



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

GRAND CHAMBER

CASE OF GROSAM v. THE CZECH REPUBLIC

(Application no. 19750/13)

JUDGMENT

Art 35 § 1 • Later addition by applicant of new complaint, after initial communication of case to respondent Government, not within six-month time-limit

Art 34 • Individual application • Recharacterisation of applicant's complaint by Chamber extending scope of case beyond that initially referred to it in application form

STRASBOURG

1 June 2023

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

In the case of Grosam v. the Czech Republic,

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

Síofra O’Leary,
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Branko Lubarda,
Mārtiņš Mits,
Jovan Ilievski,
Péter Paczolay,
Lado Chanturia,
María Elósegui,
Darian Pavli,
Ioannis Ktistakis,
Frédéric Krenc,
Mykola Gnatovskyy, *judges*,
Pavel Simon, *ad hoc judge*,

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 3 May 2023,

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

PROCEDURE

1. The case originated in an application (no. 19750/13) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Jan Grosam (“the applicant”), on 13 March 2013.

2. The applicant was represented by Mr J. Dajbych, a lawyer practising in Prague.

3. The Czech Government (“the Government”) were represented before the Chamber by their Agent at the time, Mr V.A. Schorm, and before the Grand Chamber by his successor in that position, Mr P. Konůpka, both of the Ministry of Justice.

4. In his application the applicant alleged, in particular, that in the disciplinary proceedings against him, which he considered to be criminal in nature, he had not had a right to appeal against the decision of the disciplinary chamber of the Supreme Administrative Court, even though that chamber could not, because of its composition and the lack of sufficient guarantees as to its expertise and independence, be considered the “highest tribunal” within the meaning of Article 2 of Protocol No. 7 to the Convention. He also raised

various complaints under Article 6 of the Convention concerning the fairness of the proceedings.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 September 2013 the Government were given notice of the application. The parties exchanged observations on the admissibility and merits of the application.

6. On 6 October 2015 and 26 September 2019, the parties were invited to submit further written observations, notably relating to whether, given its composition, the disciplinary chamber of the Supreme Administrative Court met the requirements of “a tribunal established by law” within the meaning of Article 6 § 1 of the Convention.

7. On 23 June 2022 a Chamber of the First Section, composed of Krzysztof Wojtyczek, President, Tim Eicke, Pauliine Koskelo, Gilberto Felici, Erik Wennerström, Aleš Pejchal and Ksenija Turković, judges, and Liv Tigerstedt, Deputy Section Registrar, delivered its judgment. The Chamber, by a majority, declared admissible the complaint that the disciplinary court had not satisfied the requirements of an independent and impartial tribunal under Article 6 § 1 of the Convention and held, by four votes to three, that there had been a violation of that provision. It also held, by a majority, that there was no need to examine the admissibility and merits of the remaining complaints under Article 6 § 1 relating to the disciplinary court, and, unanimously, declared the remainder of the application inadmissible. Judges Eicke, Koskelo and Wennerström expressed a joint dissenting opinion.

8. On 22 September 2022 the Government requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 14 November 2022 the panel of the Grand Chamber granted the request.

9. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

10. As Kateřina Šimáčková, the judge elected in respect of the Czech Republic, withdrew from sitting in the case (Rule 28 § 3), the President of the Grand Chamber decided to appoint Pavel Simon to sit as an *ad hoc* judge both in this case and in *Fu Quan, s.r.o. v. the Czech Republic*, no. 24827/14 (Article 26 § 4 of the Convention and Rule 71 § 1 and Rule 29 § 1), which were to be examined simultaneously (Rule 71 § 1 and Rule 42 § 2).

11. On 3 January 2023 the President, after consulting the parties, decided not to hold a hearing (Rule 71 § 2 and Rule 59 § 3 *in fine*).

12. The applicant and the Government each filed written observations on admissibility and the merits. The Government replied to the applicant’s observations, whereas the applicant did not reply to those of the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

13. The applicant was born in 1963 and lives in Prague.

14. He worked as an enforcement officer (*soudní exekutor*). In that capacity, as a member of a liberal profession (see paragraphs 30 and 37 below), he was in charge on the State's behalf of ensuring the execution of enforcement titles such as final civil court decisions, arbitration awards, enforceable notarial deeds and enforcement officers' records.

A. Events giving rise to the disciplinary proceedings against the applicant

15. On 11 November 2008 the applicant drew up an enforcement officer's record (*exekutorský zápis s doložkou přímé vykonatelnosti*), whereby company U., represented by its finance director, agreed to pay a debt of 67,762,535 Czech korunas (CZK – approximately 2,689,502 euros (EUR) at the time) in three instalments to a particular lawyer (*advokát*). The record contained an enforcement clause entitling the creditor to apply directly for enforcement of the said claim without the need to institute civil proceedings beforehand. In order to prove that he was authorised to act on behalf of the debtor company, its finance director submitted the company's Articles of Association (*stanovy*), its organisational structure (*organizační struktura*) and the document certifying his appointment as the company's finance director. He also declared that under the Articles of Association and the company's internal regulations he was authorised to perform such transactions.

16. On 3 July 2009 the above claim was transferred to another company, with its registered office in Cyprus. On the basis of the enforcement clause, that company subsequently applied for enforcement in respect of an amount of CZK 22,000,000 (EUR 851,963 at the time), and on 23 November 2009 the Prague 4 District Court (*obvodní soud*) issued an enforcement order against the debtor company in respect of its assets.

17. Further to a request by the Ministry of Justice, in a letter of 23 March 2010 the applicant submitted his comments on the circumstances in which the enforcement officer's record of 11 November 2008 had been drawn up (see paragraph 15 above). He admitted that, according to an extract from the Commercial Register (*výpis z obchodního rejstříku*) which the applicant had had at his disposal when drawing up the enforcement officer's record, the finance director, as an ordinary member of the board of directors (*představenstvo*), had not been authorised to act alone on the company's behalf. The applicant referred, however, to Article 15 § 1 of the Commercial Code, which entitled persons entrusted to perform certain activities within a

company to undertake all transactions in relation to that activity, from which he had inferred that the finance director was entitled to sign the record in question. Such entitlement, he further noted, therefore arose *ex lege* and there was no need for a separate authority form or any other document. Moreover, the finance director had told him that under the Articles of Association and the company's internal regulations, he was entitled to perform such transactions and that this fact was also apparent from the letter confirming his appointment as finance director.

B. Disciplinary proceedings against the applicant

18. On 21 May 2010 the Minister of Justice, in the capacity of a disciplinary petitioner (*kárný žalobce*), lodged a disciplinary action (*kárná žaloba*) against the applicant with the disciplinary chamber (*kárný senát*) of the disciplinary court (*kárný soud*), which was the Supreme Administrative Court (*Nejvyšší správní soud*). The applicant was charged with two acts of misconduct, namely drawing up an enforcement officer's record attesting to the recognition of a debt by an unauthorised person (see paragraph 15 above), and another, unrelated, disciplinary offence in respect of which the proceedings were later discontinued. The Minister left it to the disciplinary court's discretion to determine which disciplinary measure (*kárné opatření*) should be imposed on the applicant.

19. The disciplinary chamber of the Supreme Administrative Court was composed of a judge of that court acting as president; a judge of the Supreme Court acting as deputy president; and four lay assessors: two enforcement officers, one lawyer (*advokát*) and one professor of law (see paragraph 38 below). The applicant was represented by a lawyer (*advokát*).

20. On 25 June 2012 a hearing took place before the disciplinary court. At the beginning of the hearing, the disciplinary petitioner proposed that the applicant be fined, at the court's discretion. The applicant, in contrast to his previous statement (see paragraph 17 above), submitted that the finance director of the debtor company had at the time presented him with the letter confirming his appointment as finance director, authorising the director to act on behalf of the company without any restrictions. However, the applicant had not made a copy of that document and had not enclosed it with the enforcement officer's record. The applicant argued that he did not have a legal obligation to make a copy of that document and that it was up to the petitioner to prove his guilt, since the Code of Criminal Procedure was applicable by default (see paragraph 38 below). When the president of the disciplinary chamber pointed out that pursuant to the internal regulations the finance director was only authorised to sign documents concerning transactions up to CZK 1.5 million (EUR 58,088 at the time), the applicant replied that the letter of appointment clearly indicated that the finance director had been authorised to sign the enforcement officer's record in question and that the director had

confirmed that his authority had not been limited. The president of the disciplinary chamber then showed the letter of appointment to the applicant, who replied that this was not the document the finance director had shown him.

21. In his closing argument the applicant's representative stated:

"We are able – actually not now, on the spot, but potentially – to provide supplementary evidence that [the finance director] signed ... tens of contracts, in particular on claim transfer and claim assignment, to the tune of tens of millions, and that he signed everything on the basis of that letter of appointment."

22. On the same day, 25 June 2012, the disciplinary court found the applicant guilty of drawing up an enforcement officer's record attesting to the recognition of a debt by an unauthorised person. Specifically, the court held that the applicant had failed to act conscientiously and with due care within the meaning of Article 5 of the Rules of Professional Ethics and that, by his grossly negligent conduct, he had been in serious breach of his professional duties (see paragraph 39 below).

23. The court fined the applicant CZK 350,000 (EUR 13,554 at the time). In so deciding, it took into account the fact that this was not the applicant's first case of disciplinary misconduct, and that it had serious consequences for the debtor company.

24. The applicant then lodged a constitutional complaint (*ústavní stížnost*) in which he alleged violations of several principles of criminal procedural law, namely the presumption of innocence, the duty of the court to gather evidence and the *in dubio pro reo* principle. The applicant argued that the disciplinary court could have summoned the finance director as a witness to confirm the existence of the document authorising him to act on behalf of the debtor company. Furthermore, he claimed that the court had not invited him to propose additional evidence during or at the end of the hearing, even though it had been required to do so under the Code of Criminal Procedure, which was applicable by default to the disciplinary proceedings (see paragraph 38 below).

25. Arguing that he had been charged with a criminal offence within the meaning of the Convention, the applicant further alleged a violation of Article 2 § 1 of Protocol No. 7 in that domestic law did not provide him with the possibility of appealing against the disciplinary court's decision. As to the exception concerning the "highest tribunal" in the second paragraph of Article 2 of Protocol No. 7, the applicant pointed out that, while the disciplinary court was formally a chamber of the Supreme Administrative Court, the majority of its members were not professional judges, had no experience in adjudication and were not required to fulfil the same eligibility criteria as judges of the highest courts. The applicant thus concluded that the exception concerning the "highest tribunal" was not applicable in his case and that there had been a violation of his right of appeal in criminal matters. Referring to plenary decision no. Pl. ÚS 33/09 of the Constitutional Court,

dated 29 September 2010 (see paragraph 42 below), the applicant argued, *inter alia*, as follows:

“... In its decision the Constitutional Court ruled that the right to appeal against a decision of a judicial authority was not enshrined in the constitutional order of the Czech Republic. The complainant therefore claims this right under Article 6 of the Convention and Article 2 of Protocol [No. 7].

The Protocol [No. 7] provides for the right to seek review of a decision in the context of proceedings on criminal charges. ...

By the impugned decision [of the disciplinary court] the complainant was found guilty in the context of proceedings which are, by their nature, proceedings on a criminal charge. However, he was not allowed to seek a review of the impugned decision. This interfered with the complainant’s right to a fair trial and violated Article 36 § 1 of the Charter [of Fundamental Human Rights and Freedoms of the Czech Republic], Article 6 § 1 of the Convention and Article 2 of the Protocol [No. 7 to the Convention]. ...

The complainant is aware of the provisions of Article 2 § 2 of Protocol [No. 7], which lay down exceptions to the right to review in the cases defined therein. Under that provision, an exception to the right to review by a higher judicial body may be allowed if the charge was determined at first instance by the highest tribunal. Accordingly, in order for this exception to be applied, two conditions would have to be met simultaneously: the determining authority would have to be a tribunal within the meaning of Article 6 of the Convention and, at the same time, it would have to be the ‘highest’ tribunal within the meaning of Article 2 § 2 of the Protocol [No. 7].

In relation to the assessment whether the disciplinary chamber of the Supreme Administrative Court (hereinafter also referred to as the ‘disciplinary chamber’) is a tribunal within the meaning of Article 6 of the Convention, the Constitutional Court has already expressed its view that the disciplinary chamber is such a tribunal (Pl. ÚS 33/09). However, in that decision the Constitutional Court did not elaborate on whether the disciplinary chamber should be regarded as the ‘highest’ tribunal within the meaning of Article 2 § 2 of the Protocol [No. 7] (this was not significant for the case examined in the decision in question), or, more accurately, that decision contains no arguments to that effect. However, that issue was dealt with in detail in a dissenting opinion by Judge Dagmar Lastovecká, to which the complainant refers and some of whose arguments are elaborated on below.

As the ‘highest’ court within the meaning of Article 2 § 2 of the Protocol [No. 7], a particular body cannot be judged on the basis of its designation. It is necessary to examine both the formal features (the designation) and the substantive features (composition, requirements for performance of functions, ...). Pursuant to section 4b of Act no. 7/2002 Coll., a disciplinary chamber composed of the president of the chamber, his or her deputy and four lay assessors hears [disciplinary] cases concerning enforcement officers. ... It is clear from the foregoing that judges of the highest judicial bodies are represented in the disciplinary chamber, but they are in a minority. The majority of the disciplinary chamber consists of lay assessors who are not judges of the highest judicial bodies – they are not even judges, but members of other legal professions. They do not have any experience in decision-making in judicial matters and do not have to satisfy any qualification requirement for decision-making (minimum experience in the judiciary in order to become judges of a high judicial body; minimum age; psychological test, ...) and in this respect, they have to be seen as laypersons (despite their legal training). Decision-making in chambers composed of judges and lay assessors is exceptional in the legal order of the Czech Republic and is typical for

simpler legal disputes (some criminal and labour-law first-instance proceedings). There is always a risk in these cases that the legal professionals whose job description includes decision-making will be outvoted. Thus, at first instance [a decision is always taken by both] judges and lay assessors, and decisions that may be erroneous (due to the fact that the judges were outvoted) can be corrected on appeal. If that guarantee of a fair decision exists in civil proceedings (labour disputes), it should be a matter of course also in proceedings concerning criminal charges. In the event that lay assessors outvote judges in disciplinary proceedings, regardless of the reasoning ..., any remedy is excluded.

In view of the foregoing, the complainant considers it obvious that, although the designation of the disciplinary chamber contains the word ‘supreme’, it is not the highest judicial body. Its members do not satisfy the common requirements for exercising the function of a member of the highest judicial body; they are not even judges. Such an organ cannot sufficiently guarantee the correctness, or even the fairness, of the decision-making process. The complainant believes that the disciplinary chamber is not the ‘highest tribunal’ within the meaning of Article 2 § 2 of Protocol [No. 7]. The aforementioned exception under Article 2 § 2 of Protocol [No. 7] is inapplicable and disciplinary defendants should be guaranteed the right to have the decisions against them reviewed by a court of higher instance. ...”

26. On 11 September 2012 the Constitutional Court (*Ústavní soud*) dismissed the applicant’s constitutional complaint. It held that it was not within its authority to review compliance with ordinary laws, but only with constitutional law. It found that the disciplinary court had provided convincing and logical reasons for its decision. Referring to its case-law (decision no. Pl. ÚS 33/09 concerning disciplinary proceedings against a judge, see paragraph 42 below), it stated, in particular, as follows:

“As regards the reasons expressed in the constitutional complaint concerning the impossibility of applying for a review of the decision delivered in the disciplinary proceedings and the composition of the disciplinary chamber, the Constitutional Court refers to the reasoning in its plenary judgment no. Pl. ÚS 33/09, by which the chamber [sitting in the present] case is bound. [In the above plenary judgment] the proposal to invalidate section 21 of Act no. 7/2002 as amended by Act no. 314/2008 was rejected [and] ... the Constitutional Court, for the reasons set out therein, [and having assessed] the disciplinary chamber from the point of view of its composition, found that the [legal provisions] which did not [confer on] a person charged with a disciplinary offence [the right] to lodge an appeal against a decision of the disciplinary chamber were not unconstitutional. ...”

27. Regarding the other complaints made by the applicant, the Constitutional Court made the following general statement:

“[T]he complainant’s arguments do not lead to the conclusion that the constitutional complaint is well-founded.”

28. The Constitutional Court’s decision of 11 September 2012 was served on the applicant on 17 September 2012.

C. The applicant’s application to the Court

29. On 13 March 2013 the applicant lodged an application with the Court in which he raised various complaints under Article 6 § 1 of the Convention

(see paragraph 53 below) concerning unfairness of the above disciplinary proceedings. He also raised a complaint under Article 2 of Protocol No. 7 to the Convention. Since the scope of the latter complaint became a contentious issue before the Court (see paragraph 66 below), it is deemed useful to reproduce the following extracts from the application form:

“B. VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7 TO THE CONVENTION

15.24. The applicant submits that the present proceedings violated Article 2 of Protocol No. 7 to the Convention (“the Protocol”), which governs the right to appeal in criminal proceedings.

15.25. As stated above, the applicant believes that the disciplinary proceedings should be assessed as proceedings on criminal charges. On the basis of this assessment, he concludes that the provisions of Article 2 § 1 of the Protocol, which enshrine the right to appeal against a decision, are applicable to the present case. However, the applicant was denied that right.

15.26. The applicant is of course aware of the provisions of paragraph 2 of this Article, which provides for exceptions to the need for review under paragraph 1. However, he is of the view that none of these exceptions apply to the present case.

15.27. The first exception under Article 2 § 2 of the Protocol applies to minor offences provided for by law. The applicant considers that the law does not define any less serious offences that should be exempted from the right of review, but generally prohibits the right to appeal in disciplinary proceedings, regardless of the sanction ... in a given case. He believes that the provisions of Article 2 of the Protocol imply an obligation on the Contracting Party to clearly define by law the offences for which no right of review is required, and not to determine this according to the manner in which proceedings are conducted in respect of such offences. The applicant believes that the legislation could be discriminatory, since the right of review may be granted or not granted for similar misconduct, based only on which authority will decide on the offence. The applicant refers to the seriousness of the possible sanctions that may be imposed in the disciplinary proceedings.

15.28. The applicant also believes that it is not possible to accept the disciplinary chamber of the Supreme Administrative Court as the highest tribunal under Article 2 § 2 of the Protocol. He believes that a decision-making authority does not become the highest tribunal by virtue of being designated as such or being assigned to the Supreme Administrative Court. The decisive factor must undoubtedly be how the decision-making authority is staffed and its composition, and also whether it provides a sufficient guarantee of expertise and independence.

15.29. Pursuant to section 4b of Act No. 7/2002 Coll., the disciplinary chamber dealing with cases concerning enforcement officers is composed of its president, his or her deputy and four lay assessors. The president of the chamber is a judge of the Supreme Administrative Court, and his deputy is a judge of the Supreme Court. Two of the lay assessors are enforcement officers and two are persons nominated pursuant to paragraph 4, third sentence. Among the lay assessors who are not enforcement officers, there must always be at least one lawyer (*advokát*) and one person practising another legal profession. It is clear from the foregoing that judges of the highest judicial institutions are represented in the disciplinary chamber, but that they are in a minority. The majority of the disciplinary Chamber is made up of lay assessors who are not judges of the highest judicial institutions, they are not even judges at all and are, therefore, not subject to the requirements imposed on judges in terms of their expertise and

independence. Lay assessors also do not have to meet the conditions required for participation in the highest judicial institution (minimum age, psychological testing, certain number of years in the judiciary, etc.). In the situation at issue, where the majority of the members of the disciplinary chamber do not meet the conditions for membership of the highest judicial institution, it is not possible to speak of the disciplinary chamber as the highest tribunal within the meaning of Article 2 § 2 of the Protocol.

15.30. The legal order of the Czech Republic allows decisions to be made by chambers composed of judges and lay assessors, who are not judges, in other cases but these are usually simpler cases (some criminal proceedings at first instance, labour disputes at first instance). There is always a risk in these cases that the legal professionals (judges) will be outvoted by the non-professionals (lay assessors). If such a situation occurs at first instance, possibly wrong decisions of the lay assessors can be corrected on appeal. However, if this occurs in disciplinary proceedings, and the disciplinary chamber is considered to be the highest court, no remedy is available to the accused.

15.31. With regard to the aforementioned facts, the applicant concludes that since he was not allowed to lodge an appeal against the decision of the disciplinary chamber, his right guaranteed by Article 2 of the Protocol was violated.”

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Relevant legislation

1. *Enforcement Procedure Act*

30. As part of efforts to bolster civil enforcement in the Czech Republic, a function hitherto conferred only on the civil courts, a new Act no. 120/2001 on Enforcement Officers and Enforcement Activities and Amendments to Other Acts (hereinafter “the Enforcement Procedure Act”) was passed on 28 January 2001. Amongst the provisions introduced by the Act was the establishment of a new liberal profession of enforcement officer, henceforth entrusted with civil enforcement on behalf of the State alongside the civil courts. In exercising their enforcement activities enforcement officers would perform a State function, thus wielding a part of the State’s power.

31. Under section 1(1) of this Act, an enforcement officer is a natural person fulfilling the conditions under the Act who has been entrusted by the State with the office of enforcement officer.

32. Pursuant to section 2 of the Act, enforcement officers must exercise their enforcement activities independently. In the exercise of those activities they are bound only by the Constitution, laws and other statutory instruments.

33. Under section 8, the Minister of Justice appoints and removes enforcement officers and also determines and, as applicable, increases their overall number.

34. Under section 28, enforcement is carried out by the enforcement officer named by the enforcement creditor in his or her application for enforcement and recorded in the register of enforcement proceedings. Acts carried out by enforcement officers in enforcement proceedings are deemed to be acts of the court.

35. Under section 116, enforcement officers are liable for any disciplinary misconduct they commit. Disciplinary misconduct means, *inter alia*, a serious or repeated breach of the duties prescribed by legal or professional regulations, or of the profession's dignity. In the event of disciplinary misconduct, any of the following disciplinary measures may be imposed on an enforcement officer: a reprimand, a written reprimand, a fine of up to a hundred times the minimum monthly wage, and removal from office.

36. Under section 117(2), disciplinary action can be brought only by the Minister of Justice, the chairman of the audit committee or the chairman of the review committee of the Chamber of Enforcement Officers, the president of the regional or district court if the enforcement officer's registered office is within the jurisdiction of that court, or the president of the district court that has authorised the enforcement officer to carry out the enforcement.

37. The explanatory memorandum to the draft Enforcement Procedure Act (Parliamentary Paper no. 725/0, special part) states, concerning section 1 of the Act, as follows:

“The enforcement officer is a non-State body – a natural person to whom the State delegates a part of its powers which otherwise belongs to the courts. The enforcement officer performs the activity as a member of a liberal profession and has the status of a public official.”

2. *Act no. 7/2002 on Proceedings in Matters concerning Judges, Public Prosecutors and Enforcement Officers*

38. The relevant provisions of the Act, as in force at the material time, read as follows:

Section 3

“The disciplinary court shall hear and decide cases coming under this Act. The Supreme Administrative Court is the disciplinary court.”

Section 4

“...

(4) The president of the disciplinary court shall keep a list of lay assessors ... Further to a request by the president of the disciplinary court and within the time-limit fixed by [him or her], ... the Prosecutor General, the President of the Czech Bar Association and the deans of the faculties of law of public universities ... shall each nominate ten lay assessors from among the public prosecutors and members of the Bar to be entered in the list of lay assessors ...”

Section 4b

“(1) In proceedings in matters concerning enforcement officers the disciplinary court shall hear and decide cases in chambers composed of a presiding judge, his or her deputy, and four lay assessors. The presiding judge shall be a judge of the Supreme Administrative Court and his or her deputy shall be a judge of the Supreme Court. Two of the lay assessors shall be enforcement officers, and two shall be nominated according to subsection 4, third sentence. Among the lay assessors who are not enforcement officers, there shall always be at least one lawyer (*advokát*) and one person engaged in another field of law, provided that he or she is registered on the list of lay assessors for proceedings in matters concerning judges.

...

(4) The president of the disciplinary court shall keep lists of lay assessors for proceedings in matters concerning enforcement officers. [He or she] shall include in the list the names of ten enforcement officers nominated by the president of the Chamber of Enforcement Officers ... at the request of the president of the disciplinary court. As regards the other lay assessors, section 4(4), third and fourth sentences, shall apply as appropriate.

(5) The president of the disciplinary court shall appoint, by drawing lots from the lists mentioned in subsection 4, lay assessors, four substitutes from among enforcement officers and four substitutes from other lay assessors according to the fixed order. [He or she] shall appoint, by drawing lots, other lay assessors and substitutes from among other lay assessors so that the disciplinary chamber always includes at least one lawyer (*advokát*) and one person engaged in another field of law, provided that he or she is registered on the list of lay assessors for proceedings in matters concerning enforcement officers.

(6) The term of office of the chamber in matters concerning enforcement officers is five years.

(7) The chamber of the disciplinary court for proceedings in matters concerning enforcement officers shall decide cases by a majority of votes of all the members. In the event of a tied vote when ruling on whether an enforcement officer is guilty of professional misconduct, the chamber shall acquit him or her.”

Section 12

“(1) The presiding judge of the chamber shall serve the notice of proceedings on the person against whom the disciplinary charges are brought ... and ... shall advise him or her of the right to allege bias on the part of the members of the chamber, to express his or her opinion on [the charges] and evidence, to submit facts and evidence in his or her favour, and also of the right to remain silent.”

Section 17

“...

(4) The presiding judge of the chamber shall hear the person against whom the charges have been brought and take any other evidence as necessary. ...

(5) After the evidence has been heard, the petitioner, defence counsel and the person against whom disciplinary charges have been brought may express their opinions on the case. The person against whom the charges have been brought shall always make the closing submission.

(6) The oral hearing shall be public.”

Section 21

“No appeal lies against a decision taken in disciplinary proceedings.”

Section 25

“Unless this Act provides otherwise or unless the nature of the case suggests otherwise, the provisions of the Code of Criminal Procedure shall apply as appropriate.”

3. Rules of Professional Ethics and Rules on Competition for Enforcement Officers

39. Rule 5 of these Rules provides that in performing their activities, enforcement officers must act independently, conscientiously and with due care.

B. Relevant case-law of the Constitutional Court

1. The status of enforcement officers

40. In its opinion no. Pl. ÚS-st. 23/06 issued on 12 September 2006, the plenary Constitutional Court held that enforcement officers, in executing a final decision, were in the same position as public officials as they held judicial power. That premise was subsequently relied on in a number of subsequent decisions, for example, I. ÚS 636/14 of 28 July 2014, II. ÚS 918/14 of 3 September 2014, II. ÚS 2690/13 of 5 September 2013, IV. ÚS 146/12 of 17 May 2012, and many others.

2. Disciplinary matters

41. On 27 October 2009 a disciplinary chamber of the Supreme Administrative Court, in disciplinary proceedings against a judge, reached the conclusion that section 21 of Act no. 7/2002 (see paragraph 38 above), which prohibited appeals against decisions of the disciplinary chamber, was contrary to the Charter of Fundamental Rights and Freedoms of the Czech Republic (*Listina základních práv a svobod*) and to the Convention. It requested the Constitutional Court to review the constitutionality of the provision in question.

42. In a judgment of 29 September 2010 (Pl. ÚS 33/09), the plenary Constitutional Court decided by a majority to dismiss the petition, stating as follows:

“53. In the light of the [*Engel*] criteria, the Constitutional Court concludes that disciplinary proceedings against judges of the general courts are not proceedings for the determination of criminal charges. Firstly, from the perspective of domestic law, they do not fall under the heading of criminal proceedings, in spite of the fact that the Code of Criminal Procedure applies by default. Proceedings against judges are by their nature

typically disciplinary and not criminal; although they entail a ruling on liability for breaches of obligations prescribed by law, the proceedings concern only the specific duties of judges. Nor is the third criterion (nature and severity of the punishment) of the *Engel* test fulfilled, despite the fact that it is usually this criterion that makes it possible to include disciplinary proceedings within the ‘criminal’ sphere. Indeed, only a sanction modifying the conditions of the relationship between the judge and the State or terminating the relationship may be imposed on a judge for breaching his or her obligations. In accordance with section 88 of Act no. 6/2002 ... as amended, a reprimand, removal from the position of president of a court, removal from office, or a reduction in pay of up to 30% for up to a year (up to two years if the judge has previously been found guilty in other disciplinary proceedings and the sentence has not yet been erased from the disciplinary records) may be imposed on a judge in disciplinary proceedings. The possible sanctions thus relate only to the conditions (reduction in pay) or the continuation (removal from office) of the relationship between the State and the judge, and therefore their nature is disciplinary, not criminal. For example, judges may not be ordered to pay a fine, which could be regarded as a criminal punishment, but may ‘only’ have their pay reduced or a salary increase withheld.

...

60. In the Constitutional Court’s view, the disciplinary chamber of the Supreme Administrative Court constitutes a ‘tribunal’ within the meaning of Article 6 of the Convention and (in particular) Article 81 of the Constitution, and this conclusion is not affected by the fact that it is not composed of judges of the said court only, but also of judges of other courts and representatives of other legal professions. In fact, the disciplinary chamber of the Supreme Administrative Court possesses the formal and substantive characteristics of a tribunal. As regards the formal characteristics, the Constitutional Court considers it necessary to mention that the disciplinary chamber forms part of the organisational structure of the Supreme Administrative Court and is always presided over by a judge (of the Supreme Administrative Court or the Supreme Court). As regards the substantive characteristics, the Constitutional Court refers to the existence of systemic guarantees of independence and impartiality, which also apply to the disciplinary chamber of the Supreme Administrative Court in the same way as to a court composed of judges only, and this is reflected in the wording of sections 5 and 6 of the impugned Act in particular. The possibility that other citizens, in addition to judges, may participate in the courts’ decision-making follows, moreover, from Article 97 § 2 of the Constitution; therefore, the very fact that the court’s chamber is composed of both judges and lay assessors is not capable *ex constitutione* of preventing that chamber being described as a ‘tribunal’. ...

61. It must be added that even if the Constitutional Court concludes that the proceedings under the impugned Act have the nature of criminal proceedings, this conclusion alone would not necessarily result in the Act’s invalidation, either as a whole or as regards section 21. This finding is also supported by Article 2 § 2 of Protocol No. 7 to the Convention, under which – even if the proceedings concerned are criminal proceedings – the right of appeal against a decision delivered in the proceedings does not have to be guaranteed if the highest tribunal has decided as the court of first instance. Given that fact ... it is also not possible to accept the argument that proceedings at one level of jurisdiction only can affect the quality of the decision on the merits. ...”

43. In decision no. Pl. ÚS 38/09 of 3 August 2011 the plenary Constitutional Court examined a petition by the Supreme Administrative Court to invalidate certain transitional provisions of Act no. 183/2009, which

amended the Enforcement Procedure Act (see paragraph 30 above), and other laws. The court noted, *inter alia*, as follows:

“29. [U]nder the new legislation, criticised by the petitioner, (enforcement officers) have at their disposal an entire procedure conducted from the very outset before the Supreme Administrative Court’s highly qualified chamber, the composition of which guarantees an equal, fair and independent assessment of all cases regardless of the stage reached in the proceedings when they were referred to it. ...

30. Thus it can be concluded that the public interest in thorough and impartial decision-making in disciplinary proceedings against enforcement officers is guaranteed by the fact that a special chamber of the Supreme Administrative Court, that is to say, the highest tribunal, guaranteeing the independence and impartiality of the whole process, adjudicates in disciplinary proceedings against enforcement officers. ...”

44. In decision no. IV. ÚS 1335/12 of 9 July 2013, following the judgment of the plenary court (see paragraph 42 above), the Constitutional Court addressed the issue whether the conclusions set out in that judgment could be directly applied to disciplinary proceedings in matters concerning enforcement officers. In this connection the court held, *inter alia*, as follows:

“For the sake of completeness, it is noted that in judgment no. Pl. ÚS 33/09 the Constitutional Court concluded that the impossibility of lodging an appeal against the disciplinary court’s decision is not contrary to the constitutional guarantees of the right to a fair trial. It held that the constitutional system guaranteed a right of appeal only in criminal matters (Article 2 § 1 of Protocol No. 7 to the Convention) and that there were exceptions to this rule under Article 2 § 2 of Protocol No. 7 to the Convention ... The Constitutional Court supported its conclusion on the constitutionality of the impugned provision by arguing that disciplinary proceedings concerning judges were not proceedings for the determination of a criminal charge within the meaning of Article 6 § 1 of the Convention (this conclusion does not apply directly in the present case) and pointing out that the Supreme Administrative Court’s decisions were delivered by the highest tribunal within the meaning of Article 2 § 2 of Protocol No. 7 to the Convention (a fact which is also relevant in the present case).”

45. The Constitutional Court expressed a similar opinion in decision no. IV. ÚS 2047/13 of 15 October 2013. It stated as follows:

“The Constitutional Court did not find any violation of the rights asserted by the complainant. First, in respect of his allegation of a violation of the right to an effective domestic remedy, the Constitutional Court referred ... to its decision no. Pl. ÚS 33/09 ... The Constitutional Court [in that decision] reached the conclusion that ‘a legal regulation which does not allow a person accused of a disciplinary offence to appeal against a decision of the disciplinary chamber is not unconstitutional; a general right to appeal is not protected in the constitutional order’. When the disciplinary proceedings do not involve the determination of a criminal charge within the meaning of Article 6 of the Convention ... and Article 2 of Protocol No. 7 to the Convention, the right to appeal against a decision taken in such proceedings is, accordingly, not explicitly guaranteed in the constitutional order and it is not otherwise possible to infer such a right from the constitutional order. These conclusions are also fully valid in respect of cases concerning breaches of discipline by enforcement officers.”

46. By decision no. I. ÚS 12/14, delivered on 24 June 2014, the Constitutional Court dismissed a constitutional complaint in which the

complainant, an enforcement officer, had alleged a violation of his right to a fair trial, challenging the fact that no appeal lay against a decision of the Supreme Administrative Court by which he had been fined CZK 10,000. The court also rejected the complainant's request to invalidate section 21 of Act no. 7/2002 on Proceedings in Matters concerning Judges, Public Prosecutors and Enforcement Officers (see paragraph 38 above). It stated, *inter alia*, as follows:

"5. As to the complainant's claim concerning the impossibility of requesting a review of the decision taken in the disciplinary proceedings and the composition of the disciplinary chamber, the Constitutional Court refers to the reasoning of its plenary judgment of 29 September 2010 no. Pl. ÚS 33/09 (N 205/58 SbNU 827), in which it dismissed a proposal to invalidate section 21 of Act no. 7/2002 on Proceedings in Matters concerning Judges, Public Prosecutors and Enforcement Officers as amended by Act no. 314/2008 Coll. In that judgment, the Constitutional Court reached the conclusion that a legal regulation which did not provide for an appeal by the accused against a decision of the disciplinary chamber was not unconstitutional."

II. INTERNATIONAL LAW

47. The International Court of Justice (ICJ) in the *Nuclear Tests (Australia v. France)* case (judgment of 20 December 1974, *ICJ Reports* 1974, p. 253) and in *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)* (judgment of 1 December 2022, *ICJ Reports* 2022, p. 614) had occasion to examine the significance of submissions and statements by the applicant for defining a claim, and the court's power to interpret the submissions of the parties.

48. In the *Nuclear Tests* case, the ICJ held as follows:

"30. [I]t is essential to consider whether the Government of Australia requests a judgment by the Court which would only state the legal relationship between the Applicant and the Respondent with regard to the matters in issue, or a judgment of a type which in terms requires one or both of the Parties to take, or refrain from taking, some action. Thus it is the Court's duty to isolate the real issue in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the parties, and in fact is bound to do so; this is one of the attributes of its judicial functions. It is true that, when the claim is not properly formulated because the submissions of the parties are inadequate, the Court has no power to 'substitute itself for them and formulate new submissions simply on the basis of arguments and facts advanced' (*P.C.I.J., Series A, No. 7*, p. 35), but that is not the case here, nor is it a case of the reformulation of submissions by the Court. The Court has on the other hand repeatedly exercised the power to exclude, when necessary, certain contentions or arguments which were advanced by a party as part of the submissions, but which were regarded by the Court, not as indications of what the party was asking the Court to decide, but as reasons advanced why the Court should decide in the sense contended for by that party. Thus in the *Fisheries* case, the Court said of nine of the thirteen points in the Applicant's submissions: 'These are elements which might furnish reasons in support of the Judgment, but cannot constitute the decision' (*I.C.J. Reports* 1951, p. 126) ..."

49. In *Dispute over the Status and Use of the Waters of the Silala*, the ICJ held as follows:

“43. To this end, the Court will carefully assess whether and to what extent the final submissions of the Parties continue to reflect a dispute between them. The Court has no power to ‘substitute itself for [the parties] and formulate new submissions simply on the basis of arguments and facts advanced’ (*Certain German Interests in Polish Upper Silesia, Merits, Judgment, No. 7, 1926, P.C.I.J., Series A, No. 7, p. 35*). However, it is ‘entitled to interpret the submissions of the parties, and in fact is bound to do so; this is one of the attributes of its judicial functions’ (*Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 262, para. 29*). In undertaking this task, the Court will take into account not only the submissions, but also, *inter alia*, the Application as well as all the arguments put forward by the Parties in the course of the written and oral proceedings (see *ibid.*, p. 263, paras. 30-31). The Court will thus interpret the submissions, in order to identify their substance and to determine whether they reflect a dispute between the Parties.”

III. COUNCIL OF EUROPE MATERIALS

50. The relevant paragraph of the Explanatory Report to Protocol No. 7 to the Convention (Strasbourg, 22 November 1984, ETS 117) is worded as follows with regard to Article 2 of Protocol No. 7:

“17. This article recognises the right of everyone convicted of a criminal offence by a tribunal to have his conviction or sentence reviewed by a higher tribunal. It does not require that in every case he should be entitled to have both his conviction and sentence so reviewed. Thus, for example, if the person convicted has pleaded guilty to the offence charged, the right may be restricted to a review of his sentence. As compared with the wording of the corresponding provisions of the United Nations Covenant (Article 14, paragraph 5), the word ‘tribunal’ has been added to show clearly that this provision does not concern offences which have been tried by bodies which are not tribunals within the meaning of Article 6 of the Convention.”

THE LAW

I. SCOPE OF THE CASE AND RELATED PRELIMINARY OBJECTIONS

A. Introduction

51. The Court reiterates that the scope of a case “referred to” it in the exercise of the right of individual application is determined by the applicant’s complaint or “claim” – which is the term used in Article 34 (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 109, 20 March 2018).

52. The applicant raised complaints under Article 6 §§ 1, 2 and 3 (d) of the Convention and Article 2 of Protocol No. 7 thereto (see paragraph 29 above). The relevant parts of those Articles read as follows:

Article 6 (right to a fair hearing)

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

Article 2 of Protocol No. 7 (right of appeal in criminal matters)

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

1. The Chamber judgment

53. In its judgment (see *Grosam v. the Czech Republic*, no. 19750/13, 23 June 2022), the Chamber defined the applicant’s complaints under Article 6 of the Convention in the following terms:

“66. The applicant complained under Article 6 §§ 1, 2 and 3 (d) of the Convention that his right to a fair trial had been violated in that:

(i) the principle of presumption of innocence had not been respected in the disciplinary proceedings brought against him. The applicant claimed that the disciplinary court had placed the burden of proving his ‘innocence’ on him as it examined only evidence proving his guilt but failed to search for and examine *ex proprio motu* evidence on his behalf; since the applicant had not been able to prove his ‘innocence’, the disciplinary court held that the applicant’s defence was not plausible; furthermore, he asserted that the disciplinary court had prevented him from proposing additional evidence before closing the hearing.

(ii) in the proceedings before the Constitutional Court many of his arguments were not duly addressed by the court.”

54. The applicant’s complaint under Article 2 of Protocol No. 7 to the Convention was defined as follows:

“68. [R]elying on Article 2 of Protocol No. 7 to the Convention, the applicant complained that no appeal against the disciplinary court’s decision (being ‘criminal’ in his view) was admissible by law. Neither exception to that provision applied as his offence had not been of a minor character due to the seriousness of the sanctions which could have been imposed, and because the disciplinary chamber of the Supreme

Administrative Court could not be considered as the ‘highest tribunal’ within the meaning of that provision on account of its composition and the lack of sufficient guarantees as to its expertise and independence as it was comprised of six members, out of whom only two were professional judges.”

55. The Chamber recharacterised the above complaint lodged under Article 2 of Protocol No. 7 mainly as a complaint concerning the composition of the disciplinary court and examined it under Article 6 § 1 of the Convention (see *Grosam*, cited above). In particular, it held as follows:

“70. The Court being the master of the characterisation to be given in law to the facts of the case (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-26, 20 March 2018) views the latter complaint as one primarily falling under Article 6 § 1 of the Convention, especially given that a ‘tribunal’ within the meaning of Article 6 is also one within the meaning of Article 2 of Protocol No. 7 (see *Didier v. France* (dec.), no. 58188/00, § 3, ECHR 2002-VII (extracts)).”

56. The Chamber then examined the applicability of Article 6 § 1 and found that it was applicable, not under its criminal, but under its civil limb (see *Grosam*, cited above, §§ 87-98). It accordingly declared the applicant’s complaints under Article 6 §§ 2 and 3 (d) of the Convention inadmissible as being incompatible *ratione materiae* with the provisions of the Convention (*ibid.*, § 99; see also paragraph 53 above).

57. Likewise, the Chamber declared inadmissible as being manifestly ill-founded the applicant’s complaint under Article 6 § 1 of the Convention that the Constitutional Court had not duly addressed all the arguments he had raised in his constitutional complaint (see *Grosam*, cited above, §§ 157-58; see also paragraph 53 above).

58. As regards the applicant’s complaint under Article 2 of Protocol No. 7, which it had recharacterised to fall under Article 6 § 1 of the Convention (see paragraphs 54-55 above), the Chamber found a violation of that provision. Specifically, it held that the applicant had been denied his right to an independent and impartial tribunal because his case had been heard by the disciplinary chamber, which had not satisfied those requirements (see *Grosam*, cited above, §§ 113-51).

59. Lastly, the Chamber held that there was no need to examine the admissibility and merits of the applicant’s remaining complaints under Article 6 § 1 of the Convention, relating to the alleged lack of fairness of the proceedings before the disciplinary court, namely (i) the complaint that the disciplinary court had not invited him to propose additional evidence before the closing of the hearing, (ii) the complaint concerning the assessment of the evidence and (iii) the complaint that he had been unable to appeal against the decision (*ibid.*, § 154; see also paragraph 53 above).

2. *Scope of the case before the Grand Chamber*

60. According to the Court's settled case-law, the "case" referred to the Grand Chamber is the application as it has been declared admissible, together with the complaints which have not been declared inadmissible (see, for example, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 83, 17 January 2023).

61. The Grand Chamber notes that the Chamber in its judgment (see *Grosam*, cited above, §§ 99 and 157-58) declared inadmissible (a) the applicant's complaints under Article 6 §§ 2 and 3 (d) of the Convention (see paragraph 56 above) and (b) his complaint under Article 6 § 1 that the Constitutional Court had not given sufficient reasons for its decision (see paragraph 57 above). These complaints thus fall outside of the scope of the "case" referred to the Grand Chamber (see the previous paragraph).

62. The Grand Chamber further observes that the Chamber did not declare inadmissible the applicant's complaint under Article 2 of Protocol No. 7 and his remaining complaints under Article 6 § 1 of the Convention (see paragraphs 58-59 above).

63. Consequently, the scope of the "case" as referred to the Grand Chamber encompasses:

(a) the complaint under Article 2 of Protocol No. 7, in respect of which the Chamber, after recharacterising it to fall under Article 6 § 1 of the Convention, found a violation of the latter provision on account of failure to observe the requirement of an independent and impartial tribunal (see paragraphs 54-55 and 58 above); and

(b) the complaints under Article 6 § 1 of lack of fairness of the proceedings before the disciplinary court, in respect of which the Chamber found no need to examine the admissibility and merits (see paragraphs 53 and 59 above).

64. However, this does not mean that the Grand Chamber may not also examine, where appropriate, issues relating to the admissibility of the complaints falling within the scope of the "case" as referred to the Grand Chamber, in the same manner as this is possible in normal Chamber proceedings, for example by virtue of Article 35 § 4 *in fine* of the Convention, or where such issues have been joined to the merits or they are otherwise relevant at the merits stage (see, for example, *Azinas v. Cyprus* [GC], no. 56679/00, § 32, ECHR 2004-III; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 56, 25 March 2014; and *Radomilja and Others*, cited above, § 102). Thus, even at the merits stage the Grand Chamber may reconsider a decision to declare a complaint admissible if it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see the above-cited cases of *Azinas*; *Vučković and Others*; and *Radomilja and Others*).

B. The parties' submissions

65. The way in which the Chamber defined the applicant's complaints under Article 6 of the Convention (see paragraph 53 above) was not disputed between the parties. The Grand Chamber sees no reason to hold otherwise.

66. The only issue in dispute regarding the scope of the case was whether the applicant's complaint under Article 2 of Protocol No. 7, as formulated in his application to the Court (see paragraph 29 above), could be examined under Article 6 § 1 of the Convention as a complaint about an independent and impartial tribunal, as the Chamber did.

1. The Government

67. The Government maintained before the Grand Chamber that the Chamber had actually examined a distinct and specific complaint concerning an independent and impartial tribunal which the applicant had raised for the first time in his observations of 5 November 2015, and only after the Chamber had recommunicated the case and posed a specific question in that regard (see paragraphs 6 and 82 below).

68. As they did before the Chamber, the Government argued before the Grand Chamber that the Chamber had not respected the Court's limited scope of review and had *proprio motu* extended the scope of the case to issues not raised by the applicant in his application to the Court. The Government referred to the general principles in this regard as summarised in *Radomilja and Others* (cited above, §§ 109, 117 and 123-25) and *Foti and Others v. Italy* (10 December 1982, § 44, Series A no. 56).

69. In particular, in his application to the Court the applicant had complained under Article 2 of Protocol No. 7 to the Convention that his right of appeal in criminal matters had been violated in that he had been denied the right to have his conviction and sentence reviewed by a higher tribunal. It was only within the bounds of that complaint that he had argued that, given its composition, the disciplinary chamber could not be regarded as the "highest tribunal". His arguments regarding that court's composition had thus only addressed one of the exceptions provided for in the second paragraph of that specific Article.

70. The crux of the applicant's complaint before the Court therefore concerned the impossibility of appealing against the decision of the disciplinary court, contrary, in the applicant's view, to Article 2 of Protocol No. 7 to the Convention. It was thus evident that the substance of his complaint was, in terms of both the facts and the legal arguments, essentially different from the complaint examined by the Chamber under Article 6 § 1 of the Convention.

71. The applicant had not complained that he had been denied access to an "independent and impartial tribunal established by law" within the meaning of Article 6 § 1 of the Convention. Contrary to the Chamber's

findings, nowhere in the application had the applicant maintained that the disciplinary court – owing to its composition, manner of creating the lists of candidates for lay assessors, or lack of safeguards against outside pressure – could not be considered a “tribunal” or even an “independent and impartial tribunal” in terms of Article 6 of the Convention.

72. It was in his observations of 5 November 2015 (see paragraph 82 below) that the applicant had, for the first time, complained of a violation of Article 6 § 1 on the grounds that the disciplinary chamber could not be regarded as an independent and impartial tribunal owing to its composition and the manner of appointment of some of its members. Thus, the complaint in respect of which the Chamber had found a violation had only appeared in the third, or rather fourth, submissions of the applicant – that is to say, too late and outside the original scope of the case brought before the Court under the Convention.

73. Despite the above, the Chamber had repeatedly invited the Government to reply to questions as to whether the applicant had at all stages of the proceedings had access to a court satisfying all the requirements of Article 6 § 1, in particular taking into account its composition and the guarantees of professional judicial expertise and the manner of selection of persons to be included in the list of lay assessors (see paragraph 6 above).

74. The Government then referred to their submissions before the Chamber of 9 January and 12 March 2014 and 13 November 2015 in which they had repeatedly stressed that those questions went beyond the scope of the applicant’s complaints, and in which they had objected to the Chamber’s extension of the subject matter of the case *proprio motu*.

75. While the Court was the master of the characterisation to be given in law to the facts of the case and therefore was not bound by the characterisation given by the parties, that did not mean that it was free to entertain a complaint regardless of the procedural context in which it had been made (the Government cited *Garib v. the Netherlands* [GC], no. 43494/09, § 98, 6 November 2017). The *jura novit curia* principle referred to the legal characterisation of the complaint, and not to the issue of the particular act of the authorities in which the applicant saw a violation of the Convention. The Court could not use that principle to introduce a new complaint not made by the applicant. While the Court had jurisdiction to review the circumstances complained of in the light of the entirety of the Convention (the Government referred to *Foti and Others*, cited above, § 44), this did not enable it to examine issues in respect of which the applicant had not alleged a violation of his Convention rights.

76. In the Government’s view there was a significant difference between a claim that a judicial body, owing to its composition, was not the “highest tribunal” within the meaning of Article 2 § 2 of Protocol No. 7, and a claim that it was not a “tribunal” at all within the meaning of Article 6 § 1 of the Convention. To their knowledge, the Court had not yet defined the notion of

“highest tribunal” used in the second paragraph of Article 2 of Protocol No. 7. It had only observed that an authority that was not a “tribunal” within the meaning of Article 6 of the Convention could not be considered the “highest tribunal” for the purposes of Article 2 § 2 of Protocol No. 7 (the Government cited *Saqueti Iglesias v. Spain*, no. 50514/13, § 53, 30 June 2020). This did not mean that the reverse was also true: if a certain authority was not the “highest tribunal” in the sense of Article 2 § 2 of Protocol No. 7, that did not automatically mean that it was not a “tribunal” within the meaning of Article 6 § 1 of the Convention, as it was not unreasonable to assume that the highest tribunals had to meet stricter requirements than the ordinary courts.

77. Yet that was precisely the conclusion reached by the Chamber, which had emphasised that the applicant had, in his original application, duly lodged his complaint concerning the composition of the disciplinary court and the lack of sufficient guarantees as to the lay members’ expertise and independence. In its assessment as to whether the applicant had raised that complaint, at least in substance, the Chamber had failed to consider the legal aspect of the complaint (see *Grosam*, cited above, §§ 75 and 103-05). In the Chamber’s opinion, it was irrelevant that the applicant had mentioned the institutional aspect of the disciplinary court’s composition solely by referring to the second paragraph of Article 2 of Protocol No. 7, since the legal characterisation of his claims was a matter for the Court to decide. Thus, on the basis of the complaint of a violation of the right of appeal in criminal matters under Article 2 of Protocol No. 7, which it had recharacterised as a complaint of a violation of the right to a “tribunal” under Article 6 of the Convention, the Chamber had taken the view that it could examine compliance with all the requirements of a “tribunal”, such as its independence and impartiality, the professional qualifications of the judges, and so forth.

78. For these reasons the Government strongly opposed the applicant’s argument (see paragraph 86 below) that in his observations of 5 November 2015 (see paragraph 72 above and paragraph 82 below) he had merely elaborated on his initial complaint. Rather, prompted by the Chamber (see paragraphs 6 and 73 above), in those observations he had formulated a new complaint which was not contained in his original application. Even if the Court were to find that this complaint was not new but constituted an extension of his original complaints, the Government maintained that it had never been raised, even in substance, before the domestic courts, notably the Constitutional Court, and that the applicant had therefore not exhausted domestic remedies.

79. Lastly, the Government submitted that, despite the objections they had raised throughout the proceedings against the attempts by the Chamber to extend the scope of the case and raise new issues of its own initiative (see paragraph 74 above), the Chamber had continuously and proactively sought reasons for finding a violation of the Convention, far beyond the scope of the applicant’s original complaints. That might give the impression that the

Chamber had used the case as a vehicle to deal with the entire system of disciplinary justice under Czech law, thereby using an individual application to achieve a goal other than that for which it was intended.

80. The Government thus invited the Grand Chamber not only to correct the error that had occurred at the Chamber level but also to clarify the limits of the Court's power to recharacterise an applicant's complaints, with a view to ensuring that the scope of the case did not extend beyond the complaints contained in the application.

81. In view of the above, the Government concluded that the complaint in respect of which the Chamber had found a violation of Article 6 § 1 of the Convention was inadmissible either for non-compliance with the six-month time-limit or for non-exhaustion of domestic remedies.

2. The applicant

82. In his observations before the Chamber, dated 5 November 2015, the applicant submitted that the disciplinary chamber of the Supreme Administrative Court was not a "tribunal" within the meaning of Article 6 § 1 of the Convention because it comprised six members, of whom only two were professional judges (see paragraph 19 above). In particular, he argued that the disciplinary chamber could not be considered independent, as its members (lay assessors) who were not professional judges did not meet the requirements of independence and impartiality. In addition, the law did not provide for any safeguards against external pressure, did not set out requirements for lay assessors in terms of their expertise and experience in comparison with professional judges, and did not provide for any rules on their appointment. Lastly, the selection process for lay assessors lacked transparency.

83. In his further observations, dated 10 December 2015, the applicant opposed the Government's argument that his complaint that the disciplinary chamber of the Supreme Administrative Court was not a "tribunal" within the meaning of Article 6 § 1 of the Convention was inadmissible for non-compliance with the six-month time-limit and for non-exhaustion of domestic remedies. In particular, he submitted that his reliance in his application on Article 2 of Protocol No. 7 to the Convention, the wording of which referred to the notion of the "highest tribunal", necessarily entailed an examination as to whether the disciplinary chamber of the Supreme Administrative Court was a "tribunal" for the purposes of Article 6 § 1 of the Convention. In support of this link between the two Articles, the applicant referred to the Explanatory Report to Protocol No. 7 to the Convention (see paragraph 50 above).

84. In those observations the applicant also stated:

"In his submissions of 5 November 2015, [the applicant] described in detail the grounds that lead him to the conclusion that the members of the disciplinary court (in

the sense of [lay assessors]) do not comply with the requirements [of] impartiality and independence and therefore [the applicant] refers to those conclusions in full.”

85. Before the Grand Chamber the applicant maintained that in his application to the Court he had complained about the composition of the disciplinary court under Article 2 of Protocol No. 7 to the Convention. That complaint, he argued, could also be characterised as a complaint of a violation of the right to a fair trial under Article 6 of the Convention.

86. Moreover, in his observations before the Chamber he had described that complaint in more detail, as distinct from formulating a new complaint.

87. He concluded that the Chamber in its judgment had examined only the complaints and arguments he had put forward and thus had not exceeded the Court’s jurisdiction in any way.

C. The Court’s assessment

88. The Court reiterates that a complaint or “claim” – which is the term used in Article 34 of the Convention – comprises two elements, namely factual allegations (that is, to the effect that the applicant is the “victim” of an act or omission) and the legal arguments underpinning them (that is, that the act or omission in question entailed a “violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto” – see *Radomilja and Others*, cited above, § 110). These two elements are intertwined because the facts complained of ought to be seen in the light of the legal arguments adduced and vice versa (*ibid.*).

89. The Court further reiterates that the complaints the applicant proposes to make under Article 6 of the Convention must contain all the parameters necessary for the Court to define the issue it will be called upon to examine. It must be stressed that the scope of application of Article 6 of the Convention is very broad and that the Court’s examination is necessarily delimited by the specific complaints submitted to it (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 104, 6 November 2018).

90. In order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he or she was directly affected by the measure complained of; this is indispensable for putting the protection mechanism of the Convention into motion (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 96, ECHR 2014). Likewise, the Court can base its decision only on the facts complained of (see paragraph 88 above; see also *Radomilja and Others*, cited above, §§ 120-21 and 124). Therefore, it is not sufficient that a violation of the Convention is “evident” from the facts of the case or the applicant’s submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto (see *Radomilja and Others*, cited above, § 110; see also paragraph 88 above), in a manner which should not leave the

Court to second-guess whether a certain complaint was raised or not (see, in the context of exhaustion of domestic remedies, *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020).

91. This means that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (compare the judgments of the ICJ cited in paragraphs 47-49 above).

92. In the present case, in his application to the Court the applicant complained under Article 2 of Protocol No. 7 to the Convention that domestic law excluded appeals against decisions of the disciplinary chamber of the Supreme Administrative Court (see paragraph 29 above). He did not claim that the inclusion in its composition of members who were not professional judges entailed a violation of that Article (see paragraph 88 above). He relied on that fact only to argue that, because its lay members were not subject to the same requirements of expertise and independence as judges, the disciplinary court could not be regarded as the “highest tribunal”. That argument was aimed only at excluding the application of the exception provided for in Article 2 § 2 of Protocol No. 7, according to which the right of appeal does not apply in cases where the accused was tried in the first instance by the highest tribunal.

93. What is more, the applicant emphasised that because of the participation of lay assessors the composition of the disciplinary chamber of the Supreme Administrative Court was atypical among the higher judicial institutions in the Czech Republic, which normally did not involve lay assessors, whose participation was, as he pointed out, common in some first-instance courts (see paragraph 29 above). In short, he did not argue that the disciplinary chamber was not a “tribunal” but merely that it was not the “highest tribunal”.

94. Such a secondary argument cannot be equated with a complaint since, as argued by the applicant, the composition of the disciplinary chamber was not the cause or the fact constitutive of the alleged violation of Article 2 of Protocol No. 7 (compare the judgment of the ICJ in the *Nuclear Tests* case, quoted in paragraph 48 above, in so far as it refers to that court’s power to exclude certain contentions or arguments regarded, not as indications of what the party was asking that court to decide, but as reasons why the court should decide in the sense contended for).

95. In view of the above, the Court considers that the applicant’s argument relating to the composition of the disciplinary court cannot be interpreted as raising a complaint that that court was not an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. If the applicant wished at that stage to complain of a breach of those guarantees set forth in Article 6 § 1 of the Convention, he should have stated so in his application form in a clear manner, similarly to what he did subsequently, in his observations before the Chamber of 5 November 2015 (see paragraph 82

above, and compare *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 246, 18 July 2019).

96. From the foregoing it follows that the applicant did not raise his complaint under Article 6 § 1 of the Convention regarding an independent and impartial tribunal in his application to the Court. Rather, as pointed out by the Government (see paragraphs 67 and 72 above), that complaint was formulated for the first time in his observations of 5 November 2015 to the Chamber, after it had given notice of the application to the respondent Government (see paragraph 82 above). That new complaint cannot be considered to concern a particular aspect of his initial complaint under Article 2 of Protocol No. 7, as it relates to distinct requirements arising from Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 110, 1 June 2021, and paragraph 89 above).

97. It further follows that, by posing a question concerning compliance with the requirement of a “tribunal established by law” under Article 6 § 1 of the Convention (see paragraph 6 above), the Chamber of its own motion extended the scope of the case beyond the one initially referred to it by the applicant in his application. The Chamber thereby exceeded the powers conferred on the Court by Articles 32 and 34 of the Convention (see paragraph 91 above).

D. Conclusions on the scope of the case

98. Against this background, the Court considers that the complaint to the effect that the disciplinary court was not an independent and impartial tribunal, which the applicant raised in November 2015, was submitted more than six months after the disciplinary proceedings against him had ended on 17 September 2012, when the Constitutional Court’s decision to dismiss his constitutional complaint was served on him (see paragraph 28 above).

99. The Government’s preliminary objection of non-compliance with the six-month rule (see paragraphs 72 and 81 above) must therefore be upheld.

100. It follows that the applicant’s complaint regarding an independent and impartial tribunal is inadmissible under Article 35 § 1 of the Convention for non-compliance with the six-month rule, and that it must therefore be rejected pursuant to Article 35 § 4.

101. In the light of the foregoing, the Court considers that it is not necessary to examine the Government’s remaining preliminary objection concerning the applicant’s alleged failure to exhaust domestic remedies (see, for example, *Ramos Nunes de Carvalho e Sá*, cited above, § 110).

102. Having established that the applicant’s complaint under Article 6 § 1 of the Convention regarding an independent and impartial tribunal is inadmissible, the Court will proceed with the examination of his remaining complaints which fall within the scope of the case as referred to the Grand

Chamber. These include the applicant's complaints under Article 6 § 1 of the Convention relating to the fairness of the proceedings before the disciplinary court, and his original complaint under Article 2 of Protocol No. 7 to the Convention (see paragraph 63 above).

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

103. The applicant complained, in particular, that the disciplinary court had not explicitly invited him to propose further evidence before closing the hearing, and that he had been found guilty only because he had not been able to back up his defence with a copy of the document which had been presented to him by the finance director of the debtor company (see paragraphs 52-53 above).

104. The Government disputed the admissibility of this part of the application by arguing that it was manifestly ill-founded. However, before addressing the parties' arguments in that regard (see paragraphs 125-129 below), the Court, for the reasons set out below (see paragraphs 107 and 111-112), must examine whether Article 6 is applicable to the disciplinary proceedings in question and, if so, under which head (civil and/or criminal).

A. Applicability

105. In contrast to their position before the Chamber (see *Grosam*, cited above, §§ 81-82), the Government in their observations before the Grand Chamber no longer disputed that Article 6 of the Convention was applicable under its civil head to the disciplinary proceedings at issue. However, they continued to object to the applicability of that Article under its criminal head. The applicant, for his part, maintained his view (*ibid.*, §§ 85-86) that Article 6 of the Convention was applicable under both its civil and criminal limbs.

1. *Applicability of Article 6 under its civil head*

106. The Court notes that both parties eventually agreed that Article 6 of the Convention was applicable to the disciplinary proceedings in question under its civil head (see the previous paragraph).

107. However, the issue whether a particular Article of the Convention or a Protocol thereto is applicable or not is a matter that goes to the Court's jurisdiction *ratione materiae*, the scope of which is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case. Accordingly, the Court has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Selmani and Others*

v. the former Yugoslav Republic of Macedonia, no. 67259/14, § 27, 9 February 2017).

108. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a “dispute” (“*contestation*” in French) regarding a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018, with further references, and *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022, with further references). Lastly, the right must be a “civil” right (see *Grzęda*, cited above, § 257).

109. Applying these principles to the present case, the Chamber held as follows (see *Grosam*, cited above):

“89. The Court notes that its case-law has developed in recent years and it has come to accept that disciplinary proceedings where, as in the present case, the right to continue to practise a liberal profession is at stake, can give rise to ‘disputes’ over ‘civil rights’ within the meaning of Article 6 § 1 of the Convention. The Court has recognised that Article 6 § 1 of the Convention is applicable in its civil limb not only when the applicant is the subject of a temporary or permanent ban on the practice of his profession, but also in the case of the imposition of a financial fine. Indeed, the concrete outcome of the proceedings is not essential to judge the applicability of Article 6 § 1 of the Convention; it may suffice, where appropriate, that the right to exercise a profession is at stake, simply because the suspension of the exercise of the profession appears in the catalogue of possible measures against the applicant (see *Peleki v. Greece*, no. 69291/12, § 39, 5 March 2020, with further references).

90. The Court notes that notwithstanding the fact that the applicant exercised State judicial power in the field of civil enforcement, his status was – and this fact was not contested by the parties – still that of a liberal profession ... Czech enforcement officers are not, therefore, civil servants (nor are they employees). As such, the instant case differs notably from the cases of disciplinary proceedings against civil servants, where the so-called *Vilho Eskelinen* test is applied to determine whether the applicant’s status as a civil servant excludes the protection embodied in Article 6 (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II). Rather, the enforcement officer’s status must be regarded as akin to that of a public notary, as in the *Peleki* case (cited above), rather than that of other liberal professions, such as attorneys or other professions for whom the exercise of the State power is out of the question.

91. Considering its conclusions in *Peleki* (cited above), the Court notes that, at first, the disciplinary petitioner’s action left it up to the disciplinary court’s consideration which disciplinary measure should be imposed on the applicant in the disciplinary action ... Although at the beginning of the hearing the disciplinary petitioner suggested that the applicant be fined ..., that suggestion was not binding on the disciplinary court ..., and, accordingly, the applicant’s right to continue to practise as an enforcement

officer was potentially at stake, since the removal from his office appeared in the catalogue of possible measures against him (see ... *Peleki*, cited above).

92. Therefore, the Court concludes that the subject matter of the disciplinary proceedings at issue could have been the applicant's right to exercise his liberal profession, and this of itself suffices to arrive at the conclusion that Article 6 § 1 is applicable under its civil head. Accordingly, it dismisses the Government's objection as to incompatibility *ratione materiae* with Article 6 § 1 under its civil head."

110. The Grand Chamber agrees entirely with the above-mentioned assessment and conclusion by the Chamber and reaffirms that in the present case Article 6 of the Convention is applicable under its civil limb (see also *Bayer v. Germany*, no. 8453/04, §§ 37-39, 16 July 2009, where the Court found Article 6 applicable under its civil head to disciplinary proceedings against enforcement officers (bailiffs)).

2. *Applicability of Article 6 under its criminal head*

111. The Court notes that the applicant also raised a complaint under Article 2 of Protocol No. 7 to the Convention (see paragraphs 29, 52 and 54 above), and that the concept of "criminal offence" used in the first paragraph of that Article corresponds to that of "criminal charge" in Article 6 § 1 of the Convention (see *Gurepka v. Ukraine*, no. 61406/00, § 55, 6 September 2005; *Zaicevs v. Latvia*, no. 65022/01, § 53, 31 July 2007; and *Saqueti Iglesias*, cited above, § 22).

112. That being so, and given that the two aspects, civil and criminal, of Article 6 of the Convention are not necessarily mutually exclusive, the Court considers that it should assess whether that Article is also applicable under its criminal head (compare *Ramos Nunes de Carvalho e Sá*, cited above, § 121) – that is, whether the disciplinary proceedings complained of involved the determination of a "criminal charge" against the applicant.

113. The concept of a "criminal charge" in Article 6 § 1 is an autonomous one (*ibid.*, § 122). The Court's established case-law sets out three criteria, commonly known as the *Engel* criteria, to be considered in determining whether or not there was a "criminal charge" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22, and *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 75, 22 December 2020). The first of these criteria is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see, among other authorities, *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X; *Jussila v. Finland* [GC], no. 73053/01, §§ 30-31, ECHR 2006-XIV; and *Gestur Jónsson and Ragnar*

Halldór Hall, cited above, §§ 75 and 77-78). The fact that an offence is not punishable by imprisonment is not by itself decisive for the purposes of the applicability of the criminal limb of Article 6 of the Convention since, as the Court has pointed out on numerous occasions, the relative lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see *Ramos Nunes de Carvalho e Sá*, cited above, § 122; *Gestur Jónsson and Ragnar Halldór Hall*, cited above, § 78; and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 67, 3 November 2022).

(a) The parties' submissions

114. As regards the first and second of the three *Engel* criteria, both parties agreed that the offence for which the applicant was fined was formally classified as a disciplinary offence rather than a criminal offence under domestic law, and that it was also disciplinary in nature. They disagreed only as to whether the third *Engel* criterion was met, that is, whether the severity of the penalty the applicant risked incurring rendered the offence criminal.

115. The Government's arguments as regards that criterion were identical to their arguments before the Chamber (see *Grosam*, cited above, § 83). They emphasised (i) that the disciplinary court could not have imposed a prison sentence, even in the case of non-payment of the fine, and (ii) that, although the applicant could have been fined up to CZK 800,000 (EUR 30,981 at the relevant time – see paragraph 35 above), the severity of that penalty was not in itself sufficient to conclude that the disciplinary proceedings against the applicant involved the determination of a “criminal charge”. As regards the latter point, the Government drew a comparison with the *Müller-Hartburg* case, in which the Court had come to the same conclusion even though the applicant risked a fine of up to approximately EUR 36,000 (see *Müller-Hartburg v. Austria*, no. 47195/06, § 47, 19 February 2013).

116. The applicant averred that the severity of the fine he had risked incurring suggested that the disciplinary proceedings against him concerned the determination of a “criminal charge”.

(b) The Court's assessment

117. The Grand Chamber notes that the Chamber found that the first and second *Engel* criteria were not met in the present case because the misconduct for which the fine had been imposed on the applicant was formally classified as a disciplinary offence rather than a criminal offence under Czech law, and was also disciplinary in nature (see *Grosam*, cited above, §§ 94-95). It further notes that both parties agreed with that view (see paragraph 114 above).

118. The Grand Chamber endorses those findings by the Chamber. It is evident that the misconduct in question is not formally classified as a criminal but as a disciplinary offence under domestic law (see *Grosam*, cited above, § 94). Moreover, the applicant was fined on the basis of section 116 of the

Enforcement Procedure Act, which indeed does not apply to the whole population but only to enforcement officers (see paragraph 35 above) as the members of a professional group, and which is undeniably designed to ensure that they comply with the specific rules governing their professional conduct (see *Grosam*, cited above, § 95).

119. As regards the third criterion, namely the nature and degree of severity of the penalty, the Chamber held as follows (*ibid.*):

“96. [T]his criterion is to be determined by reference to the maximum potential penalty for which the relevant law provides. The actual penalty imposed is relevant to the determination but cannot diminish the importance of what was initially at stake (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 120, ECHR 2003-X, with further references). The Court observes that pursuant to section 116 ... of Act no. 120/2001 at the material time the applicable sanctions included a reprimand, a written reprimand, a fine of up to a hundredfold of the minimum monthly wage, and removal from office. With the exception of the fine, these sanctions are typical disciplinary sanctions. As regards the fine, the Court notes that in contrast to fines in criminal proceedings fines under Act no. 120/2001 do not attract a prison term in the event of default, as the disciplinary authorities have no power to impose deprivation of liberty. Although the size of the potential fine is such that it must be regarded as having a punitive effect, the severity of this sanction in itself does not bring the charges into the criminal sphere (see, *mutatis mutandis*, *Müller-Hartburg*, cited above, § 47, with further references, and *Rola*, cited above, § 56). In sum, the nature and severity of the sanctions the applicant risked incurring and the sanction actually imposed were not such as to render the charges ‘criminal’ in nature.

97. It is also relevant to note here that the applicant’s eventual removal from office would not have prevented him from practising as a lawyer (see similarly *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 93, ECHR 2013).

98. Having regard to all these elements the Court finds that the offence under section 116 ... of Act no. 120/2001 was not criminal but disciplinary in nature (see, *mutatis mutandis*, *Müller-Hartburg*, cited above, §§ 44-45, with further references, and *Rola*, cited above, § 56). Consequently, the Court concludes that the disciplinary proceedings against the applicant did not involve the determination of a ‘criminal charge’ within the meaning of Article 6 § 1 of the Convention, which, thus, does not apply to these proceedings under its criminal head.”

120. The Grand Chamber fully agrees with this assessment and with the Chamber’s conclusion. Indeed, although the amount of the fine the applicant risked incurring may appear substantial – up to CZK 800,000 (EUR 30,981 at the relevant time – see paragraphs 35 and 115 above) – this does not suffice for that sanction to be regarded as “criminal” in the autonomous sense of Article 6 (see *Müller-Hartburg*, cited above, § 47, where the size of the potential fine of approximately EUR 36,000, though having a punitive effect, was not so severe as to bring the matter within the criminal sphere; see, similarly, *Ramos Nunes de Carvalho e Sá*, cited above, §§ 25, 71, 126 and 217, where the maximum penalty was ninety day-fines and the fine imposed was twenty day-fines, which according to the applicant corresponded to EUR 43,750).

121. It should also be noted that the Court has already had an opportunity to examine the applicability of Article 6 under its criminal head to disciplinary proceedings against enforcement officers (bailiffs) and that it held that the proceedings in question had not involved the determination of a “criminal charge”, even though the disciplinary sanction at stake in that case was removal from office (see *Bayer*, cited above, § 37).

122. In view of the above (see paragraphs 117-121), the Court considers that the facts of the present case do not give grounds for a conclusion that the disciplinary proceedings against the applicant entailed the determination of a “criminal charge” within the meaning of Article 6 § 1 of the Convention.

3. Conclusion as to applicability

123. Having regard to the considerations set out above (see paragraphs 105-122), the Court finds that Article 6 § 1 of the Convention applies under its civil but not under its criminal head to the disciplinary proceedings at issue.

B. Compliance

124. The applicant complained of a violation of his right to a fair trial in the disciplinary proceedings against him (i) because of the way in which the disciplinary court had assessed the evidence, and (ii) because it had not invited him to propose additional evidence before closing the hearing (see paragraph 103 above).

1. The parties’ submissions

(a) The applicant

125. The applicant submitted that he had been found guilty of a disciplinary offence without his guilt being proven and even though other, exculpatory, evidence had existed which could have been examined by the disciplinary court. In particular, his main argument in the disciplinary proceedings in question had been that the authority of the finance director of the debtor company to sign the enforcement officer’s record drawn up by the applicant (see paragraph 15 above) had been based on a document provided to him by the finance director. The disciplinary court had not accepted that defence for the sole reason that he had been unable to produce a copy of the document.

126. However, it had been within the disciplinary court’s power to search for and examine *ex proprio motu* evidence in his favour and to take (other) evidence that could have clarified the facts of the case, and in particular to obtain testimonies from the persons who had participated in the signing of the above-mentioned record. Since the disciplinary court had not done so, but had only examined evidence pointing to his guilt, it had not sufficiently

established the facts of the case and had placed the burden of proving his innocence on him. Because he had been unable to prove his innocence, the disciplinary court had considered his defence unconvincing (see the previous paragraph).

127. Lastly, the applicant argued that it had been a part of his defence strategy to propose further evidence when he considered it appropriate, including after the point at which the disciplinary court or the disciplinary prosecutor considered that all the necessary evidence had been taken. By not inviting him to propose further evidence before closing the hearing, the disciplinary court had prevented him from defending himself effectively, as he would have proposed that testimonies be obtained from the above-mentioned witnesses (see the previous paragraph).

(b) The Government

128. In their observations before the Chamber, the Government emphasised that the applicant had changed his defence on several occasions (see paragraphs 17 and 20 above). They argued that it would have been absurd to expect the disciplinary court to seek evidence in support of the allegations made by persons charged with a disciplinary offence each and every time they changed their defence. That was so especially in a situation where, as in the applicant's case, the court had already been satisfied on the basis of several other pieces of evidence that all relevant facts had been established.

129. As regards the applicant's argument that he had been prevented from calling witnesses (see paragraph 127 above), the Government submitted that the applicant could have made a proposal to that effect before or during the hearing but that he had not done so. The statement made by the applicant's representative in his closing argument could not be regarded as a proposal for witnesses to be called (see paragraph 21 above). That statement was entirely vague because it completely failed to identify the persons whose potential testimony the applicant had had in mind (the Government cited *Ciupercescu v. Romania*, no. 35555/03, § 162, 15 June 2010).

2. The Court's assessment

(a) As regards the duty to collect evidence and its assessment

130. The Court first considers that no duty of the court to collect evidence of its own motion can be derived from Article 6 of the Convention under its civil limb. A positive obligation on the part of the authorities to investigate and collect evidence in favour of the accused may arise only under the criminal limb of that Article and only in some very specific circumstances (see, for example, *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, §§ 195-200, 16 February 2021, where the applicants – victims of human trafficking – were prosecuted for drug-related offences committed in relation to their being trafficked, and where the Court considered that the

lack of a proper assessment of their status as victims of trafficking had prevented the authorities from securing evidence which might have constituted a fundamental aspect of their defence).

131. The Court further reiterates that, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. In principle, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review (see *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017, with further references). The same applies to the probative value of evidence and the burden of proof (see, for example, *Tiemann v. France and Germany* (dec.), nos. 47457/99 and 47458/99, ECHR 2000-IV, with further references). The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *De Tommaso*, cited above, § 170).

132. In the present case, the Court considers that the way in which the disciplinary court distributed the burden of proof and assessed the evidence was not arbitrary or manifestly unreasonable.

(b) As regards the administration of evidence

133. The Court reiterates that Article 6 of the Convention does not explicitly guarantee the right to have witnesses called or other evidence admitted by a court in civil proceedings (see, for example, *Wierzbicki v. Poland*, no. 24541/94, § 39, 18 June 2002). Nevertheless, any restriction imposed on the right of a party to civil proceedings to call witnesses and to adduce other evidence in support of his or her case must be consistent with the requirements of a fair trial within the meaning of paragraph 1 of that Article, including the principle of equality of arms (*ibid.*).

134. In the present case, the Court notes that the applicant's representative, in his closing argument before the disciplinary court, indicated that the applicant could potentially provide supplementary evidence with a view to proving that the finance director of the debtor company had been entitled to sign the enforcement officer's record (see paragraph 21 above). However, he did not make any concrete proposal in that regard. This means that even at that point the applicant had an opportunity to call as witnesses the persons who had participated in the signing of the document in question (see paragraphs 15 and 126 above), but that he failed to avail himself of that opportunity.

(c) As regards the right of appeal

135. The applicant did not complain of the impossibility of appealing against the disciplinary court's decision under Article 6 § 1 of the Convention but under Article 2 of Protocol No. 7 thereto (see paragraphs 29, 52 and 54 above). The Chamber, which recharacterised the applicant's complaint under Article 2 of Protocol No. 7 as a complaint under Article 6 § 1, seemed to consider that the issue of the lack of a possibility of appeal could be examined under the general requirement of fairness set forth in the latter Article, but eventually decided that there was no need to examine any issue regarding the fairness of the proceedings before the disciplinary court (see paragraphs 55 and 59 above).

136. The Grand Chamber has already established that such recharacterisation was not possible in the circumstances of the present case (see paragraphs 88-96 above). The applicant's complaint regarding the right to appeal will therefore be examined below (see paragraphs 138-141), under Article 2 of Protocol No. 7, as originally submitted. The Grand Chamber would add, by way of observation, that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation (see *Platakou v. Greece*, no. 38460/97, § 38, ECHR 2001-I) and that, in any event, the applicant had the opportunity to lodge a constitutional complaint – of which he availed himself – and that the Constitutional Court examined his complaint on the merits (see paragraphs 24-27 above).

(d) Conclusion

137. It follows from the above considerations (see paragraphs 130-136) that the complaints under Article 6 § 1 of the Convention relating to the fairness of the disciplinary proceedings are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and that they must be rejected pursuant to Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7 TO THE CONVENTION

138. In line with his view that the disciplinary proceedings in question involved the determination of a “criminal charge” against him (see paragraph 116 above), the applicant complained that in those proceedings no appeal was admissible by law against decisions of the disciplinary chamber of the Supreme Administrative Court (see paragraphs 29, 52 and 54 above).

139. The Government disputed the admissibility of this complaint by arguing that Article 2 of Protocol No. 7 was not applicable to the proceedings in question.

140. The Grand Chamber again refers to the Court's established case-law according to which the concept of “criminal offence” used in the first paragraph of Article 2 of Protocol No. 7 corresponds to that of “criminal

charge” in Article 6 § 1 of the Convention (see paragraph 111 above). Having regard to its findings above to the effect that Article 6 of the Convention is not applicable under its criminal head to the disciplinary proceedings in question (see paragraphs 117-123), the Court finds that Article 2 of Protocol No. 7 is not applicable either. The Government’s objection must therefore be upheld.

141. It follows that this complaint is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and that it must be rejected pursuant to Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Upholds* the Government’s preliminary objection that the complaint under Article 6 § 1 of the Convention concerning an independent and impartial tribunal is inadmissible for non-compliance with the six-month time-limit;
2. *Declares* the remaining complaints under Article 6 § 1 of the Convention inadmissible;
3. *Declares* the complaint under Article 2 of Protocol No. 7 to the Convention inadmissible.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 1 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen
Deputy to the Registrar

Síofra O’Leary
President