



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

Legal summary

September 2026

Kuijt v. the Netherlands (dec.) [GC] - 19365/19

Decision 23.9.2026 [GC]

Article 6

Article 6-1

Impartial tribunal

Independent tribunal

Tribunal established by law

“Reserve judges” participating in the deliberations of the three-judge formation assigned to determine applicant’s appeal in cassation before the Supreme Court: *inadmissible*

Facts – In December 2016 the applicant was found guilty by the Court of Appeal of complicity in disrupting a municipal council meeting 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 applicant lodged an appeal on points of law with the Supreme Court.

Under section 75(3) of the Judiciary Organisation Act, appeals on points of law were examined and decided by a panel of three or five judges from a division of the Supreme Court composed of several judges. The other members of the division, who could participate in the deliberations but did not rule on the appeal, were known as *reservisten*. According to the Protocol on participation in examination and deliberations, adopted by the Supreme Court in 2017, the purpose of this right to participate was to ensure the uniform interpretation and application of the law as well as the consistency of the case-law of the Supreme Court. The Protocol was amended as of 1 September 2019, with the addition of a footnote (after the term “a member of the Supreme Court” in section 2.1.1) that made reference to the decision by the challenge panel in the applicant’s case, clarifying that a challenge could be brought not only against members of the panel but also against *reservisten*.

In 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.

In December 2018 the challenge panel dismissed the applicant’s challenge as ill-founded.

In January 2019 the Supreme Court dismissed the applicant’s appeal on points of law.

Relying on Article 6 § 1, 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.

On 26 August 2025 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber.

Law – Article 35 § 1:

(1) *Scope of the challenge procedure* – In its decision the challenge panel had clarified both the extent and the limits of the remedy under Article 512 of the Code of Criminal Procedure, relative to the grounds that the applicant had raised in her challenge. It was 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.

The Court found it important to consider, first of all, the extent to which both the Procurator-General and the challenge panel had addressed the applicant's challenge, which had 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.

As regards the first issue, it had been confirmed in the proceedings before the challenge panel that the applicant's challenge had not been applicable solely to the three judges who had been assigned to examine and decide her appeal on points of law. Rather, it had 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. The applicant had thus been successful in that regard. That had 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*.

With respect to the second issue, the challenge panel had 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 had found that any fear the applicant might have had for the impartiality of any of the judges participating in the deliberations on her case was not objectively justified.

Regarding the third issue, the challenge panel had held that the absence of a statutory basis for the *reservisten* system could not be taken as an indication of bias. It had 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.

As a preface to its findings, the challenge panel had 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 had stated, and that fact was not altered by the participation in the deliberations of *reservisten*. It had

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 had also articulated the institutional rationale behind the practice – ensuring consistency in the Supreme Court’s case-law – with reference to the standards set by the Court in some leading judgments given under Article 6 of the Convention.

The challenge panel had also responded to the applicant’s reliance on a number of judgments of the Court in support of her challenge.

On the basis of the above, it was clear to the Court that the challenge panel, in its ruling in the challenge proceedings instituted by the applicant, had carefully scrutinised those aspects of the challenge that fell within the scope of the remedy, and had given reasons for rejecting her argument that the entire Criminal Division was not impartial. To that specific extent – that is, in so far as the applicant had complained that, on account of its *reservisten* system, the Supreme Court was not an (objectively) impartial tribunal – the Court considered that she had made use of a relevant remedy.

(2) *Other aspects of the applicant’s Article 6 complaint* – As to the applicant’s argument that the panel examining her appeal had been – on account of the possible participation of *reservisten* in the deliberations – neither independent nor a “tribunal established by law”, the challenge panel had ruled that those aspects could not constitute grounds for challenging judges under Article 512 of the Code of Criminal Procedure. Nonetheless, the challenge panel had in fact addressed and rejected the applicant’s argument that the possible participation of *reservisten* had 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.

The applicant’s argument that her appeal had not been decided by an independent tribunal “established by law” was, however, broader than the issue of the nature of the participation of *reservisten*. It also encompassed the criticism that the *reservisten* system lacked the requisite legal basis, that is to say, that it was not statute-based but rested on an instrument – the Protocol – that lacked 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 had criticised as being merely descriptive rather than normative or properly regulatory. That aspect of her complaint had been held to fall outside the scope of the challenge procedure.

The Government had maintained that given the direct applicability of the Convention in the domestic 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, in the proceedings to determine her criminal case at final instance by that court. The Court was familiar with that feature of the domestic legal system.

Furthermore, 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 and then by the Supreme Court when ruling on the applicant’s challenge, was to ensure public confidence in the judicial system and adherence to the rule of law through consistent and predictable judicial decision-making – features that the Court had identified as essential to the proper implementation of Article 6. The fact that the Supreme Court in the challenge proceedings had considered certain relevant examples of the Court’s case-law also spoke to its receptiveness to arguments based on Convention principles. Against such a background, it was 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.

Having regard to the above, and in particular to the indication that had been given by the Supreme Court, the Court was satisfied that at the relevant time a remedy had been available in theory that had been 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.

As to the availability of that remedy in practice, since the examination of the applicant's appeal there had been no attempt to challenge the *reservisten* system in the manner suggested by the Supreme Court. To date, therefore, there was no practical example of the remedy that could clearly demonstrate its effectiveness and availability. It followed that the Supreme Court had not had the opportunity at any time to hear and consider the arguments that the applicant had now raised before the Court. That was not a satisfactory state of affairs. It was appropriate for domestic courts to have the initial opportunity to assess the compatibility of domestic law and practice with the Convention. That was especially true given that the applicant's complaint in the present case was directed against a court of final instance's internal practice, which had been adopted to achieve the crucial purpose of ensuring uniform application of the law by the Supreme Court.

The Court had previously placed emphasis on the independence and impartiality of the judiciary, those qualities being essential to maintaining public confidence in the courts, and without which the principles of subsidiarity and shared responsibility could not function properly. With that in mind, it had been 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. The Court attached 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. The Court further noted the Supreme Court's judgment of 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 was raised before it – the compatibility of aspects of its practice with the requirements of international human rights treaties. Those considerations led the Court to the conclusion that a remedy had been available in practice to the applicant.

(3) *Conclusion on the objection of failure to exhaust domestic remedies* – In the light of the foregoing, the Court reached 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 had taken place before a court that was neither independent nor “established by law” – the Government's objection to the admissibility of the application was justified and had to be upheld.

Conclusion: inadmissible (failure to exhaust domestic remedies).

Article 35 § 3 (a):

The applicant's complaint which had been examined in the challenge proceedings had been that the Supreme Court formation which had decided her appeal and had thus ultimately determined the criminal charges against her had not been an impartial tribunal.

The Court emphasised that the applicant had been 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.

In particular, the challenge panel had 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; rather, she had alleged a systemic lack of impartiality that was, in her view, inherent in the *reservisten* system.

The challenge panel had 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 had considered that the applicant's fear in that regard was therefore not objectively justified. In particular, the challenge panel had distinguished the influence of *reservisten* from that at issue in *Agrokompleks v. Ukraine*, in which the president of a court had intervened in the proceedings in favour of one of the parties.

Bearing in mind the purpose of the *reservisten* system, and the reasons given by the challenge panel, the Court agreed 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.

Conclusion: inadmissible (manifestly ill-founded).

(See *Agrokompleks v. Ukraine*, [23465/03](#), 6 October 2011)

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