



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

FIFTH SECTION

CASE OF SIMONCINI v. SAN MARINO

(Application no. 14396/24)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Annulment *ex officio* by the Judicial Council (CGP) of the applicant's appointment to first-instance judge after the application of retrospective legislation • Genuine and serious dispute over arguable civil right under domestic law • Administrative proceedings challenging annulment directly decisive for the applicant's rights • Art 6 applicable • Legislative intervention occurred during separate proceedings brought by other competing candidates challenging the applicant's appointment and prior to him instituting proceedings • Insufficient consideration given to the principle of the irremovability of judges during their term of office • Introduction of legislation amounting to an unjustified arbitrary course of action aimed at circumventing the principle of the rule of law and the notion of a fair trial • Equality of arms principle disrupted, making the proceedings instigated by the applicant unwinnable • Absence of any compelling general interest reasons capable of outweighing the inherent dangers in the use of retrospective legislation

Art 6 § 1 (civil) • Length of proceedings did not exceed a reasonable time

Art 8 • Private life • Annulment of the applicant's appointment to first-instance judge by the CGP unjustified • Art 8 applicable following consequence-based approach • Cumulative effects sufficiently serious and affected the applicant's right to private life to a very significant degree • Domestic courts' failure to acknowledge that right or balance it appropriately against other alleged competing interests • Lawfulness requirement not met • Absence of relevant and sufficient reasons justifying the necessity of the impugned measure in a democratic society

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 February 2026

FINAL

15/06/2026

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Simoncini v. San Marino,

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

Kateřina řimáčková, *President*,

María Elósegui,

Georgios A. Serghides,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,

Sébastien Biancheri, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 14396/24) against the Republic of San Marino lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a San Marinese national, Mr Massimiliano Simoncini (“the applicant”), on 9 May 2024;

the decision to give notice to the San Marinese Government (“the Government”) of the complaints concerning Article 6 and 8 of the Convention (in connection with domestic proceedings no. 37/2020) and to declare inadmissible the remainder of the application;

the parties’ observations;

the decision to reject the Government’s request for the recusal of Mr Gilberto Felici, the judge elected in respect of San Marino, in September 2025 (Rule 28 §§ 3 and 4 of the Rules of Court);

Having deliberated in private on 27 January 2026,

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

INTRODUCTION

1. The application concerns proceedings related to the annulment of the applicant’s appointment to *Commissario della Legge* (a judicial organ in the ordinary courts of first instance). It raises complaints under Articles 6 and 8 of the Convention.

THE FACTS

2. The applicant was born in 1963 and lives in Montegiardino. He was represented by Mr E. Santi, a lawyer practising in Borgo Maggiore.

3. The Government were represented by their Agent, Ms S. Bernardi, Representative of San Marino to the Court.

4. The facts of the case may be summarised as follows.

THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. In the relevant period, the composition of the Judicial Council in plenary session (*Consiglio Giudiziario Plenario*, hereinafter “CGP”) was governed by Qualified Law no. 145/2003, and subsequent amendments resulting from Qualified Law no. 2/2011 (see paragraph 57 below). The CGP was made up of the Members of Parliament who were members of the Parliamentary Commission for Justice, the Minister of Justice, and judges, including the Chief Justice (*Magistrato Dirigente* - a judge entrusted with the directorship of the courts and the judiciary). The Heads of State (*La Reggenza* – who chair the CGP but have no voting rights) convened the judges that would form part of the CGP according to the criteria established in article 7 (5) of Qualified Law no. 145/2003 (see paragraph 57 below). The political and judicial components were to be equal in number.

6. After the retirement of A, a Judge of Appeal - thus leaving only two other ordinary appeal judges in office - A was replaced, as a member of the CGP [at the meeting of 5 March 2018], by B, a *Commissario della Legge* (hereinafter “CoL”, a first-instance judge, see paragraph 54 below) on the basis of the subsidiary criterion of supplementation by a CoL confirmed on a permanent basis. The Government noted that that was so even though at the time another Judge of Appeal in civil matters was in place on a non-renewable term of three years i.e. fixed term (in line with a special law to that effect regulating specific assignments).

7. Subsequently, after the appointment of another Judge of Appeal (namely, C, who at the time was in his three-year probationary period and, therefore, not yet confirmed on a permanent basis), on 27 April 2018, the CGP, following the relevant debate concerning the interpretation of article 7 (5) of Qualified Law no. 145/2003 (see paragraph 57 below), provided the interpretation of that provision according to which the supplementation was to be carried out with regard to judges in the same category/functions, irrespective of their permanent status. In other words, the posts of the three Judges of Appeal referred to in the law were to be filled in with the Judges of Appeal in place, including those not yet confirmed on a permanent basis, thus, excluding the CoL B from the composition of the CGP. That interpretation was maintained in the following meetings.

8. On 14 September 2018 the CGP initiated a recruitment procedure for the post of a CoL. Since 2009 (confirmed in office following the relevant probationary period in 2012) the applicant had been an *Uditore Commissariale* (hereinafter “UD”), one of the judicial organs of San Marino, having limited functions in the assistance of first-instance judges (see article 2 (3) and (6) of Constitutional Law no. 144/2003 as modified by subsequent amendments, at paragraph 54 below). The applicant having more

than four years of experience he was qualified to be nominated for the post of CoL.

9. On 30 November 2018 another meeting of the CGP was held where two of its members expressed their concerns in relation to the composition of the CGP, particularly in relation to whether a Chief (*Dirigente*, a person external to the judiciary, entrusted with the directorship of the courts and judiciary in exceptional circumstances, see article 6 of Qualified Law no. 145/2003 at paragraph 59 below) could sit on the CGP, given that he was not a judge thus could not be one of the members of the judicial component of the CGP (nor one of the politicians mentioned in the law and designated as members of the CGP). On the same day the CGP appointed professor Z as Chief.

10. On 6 February 2019 the Heads of State convened a morning and evening session of the CGP meeting, to be held on 12 February 2019, with two different compositions (the afternoon session had an extra CoL, as well as Z).

11. As a result, at the morning session of 12 February 2019 which was dedicated to “the composition of the CGP” in relation to the position of the Chief who was external to the judiciary (the situation pertaining at the time), B complained about the state of affairs, mainly in so far as it appeared that the Heads of State had already made the relevant decision, despite it being for the CGP to decide on the matter. B further brought to the attention of the CGP that the different interpretations given to the law concerning the composition of the CGP in relation to its judicial component meant that either before 27 April 2018 or thereafter, the CGP had not been in line with the composition required by law. In consequence (according to which interpretation was chosen) any decisions taken on either of those meetings would be null. B also reiterated the concerns raised on 30 November 2018 concerning the position of the Chief (see paragraph 10 above), referring to the incompatibility with international norms of appointing a person as director of the courts and judiciary who was external to the judiciary, as was the case [at the time] in San Marino. B was joined by D in the relevant reflections. At that meeting the Minister of Justice expressed his surprise at learning that the presence of C in prior compositions could be a problem. The rest of the morning session was dedicated to the role of Chief Justice when the person at issue was a Chief external to the judiciary but finally no vote was taken on the matter.

12. At the afternoon session of the CGP meeting of 12 February 2019, prior to the vote on the CoL appointment, various concerns (unrelated to the composition of the CGP) were raised about the procedure to be undertaken for the recruitment of a CoL in reference both to the selection criteria, as well as to the relevant steps to be taken. Comments were made about the unclarity in the law in this respect and some of the members expressed their perplexity

as to the way forward. Comments were also made in relation to the absence of a proper report in line with the law including a relevant nomination.

13. Nevertheless, at that session, following a recommendation of the Chief Justice in his 2017 report - which was reiterated by the subsequent Chief (following the former's sudden death) by means of a note which also included the names of other UD's who qualified for the post - by eleven votes in favour, the CGP decided to proceed by way of internal recruitment, and then, by eleven votes in favour, appointed the applicant to the post of CoL (another candidate having obtained one vote). On the same day the CGP voted in favour of various recruitment competitions for judges to be launched.

14. A few days later, on 26 February 2019, the legislator intervened by enacting Qualified Law no. 1/2019 (see paragraph 59 below). In the present case the Government explained that this was aimed at resolving the issues raised on 12 February 2019 and granting the Chief, external to the judiciary, voting rights in the CGP.

15. The decision to appoint the applicant as CoL was acknowledged (*presa d'atto*) by Parliament on 15 March 2019 and he took up service on 22 March 2019.

16. On 11 April 2019, X and Y, who were also UD's at the time and possible candidates for the position attributed to the applicant and felt aggrieved by the applicant's appointment, instituted administrative proceedings (no. 13/2019) (see paragraph 25 below).

17. On 20 February 2020, following a change of government in November 2019, and pending proceedings no. 13/2019, a further legislative intervention was put in place via Qualified Law no. 1/2020 (see paragraphs 60-61 below). In the present case the Government explained that the modifications to articles 6 and 7 of Qualified Law no. 145/2003, consequent to the legislative intervention, were aimed solely at removing the voting rights of the Chief, external to the judiciary, and excluding him from the judicial component forming part of the CGP (see paragraphs 60 below) leaving the rest unchanged, while article 3 of Qualified Law no. 1/2020 (see paragraph 61 below) (also part of the legislative intervention), provided an interpretative provision to deal with the diverging interpretations concerning the rest of the composition of the CGP.

18. Various deliberations ensued where the different members of the CGP (freshly composed in respect of the political component following the election, and with relevant changes to the judicial component in the light of the legislative intervention, as from the deliberations of 13 July 2020) expressed divergent views in relation to the legislative intervention (Qualified Law no. 1/2020, see paragraphs 60-61 below) and the way forward. Some members called for the annulment of the decisions made by the CGP when composed contrary to the interpretation resulting from the legislative intervention.

19. On 28 September 2020, in view of the legislative intervention and having taken note of the proceedings brought by X and Y, challenging the applicant's appointment, the decision of the CGP initiating the recruitment procedure and that appointing the applicant as CoL were annulled by the CGP, of its own motion, in an act of self-protection (*autotutela decisoria spontanea*) (by thirteen votes in favour, three against and two abstentions). The CGP considered that there had been a problem in the composition of the CGP taking those decisions in so far as they had included C, who, at the time, had not been confirmed on a permanent basis, contrary to that established by the new article 3 of Qualified Law no. 1/2020, an interpretative provision with retroactive effect.

20. On this matter the CGP had requested on 31 August 2020 and obtained on 5 September 2020 a *pro-veritate* opinion issued by a President Emeritus of the Italian Constitution Court. The latter considered, relying on judgments of the Italian Constitutional Court concerning laws of authentic interpretation, that article 3 of Qualified Law no. 1/2020 was a law of authentic interpretation in respect of article 7 of Qualified Law no. 145/2003, allowing for retroactive effect. According to that opinion: in the light of the interpretation set forward in Qualified Law no. 1/2020, the CGP had not been properly composed at those meetings; as a result of that defect in the composition any acts undertaken by that body were unlawful and would remain valid only if they had not been challenged within the relevant time-limit; the unlawful composition of the CGP prevailed and absorbed any other defects which indeed existed (*comunque sussistenti*); noting that the pending proceedings (no. 13/2019) had not yet been decided, it was considered that there were public interest reasons to annul the impugned deliberations of the CGP in the interest of legal certainty of the appointments of a judicial nature and to ensure the guarantees of impartiality and independence which also depended on the lawfulness of selection procedures; however, decisions of the CGP which had not been challenged within the peremptory time-limits could remain in place.

21. In the meantime, on 17 July 2020, a majority of judges in San Marino, including the applicant, had written to the Secretary General of the Council of Europe expressing their concerns concerning Qualified Law no. 1/2020, *inter alia*, in respect of its retroactive application, as well as the resulting nullity of the decisions taken by the CGP as composed prior to the amendments, in the absence of any verification as to whether a different composition would have had any impact on the decisions taken. They considered that Qualified Law no. 1/2020 had been put in place to allow for a reconstitution of the CGP favourable to the Government of the day. In particular it allowed the nullification of the appointments of the Chief Justice (*sic.*), two appeal judges, and one first-instance judge, already in office (but the confirmation of three other posts of UDs and one *Procuratore del Fisco*), who had been lawfully appointed according to the law as it stood at the time

of their appointment. These would then be replaced by others on the basis of a new CGP composition which, apart from not being in line with international standards in view of its political component, was more favourable to the Government. Thus, undermining the independence of the judiciary and falling foul of Council of Europe Standards.

22. Similar concerns were raised before the Council of Europe Commissioner for Human Rights who in a letter of reply of 8 September 2020¹ (twenty days before the impugned decision) recalled a number of important principles and European standards that underpin the rule of law and the enjoyment of human rights and highlighted the essential role of judicial councils, which must be firmly established in law and made up, in their majority, of members of the judiciary elected by their peers. She invited the Government of San Marino to make full use of the assistance and expertise of the relevant Council of Europe bodies to assess the institutional setup affecting the independence of the judiciary in San Marino, and, if necessary, to reform it in accordance with their recommendations. Aware that the Group of States against Corruption (“GRECO”) was expected to adopt its relevant evaluation report on San Marino imminently, she called on the authorities to refrain from taking any further steps that may fuel such allegations pending the adoption and publication of that report, and before any possible recommendations included in it were properly implemented.

23. The GRECO evaluation report, which identified various shortcomings, *inter alia* in relation to the judicial council and its operation, was issued on 21-25 September 2020 (see paragraph 66 below). The relevant legislative reform addressing the GRECO recommendations took place in December 2021 (see paragraphs 56, 62 and 67 below).

24. Apart from that relating to the applicant, the decisions to appoint the Chief as well as two other appeal judges were annulled on the basis of article 3 of Qualified Law no. 1/2020. These appointment decisions had been challenged in different ways at the domestic level. The applicant was unsuccessful in the subsequent competition launched in 2020, and another one thereafter, decided by the CGP, which was made up, partly, of other judges. The two judges of appeal whose appointment had been annulled became Judge for Extraordinary Remedies and Judge of Appeal for Civil Liability Actions of Magistrates, respectively.

B. Proceedings no. 13/2019

25. In the meantime, as mentioned above, on 11 April 2019 (prior to the enactment of Qualified Law no.1/2020), X and Y, who were also UDAs at the time and possible candidates in the same appointment procedure, instituted

¹ [Commissioner calls on the authorities of San Marino to refrain from actions jeopardising the independence of the judiciary - Commissioner for Human Rights](#)
(last accessed January 2026)

administrative proceedings (no. 13/2019). They challenged the appointment procedure on various grounds: i) The CGP composition which included judge C had not been lawfully constituted; ii) the report required by article 3 (6) of Qualified Law no. 145/2003 to launch the recruitment procedure had not been prepared; iii) the subsequent report necessary to the assessment of the professional characteristics of UD's eligible for the position, required by article 5 (6) of the same law, had been missing; iv) the Chief at the time had no competence to draw up a qualitative assessment of the candidates; v) the appointment was made in the absence of relevant information on the qualification of candidates and uniform criteria for their assessment given that it was based on the findings of the 2017 Report on the State of Justice, established for other purposes and which had made no qualitative assessment of the other candidates; vii) absence of reasons for such an appointment; viii) absence of notification of the procedure to other interested candidates; and ix) participation at the relevant CGP meeting of E, who had been incompatible in view of past events to participate in the procedure at issue.

26. The applicant was notified of these proceedings but, at that stage, he chose not to participate.

27. Following the turn of events (see paragraph 17 et seq. above), on 26 November 2020, the applicant unsuccessfully (due to the expiry of the relevant time-limits) tried to intervene in proceedings no. 13/2019. His contemporaneous request to join these proceedings to others lodged by him in parallel (no. 37/2020, see paragraph 33 below) was also rejected, despite a lack of objection by the representative of the State.

28. Proceedings no. 13/2019 were eventually discontinued (*archiviazione*) on 16 March 2021 as the actors had lost interest in the case following their appointment to the post of UD. The applicant's challenge (before the same CoL) against the decision to discontinue the case, as well as a request for the judge to abstain, were rejected on 12 April 2021.

C. Proceedings no. 7/2021

29. The applicant lodged an appeal against the decisions of 16 March and 12 April 2021 (referred to in the previous paragraph) pointing out that the CoL deciding that case should have abstained on the grounds of manifest incompatibility, since he had taken part, as member and minute-taker, in the CGP meeting appointing X and Y as CoLs.

30. On 27 May 2022 the appeal was rejected by Judge S, the Judge of Appeal for Civil Liability Actions of Magistrates (hereinafter "JACLM"), acting as an Administrative Judge of Appeal pursuant to Article 4 of Constitutional Law no. 2/2021.

D. Querela nullitatis (1)

31. The applicant asked for the annulment of the decision of 27 May 2022 (referred to in the previous paragraph) by means of an action for *querela nullitatis* before the Judge for Extraordinary Remedies in civil matters.

32. The latter having abstained, the appeal was assigned to the Judge for Extraordinary Remedies in criminal matters who declared it inadmissible, because such an action was not provided for in the domestic legal order.

E. Proceedings no. 37/2020

33. In parallel with his attempt to intervene in proceedings no. 13/2019, on 26 November 2020 the applicant also brought administrative proceedings (no. 37/2020) against the *ex officio* decision of the CGP dated 28 September 2020, annulling his appointment². He unsuccessfully requested these proceedings to be joined to those no. 13/2019 mentioned above and later to proceedings nos. 14/2021 and 25/2021 (see paragraph 51 below).

34. The CoL competent to decide the case abstained and all the other CoLs declared reasons for incompatibility to sit on the case – either because they had participated in the impugned sitting of the CGP or because they had been summoned to appear before the court as a party with an interest in the proceedings. In consequence, the Chief Justice ordered that the case be assigned to the Judge of First Instance of Civil Liability Actions of Magistrates (hereinafter “FCLM”) pursuant to Article 1 of Constitutional Law no. 2/2020. The latter position was, at the time, vacant and awaiting an ongoing recruitment competition.

35. The position was filled on 1 June 2021, and on 8 June 2021 the FCLM set the date for the preliminary hearing to 29 June 2021. On 2 December 2021 the FCLM dismissed the applicant’s preliminary objection concerning the lack of competence and jurisdiction of the FCLM to hear the case. After adversarial proceedings on the matter, it found that the subsidiary and surrogate competence of that judge was in line with article 2 (5) of Constitutional Law no. 144/2003 as amended by Constitutional Law no. 2/2020. The applicant’s request concerning a precautionary suspension of the effects of the impugned decision was also rejected on 14 March 2022.

36. Both interlocutory decisions were confirmed on appeal on 20 June 2022.

1. First-instance judgment

37. By a judgment of 25 January 2023 the FCLM rejected the applicant’s claims considering them unfounded.

² This was the first case challenging the application of Qualified Law no. 1/2020.

38. Reconfirming his competence to decide the case, the FCLM refused to join the proceedings to others which had been discontinued (no. 13/2019) or had been lodged against various public bodies and not solely the CGP as in the present case. He further rejected the applicant's plea about the incompleteness of the documents supplied to him, noting that all the documents he had requested, concerning meetings which actually took place and within the temporal interests of the case, had been supplied to him.

39. As to the constitutionality of articles 3 and 4 of Qualified Law no. 1/2020, which amended Qualified Law no. 145/2003 as amended in 2019, concerning laws on the judicial system, the judge noted that article 3 of Qualified Law no. 1/2020, an interpretative provision, explained that in deciding the composition of the CGP priority had to be given to the criterion of being confirmed on a permanent basis. Given, *inter alia*, the formulation of article 4 of Qualified Law no. 1/2020 for future situations, there was no doubt that article 3 of Qualified Law no. 1/2020 had retroactive effect. According to the FCLM this in itself did not breach the applicant's rights under Articles 6, 8 and 13 of the Convention. Indeed, even the more restrictive ECtHR jurisprudence (compared to the domestic one) allowed for legislative intervention in civil matters if a fair balance had been reached in the light of compelling public interest reasons. In the present case all relevant domestic and ECHR criteria had been met: i) Qualified Law no. 145/2003 had not been unclear about the hierarchy of the relevant criteria to be applied in determining the CGP composition; ii) the new interpretation was not only one of the possible interpretations given to that law but also the most probable one, and most reasonable one; iii) the unclear law requiring interpretation was a crucial provision upon which the legal certainty of the entire legal system in San Marino depended, it followed that the need to clarify it was imperative and compelling and certainly not arbitrary. It could also not be ignored that the intervention did not take place pending proceedings within which the applicant had been a party since his request to join those proceedings had been made out-of-time, and lastly the legislative intervention had taken place only a year after the unclarity arose.

40. As to the impugned CGP decision, the FCLM noted that the applicant had challenged it on various grounds not all of which had been fully comprehensible, and some of which overlapped. According to the FCLM, the CGP had acted of its own motion in order to correct an error (*autotutela decisoria spontanea*) and thus annulled the decision, as allowed by Law no. 160/2011 (*ex officio* annulment) in relation to administrative decisions such as that of a judge's nomination. Therefore, contrary to that argued by the applicant, the CGP had not taken over the competence of the administrative court deciding case no. 13/2019; nor that of Parliament whose competence was solely to acknowledge certain steps in the procedure (*presa d'atto*), without having any substantive role in the nomination; nor that of the Constitutional Court; nor had the act been in contrast with the law.

41. The FCLM further rejected the applicant's claims of breaches of domestic law, as follows: i) unlike for the process of a nomination, the law did not provide for a report by the Chief Justice in the case of a *contrarius actus* such as the annulment of that nomination; ii) unlike articles 42 and 43 of Law no. 160/20, its article 44 concerning annulment, as in the present case, did not provide that the rules of ordinary procedures (such as the principle of adversarial proceedings) should apply – moreover it was open to the applicant to challenge the decision subsequently, as in fact he did; iii) the CGP could act of its own motion, and there was no requirement of a complaint by a party; iv) while it was open to the CGP to correct the error (*sanare via convalida*) as opposed to annulling the decision, this was not obligatory and subject to discretion; v) there had been nothing arbitrary in the CGP decision which gave reasons explaining the compelling public interest behind it, in particular in so far as an illegitimate composition would have created a tribunal which was not in line with ECtHR case-law; Furthermore the applicant had been aware of the development, which moreover came to be eighteen months after his taking office and thus the annulment decision had been taken within a reasonable lapse of time, and therefore was in line with domestic law; vi) the presence of C at the deliberations of the CGP which voted upon the applicant's nomination was enough to consider the nomination decision as vitiated and subject to annulment; vii) the delay in giving access to all relevant documents to the applicant did not lead to the unlawfulness of the impugned decision; viii) the CGP was correctly composed on the date of the annulment decision; ix) all the appeal grounds raised by the applicant having been rejected, it could not be said that the CGP acted in abuse of power. Moreover, while the annulment certainly affected the applicant, there was no indication of a grave or manifest injustice nor was there proof that the administration intended to favour X and Y.

2. The appeal proceedings

42. On 23 February 2023 the applicant appealed (no. 3/2023) and requested the suspension of the enforceability of the first-instance judgment pending the proceedings.

43. On 15 March 2023 the applicant lodged a request for abstention and objection of the JACLM. His challenge was rejected by the Constitutional Court on 4 July 2023. On 14 November 2023 he filed a new request for abstention of the JACLM and raised an issue of constitutional legitimacy in relation to the intervening Qualified Law no. 1/2020 concerning the composition of the CGP.

44. By judgment of 9 January 2024 notified on 10 January 2024, delivered by Judge S, the JACLM rejected the applicant's appeal and ordered the applicant to pay the costs of the appeal proceedings.

45. In so far as relevant, the JACLM noted the incongruent and dysfunctional nature of the appeal which could even be considered as abusive

and which already on the basis of the way in which it was presented could be considered inadmissible. It also referred to what it considered delaying tactics to prolong proceedings. In any event the appeal was to be rejected on the merits in so far as the action of the CGP had been justified given the umbrella consideration (*assorbente considerazione*) related to the defective composition of the CGP when it had appointed the applicant. Indeed, article 44 of Law no. 160/2011 provided that every administrative act (as was at issue in the present case) could be annulled *ex officio*. Moreover, the impugned legislative action, having retroactive effect, had been necessary, reasonable, and proportionate in the light of the interests at play, and could not amount to a breach of Article 6 of Convention. This was even more so since the intervention occurred during proceedings no. 13/2019 to which the applicant was not a party. The necessity of any interference had also to be seen in the light of the rights of X and Y, who had been affected by the unclear interpretation of the rules at issue. Moreover, the uncertainty was clarified within a short time span.

46. The JACLM further considered that the acknowledgement by Parliament was not a nomination and the applicant's claim that his nomination by the CGP of 12 February 2019 had become intangible and irrevocable was unfounded, as were his complaints in this regard under the Convention. The act in self-protection was not a punitive act and thus Article 7 of the Convention did not apply, nor was it discriminatory, thus, it did not raise an issue under Article 14 of the Convention. The impugned decision was not based on the applicant's exercise of his judicial function (neither in relation to the functional nature of his appointment nor the exercise of the functions inherent to that position) but solely on the unlawfulness of his appointment on 12 February 2019, due to the defective composition of the CGP, which was already evident at the time (so much so that it had been challenged by X and Y on this basis), and was further clarified by the legislator's intervention; It was not related to his behaviour or beliefs, nor was it hateful or politically oriented, contrary to other cases decided by the ECtHR. In the view of the JACLM there was no issue under Article 8 of the Convention as the matter was of a public not private nature, and in any event any interference was justified for the coherence of the judicial system, as well as the legal certainty and the tranquillity of people who had the right to be judged by a tribunal constituted according to law. Lastly, the applicant's rights under Article 6 and 13 had also been respected, the applicant having had ample opportunity to challenge these decisions, including via these same proceedings.

47. In conclusion, the JACLM considered that what was in issue was the interest of the public, the fundamentals of democracy and the public trust in the judiciary which prevailed over the interests of one individual, who had a right to a review of the administrative act at issue, but not a subjective right if the appointment was found to be unlawful. It was inappropriate and

pretentious of the applicant to invoke fundamental human rights in such a context only because he imagined that his appointment was intangible, despite it being unlawful. The composition of the CGP had been vitiated by the presence of C who was still on probation (therefore not confirmed on a permanent basis) and having judges on probation sit on such a body could give rise to conflicts of interest. It was in that context that, rationally and with a view to make its application more foreseeable, articles 3 and 4 of Qualified Law no. 1/2020 clarified that article 7 (5) of Qualified Law no. 145/2003 had to be interpreted as referring to members of the judiciary who were confirmed on a permanent basis – an interpretation not applied, on 12 February 2019, when the applicant had been appointed. Thus, in the light of the doubts about the relevant interpretation and the new amendments, as well as their interpretation resulting from the *pro-veritate* opinion issued on the matter, the CGP's act of self-protection had been reasoned and the San Marino authorities had had the duty to make right the situation.

48. It considered that all the other arguments raised by the applicant were manifestly ill-founded, including i) that in relation to the failure to join the proceedings to others, particularly noting that these proceedings concerned the annulment decision and not the decision to appoint him; and ii) that about the composition of the CGP on the date of the annulment decision, which deliberated in the absence of the Chief Justice (seat at the time vacant), and which correctly included amongst its eighteen members C, who by then had completed his probationary period, and excluded the applicant who was at the time still in his probationary period of three years.

49. The JACLM ordered the costs of the proceedings to be paid by the applicant, bearing in mind his behaviour during the proceedings which – it considered – verged on abuse of process and included his instrumentalization of proceedings, multiple complaints and claims of in-existent breaches of human rights aimed at prolonging proceedings at the expense of the taxpayer.

F. Querela nullitatis (2)

50. On 8 February 2024 the applicant filed a further request by means of an action for *querela nullitatis* against the judgment of 10 January 2024 which was declared inadmissible on 17 November 2024 by the Judge for Extraordinary Remedies, since such action could not be brought against administrative judgments.

G. Other proceedings

51. The applicant also unsuccessfully brought two further administrative sets of proceedings (nos. 14/2021 and 25/2021), which were joined, challenging the procedure appointing X and Y, in which he had also participated unsuccessfully.

52. Three different sets of disciplinary proceedings were also issued against the applicant in relation to incidents which occurred subsequent to the above facts. In the first of these proceedings, he was issued with the disciplinary sanction of a warning (*ammonimento*) (these proceedings being subject of application no. 3106/24 before this Court), in the second to a reprimand (*censura*), and in the third to a fine in the form of a suspension from his pay (*sospensione della retribuzione*) for a month.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

53. For the purposes of the present text, it is noted that the term *Magistratura*, translated as “judiciary”, includes all the judicial organs of San Marino as enlisted in Article 2 (3) (4) and (5) of Constitutional Law no. 2/2011, set out at paragraph 54 below, namely those having ordinary, extraordinary and special jurisdictions, and the *Procuratore del Fisco*. The term *magistrati* which has been translated as “magistrates” for the purposes of the present case, refers to all those persons forming part of the judiciary, in the sense, as explained above.

A. Constitutional Law

54. Constitutional Law no. 2/2011 (16 September 2011), concerning new rules applicable to the judicial system, modified Article 2 of Constitutional Law no. 144/2003 (30 October 2003) to read as follows:

Article 2 (Judicial bodies – *Organi del potere giudiziario*)

“[1] In accordance with the Statutes and the Declaration of Fundamental Rights and Principles of the San Marino Legal System, the magistrates of the Republic exercise judicial power, perform institutional duties without subordination and are accountable under the law.

[2] Magistrates, bound by the duties and entitled to the rights indicated by law, in order to guarantee the objectivity and impartiality with which they are required to perform their functions, are entitled to the special personal, economic and status guarantees provided for by law and by international treaty and customary law.

[3] The organs of jurisdiction (*organi della giurisdizione*) are the Judge of the Third Instance, the Appeal Judge, the *Commissario della Legge*, and the *Uditore Commissariale*.

[4] Extraordinary judicial functions in cases provided for by law are assigned to the Judge for Extraordinary Remedies.

[5] Civil liability actions against magistrates are assigned to the jurisdiction of the Judges for Civil Liability Actions (*Giudici per l'azione di responsabilità civile*).

[6] Judges exercise all the judicial functions expressly assigned to them by law. The *Uditore Commissariale* assists the *Commissario della Legge* in his activities; the

Commissario della Legge may assign or delegate to him investigative functions in civil, criminal and administrative matters.

[7] Several judges may be assigned to individual judicial offices, each of whom is guaranteed the fullness of judicial functions. The Qualified Law on the judicial system provides for the substitution of judges of the same level.”

55. Subsequently, Constitutional Law No. 2/2020 (3 December 2020) further amended Article 2 (5) of Constitutional Law no. 144/2003 to read as follows:

“[5] Civil liability actions against magistrates are assigned to the jurisdiction of the Judges for Civil Liability Actions (*Giudici per l'azione di responsabilità civile*). The Judges for Civil Liability Actions of Magistrates shall also be competent to rule on civil, criminal or administrative proceedings if all competent judges have lawfully abstained or have been legitimately objected to or are otherwise unable to rule because they have already ruled.”

56. The relevant articles of Constitutional Law no. 1/2021 (7 December 2021) concerning the Judiciary, the Judicial System and the Judicial Council, in so far as relevant, read as follows.

Article 8

“...

(4) A magistrate appointed by career advancement shall not be subject to any probationary period.

(5) Magistrates who, following career advancement, are subject to a probationary period at the time of the entry into force of this law shall be confirmed on a permanent basis.

...”

Article 9

“(1) Once they have completed their probationary period, career magistrates shall remain in office until they reach the age of 70.

(2) Magistrates shall not be removed from office, except in the event of reaching retirement age, dismissal following the establishment of disciplinary liability or permanent incapacity to perform their duties, which shall be verified by the Judicial Council in consultation with the Magistrate.

(3) Career magistrates who have exercised judicial functions for at least ten years may request, for serious personal or family reasons, to be transferred to the Public Administration. The Judicial Council shall decide on the request. If the Judicial Council accepts the request, Parliament shall decide on the magistrate’s placement.

(4) Career magistrates shall be subject to professional evaluations every five years, with regard to the balance, productivity and professional qualities demonstrated in the exercise of their judicial duties. The evaluation shall be carried out by the Judicial Council, on the basis of a reasoned and documented report by the Chief Justice and in consultation with the magistrate concerned.”

B. Law no. 145/2003 and its subsequent amendments

1. As modified in 2011

57. In so far as relevant, Qualified Law no. 2/2011 (16 September 2011), concerning the new rules on the judicial system, modified the relevant articles of Qualified Law no. 145/2003 (30 October 2003), concerning provisions on the judicial system, to read as follows:

Article 3 (Recruitment of magistrates)

“...

The starting of procedures to appoint magistrates shall be requested to the Parliament with a reasoned report drawn up by the Chief Justice (*Magistrato Dirigente*) with the consent of the Judicial Council. After having taken note of the request, the Parliament shall decide [on the appointment] by absolute majority.

New magistrates shall preferably be recruited through internal career progression. The judges on an indefinite term position who are appointed to perform higher functions are not required to serve a probationary period.”

Article 4 (Duration of mandates)

“...

[2] After their appointment, Judges of Appeal, *Commissari della Legge*, and *Uditori Commissariali* are subject to a probationary period of three years. The Judicial Council assesses their performance on the basis of a detailed report prepared by the Chief Justice and decides whether to confirm them in their position for an indefinite period or to terminate their appointment, notifying the Parliament for their acknowledgement (*presa d'atto*).

[3] Magistrates who have been confirmed in their position for an indefinite period remain in service until the age of sixty-eight years; this period may be extended for two years by the Judicial Council at the request of the person concerned in case of proven service needs attested by a detailed report of the Chief Justice. The magistrates cease their function, by resignation, end of the mandate (*decadenza*), exemption or having joined the public administration.”

Article 5 (Requirements for the appointment of magistrates)

“...

Uditori Commissariali having served for at least four years may be appointed as *Commissarii della Legge*. The assessment of the professional skills acquired is carried out by the Judicial Council in plenary session, to which the Chief Justice submits a relevant report.

...”

Article 7 (The Judicial Council)

“...

[5] The Judicial Council in plenary session shall be composed of the members of the Parliamentary Commission for Justice, the Minister (*Segretario di Stato*) of Justice, the

Third Instance Judges, three Judges of Appeal, five *Commissari della legge* and the Chief Justice. The *Commissari della legge* and the three Judges of Appeal are chosen from among those confirmed in office on a permanent basis with the highest seniority in that position; in the event of equal seniority, age prevails. In any case, the number of magistrates must always be equal to that of the other members; if, due to specific requirements, their number is lower, the Council shall be supplemented with magistrates of the same instance as that of the absence or, if the number continues to be lower, with *Commissari della legge*, even if not yet confirmed in office on a permanent basis, on the basis of seniority; in the event of equal seniority, age prevails.

...”

58. Qualified Law No. 2/2011, concerning the new rules on the judicial system, also contained a transitory provision (Article 10) which read as follows:

“...

The *Uditori Commissariali* currently serving may be appointed as *Commissari della legge* and *Procuratori del Fisco* by the Judicial Council based on the report of the Chief Justice. They are subject to the ordinary probationary period.

The provision of article 4 (2) [of Qualified Law no. 145/2003 as amended in 2011] concerning the probationary period shall apply only to the magistrates who will take office after the approval of this Law.

...”

2. As modified in 2019

59. Article 2 and 3 of Qualified Law no. 1/2019 (26 February 2019) amended Qualified Law no. 145/2003 to read as follows:

Article 6 (Chief Justice)

“[1] The Chief Justice is appointed for a term of five years by the Judicial Council in plenary session from among the *Commissari della legge* with at least five years of service and Appeal Judges confirmed in their positions, or from among the Third Instance Judges.

[2] On the proposal of the Chief Justice, the Judicial Council in plenary session appoints, from among the magistrates, a Deputy Chief Justice who replaces the Chief Justice in any case where the latter is prevented from performing his or her duties. The Chief Justice may delegate the Deputy Chief Justice to exercise his or her powers. In the event of the death or permanent incapacity of the Chief Justice, the Deputy Chief Justice shall perform his or her duties until a successor is appointed.

[3] If, in exceptional circumstances, the sphere of the administration of justice urgently requires particular and specific professional skills and experience, the Judicial Council may appoint a Chief (*Dirigente*) being a person, external to the San Marino Judiciary, of the highest repute and possessing outstanding competence in the direction of judicial structures and organs, for periods of time to be defined by the Judicial Council itself, including for less than five years.

[4] The Chief, appointed in accordance with the preceding paragraph, shall be an *ex officio* member of the Judicial Council, both in ordinary and in plenary session. He/she shall fulfil the functions and duties that the laws of the judicial system and other laws

of the State assigned to the Chief Justice including the prerogatives referred to in this article.

...”

Article 7

“[5] The composition of the Judicial Council in plenary session shall be the following: the Minister of Justice, the Chief Justice, ten parliamentarians who are members of the Permanent Parliamentary Commission for Justice and a number of magistrates equal to the number of parliamentarians who are members of the Permanent Parliamentary Commission for Justice. The magistrates participating in the Judicial Council in plenary session shall be: two Third Instance Judges, three Judges of Appeal and five *Commissari della Legge*. The Judges of Appeal and the *Commissari della Legge* shall be chosen from among those confirmed in office on a permanent basis with the highest seniority in that position, in the event of equal seniority, old age prevails. To comply with the provisions of this paragraph, if the number of magistrates is lower than that of the parliamentarians who are members of the Permanent Parliamentary Commission for Justice, the Council shall be supplemented by magistrates of the same instance as the absence, or, if the number continues to be lower, with *Commissari della legge*, even if not yet confirmed in office on a permanent basis, on the basis of seniority; in the event of equal seniority, age prevails.”

3. As modified in 2020

60. In so far as relevant, article 2 and 4 of Qualified Law no. 1/2020 (20 February 2020) concerning the composition of the Judicial Council in plenary session, further amended article 6 and 7 of Qualified Law no. 145/2003 to read as follows:

Article 6 (Chief Justice)

“[4] The Chief who is not a magistrate, appointed in accordance with the preceding paragraph, shall participate in the Judicial Council without the right to vote, both in ordinary and in plenary session. He/she shall fulfil the functions and duties that the laws of the judicial system and other laws of the State assign to the Chief Justice, including the prerogatives referred to in this article.”

Article 7

“[5] The Judicial Council in plenary session shall be composed of the members of the Parliamentary Commission for Justice, the Minister of Justice, the Third Instance judges, three Judges of Appeal, five *Commissari della Legge* and the Chief Justice. The Judges of Appeal and the *Commissari della Legge* shall be chosen from among those confirmed in office on a permanent basis with the highest seniority in that position, in the event of equal seniority, old age prevails. If there are no three Judges of Appeal appointed on a permanent basis, the composition of the Council shall be supplemented by *Commissari della Legge* confirmed in office on a permanent basis. The number of magistrates with voting rights shall always be equal to the number of other members with voting rights. In the absence of magistrates confirmed in office on a permanent basis, the Council shall be supplemented by magistrates employed for a definite duration, preferring those of the same instance [as the absence], chosen from among

those with the highest seniority in that position; in the event of equal seniority, age prevails.”

61. Article 3 of Qualified Law no. 1/2020, named a provision of authentic interpretation, also provided that the fifth paragraph of article 7 of Qualified Law no. 145/2003 and successive amendments was to be interpreted in the sense that:

“The Judicial Council in plenary session is composed primarily of magistrates confirmed in office on a permanent basis, that is to say, that they have passed the probationary period, where applicable. Only in the event that the number of magistrates confirmed in office on a permanent basis is lower than that of other members, the Judicial Council in plenary session shall be supplemented according to the other criteria laid down in the law.”

62. Qualified Law no. 1/2020 is no longer in force (except for its Article 10), it having been abrogated by means of Constitutional Law no. 1/2021 (see paragraph 56 above) in the context of a further legislative reform.

C. Law no. 55/2003

63. Law no. 55/2003, concerning proceedings before the Constitutional Court, in so far as relevant reads as follows:

Article 11 (judicial review of constitutionality)

“1. The review of constitutionality referred to in Article 16 of the Declaration on the Citizens’ Rights may be carried out through direct action or interlocutory action in the context of proceedings pending before judicial bodies.

...”

Article 12 (direct action)

“1. A direct review of legitimacy may be requested by at least twenty Councillors, by the Executive Government (*Congresso di Stato*), by five Regional Councils (*Giunte di Castello*), by the Equal Opportunities Commission, or by a number of citizens representing at least 1.5% of the electorate, as determined by the latest and definitive annual revision of the electoral rolls.

...”

Article 13 (interlocutory referral)

“1. Applications for review of constitutionality may be lodged through interlocutory (*incidentale*) action in the context of proceedings pending before the jurisdictional bodies of the Republic by the parties or the *Procuratore del Fisco* by means of an *ad hoc* written application, or *ex officio* by the judge with a reasoned order.

...

4. The application shall be included in the files of the judicial proceedings and notified to any interested party by the applicant. The Judge shall grant the parties and the *Procuratore del Fisco* if involved in the case, twenty days to submit their observations

and arguments. After such period, the Judge shall reject, by means of an order, manifestly unfounded or dilatory applications.

...”

D. Law no. 160/2011

64. Law no. 160/2011 concerning administrative procedures and access to administrative documents, in so far as relevant reads as follows:

Article 44

“An unlawful administrative measure tainted with violation of the law, abuse of powers or lack of competence may be annulled *ex officio*, for reasons of public interest, by the body that has adopted it or by another body provided for by the law, within a reasonable time-limit and taking into account the interests of the addressees.

The possibility to validate a measure that may be annulled for reasons of public interest and within a reasonable time shall not be affected.”

E. Law no. 68/1989

65. Law no. 68/1989 concerning administrative jurisdictions, in so far as relevant, reads as follows:

Article 9

“The bodies of administrative jurisdiction are called upon to decide on challenges for lack of competence, excess of power or violation of the law against actions or decisions of institutional bodies of the Public Administration in general, including actions of administrative bodies of the Social Security Institute and of the Autonomous State Bodies and Companies, when they concern an interest of a natural or legal person.

The latter without prejudice (*fatte salve*) to the different provisions of law on access to a court for the determination of a person’s rights and interests (*tutela giurisdiziativa*). Acts relating to public employment are subject to the administrative jurisdiction provided for by this law. Conflicts of jurisdiction are decided pursuant to article 37.”

Article 15

“The Administrative Judge of first instance has jurisdiction to decide at first instance.

When upholding the application, it pronounces the annulment of the contested administrative act. It also orders the losing party to reimburse the legal costs incurred by the other parties, unless it is considered that there are justifiable grounds for ordering the sharing of costs.

In proceedings relating to the public service it also pronounces, in case of approval of the application, an order to the Public Administration to pay the employee’s entitlements, without prejudice to the jurisdiction of the ordinary judge for the decision on possible compensation of damage.

...”

II. INTERNATIONAL INSTRUMENTS

A. The Group of States against Corruption (“GRECO”)

66. The report of the Group of States against Corruption (“GRECO”) – Corruption prevention in respect of members of parliament, judges and prosecutors (Evaluation Report – Republic of San Marino, 85th Plenary Meeting 21-25 September 2020), in particular, the chapter entitled “Corruption prevention in respect of judges”, which related to the period relevant to the present case, in so far as relevant, reads as follows:

“Overview of the System

...

Judicial Council

... [summary of the legal framework with its amendments including Qualified law no. 1/2020]

85. The GET [GRECO evaluation team] considers that substantial amelioration must follow with regard to the Judicial Council composition and operation. The current system has important flaws as compared to international standards. Regarding the composition of the Judicial Council in ordinary session, the presence of the Minister of Justice, although without voting rights, in sittings of all-judges where the organisation of work is discussed, looks problematic, particularly, by virtue of the key democratic principle of separation of powers. GRECO has repeatedly advised abolishing the *ex officio* membership of the Minister of Justice in judicial councils.

86. The problems are, however, more acute in relation to the Judicial Council in plenary. At the start, the GET notes that mixed membership in judicial councils is not a problem *per se*. However, when this is the case, there should be a majority of judges. Furthermore, caution should be exerted in order to ensure that the real and perceived independence of the judiciary is not only safeguarded, but also strengthened at all times. Particular attention must be paid to political membership. In this connection, the functioning of judicial councils should allow no concession at all to the interplay of parliamentary majorities and be free from any subordination to political party consideration. This is a particularly relevant concern in the case of San Marino where the number of active politicians appointed automatically to the Judicial Council equals the number of judges.

87. Furthermore, the GET underscores that the election of members of judicial councils is a crucial moment to infuse transparency and accountability to this central body within the judiciary. When non-judicial members are appointed by Parliament, the procedure related to this appointment must be conducted in a transparent and non-political manner. The GET finds these requirements difficult to reconcile with the current procedure where members of a parliamentary committee, i.e. the Permanent Parliamentary Committee for Justice, are automatically made members of the Judicial Council. Thus, in practice, election criteria are more connected to parliamentary activities (politically driven and motivated) than to judicial duties and knowledge.

88. Moreover, the GET stresses that standards call for members, whether judges or not, to be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence. Besides, regarding the selection of judges, these should be elected by their peers aiming at ensuring widest

representation of the judiciary at all levels; all interference of the judicial hierarchies in the process should be avoided. In San Marino, the primary criterion for the appointment to the plenary of the Judicial Council is confirmation in office on a permanent basis. As for non-judicial members, in addition to the concerns already expressed in the preceding paragraphs, nothing is said on their merits and qualities, other than that they cannot be lawyers, notaries or accountants.

89. Regarding the operation of the Judicial Council in San Marino, no rules of procedure have been adopted ...

...

91. In light of the shortcomings identified above, the GET is of the firm view that a comprehensive reform of the Judicial Council's architecture must be taken as a matter of priority. Accordingly, in order to enshrine the role of the Judicial Council as a guarantor of the independence of judges and the judiciary, **GRECO recommends (i) changing the composition of the Judicial Council by providing that at least half of its members are judges elected by their peers, and, for non-judicial members, by excluding *ex officio* membership of members of the executive and the legislative; (ii) establishing objective and measurable selection criteria and a transparent selection procedure to endorse the professional qualities and impartiality of all members; and (iii) putting in place operational arrangements to ensure the effective performance of its functions in an institutionalised manner.**

Recruitment career and conditions of service

Selection and appointment

... [summary of the legal framework with its amendments]

98. The GET considers that the recruitment system [of judges] by means of competition is sound: it depends upon objective success in competitive examination. Further improvements could, however, be taken as regards appointments through internal career progression. Both the requirements of the post and the selection procedure would benefit from further articulation. The law requires a law degree, a number of years of experience and undisputed reputation. In the GET's view, the current set of selection criteria can be further refined and developed to define more clearly the qualities required for the post so that integrity, ability and efficiency are best met. That would also allow for an easier scrutiny of candidates' qualifications, i.e. the manner in which the various skills and qualities are assessed and balanced against each other, during the evaluation process. When career advancement/recruitment to higher positions are not exclusively based on seniority, but also on other qualities and merits, these must be clearly defined and objectively assessed.

99. Appointment follows through a qualified majority decision of the Judicial Council (on the basis of a report from the head of the court, when the appointment is made through internal career progression). However, aside from the cases when a prior report from the head of the court is required, nothing is said in law or regulation as to how this decision is reached (e.g. evaluation criteria), nor is the appointment decision required to be reasoned. The considerations made before in this report as to the composition and operation of the Judicial Council are of critical importance in this area. Additional steps must be taken to fully ensure an appointment process which is vested (both in reality and in appearance) with sufficient guarantees of objectivity, transparency, independence and impartiality.

100. Furthermore, the GET has concerns as to the deviation from the principle of permanent tenure for the highest ranks of the judiciary (Highest Judges of Appeal, the

Judges of Extraordinary Remedies and the Judges for the Civil Liability of Magistrates). Permanent tenure until retirement constitutes a fundamental protection for the independence of all judges, according to international standards and GRECO practice. Consequently, **GRECO recommends ensuring that the appointment of judges, as well as the confirmation of permanent employment after the completion of a probationary period, as applicable, are thoroughly regulated according to clear and objective criteria, based on merit having regard to qualification, integrity, ability and efficiency, following a transparent procedure, which is sufficiently reasoned.**

...

103. ... **GRECO recommends thoroughly regulating the system of selection, appointment, mandate renewal and revocation, as well as the responsibilities of the head of the court (whether s/he comes from inside or outside the judicial career).**

...

V. RECOMMENDATIONS AND FOLLOW-UP

170. In view of the findings of the present report, GRECO addresses the following recommendations to San Marino:

...

Regarding judges and prosecutors

vii. (i) **changing the composition of the Judicial Council by providing that at least half of its members are judges elected by their peers, and, for non-judicial members, by excluding *ex officio* membership of members of the executive and the legislative;** (ii) **establishing objective and measurable selection criteria and a transparent selection procedure to endorse the professional qualities and impartiality of all members;** and (iii) **putting in place operational arrangements to ensure the effective performance of its functions in an institutionalised manner** (paragraph 91);

viii. **ensuring that the appointment of judges, as well as the confirmation of permanent employment after the completion of a probationary period, as applicable, are thoroughly regulated according to clear and objective criteria, based on merit having regard to qualification, integrity, ability and efficiency, following a transparent procedure, which is sufficiently reasoned** (paragraph 100);

ix. **thoroughly regulating the system of selection, appointment, mandate renewal and revocation, as well as the responsibilities of the head of the court (whether s/he comes from inside or outside the judicial career)** (paragraph 103);

...”

67. In their subsequent report, Corruption prevention in respect of members of parliament, judges and prosecutors (Compliance Report – Republic of San Marino, 91st Plenary Meeting 13-17 June 2022), GRECO concluded that following a thorough legislative reform (in 2021) to address

the various flaws identified above, the three recommendations above had been implemented satisfactorily or dealt with in a satisfactory manner³.

B. The European Commission for Democracy through Law (“the Venice Commission”)

68. The Compilation of Venice Commission opinions and reports concerning courts, Strasbourg 7 January 2025⁴, in its part concerning judicial councils, in so far as relevant reads as follows:

“4.2 Composition of the Councils of Justice

4.2.1 General approach

“There is no standard model that a democratic country is bound to follow in setting up its Supreme Judicial Council so long as the function of such a Council fall within the aim to ensure the proper functioning of an independent Judiciary within a democratic State. Though models exist where the involvement of other branches of power (the legislative and the executive) is outwardly excluded or minimised, such involvement is in varying degrees recognised by most statutes and is justified by the social content of the functions of the Supreme Judicial Council and the need to have the administrative activities of the Judiciary monitored by the other branches of power of the State. It is obvious that the Judiciary has to be answerable for its actions according to law provided that proper and fair procedures are provided for and that a removal from office can take place only for reasons that are substantiated. Nevertheless, it is generally assumed that the main purpose of the very existence of a Supreme Council of the Judiciary is the protection of the independence of judges by insulating them from undue pressures from other powers of the State in matters such as the selection and appointment of judges and the exercise of disciplinary functions.”

CDL-INF(1999)005, Opinion on the reform of the judiciary in Bulgaria, §28

See also CDL-AD(2015)042, Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia", §61

“The composition of the SJC is in line with the recommendations of the Venice Commission. The majority of the members would be judges (ten out of fifteen), and eight judicial members would be elected from various levels of courts. The Presidents of the Supreme Court of Cassation and Supreme Administrative Court would be members *ex officio*. The non-judicial members would be elected by the National Assembly with a two-thirds majority, no dead-lock mechanism is provided for. It is recommended to foresee such an anti-deadlock mechanism (for which examples can be taken from the several possibilities presented previously by the Venice Commission).”

CDL-AD(2023)039, Opinion on the Draft Amendments to the Constitution of Bulgaria, §123

“[...] Involving only judges carries the risk of raising a perception of self-protection, self-interest and cronyism. As concerns the composition of the judicial council, both politicisation and corporatism must be avoided. An appropriate balance should be found between judges and lay members. The involvement of other branches of government

³ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a6ec11> (last accessed January 2026)

⁴ [Compilation of Venice Commission Opinions and Reports concerning Courts - Venice Commission of the Council of Europe](#) (last accessed January 2026)

SIMONCINI v. SAN MARINO JUDGMENT

must not pose threats of undue pressure on the members of the Council and the whole judiciary.”

CDL-AD(2016)007, Rule of Law Checklist, §82

See also CDL-AD(2017)018, Opinion on the Judicial System Act of Bulgaria, §§17, 20, 21 and 23; CDL-INF(1998)009, Opinion on recent amendments to the law on major constitutional provisions of the Republic of Albania, §9

“[...] [T]he election by high quorums needed in the National Assembly for the election of prominent lawyers to the HJC (five members) and to the HPC (four members) may lead to deadlocks in the future. There is a danger that the anti-deadlock mechanism meant to be an exception becomes the rule and allows politicized appointments. In order to encourage consensus and move away from the anti-deadlock mechanism of a five-member commission, the composition of the latter should be reconsidered [...].”

CDL-AD(2021)032, Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments of Serbia, §110

“[...] [P]oliticisation can be avoided if Parliament is solely required to confirm appointments made by the judges.”

CDL-AD(2002)021, Supplementary Opinion on the Revision of the Constitution of Romania, §22

See also CDL-AD(2002)026, Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, §13; CDL-INF(1998)009, Opinion on recent amendments to the law on major constitutional provisions of the Republic of Albania, §§9, 19; CDL-INF(1999)005, Opinion on the reform of the judiciary in Bulgaria, §29

“[...] [A] substantial element or a majority of the members of the Judicial Council should be elected by the Judiciary itself. In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualification taking into account possible conflicts of interest.”

CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §29

See also CDL-AD(2018)003, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, §54; CDL-AD(2008)006, Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia, §76

“In addition, the Constitution does not define precisely the number of members of the HJC. [...] [I]t is quite unusual for a constitutional body to exist without the number of its members being clearly fixed (or at least without having a clear method of defining this number). The very idea of an “institution” implies that its composition is defined either in the law or in the Constitution, and is not left to the discretion of one person, even if this is the head of the State. Absence of a fixed composition undermines the legitimacy of the decisions taken by the body.”

CDL-AD(2018)032, Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §22

“[...] [W]hen using its legislative power to design the future organisation and functioning of the judiciary, Parliament should refrain from adopting measures which would jeopardise the continuity in membership of the High Judicial Council. Removing all members of the Council prematurely would set a precedent whereby any incoming government or any new Parliament, which did not approve of either the composition or the membership of the Council could terminate its existence early and replace it with a new Council. In many circumstances such a change, especially on short notice, would raise a suspicion that the intention behind it was to influence cases pending before the Council”.

CDL-AD(2013)007, Opinion on the draft amendments to the organic law on courts of general jurisdiction of Georgia, §§ 69-72.

“[...] The Venice Commission and the Directorate consider that as a matter of principle, the security of the fixed term of the mandates of members of constitutional bodies serves the purpose of ensuring their independence from external pressure. Therefore, measures which would jeopardise the continuity in membership and interfere with the security of tenure of the members of this authority would raise a suspicion that the intention behind those measures was to influence its decisions.”

CDL-AD(2020)001, Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy of Moldova, §57”

THE LAW

I. PRELIMINARY REMARKS

A. The scope of the case

69. Given the extensive and at times unclear submissions by both parties to the case, the Court finds it opportune to note that the scope of the case is limited to the complaints notified to the Government under application no. 14396/24, namely the complaints concerning Articles 6 and 8 of the Convention in connection with proceedings no. 37/2020, the remainder of that application having been declared inadmissible by the President of the Section acting in a single-judge formation (see Rule 27A § 2(a) and Rule 54 § 3 of the Rules of Court), and other applications brought before the Court having been dealt with separately and independently of this case.

B. The Government’s objection of abuse of petition

70. The Court reiterates that an application may be rejected as an abuse of the right of application under Article 35 § 3 (a) of the Convention, which provides, as far as relevant:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers ... an abuse of the right of application.”

1. The parties’ submissions

71. The Government submitted that the application was inadmissible for abuse of petition. They pointed out to i) the applicant’s confused presentation of facts, which also contained untrue facts (in relation to the appointment procedure and the relevant legislation) and matters extraneous to this application (some of which referring to other applications brought by him before the Court); ii) the absence of certain documents (or pages therein) related to proceedings no. 37/2020 and the excessive documentation concerning other proceedings he undertook at the domestic level, for the sole purposes of creating confusion and difficulties; iii) the publication on the Court’s online case-law database (Hudoc) of the notification to the

Government of the present application which was reported in the press and could potentially put pressure on judges in other pending proceedings, as well as the reference to it by the applicant in other proceedings to his advantage, which the Government considered was not in conformity with confidentiality rules; and iv) the applicant's complaints being of a fourth instance nature.

72. The applicant rebutted by stating that the Government had been abusing the system by trying to mislead the Court, submitting an incomplete statement of facts and legislative legal framework, as well as excessively lengthy observations, relying on arguments which had never been determined by the domestic courts. Moreover, this objection had been based on irrelevant, baseless and inaccurate assertions. He argued that by omitting facts and confusing their chronology the Government was failing in its duty to cooperate fully in the conduct of the proceedings (Rule 44A of the Rules of Court). Furthermore, he clarified that there had been no divulging of friendly settlement negotiations, nor had this been claimed by the Government, which appeared solely to suggest that the Court should remain silent upon cases communicated to the Government, that national judges should remain uninformed about developments occurring before the ECtHR, and that the press (for whom the applicant was not responsible) should have no interest in such cases.

2. *The Court's assessment*

(a) **General principles**

73. The Court reiterates that the implementation of this provision is an "exceptional procedural measure" and that the concept of "abuse" must be understood in its ordinary sense according to general legal theory – namely, the harmful exercise of a right by its holder for purposes other than those for which it is designed (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009; *De Luca v. Italy*, no. 43870/04, § 35, 24 September 2013; and *Petrović v. Serbia* (dec.), nos. 56551/11 and 10 others, 18 October 2011).

74. The Court has applied this provision in four types of situations (see *Miroļubovs and Others*, cited above, §§ 62-66): in cases where applications were knowingly based on untrue facts (see *Y.T. v. Bulgaria* (revision), no. 41701/16, §§ 35-40, 4 July 2024), in cases where an applicant used particularly vexatious, contemptuous, threatening, or provocative language in his communication with the Court (see, for example, *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, 4 February 2003), in cases where an applicant deliberately breached the confidentiality of friendly-settlement negotiations (see, for example, *Deceuninck v. France* (dec.), no. 47447/08, 13 December 2011) and in cases where applicants repeatedly sent quibbling and manifestly ill-founded applications resembling those they had previously lodged that had been declared inadmissible (see

Anibal Vieira & Filhos LDA and Maria Rosa Ferreira da Costa LDA v. Portugal (dec.), nos. 980/12 and 28385/12, 13 November 2012).

75. However, the Court has held that the notion of abuse of the right of application under Article 35 § 3 (a) of the Convention is not limited to those four situations, and that other situations can also be considered an abuse of that right. In principle, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered an abuse of the right of application (see *Miroļubovs and Others*, cited above, § 65; *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014 (extracts); and *Koch v. Poland* (dec.), no. 15005/11, 7 March 2017).

76. Furthermore, the Court has found that the misuse of domestic remedies and an applicant's conduct before the national authorities are relevant factors in assessing whether an application should be considered an abuse of the right of application (see *Bock v. Germany* (dec.), no. 22051/07, 19 January 2010; *Dudek (VIII) v. Germany* (dec.), no. 12977/09 and 4 others, 23 November 2010; and *Ferrara and Others v. Italy* (dec.) nos. 2394/22 and 18 others, § 43, 16 May 2023). With regard to the subjective element, the Court has emphasised that for behaviour to qualify as abuse of the right of application, it must be intentional, and this intention must be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Miroļubovs and Others*, cited above, § 66; and *Ferrara and Others*, cited above, §§ 63 and 66).

(b) Application to the present case

77. Turning to the present case, firstly, the Court observes that the excessively long submissions of the parties, related to this objection, have been made with total disregard of the scope of the case notified to the Government (see paragraph 69 above). In so far as the Government contest “untrue facts” related to the scope of the case before it, while not excluding that certain statements made by the applicant could be considered as “untruths” or in any case exaggerations, the Court notes that the matters of disagreement between the parties, other than those relating to linguistic issues or matters irrelevant to the legal assessment of the case, concern mainly the interpretation of the legal framework and the practice in the domestic system, which rather relate to the applicability of the invoked provisions and the merits of the complaints and will, in so far as relevant, be dealt with in that context accordingly. Irrespective of whether the applicant's arguments are well-founded, there is nothing to indicate that there was a deliberate distortion of irrefutable facts with a view to deceiving the Court (compare *X and Others v. Bulgaria* [GC], no. 22457/16, § 145, 2 February 2021, and contrast *Bencheref v. Sweden* (dec.), no. 9602/15, 5 December 2017).

78. Secondly, while it is true that the applicant has presented copious documentation and submissions (related to a plethora of domestic proceedings undertaken), not all of which were necessary to the processing of the present case, there is no indication of a deliberate intent to impede the proper functioning of the Court or the proper conduct of the proceedings and it cannot be said to constitute abusive conduct (compare *Podeschi v. San Marino*, no. 66357/14, § 88, 13 April 2017). Nor can it be said that the Court has been misled by any omission (such as missing documentation) which concerned the very core of the case (contrast, *Gross*, cited above, §§ 36-37).

79. Thirdly, in the present case it is rather the Government who, in the context of their observations⁵, refer, albeit in wide terms, to the friendly settlement exchanges between the parties, despite them having been informed that such submissions may not be relied on in the contentious proceedings (Rule 62 § 2 of the Rules of Court). Furthermore, the Government have not claimed any such disclosure by the applicant or his representatives (contrast *Gherardi Martiri v. San Marino*, no. 35511/20, § 69, 15 December 2022) rather they focused their objection concerning a breach of confidentiality on the fact that the press and the applicant made known the fact that the present case had been notified to the Government. In this connection the Court notes that, contrary to friendly settlement negotiations, such information is public and purposefully put in the public domain via the Court's online database (Hudoc), thus ensuring accessibility to all those concerned, and anyone interested, as well as the transparency of Court procedures. Thus, no reprehensible conduct can be identified in the fact that this public information was relayed by the applicant to others, who themselves could have accessed the information online and drawn their relevant conclusion as to their significance; and certainly, the applicant cannot be answerable for the fact that a piece of public information, in what is certainly a case of media interest in the respondent State, was published by the press.

80. In view of the foregoing, the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

81. The applicant complained of a legislative intervention by the State with the administration of justice, contrary to the rule of law, which had not been cured by means of proceedings no. 37/2020, to the detriment of his civil rights. He also complained that Judge S, hearing his appeal, had not been impartial and about the length of the proceedings, which he considered contrary to that provided in Article 6 of the Convention, which reads as follows:

⁵ which constitute public documents, see Rule 33 of the Rules of Court.

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

A. Admissibility

1. *The parties' submissions*

(a) **The Government**

82. The Government submitted that the applicant had no right to promotion solely because he was the most senior UD. Article 5 of Qualified Law no. 145/2003, and subsequent amendments, only provided for the possibility of taking part in a competition (subject to an evaluation report by the Chief Justice) and, if successful, the post was nonetheless subject to a three-year probationary period (until this was removed in December 2021 by means of Constitutional Law no. 1/2021 for persons serving such period at the time). They noted that pursuant to article 3 of Qualified Law no. 145/2003 (as applicable at the time of the applicant's appointment, see paragraph 57 above) it was only CoLs, who were appointed judges of appeal, that were not subject to a probationary period. This was so because they had already proved themselves in their judicial functions, but not UD's – who were magistrates, but not judges, and whose role was limited as they did not exercise judicial functions except by delegation⁶ – appointed to CoLs.

83. The appointment to CoL was to be made following a comparative assessment with other UD's meeting the legal requirements for participation in such a competition. In the present case the recruitment procedure had been vitiated by multiple defects. In addition to the one related to the composition of the CGP there had also not been a comparative report concerning the other candidates in breach of articles 3 (6) and 5 (6) of Qualified Law no. 145/2003. Indeed, the report relied on had only indicated the eligible candidates – without containing their evaluation based on pre-established principles – indicating the applicant as a preferred choice. Thus, the applicant did not have the subjective right (based on a certain and unchallengeable position) to retain an unlawfully awarded post, but solely a legitimate interest (like the other candidates challenging the procedure) to have the legality of the procedure and the consequent appointment established. Indeed, domestic case-law⁷ had shown that CGP decisions can be considered as administrative decisions and that they can be challenged before the administrative courts on grounds of lack of competence, excess of power or violation of the law (article 9 of Law no. 68/1989, at paragraph 65 above). In that light, his appointment could also

⁶ With reference to the judgment of the Judge for Extraordinary Remedies in civil matters of 8 July 2019.

⁷ See, for example, the judgment of the *Commissario della Legge*, in its administrative competence, of 4 November 2014, concerning a challenge to a CGP decision not to confirm a CoL in his position.

not be considered final in so far as it had been challenged by the other two candidates.

(b) The applicant

84. The applicant submitted that the Government's submissions were out of point, as the subject of the applicability of this provision was whether he had the right to retain his appointment as a judge after "two years of service" and the legitimacy of his retroactive removal from the post, not whether he had the right to be promoted/appointed to CoL in the first place. The applicant was of the view that he did have the right to retain his appointment established and recognised in domestic law (article 4 of Qualified Law no. 145/2003, as modified by Constitutional Law no. 2/2011, see paragraph 54 above), in fact the State had had to resort to the effects of a retroactive law in order to abolish it, thus, obviating the domestic courts from upholding his right. In his view, the case concerned subjective rights (with reference to article 9 of Law no. 68/1989, see paragraph 65 above), and his acquired right to retain his appointment which had been overridden by a retroactive law enacted in breach of all the criteria set by the Convention. Moreover, in so far as the Government referred to other irregularities in his appointment procedure, these had never been established by the domestic courts given the outcome of proceedings no. 13/2019.

85. He emphasised that his appointment had not been subject to a probationary period. The latter interpretation of domestic law (article 3 *in fine* of Qualified Law no. 145/2003, see paragraph 57 above) namely, that members of the judiciary, already confirmed on a permanent basis (as was the applicant in his position of UD as of 2012) who were promoted were not required to serve a probationary period, was peacefully accepted in the domestic system. This applied both to UDs becoming CoLs as well as CoLs becoming judges of higher rank, so much so that his appointment decision made no reference to such period, nor had the two persons who later obtained the post been subject to such probationary period.

2. The Court's assessment

(a) General principles

86. Article 6 § 1 does not guarantee any particular content of "civil rights and obligations" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Grzęda v. Poland* [GC], no. 43572/18, § 258, 15 March 2022).

87. It is the right as asserted by the applicant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 is applicable. Where there was a genuine and serious dispute about the existence of that right, a decision by the domestic courts that there was no such right

does not remove, retrospectively, the arguability of the claim (see *Károly Nagy v. Hungary* [GC], no. 56665/09, § 63, 14 September 2017, with further references).

88. The rights conferred by the domestic legislation can be substantive, or procedural, or, alternatively, a combination of both (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 101, 19 September 2017, with further references).

89. There can be no doubt about the existence of a “right” within the meaning of Article 6 § 1 where a substantive right recognised in domestic law is accompanied by a procedural right to have that right enforced through the courts. The mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Article 6 therefore applies where the judicial proceedings concern a discretionary decision resulting in interference in an applicant’s rights (*ibid.*, § 102, with further references).

90. In some cases, national law, while not necessarily recognising that a person has an individual right, does confer the right to a lawful procedure for examination of his or her claim, involving, for example, a ruling by a competent court as to whether a decision was arbitrary or *ultra vires* or whether there were procedural irregularities. This is true of certain decisions where the authorities have a purely discretionary power to grant or refuse an advantage or privilege, and where the law confers on the person concerned the right to apply to the courts, which may set the decision aside if they find that it was unlawful. In such a case Article 6 § 1 of the Convention is applicable, on condition that the advantage or privilege, once granted, gives rise to a civil right (*ibid.*, § 105, with further references).

91. As regards officials employed in the civil service, according to the criteria established in *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, ECHR 2007-II) the respondent State cannot rely before the Court on an applicant’s status as a civil servant to exclude the protection embodied in Article 6 unless two conditions are fulfilled. First, the State in its national law must have excluded access to a court for the post or category of staff in question. This condition is satisfied where domestic law contains either an explicit exclusion from access to a court or an implicit one, in particular where the latter stems from a systemic interpretation of the applicable legal framework or the whole body of legal regulation (see *Grzęda*, cited above, § 292). Secondly, the exclusion must be justified on objective grounds in the State’s interest. In order for the exclusion to be justified, it is not enough for the respondent State to establish that the civil servant in question participated in the exercise of public power or that there existed a special bond of trust and loyalty between the civil servant and the State, as employer. It is also for the respondent State to show that the subject matter of the dispute in issue was related to the exercise of State power or that it had called into question the special bond. Thus, there can in principle be no

justification for the exclusion from the Article 6 guarantees of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question. There will, in practice, be a presumption that Article 6 applies. It will be for the respondent State to demonstrate, first, that a civil servant applicant did not have a right of access to a court under national law and, secondly, that the exclusion of the Article 6 rights was justified in the case of that civil servant (see *Grzęda*, cited above, § 261, with further references; see also §§ 291, 292, 296 and 299).

92. The Court has confirmed that the *Eskelinen* test applied to disputes concerning judges, as the judiciary, albeit not part of the ordinary civil service, is considered part of typical public service (see *Baka v. Hungary* [GC], no. 20261/12, § 104, 23 June 2016).

93. On the basis of the principles set out in *Vilho Eskelinen and Others*, Article 6 has been applied to all types of disputes concerning judges, including those relating to recruitment/appointment (see *Juričić v. Croatia*, no. 58222/09, 26 July 2011), career/promotion (see *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, 9 October 2012, and *Tsanova-Gecheva v. Bulgaria*, no. 43800/12, 15 September 2015, §§ 85-87), transfer (see *Tosti v. Italy* (dec.), no. 27791/06, 12 May 2009, and *Bilgen v. Turkey*, no. 1571/07, § 79, 9 March 2021), suspension (see *Paluda v. Slovakia*, no. 33392/12, §§ 33-34, 23 May 2017, and *Camelia Bogdan v. Romania*, no. 36889/18, § 70, 20 October 2020), disciplinary proceedings (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 120, 6 November 2018; *Di Giovanni v. Italy*, no. 51160/06, §§ 36-37, 9 July 2013; and *Eminağaoğlu v. Turkey*, no. 76521/12, § 80, 9 March 2021), as well as to the dismissal of judges (see *Olujić v. Croatia*, no. 22330/05, §§ 31-43, 5 February 2009; *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 91 and 96, ECHR 2013; *Kulykov and Others v. Ukraine*, nos. 5114/09 and 17 others, §§ 118 and 132, 19 January 2017; *Sturua v. Georgia*, no. 45729/05, § 27, 28 March 2017; *Kamenos v. Cyprus*, no. 147/07, §§ 82-88, 31 October 2017), to the reduction in salary and conviction for a serious disciplinary offence (see *Harabin v. Slovakia*, no. 58688/11, §§ 118-23, 20 November 2012), removal from a post (for example, president of the Supreme Court or president of the Court of Appeal or vice-presidents of the Regional Court) while remaining a judge (see *Baka*, cited above, §§ 34 and 107-11; *Denisov v. Ukraine* [GC], no. 76639/11, § 54, 25 September 2018; and *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, §§ 104-24, 29 June 2021; see also *Grzęda*, cited above, concerning the premature termination of the applicant's term of office as a judicial member of the National Council of the Judiciary, while he still remained a serving judge).

94. Given the prominent place that the judiciary occupies among State organs in a democratic society and the growing importance attached to the separation of powers and to the necessity of safeguarding the independence

of the judiciary (see *Ramos Nunes de Carvalho e Sá*, cited above, § 196), the Court must be particularly attentive to the protection of members of the judiciary against measures affecting their status or career that can threaten their judicial independence and autonomy (see *Bilgen*, cited above, § 58, and *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, § 228, 8 November 2021).

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

95. The Court notes that the applicant was appointed to the position of CoL on 12 February 2019, acknowledged by Parliament on 15 March 2019. The Court observes that even assuming that a probationary period applied, as alleged by the Government and denied by the applicant, the CoL office holder would still have had a right to continue his office until such probationary period elapsed (see Law no. 2/2011, which modified article 4 of Qualified Law no. 145/2003, see paragraph 54 above). Had that period been terminated successfully – and it is noted that the applicant’s termination in the present case was not on the basis of any failures in his performance – the mandate would have come to an end at the age of sixty-eight, with some specific grounds on which it could be terminated therebefore (article 4 (3) of Qualified Law no. 145/2003, see paragraph 57 above).

96. The Government argued that no such right existed because the applicant’s appointment had been unlawful. The Court reiterates that in determining whether there was a legal basis for the right asserted by the applicant, the Court needs to ascertain only whether the applicant’s arguments were sufficiently tenable, not whether he would necessarily have been successful before the domestic courts (see, *mutatis mutandis*, *Grzęda*, cited above, § 268). The Court notes that prior to the enactment and coming into force of article 3 of Qualified Law no. 1/2020 (see paragraph 61 above), concerning the composition of the CGP, there had been no determination by any domestic court finding that the applicant’s appointment had been unlawful. In particular, the administrative courts which had been tasked with making that decision (in proceedings no. 13/2019), ultimately never did so as a result of the series of events which followed the legislative intervention. The Government have not indicated any other domestic court decision, delivered prior to that legislative intervention, which determined that in one or a number of meetings the CGP (which included C as was the case on 12 February 2019) had been irregularly composed. While it is true that in proceedings no. 37/2020 the administrative authorities found the appointment of the applicant to be unlawful because of that defective composition, that finding was entirely based on article 3 of Qualified Law no. 1/2020 enacted a year after the applicant had obtained his appointment. The Court considers that the fact that the applicant’s appointment was annulled by the CGP on the basis of new legislation which came into force in 2020 could not remove, retrospectively, the arguability of his right under the applicable rules as

interpreted at the time of his appointment in 2019 (see, *mutatis mutandis*, *Baka*, § 110; *Grzęda*, § 285, both cited above; and *Stoianoglo v. the Republic of Moldova*, no. 19371/22, § 29, 24 October 2023). In the circumstances of the present case, the question of whether a right existed under domestic law cannot therefore be answered on the basis of the subsequent legislation.

97. In the light of the foregoing, the Court concludes that in the present case there was a genuine and serious dispute over a “right” which the applicant could claim on arguable grounds under domestic law (see, *mutatis mutandis*, *Baka*, § 111, and *Grzęda*, § 286, both cited above).

98. The Court also finds it opportune to point out, in view of the Government’s submissions (see paragraph 83 above), that the applicant’s appointment was annulled and such annulment confirmed by the administrative courts solely on the basis of the irregular composition of the CGP in light of article 3 of Qualified Law no. 1/2020, and not on the basis of any other alleged failures in the appointment procedure in respect of which no domestic court ever made any determination.

99. The conclusion that the applicant had a “right” which he could claim on arguable grounds under domestic law, is reaffirmed by the fact that, as shown by the facts of the case, the finding of the domestic courts, and the Government’s submissions, this was accompanied by a procedural right under domestic law to challenge the decision annulling his appointment. That of itself could suffice to find that there is a right within the meaning of Article 6 § 1 in the context of the present case.

100. The Court must now determine whether the “right” claimed by the applicant was “civil” within the autonomous meaning of Article 6 § 1, in the light of the criteria developed in the *Vilho Eskelinen and Others* judgment. The Court observes that national law had not “expressly excluded access to a court” for a claim based on the alleged unlawfulness of the annulment of the applicant’s appointment as CoL. Quite the contrary, as pointed out by the Government (see paragraph 83 above), the applicant had the possibility, of which he availed himself of, to challenge that decision. The first condition of the *Vilho Eskelinen* test has not therefore been met and Article 6 applies under its civil head. Given that the two conditions for excluding the application of Article 6 must be fulfilled it is not necessary to examine whether the second condition of the *Vilho Eskelinen* test would have been met (see, for instance, *Baka*, cited above, § 118, and *Frezadou v. Greece*, no. 2683/12, § 32, 8 November 2018).

101. Lastly, the Court notes that the proceedings at issue (no. 37/2020) were directly decisive for the applicant’s rights in so far as the proceedings could have resulted in the annulment of the CGP decision annulling the applicant’s appointment (see article 15 of Law no. 68/1989 at paragraph 65 above), thus reinstating the applicant to his post.

102. It follows that Article 6 is applicable in the present case and the Government's preliminary objection as to the applicability of the provision must be dismissed.

103. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Alleged unfairness resulting from retroactive legislative intervention

(a) The parties' submissions

(i) The applicant

104. The applicant submitted that he had suffered consequences as a result of a legislative interference with retroactive effect which impinged on his civil right to maintain his position of CoL following the relative appointment. That legislation created an advantage for the State in the dispute against the applicant. He considered that there had been no compelling reasons of general interest to enact a law and apply it retroactively, but solely a will by the Government to remove certain magistrates who had already been appointed and have them eventually substituted by others. He noted that the CGP's reliance on the *pro veritate* opinion, had been a stratagem which allowed the CGP to substitute itself for the judiciary in the ongoing disputes which were effectively decided by the CGP rather than by the natural judge pre-established by law. Moreover, that opinion had conveniently considered that only some but not all CGP decisions (composed of judge C) required annulment. The applicant further noted that any conflicts or opinions expressed following the enactment of Qualified Law no. 1/2020 (see paragraph 18 above) could not serve retroactively as ground for its adoption.

105. The applicant considered that the interference extended beyond proceedings no. 13/2019. The text of Qualified Law no. 1/2020 had been approved specifically to affect the outcome of proceedings no. 13/2019 as well as to produce legal effects and apply directly to the status of the applicant as a "tenured judge promoted to higher functions". Thus, it had the clear aim of circumventing the rule of law. As a result, the dispute between the applicant and the State was not examined by the administrative courts in a manner consistent with the right to a fair trial. Moreover, the latter courts had usurped the functions of the Constitutional Court by determining the issue themselves and rejecting his request for referral of the matter to the Constitutional Court.

(ii) The Government

106. The Government submitted that the impugned legislative measure (namely, article 3 of Qualified Law no. 1/2020, see paragraph 61 above), was

in line with the principle of the rule of law as it was one of authentic interpretation of the original provision (i.e. article 7 (5) of Qualified Law no. 145/2003, see paragraph 57 above) concerning the composition of the CGP. Noting that an authentic interpretation assigned to the rule interpreted the meaning that was already self-evident, which is that contained in the wording of the law, they noted that the legislative action clarified the meaning of article 7 (5) of Qualified Law no. 145/2003 to the effect that a judge of appeal not yet confirmed on a permanent basis (as was the case of C) could not become a member of the CGP as long as there were other judges, of any level, confirmed on a permanent basis. They submitted that the interpretation of the provision had been subject to divergences as of 27 April 2018 (see paragraph 6 set seq. above) resulting from the view of the majority of the CGP on that day. The same matter was debated also during the meeting of 12 February 2019 (see paragraph 11 above), day on which the applicant was appointed. In the Government's view, the CGP's interpretation of the law on 27 April 2018 and the meetings thereafter was innovative and contrary to the wording and the rationale of the law. They alleged that the prior interpretation had been the norm as of 2011, relying on the CGP's composition which included the CoL B (see paragraph 6 above).

107. In their view, that interference had been necessary as the disputed provision affected the proper functioning of the CGP and was of "systemic importance" in the legal system. It was also in conformity with the San Marino Constitutional Court's case-law which had found that (with the exclusion of the criminal sphere) legislative provisions pertaining to authentic interpretation, having an inherent retroactive effect, were compatible with the Constitution in case there were reasonable doubts as to the scope of the provision being interpreted (hermeneutic uncertainty) and in so far as the interpretative solution adopted was one of the solutions that could already be derived from the provision being interpreted (*ex-ante* plausibility of the authentic interpretation). Both conditions had been met in the case under consideration, as confirmed by the administrative courts at both instances in proceedings no. 37/2020.

108. As to its content, it was a reasonable interpretation as it was important to achieve legal certainty as to the composition of the CGP, but in particular that the CGP be composed of permanent magistrates to the exclusion of those who were still not confirmed on a permanent basis and, thus, whose mandates had yet to be confirmed by the same CGP. The latter situation would inevitably have led to conflicts of interest and abstentions at certain meetings (when those magistrates were to be confirmed in their positions) which would in turn have entailed a discrepancy between the judicial component and the political component making up the CGP. The interpretation given to the legal norms, prior to the legislative interference, by a majority of the CGP had thus significantly affected the principles of legal certainty, autonomy and independence of the judiciary, involving the

legitimacy and effectiveness of the functions of a constitutionally relevant body such as the CGP. Thus, as noted by the domestic courts in the present case, such intervention had been necessary due to overriding reasons of public interest.

109. Bearing in mind that either the CGP composition prior to 27 April 2018 or that after that date was irregular, in the Government's view, it had been more appropriate for the matter to be dealt with *erga omnes* by the legislator as opposed to the domestic courts. Moreover, the intervention had been timely, in so far as various judicial recruitment competitions had been launched and various appointments (including that of the applicant) had been challenged and were pending a determination, it was thus necessary to bring them in line with the law to avoid useless expenditure, and to avoid persons appointed to such positions adopting unlawful acts.

110. In reply to a specific question set by the Court, the Government admitted that no challenges had been lodged by litigants whose cases had been adjudicated by the applicant as CoL. They noted that under national law, the invalidity of judgments may be invoked by litigants only within the time-limits laid down for the appeal or the *querela nullitatis*, otherwise it is considered as remedied. In this regard, they also recalled Italian case law⁸, in the light of the similar framework. The Government further considered that no negative effect on the exercise of jurisdiction as a result of the annulment decision complained of by the applicant ensued.

111. The Government further noted that the interpretation upheld by the CGP on 12 February 2019 had been challenged in proceedings no. 13/2019, nevertheless, the applicant had not participated in them. Moreover, the legislative interference had not impacted the outcome of those proceedings.

(b) The Court's assessment

(i) General principles

112. In the context of civil disputes, the Court has repeatedly ruled that although, in principle, the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws in force, the principle of the rule of law and the concept of a fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute, save on compelling grounds of general interest (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no. 301-B; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, § 57, ECHR 1999-VII; *Scordino v. Italy (no. 1)* [GC],

⁸ Judgement no. 27923 of 21 September 2018 of the Italian Supreme Court of Cassation, Section II, to the effect that the annulment for original defects of the appointment of a member of a judicial body, while having an *ex-tunc* effect, entails the invalidity of a judgment that can only be invoked within the limits and within the rules pertaining to legal remedies.

no. 36813/97, § 126, ECHR 2006-V; and, more recently, *Cicero and Others v. Italy*, nos. 29483/11 and 4 others, § 29, 30 January 2020; *Hussein and Others v. Belgium*, no. 45187/12, § 60, 16 March 2021; and *Zafferani and Others v. San Marino*, nos. 38127/22 and 6 others, § 47, 9 January 2025).

113. There are dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, *Reports of Judgments and Decisions* 1997-VII – hereinafter the “*Building Societies case*”). Nevertheless, when the State is not a party to the case, this does not preclude the Court from making as assessment of the circumstances of the case (see, for example, *Arras and Others v. Italy*, no. 17972/07, § 44, 14 February 2012; *Vezon v. France*, no. 66018/01, 18 April 2006; and *Ducret v. France*, no. 40191/02, 12 June 2007). Indeed, the State’s responsibility maybe engaged both in its legislative capacity, if it vitiates the trial or affects the judicial outcome of the dispute, and in its capacity as a judicial authority where the right to a fair trial is violated, including in private law cases between private individuals (see *Arras and Others*, § 45, *Vezon*, § 30, and *Ducret*, § 34, all cited above).

114. Respect for the rule of law and the concept of a fair trial therefore require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (see, *inter alia*, *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, § 45, 31 May 2011, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 93, 3 November 2022).

115. It is possible for general legislation which may prove unfavourable to litigants to be enacted if it did not actually target pending judicial proceedings and was not aimed at circumventing the principle of the rule of law (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 72, ECHR 2004-III) and laws may also be enacted before the start of proceedings without raising an issue under Article 6 § 1 (see *Organisation nationale des syndicats d’infirmiers libéraux (ONSIL) v. France* (dec.), no. 39971/98, ECHR 2000-IX). However, a legislative intervention contrary to the Convention may occur even before judicial proceedings have started, this is so in exceptional cases, for example, when an administrative authority’s decision is a necessary preliminary for bringing the case before a tribunal (therefore in such circumstances that period must also be taken into account) (see *OGIS-Institut Stanislas, OGECE Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 62, 27 May 2004, and *Zafferani and Others*, cited above, § 50) or when the dispute had originated well before the institution of judicial proceedings (see *Morelli v. Italy* (dec.), no. 23984/19, § 43, 3 September 2024, as well as the Court’s considerations in *Azzopardi and Others v. Malta* (dec.), no. 14671/17, § 44, 12 March 2019,

where the Court did not rule out such an approach where the applicants could not have adduced the domestic courts prior to the legislative intervention).

(ii) *Application of the general principles to the present case*

116. As transpires from the above general principles, issues of incompatibility with Article 6, resulting from legislative intervention, generally transpire in cases where the intervention occurred pending proceedings and where the State intervened in its favour in proceedings in which it was a party (the other party being the applicant), or where it intervened in proceedings between private parties in favour of one of the parties (the other party being the applicant). Such issues only exceptionally arise if the legislative intervention occurred prior to the start of proceedings in which the applicant was a party.

117. The present case concerns an unusual configuration. Firstly, the legislative intervention in the present case occurred during the dispute raised by X and Y in pending proceedings no. 13/2019, against the CGP (and therefore an organ of the State). However, the applicant, although an interested party (*controinteressato*), had not joined those proceedings. In this connection the Court notes that since the CGP's decision being challenged by X and Y was favourable to the applicant he had no interest in contesting it (compare *Kövesi v. Romania*, no. 3594/19, § 150, 5 May 2020), nor in joining those proceedings given that, at the time, the applicant's interests should have coincided with those of the CGP. It was only when those interests no longer coincided, and when the newly composed CGP annulled *ex officio* the applicant's appointment, following the legislative intervention, that a dispute arose in his respect. Unable to join those proceedings at that stage (due to the expiry of the relevant time-limit to intervene, see paragraph 27 above) the applicant lodged parallel proceedings challenging his removal, as was his right recognised under domestic law. The Court observes that, it was the domestic courts that decided, despite the applicant's requests, not to join those proceedings (see paragraphs 27 and 33 above).

118. Bearing in mind that the annulment of the applicant's appointment had been based on the unlawful composition of the CGP that had appointed him, one of the grounds raised by X and Y, it cannot be denied that, while in themselves separate proceedings having separate objects, both proceedings had a substantive link (concerning the composition of the CGP that appointed the applicant), and that proceedings no. 13/2019 were, in practice, a precursor to proceedings no. 37/2020. Indeed, given that the only appointments which had been annulled, as a result of the intervening law, had been those appointments which had been challenged (but not any other CGP decisions related to other appointments), in the absence of proceedings no. 13/2019, the applicant's appointment would not have been annulled (on the basis on which it was annulled, namely a "faulty composition" which had been challenged) and there would have been no reason for the applicant to institute proceedings

no. 37/2020. It follows that the circumstances of the present case can be considered as one of those exceptional cases where a legislative intervention contrary to the Convention may occur even before judicial proceedings involving an applicant have started (compare the examples set out at paragraph 115 *in fine* above).

119. Thus, the Court considers that what is relevant to the present case so to determine whether the applicant has had a fair trial in proceedings no. 37/2020, was whether the legislative interference (namely, article 3 of Qualified Law no. 1/2020, see paragraph 61 above) which occurred prior to those proceedings, was based on compelling grounds of general interest or rather was aimed at circumventing the principle of the rule of law.

120. The Court cannot agree with the Government that the legislative intervention (namely, article 3 of Qualified Law no. 1/2020, see paragraph 61 above) did not impact the outcome of proceedings no. 13/2019. In reality the legislative intervention with inherent retroactive effect, followed by the CGP's autonomous action to abide by that law, "determined" the dispute in those proceedings concerning the correct composition of the CGP, so much so that there was no interest for the claimants to continue those proceedings. As stated by the Government (see paragraph 109 above), they considered that it was for the legislator to resolve the matter and not the courts. The State, thus, usurped the function of the domestic court to interpret domestic law as stood at the relevant time and adjudicate on the pending dispute in proceedings no. 13/2019. By so doing, the State favoured X and Y in their position in proceedings no. 13/2019 and created an advantage in favour of the CGP (the State) in the proceedings subsequently lodged by the applicant, and which are the subject of this case (no. 37/2020). That advantage disrupted the principle of equality of arms and rendered pointless the pursuance of proceedings no. 37/2020 given that the administrative courts were obliged to apply the subsequent law with retroactive effect (namely, article 3 of Qualified Law no. 1/2020, see paragraph 61 above) thus making the case unwinnable for the applicant (compare, *Arras and Others*, cited above, § 46).

121. The Court cannot ignore that, as already noted above, it was only decisions in relation to situations which had been challenged which had been annulled, there is therefore no doubt that article 3 of Qualified Law no. 1/2020 was intended to influence the determination of pending disputes.

122. The Government argued that the legislative intervention was intended to clarify the meaning of article 7 (5) of Qualified Law no. 145/2003, given that its interpretation, which they alleged had been constant since 2011, had been subject to divergences following the meeting of 27 April 2018. They considered that the CGP's interpretation of the law on 27 April 2018 and the meetings thereafter was innovative and contrary to the wording and the rationale of the law.

123. It is not for the Court to interpret which interpretation is correct. If it is true that the interpretation on 27 April 2018 and thereafter had been in

contrast with the law, this could have been argued before the domestic courts. Nevertheless, even accepting that the choice of interpretation was the State's prerogative, and that article 3 of Qualified Law no. 1/2020 was indeed interpretative in nature and reinforced the original intention of the legislator – despite the provision having repeatedly been interpreted as being otherwise by the CGP – that fact, by itself, cannot justify an intervention with retroactive effect (see, *mutatis mutandis*, *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 81, 24 June 2014, and *Biraghi and Others v. Italy*, nos. 3429/09 and 21 others, § 37, 24 June 2014). This is even more so when the fears justifying the choice of that interpretation (namely, that the members of the judicial component, whose mandates had yet to be confirmed, would – at the meetings concerning their confirmation – have to withdraw, causing an imbalance of the CGP, see paragraph 108 above) were fears related to future situations, and thus cannot be considered as a compelling reason of general interest justifying a retroactive application of that interpretation.

124. The Government further relied on the importance of having a duly composed CGP when appointing judicial organs – a principle which is certainly in the general interest. However, the Court notes that the problem of the composition in the present case was technical in nature and related only to one member – with reference to the criterion of supplementation to be used (see paragraphs 6 and 7 above). Moreover, the law was put in practice retroactively in a way which affected only some of the decisions taken by the CGP composed in that 'defective' manner. Such a selective approach, unless based on objective criteria, undermined the Government's position that the aim was solely to restore legality. In this regard it is noteworthy that the application of the new law was, in practice, subject to the discretion of the CGP. The latter appears to have followed blindly a legal opinion commissioned by it, and drafted by one person, on the matter. Via that opinion, and its adoption by the CGP, the criterion for such choice was established as being situations where challenges to the appointments were pending, thus effecting the appointment of four specific individuals, one of whom was the applicant, but no other decisions taken by the CGP composed in the same manner.

125. The Court has already held that laws directed, in law or in practice, against specific persons are contrary to the rule of law (see, *mutatis mutandis*, *Grzęda*, cited above, § 299, and the case-law cited therein). It further observes that, in the present case, no weight appears to have been given to the fact that no individuals whose case had been, or was being, heard by the applicant as CoL had brought proceedings arguing that the tribunal before which their case was being heard was not a tribunal established by law. In addition, despite the nature and limited impact of the underlying defect, insufficient consideration was given to the principle of the irremovability of judges during their term of office, a principle generally considered as a corollary of judges'

independence – which is a prerequisite to the rule of law (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 239, 1 December 2020) and to the principle that members of the judiciary should enjoy – as do other citizens – protection from arbitrariness on the part of the legislative and executive powers, and only oversight by an independent judicial body of the legality of a measure such as removal from office is able to render such protection effective (see *Grzęda*, cited above, § 327).

126. The Court finds nothing in the Government's submissions capable of justifying such an arbitrary course of action which it considers as being aimed at circumventing the principle of the rule of law and the notion of a fair trial. In the latter connection the Court notes that such action disrupted the principle of equality of arms, making the case before the administrative courts unwinnable for the applicant, despite the absence of any compelling general interest reasons capable of outweighing the dangers inherent in the use of retrospective legislation.

127. It follows that there has been a violation of Article 6 § 1 of the Convention in respect of the fairness requirement.

2. *Impartial tribunal*

128. Having found a violation of Article 6 § 1 of the Convention in respect of the fairness requirement in relation to proceedings no. 37/2020, and bearing in mind the nature of that violation, the Court considers that it is not necessary to examine whether in those proceedings the applicant had access to an impartial and independent tribunal, as provided by Article 6 § 1 of the Convention.

3. *Length of proceedings*

129. The applicant complained about the length of proceedings no. 37/2020, considering that the initial delay (in particular to appoint a judge to hear the case and then to decide preliminary issues) could not be made good by the fact that the appeal proceedings had been speedy.

130. The Government submitted that, other than the initial difficulties to identify a competent court (as a result of the abstention of all the judges and the attribution of the case to FCLM pursuant to Constitutional Law no. 2/2020, see paragraph 55 above, for the first time ever), the proceedings had been speedy and any delays had been the result of the applicant's abusive behaviour and delaying tactics highlighted by the domestic court (see paragraph 45 and 49 above).

131. The Court reiterates that the relevant period to take into account in the assessment of the length of proceedings normally covers the whole of the proceedings in question, including appeal proceedings (see *König v. Germany*, 28 June 1978, § 98 *in fine*, Series A no. 27) and extends right up

to the decision which disposes of the dispute (see *Gherardi Martiri*, cited above, § 124).

132. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the particular case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among others, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 209, 25 June 2019, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 143, 29 November 2016, with further references).

133. The Court observes that the proceedings were lodged on 26 November 2020, however, a judge took cognisance of them only on 8 June 2021. A first-instance judgment ensued on 25 January 2023 and a final appeal judgment on 9 January 2024. The proceedings thus lasted three years one month and two weeks over two levels of jurisdiction.

134. The Court notes that the initial delay of a little more than six months for the proceedings to start being heard was due to the exceptional circumstance that all judges in the country had had an incompatibility prohibiting them from hearing the case. Other than that initial period the Court does not consider that there had been any period of inactivity. Moreover, the applicant raised a multitude of arguments and motions, all of which had to be seen to, despite them not always being entirely coherent or clear and certainly not concise. While not losing sight of what was at stake for the applicant, bearing in mind the other criteria relevant to this assessment, including the complexity of certain preliminary issues, such as the competence of the judge to hear the case (Constitutional Law no. 2/2020, see paragraph 55 above), the Court considers that the proceedings have not exceeded a reasonable time.

135. Accordingly, there has been no violation of Article 6 § 1 in relation to the length of proceedings.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

136. The applicant complained that the annulment of his appointment to first-instance judge had amounted to an interference with his private life which was not in conformity with that provided under Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. *The parties' submissions*

(a) The Government

137. The Government submitted that the provision was not applicable as the decision to annul his appointment had not been based on personal or professional grounds. They noted that his appointment had not become final due to the challenge submitted by X and Y in the light of the flaws in the appointment procedure, he thus had no subjective right to keep that position. Moreover, the applicant had not demonstrated before this Court or the domestic courts – that the decision effected his “inner circle” to the extent that would make the provision applicable, neither in relation to any pecuniary losses nor in relation to maintaining interpersonal relationships. They noted that he had maintained his functions as UD (a position he had held for ten years as opposed to eighteen months as CoL) and continued to work in the same court alongside his colleagues and to develop relationships in the work sphere. The applicant had also been able (like others whose appointment had been annulled) to re-apply for such a position and no serious or reputational consequences had been suffered by him as a result of the media coverage of that decision, which had rightly indicated that it had been made on procedural grounds.

(b) The applicant

138. The applicant considered the provision to be applicable both on the basis of the “reason-based approach”, in so far as he had criticised the enactment of Law no. 1/2020, and on the basis of the “consequence-based approach”.

139. In the latter connection he noted that the measure continued to produce serious and ongoing consequences in his private life, beginning with the loss of his earnings which he claimed was significant (relying on his tax returns and payslips, which according to the Court’s calculations show a difference in salary of around 3,000 euros ‘EUR’) and caused him to neglect the needs of his family, inevitably affecting the household’s finances and the educational and professional choices of his four children. This matter could not be expanded upon before the administrative courts due to their limited competence in employment matters, and a request for referral to the Constitutional Court to determine the matter had been rejected. In addition, he had incurred costs in pursuing related proceedings.

140. It also effected a wide range of his professional relationships, for example: he lost the right to participate in the governing body of the judiciary and, subsequently (following the reform), the right to be elected or vote to elect the judicial members of the Judicial Council; he was unable to take part in selection processes for managerial positions and external assignments

within the court; his career had remained frozen since then, despite other internal selection procedures he had attempted unsuccessfully. He also referred to the subsequent disciplinary proceedings lodged against him. He considered that in a small country comprising only thirty magistrates in total, the consequences in terms of professional prestige had been extremely serious, with evident repercussions on his reputation, his work relationships, as well as his social and family life. Indeed, the Government had highlighted the significantly inferior nature of UD's thus implicitly accepting that the measure profoundly impacted the core sphere of his professional activity, exceeding any reasonable threshold of severity expected in the Court's case-law.

2. *The Court's assessment*

(a) **General principles**

141. Whereas no general right to employment, nor a right of access to the civil service or a right to choose a particular profession, can be derived from Article 8, the notion of "private life", as a broad term, does not exclude in principle activities of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world. Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may, under certain circumstances, fall within the scope of "private life" (see *Denisov*

, cited above, § 100).

142. Employment-related disputes are not per se excluded from the scope of "private life" within the meaning of Article 8 of the Convention. There are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant's "inner circle", (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach) (see *Denisov*, cited above, § 115).

143. If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very serious

and affect his or her private life to a very significant degree (ibid., § 116, and *Gumenyuk and Others v. Ukraine*, no. 11423/19, § 86, 22 July 2021).

(a) Application of the general principles to the present case

144. In the present case the CGP decision of 28 September 2020 consequent to legislative amendments in 2020 resulted in the applicant's inability to continue exercising his judicial functions as a first-instance judge.

145. Since there is nothing to indicate that the reason for that decision was the applicant's censure of those amendments, it is the consequence-based approach which may bring the issue under Article 8.

146. The applicant referred, firstly, to his financial losses and their effects on his "inner circle". This argument has to be viewed as relating to the worsening of the material well-being of the applicant and his family. It is recalled that the pecuniary element of the dispute does not automatically bring the issue within the scope of Article 8 of the Convention (see *Denisov*, § 122, and *Camelia Bogdan*, § 86, both cited above).

147. In this connection the Court takes note of the Government's argument that the applicant continued to perform his function as UD. However, the Court observes that, while it remained a judicial body/organ, it was certainly lower in rank and prestige. Further, there appears to be no dispute about the fact that the latter function also provided for a substantially lower salary than that which the applicant received while performing his duties as CoL prior to the impugned measure. From the evidence provided by the applicant, it transpires that the global salary of a CoL is nearly twice as much as that of a UD, with a difference of around EUR 3,000 euros (contrast *Gyulumyan v. Armenia* (dec.) no. 25240/20, § 90, 21 November 2023, where the applicants had not claimed nor substantiated a significant reduction in their income, and *Gražulevičiūtė v. Lithuania*, no. 53176/17, § 103, 14 December 2021, where the percentage of the lost income was undeterminable). The Court considers that this reduction was both substantial (contrast *Denisov*, cited above, § 112) and abrupt, moreover, albeit referred to by the applicant only in his just satisfaction claims, it will also have negative repercussions on the eventual calculation of his eventual pension treatment (compare *Pajak and Others v. Poland*, no. 25226/18, § 215, 24 October 2023).

148. It is true that in the present case the applicant had not lost all of his remuneration for any lapse of time (contrast *Xhoxhaj v. Albania*, no. 15227/19, § 363, 9 February 2021, and *Pengezov v. Bulgaria*, no. 66292/14, § 68, 10 October 2023). However, it is also true that, unlike other cases examined by this Court, the applicant never recovered those losses (contrast *J.B. and Others v. Hungary* (dec.), no. 45434/12 and 2 others, §§ 132-33, 27 November 2018, and *Camelia Bogdan*, cited above, §§ 85-86). In these circumstances the Court accepts that those losses, substantiated by

the relevant documentation, affected the well-being of his family, including his four children, and their daily needs and educational prospects.

149. As to establishing and maintaining relationships with others, the Court observes that, following the impugned decision, the applicant could no longer act as a CoL – function he had held for around eighteen months. Thus, he was deprived of the opportunity to continue his fully judicial work (at least until he would have been successful in another competition, which was not the case to date). He, nevertheless, continued to work as a UD, and remained in the same environment alongside his colleagues of the judiciary in general (compare *Denisov*, cited above, § 123, and contrast *Gumenyuk and Others*, cited above, § 88; *Samsin v. Ukraine*, no. 38977/19, §§ 39 and 41, 14 October 2021, and more recently *Golovchuk v. Ukraine*, nos. 16111/19 and 4737/21, § 30, 27 March 2025 where the applicants were deprived of the opportunity to continue their judicial work and to live in the same professional environment). Nevertheless, in the Court’s view, the annulment of his appointment to CoL, (in other words, in practice, his demotion to UD) effected his possibility of establishing and developing relationships in the light of other factors, such as his inability to take part in selection processes for managerial positions within the court and in external assignments on behalf of the court, which certainly serve as a means of developing relations and pursuing professional development. Further, his return to the function of UD effected his participation in the Judicial Council from which, as a UD, he was immediately excluded, and later, following the reform, as UD, he had no right to contest for that position, nor to vote for the judicial members of the Judicial Council, thus he could not express his opinion, or cast his vote, in relation to various matters relating to their working environment.

150. Lastly, the Court must consider whether, as claimed by the applicant, the impugned measure encroached upon his reputation in such a way that it seriously affected his esteem among others, with the result that it had a serious impact on his interaction with society. The Court will look at this issue in terms of professional and social reputation (see *Denisov*, cited above, § 125).

151. It observes that the CGP and subsequently the domestic courts did not examine the applicant’s performance as a first-instance judge or express any opinion as to his judicial competence and professionalism (compare, *Denisov*, cited above, § 126, and contrast *Juszczyszyn v. Poland*, no. 35599/20, § 233, 6 October 2022). Similarly, there had been no effects resulting from the applicant’s personality and character (compare *Gyulumyan*, § 93, and contrast *Khoxhaj*, § 363, both cited above). The decision in the applicant’s case formally concerned the lawfulness of his appointment based on procedural grounds, while his professional role as a judge and personal characteristics were not touched upon. Thus, the decision cannot be regarded as relating to the core of the applicant’s professional reputation (compare *Denisov*, § 126, and contrast, *Oleksandr Volkov*, § 166, both cited above). Nevertheless, bearing in mind that the measure applied

only to a few individuals, including the applicant, but not others, the Court is not convinced that it had not affected his colleagues' esteem of him or his societal reputation. In this context the Court cannot ignore the limited dimensions of the single court compound in San Marino, composed of around thirty magistrates, wherein all of a sudden, the applicant found himself working with attorneys and judges, while demoted to a lower professional qualification (from CoL with full competence over judicial files, to UD, with, in contrast, limited competence and only delegated action on files), which was devoid of the crux of the judicial function, namely the responsibility of decision making (contrast *Denisov*, cited above, § 123, concerning the mere loss of an administrative role). This loss of esteem appears to be supported by the fact that – although eligible and with serious experience – thereafter, the applicant has been unsuccessful in recruitment competitions, which were decided by CGP's made up, at least in part, of his ex-colleagues (see paragraph 24 above). Finally, it cannot be excluded that, in a small country like San Marino, the extensive media exposure which was given to the matter (through no fault of the applicant), could have affected his societal reputation to a certain degree.

152. In conclusion, the Court considers that, while none of the factors mentioned above, would, on their own, reach the relevant threshold for the purposes of the severity test under Article 8, the cumulative factors as played out and substantiated by the applicant in the present case are sufficient to hold that, the consequences deriving from the decision to annul the applicant's appointment were serious enough and affected his private life to a very significant degree (compare the global assessment in *Pengezov*, cited above, § 72). Therefore Article 8 of the Convention is applicable in the present case.

153. It follows that the Government's objection *ratione materiae* must be dismissed.

154. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

155. The applicant submitted that the interference with his private life, namely, the annulment of his appointment to CoL, had not been in accordance with the law. Besides the fact that the Government had intervened legislatively to influence the outcome of a pending dispute, that legislative intervention, namely article 3 of Qualified Law no. 1/2020 (see paragraph 61 above), could not be considered a law of sufficient quality. It was neither foreseeable – as the applicant could never have foreseen the circumstances in

which and the conditions on which the authorities were entitled to resort to measures affecting his rights under the Convention, nor respectful of the rule of law. Furthermore, it had not been accompanied by any safeguards in so far as the administrative proceedings had applied that law themselves determining its constitutionality in the absence of a referral to the Constitutional Court.

156. He considered that there had been no legitimate interest behind such measure given that, as admitted by the Government (see paragraph 110 above), none of the litigants whose litigation had been decided by the applicant had ever questioned his appointment or legitimacy. Nor could the measure ever be considered proportionate given the serious, prolonged impact and the significant economic and professional consequences.

(b) The Government

157. The Government submitted that the interference was lawful, in accordance with article 3 of Qualified Law no. 1/2020, which had been enacted by Parliament in the legitimate exercise of its powers and in compliance with the rule of law in so far as it had been necessary to pursue overriding public interests such as legal certainty, separation of powers, the autonomy and independence of the judiciary, due process and the protection of legitimate expectations.

158. They reiterated their submissions made under Article 6 of the Convention, affirming that following the arising disagreements it had been necessary to provide clarity about the composition of the CGP. Thus, allowing it to function properly. They considered that the interpretation provided by the legislator as interpreter, following disagreements which had arisen at the meeting of 27 April 2018 as to the interpretation of the law, appeared proportionate to the aims pursued. In their view the interpretation given by the legislator was the more reasonable one, since it was “the only one capable of preventing possible imbalances between the members who are judges and those who are not judges”. The Government considered that the adoption of this provision should have been foreseeable to the applicant given his profession.

159. The CGP, once the rule of authentic interpretation was approved, deliberated on the annulment of the applicant’s appointment based on the *pro-veritate* opinion, and restored the *status quo ante* (i.e. the composition of the CGP according to the interpretation that had already been continuously given from 2011 to 2018) and then initiated transparent selection procedures for filling the vacancies.

160. In so far as the applicant had argued that the administrative courts had usurped the functions of the constitutional jurisdictions, they considered that the administrative courts had simply proceeded to a preliminary assessment of his claims of a constitutional nature to determine if they were admissible (pursuant to article 12 (2) [*recte* 13 (4)] of Qualified Law

no. 55/2003, see paragraph 63 above), but also relevant and not manifestly ill-founded, thus deserving of referral. However, they considered them manifestly ill-founded, thus no such referral had been necessary.

2. The Court's assessment

(a) General Principles

161. An interference with the right to respect for private life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being “in accordance with the law”, pursuing one or more of the legitimate aims listed therein, and being “necessary in a democratic society” in order to achieve the aim or aims concerned (see *Juszczyszyn*, cited above, § 260, and *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 92, 12 January 2023)

162. The expression “in accordance with the law” requires, firstly, that the impugned measure should have some basis in domestic law. It states the obligation to conform to the substantive and procedural rules thereof (see *Gumenyuk and Others*, cited above, § 95).

163. Secondly, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him or her, and be compatible with the rule of law. The phrase thus implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which, and the conditions on which, the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts) with further references, and *De Tommaso v. Italy* [GC], no. 43395/09, §§ 106-109, 23 February 2017).

164. The interference with the right to respect for one's private and family life must therefore be based on a “law” that guarantees proper safeguards against arbitrariness. There must be safeguards to ensure that the discretion left to the executive is exercised in accordance with the law and without abuse of powers. The requirements of Article 8 with regard to safeguards will depend, to some degree at least, on the nature and extent of the interference in question (see *Solska and Rybicka v. Poland*, nos. 30491/17 and 31083/17, § 113, 20 September 2018, with further references, and more recently *Juszczyszyn*, cited above, § 263).

165. The Court reiterates that interference will be considered “necessary in a democratic society” for a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, for example,

Chapman v. the United Kingdom [GC], no. 27238/95, § 90, ECHR 2001-I, and *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, § 283, 17 October 2019).

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

166. The Court has already found that the annulment of the applicant's appointment by the CGP affected his private life to a very significant degree (see paragraph 152 above). The impugned measure therefore constituted an interference with the applicant's right to respect for his private life.

167. The Court notes that the CGP's decision was based on article 44 of Law no. 160/2011 concerning administrative procedures (see paragraph 64 above) in the light of the enactment of article 3 of Qualified Law no. 1/2020 (see paragraph 61 above) interpreting retroactively article 7 of Qualified Law no. 145/2003 (see paragraph 57 above).

168. In so far as the decision to annul the applicant's appointment had been issued under article 44 of Law no. 160/2011, the Court observes that the latter provision provides that such measure can be undertaken within a reasonable time-limit and taking into account the interests of the addressees (see paragraph 64 above). The Court observes that the measure in the present case was undertaken more than eighteen months after the applicant had started performing his functions as CoL, and nineteen and a half months after his appointment. While in the present case the domestic court, at first instance, considered that eighteen months was a reasonable lapse of time (see paragraph 41 above) the Government provided no other examples showing that such an extended period of time, fell within the notion "within a reasonable time" referred to in article 44 of Law no. 160/2011. Moreover, it considers that little, if at all, have the interests of the applicant as addressee been taken into account as required by that provision – a matter which the Court will refer to below. In that light, the measure's conformity with domestic law is doubtful.

169. In so far as the measure was taken in the light of the enactment of article 3 of Qualified Law no. 1/2020, the Court has previously acknowledged that laws with retrospective effect which were found to constitute legislative interference pending proceedings still conformed with the lawfulness requirement of Article 1 of Protocol No. 1 (see, *inter alia*, *Maurice v. France* [GC], no. 11810/03, § 81, ECHR 2005-IX, and *Draon v. France* [GC], no. 1513/03, § 73, 6 October 2005). This was so both when a breach of Article 6 was upheld, in the absence of compelling grounds of general interest justifying such interference pending proceedings (see, for example, *Arras and Others*, §§ 50 and 81, and *Maggio and Others*, §§ 49 and 60, both cited above, and, more recently, *Zafferani and Others*, cited above, §§ 54 and 67) and even more so when no breach of Article 6 was upheld (see, for example, *Morelli v. Italy* (dec.), no. 23984/19, § 78, 23984/19).

170. Thus, the Court can accept for the purposes of Article 8 that reliance on that provision constituted “some basis in domestic law”.

171. As to the applicant’s argument concerning the quality of that law, the Court notes that the applicant’s inability, when taking up the post, to predict that such legislation – which triggered the impugned measure – would be enacted, does not suffice to call into question the interference’s lawfulness in Convention terms (see, *mutatis mutandis*, *Polyakh and Others*, cited above, § 268).

172. As to the applicant’s further arguments in this context, the Court considers that the question whether the legal basis met the Convention requirements of lawfulness, in the sense of providing the relevant safeguards, as well as compliance with the principles of rule of law and freedom from arbitrariness, must be examined in the context of the main issue in the present case – whether or not the impugned interference pursued a legitimate aim and could be considered necessary in a democratic society for the achievement of such aim (see, for example, *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, § 117, 22 January 2009).

173. As to whether the decision of the CGP pursued a legitimate aim, the Government relied (see paragraph 155 above) on overriding public interests such as legal certainty, separation of powers, the autonomy and independence of the judiciary, due process and the protection of the legitimate expectations and emphasised the importance of having clarity about the composition of the CGP, allowing it to function properly. The Court notes that such argumentation appears to relate more to the aim pursued by Qualified Law no. 1/2020 (which contained both retrospective and prospective provisions concerning the composition of the CGP) rather than the specific aim behind the CGP decision in relation to the applicant, pursuant to article 3 of Qualified Law no. 1/2020. Nevertheless, the Court accepts that the need for legal certainty in relation to appointments of a judicial nature, thus the necessity of a duly composed CGP when appointing judicial organs is in the interests of ensuring the relevant fair trial guarantees and thus seeks the pursuance of the protection of the rights and freedoms of others. The relevance of such a legitimate aim in the specific circumstances of the applicant’s case, wherein the applicant’s appointment, but not other appointments, was annulled for purportedly that purpose, will be examined below.

174. The Court reiterates that a court or tribunal must always be “established by law”, a tribunal that is not established in conformity with the intentions of the legislature will necessarily lack the legitimacy required in a democratic society to resolve legal disputes (see *Guðmundur Andri Ástráðsson*, cited above, § 211). However, the Court observes, firstly, that, in the absence of the legislative intervention with retrospective effect (indicating that the composition of the CGP should, in so far as possible, exclude judges who are not yet confirmed in office on a permanent basis), there had been

little reason to question the lawfulness of the composition of the CGP when it appointed the applicant, and thus the lawfulness of the applicant's appointment on that ground. A minority view reiterated at the CGP meetings and a challenge by other interested candidates, by themselves, would not suffice to consider that such tribunal had not been appointed by law. The Court underlines that there had been no national outrage, nor political upheaval, at the time of his appointment; importantly, no domestic court had determined that such appointment (or others of the like) had been unlawful, nor had any individual whose case had been, or was being, heard by the applicant, had questioned the lawfulness of that appointment.

175. While it is true that it might have been legitimate to pre-empt any possible future challenges, by individuals tried by such a court, it is not irrelevant that – since no challenge had been brought till then – it was only as a result of the State's intervention that such challenges could be brought in future. More importantly, it is striking that only some of those “tainted” appointments had been annulled. Additionally, it cannot be ignored that according to article 44 of Law no. 160/2011 (see paragraph 64 above) it was possible to “validate” the appointment decision, in other words to remedy the existent defect, and avoid the selective annulment of the applicant's appointment. Thus, the necessity of such action for annulment, as well as the real aim behind it, is ever less evident in such context.

176. Indeed, it has been apparent throughout the Government's observations (under Article 6 and extended elsewhere) that there was an interest in annulling only the challenged appointments and in avoiding any challenges to ongoing competitions by other candidates – interests which appear to have been the Government's overriding concern, and which do not fall squarely within the legitimate interest upheld above. Moreover, the Court notes that, to avoid challenges in relation to ongoing or future competitions, it was not necessary to (provide for and) apply the law retroactively. A prospective law as provided in article 4 of Qualified Law no. 1/2020 was sufficient. As to the challenge lodged by X and Y, the persons who challenged the applicant's appointment (and presumably the few other individuals who challenged the other appointments in different ways, see paragraph 24 above) the Court considers that there is no doubt that other competing candidates had a legitimate interest in the fairness of the appointment procedure. However, those interests could well have been served in the proceedings, lodged by those individuals, intended precisely for that purpose.

177. Moreover, such interests had to be balanced against other competing interests, namely the interests of the applicant individually, as well as the interests of the population at large to have a legal system respectful of the rule of law in all the senses. In this connection the Court reiterates that the principle of the irremovability of judges during their term of office, is a principle generally considered as a corollary of judges' independence – which is a prerequisite to the rule of law (see *Guðmundur Andri Ástráðsson*, cited

above, § 239). The Court has already found (see paragraph 125 above) that insufficient consideration had been given to this principle in the enactment of the law, the same holds for the purposes of the CGP decision to apply such law in the applicant's case. The principle of the irremovability of judges and the interest of the population at large had to be coupled with the applicant's own personal private life interests of maintaining his position as CoL (see in this respect the assessment concerning the applicability of the provision), a matter which was given even less, if any at all, consideration by the CGP, despite the requirements of article 44 of Law no. 160/2011 (see paragraph 168 above).

178. The administrative courts gave such matters no greater weight in determining that the matter did not deserve referral to the Constitutional Court. While it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 150, 20 March 2018), it cannot but observe that the administrative courts failed to acknowledge altogether that the applicant's right to respect for private life had been at stake in the proceedings, or to seek to balance appropriately that right against the other alleged interests at play (see paragraphs 41 et seq. and in particular 46 above; see also, *mutatis mutandis*, *Budimir v. Croatia*, no. 44691/14, § 63, 16 December 2021).

179. Bearing in mind all the above, the Court considers that the requirement of lawfulness has not been met, and that no relevant and sufficient reasons have been advanced capable of considering that the measure applied to the applicant, which had serious consequences for his private life, was necessary in a democratic society. It thus constituted an unjustified interference with his private life.

180. There has accordingly been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. Article 41 of the Convention provides:

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

A. Damage

1. The parties' submissions

182. The applicant requested the annulment of the decisions affecting his professional career, so to restore the situation existent prior to the breach of the Convention and claimed 149,041.08 euros (EUR) in respect of pecuniary

damage, representing the loss and diminished gain (*lucrum cessans*), namely, EUR 135,178.31 representing the pay difference between what he received as UD and what he would have received as CoL, and EUR 13,862.77, the shortfall in retirement contributions, until the date of submissions (June 2025). He further claimed EUR 40,000 in non-pecuniary damage resulting from the ongoing repercussions of the impugned measure (referring to the Article 8 severity threshold, the freezing of career progression and the effects on his subsequent evaluations and promotion opportunities, the prolonged stress and forced psychological pressure within the workplace, initiation of disciplinary proceedings, and burdensome allocation of judicial workload, which had a negative impact on his mental health). Relying on Article 46 of the Convention, he further invited the Court to indicate any individual or general measures to bring the violation to an end and redress its consequences.

183. The Government submitted that following judicial reform the legal framework as well as the CGP composition had been modified and the impugned law repealed (see paragraph 62 above). Thus, there was no room for any general measures called for by the applicant. They further noted that the applicant had applied and been unsuccessful in two further competitions, and that challenges to those competitions had been dismissed, thus, his lack of career progression had no link to the violations complained of. The same applied in relation to the disciplinary proceedings and other unrelated matters. Thus, they considered that the claim for non-pecuniary damage in this respect should not be upheld.

2. The Court's assessment

184. As the Court has held on a number of occasions, a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI, and *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009). If the nature of the violation allows for *restitutio in integrum* it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, however, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (*ibid.*).

185. While it remains for the State to put an end to the breach of Article 8, recalling that the latter is free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention provided that such means are compatible with the “conclusions and spirit” set out in the Court’s judgment (see *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, § 195, 29 May 2019), the Court will proceed to award

reparation for its consequences to date of the observations (as requested by the applicant, see paragraph 182 above).

186. The Court notes that the Government has not challenged the applicant's calculation concerning the loss of earnings resulting from the annulment of his CoL position. Those losses have a direct causal link with the violations found in the present case, and bearing in mind that the applicant continued his functions within the judiciary, it would not be speculative to award such losses. The Court also considers that, although some of his arguments in this respect are unsubstantiated or unrelated to the object of this case, the applicant has certainly suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making an assessment on an equitable basis and in the light of all the information in its possession, the Court considers it reasonable to award the applicant an aggregate sum of EUR 150,000, covering all heads of damage, (see, *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 121, 14 October 2021).

B. Costs and expenses

1. The parties' submissions

187. The applicant claimed reimbursement of legal fees and expenses (in respect of legal representation by different lawyers regarding several proceedings undertaken by him, at the domestic level, as well as his several applications before this Court) in relation to which he submitted a series of invoices (which refer, sometimes jointly, to several proceedings, including proceedings unrelated to the present case, or other proceedings brought before this Court).

188. The Government submitted that the invoices submitted by the applicant went beyond proceedings no. 37/2020 and included costs in relation to proceedings no. 13/2019, as well as the disciplinary proceedings lodged against him, and other applications lodged before the ECtHR which were unrelated to the object of the present case. Nor was there any evidence that the invoiced costs had been paid.

2. The Court's assessment

189. The Court notes, firstly, that the applicant has submitted an unquantified claim in respect of costs and expenses, merely submitting a series of invoices which refer, sometimes jointly, to several proceedings (see paragraph 187 above). It would thus be open to the Court, having regard to the manner in which it was filed to reject such claim. Nevertheless, the Court considers it appropriate in the present case to make a partial award in respect of his claim.

190. The Court considers that costs and expenses in relation to the administrative proceedings at issue in the present case, namely no. 37/2020 including its appeal (no. 3/2023), as well as those incurred before this Court in relation to this application, would in fact be due, but not costs and expenses related to any other proceedings which were either undertaken despite them not being considered as required remedies or unrelated proceedings such as the disciplinary proceedings unconnected to the object of the present case, or other applications brought before this Court.

191. According to the Court's case-law (see *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023), an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In relation to the Government's argument that no evidence of payment had been made, the Court notes that the applicant has signed a power of attorney mandating the legal representative to bring these proceedings before the Court, and thus he has entered into a contractual relationship with the legal representative who is entitled to recover relevant dues, concerning at least these proceedings before this Court, as per invoice issued even assuming that these have not yet been paid (see *J.B. and Others v. Malta*, no. 1766/23, § 175, 22 October 2024).

192. The Court considers that the same should hold in respect of the costs and expenses incurred in relation to proceedings no. 37/2020 including its appeal (no. 3/2023) in the absence of any reason to consider that those invoices remained unpaid. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000, related to the above-mentioned proceedings and rejects the remainder of the claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention concerning the fairness of the proceedings resulting from retroactive legislative intervention;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention concerning the independence and impartiality of the tribunal;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention concerning the length of proceedings;
5. *Holds* that there has been a violation of Article 8 of the Convention;

6. *Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 150,000 (one hundred fifty thousand euros), in respect of pecuniary and non-pecuniary damage combined;
 - (ii) EUR 10,000 (ten thousand) in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 February 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Kateřina Šimáčková
President