



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

GRAND CHAMBER

CASE OF KUIJT v. THE NETHERLANDS

(Application no. 19365/19)

DECISION

STRASBOURG

23 September 2026

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

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In the case of Kuijt v. the Netherlands,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mattias Guyomar, *President*,
Arnfinn Bårdsen,
Ivana Jelić,
Lado Chanturia,
Ioannis Ktistakis,
Kateřina Šimáčková,
Georgios A. Serghides,
Jolien Schukking,
Darian Pavli,
Erik Wennerström,
Diana Sârcu,
Davor Derenčinović,
Úna Ní Raifeartaigh,
Alain Chablais,
Anna Adamska-Gallant,
Vahe Grigoryan,
Vasilka Sancin, *judges*,

and John Darcy, *Deputy Grand Chamber Registrar*,

Having regard to the above application lodged on 4 April 2019,

Having deliberated in private on 21 January and 1 July 2026, decides as follows:

INTRODUCTION

1. The applicant in the present case seeks to challenge an element of the practice of the Supreme Court of the Netherlands. In that court, cassation appeals are assigned to three- or five-judge panels of the relevant division, whose task is to examine and decide the case. In the present case, the division in question was the Criminal Division. When the panel deliberates, the other judges in the division may participate in the discussion. The Dutch term for these other judges is *reservisten*. The purpose of their participation is to ensure the uniform interpretation and application of the law as well as the consistency of the case-law of the Supreme Court. The applicant's complaint is that, given the possible participation in the deliberations of one or more *reservisten*, her appeal on points of law was not heard and determined by an independent and impartial tribunal established by law, as required by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

PROCEDURE

2. The case originated in an application (no. 19365/19) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention by a Dutch national, Ms Johanna Kuijt (“the applicant”), on 4 April 2019.

3. The applicant was represented by Mr W.H. Jebbink, a lawyer practising in Amsterdam. The Government of the Kingdom of the Netherlands (“the Government”) were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

4. The application was allocated to the Fourth Section of the Court, pursuant to Rule 52 § 1 of the Rules of Court. On 15 April 2020 the Government were given notice of the complaint concerning Article 6 § 1 of the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3.

5. On 26 August 2025 a Chamber of the Fourth Section decided to relinquish jurisdiction in favour of the Grand Chamber (Article 30 of the Convention).

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicant and the Government each filed observations on the admissibility and the merits of the case. In addition, the President invited the European Commission for Democracy through Law (Venice Commission) and the Consultative Council of European Judges (CCJE) to intervene in the written procedure. He also granted leave to the French Government to do likewise (Article 36 § 2 of the Convention and Rules 71 § 1 and 44 § 3).

8. The Venice Commission and the CCJE made written submissions on issues relating to the merits of the case, in response to questions posed by the Court. Both interveners published their submissions on their respective websites¹.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 21 January 2026.

There appeared before the Court:

(a) *for the Government*

MS B. KOOPMAN,

Agent,

MS M. BRILMAN,

MS D. DE GROOT,

MR M. KUIJER,

MS N. KOFFEMAN,

MS A. VAN WALRAVEN,

Advisers;

¹ The submissions of the Venice Commission were published with the reference Opinion no. 1263/2025 (CDL-AD(2025)047); those of the CCJE with the reference CCJE(2025)10.

(b) *for the applicant*

MR W.H. JEBBINK,

MR H.U. JESSURUN D'OLIVEIRA,

Counsel,

Adviser.

The applicant was also present.

The Court heard the submissions made by Ms Koopman and Mr Jebbink, as well as their replies to questions put by judges. After the hearing, the President decided to allow the Government to submit additional elements to supplement the replies they had given at the hearing. The applicant was permitted to make submissions in reply.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1964 and lives in Krommenie, the Netherlands.

A. Proceedings at first instance and before the Court of Appeal

11. By a judgment of 14 December 2015, a single judge of the Central Netherlands Regional Court in Utrecht convicted the applicant of complicity in disrupting a meeting of the Zeist municipal council on 6 October 2015 and of failure to comply with an order from the competent official to leave the council chamber immediately. She received a sentence of two weeks' imprisonment. The time that she had spent in pre-trial detention was deducted from this term, and the sentence was suspended for a period of two years. The court further granted the public prosecutor's request to execute a suspended sentence (two months' imprisonment) that the applicant had received in 2014 for posting statements on her website inciting the public to commit criminal offences and violent acts against a public authority. That earlier sentence had been suspended for one year.

12. By a judgment of 12 December 2016, the Arnhem-Leeuwarden Court of Appeal overturned the first-instance judgment for technical reasons and decided the case itself. It convicted the applicant of the offences in question and sentenced her to two weeks' imprisonment. It further found that the execution of the earlier suspended sentence was warranted, as the applicant had reoffended within a year.

B. Proceedings before the Supreme Court

13. On 13 December 2016 the applicant lodged an appeal on points of law with the Supreme Court. On 22 October 2017 the applicant's lawyer submitted the statement of grounds for that appeal (*cassatieschriftuur*),

comprising the following three grounds. First, it was argued that the applicant's conviction for disrupting a meeting of the municipal council had breached Articles 10 and 11 of the Convention, because she had been peacefully protesting, as a member of the Anarchist Anti-Deportation Group Utrecht, against a local immigration detention facility that she considered should be closed down. Second, it was submitted that the official who had ordered her to leave the council meeting had lacked the authority to do so. Third, it was contended that the decision to execute her previous sentence had been unlawful as that sentence had related to a different type of offence.

14. In an advisory opinion of 26 June 2018, the Advocate-General recommended that the appeal be dismissed. The applicant was given the opportunity to respond to that advisory opinion.

15. By a letter of 26 June 2018, the applicant's lawyer asked the Supreme Court's registry for the names of the judges assigned to the panel hearing her appeal. That information was given to her in a reply of 12 July 2018.

16. By a letter of 27 July 2018, the applicant's lawyer asked the Supreme Court's registry whether *reservisten* would participate in the deliberations in the applicant's case. He added that the Supreme Court's Protocol on participation in examination and deliberations at the Supreme Court of the Netherlands (*Protocol deelname aan behandeling en beraadslaging van de Hoge Raad der Nederlanden* – "the Protocol", reproduced in so far as relevant in paragraph 61 below) stated that *reservisten* could take part in the deliberations, but it was unclear whether they did so in all cases.

17. In its reply of 7 September 2018, the Supreme Court's registry referred the applicant's lawyer to the Protocol and stated that no further comment would be made on the matter.

1. Challenge proceedings

18. On 12 September 2018 the applicant challenged the involvement in her case of the three judges assigned to it, as well as that of all the other judges in the Supreme Court's Criminal Division. She relied on Article 512 of the Code of Criminal Procedure, which allowed the parties to criminal proceedings to challenge "any of the judges examining a case" on the grounds of facts or circumstances that could undermine judicial impartiality (see paragraph 57 below).

19. The applicant's challenge was heard by a panel of five judges drawn from a different division of the Supreme Court ("the challenge panel"). An oral hearing took place on 29 October 2018.

20. The judges who had been challenged stated that they did not consider themselves required to withdraw and saw no need to be heard further on the matter.

21. On 9 November 2018 the Procurator-General delivered his advisory opinion (see paragraphs 29-38 below).

(a) The applicant's arguments

22. The applicant argued that, contrary to Article 6 § 1 of the Convention, her appeal would not be heard and determined by an independent and impartial tribunal established by law. This was because, according to the Supreme Court's Protocol, one or more *reservisten* could participate, or had participated, in the deliberations in her case, even though that was not provided for by law (she relied on *Miracle Europe Kft v. Hungary*, no. 57774/13, 12 January 2016). She submitted that, given the Supreme Court's refusal to answer her question regarding the participation of *reservisten* in her case (see paragraphs 16 and 17 above), it had to be assumed that one or more such judges would take or had already taken part in the deliberations.

23. The applicant argued that the panel which had been designated to hear and determine her appeal should be considered a non-independent tribunal because it allowed itself to be unduly influenced by the participation of other judges in the deliberations. She challenged the other judges in the Criminal Division as biased or non-independent because they could influence the examination of her appeal, which would be unlawful as they were not members of the panel assigned to the case.

24. While the exact role of *reservisten* in the deliberations remained unclear, it could be inferred from several academic publications and statements by (former) judges of the Supreme Court that *reservisten* who took part in the deliberations could contribute to the decision-making process to a degree almost equal to that of the members of the panel. Although the *reservisten* did not take part in the vote, their contributions could be of great importance, amounting to undue influence over the determination of the case.

25. By participating in the deliberations, the *reservisten* in fact took part in hearing and determining the case. That was contrary to the requirements of section 75 of the Judiciary Organisation Act, under which cases should be examined and decided by a panel of three or five judges (see paragraph 58 below). The requirement that a tribunal be "established by law" was thus not satisfied.

26. The applicant further noted that the involvement of *reservisten* in deliberations appeared to be optional, as it was unclear whether they would participate or had participated at all. Moreover, it appeared that they were free to choose whether or not to take part in the deliberations and, if present, whether to express an opinion. In the applicant's view, that lack of clarity regarding the involvement of *reservisten* and the discretionary nature of their participation were contrary to the principle that the administration of justice had to be transparent.

27. Maintaining that the presence of *reservisten* at the deliberations brought undue influence to bear on the panel judges (and in that respect she relied on *Agrokompleks v. Ukraine*, no. 23465/03, 6 October 2011), the applicant argued that Article 512 of the Code of Criminal Procedure (see

paragraph 57 below) had to be interpreted as protecting both judicial impartiality and judicial independence, given their close link.

28. Lastly, the applicant submitted that her right to a fair trial had been violated because she would not have had or had not had the opportunity to react to the input of the *reservisten* during the deliberations. She emphasised the importance of appearances in that respect, and relied on judgments of the Court concerning the presence of other judicial officers at, and their participation in, judicial deliberations (referring to *Lobo Machado v. Portugal*, 20 February 1996, *Reports of Judgments and Decisions* 1996-I; *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI; and *Martinie v. France* [GC], no. 58675/00, ECHR 2006-VI).

(b) Advisory opinion of the Procurator-General

29. In his advisory opinion of 9 November 2018, the Procurator-General took the view that the challenge was admissible, not only with respect to the judges assigned to sit on the appeal panel, but also with respect to the *reservisten*. As to the merits, he advised that the challenge was ill-founded and should be dismissed on that basis.

30. The Procurator-General noted that *reservisten* were not designated to “examine and decide” the case within the meaning of section 75(3) of the Judiciary Organisation Act (see paragraph 58 below), but that, according to the Protocol, they participated in the deliberations with a view to ensuring the uniform interpretation and application of the law.

31. He noted that both supporters and opponents of *reservisten*’s participation in deliberations drew on the same source, namely Article 6 of the Convention. On the one hand, the applicant had argued that this arrangement would prevent her from having access to the impartial tribunal guaranteed by law to which she was entitled. On the other hand, in 2016 the then President of the Supreme Court, Judge Feteris, had invoked Article 6 of the Convention in support of the impugned practice, affirming that a fair trial presupposed uniformity of the law. While such uniformity could also be pursued by other means, including joint case-law analyses or informal discussions, these were much less effective.

32. In his advisory opinion the Procurator-General cited the following description of the link between the promotion of legal uniformity and the participation of *reservisten* in deliberations, as given by Judge Feteris in a 2016 academic article²:

“One of the main tasks of the Supreme Court has traditionally been to promote legal uniformity in the Netherlands. This was one of the main reasons for establishing a single supreme court after the Netherlands gained independence. ...

² Maarten Feteris, “Geheim van de raadkamer staat niet aan collegiale afstemming in de weg”, *Nederlands Juristenblad* 2016/1759.

Once a supreme court has been established, this does not automatically guarantee the uniformity of lower-court decisions. A necessary condition for this is that the highest court itself speaks with one voice, i.e. delivers consistent judgments and rulings. Otherwise, its case-law cannot serve as a guideline for the lower courts. Inconsistent case-law can even lead to tension with the requirements of the rule of law arising from the [Convention]. ...

...

The Supreme Court has developed a working method to avoid such problems and to ensure the necessary consistency and uniformity of law as much as possible. Once the Supreme Court has answered a legal question in a certain way, it will almost always continue to follow that line in subsequent cases. The Supreme Court only deviates from this as a matter of exceptional importance. The judges who now have to decide in a panel of three or five therefore feel bound in principle by what their colleagues have previously decided. In theory, one could leave it at that, but then a great deal would depend on the random composition of the panel that is confronted with a particular legal issue for the first time. If they were able to go their own way, even if most of the judges in the division thought differently, those [other] colleagues [in the division] would, in view of the required consistency, have to follow a line that they believe to be wrong, simply because a few of their colleagues had previously decided in that sense. We want to avoid such a situation within the Supreme Court, and that is why a working method has been developed whereby all cases of any legal importance are discussed in a ... meeting of the entire division, which currently consists of ten judges ...

Even judges who are not sitting in that case – they are also known as *reservisten* – can join the debate and do so regularly. The final decision rests with the three or five judges who sit on the panel, but they are fully aware of the importance of uniformity and consistency of the Supreme Court’s case-law and will therefore take into account the view of their colleagues in the division. The Supreme Court aims to take decisions on the basis of such mutual coordination which makes it possible that they can count on broad support within the relevant division of the court. This also prevents previous decisions from being regularly called into question when the composition of the division changes. Furthermore, issues of cross-division importance are coordinated between the divisions.”

33. The Procurator-General noted that, while the description of the participation of *reservisten* in deliberations in the Protocol was recent, the practice was not, as illustrated in an article by the former President of the Supreme Court, Judge Wiarda, in 1978.

34. The Procurator-General then summarised the Court’s case-law on which the applicant had relied in her challenge (see paragraphs 22, 27 and 28 above), which concerned the allocation of cases and the presence and participation of other parties in deliberations. He added that the fact that a lack of consistent case-law could lead to a violation of Article 6 of the Convention was aptly illustrated by the case of *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, 29 November 2016), in which the Court had stated that it was precisely the highest court that could be expected to ensure the uniform application of the law and legal certainty (with reference to §§ 123 and 129 of that judgment).

35. The Procurator-General went on to say that the Court’s case-law on the allocation of cases demonstrated the importance of the legal basis for

judicial organisation, of statutory regulation of competence and transparency through rules on the allocation of cases, and of compliance with those rules in practice. However, as *reservisten* did not “examine and decide” cases, their presence at the deliberations did not raise an issue of case allocation for the purposes of the Court’s case-law.

36. With respect to the Court’s case-law on the presence and participation of other judicial officers in deliberations, the Procurator-General observed that the Court had repeatedly expressed its disapproval of the presence of a public prosecutor or a member of the public prosecution service in an advisory capacity during deliberations (referring to *Borgers v. Belgium*, 30 October 1991, Series A no. 214-B). The Court had further found that the mere presence of an attorney-general without an advisory vote during deliberations in a civil dispute was sufficient to constitute a violation of Article 6 of the Convention (in reference to *Lobo Machado*, cited above). The Procurator-General noted that in each of the aforementioned – and in other – cases, the Court had found a violation of Article 6 of the Convention owing to a failure to observe the principle of equality of arms or the adversarial principle. No negative conclusion could be drawn from that case-law regarding the presence and participation of *reservisten* in deliberations for the purpose of ensuring the uniform interpretation and application of the law, which was at issue in the present case.

37. In so far as the applicant had relied on the Court’s judgment in *Kress* (cited above; see paragraph 28 above), the Procurator-General emphasised that the key consideration leading to the finding of a violation of Article 6 § 1 of the Convention in that case – as well as in the subsequent cases of *Martinie* (cited above) and *Association Avenir d’Alet v. France* (no. 13324/04, 14 February 2008) – was the fact that the government commissioner, whose presence at the deliberations of the bench of the *Conseil d’État* had been at issue, had already publicly expressed his view on the case prior to the deliberations.

38. The Procurator-General noted that at the Supreme Court of the Netherlands criminal cases in cassation were examined and decided by a three- or five-judge panel, as required by law (section 75(3) of the Judiciary Organisation Act – see paragraph 58 below). Except for reasons of recusal or incapacity, each member of the Criminal Division of the Supreme Court was equally eligible to be appointed to a panel of three or five judges responsible for examining and deciding a case. Section 7 of the Judiciary Organisation Act did not restrict the presence of other members of the Division at the deliberations. The secrecy of the deliberations applied to all those present (section 7(3) of the Judiciary Organisation Act – see paragraph 58 below). This was also stated in the Protocol. The fact that these other members of the Division were present at and could contribute to the deliberations – with the aim of ensuring the uniformity of the law – did not alter the fact that cases were examined and decided by a panel of three or five judges, and was not

objectively incompatible with the right to an impartial tribunal as provided for by Article 6 § 1 of the Convention or Article 14 § 1 of the International Covenant on Civil and Political Rights (adopted on 16 December 1966, 999 UNTS 171 – ICCPR; see paragraph 72 below). Nor could it give rise to an objectively justified fear that the applicant would be denied the tribunal to which she was entitled by law.

39. The applicant submitted a written response to the advisory opinion, in which she referred again to the Court’s judgments in *Borgers* and *Kress* (both cited above). She argued that the Procurator-General had failed to address, *inter alia*, the central point of the challenge, which was that the “established by law” requirement had not been met.

(c) Decision of the challenge panel

40. By a decision of 21 December 2018, the challenge panel, composed of five judges of the fourth division of the Supreme Court – that division itself being made up of judges drawn from the first, second and third divisions, including the President and Vice-Presidents of the Supreme Court –, dismissed the applicant’s challenge as ill-founded.

41. At the outset, the challenge panel stated as follows regarding the role of *reservisten*:

“2.3.1. ... According to section 75(2) and (3) of the Judiciary Organisation Act, the multi-judge divisions examine and decide cases in a formation of three or five judges (‘the panel’). The other judges of the division are not responsible for examining and deciding the case. As specified in section 1.2 of the Protocol, these judges may participate in the deliberations of cases *in camera* for the purpose of safeguarding legal unity in the division. The role of these ‘*reservisten*’ is limited to legal input (*rechtskundige inbreng*) in the interest of legal unity. Such participation is necessary to ensure consistency of the case-law at the level of the Supreme Court. Lack of consistency may undermine confidence in the judicial system and legal certainty, both of which are fundamental aspects of the rule of law (compare, *inter alia*, judgment of 20 October 2011 in *Nejdet Şahin and Perihan Şahin v. Turkey*, ECLI:CE:ECHR:2011:1020JUD001327905, §§ 55-57, and judgment of 29 November 2016 in *Lupeni Greek Catholic Parish and Others v. Romania*, ECLI:CE:ECHR:2016:1129JUD007694311, § 116).

2.3.2. The participation of *reservisten* in the deliberation of cases *in camera* does not alter the fact that a case is examined and decided exclusively by the judges of the composition within the meaning of section 75(2) and (3) of the Judiciary Organisation Act. In this context section 1.2 of the Protocol provides that *reservisten* do not participate when the presiding judge asks the judges individually for their opinion (*hoofdelijke omvraag*) as referred to in section 7(1) of the Judiciary Organisation Act.

2.3.3. Section 1.3.1 of the Protocol states that if facts or circumstances arise in relation to a judge in a specific case that could compromise judicial impartiality, that judge shall not be responsible for examining and deciding the case, even if no request for recusal or challenge has been made.”

42. Turning to the applicant’s request, the challenge panel found that, contrary to the earlier case-law of the Supreme Court and the wording of the

Protocol as in force at the relevant time (see section 2.1.1 of the Protocol, reproduced in paragraph 61 below), *reservisten* could be challenged on grounds of lack of impartiality. The challenge panel referred to a recent Supreme Court judgment which had interpreted “examining a case”, within the meaning of Article 512 of the Code of Criminal Procedure, as encompassing “any judicial involvement in a case, of whatever nature or scope” (see paragraph 71 below). On the basis of that interpretation, the challenge panel found that the role of *reservisten* in deliberations had to be deemed judicial involvement in the case for the purposes of Article 512. “Examining a case” within the meaning of that provision was broader than “examining and deciding a case” within the meaning of section 75(2) and (3) of the Judiciary Organisation Act (see paragraph 58 below). An effective legal remedy was thus available in cases in which judicial impartiality might be undermined by the presence or the participation of a *reservist* in the deliberations. Accordingly, the applicant’s challenge was also admissible in relation to the *reservisten* of the Criminal Division.

43. As regards the scope of the challenge procedure, the challenge panel explained that it was limited to assessing judicial impartiality, which entailed the absence of prejudice and bias. Other aspects of Article 6 § 1 of the Convention, such as judicial independence and the requirement that a tribunal be “established by law”, could not, in themselves, constitute grounds for a challenge, as Article 512 of the Code of Criminal Procedure restricted challenges to the issue of a lack of impartiality. Those other aspects could, however, be raised in the main cassation proceedings, “if necessary by using a legal remedy” (in that regard, the challenge panel referred to two judgments in which the Supreme Court had dealt with complaints about the composition of the panel of the Court of Appeal – see paragraph 70 below).

44. The challenge panel noted that the applicant had argued that the members of the Supreme Court panel were unduly influenced by the *reservisten* of the Criminal Division, whom she regarded as third parties who, in a privileged setting, exerted influence on the panel in the determination of her case. She had contended that their presence during deliberations was not provided for by law and that they had been unlawfully influencing the determination of her case.

45. Reiterating that the role of *reservisten* in deliberations was limited to contributing to the uniform interpretation and application of the law (see paragraphs 2.3.1 and 2.3.2 of its decision, reproduced in paragraph 41 above), the challenge panel found that such contribution was not an indication of any bias on the part of members of the panel or the *reservisten* and that any fear in that regard was not objectively justified. It further found that the fact that the participation of *reservisten* in deliberations was not regulated by an act of Parliament did not constitute an indication of bias.

46. Although the applicant’s complaint that the tribunal had not been “established by law” fell outside the scope of the challenge procedure, the

challenge panel added, as a subsidiary consideration (*obiter dictum*), that the participation and role of *reservisten* were set out in the Protocol, and that both the Protocol and the composition of each Supreme Court division were published on that court's website, enabling all parties to identify in advance which judges could participate as *reservisten* in their case.

47. The challenge panel distinguished the present case from *Agrokompleks* and *Miracle Europe Kft* (both cited above). In *Agrokompleks* the Court had ruled that judicial independence and impartiality required that individual judges, when handling the cases assigned to them, be free from undue influence, for example, through directives or pressure, including from fellow judges. In that case the president of a court had intervened in the proceedings in favour of one of the parties, compromising the independence of the judges hearing the case and creating an objectively justified appearance of bias. By contrast, the role of *reservisten* (see paragraphs 2.3.1 and 2.3.2 of its decision, reproduced in paragraph 41 above) could not be considered to involve such influence as would create the appearance of bias.

48. In *Miracle Europe Kft* the Court had ruled that the “discretionary assignment” of cases to judges could create the appearance of a lack of independence and impartiality. The challenge panel noted that the applicant in the present case had not challenged the manner in which the panel assigned to her case had been composed.

49. The challenge panel therefore concluded that neither of the aforementioned judgments of the Court supported the existence of circumstances in the applicant's case that might indicate bias on the part of the members of the panel or the *reservisten* or suggest that any fear she might have of bias was objectively justified.

50. The challenge panel further held that the applicant could not rely on the Court's case-law on the presence of other parties at, and their participation in, deliberations either (see paragraph 28 above), as that case-law concerned the principle of equality of arms, a violation of which did not constitute a ground for a challenge. The case-law relied on by the applicant concerned situations in which the person who was present at the deliberations had publicly expressed a view on the case prior to those deliberations (with reference to *Martinie*, cited above, § 53). The applicant's challenge did not imply that such a situation had occurred in relation to the members of the panel or the *reservisten*.

51. Lastly, the challenge panel noted that the presence of *reservisten* at deliberations differed from the situations at issue in the case-law cited by the applicant, in that the *reservisten* – unlike an attorney-general or government commissioner – had the status of judges.

52. Since the applicant had not based her challenge on any other facts or circumstances indicating bias against her on the part of the members of the panel or the *reservisten*, the challenge panel concluded that her challenge was ill-founded and, accordingly, dismissed her request.

2. The Supreme Court's judgment in the cassation proceedings

53. By a judgment of 8 January 2019, the Supreme Court, sitting as a panel of three judges of the Criminal Division, dismissed the applicant's appeal.

54. As regards the second ground of appeal, which concerned the competence of the official who had ordered the applicant to leave the council meeting (see paragraph 13 above), the panel referred to a judgment it had adopted in another case on the same day, concerning the same facts (failure to comply with an order to leave a meeting of the Zeist municipal council after disrupting that meeting by way of a protest on 6 October 2015). In that judgment the panel had affirmed that the official, acting on behalf of the municipality that employed him, and with the mayor's approval, could be considered authorised to order a person to leave a council meeting. It rejected the third ground of appeal (*ibid.*), finding that there was no requirement in law that a previous suspended sentence could only be executed when a person committed a similar offence. It did not refer to any Supreme Court case-law in that regard. Lastly, the panel rejected the first ground of appeal, which concerned the alleged breach of Articles 10 and 11 of the Convention, with summary reasoning, in accordance with section 81 of the Judiciary Organisation Act (see paragraph 58 below).

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

55. At the material time, the relevant provisions of the Dutch Constitution read as follows:

Article 17

"No one may be prevented against his or her will from being heard by the courts to which he or she is entitled to apply under the law."

Article 93

"Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published."

Article 94

"Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons."

Article 118

“ ...

(2) In the cases and within the limits laid down by act of Parliament, the Supreme Court shall be responsible for quashing court judgments which infringe the law (cassation).

...”

56. Dutch courts are required, in so far as possible, to interpret and apply domestic law in such a way that the State meets its treaty obligations (*verdragsconforme uitleg*; see, for example, Supreme Court judgment of 16 November 1990, ECLI:NL:HR:1990:ZC0044).

B. Code of Criminal Procedure

57. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 432

“1. The cassation appeal shall be lodged within 14 days of the final judgment ...”

Article 434

“1. The registrar of the court that handed down the judgment or ruling against which a cassation appeal has been lodged shall send the case file to the registrar of the Supreme Court as soon as possible.

...”

Article 435

“1. Upon receipt of the case file by the registrar of the Supreme Court, the Procurator-General shall notify the defendant ... that the case file has been received by the Supreme Court, stating that the case will be heard by the Supreme Court after the expiry of the period referred to in the second ... paragraph of Article 437 ... The notification shall refer to Article 437.

...”

Article 436

“1. After the notification referred to in Article 435, first paragraph, the presiding judge shall set a date for the hearing, taking into account the time-limits referred to in Article 437, first and second paragraphs.

2. The defendant or, if counsel has been appointed to represent the defendant before the Supreme Court, counsel shall be notified of the date set for the hearing of the case.

...”

Article 437

“ ...

2. The defendant by or on behalf of whom a cassation appeal has been lodged shall, on pain of inadmissibility, have his or her counsel submit a document to the Supreme Court containing his or her grounds for cassation within two months of the notification referred to in the first paragraph of Article 435 being served.

...”

Article 439

“1. On the day of the hearing or on a later date, the Procurator-General shall present his or her conclusions in writing to the Supreme Court. Subsequently, the date for the judgment shall be set.

...”

Article 442

“1. The judgment shall be signed by the presiding judge and the judges who ruled on the case as well as by the registrar who was present during the deliberations.

2. If one or more of those who ruled on the case are unable to sign or if the registrar who was present during the deliberations is unable to sign, this shall be stated at the end of the judgment.”

Article 512

“The accused or the public prosecutor may challenge any of the judges examining a case on the grounds of facts or circumstances which could undermine judicial impartiality.”

C. Judiciary Organisation Act

58. At the material time, the relevant provisions of the Judiciary Organisation Act (*Wet op de Rechterlijke Organisatie*) read as follows:

Section 5(2)

“On pain of nullity, orders and judgments in civil and criminal cases and rulings in administrative cases shall be given by the number of judicial officers responsible for the administration of justice determined in this Act.”

Section 7

“(1) The presiding judge of a panel shall ask the members individually for their opinion in deliberations. The presiding judge shall give his or her opinion last.

(2) Each member shall participate in the decision-making process.

(3) Judicial officers charged with the administration of justice, trainee judges and trainee public prosecutors, senior judicial auditors and judicial auditors, the registrar, deputy registrar and acting registrars of the Supreme Court, court officials and external registrars ... may not divulge matters discussed *in camera* concerning pending cases.”

Section 75

“(1) The Supreme Court shall, on the proposal of the president, form one or more divisions composed of several judges and, in the cases prescribed by law, one or more single-judge divisions, and shall determine their composition.

(2) Except in cases specified by law, cases before the Supreme Court shall be examined and decided by five members of a division composed of several judges, one of whom shall act as president.

(3) The presiding judge of a division composed of several judges may decide that any case which he or she deems suitable be examined and decided by three members of that division. If the case is deemed by one of these members to be unsuitable for examination and decision by three members, the examination shall be continued by five members.

(4) The Supreme Court shall, on the proposal of the president, adopt regulations. These regulations shall lay down the organisation into divisions.

(5) The regulations shall be published in the Official Gazette.

...”

Section 78(1)

“The Supreme Court shall examine appeals on points of law against the acts, judgments, verdicts and decisions of the courts of appeal and the regional courts, lodged either by a party or ‘in the interest of the law’ by the Procurator-General at the Supreme Court.”

Section 79(1)

“The Supreme Court shall quash acts, judgments, verdicts and decisions:

a. for failing to comply with formal requirements, in so far as nullity is the express consequence of such failure to comply or such nullity arises from the nature of the formal requirement that has not been complied with;

b. for violating the law, with the exception of the law of foreign States.”

Section 80a(1)

“The Supreme Court may, after taking cognisance of the advisory opinion of the Procurator-General, declare an appeal on points of law inadmissible if the complaints raised do not justify an examination in cassation proceedings, because the party lodging the appeal on points of law clearly has insufficient interest in the appeal on points of law or because the complaints clearly cannot lead to cassation.”

Section 81(1)

“If the Supreme Court considers that a complaint does not constitute grounds for overturning the impugned judgment and does not give rise to the need for a determination of legal issues in the interests of legal uniformity and legal development, it may, in giving reasons for its decision on such complaint, limit itself to that finding.”

59. At the time when the applicant’s case was pending before the Supreme Court, the Criminal Division consisted of 11 judges. In standard criminal cases the president of the Criminal Division appoints a three-judge panel to

examine and decide the case. Panels are not fixed, but once one has been appointed it will deal with the case unless the matter is referred to a five-judge panel or a judge is removed from the case on formal grounds or is unable to sit due to practical difficulties (such as illness).

D. The Supreme Court's Regulations on internal organisation and the Protocol at the material time

60. At the time when the applicant's case was examined by the Supreme Court, the Regulations on internal organisation adopted by the Supreme Court on the basis of section 75(4) of the Judiciary Organisation Act (see paragraph 58 above) provided, in so far as relevant:

Article I

"The Supreme Court of the Netherlands consists of four divisions composed of several judges and three single-judge divisions.

..."

Article XI

"1. The registrar shall ensure that an up-to-date list of the composition of the first, second and third divisions is available for public inspection at the Civil registry. This list shall also be published on the Supreme Court's website. The composition of the fourth division shall be determined on an *ad hoc* basis, drawn from members of the first, second and third divisions, with the president, or if possible, a vice-president, acting as presiding judge of the division.

2. At the request of a party to the proceedings, the registrar shall communicate the names of the Supreme Court members who will decide a particular case."

61. On 28 August 2017 the Supreme Court adopted the Protocol on participation in examination and deliberations at the Supreme Court of the Netherlands. It is published on the Supreme Court's website. At the material time, the relevant part of the Protocol read as follows:

"[Preamble]

This protocol sets out the principles applied by the Supreme Court with regard to the participation of its members in the examination of and deliberations on cases. The protocol regulates the presence of so-called '*reservisten*' during deliberations *in camera*. The protocol aims to establish (*vast te leggen*) and further elaborate on the existing practice in this regard. ... The publication of this protocol is for information purposes only, and not to create or extend any obligations or claims. The protocol sets out principles; under certain circumstances, there may be reasons to deviate from these principles.

...

KUIJT v. THE NETHERLANDS DECISION

1.1. Members of the Supreme Court responsible for examining the case

1.1.1. The Supreme Court consists of four divisions composed of several judges and three single-judge divisions. The divisions composed of several judges examine and decide cases in accordance with the law in a panel of three or five judges.

...

1.2. Input from other members of the division (*reservisten*)

The other members of a division of the Supreme Court are not responsible for examining and deciding the case. However, these other members (*reservisten*) may participate in deliberations on cases *in camera* with a view to safeguarding the uniform interpretation and application of the law within the division. They do not participate when judges are asked individually for their opinion, as provided for by section 7(1) of the Judiciary Organisation Act. The duty of confidentiality in relation to matters discussed *in camera* concerning pending cases, as referred to in section 7(3) of the Judiciary Organisation Act, is fully applicable to them.

1.3. Exclusion of members if judicial impartiality could be compromised

1.3.1. If facts or circumstances arise in a specific case that might undermine judicial impartiality in relation to a member, ... that member will not be assigned to examine and decide the case, even if no challenge has been made or the member has not recused himself or herself. The Guidelines on impartiality and other jobs of members of the judiciary apply in this connection.

1.3.2. The member referred to in section 1.3.1 shall also not participate as a *reservist* in the deliberations ... on that case. The member shall also not be present ... during those deliberations.

...

2.1.1. A party to the proceedings may challenge any of the judges examining the case as referred to in section 1.1.1 on the grounds of facts or circumstances that could impair the impartiality of the court. The challenge may therefore not relate to members of the Procurator-General's office at the Supreme Court, or to employees of the Supreme Court.

..."

E. Developments since the applicant's case was examined by the Supreme Court

62. After the applicant's case was examined, both the Regulations on internal organisation and the Protocol were amended. As of 1 September 2019, the Regulations became an integral part of the Rules of Procedure of the Supreme Court of the Netherlands ("the Rules of Procedure"). The Rules of Procedure are adopted by the Supreme Court on the basis of section 75(4) of the Judiciary Organisation Act (see paragraph 58 above). This integration gives the Regulations the status of "law" within the meaning of section 79 of the Judiciary Organisation Act (see paragraph 58 above) because, according to Supreme Court case-law, Rules of Procedure that are adopted by a judicial body authorised to do so and that are appropriately published should be considered law for the purposes of section 79 of that Act (Supreme Court,

17 April 2015, ECLI:NL:HR:2015:1064, and 3 June 2022, ECLI:NL:HR:2022:824).

63. The relevant provisions of the Rules of Procedure, as in force since 2019, provide (numbering as currently in force):

Section 1.1.3

“The first, second and third divisions composed of several judges examine and decide cases in accordance with the law in a formation of three or five members (‘the panel’).”

Section 1.1.4

“The other members of a division of the Supreme Court are not responsible for examining and deciding the case. However, these other members (*reservisten*) may participate in deliberations on cases with a view to safeguarding the uniform interpretation and application of the law within the division.”

Section 1.1.5

“The Protocol on participation in examination and deliberations lays down further rules on the participation in hearings and deliberations.”

Section 1.1.15

“The Supreme Court’s registrar ensures that an up-to-date list of the composition of the divisions composed of several judges is published on the Supreme Court’s website.”

64. The Protocol was also amended as of 1 September 2019, *inter alia*, to give effect to the challenge panel’s decision in the applicant’s case. The relevant amended provisions read:

Section 1.2

“Section 1.1.4 of the Rules of Procedure states that the other members of a division of the Supreme Court are not responsible for examining and deciding the case. ...”

Section 2.1.1

“A party to the proceedings may challenge a member of the Supreme Court on the grounds of facts or circumstances that could impair the impartiality of the court. The challenge may therefore not relate to members of the Procurator-General’s office at the Supreme Court, or to employees of the Supreme Court.”

65. After the term “a member of the Supreme Court” in section 2.1.1, a footnote has been added with a reference to the decision by the challenge panel in the applicant’s case, in order to clarify that a challenge may be brought not only against members of the panel but also against *reservisten*.

F. Case-law of the Supreme Court

1. *Procedural aspects of proceedings before the Supreme Court*

66. In a judgment of 22 October 2002 (ECLI:NL:HR:2002:AE7385), the Supreme Court addressed a complaint by a defendant, raised in his grounds of appeal on points of law, of a breach at the cassation stage of the requirement under Article 6 of the Convention that his case be heard within a reasonable time, given that the Supreme Court would deliver its judgment more than 16 months after he had lodged his appeal. The Supreme Court held that the complaint did not meet the requirements for a ground of appeal on points of law, because it merely referred to a potential future breach, in proceedings before it, of the reasonable-time requirement.

67. In a leading judgment of 17 June 2008 (ECLI:NL:HR:2008:BD2578), the Supreme Court reiterated and refined the general principles and guidelines it had previously formulated on how to assess whether criminal proceedings had failed to comply with the reasonable-time requirement under Article 6 of the Convention and what legal consequences should follow if that requirement was not met (for example, a reduction of sentence). As regards the cassation stage, the Supreme Court clarified that the reasonable-time requirement could also be exceeded in situations where the deadline for submitting the case file to the Supreme Court was not met after an appeal on points of law had been lodged. The time-limit for the submission of the case file was set at eight months. This was reduced to six months in cases where an appeal on points of law had been lodged by a defendant in pre-trial detention or in the juvenile criminal justice system. In the case in question, the defendant had argued in his grounds of appeal on points of law that the reasonable-time requirement under Article 6 § 1 of the Convention had not been met at the cassation stage of the proceedings. The Supreme Court, applying the above general principles, held that the time-limit it had set for receiving the case file had been exceeded and concluded that Article 6 of the Convention had thus been breached.

68. In a judgment of 24 January 2023 (ECLI:NL:HR:2023:40), the Supreme Court addressed a complaint by a defendant who, relying in his appeal on points of law on the views of the United Nations Human Rights Committee (CCPR) in *Jaddoe v. the Netherlands*³, argued that he had been denied the possibility of a review of his conviction by a higher court, in breach of Article 14 § 5 of the ICCPR (see paragraph 72 below), because the cassation procedure before the Dutch Supreme Court did not satisfy this requirement. The CCPR had found a violation of that provision in *Jaddoe*, noting that the Supreme Court had dismissed Mr Jaddoe's appeal on points

³ CCPR, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3256/2018, 26 July 2022, UN doc. CCPR/C/135/D/3256/2018.

of law with summary reasoning derived from section 81(1) of the Judiciary Organisation Act. According to the CCPR, this manner of dismissing the appeal on points of law meant that, “in [those] specific circumstances”, no “review” had taken place that met the requirements of Article 14 § 5 of the ICCPR. In particular, it found that there was a “lack of evidence that the Supreme Court [had] sufficiently reviewed the facts and evidence” in the complainant’s case, since the main reasons for the rejection of his cassation appeal had been legal considerations, taking into account the nature of the cassation proceedings.

69. The Supreme Court explained in detail why its practice of issuing judgments with summary reasoning under section 80a or 81(1) of the Judiciary Organisation Act (see paragraph 58 above) did not violate the right to a review under Article 14 § 5 of the ICCPR, even in cases where an acquittal at first instance was followed by a conviction on appeal, as had been the situation in *Jaddoe* as well as in the case then before it. Referring to the Court’s judgment in *Baydar v. the Netherlands* (no. 55385/14, 24 April 2018), the Supreme Court emphasised that a full panel of judges examined an appeal on points of law in all cases, including those in which it delivered judgments with summary reasoning. This examination involved a substantive assessment of both the legal and factual grounds for the conviction and sentence. The Supreme Court nonetheless stated that it would henceforth provide case-specific reasoning in cases comparable to *Jaddoe* more frequently.

2. Case-law examples concerning “established by law” complaints

70. As stated in paragraph 43 above, the Supreme Court has overturned Court of Appeal judgments in cases where the panel of the appellate court which decided the case was not validly constituted. In one case, this was because the judgment bore the signature of a judge who, by the date of the judgment, had retired from the post (ECLI:NL:HR:2016:2607). In the other case, the judgment was signed by a judge who, on the date of the judgment, had not yet been sworn in as a member of the Court of Appeal (ECLI:NL:HR:2017:2561).

3. Case-law on the scope of a challenge

71. In an appeal on points of law in a case in which a defendant had challenged the members of a Regional Court’s challenge panel, the Supreme Court ruled that, having regard to the purpose and scope of the challenge rules, the term “examining a case” within the meaning of Article 512 of the Code of Criminal Procedure (see paragraph 42 above) meant “any judicial involvement in a case, of whatever nature or scope” (Supreme Court, 25 September 2018, ECLI:NL:HR:2018:1770). A challenge to members of a challenge panel was thus admissible. However, in that case the defendant had

used the challenge remedy because he did not agree with a procedural decision taken by the challenge panel, rather than because of legitimate concerns as to the impartiality of the judges. The Supreme Court held that such disagreement with procedural decisions fell outside the scope of the challenge rules and would therefore not be considered by a challenge panel.

II. RELEVANT INTERNATIONAL MATERIAL

72. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) reads, in so far as relevant:

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

...

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

...”

COMPLAINT

73. The applicant complained that, given the possible participation of *reservisten*, her appeal on points of law had not been heard and determined by an independent and impartial tribunal established by law, as required by Article 6 § 1 of the Convention.

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

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

THE LAW

A. The parties’ submissions on the admissibility of the case

1. *The Government*

75. The Government objected to the admissibility of the application, arguing that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

76. They emphasised that the purpose of the exhaustion rule was to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. They observed that the Court was not a court of first instance and contended that to allow an applicant to raise a claim on which the domestic courts had not

properly been able to adjudicate would run counter to the subsidiary character of the Convention (they referred to *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 69, ECHR 2010; and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018).

77. The applicant had not acted diligently before the Supreme Court, as she had failed to raise her objections concerning the role of *reservisten* at that court in the proper proceedings. The challenge procedure under Article 512 of the Code of Criminal Procedure (see paragraph 57 above), of which the applicant had made use, was an extraordinary procedure and limited to assessing judicial impartiality. However, the grounds advanced by the applicant in that procedure did not relate to a lack of impartiality; rather, she had alleged that the participation of *reservisten* in the deliberations in the main proceedings would have violated the requirements of independence and of a tribunal “established by law”. The applicant could and should have raised those complaints in the main proceedings.

78. Under Dutch criminal law, all accused persons had the right to challenge alleged failures to comply with the institutional requirements of Article 6 § 1 of the Convention in their proceedings, as guaranteed by the Constitution, including through an appeal on points of law in which the Supreme Court’s compliance with the requirements of a “tribunal established by law” and an “independent and impartial tribunal” could be challenged. The Government rejected the applicant’s argument that she could not have raised complaints about the Supreme Court proceedings themselves in her appeal. If the applicant were correct in that regard, any person wishing to complain about the proceedings before the Supreme Court would always be forced to turn to the Court. That would be unworkable and undesirable given the principle of subsidiarity.

79. The applicant had been well aware of the potential presence and participation of *reservisten* in the deliberations in her case, and the practice had been widely discussed in professional and academic circles in the Netherlands (the Government referred to the Procurator-General’s opinion and the publications which he had cited – see paragraphs 32 and 33 above). Since she had thus known of the practice when she had lodged her appeal on points of law on 13 December 2016, she could and should have raised this issue in her first written submissions to the Supreme Court. She had had another opportunity to raise the issue in the main proceedings, namely by including it among her grounds of appeal on 22 October 2017, that is, after the Supreme Court had published the Protocol in August 2017 providing updated details on its working arrangements.

80. The Government emphasised that this would have provided the Supreme Court with the opportunity to consider its use of *reservisten* in the light of the requirements of Article 6, including those of “independence” and of a “tribunal established by law”, before the applicant had turned to the

Court. They pointed out that the Supreme Court had still not ruled on whether the participation of *reservisten* in deliberations was compatible with Article 6 of the Convention, as that issue had never, to date, been properly raised before it. However, the principle established in the Court's case-law – that mere doubts about the effectiveness of a domestic remedy did not absolve applicants from the obligation to try it – applied all the more when a particular legal question or issue arose for the first time, as it did in the present case.

81. The Government referred to examples from the Supreme Court's case-law in which that court had examined issues relating to its own practice (see paragraphs 67-69 above). The Government argued that those case-law examples, in particular the judgment of 24 January 2023, showed that there had been an effective and available domestic remedy, specifically in the main cassation proceedings, and that the applicant had erred in not using it.

2. *The applicant*

82. The applicant asserted that she had exhausted domestic remedies.

83. She pointed out that she could only have inquired about the composition of the panel in her case after the Advocate-General had delivered his opinion, by which time the deadline for submitting the grounds of appeal had already expired (see paragraph 57 above for the relevant provisions of the Code of Criminal Procedure).

84. After learning the composition of the panel, she had asked whether *reservisten* would participate in the deliberations in her case (see paragraph 16 above). Upon receiving the registry's response, she had availed herself of the challenge procedure under Article 512 of the Code of Criminal Procedure to raise her complaints, arguing that that provision should be interpreted in the light of Article 6 § 1 of the Convention (see paragraph 22 above). The challenge procedure, which under Dutch law did not constitute an extraordinary remedy, had been the only potentially effective remedy available. However, the challenge panel had limited the interpretation of Article 512 of the Code of Criminal Procedure to issues of impartiality. In so doing, it had disregarded the Court's well-established case-law, according to which independence and impartiality were interrelated, closely linked concepts (the applicant relied on, *inter alia*, *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, § 192, ECHR 2003-VI). The interpretation of the challenge panel implied that no effective domestic remedy existed for her complaints.

85. In response to the Government's argument that her complaint in relation to the requirements of independence and of a tribunal "established by law" could have been raised in the main proceedings (see paragraphs 77-80 above), the applicant submitted that, according to section 78 of the Judiciary Organisation Act, the Supreme Court was limited to examining appeals on points of law against decisions by lower courts and courts of appeal (see paragraph 58 above). In support of her argument, she referred to the

Explanatory Memorandum (*Memorie van Toelichting*) to amendments to the Code of Criminal Procedure and the Judiciary Organisation Act⁴, as well as to the section on proceedings before the Supreme Court in a leading authority on Dutch criminal law⁵.

86. Moreover, she argued that at the time when she could have complained about the participation of *reservisten* in the main proceedings, their participation was a future or hypothetical circumstance (see paragraphs 83-84 above), which would not have constituted an admissible ground of appeal, according to the case-law of the Supreme Court itself (see paragraph 66 above).

87. She further argued that the cases cited by the challenge panel in support of its argument about the availability of a remedy in the main cassation proceedings actually undermined its position, as those cases concerned situations where the Supreme Court had quashed judgments by courts of appeal delivered by panels not composed of the number of judges prescribed by law (see paragraphs 43 and 70 above).

88. As regards the Government's reliance on a Supreme Court judgment from 2008 concerning the reasonable-time requirement (see paragraph 67 above), the applicant argued that that judgment showed that the Supreme Court had set itself the task of upholding the requirements of a fair trial of its own motion in the cases it heard. The applicant claimed that *Jaddoe* and the subsequent case-law demonstrated likewise. It was thus not necessary for appellants to invoke in their grounds of appeal on points of law any alleged violation of the requirements of Article 6 of the Convention. In her case, the Supreme Court had twice been afforded the opportunity to address of its own motion the arguments she had raised, either in the challenge procedure or in the main proceedings.

89. The applicant asserted that the case-law relied on by the Government showed there was no precedent to support the argument that she could and should have raised her complaints in the main proceedings. It was precisely because there was no precedent that she had chosen the challenge procedure to bring forward her arguments about the participation of *reservisten*. She had not expected the challenge panel to decline to respond to those arguments by limiting the scope of its decision to the issue of impartiality alone.

90. Furthermore, the Supreme Court had not explained how the independence of the panel members and of *reservisten* participating in the deliberations could be effectively challenged before that selfsame panel, with the possibility that the *reservisten* would play a role in ruling on such challenge. That possibility, in her view, would have rendered such a procedure incompatible with Article 6 of the Convention (the applicant relied on *Debled v. Belgium*, 22 September 1994, § 37, Series A no. 292-B).

⁴ Lower House of Parliament, parliamentary year 1997-1998, 26 027, no. 3.

⁵ Section 45.3.1.1 of the "Handboek Strafzaken", A.J.A. van Dorst and M.J. Borgers, 2018.

91. The applicant concluded that, in the light of the foregoing, the raising of a complaint about the possible participation of *reservisten* in the main proceedings could not be regarded as an effective remedy that she had been required to attempt before lodging her application with the Court.

B. The Court's assessment

1. Whether domestic remedies were exhausted

(a) Relevant principles

92. The general principles on exhaustion of domestic remedies were set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and reiterated more recently in *Mansouri v. Italy* ((dec.) [GC], no. 63386/16, § 84, 29 April 2025).

93. The Court reiterates, at the outset, the subsidiary nature of the Convention system. Responsibility for ensuring that the rights and freedoms enshrined in the Convention are secured at the domestic level lies primarily with the Contracting States. The Court's role is to supervise the manner in which those obligations are fulfilled (see, for example, *Maurice v. France* [GC], no. 11810/03, § 117, ECHR 2005-IX, and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 138, 27 November 2023, with further references).

94. It follows that, as a general rule, States must be afforded the opportunity to remedy alleged violations through their own legal systems before being called to answer before an international judicial body (see *Egmez v. Cyprus*, no. 30873/96, § 64, ECHR 2000-XII). In accordance with the principle of subsidiarity, the Court has repeatedly held that it is appropriate for domestic courts to have the initial opportunity to assess the compatibility of domestic law and practice with the Convention. Where an application is subsequently lodged in Strasbourg, the Court should, as far as possible, have the benefit of the domestic courts' reasoning, those courts being in direct and continuous contact with the social forces of their countries (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008).

95. The obligation to exhaust domestic remedies therefore requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention complaints. The remedies relied upon must be sufficiently certain in practice as well as in theory; failing that, they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports* 1996-VI). For a remedy to be effective, it must be capable of directly addressing the impugned situation and must offer reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

96. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Vučković and Others*, cited above, § 74). The absence of a well-established body of domestic case-law predating an application may, in certain circumstances, be explained by the fact that a remedy has not previously been used in a particular context (see *Mansouri*, cited above, § 99). In principle, it remains incumbent on the aggrieved individual to test the extent of the domestic protection offered and allow the domestic courts to develop those rights by way of interpretation (see *Vučković and Others*, cited above, § 84).

97. At the same time, the Court reiterates that the rule of exhaustion of domestic remedies must be applied with a degree of flexibility and without excessive formalism (see *Akdivar and Others*, cited above, § 69).

98. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case (*ibid.*, § 68).

99. Where no further remedy is available because the complaint of a violation of the institutional guarantees of Article 6 § 1 is directed against the last-instance judicial authority of the domestic legal system itself, the principle of subsidiarity may require applicants to display special diligence in complying with the obligation to exhaust the appropriate domestic remedies. In such cases preventive remedies are of particular importance (see *Pirtskhalava and Y v. Georgia* (dec.), nos. 11025/22 and 11032/22, § 59, 4 November 2025; *NDI SOPOT S.A v. North Macedonia*, no. 6035/17, § 89, 26 November 2024; and *Croatian Golf Federation v. Croatia*, no. 66994/14, § 112, 17 December 2020), that is, remedies that prevent the violation from occurring.

100. Lastly, the Court has consistently held that even where domestic courts are obliged to consider matters of their own motion, applicants are not exempted from the requirements of Article 35 of the Convention (see, for example, *Dalipi v. Greece* (dec.), no. 51588/08, § 20, 26 June 2012; *Trūps v. Latvia* (dec.), no. 58497/08, § 56, 20 November 2012; and *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 36, 10 December 2013).

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

(i) Scope of the challenge procedure

101. The applicant chose to use the remedy set out in Article 512 of the Code of Criminal Procedure (see paragraph 57 above), which serves to ensure

judicial impartiality in criminal proceedings, with a view to persuading the Supreme Court challenge panel to adopt a considerably broader interpretation of that provision. She criticised the reasoning given by the challenge panel in declining to broaden the scope of that remedy so as to also take in the other institutional requirements set by Article 6 for the administration of justice (see paragraphs 84 and 89 above). Although it is true, as the applicant argued in the challenge proceedings and again in her submissions in the present proceedings (see paragraphs 27 and 84 above), that the Court has often referred to the interconnected nature of such requirements (see, in particular, as a recent authority, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 231, 1 December 2020), determining the scope of the remedy provided for in Article 512 of the Code of Criminal Procedure involved the interpretation of domestic law. The Court reiterates that it is in principle for the national authorities, notably the courts, to interpret and apply domestic law, and that its own power of review is limited (see, for instance, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018, and *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 159).

102. In its decision the challenge panel clarified both the extent and the limits of the remedy under Article 512 of the Code of Criminal Procedure (see paragraph 43 above), relative to the grounds that the applicant had raised in her challenge. It is not for the Court to question that interpretation, but rather to assess its implications for the application of Article 35 § 1 of the Convention in the present case.

103. The Court finds it important to consider, first of all, the extent to which both the Procurator-General (see paragraphs 29-38 above) and the challenge panel (see paragraphs 41-52 above) addressed the applicant's challenge, which raised three issues: (i) whether the challenge procedure could be used only in respect of the judges of the panel assigned to the case or also in respect of *reservisten*; (ii) whether the possible involvement of *reservisten* amounted to a breach of the requirements of impartiality and independence; and (iii) the significance, if any, of the fact that the practice of allowing *reservisten* to actively participate in the deliberations was not set out at statutory level.

104. As regards the first issue, it was confirmed in those proceedings that the applicant's challenge was not applicable solely to the three judges who were assigned to examine and decide her appeal on points of law. Rather, it applied to all of the judges of the Criminal Division, that is to say, to those who could, in theory, participate in the deliberations as *reservisten*, since such potential involvement counted as "examining a case" within the meaning of the relevant statutory provision (see paragraph 42 above). The applicant was thus successful in that regard. The Court notes that this led to an amendment to the Protocol, which had previously described the challenge procedure as being limited to the judges assigned to examine and decide the case, so as to

reflect the fact that the scope of the remedy had been broadened to include *reservisten* (see paragraph 64 above).

105. With respect to the second issue, the challenge panel examined and rejected, through the prism of possible bias, the applicant's assertion that any participation by *reservisten* in the deliberations would represent undue influence over the judges assigned to examine and decide her appeal. Stressing the limited nature of the type of contribution that could be made by a *reservist*, the challenge panel found that any fear the applicant may have had for the impartiality of any of the judges participating in the deliberations on her case was not objectively justified (see paragraph 45 above).

106. Regarding the third issue, the challenge panel held that the absence of a statutory basis for the *reservisten* system could not be taken as an indication of bias (*ibid.*). It referred in an *obiter dictum* to the accessibility of the Protocol, which was published on the official website of the Supreme Court, and to the information made available in the same way regarding the composition of each division of the Supreme Court, which enabled all parties to identify which judges could participate as *reservisten* in the deliberations on their appeal (see paragraph 46 above).

107. As a preface to its findings, the challenge panel clarified that *reservisten* did not examine and decide cases, within the meaning of the statutory provisions governing the composition of panels of the Supreme Court, namely section 75(2) and (3) of the Judiciary Organisation Act. The competence to examine and decide appeals on points of law remained vested exclusively in the judges assigned to that task, it stated, and that fact was not altered by the participation in the deliberations of *reservisten*. It explained the purpose ("safeguarding legal unity in the division") as well as the form and limits ("limited to legal input in the interest of legal unity") of the practice. It also articulated the institutional rationale behind the practice – ensuring consistency in the Supreme Court's case-law – with reference to the standards set by this Court in some leading judgments given under Article 6 of the Convention (see paragraph 41 above).

108. The challenge panel also responded to the applicant's reliance on a number of judgments of the Court in support of her challenge. With reference, in particular, to *Agrokompleks v. Ukraine* (no. 23465/03, 6 October 2011), and the problems identified in that case concerning undue influence exerted from within a domestic court and the resulting infringement of internal judicial independence and objective impartiality, the challenge panel held that the *reservisten* system did not involve such a degree of influence as to create the appearance of bias (see paragraph 47 above). It likewise found that the other examples of the Court's case-law relied on by the applicant involved a different issue (equality of arms), which was not relevant to the issue of bias, and also a different category of judicial officer (attorney-general, government commissioner) compared with *reservisten*, all of whom were judges of the Supreme Court (see paragraph 51 above).

109. On the basis of the above, it is clear to the Court that the challenge panel, in its ruling in the challenge proceedings instituted by the applicant, carefully scrutinised those aspects of the challenge that fell within the scope of the remedy, and gave reasons for rejecting her argument that the entire Criminal Division was not impartial. To this specific extent – that is, in so far as the applicant has complained that, on account of its *reservisten* system, the Supreme Court of the Netherlands was not an (objectively) impartial tribunal – the Court considers that she made use of a relevant remedy. The Court will revert below to this part of the applicant’s complaint, and its admissibility (see paragraphs 121-126 below).

(ii) Other aspects of the applicant’s Article 6 complaint

110. As to the remainder of the applicant’s arguments, that is, her claim that the panel examining her appeal was – on account of the possible participation of *reservisten* in the deliberations – neither independent nor a “tribunal established by law”, the challenge panel ruled that those aspects could not constitute grounds for challenging judges under Article 512 of the Code of Criminal Procedure (see paragraph 43 above). Nonetheless, as previously noted (see paragraph 107 above), the challenge panel did in fact address and reject the applicant’s argument that the possible participation of *reservisten* meant that her appeal would be decided by a judicial formation that was not in conformity with the statutory provisions governing the composition of panels of the Supreme Court.

111. The applicant’s argument that her appeal was not decided by an independent tribunal “established by law” is, however, broader than the issue of the nature of the participation. It also encompasses the criticism that the *reservisten* system lacks the requisite legal basis, that is to say, that it is not statute-based but rests on an instrument – the Protocol – that lacks the formal and essential qualities of law, be it in terms of the manner of its adoption by the Supreme Court or in terms of its content, which the applicant has criticised as being merely descriptive rather than normative or properly regulatory. This aspect of her complaint was held to fall outside the scope of the challenge procedure (see paragraph 43 above). Accordingly, it is in relation to these two specific aspects of the applicant’s complaint in respect of the *reservisten* system – that the panel which examined and decided her appeal was not independent and that it was not “established by law” in the sense explained above – that the Court must examine the Government’s objection.

112. As reiterated above, it is well established in the Court’s case-law that where a Government raises the objection of failure to exhaust domestic remedies, they bear the burden of proving to the satisfaction of the Court that there was an effective remedy available in theory and in practice of which the applicant failed to make use (see paragraph 98 above). The Government maintained that given the direct applicability of the Convention in the Dutch legal order, it had been open to the applicant to challenge the alleged failure

of the Supreme Court to comply with the requirements of Article 6 § 1 of the Convention, in the proceedings to determine her criminal case at final instance by that court (see paragraph 78 above). The Court is familiar with this feature of the Dutch legal system, as initially recognised in *De Jong, Baljet and Van den Brink v. the Netherlands* (22 May 1984, § 21, Series A no. 77; see also *Van Raalte v. the Netherlands*, 21 February 1997, §§ 19-20, Reports 1997-I, and *Schenkel v. the Netherlands*, no. 62015/00, § 19, 27 October 2005).

113. The Court would further note that the rationale given for the *reservisten* system, both by judges expressing themselves in a non-judicial capacity in the context of the academic discussion on the issue (see paragraphs 32-33 above) and then by the Supreme Court when ruling on the applicant's challenge in 2018, is to ensure public confidence in the judicial system and adherence to the rule of law through consistent and predictable judicial decision-making (see paragraph 41 above) – features that the Court has identified as essential to the proper implementation of Article 6. The fact that the Supreme Court in the challenge proceedings considered certain relevant examples of the Court's case-law also speaks to its receptiveness to arguments based on Convention principles (see paragraphs 47-48 and 50 above). Against such a background, it is appropriate for the Court to accord particular significance to the Supreme Court's indication to the applicant that it was open to her to raise the aspects that could not be addressed in the challenge proceedings in the main cassation proceedings themselves (see paragraph 43 above).

114. The applicant advanced a series of arguments (see paragraphs 85-87 above) to the effect that the Supreme Court's indication to her should not be accepted as correct or persuasive. In particular, she submitted that the two judgments instanced by the Supreme Court failed to support the intended point (see paragraph 87 above). She maintained that the suggested remedial action had no basis in the statutory framework and would encounter insuperable procedural barriers, rendering it inoperable (see paragraphs 85-86 above). As observed above (see paragraph 101), the existence and scope of available domestic remedies are themselves questions of domestic law, subject to the authoritative interpretation of the competent domestic courts, and above all the Supreme Court. On this account, the Court is not inclined to agree that, because the applicant found no answer to her various objections in the challenge panel's reasoning, it should be concluded that no appropriate remedy existed or exists. That would have been a matter for the Supreme Court to elucidate, had the issue been properly raised before it, thus giving it the opportunity to do so.

115. It was further objected by the applicant that had she raised her challenge to the independence of the Supreme Court in conjunction with the cassation appeal itself, that challenge would have been decided by the same judges, potentially with *reservisten* participating in the deliberations on that

ground of appeal too (see paragraph 90 above). However, the Court finds this argument to be speculative, as the applicant failed precisely to make use of the main cassation proceedings to raise her grievances. There is therefore no need for the Court to address the implications of this hypothetical situation.

116. Having regard to the above, and in particular to the indication that was given by the Supreme Court, the Court is satisfied that at the relevant time a remedy was available in theory that was capable of addressing the aspects of the applicant's challenge that fell outside the challenge procedure – specifically, such complaints could have been included in the grounds of appeal on points of law in the main cassation proceedings. To this extent, the Government have discharged their burden of proof.

117. As to the availability of that remedy in practice, the Court notes the clarification by the Government that in the time since the examination of the applicant's appeal, there has been no attempt to challenge the *reservisten* system in the manner suggested by the Supreme Court (see paragraph 80 above). To date, therefore, there is no practical example of the remedy that could clearly demonstrate its effectiveness and availability. It follows that the Supreme Court has not had the opportunity at any time to hear and consider the arguments that the applicant has now raised before this Court. This is not a satisfactory state of affairs. As reiterated above, it is appropriate for domestic courts to have the initial opportunity to assess the compatibility of domestic law and practice with the Convention (see paragraph 94 above). This is especially true given that the applicant's complaint in the present case is directed against a court of final instance's internal practice, which has been adopted to achieve – according to the Government's submissions on the merits of the case – the crucial purpose of ensuring uniform application of the law by the Supreme Court.

118. It is relevant to recall here the emphasis that the Court has placed on the independence and impartiality of the judiciary, these qualities being essential to maintaining public confidence in the courts, and without which the principles of subsidiarity and shared responsibility cannot function properly (see *Danileț v. Romania* [GC], no. 16915/21, § 138, 15 December 2025). With this in mind, it was all the more important to afford the Supreme Court an opportunity to assess and respond to the claim that the manner in which it operated, involving a well-known and long-standing practice, contravened the standards set by Article 6 § 1 of the Convention. Here too the Court attaches particular significance to the challenge panel's indication to the applicant regarding the remedy to be used to challenge the compatibility of the *reservisten* system with those requirements – namely, to raise the issue in the main cassation proceedings (see paragraph 43 above). The Court further notes the Supreme Court's judgment of 24 January 2023, delivered after the lodging of the present application and cited by the Government as a practical example of that court's ability and readiness to assess – when the matter is raised before it – the compatibility of aspects of

its practice with the requirements of international human rights treaties (see paragraph 81 above). These considerations lead the Court to the conclusion that a remedy was available in practice to the applicant.

119. Finally, the Court observes that the concerns underlying the complaint raised in the present case are by their nature serious and therefore merit careful examination by the Supreme Court. It reiterates that the requirement for applicants to exhaust domestic remedies goes hand in hand with the obligation on the respondent State to ensure that any claim applicants wish to make before the Court can first be effectively raised before and examined by the competent domestic authority, in keeping with the primary responsibility of the High Contracting Parties to secure the rights and freedoms defined in the Convention and the Protocols thereto.

(iii) Conclusion on the objection of failure to exhaust domestic remedies

120. In the light of the foregoing, the Court reaches the conclusion that in respect of the aspects of the applicant's complaint that could not be addressed via the challenge procedure – namely, that the cassation proceedings took place before a court that was neither independent nor established by law (see paragraph 111 above) – the Government's objection to the admissibility of the application is justified and should be upheld. Consequently, this part of the application must be rejected as inadmissible under Article 35 §§ 1 and 4 *in fine* of the Convention for failure to exhaust domestic remedies.

2. Whether the remainder of the application is manifestly ill-founded

121. The Court now returns to the part of the applicant's complaint that was examined in the challenge proceedings, namely, her argument that the Supreme Court formation that decided her appeal and thus ultimately determined the criminal charges against her was not an impartial tribunal.

122. The Court emphasises that the applicant was able to raise that argument via the challenge procedure, leading to the reasoned ruling of the challenge panel following its careful and thorough examination of the matter.

123. In particular, the challenge panel found that the applicant had not based her challenge on any facts or circumstances indicating bias against her on the part of any of the judges (see paragraph 52 above); rather, she had alleged a systemic lack of impartiality that was, in her view, inherent in the *reservisten* system (see paragraph 44 above).

124. The challenge panel further found that the contribution of *reservisten* in deliberations, which was limited to ensuring the uniform interpretation and application of the law, was not an indication of any bias on the part of the members of the panel or the *reservisten*. It considered that the applicant's fear in that regard was therefore not objectively justified (see paragraph 45 above). In particular, the challenge panel distinguished the influence of *reservisten* from that at issue in *Agrokompleks* (cited above), in which the

president of a court had intervened in the proceedings in favour of one of the parties (see paragraph 47 above).

125. Bearing in mind the purpose of the *reservisten* system as acknowledged above (see paragraph 113), and the reasons given by the challenge panel, the Court agrees with the panel's conclusion that the applicant's fear that the tribunal adjudicating her case was not impartial could not be held to be objectively justified.

126. It follows that this part of the application is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded, and that it must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 2026.

John Darcy
Deputy to the Registrar

Mattias Guyomar
President