1 of the Convention, the disciplinary proceedings against him had been unfair since his appeal had been heard on 4 August 2005 by a judicial body that had lacked impartiality and had not been composed in accordance with the law.

4.  On 29 August 2007 the application was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1958 and lives in Batumi.

6.  He was a judge at the Khulo District Court. On 12 November 2004 the Supreme Council of Justice initiated disciplinary proceedings against him on the grounds set out in section 2(2)-(a) Act of 22 February 2000 on Disciplinary Proceedings against Judges of Ordinary Courts (hereinafter, “the Disciplinary Proceedings Act” – see paragraphs 16 and 17 below). He was accused in particular of having kept a defendant in a criminal case under his consideration in unlawful detention for the period of fourteen days in September 2004, which fact was qualified as a “manifest breach of the law” within the meaning of the above-mentioned provision of the Disciplinary Proceedings Act.

7.  On 18 November 2004 a Panel of the Disciplinary Council of Judges (hereinafter, “the Panel”), composed of Mr K.K. (the President of the Panel and rapporteur), Mr G.Ch., Mr D.S. and Mr I.K., considered the case at an oral hearing. According to the transcript of the hearing, the applicant admitted to the act he had been accused of. After examining the circumstances of the case, the Panel found the applicant guilty of the misconduct in question. Describing the mistake at issue as unacceptable, the Panel decided, despite his lack of prior disciplinary sanctions and his good professional reputation, to remove the applicant from judicial office.

8.  The applicant lodged an appeal with the Disciplinary Council of Judges (hereinafter, “the Disciplinary Council”) on points of fact and law. He questioned the assessment of the circumstances of the case and the application of the legal provisions to the established facts in the decision of 18 November 2004.

9.  By a decision of 27 January 2005, the Disciplinary Council unanimously upheld the Panel’s decision of 18 November 2004 in its entirety.

10.  The applicant appealed on points of law to the Supreme Court of Georgia. In a judgment of 11 July 2005, the Supreme Court quashed the Disciplinary Council’s decision of 27 January 2005 for lack of reasoning and legal assessment of the facts, and remitted the case for re-examination.

11.  On 4 August 2005 the Disciplinary Council, composed of six members, including three members, Mr K.K. (President and rapporteur), Mr G.Ch., Mr I.K, who had sat at the first hearing, re-considered the applicant’s case; another member of the Disciplinary Council who participated in the examination of the applicant’s case was Ms N.K. During the oral hearing, the applicant challenged the above-mentioned three members of the bench – Mr K.K., Mr G.Ch. and Mr I.K – on the ground that they had considered his case when it had come before the Panel on 18 November 2004. The request was dismissed.

12.  After re-considering all the factual circumstances of the case, the Disciplinary Council found, in its decision of 4 August 2005, that the applicant had committed “a manifest breach of the law” and upheld the Panel’s decision of 18 November 2004 in its entirety.

13.  In his appeal on points of law, the applicant complained that Mr K.K. had presided over all of the benches of both the Disciplinary Council and the Panel, and three of the members sitting on the Disciplinary Council when it ruled on 4 August 2005 had already dealt with the case at first instance on 18 November 2004. He also complained about his request for their withdrawal being rejected. Finally, the applicant criticised the haste with which the case had been considered by the Disciplinary Council.

14.  On 14 November 2005 the Supreme Court dismissed the applicant’s appeal on points of law, finding that the case had been objectively and exhaustively examined by the disciplinary bodies and that the punishment imposed had been appropriate. As for the rest, noting that the Disciplinary Proceedings Act had instituted a system whereby members of the disciplinary panel could also sit on the Disciplinary Council, the Supreme Court concluded that the composition of the benches complained of by the applicant had been perfectly legal. Moreover, in the court’s opinion, the fact that the persons concerned had previously participated in the examination of the case was not in itself sufficient to prove that the Disciplinary Council, in its ruling on 4 August 2005, had not been impartial.

15.  According to the materials available in the case file, the applicant did not voice, even in remote terms, either before the Panel, the Disciplinary Council or the Supreme Court any complaint about the lack of professional qualifications by any of the individual members of the Disciplinary Council who had participated in the examination of his case.

II.  RELEVANT DOMESTIC LAW

16.  The relevant legal provisions on the guarantees on irremovability of judges of the Courts of Ordinary Jurisdiction as well as concerning the conduct of disciplinary proceedings against such judges, as they were in force at the time of the opening of the disciplinary proceedings against the applicant, were cited in the case of *Sturua v. Georgia* (no. 45729/05, §§ 13‑14 and 16-18, 28 March 2017).

17.  Two other relevant legal provisions from the Disciplinary Proceedings Act, Sections 25(1) and 35(1), read as follows:

Section 25(1)

“Any judge of an ordinary court ... and any Georgian national aged 25 years or over with a law degree and at least five years’ relevant professional experience may be a member of the Disciplinary Council.”

Section 35(1)

“The implicated judge ... shall have the right to request the withdrawal of one or all of the members of a Disciplinary Panel by providing reasoned grounds for the request....”

THE LAW

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

18.  The applicant complained that his case had not been heard by an impartial tribunal as the same three judges – Mr K.K., Mr G.Ch. and Mr I.K. – had taken part in the first and appellate disciplinary proceedings. He further complained that the composition of the Disciplinary Council that examined his case at the appellate level on 4 August 2005 could not be considered to have been established in accordance with the law because two members – Mr K.K. and Ms N.K. – had allegedly lacked the professional qualifications required under Section 25(1) of the Disciplinary Proceedings Act.

19.  The applicant relied on Article 6 § 1 of the Convention which reads, in its relevant parts, as follows:

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

A.  Admissibility

1.  The parties’ arguments

20.  The Government first contended that Article 6 of the Convention did not apply in the present case. Among other arguments, they relied on the Court’s decision in the case of *Pitkevich v. Russia* ((dec.), no. [47936/99](http://hudoc.echr.coe.int/eng#{"appno":["47936/99"]}), 8 February 2001) and maintained that disputes relating to dismissal from the judiciary fell outside the scope of the provision in question.

21.  As regards the complaint about the members of the Disciplinary Council allegedly lacking the necessary professional qualifications, the Government additionally submitted that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention. They emphasised in particular that that the applicant had never voiced any similar grievance, at least in remote terms, during the disciplinary proceedings at the domestic level.

22.  The applicant disagreed with the Government’s objections, considering them to be misplaced and not supported by either the Court’s relevant case-law or the relevant domestic law. With respect to the professional qualifications of Mr K.K. and Ms N.K., the applicant maintained that, to the best of his knowledge, those two people had not possessed five years’ professional experience in the legal field at the time of adjudicating on his case at the first and appellate instances in November 2004 and August 2005, in contravention of the relevant requirement contained in Section 25(1) (see paragraph 17 above).

2.  The Court’s assessment

23.  As regards the Government’s objection of incompatibility *ratione materiae*, the Court reiterates that in the leading and identical case of *Sturua v. Georgia*, (no. 45729/05, 28 March 2017) it already found that Article 6 § 1 of the Convention applied under its “civil” head to disciplinary proceedings conducted under the Disciplinary Proceedings Act against judges of the Courts of Ordinary Jurisdiction (see *Sturua*, cited above, §§ 23‑30). The relevant objection of inadmissibility must therefore be dismissed in the present case.

24.  As regards the objection of non-exhaustion of domestic remedies in relation to the complaint about the allegedly unlawful composition of the disciplinary bodies, the Court observes that there is, indeed, no indication that the applicant, at any stage of the proceedings, challenged the participation of Mr K.K. and Ms N.K. on account of the lack of the requisite professional qualifications, in contravention of the requirements contained in Section 25(1) of the Disciplinary Proceedings Act (compare with, amongst others, *Śliwa v. Poland* (dec.), no. 17519/08, §§ 18-20, 10 May 2012). This omission appears to be particularly problematic given that, in the context of an alleged breach by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs, it is always important for the Court to have knowledge of the domestic courts’ position on the matter (see *Dāvidsons and Savins v. Latvia*, nos. 17574/07 and 25235/07, § 39, 7 January 2016; and also *Biagioli v. San Marino* (dec.), no. [8162/13](http://hudoc.echr.coe.int/eng#{"appno":["8162/13"]}), § 75, 8 July 2014). For these reasons, the Court finds that the Government’s objection of non-exhaustion of domestic remedies is valid.

25.  In the light of the above considerations, the Court concludes that the complaint about the allegedly unlawful composition of the disciplinary bodies at the first and appellate levels must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

26.  As to the applicant’s complaint concerning the impartiality of the Disciplinary Council, it is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

27.  Relying on the same arguments as those put forward in the case of *Sturua* (cited above, § 31), the Government argued that domestic law had offered sufficient guarantees about the independence and impartiality of the Disciplinary Council.

28.  The applicant disagreed.

29.  In the case of *Sturua*, the Court already found a violation of Article 6 § 1 of the Convention in respect of the issue identical to that examined in the present case – the examination of the disciplinary charge against the applicant by the same members of the Disciplinary Council both at the first and appellate levels of jurisdiction, which fact, given the proportion that the judges in question formed on the appellate bench coupled with certain other specific features of the disciplinary procedure at the material time, was sufficient for the Court to hold that the applicant’s fears as to a lack of impartiality on the part of the Disciplinary Council were objectively justified (see *Sturua*, cited above, §§ 34 and 35).

30.  Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the same complaint in this case. Having regard to its case-law on the subject, the Court considers that, given the situation when the applicant’s appeal was examined by the Disciplinary Council on 4 August 2005, with the half of the bench being composed of the same three judges – Mr K.K., Mr G.Ch. and Mr I.K. – who had heard the applicant’s case at first instance, the applicant’s fears as to a lack of impartiality on the part of the Disciplinary Council were objectively justified.

31.  There has accordingly been a breach of Article 6 § 1 of the Convention.

II.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32.  Relying on Articles 6 § 1 and 13 of the Convention, the applicant also complained, on the one hand, that he did not have access to a court and, on the other, that the outcome of the disciplinary proceedings had been based on an erroneous, unjustifiably hasty and therefore superficial assessment of the facts and a wrongful application of the law by the Disciplinary Council and the Supreme Court of Georgia.

33.  However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court, having regard to some of its previous findings in its established case-law on the matter (see *Sturua*, cited above, §§ 37-42), finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

34.  Accordingly, this part of the application is manifestly ill‑founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

35.  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

36.  The applicant claimed 50,000 Georgian laris (GEL) (approximately 21,700 euros (EUR) at the relevant time) in respect of non-pecuniary damage.

37.  The Government submitted that the amount claimed was excessive.

38.  The Court accepts that the applicant suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation (see, for instance, *Toziczka v. Poland*, no. [29995/08](http://hudoc.echr.coe.int/eng#{"appno":["29995/08"]}), § 56, 24 July 2012). Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 3,500 under this head (see again *Sturua*, cited above, § 46).

B.  Costs and expenses

39.  The applicant claimed GEL 4,920 (approximately EUR 2,140 at the relevant time) in respect of his representation before the Court. In support of this claim, he submitted a contract for legal services that he had concluded with his representative on 18 April 2008 together with an itemised invoice breaking down the services provided into hours and fees – twenty-seven hours and twenty minutes at a rate of GEL 180 (approximately EUR 77) per hour. The detailed invoice also indicated the dates and exact types of legal services rendered.

40.  The Government argued that the applicant’s claims were mostly unsubstantiated and excessive.

41.  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 have been 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 sum of EUR 2,140 for costs and expenses in the proceedings before the Court.

C.  Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the complaint under Article 6 § 1 of the Convention concerning the alleged lack of impartiality of the Disciplinary Council admissible and the remainder of the application inadmissible;

2.  *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 2,140 (two thousand one hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

4.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 12 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Anne-Marie Dougin Síofra O’Leary
Acting Deputy Registrar President