



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

FIRST SECTION

CASE OF SOBCZYŃSKA AND OTHERS v. POLAND

*(Applications nos. 62765/14 and 2 others –
see appended list)*

JUDGMENT

Art 6 § 1 (civil) • Access to court • Lack of judicial review of President of the Republic's refusal to appoint junior judges to vacant district court judge posts despite their successful participation in a selection procedure conducted by the National Council of the Judiciary ("NCJ") • Art 6 § 1 applicable • Genuine and serious dispute over arguable right in domestic law to a fair procedure in the examination of an application for a judicial post, including the right to be protected against arbitrary rejection • Second condition of *Eskelinen* test not met • Denying applicants, who met statutory eligibility requirements, judicial review of the refusal decision, not in the interest of a State governed by the rule of law • Decision did not contain reasons, was not subject to any form of review and bore *prima facie* appearances of arbitrariness • Essence of applicants' right of access to a court impaired

Art 35 § 1 • Applications introduced within the applicable six-month period following the final decision refusing to entertain the applicants' complaints • Applicants only became aware of the ineffectiveness of the domestic remedies used after that decision • Novel and unprecedented situation with no relevant case-law indicating the impossibility of appealing against the President's decision refusing to appoint persons put forward by the NCJ for judicial positions

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 May 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sobczyńska and Others v. Poland,

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

Ivana Jelić, *President*,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant, *judges*,
and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the applications against Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) – namely, no. 62765/14 lodged by Ms Aleksandra Sobczyńska (“the first applicant”), no. 62769/14 lodged by Mr Adrian Klepacz (“the second applicant”), no. 62772/14 lodged by Mr Rafał Brukiewicz (“the third applicant”) – all of them Polish nationals – on the dates indicated in the appended table;

the decision to give notice to the Polish Government (“the Government”) of the complaints concerning Articles 6 § 1 and 13 of the Convention and to declare inadmissible the remainder of the applications;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Commissioner for Human Rights of the Republic of Poland, and the Polish Judges’ Association Iustitia, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 28 April 2026,

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

INTRODUCTION

1. The case concerns the President of the Republic’s refusal to appoint the applicants to vacant judicial posts – despite their successful participation in a competitive selection procedure conducted by the National Council of the Judiciary – and the absence of any judicial review of that decision. It raises issues under Article 6 § 1 of the Convention.

2. Although the case touches upon issues concerning the organisation of the judiciary, the material events took place before the overhaul of the judiciary, which was initiated in 2017 (for an overview, see *Wałęsa v. Poland*, no. 50849/21, §§ 2-4, 23 November 2023). Most notably, all actions undertaken by the National Council of the Judiciary (which conducted the relevant selection procedures) took place before 6 March 2018 (for details, see *Reczkowicz v. Poland*, no. 43447/19, § 14 and §§ 271-78, 22 July 2021)

and the composition of the Constitutional Court in the proceedings concerning the applicants did not raise the issues examined by this Court in *Xero Flor w Polsce sp. z o.o. v. Poland* (no. 4907/18, 7 May 2021).

THE FACTS

3. A list of the applicants is set out in the appendix.
4. The Polish Government (“the Government”) were represented by their Agent, Mr J. Sobczak, subsequently replaced by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.
5. The facts of the case may be summarised as follows.

I. APPLICATIONS FOR VACANT JUDICIAL POSTS IN 2006

6. At the relevant time, in 2006, the applicants were working in various district courts (courts of first instance) as junior judges (*asesorzy sądowi*; for details, see paragraphs 40-43 below).

7. Under the relevant legislation – as in force at the time in question (see paragraph 43 below) – in order to be appointed as a judge, a candidate for the post, as a general rule, had to have served as a junior judge for at least three years.

8. In 2006, the applicants applied for vacant posts as district court judges in Słubice, Jelenia Góra and Gliwice, respectively. After being approved by the respective general assemblies of the courts in question and by the National Council of the Judiciary (*Krajowa Rada Sądownictwa* – “the NCJ”), in October 2006, June 2006 and February 2007 respectively, the applicants’ applications were forwarded by the NCJ to the President of the Republic, with a motion that they be appointed.

II. REFUSAL OF THE PRESIDENT OF THE REPUBLIC TO APPOINT THE APPLICANTS – DECISION OF 3 JANUARY 2008

9. In August 2007, the NCJ informed the applicants that it had received a letter from the President of the Republic stating that he did not intend to appoint them.

10. In November 2007, the applicants requested the President of the Republic to remedy the breach of law (*wezwanie do usunięcia naruszenia prawa*) which, in their view, had resulted from his refusal to appoint them.

11. On 16 January 2008, a decision (*postanowienie*) issued by the President of the Republic on 3 January 2008 and refusing to appoint nine candidates (including the applicants) to various positions in the judiciary was published in the Official Gazette of the Republic of Poland (*Monitor Polski*). No reasons were given for that decision. It was the first time that a President

of the Republic had declined to appoint candidates indicated in the motion of the NCJ.

III. PROCEEDINGS RELATING TO THE REFUSAL BY THE PRESIDENT OF THE REPUBLIC TO APPOINT THE APPLICANTS

A. Administrative court proceedings

1. *Complaints alleging inaction on the part of the President of the Republic*

12. Having received no response to their respective requests (see paragraph 10 above), in January 2008 the applicants lodged complaints with the Warsaw Regional Administrative Court alleging inaction (*skarga na bezczynność*) on the part of the President of the Republic.

13. Between 25 February and 17 March 2008, the Regional Administrative Court declared the complaints inadmissible (*odrzucał skargi*). The Administrative Court's decisions in respect of the matter in question were based on the following grounds:

- under the relevant provisions of Article 184 of the Constitution and section 3(2) of the Law on Proceedings before Administrative Courts ("the 2002 Act" – see paragraph 30 below), inaction on the part of the public administration could be the subject of a complaint lodged with an administrative court, provided that the case in question fell within the jurisdiction of that court;

- since, in the present case, the applicants sought to challenge the President of the Republic's use of his competence to appoint judges, their complaints were not subject to review by the administrative courts. The President of the Republic, exercising his competence, was not considered to constitute a public administrative authority. Furthermore, the decisions of the President of the Republic in respect of the matter could not be equated with acts or actions which, like those referred to in section 3(2) of the 2002 Act, were subject to appeal before the administrative court;

- the act of appointment conferred judicial authority on a candidate for the post of judge. It gave rise to a public-law relationship between that candidate and the State, which produced its effects mainly in the institutional sphere. Even though the act in question concerned a private individual, it did not fall within the scope of the administrative function;

- although, under Article 10 § 2 of the Constitution, the President of the Republic represented the executive power, he was not considered to constitute a body of the public administration. The head of State had specific powers relating to the conduct of public policy and setting the direction of public actions (and overseeing the implementation of such actions).

14. The applicants lodged cassation appeals against the respective decisions of the Warsaw Regional Administrative Court, asking the Supreme

Administrative Court to discontinue the proceedings in view of the fact that the President of the Republic had – in the meantime – ended the state of inaction by issuing the decision of 3 January 2008. In decisions dated 9 (cases no. I OSK 1873/12 and I OSK 1872/12) and 16 October 2012 (case no. I OSK 1871/12), the Supreme Administrative Court dismissed the cassation appeals, terminating the proceedings.

2. Appeals seeking the annulment of the decision refusing to appoint the applicants

15. After the publication of the President's decision of 3 January 2008 (see paragraph 11 above), the applicants lodged, on 15 February 2008, appeals with the Warsaw Regional Administrative Court, seeking the annulment of the impugned decision on the grounds that it was contrary to the motions issued by the NCJ in their regard and that it was devoid of any reasoning. In their view, the decision in question was contrary to: (i) Article 179 of the Constitution in conjunction with section 55(1) of the Act on the Organisation of Ordinary Courts (*Prawo o ustroju sądów powszechnych* – see paragraph 27 below), (ii) the following provisions of the Constitution (and the principles derived therefrom): Articles 10 § 2 and 173 (principles underlying the separation of powers and the independence of the judiciary from the executive), Articles 32 and 60 (right of equal access to public service), Article 2 (principle of a democratic State governed by the rule of law) and Article 7 (principle of legality), and (iii) Article 107 of the Code of Administrative Procedure (specifying the mandatory components of each administrative decision).

16. In 2011, the Warsaw Regional Administrative Court declared inadmissible (*odrzucił*) the applicants' appeals. In doing so, it relied on arguments similar to those set out in the decisions on the inadmissibility of the applicants' complaints alleging inaction on the part of the President of the Republic (see paragraph 13 above).

17. The applicants lodged cassation appeals with the Supreme Administrative Court against the decisions of the Regional Administrative Court. Since, in the meantime, the first two applicants had lodged constitutional complaints with the Constitutional Court (see paragraph 19 below), the proceedings concerning the cassation appeals were suspended.

18. Following the conclusion of the above-mentioned proceedings by the Constitutional Court (see paragraph 20 below), the Supreme Administrative Court resumed the proceedings before it and gave decisions dated 9 (cases no. I OSK 1891/12 and I OSK 1882/12) and 16 October 2012 (case no. I OSK 1887/12) by which it dismissed the cassation appeals lodged by the applicants, thus terminating the proceedings.

B. Constitutional Court proceedings

1. *First set of proceedings – initiated by the first two applicants*

19. In April 2008, the first and second applicants, A. Sobczyńska and A. Klepacz (along with one more person who was affected by the presidential decision of 3 January 2008 but who has not lodged an application with this Court) lodged a complaint (*skarga konstytucyjna*) with the Constitutional Court, asking it to declare that section 55(1) of the Act on the Organisation of Ordinary Courts (“the 2001 Act” – see paragraph 27 below) – in so far as it had allowed the President of the Republic not to proceed with their appointment without having to give reasons for his decision (despite the approval of their respective candidacies by the NCJ) – was contrary to the following provisions of the Constitution: Article 32 (principles of equality before the law and non-discrimination), Article 45 § 1 in conjunction with Article 77 § 2 (right of access to a court), and Article 60 (right of equal access to public service). The arguments advanced by the applicants in their respective constitutional complaints were as follows:

- the refusal of the President of the Republic to proceed with their respective appointments had constituted an interference with the proper functioning of the judiciary;
- the guarantees of the impartiality and independence of the courts and tribunals applied both to their judicial activities *sensu stricto* and to the procedures for recruiting magistrates;
- the above-mentioned contested provision of section 55(1) of the 2001 Act was contrary to the constitutional principle of respect for human dignity. Since only the applications of candidates who had previously satisfied all the conditions for access to the posts to be filled were submitted to the President of the Republic for appointment, it followed that by refusing to appoint the persons concerned by the decision of 3 January 2008, the President of the Republic had called into question their professional abilities and damaged their reputation;
- even assuming that the President of the Republic did have the authority to refuse to appoint a candidate to the post of judge, his powers in this regard should have been regulated in greater detail by section 55(1) of the 2001 Act. The fact that, despite its importance for the candidates concerned, the President of the Republic’s decision on this point was not accompanied by any reasoning and was not subject to any appeal was indicative of an obvious shortcoming in the relevant legislation;
- the Constitution required that every decision by which the public authorities interfered with individual rights and freedoms be subject to judicial review. Furthermore, given that (in the event of disputes concerning the rights and freedoms of individuals) the Constitution established a presumption in favour of access to courts, any restrictions in that area could only be applied if the Constitution provided express authorisation to that

effect. Furthermore, restrictions of that type were only permitted in the event of a conflict between the rights and freedoms in question and a constitutional provision of at least equal importance to those rights and freedoms. It followed from all of the above-noted principles that those of the President of the Republic's decisions which were administrative in nature and which were decisive for individual rights and freedoms had to be subject to judicial review;

- section 55(1) of the 2001 Act was contrary to the principle of equal access to public service that was set out in Article 60 of the Constitution. Since each candidate for the position of judge had to meet the most stringent legal requirements in that regard and since eligible applications were subject to prior review by the general assemblies of the competent courts (and then by the NCJ), the rejection by the President of the Republic of the applications thus selected – on the basis of vague criteria and without any justification – constituted both arbitrary interference by the President in the right of the candidates in question to equal access to public service and clear discrimination against them.

20. On 19 June 2012, the Constitutional Court, sitting in plenary session, gave a decision (in case no. SK 37/08) by which it discontinued the proceedings on the grounds that it was inadmissible for it (that is, the Constitutional Court) to deliver a judgment in respect of that case (that is, case no. SK 37/08) (*umorzył postępowanie ze względu na niedopuszczalność wydania wyroku*). In the reasons for its decision, the Constitutional Court stated the following:

- under Article 79 of the Constitution and the principles established in its case-law, its task was to review the constitutionality of laws and not the application of the provisions of the Constitution by public authorities;

- the conclusion of case no. Kpt 1/08 (see paragraph 49 below) concerning the exhaustive and exclusive nature of Article 179 of the Constitution (which covered all issues relating to the competence of the President of the Republic in the appointment of judges) implied that all questions that might arise in connection with the President of the Republic's possible refusal to appoint a candidate to the position of judge fell within the sphere of the interpretation and application of the provisions of the Constitution, and not that of the constitutionality of laws;

- the wording of section 55(1) of the 2001 Act was identical to that of Article 179 of the Constitution;

- given that, in the case under review, the applicants were seeking to challenge the President of the Republic's use of the competence conferred on him under Article 179 of the Constitution, their appeals were outside the scope of a constitutional review; indeed, the Constitutional Court did not have jurisdiction to review the application of the Constitution by public authorities or to rule on the alleged inconsistency with the Constitution of the President of the Republic's practice;

- in addition to the above, the complaint relating to the alleged violation of the applicants' right of access to a court (alleging the incompatibility of section 55(1) of the 2001 Act with Articles 45 § 1 and 77 § 2 of the Constitution) had been premature. On the one hand, the respective cassation appeals of the parties concerned were pending before the Supreme Administrative Court; on the other hand, no established case-law of the administrative courts on the issue was the subject of those appeals.

21. Three of the 15 members of the Constitutional Court expressed dissenting opinions, holding, in particular, that – given the importance of the case for the correct application of the principle of a democratic State governed by the rule of law – the Constitutional Court should have ruled on the merits of the case. One of the three dissenting members (Judge P. Tuleja) stated in his dissenting opinion, in particular, that:

- the argument put forward by the majority of the Constitutional Court judges that the subject matter of section 55(1) of the 2001 Act and Article 179 of the Constitution was identical had been insufficiently substantiated. The fact that the powers conferred on the President of the Republic under the Constitution with regard to the appointment of judges constituted the exclusive competence of the President did not prevent the manner in which those powers were exercised from being regulated by ordinary legislation. Furthermore, it was clear from the wording of section 55(1) of the 2001 Act that the matter regulated therein was broader than that regulated by Article 179 of the Constitution;

- the Constitutional Court had been wrong to rely so heavily on its decision in case no. Kpt 1/08 (see paragraph 49 below). Not only had the latter case differed from the applicants' case in terms of its subject matter, but the Constitutional Court had itself concluded that there were lacunae in the legislation concerning the appointment of judges by the President of the Republic. It was precisely this aspect that the applicants were seeking to challenge. Furthermore, the legal doctrine on which the majority of the Constitutional Court judges claimed to have based their decision did not corroborate their conclusion regarding the exhaustive and exclusive nature of the provisions in the Constitution itself on all matters relating to the appointment of judges by the President of the Republic;

- the applicants had indeed exhausted the remedies necessary to bring the matter before the Constitutional Court.

The above-mentioned dissenting judge also made the following statement:

“It is legitimate to ask what purpose is served by establishing elaborate criteria for the selection of judges and by creating a multi-stage procedure for identifying candidates, if at the end of that process the President retains an arbitrary and entirely unconstrained discretion (in particular, unconstrained by statute). How is the constitutional role of the National Council of the Judiciary to be guaranteed if, in practice, the President may initiate a parallel assessment of candidates? The President is not bound by any time-limit for examining the Council's motions, and the members of the Council may never learn the reasons for a decision refusing to act upon such a motion.

Does Polish law sufficiently safeguard the independence of a judge who may be required to adjudicate on the legal situation of the President – for example, in respect of the obligation to disclose public information – when that judge’s promotion depends on the procedure described above? The competence vested in the President under Article 144 § 3 (17) of the Constitution should serve to limit the influence of the Council of Ministers on the process of appointing judges and to strengthen the independence of the judiciary. To derive, from the nature of that competence, limitations on the principle of statutory exclusivity – where that principle is designed to protect human rights and the separation of powers – would produce the opposite effect: it weakens the protection of human rights and undermines the independence of the judiciary.”

22. The above-noted dissenting opinion, which was shared by one of the other dissenting judges, concluded that section 55(1) of the 2001 Act – in so far as it did not require the President of the Republic to give reasons for his decision to refuse to appoint a candidate to the position of judge – was incompatible with Article 60 of the Constitution in conjunction with Articles 32 and 2 thereof.

2. Second set of proceedings – initiated by all three applicants

23. Following the termination of the administrative-court proceedings (see paragraph 18 above), the applicants lodged complaints with the Constitutional Court in 2013, that were essentially the same as those previously brought before it by the first two applicants.

24. On 12 June 2013, the Constitutional Court, sitting as a single judge, gave decisions (cases no. Ts 36/13, Ts 38/13, Ts 39/13) by which it refused to entertain each complaint (*odmówił nadania biegu skardze*). In the reasoning for its decisions, the Constitutional Court observed that the decisions by which the Supreme Administrative Court (ruling as the court of final instance) had dismissed the respective cassation appeals of the applicants had been adopted in application of the provisions of the 2002 Act (see paragraph 30 below – which concerned the jurisdiction of administrative courts) and not in application of the provisions of section 55(1) of the 2001 Act (the constitutionality of which was contested by the applicants in the proceedings before it). The Constitutional Court also deemed that the complaint concerning the lack of reasoning in the President of the Republic’s decision refusing to appoint the applicants to the position of judge had become time-barred. In that regard, it observed that, since it was clear that that decision was not subject to appeal, the three-month period for lodging a constitutional complaint had begun to run from the date on which the decision in question had been communicated to the parties concerned. Lastly, the Constitutional Court reiterated that it had itself discontinued the proceedings concerning the complaints lodged by the first two applicants (see paragraph 20 above), which were similar to those before it.

25. All three applicants appealed, but the Constitutional Court, sitting as a panel of three judges, dismissed the appeals by decisions of 5 March 2014 (served on the representatives of the applicants on 7 March 2014).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Domestic law

1. Constitutional provisions

26. The relevant provisions of the Constitution read as follows:

Article 2

“The Republic of Poland shall be a democratic State governed by the rule of law and implementing the principles of social justice.”

Article 7

“The organs of public authority shall function on the basis of, and within the limits of, the law.”

Article 10

“1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.

2. Legislative power shall be vested in the *Sejm* and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and judicial power shall be vested in courts and tribunals.”

Article 32

“1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.”

Article 45 § 1

“Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.”

Article 60

“Polish citizens enjoying full public rights shall have a right of access to public service based on the principle of equality.”

Article 77 § 2

“Statutes shall not bar the recourse by any person to a court in pursuit of claims alleging infringement of freedoms or rights.”

Article 79 § 1

“In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed shall have the right to appeal to the Constitutional Court for a judgment on the conformity with the Constitution of a statute or another normative act upon the basis of which a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations under the Constitution.”

Article 126

“1. The President of the Republic of Poland shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority.

2. The President of the Republic shall ensure observance of the Constitution, and safeguard the sovereignty and security of the State and the inviolability and integrity of its territory.

3. The President shall exercise his duties within the scope of and in accordance with the principles specified in the Constitution and statutes.”

Article 144

“1. The President of the Republic, exercising his constitutional and statutory authority, shall perform official acts.

2. Official acts of the President shall require, for their validity, the signature of the Prime Minister who, by virtue of that signature, accepts accountability therefor to the *Sejm* [the lower house of Parliament].

3. The provisions of paragraph 2 above shall not relate to:

...

(17) appointing judges; ...”

Article 173

“The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.”

Article 174

“The courts and tribunals shall pronounce judgments in the name of the Republic of Poland.”

Article 175 § 1

“The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts.”

Article 177

“The common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.”

Article 178 § 1

“Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.”

Article 179

“Judges shall be appointed by the President of the Republic, upon a motion by the National Council of the Judiciary, for an indefinite period.”

Article 184

“The Supreme Administrative Court and other administrative courts shall exercise – to the extent specified by statute – supervision over the performance of the public administration. Such supervision shall also extend to judgments on the conformity with statute of resolutions [issued by] organs of local government and regulatory instruments [adopted by] territorial organs of government administration.”

Article 186

“1. The National Council of the Judiciary shall safeguard the independence of courts and judges.

2. The National Council of the Judiciary may lodge an application with the Constitutional Court seeking that that court examine the conformity with the Constitution of normative acts to the extent to which they relate to the independence of courts and judges.”

Article 187

“1. The National Council of the Judiciary shall be composed as follows:

(1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;

(2) fifteen judges chosen from among the judges of the Supreme Court, ordinary courts, administrative courts and military courts;

(3) four members chosen by the *Sejm* from among its deputies and two members chosen by the Senate from among its senators.

2. The National Council of the Judiciary shall choose, from among its members, a chairperson and two deputy chairpersons.

3. The term of office of those chosen as members of the National Council of the Judiciary shall be four years.

...”

2. *The Act on the Organisation of Ordinary Courts – “the 2001 Act”*

(a) Wording applicable to the case of the applicants

27. The relevant provision of the Act of 27 July 2001 on the Organisation of Ordinary Courts (*ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych*“ (the 2001 Act”) – as worded between 12 September 2001 and 5 May 2009 – provided as follows:

Section 55 § 1

“Judges of the ordinary courts shall be appointed to judicial office by the President of the Republic of Poland, upon a motion of the National Council of the Judiciary.”

(b) Changes introduced following the events concerning the applicants

28. The Act of 23 January 2009 on the National School of Judiciary and Public Prosecution (*ustawa z dnia 23 stycznia 2009 r. o Krajowej Szkole Sądownictwa i Prokuratury*) amended section 55(1) of the 2001 Act (with effect from 5 May 2009) by introducing a requirement that the President of the Republic of Poland appoint judges to ordinary courts within one month of receiving the respective motions from the National Council of the Judiciary.

29. By a judgment of 5 June 2012 (case no. K 18/09 – see paragraph 51 below) the Constitutional Court ruled that the above-mentioned amendment was incompatible with Articles 179 and 2 of the Constitution.

3. The Law on Proceedings Before Administrative Courts – “the 2002 Act”

30. Pursuant to section 3(1) of the Law of 30 August 2002 on Proceedings Before Administrative Courts (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi* – “the 2002 Act”), administrative courts exercise oversight over the activities of the public administration and apply the legal remedies provided for by statute.

31. Section 3(2) of the 2002 Act specifies the acts and measures undertaken by the public administration that may be challenged before the administrative courts – including:

- administrative decisions (*decyzje administracyjne*; section 3(2)1),
- various procedural orders (*postanowienia*) made during administrative proceedings (section 3(2)2), and
- other acts or measures undertaken by the public administration (*akty lub czynności z zakresu administracji publicznej*) that concern rights or obligations arising from statutory provisions (section 3(2)4).

32. Moreover, section 3(2)(8) of the 2002 Act – as applicable at the time relevant for the complaints raised by the applicants – provided that the administrative courts also had jurisdiction to hear complaints against inaction (*bezczywność*) on the part of public authorities in respect of the kind of cases referred to in section 3(2)(1) to (4) above.

4. Provisions concerning the NCJ’s role in the appointment procedure

33. Under section 2(1) of the Act of 27 July 2001 on the National Council of the Judiciary (*ustawa z dnia 27 lipca 2001 r. o Krajowej Radzie Sądownictwa* – “the Act on the NCJ (2001)”) – as applicable at the time in

question, the NCJ had authority to perform the tasks set out by statutes, and in particular to:

- examine and assess candidates for judicial office at the Supreme Court and the Supreme Administrative Court, as well as for judicial posts at the ordinary courts, regional administrative courts, and military courts (section 2(1)2)
- submit to the President of the Republic of Poland motions for the appointment of judges to the Supreme Court, the Supreme Administrative Court, the ordinary courts, the regional administrative courts, and the military courts (section 2(1)(3)).

5. Procedure provided (at the material time) for the appointment of ordinary court judges

34. The procedure for the selection and appointment of candidates to judicial office in ordinary courts comprised several stages and was governed by the relevant provisions of (i) the Constitution (Article 144 § 3 (17)), (ii) the 2001 Act, and (iii) the Act on the NCJ (2001).

35. The procedure began with the publication of a vacancy notice in the Official Gazette of the Republic of Poland (*Monitor Polski*) by the Minister of Justice. Interested candidates who met the eligibility criteria were to submit their applications to the president of the competent court (which depended on the level of jurisdiction at which the vacancy arose) – (section 57 of the 2001 Act).

36. Applications deemed admissible were to first be reviewed by the board (*kolegium*) of the competent court (section 57(3) of the 2001 Act), and subsequently by its general assembly of judges (*zgromadzenie ogólne sędziów*). The general assembly was to decide on each application by vote, the results of which were to be transmitted by the president of the competent court to the NCJ (section 58(2)-(3) of the 2001 Act). The Minister of Justice was also to present his or her opinion on each of the candidates (section 58(4) of the 2001 Act).

37. The NCJ would then conduct a comprehensive assessment of the candidates (section 60 of the 2001 Act in conjunction with section 2(1) of the Act on the NCJ (2001) – see paragraph 33 above). The assessment would be made on the basis of the documents submitted and of the relevant criteria (including their professional qualifications, experience, and moral integrity – section 61 of the 2001 Act). Following this evaluation, the NCJ would express either a favourable or unfavourable opinion on each applicant. In the event of a favourable opinion, the NCJ was to submit to the President of the Republic a motion that the candidate in question be appointed (section 2(1)3 of the Act on the NCJ (2001)). The NCJ's opinion would be presented in the form of a resolution adopted in plenary session – in the presence of at least half of its members – by an absolute majority of the votes cast (section 12 of the Act on the NCJ (2001)).

38. Under Article 179 of the Constitution and section 55(1) of the 2001 Act (see paragraphs 26-27 above), the President of the Republic would appoint candidates indicated in the motion of the NCJ.

39. At the relevant time, a resolution containing the NCJ's opinion on a candidate did not have to contain any written reasoning and was not subject to any appeal (section 13(1)-(2) of the Act on the NCJ (2001)).

6. Status of junior judges (asesorzy sądowi), as regulated by the 2001 Act at the material time

40. At the time in question (that is to say from the adoption of the 2001 Act until 4 March 2009, when the provisions in question were repealed) the status of junior judges (*asesorzy sądowi*) was comprehensively set out in sections 134-36 of the 2001 Act.

41. The position of junior judge was open only to candidates who had successfully completed judicial or prosecutorial training (*aplikacja sądowa* or *aplikacja prokuratorska*) and passed the judicial or prosecutorial examination (section 134(1)). In addition, candidates were required to satisfy the general conditions for judicial office set out in section 61(1)(1)-(4) of the 2001 Act – namely: Polish citizenship; full legal capacity; an impeccable character; and a degree in law. The 2001 Act further provided that the fact that a junior judge had taken and passed the judicial or prosecutorial examination could not serve as a sufficient basis for appointment if more than five years had elapsed since a candidate had taken it – unless the candidate had, in the meantime, carried relevant work in the field of law (of the type specified in section 61(2)-(3)) for at least three years (section 134(2)).

42. A candidate for the office of junior judge was required to lodge a request to be appointed (*mianowanie*) with the Minister of Justice (section 134(3)). Such an appointment was a discretionary act on the part of the Minister of Justice. Each candidate was to be required to submit a certificate from the National Criminal Register and a medical certificate confirming fitness to perform judicial duties, in accordance with the rules applicable to candidates for judicial office (section 134(3) in conjunction with section 57).

43. Once appointed and sworn in, junior judges would gain the right to perform judicial functions that were essentially the same as those of a fully qualified judge (section 136(2)). In order to be eligible for a (fully independent) judicial office, a junior judge had to perform his or her functions for at least three years (section 61(1)(7)).

B. Domestic practice

1. Case-law of the Constitutional Court

44. The issue of judicial appointments has been examined on several occasions by the Constitutional Court – notably within the context of its review of the constitutionality of the 2001 Act and the Act on the NCJ (2001).

45. In a judgment of 24 October 2007 (case no. SK 7/06), the Constitutional Court declared unconstitutional certain provisions of the 2001 Act, on the grounds that junior judges lacked independence from the Minister of Justice (for details, see *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, §§ 19-24, 30 November 2010). The Constitutional Court found that junior judges could be dismissed at any time during their term by the Minister of Justice, and that no adequate safeguards existed to protect them against the arbitrary exercise of that power. In this regard, the Constitutional Court observed that the possibility for an extrajudicial body – representing the executive and led by a political figure – to influence the career of junior judges was problematic in the light of the requirement of an “independent and impartial tribunal”.

46. In a judgment of 29 November 2007 (case no. SK 43/06), the Constitutional Court declared unconstitutional certain provisions of the Act on the NCJ (2001) in so far as they conferred upon the NCJ the authority to regulate the criteria for assessing candidates for judicial office. The Constitutional Court held that such matters should be regulated by statute. On that occasion, the Constitutional Court examined the procedure for selecting judicial candidates in the light both of the principles set out in Article 60 of the Constitution, and those arising from the imperatives of judicial impartiality, independence and the prohibition on arbitrariness. In the reasoning of that judgment the Constitutional Court held, *inter alia*, that:

“Article 60 of the Constitution is the source of precisely defined subjective constitutional rights, which must be respected by the public authorities.

...

It is beyond dispute that the right of access to public service also extends to judicial posts. The particular importance and role of the courts in safeguarding constitutional rights and freedoms require that the constitutional principles outlined above be observed with particular rigour when judicial positions are filled. In view of the constitutional principle of judicial independence, any form of arbitrariness or unfettered discretion in this sphere must be excluded.

...

The right under consideration encompasses not only the general right to seek admission to public service as such, but also the right to apply for a specific post within that service. The guarantees concerning access to public service set out above must therefore apply to the procedures for filling each category of public-service position.”

47. In a judgment of 27 May 2008 (case no. SK 57/06) the Constitutional Court declared unconstitutional certain provisions of the Act on the NCJ (2001) in so far as they excluded from judicial review NCJ resolutions containing an opinion on a candidate for a judicial post (see paragraph 39 above). In relation to the right of equal access to public service, the Constitutional Court made, *inter alia*, the following observations:

“The right arising from Article 60 of the Constitution has the character of a formal guarantee, since the constitutional provisions, apart from the requirement of Polish citizenship, do not specify the conditions that must be met by persons seeking a position in the public service. This provision therefore cannot serve as a basis for asserting before a court a claim to be admitted to employment or to perform a specific function, or to occupy a particular post. The [public] interest protected by Article 60 of the Constitution is the transparency and openness of the rules applied when determining the requirements for holding positions in the public service. The right guaranteed by this constitutional provision also encompasses the verifiability of the criteria used in recruitment to the public service: public authorities are entitled to establish specific conditions of access to particular branches of the service, and thus to conduct selective recruitment. It is, however, necessary to ensure appropriate guarantees of the lawfulness of decisions concerning access to public service, so as to exclude any arbitrariness on the part of the public authorities (see judgment of 9 June 1998, no. K 28/97).

...

The procedure in which the NCJ assesses a candidate for judicial office at a given judicial post and decides whether to submit to the President of the Republic of Poland a request for appointment to that post concerns the right, guaranteed by Article 60 of the Constitution, of Polish citizens enjoying full public rights to have access to public service on the basis of the principle of equality. It is therefore a right belonging to the category of constitutional rights and freedoms to which the absolute prohibition on excluding judicial review, expressed in Article 77 § 2 of the Constitution, applies. For that reason, emphasising in the present case the link between this constitutional provision and Article 60, the Constitutional Court held that the complete exclusion of judicial review by the challenged provision – section 13(2), second sentence, of the Act on the National Council of the Judiciary – was incompatible with Article 45 § 1 and Article 77 § 2 of the Constitution in conjunction with Article 60.

It is for the legislature to determine the court competent to examine such cases, as well as the scope and procedure of judicial review of proceedings concerning the filling of judicial posts. Reiterating the legislature’s regulatory discretion in shaping judicial review in matters of judicial appointments, the Constitutional Court wishes to emphasise that the scope of such protection must correspond to the content of the right guaranteed in Article 60. It must not be overlooked that the object of this protection is primarily the formal aspect of access to public service – namely, compliance with uniform criteria and procedural rules – and not the substantive assessment of a given person’s qualifications or credibility in the light of the criteria applied in that procedure. Only to the extent that the Constitution itself defines the content of the right of access to public service does it become necessary to give effect to the guarantee of judicial protection contained in Article 45 § 1 in conjunction with Article 77 § 2. That right, as indicated above, is exhausted in the requirement to respect equal rules of access to public service.

Judicial review therefore does not provide a basis for encroaching upon the competences of the National Council of the Judiciary, as this could amount to an

infringement of the Council's constitutional powers under Article 179. The judicial protection afforded to a candidate for a particular judicial post would thus encompass review of the procedure solely in terms of its compliance with the law (as defined above), and would therefore be limited to assessing the lawfulness of the procedure applied in that individual case – including a decision to lodge with the President of the Republic a request for appointment or to refrain from lodging such a request in respect of that candidate. Subjecting the outcome of the proceedings before the NCJ in an individual case to judicial review cannot, however, be understood as implying that the court would participate in deciding on the filling of a specific judicial post.”

48. On 28 February 2008, following the adoption by the President of the Republic of the decision refusing to appoint the applicants (see paragraph 11 above), the First President of the Supreme Court referred the matter to the Constitutional Court, requesting a ruling on a “conflict of competence” (*wniosek o rozstrzygnięcie sporu kompetencyjnego*) between the President of the Republic and the NCJ. In support of his request, he enquired whether, in view of (i) the time that had elapsed between the submission of the applicants' candidacies to the President of the Republic for approval and the date on which the latter had ruled on this point, and (ii) the lack of reasoning for the contested decision – the President of the Republic had in the meantime re-examined those applications. He pointed out in that regard that, under the relevant provisions of the Constitution and the relevant law, only the NCJ (in its capacity as guarantor of the independence of Poland's courts and tribunals) was competent to assess candidates for judicial posts. Accordingly, the First President of the Supreme Court deemed that not only was the President's decision unprecedented in Poland's recent history, but it also appeared to be contrary to the principles of the separation of powers and of the independence of the judiciary from the executive.

49. On 23 June 2008, the Constitutional Court gave a decision (case no. Kpt 1/08) by which it discontinued the proceedings on the grounds that for it to deliver a judgment in that case was inadmissible (see paragraph 20 above). In the reasons for its decision, the Constitutional Court made the following observations:

- in the absence of identical powers in this area on the part of the respective authorities, there was no conflict of competence. There was no doubt that the power to assess and appoint candidates for the position of judge lay, respectively, with the NCJ and the President of the Republic. Furthermore, the nature of the respective decisions taken by those bodies differed from each other. The NCJ issued a favourable or unfavourable opinion on each candidate and, in the event of a favourable opinion, forwarded the candidate's application to the President of the Republic with a motion that he or she be appointed. The President, for his part, could not carry out actions forming part of the competence to assess candidates for judicial office and had no authority to formulate an alternative opinion to that expressed by the NCJ; rather, he exercised his competence to either appoint or decline to appoint as judges candidates who had received a favourable opinion (that is, who had

been indicated in a motion) from the NCJ. If, in the case under review, the Constitutional Court were to declare itself competent to hear the request of the First President of the Supreme Court, it would be setting itself up as a judge of the exercise of that competence by the President of the Republic;

- the intervention of the First President of the Supreme Court could, to a certain extent, be justified by the absence of the necessary regulations on the effects of a possible refusal by the President of the Republic to appoint a candidate to a judicial post. In the interests of the completeness of the legal system and good legislative technique, regulations on this point would certainly be desirable. Nevertheless, the absence of such regulations was not in itself (both generally and in this particular case) such as to give rise to a conflict of competence between the authorities concerned.

50. In a judgment of 15 January 2009 (case no. K 45/07), the Constitutional Court examined certain provisions of the 2001 Act concerning the secondment of judges and the supervisory powers of the Minister of Justice over the administrative activities of courts. Furthermore, in a judgment of 19 November 2009 (case no. K 62/07), the Constitutional Court declared unconstitutional certain provisions of the Act on the NCJ (2001) which empowered the President of the Republic to regulate (by way of secondary legislation) the procedure conducted by the NCJ for selecting candidates for judicial office.

51. In a judgment of 5 June 2012 (case no. K 18/09) – delivered within the context of a preventive constitutional review of section 55(1) of the 2001 Act (see section 29 above) – the Constitutional Court held that the provision was incompatible with the Constitution in so far as it imposed, at the time, a one-month time-limit on the President of the Republic for exercising the competence set out in Article 179 of the Constitution concerning the appointment of judges. The Constitutional Court made the following findings:

“Under Article 179 of the Constitution, judges are appointed by the President, at the request of the NCJ, for an indefinite term. The Constitution accordingly identifies two entities that are involved in the procedure for appointing judges: the President and the National Council of the Judiciary. The judicial appointment procedure [provided by] the Constitution thus presupposes cooperation between two bodies – one of which has a direct social mandate, while the other (owing to the participation of, among others, members of parliament and senators) has an indirect mandate ...

Under Article 144 § 3 of the Constitution, the power to appoint judges is one of the official acts of the President which, in order to be valid, do not require the signature of the Prime Minister However, this classification does not [constitute] so much a strengthening of the President’s independent position within the system as an emphasis on the independence of the judiciary from the government and its subordinate bodies. The requirement of countersignature would mean granting the Prime Minister the right of veto over candidates proposed by the NCJ ...

Pursuant to Article 186 of the Constitution, the NCJ safeguards the independence of courts and judges, which can be broadly defined as ensuring that there are no threats to the independence of courts and judges in the legal system ... Under the procedure for

appointing judges, the NCJ is to guarantee, on the one hand, the correct selection of candidates and, on the other hand, the transparency of the criteria for appointment to the position of judge ...

By entrusting the President with the power to appoint judges, the Constitution thus adopts a system of judicial appointments – but one that is limited in nature. Although judicial appointments do not require countersignature, the constitutional requirement for a motion from the NCJ significantly restricts the President’s freedom of action in this situation. The President cannot appoint [simply] any person who meets the requirements for candidates for judges, but only a person whose candidacy has been considered and indicated by the NCJ ...

...

Another controversial issue is whether the President may disregard the motion of the NCJ and refuse to appoint a ... person to the office of judge. In the light of the prevailing views of legal scholars, there is no doubt that although the President’s freedom of action is limited to taking a position on a candidate proposed by the NCJ, the fact that [his or her] power to appoint judges is framed as an exclusive competence emphasises that the President has no legal obligation to accept the NCJ’s motion; [however,] refusal [to accept the NCJ’s motion] should only take place in exceptional circumstances and would have to be preceded by the presentation of objections to the NCJ by the representative of the President who sits on it ... As far as constitutional practice is concerned, until 2007 there were no cases of the President refusing to accept a motion of the NCJ. This ... changed when, by a decision of 3 January 2008 ... [the President] refused to appoint nine persons [indicated by the] NCJ for the office of judge.

...

... [U]nder Article 144 § 3 of the Constitution, the power to appoint judges [constitutes] an exclusive competence of the President (that is, his personal right), which does not require the signature of the Prime Minister in order to be valid. As such, [that power] remains within the exclusive competence and responsibility of the President, although this does not mean that he can act completely freely – he is bound by the principles and values expressed in the Constitution, which he is obliged to uphold under Article 126 § 2 of the Constitution. ... Article 179 of the Constitution therefore [constitutes] a complete rule in terms of defining the President’s powers to appoint judges, as it regulates all the necessary elements of the appointment procedure. It is obvious, however, that this provision does not describe the entire procedure in detail and, in this sense, is not self-executing. In this respect, the exercise of the President’s powers may be specified in statutes, provided that the principle of the supremacy of the Constitution (expressed in Article 8 § 1 of the Constitution) is observed. ...

... [T]he fact that the time-limit within which the President is to exercise his powers is not explicitly specified does not mean that Article 179 of the Constitution does not refer to this issue at all. It should be interpreted as an obligation on the part of the President to act without undue delay. This interpretation is justified, *inter alia*, by the content of Article 126 of the Constitution.

... [T]he role of the President in the nomination procedure is not limited to that of a ‘notary’ confirming decisions taken elsewhere ..., but rather that he makes his own assessment of the candidates presented to him and, as a consequence, may refuse to accept an NCJ motion. He should be granted the right to refuse to comply with the motions put forward if, in his opinion, they would be contrary to the values that the Constitution has entrusted him to uphold ...

... [I]t seems that *ad hoc* changes to the law do not guarantee the realisation of the intended objective – which is, according to the intentions of the drafters, the proper exercise by the President of the powers conferred on him by Article 179 of the Constitution. This requires cooperation between the bodies involved in the procedure for appointing judges – the President and the NCJ – as required of the authorities of the Republic of Poland by the preamble to the Constitution.”

2. *Case-law of the Supreme Administrative Court*

52. All the other persons (that is, other than the applicants) concerned by the President of the Republic’s decision of 3 January 2008 also attempted to have administrative courts review the case. Specifically: (i) all six¹ remaining candidates appealed against the refusal of the President of the Republic to appoint them as judges; (ii) five² of them lodged complaints alleging inaction on the part of the President; and (iii) three³ of the latter lodged complaints in respect of the President’s “stance” on not appointing them to judicial office. None of those attempts were successful, given that the Warsaw Regional Administrative Court found the relevant complaints and appeals inadmissible and the Supreme Administrative Court gave final decisions by which it dismissed the appellants’ cassation appeals.

53. Among the rulings noted above, the Supreme Administrative Court gave a series of almost identical decisions of 17 October 2012 (cases no. I OSK 1876/12, I OSK 1877/12 and I OSK 1889/12), concerning the complaints and appeal lodged by one candidate, in respect of which it made the following observations:

- the President’s constitutional competences had to be exercised solely to fulfil his constitutional functions and not as autonomous political instruments detached from those functions (Article 126 § 3 of the Constitution);
- while Article 179 of the Constitution conferred the formal act of appointment on the head of State, safeguarding the independence of courts and judges lay with the NCJ under Article 186 § 1 of the Constitution;
- the President had lacked the authority to substitute his own (alternative) assessment of the candidate’s merits for that of the NCJ; there was no duty to accept every NCJ motion; however, any refusal should be exceptional and preceded by reservations articulated by the representative of the President representative who sat on the NCJ (reference was made to the Constitutional

¹ Proceedings before the Supreme Administrative Court were terminated in that respect by : the decision of 9 October 2012 in case no. I OSK 1883/12; decisions of 16 October 2012 in cases no. I OSK 1884/12, I OSK 1885/12, I OSK 1888/12; and the decision of 17 October 2012 in case no. I OSK 1889/12.

² Final decisions of the Supreme Administrative Court were given on 9 October 2012 in cases no. I OSK 1874/12, I OSK 1875/12, on 16 October 2012 in cases no. I OSK 1878/12 and I OSK 1880/12; and on 17 October 2012 in case no. I OSK 1876/12.

³ Final decisions of the Supreme Administrative Court were given on 16 October 2012 in cases no. I OSK 1879/12 and I OSK 1881/12 and on 17 October 2012 in case no. I OSK 1877/12.

Court's rulings in cases Kpt 1/08 and K 18/09 – see paragraphs 49 and 51 above, respectively);

- Articles 10 and 173 of the Constitution emphasised the judiciary's special constitutional position; appointment and promotion practices had to exclude arbitrariness and ensure stability for sitting judges seeking promotion;

“... [T]he current legal framework may give rise to doubts as to its compatibility with the constitutional principles set out in Articles 60 and 45 § 1 of the Constitution – namely, the right of access to public service and the right of access to a court.

It is beyond doubt that, for the reasons indicated above, decisions of the President cannot be subject to review by the administrative courts. However, it should be considered whether leaving this sphere entirely outside any form of review does not endanger the constitutional values referred to above and does not create a potential field of conflict between two constitutional organs [that share] common objectives.

The fundamental duty of the President of the Republic of Poland is to ensure respect for the Constitution and, in that regard – even without detracting from the President's personal competences – it is necessary to define the scope of his discretion to make assessments and decisions. Article 173 of the Constitution distinguishes the judiciary as a separate branch of power, while Articles 178–81 establish the principles of the independence of judges and of the autonomy of the courts. These values, in a State governed by the rule of law, must be afforded the strictest protection, since the proper performance by the courts of their assigned functions depends on their existence.

In this situation, consideration should be given to the possibility of introducing a legal provision requiring [i] the President to consult the National Council of the Judiciary in cases where, in his view, a candidate presented for appointment does not offer sufficient guarantees of the proper exercise of judicial office, or alternatively, [ii] the subjection of a refusal by the President [to approve a candidate] to a single-instance review by the Supreme Court. The practice of consultation between the President and the National Council of the Judiciary has functioned [satisfactorily] for a very long period; however, the case under examination demonstrates that the absence of a statutory provision [mandating such consultation] may give rise to the risks indicated above.”

54. Also in 2012 – in a case initiated by a person whose candidacy for judicial office had been dismissed by a different decision of the President of the Republic than the one concerning the applicants (namely, by a decision of 4 September 2008) – the Supreme Administrative Court confirmed that it lacked jurisdiction to review presidential decisions on judicial appointments; the proceedings in question were concluded by the Supreme Administrative Court's decision of 16 October 2012 (case no. I OSK 1886/12).

55. Furthermore, on 20 March 2013 (case no. I OSK 3129/12) the Supreme Administrative Court similarly dismissed a cassation appeal lodged by yet another person whose candidacy for a judicial position had ultimately been dismissed by a 2010 decision of the President of the Republic – reversing an earlier, positive decision of 27 March 2009 (issued by the previous holder of the office of the President of the Republic).

56. In its later case-law (for example, by a decision of 25 April 2019 in case no. II GZ 62/19, and by a decision of 11 May 2021 in case no. III OSK 3265/21) the Supreme Administrative Court confirmed its approach

regarding the lack of jurisdiction of administrative courts to review presidential decisions concerning the appointment of candidates to judicial office).

57. Moreover, in a series of cases concerning allegations that the composition of judicial panels of administrative courts had been unlawful – on the basis that the judges in question had been appointed on the motion of the recomposed NCJ (see *Wałęsa v. Poland*, cited above, §§ 3-4) – the Supreme Administrative Court ruled on the legal effects of the exercise by the President of the Republic of his constitutional competence in the matter of judicial appointments (see, *inter alia*, decision of 27 January 2020, case no. I OSK 1917/18, and judgment of 4 November 2021, case no. III FSK 3626/21). In the latter judgment, the Supreme Administrative Court made, *inter alia*, the following observations:

“In the light of Article 179 § 1 in conjunction with Article 144 § 2 and § 3 (17) of the Constitution, it does not appear that the mere fact that the appointment of a judge constitutes the constitutional competence of the President (and thus a personal act that is exempt from the requirement of the Prime Minister’s countersignature) suffices for it to be concluded that the President may, at his unfettered discretion, decide when he is not bound by the motion of the National Council of the Judiciary. The President’s role in the process of judicial appointments must rather be interpreted in the light of Articles 10 and 126 of the Constitution.

...

The function of guarantor of the continuity of State authority requires the President to take measures aimed at preventing disruption to the constitutionally prescribed mechanism of the functioning of State organs (including the judiciary, which is inherently linked to the personal staffing of judicial posts). Furthermore, the function of safeguarding compliance with the Constitution is, in essence, a constitutional duty incumbent upon the President in every sphere of his activity. Its proper fulfilment should not rest solely upon his subjective convictions as to the content and interpretation of constitutional provisions, but must be grounded in constitutional principles and values.”

58. Furthermore, in 2021 the Supreme Administrative Court gave a series of judgments concerning appeals against resolutions of the recomposed NCJ (by which the latter indicated some candidates for appointment to the Supreme Court and refused to indicate others). The Supreme Administrative Court set aside the impugned resolutions but held that the consequences of its judgments did not relate to the validity and effectiveness of presidential appointments to the office of judge of the Supreme Court made on the basis of motions submitted by the NCJ in the resolutions under review (for details see *Sadowski v. Poland*, no. 56297/21, §§ 9-14 and §§ 28-35, 9 May 2025)

3. Case-law of the Supreme Court

59. In a judgment of 5 November 2009 (case no. I CSK 16/09) relating to a civil claim for the establishment (*pozew o ustalenie*) of the appellant’s right to exercise the mandate of a judge of the Constitutional Court, the Supreme

Court held that the constitutional right of access to a court served to secure the effective protection of individual rights. It arose only where there existed a “case” in the constitutional sense – that is, where judicial proceedings were capable of affording protection to a private right or interest. A claim seeking recognition of the right to exercise the mandate of a judge of the Constitutional Court was characterised as relating to a public-law relationship and not to the enforcement of an individual right. Accordingly, the appellant could not rely on Article 45 § 1 or Article 77 § 2 of the Constitution, and disputes concerning the conferral or removal of a judicial mandate in the Constitutional Court were considered to fall outside the scope of judicial review.

60. The issue of presidential acts of appointment to judicial posts has gained notoriety in the case-law of the Supreme Court since the 2017 reform of the NCJ and the judicial appointments carried out with the participation of the recomposed NCJ (see *Wałęsa*, cited above, §§ 3-4). The Supreme Court – often referring to the above-cited case-law of the Supreme Administrative Court and the Constitutional Court – essentially confirmed that the possibility of seeking judicial review was excluded in respect of presidential decisions on judicial appointments. The Court notes, however, that many of those rulings (for example, judgment of 1 July 2019, case no. I NO 70/19; decision of 16 October 2019, case no. I NOZP 2/19; and judgment of 9 June 2020, case no. I NO 37/20) have been issued by the judges sitting in the Chamber of Extraordinary Review and Public Affairs (*Izba Kontroli Nadzwyczajnej i Spraw Publicznych*) of the Supreme Court (whose appointment procedure, involving the recomposed NCJ, was found inherently deficient in *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, §§ 353-54, 8 November 2021).

II. INTERNATIONAL MATERIAL

A. International material already summarised

61. The relevant international material is set out in detail in the Court’s judgment in the case of *Guðmundur Andri Ástráðsson v. Iceland* [GC] (no. 26374/18, §§ 117-27, 1 December 2020).

B. The International Covenant on Civil and Political Rights (ICCPR)

62. The relevant provisions of the ICCPR (adopted by the United Nations General Assembly on 16 December 1966), to which Poland is a State Party, read:

Article 25

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

...

(c) To have access, on general terms of equality, to public service in his country.”

C. The Council of Europe

63. The following relevant Council of Europe material has already been set out in the Grand Chamber judgment in the case of *Guðmundur Andri Ástráðsson* (cited above, §§ 121-27): (i) the Recommendation adopted by the Committee of Ministers on 17 November 2010 (CM/Rec(2010)12) on “Judges: independence, efficiency and responsibilities”; (ii) the Venice Commission’s Report on Judicial Appointments (CDL-AD(2007)028), adopted at its 70th Plenary Session (16-17 March 2007); (iii) the Rule of Law Checklist (CDL-AD(2016)007); (iv) Opinion no. 1 (2001) on “standards concerning the independence of the judiciary and the irremovability of judges” of the Consultative Council of European Judges (CCJE); (v) the Magna Carta of Judges; (vi) CCJE Opinion no. 18/2015 on the “Position of the judiciary and its relation with the other powers of state in a modern democracy” dated 16 October 2015; (vii) CCJE Report on “Judicial independence and impartiality in the Council of Europe member States in 2017”. In addition, the following materials are relevant in the instant case.

1. The Committee of Ministers

(a) Recommendation Rec(94)12

64. The Recommendation adopted by the Committee of Ministers on 13 October 1994 (no. R (94) 12) on the independence, efficiency and role of judges in its relevant parts provided as follows:

Principle I - General principles on the independence of judges

“1. All necessary measures should be taken to respect, protect and promote the independence of judges.

2. In particular, the following measures should be taken:

a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:

i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law;

ii. the terms of office of judges and their remuneration should be guaranteed by law;

iii. no organ other than the courts themselves should decide on its own competence, as defined by law;

iv. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.

b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.

c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above. These guarantees could be, for example, one or more of the following:

i. a special independent and competent body to give the government advice which it follows in practice; or

ii. the right for an individual to appeal against a decision to an independent authority; or

iii. the authority which makes the decision safeguards against undue or improper influences.

...”

(b) Recommendation CM/Rec(2010)12

65. The Recommendation CM/Rec(2010)12 on “Judges: independence, efficiency and responsibilities” (see paragraph 63 above) replaced the above-mentioned Recommendation Rec(94)12. In its relevant parts, it provides as follows:

Chapter I – General aspects

Judicial independence and the level at which it should be safeguarded

“3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.”

Chapter II – External independence

“11. The external independence of judges is not a prerogative or privilege granted in judges’ own interest but in the interest of the rule of law and of persons seeking and

expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law.”

Chapter VI - Status of the judge

Selection and career

“44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

...

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made.”

The Explanatory Memorandum to this recommendation further provides as follows:

“13. The separation of powers is a fundamental guarantee of the independence of the judiciary whatever the legal traditions of the member states.”

2. The Venice Commission

66. The Venice Commission, in its Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court proposed by the President of Poland and on the Act on the Organisation of Ordinary Courts, which it adopted at its 113th Plenary Session (Venice, 8-9 December 2017, CDL-AD(2017)031), observed, in so far as relevant:

“77. The Venice Commission acknowledges that appointment of the SC judges by a popularly elected President may, in theory, provide the appointed judges with a certain degree of democratic legitimation which is not the case in entirely the same way when the appointment of judges follows a system of co-optation within the judiciary. That being said, the Venice Commission is rather in favour of the minimisation of the role of the Head of State in the judicial appointments. In Opinion CDL-AD(2013)034 on Ukraine the Venice Commission stressed that it ‘has no objection against appointment of judges by the Head of State when the latter is bound by a proposal of the judicial council and acts in a ‘ceremonial’ way, only formalising the decision taken by the

judicial council in substance.’[footnote omitted] Even where the President has the real (not ceremonial) power to choose, his/her choice should be limited to candidates having significant support within the judiciary.”

3. *Consultative Council of European Judges*

67. In the declaration adopted by the Consultative Council of European Judges Plenary at its 9th meeting on 13 November 2008 concerning the practice of judicial appointments in Poland – issued in response to the refusal by the President of the Republic to appoint as judges a certain number of persons presented by the NCJ – the CCJE made the following observations, the relevant parts of which read as follows:

“After due consideration of the above issue, the CCJE

- recalls, first of all, that by its Recommendation No R(94) 12, the Committee of Ministers of the Council of Europe took the view that, in principle, ‘the authority taking the decision on the selection ... of judges should be independent of the government and administration’ and ‘its members’ should be selected ‘by the judiciary’; even ‘where the constitutional or legal provisions and traditions allow judges to be appointed by the government’, the Recommendation calls for guarantees ‘to ensure that the procedures to appoint judges are transparent and independent in practice’, e.g. that the government ‘follows in practice’ advice provided by an independent body, and that a guarantee for concerned candidate of a ‘right of appeal against a decision’ to the independent body is established;”

68. Opinion no. 24 (2021) of the CCJE on the Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, CCJE(2021)11, adopted on 5 November 2021 states, in so far as relevant:

“20. The [Court] and the CJEU have decided that the appointment of judges is of great importance for an independent judiciary. The CCJE has always taken that view. Consequently, the selection or recommendation of new judges for appointment and promotion based on merit is a crucial task. Decisions with respect to the career of judges must not be taken because of loyalty to politicians or other judges. Through the selection and promotion of judges or the composition of a court, these decisions have great influence on future court decisions.

...

III. Councils for the Judiciary in society

1. Relations with other powers of state

40. Members of parliament and members of the executive must of course respect the law in their dealings with the Council for the Judiciary and not infringe its role and functioning by breaking or circumventing legal rules. Moreover, relations with the Council must be based on a culture of respect for the rule of law and the role of the Council for the Judiciary in their respective member state.

...

IV. Conclusions and recommendations

...

9. Decisions with respect to the career of judges must not be taken because of loyalty to politicians or other judges, but in a transparent procedure using objective criteria as far possible. Such decisions must be reasoned and based on merit alone. Judges who think that their rights have been disregarded must have a right to judicial review ...”

III. EUROPEAN UNION LAW

A. European Union Law already summarised

69. The relevant European Union law material is set out in detail in the Court’s judgments in *Grzęda v. Poland* [GC] (no. 43572/18, §§ 145-47 and §§ 153-59, 15 March 2022) and *Dolińska-Ficek and Ozimek*, cited above, § 190.

B. Case-law of the Court of Justice of the European Union

70. On 20 April 2021 the Court of Justice of the European Union (CJEU) gave a ruling in *Repubblika*, C-896/19, EU:C:2021:311 (for details see *Grzęda*, cited above, §§ 157-159), in response to a request for a preliminary ruling on the conformity with EU law of the provisions of the Constitution of Malta governing the procedure for the appointment of members of the judiciary.

71. In so far as relevant, the CJEU gave the following reasons:

“70. In the second place, it should be noted that, as pointed out, in particular, by the Commission, although the Prime Minister has, in accordance with the national provisions at issue in the main proceedings, a certain power in the appointment of members of the judiciary, the fact remains that the exercise of that power is circumscribed by the requirements of professional experience which must be satisfied by candidates for judicial office, which requirements are laid down in Article 96(2) and Article 100(2) of the Constitution.

71. Furthermore, while it is true that the Prime Minister may decide to submit to the President of the Republic the appointment of a candidate not put forward by the Judicial Appointments Committee established by Article 96A of the Constitution, he or she is nevertheless required, in such a situation, under Article 96(4) and Article 100(6) of the Constitution, to communicate his or her reasons to the House of Representatives and, except as regards the appointment of the Chief Justice, by means of a declaration published in the Gazette. Inasmuch as the Prime Minister exercises that power only in quite exceptional circumstances and adheres to strict and effective compliance with that obligation to state reasons, that power is not such as to give rise to legitimate doubts concerning the independence of the candidates selected.

72. In the light of all of those factors, it does not appear that the national provisions at issue in the main proceedings relating to judicial appointments are, per se, such as to give rise to legitimate doubts, in the minds of individuals, as to the impartiality of appointed members of the judiciary to external factors – in particular, to direct or indirect influence from the legislature or the executive – and as to their neutrality vis-à-vis the interests before them, and thus lead to those members of the judiciary not being regarded as independent or impartial, the consequence of which would be to undermine

the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

73. In the light of all of the foregoing considerations, the answer to the second question is that the second subparagraph of Article 19(1) [of the Treaty on European Union] must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, *inter alia*, assessing candidates for judicial office and giving an opinion to that Prime Minister.”

THE LAW

I. JOINDER OF THE APPLICATIONS

72. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY REMARKS

73. The Court notes that the Government raised several objections as to the admissibility of the applications – both as a whole and in respect of individual complaints raised by the applicants.

74. Regarding the applications (taken as a whole), the Government submitted that they were inadmissible owing to the fact that they had allegedly been lodged out of time.

75. Referring to individual complaints under Articles 6 and 13 of the Convention, the Government submitted that they were incompatible *ratione materiae* with the Convention.

76. The Court will first examine the preliminary objection raised by the Government against the admissibility of all the applications in their entirety, on the basis of their allegedly belated character. Only if this objection is dismissed will the Court examine the respective objections pertaining to individual complaints raised by the applicants.

III. THE GOVERNMENT’S OBJECTION REGARDING THE ALLEGEDLY BELATED NATURE OF THE APPLICATIONS

A. The parties’ submissions

1. The Government

77. The Government submitted that all applications had been lodged out of time in view of the six-month⁴ time-limit laid down in Article 35 § 1 of the

⁴ Protocol No. 15 to the Convention has shortened to four months the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the relevant events have taken place prior to 1 February 2022, date of

Convention. They argued that in the present case, the start of the time-limit was the date of publication of each of the impugned decisions of the President of the Republic in the Official Gazette.

78. The Government contended that, since it was obvious that the decisions in question were not subject to any appeal under domestic case-law at the time and that the applicants must have been aware of that fact, the appeals that they had lodged with the administrative courts had been manifestly doomed to fail and, as such, ineffective.

79. Alternatively, the Government submitted that the applications had been belated owing to the fact that the final decisions of domestic authorities had been taken by the Supreme Administrative Court, on, respectively: (i) 9 October 2012 (with regard to the first applicant), (ii) 16 October 2012 (with regard to the second applicant), and (iii) 12 June 2013 (with regard to the third applicant). The Government argued that the time-limit for lodging an application with the Court could not be counted from the serving on the applicants of the Constitutional Court's decision of 5 March 2014, because that attempt by the applicants to initiate proceedings before the Constitutional Court had been defective from the outset and thus bound to fail.

2. The applicants

80. The applicants rejected the Government's arguments and submitted that, given the unprecedented nature of the presidential decision at the time, they could not have foreseen that the administrative courts and the Constitutional Court would decline jurisdiction to examine their case. In their view, given that (i) the administrative courts had jurisdiction to review the actions of the public administration, (ii) the list of administrative acts subject to their review was open-ended, and (iii) the President of the Republic could adopt administrative decisions affecting the rights of individuals, they had grounds to believe that those courts had jurisdiction in their case and could annul the decision in question.

81. Moreover, they argued that their approach had been confirmed to be correct by the Constitutional Court, which had stated that they must first exhaust a cassation appeal lodged with the Supreme Administrative Court. Furthermore, even assuming that the President's decision not to appoint them was not subject to any judicial appeal, the legislative provisions under which that decision had been adopted – in particular section 55(1) of the 2001 Act – could still be subject to constitutional review by the Constitutional Court. Consequently, since national law allowed them to lodge a constitutional complaint, they had each lodged an individual appeal with the administrative court (in parallel with the constitutional complaint).

entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

82. They further submitted that, following the Warsaw Regional Administrative Court's unfavourable decisions, they had appealed to the Supreme Administrative Court, which had suspended the proceedings pending the outcome of the proceedings before the Constitutional Court. They argued that, on first occasion, the Constitutional Court had dismissed the complaints lodged by the first two applicants on the grounds that, on the one hand, the complaints challenged the manner in which the President applied the relevant legislation rather than the legislation itself and, on the other hand, that those complaints had been lodged prematurely, as the proceedings before the Supreme Administrative Court had still been pending (thus confirming the need to obtain a final ruling of the Supreme Administrative Court and that this was the avenue that the applicants had to exhaust first).

83. The applicants argued that it was clear from the relevant dissenting opinions of the judges of the Constitutional Court that the latter court had had jurisdiction to rule and should have examined the complaints on their merits. The Supreme Administrative Court had dismissed the cassation appeals, as a result of which the administrative-court remedy had been exhausted. Acting in accordance with the indications of the Constitutional Court regarding the obligation to exhaust the administrative-court remedy, they had then each lodged a constitutional complaint, but to their great surprise, the latter court had declared the complaints in question to be time-barred, on the grounds that the applicable time-limit had begun to run on the date of the publication of the presidential decision – even though it had previously indicated to them that they should have exhausted the cassation-appeal remedy before the administrative courts. They had acted in accordance with the instructions of the Constitutional Court itself and in good faith and could not have foreseen that their complaint would ultimately be declared inadmissible on the grounds of it having been lodged out of time. It was on this ground that they had lodged an appeal against the Constitutional Court's decision, which had ultimately been dismissed. For those reasons, in the view of the applicants, the date on which the decision on the dismissal of that appeal was served on them constituted the start of the time-limit for lodging their applications with this Court.

84. The applicants submitted that, given the above-noted circumstances, the Government's arguments suggesting that they had unduly prolonged the six-month time-limit were entirely without factual basis, unjustified and not supported by any domestic case-law existing at the material time. They added that, given that Polish law was not based on precedent and that no legal provision stipulated that presidential decisions could not be subject to judicial review, they had the right (and indeed the obligation) to exhaust the available remedies.

85. The applicants concerned argued that, in lodging the first constitutional complaint, they had been acting on the assumption that a ruling

that the legislative provision they were challenging was unconstitutional would then enable them to obtain satisfaction before the administrative courts (by requesting the reopening of their individual cases or the quashing of the decision delivered in the case). Viewed from that perspective, the conditions set in the case of *Szott-Medyńska v. Poland* ((dec.), no. 47414/99, 9 October 2003) had been met in the present case. They further added that in acting in accordance with the Constitutional Court's instructions, they could not have foreseen that the Constitutional Court would rule against them. The inconsistency of the Constitutional Court's decisions regarding the admissibility of the concerned applicants' two constitutional complaints could not be invoked by the Government to the detriment of the applicants.

B. The Court's assessment

1. General principles

86. The relevant principles regarding the application of the time-limit for lodging an application were set out in *Jeronovičs v. Latvia* [GC] (no. 44898/10, §§ 74-75, 5 July 2016):

“74. The six-month rule stipulated in Article 35 § 1 is intended to promote security of the law/legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It protects the authorities and other persons concerned from uncertainty for a prolonged period of time (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 258, ECHR 2014 (extracts)). Finally, it ensures that, in so far as possible, matters are examined while they are still fresh, before the passage of time makes it difficult to ascertain the pertinent facts and renders a fair examination of the question at issue almost impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205; *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002; *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004; and *Williams v. the United Kingdom* (dec.) no. 32567/06, 17 February 2009).

75. In assessing whether an applicant has complied with Article 35 § 1, it is important to bear in mind that the requirements contained in that Article concerning the exhaustion of domestic remedies and the six-month period are closely interrelated (see *Galstyan v. Armenia*, no. 26986/03, § 39, 15 November 2007, and *Williams*, cited above).

Thus, where no effective remedy is available to an applicant, the time-limit expires six months after the date of the acts or measures about which he or she complains (see *Hazar and Others v. Turkey* (dec.), no. 62566/00 et seq., 10 January 2002). However, special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation the six-month period could be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see, among other authorities, *Bulut and Yavuz v. Turkey*, (dec.) no. 73065/01, 28 May 2002; *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I; *Volokhy v. Ukraine*, no. 23543/02, § 37, 2 November 2006; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009). The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the

purposes of establishing the date of the “final decision” or calculating the starting point for the running of the six-month rule (see *Prystavskaya v. Ukraine* (dec.), no. 21287/02, 17 December 2002; *Sapeyan v. Armenia*, no. 35738/03, § 21, 13 January 2009; and *Tucka v. the United Kingdom* (no. 1) (dec.), no. 34586/10, § 14, 18 January 2010).

It follows that if an applicant has recourse to a remedy which is doomed to failure from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see, for example, *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006, and *Rezgui v. France* (dec.), no. 49859/99, ECHR 2000-XI)."

87. Furthermore, in view of the interrelated nature of the requirements regarding the exhaustion of domestic remedies and the time-limit for lodging an application, the Court reiterates the general principles regarding the exhaustion of domestic remedies, which were set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 74-76, 25 March 2014):

“74. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71, and *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 70, 17 September 2009).

75. In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III). It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of ‘effective remedies’. It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Van Oosterwijck v. Belgium*, 6 November 1980, Series A no. 40, pp. 16-17, §§ 33-34, and *Azinas*, cited above, § 38).

76. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13, and *Akdivar and Others*, cited above, § 69). It would, for example, be unduly formalistic to require the applicants to exercise a remedy which even the highest court of their country would not oblige them to exhaust (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV)."

2. Application of these principles to the present case

88. The Government, essentially contended that it was clear from the beginning that the appeals lodged by all of the applicants with the administrative courts had been doomed to failure (see paragraphs 77-78 above). In consequence, in the Government’s view, all applicants should have

lodged their applications with this Court within six months of the publication of the respective refusal decisions given by the President of the Republic.

89. Furthermore, the Government argued (see paragraph 79 above) that – even if the Court were to find that attempting to exhaust the administrative-court avenue had not been clearly futile from the outset – the applicants had obviously been wrong in attempting to launch the second set of constitutional proceedings. Instead, in the Government’s view, the applicants should have lodged their applications with this Court within six months of the adoption of final decisions in their respective proceedings before administrative courts.

90. In this connection, the Court notes (see paragraph 11 above) that the decision of 3 January 2008 was without precedent, in so far as it was the first decision in history by which a President of the Republic had refused to appoint persons put forward by the NCJ for judicial positions.

91. Therefore, the Court emphasises that – in the applicants’ specific case – there had been no earlier similar decisions of the President of the Republic and, consequently, no case-law whatsoever existed at the time in question to indicate that no appeal was possible against the President’s decision to reject their respective candidacies. It follows that the Government’s contention (namely, that the applicants should have been aware of the lack of judicial review on the basis of existing case-law – see paragraph 78 above) is unfounded. Consequently, the Court finds that, given the novelty and the unprecedented nature of that situation, it cannot be argued that it was obvious from the beginning that the appeals lodged by the applicants with administrative courts were “obviously futile” or “doomed to failure from the outset”. On the contrary, the Court considers the approach of the applicants to have been correct, in so far as they were seeking to air their complaints at the domestic level before submitting them to the Court – thus acting in line with the obligation to exhaust the available domestic remedies. The Court notes that, by complying with that obligation, the applicants created an opportunity for the development of domestic case-law on this subject (compare *Mansouri v. Italy* (dec.) [GC], no. 63386/16, § 99, 29 April 2025, and *Gherghina v. Romania* (dec.), [GC] no. 42219/07, § 106, 9 July 2015).

92. The Court will now consider the Government’s alternative argument, which was based on the contention that the constitutional complaint lodged after the end of the administrative-court proceedings was clearly bound to fail. On this note, the Court reiterates (as fully relevant) its findings above as to the unprecedented character of the situation in which the applicants found themselves as a result of the President’s refusal to appoint them. Consequently, the precautionary approach adopted by these applicants – consisting of simultaneously exploring two legal avenues (neither of which appearing as obviously futile at the time) – cannot be held against them.

93. This argument is further reinforced by the course of the relevant domestic proceedings and the reasoning of the decisions issued therein. Notably, in 2008 all applicants lodged appeals with administrative courts (see

paragraph 15 above), while the first two applicants also lodged constitutional complaints with the Constitutional Court (see paragraph 19 above). As a result, the proceedings brought by the applicants to the Supreme Administrative Court (see paragraph 17 above) were suspended, pending the outcome of the proceedings before the Constitutional Court. The latter court, in turn, gave a decision by which it found the constitutional complaints – in so far as they concerned the lack of access to a court – to be premature, given that the proceedings before the Supreme Administrative Court had not been concluded (see paragraph 20 above). Consequently, following the Supreme Administrative Court’s decisions terminating the relevant proceedings (see paragraph 18 above), the applicants – guided by the suggestions in the Constitutional Court’s first decision – lodged new constitutional complaints raising issues that had previously been considered premature (see paragraph 23 above). The Court notes the lack of consistency in the approach of the Constitutional Court, which – in the second set of proceedings – clearly departed from that court’s earlier stance and deemed the new complaints to have been lodged out of time in their entirety.

94. Consequently, the Court rejects the Government’s argument that the domestic remedies used (that is the appeals lodged with administrative courts and the constitutional complaints) had clearly been bound to fail in the light of the circumstances, which had been known to the applicants at the relevant time. To hold otherwise would run counter the Court’s approach to the rule of exhaustion of domestic remedies, which requires applicants to use remedies that are not obviously futile (see *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, § 225, 9 April 2024 and the references cited therein). Thus, the Court considers that the applicants availed themselves of domestic remedies and only later became aware of the lack of effectiveness of those remedies. Accordingly, the six-month period should be calculated from the point at which the applicants became aware of these circumstances (see, *mutatis mutandis*, *Jeronovičs*, cited above, § 75 and the case-law cited therein). Given the specific circumstances of the case and the novelty of the relevant issue at the domestic level at the time in question, the Court considers that the applicants only became aware of the ineffectiveness of both domestic remedies after the final decision of the Constitutional Court refusing to entertain their complaints (see paragraph 25 above).

95. Consequently, the Court finds that the applicants, by lodging their applications with this Court on 7 September 2014 – that is, within six months from the serving on their representatives of the Constitutional Court’s decisions of 5 March 2014 (see paragraph 25 above) – observed the relevant time-limit.

96. In view of its findings above, the Court rejects the Government’s preliminary objection and finds that the applications were introduced within the applicable six-month period following the final domestic decision, which

(in their particular case) was the second-instance decision of the Constitutional Court (see paragraph 25 above).

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

97. Relying on Article 6 of the Convention, the applicants complained that the domestic courts had refused to hear their cases concerning the President of the Republic's decision not to appoint them as judges. As a result, they argued that they had effectively been denied the right of access to a court, as provided in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

1. *Applicability of Article 6*

(a) **The parties' submissions**

(i) *The Government*

98. The Government contended that the applications were incompatible *ratione materiae* with the relevant provision of the Convention. In that connection, they maintained that no “civil” rights were at issue and that, accordingly, Article 6 of the Convention, in its civil limb, was not applicable to the present case.

99. The Government submitted that domestic law did not guarantee any right to hold functions involving the exercise of public authority – including the right to be appointed to the office of judge by the President of the Republic. Consequently, a junior judge and a candidate for judicial office could not assert a right to be appointed by the President of the Republic, and the President's refusal to make such an appointment did not, in the Government's view, amount to an interference with the candidate's individual rights.

100. The Government submitted that the dispute raised by the applicants fell predominantly within the domain of public and constitutional law. They further observed that, upon appointment by the President of the Republic, a candidate for judicial office was vested with powers pertaining to the exercise of judicial authority. They concluded that the applications under review concerned exclusively the exercise of public power (*acta iure imperii*).

101. The Government maintained that the President's decision had not amounted to any restriction on the applicants' right of access to public service, as that right did not encompass the right to pursue any profession connected with public service. They submitted that Article 60 of the Constitution guaranteed only the right to apply for (but and not to be appointed to) a public service position. The Government argued that no such

right arose from the resolution of the NCJ submitting a motion that the applicants be appointed by the President of the Republic. They further added that the applicants, as junior judges, did not benefit from the same guarantees of independence as fully qualified judges.

102. The Government took the view that the two cumulative conditions of the *Vilho Eskelinen* test (as established in *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II) had been satisfied in the present case, with the result that Article 6 of the Convention was not applicable to the applicants' complaints. They relied on the domestic legal framework, which, they argued, excluded presidential judicial appointments from judicial review altogether, and on administrative courts' case-law holding that such appointments are not subject to review of those courts. In the Government's view, the decisions issued by the President on appointment to judicial posts are autonomous acts of constitutional law, not administrative acts – as shown by the lack of statutory rules on form, procedure, time-limits, and appeals and by the requirement that only acts expressly designated by statute may qualify as administrative decisions.

103. The Government further argued that, under the Constitution and related case-law, decisions on judicial appointments formed part of the President's discretionary competences: he or she was not bound by NCJ motions and could refuse to appoint a certain candidate in the event that he saw a constitutional obstacle, and such refusals were regarded as non-justiciable. The President, although a public authority, was not considered to be an administrative authority and did not act within administrative procedure when appointing judges; instead, he or she exercised a constitutional competence derived from his or her institutional status and democratic mandate, conferring judicial authority on successful candidates. Subjecting that competence to judicial review would, the Government argued, upset the separation and balance of powers, since the appointment decision was a personal competence, did not require justification, and was exempt from any external oversight or countersignature.

104. The Government emphasised the particular features of the procedure for selecting and appointing candidates to judicial office. On the one hand, they pointed to the exclusion of external oversight at various stages of the procedure; on the other hand, they highlighted the existence of thorough, multi-tiered scrutiny of applications by several bodies – including the boards and general assemblies of the relevant courts, the NCJ, and the President of the Republic. The Government argued that, since the legislature had not provided for the possibility of lodging any appeal against decisions of the President of the Republic, it was beyond doubt that such decisions were excluded from the possibility of judicial scrutiny.

105. The Government maintained that there was no basis for asserting the existence of a lacuna in domestic law resulting in the absence of a remedy against a presidential refusal to appoint a judge. They drew a distinction

between the present cases and those of *Baka v. Hungary* ([GC], no. 20261/12, 23 June 2016) and *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018), which concerned interferences with the rights of sitting judges. By contrast, the applications under review concerned candidates for judicial office, who, in the Government's view, could not claim any entitlement to appointment.

106. As regards the second limb of the *Vilho Eskelinen* test, the Government submitted that this condition was likewise fulfilled. They submitted that considerations of general interest – namely, the preservation of the institutional balance between various branches of government and the composition of the judiciary in accordance with the values represented by the President of the Republic, who derived his legitimacy from democratic election – justified denying the applicants the right of access to a court.

107. The Government acknowledged that the President's competence to appoint judges entailed an element of discretion. However, they argued that that power was not unlimited given that only candidates who had obtained the favourable opinion of the NCJ could be appointed by the President. They further submitted that the involvement of the head of State (who enjoyed strong democratic legitimacy) in the appointment process served to reinforce the legitimacy of judges in the exercise of judicial authority. The Government contended that introducing a right of appeal against presidential decisions within this context would have disrupted the balance between the judiciary and the executive, and would, in effect, have granted the judiciary exclusive control over access to judicial office.

108. Lastly, the Government submitted that the Convention did not impose any specific procedure for the appointment of judges on the Contracting States. Referring to the Court's case-law in *Ramos Nunes de Carvalho e Sá v. Portugal* ([GC], nos. 55391/13 and 2 others, 6 November 2018) and *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, 1 December 2020), they observed, firstly, that the Convention did not require States to adhere to a particular theoretical constitutional model governing the permissible interaction between the executive and the judiciary, and secondly, that a certain degree of interaction between the three branches of power was not only inevitable but also necessary – provided that none of them encroached unduly upon the functions of the others. In this respect, the Government submitted that the Contracting States should be afforded a margin of appreciation, since national courts were, in principle, better placed than an international court to determine how best to uphold the interests of justice and the rule of law in a democratic society.

(ii) *The applicants*

109. The applicants rejected the Government's arguments. They argued that the dispute did not concern a right to be appointed as a judge (which was not guaranteed under Polish law), but the constitutionally guaranteed right of

equal access to public service under Article 60 of the Polish Constitution, read together with Article 45 (right of access to a court) and Article 77 (prohibition on excluding judicial review for certain constitutional rights). They relied on Constitutional Court case-law (notably the judgments in cases no. SK 43/06 and SK 57/06) and Polish legal doctrine to argue that Article 60 imposed positive obligations on public authorities: recruitment for public service should be transparent, non-arbitrary, conducted under equal conditions for all candidates and subject to judicial review of legality, failing which the right became illusory.

110. The applicants submitted that the Constitutional Court had interpreted Article 60, in conjunction with Article 45, as requiring judicial review of NCJ decisions in judicial recruitment; this had led the legislature to introduce the possibility of lodging an appeal to the Supreme Court against NCJ resolutions, treating such proceedings as a “case” within the meaning of the Constitution. In their view, the presidential stage was just a subsequent step in the same appointment procedure; therefore, the same constitutional guarantees, (including the right of access to a court) had to extend to the President’s decision not to appoint them.

111. The applicants argued that, since the proceedings conducted by, respectively, the NCJ and the President of the Republic had each constituted one of the stages of the same procedure for recruiting judges, there was no reason to consider that Article 60 of the Constitution applied only to the stage before the NCJ (and not to that conducted by the head of State). In their view, it would be unreasonable to argue that the procedure before the NCJ was administrative in nature, concerned the right of an individual to equal access to public service and fell within the scope of the right of access to a court, whereas the same did not apply to the procedure conducted by the President of the Republic (who enjoyed arbitrary decision-making power).

112. According to the applicants, it was clear from the above-noted factors that they had indeed, at least on arguable grounds, enjoyed the domestically recognised right of equal access to public service in the form of the right to a lawful, fair and non-arbitrary judicial appointment procedure and that, consequently – under Articles 45 § 1 and 77 § 2 of the Constitution – they should have had access to a court in order to secure that right.

113. The applicants pointed out that the Government’s argument implying that judges were excluded from the protection of Article 6 of the Convention clearly ran counter to the principles set out by the Court in its case-law, according to which the various types of disputes relating to the career of judges did indeed fall within the scope of that provision of the Convention. Referring to the judgment in *Bilgen v. Turkey* (no. 1571/07, 9 March 2021), they pointed out that the Court ruled that applicants could not be excluded from the protection of Article 6 solely because of their status as judges. They pointed out that the principle that disputes relating to the status of judges were excluded from the right of access to a court because of the public-law nature

of the dispute in question could not be inferred from either the Constitution or, even less so, from the Convention.

114. Relying on the Court’s case-law, the applicants argued that disputes concerning equal access to public service and disputes concerning judges’ careers fell in principle within the “civil” limb of Article 6 – even though the Convention did not guarantee a right to appointment or promotion as such. They maintained that the Government had failed to establish that the cumulative conditions of the *Vilho Eskelinen* test had been met in the present case.

115. With regard to the first condition of the *Eskelinen* test, the applicants stated that it was not surprising to them that the Government had not cited any provision of domestic law that would expressly exclude from the right of access to a court those candidates for the office of judge whose applications had been rejected by the President of the Republic, since no such provision existed. They argued that the absence of an explicit provision in domestic law granting access to a court in such cases should not be understood as denying that right. They argued that, unlike in the case of *Bilgen* (cited above) – where the Court had found that the exclusion of the right of access to a court was expressly stated in the Constitution – in the present case, not only did no such exclusion exist, but, on the contrary, the Constitution itself expressly provided the right of access to a court for all those whose constitutionally guaranteed rights had been violated and prohibited the legislature from denying them access in this regard.

116. As to the second limb, they contended that even if some limitations on court access for disputes involving presidential competences might be conceivable, the State had not cited any objective grounds related to State interests that would justify excluding from Article 6 protection disputes concerning judicial appointments. They argued that, given the special role of judges, no “special relationship of trust” between judges and the State could justify denying them access to a court in matters that directly affected their status and, more broadly, judicial independence, as the Court had held in *Bilgen*.

117. The applicants further submitted that the presidential competence to appoint judges differed qualitatively from other exclusive competences (such as conferring orders and decorations, setting election dates, or exercising legislative vetoes) because it directly affected individual constitutional rights – in particular, equal access to public service and the right of access to a court – and directly impacted the independence and impartiality of the judiciary. They maintained that any judicial review of such presidential decisions would be confined to legality and respect for constitutional limits – not to substituting judicial discretion for that of the President – and therefore would not upset the separation of powers but would instead safeguard the rule of law. In support of their argument the applicants referred to the findings set out in Supreme Administrative Court’s judgment of 29 February 2012 (case

no. I OSK 2196/11) that “no body of public authority in a State governed by law can stand above the law and outside the supreme power of the nation – even if the legitimacy of its authority is very strong because it was elected to office in universal, equal and direct elections”. The Supreme Administrative Court had also held, in that judgment, that “in a State governed by the rule of law, the decision-making process – including in matters involving a degree of discretion – should, to some extent, be transparent, and the authorities, while not yielding to current pressures of public opinion, must nonetheless be mindful of the need to provide a rational justification for the decisions they take.”

118. The applicants contended that the exclusion from the possibility of judicial review of presidential decisions on the appointment of judges was detrimental to the public’s perception of the judiciary. On this point, they emphasised that the situation in which the head of State could, at his or her discretion, reject a candidate for a judicial post (including in a higher court and even for purely political reasons) was likely to undermine citizens’ confidence in the independence and impartiality of the judiciary.

119. In conclusion, the applicants argued that there had been no justification for their being denied the right of access to a court, and that Article 6 was indeed applicable to the case under review.

(iii) The third-party interveners

(α) The Commissioner for Human Rights of the Republic of Poland

120. The Commissioner for Human Rights of the Republic of Poland submitted that it was clear from the relevant national case-law that the power of the President of the Republic to refuse to appoint judges was limited and that presidential decisions in that regard were not subject to review by the administrative courts. However, that did not mean that presidential decisions in that regard were excluded from the possibility of any review whatsoever. It also followed that the President of the Republic was obliged to give reasons for any decision taken by him to refuse to appoint a candidate to a judicial post. In the Commissioner’s view, the absence of the possibility for an interested candidate to appeal against a presidential decision refusing to appoint him or her rendered illusory the President’s obligation to give such reasons.

121. The intervener submitted that the Polish law provided a two-stage procedure for selecting candidates for the position of a judge. Given that the procedure was supposed to be objective and fair and to serve to select the best possible candidates, the fact that only the first stage of the procedure before the NCJ was regulated in detail by law did not allow the conclusion to be drawn that the President had absolute discretion. On the contrary, the absence of specific regulations governing the selection procedure at the stage when

the NCJ's motions were before the President meant that the latter had no discretion.

122. The intervener went on to state that, under the procedure prescribed for the appointment of candidates to the position of a judge, interested candidates did not enjoy effective judicial protection owing to their inability to challenge the President's decision.

123. The intervener further argued that the procedure for appointing a candidate to the position of a judge was covered by the guarantees of the right of access to a court. There was no doubt that the President's refusal to appoint a candidate to the position of a judge put forward by the NCJ would have a significant impact on the candidate's civil rights within the meaning of Article 6 of the Convention.

124. Referring to the case of *Guðmundur Andri Ástráðsson* (cited above), the intervener stated that the Convention set out the principle of judicial protection in the event of a flagrant violation of national laws regulating the procedure for appointing candidates to the position of judge, the aim of which was to ensure that the courts were independent, impartial and established by law. In the intervener's view, it followed from the principles established in that area by the CJEU and this Court that the organisation of the judicial system in a democratic State could not be left entirely to the discretion of the representatives of the executive power.

(β) The Polish Judges' Association Iustitia

125. The Polish Judges' Association Iustitia ("Iustitia") submitted that the cases under review concerned not only the individual situations of the applicants but also issues of the utmost importance relating to the independence of members of the judiciary from the executive branch of the government and politicians. It further argued that the decision to refuse to appoint judges to senior positions had set a dangerous precedent by rendering the judiciary even more dependent on the executive and thus violating the principles of the separation of powers and checks and balances between the branches of government.

126. Iustitia further argued that the legislation regulating the procedure for selecting and appointing candidates for the position of judge clearly indicated that the President of the Republic had no autonomous power to evaluate candidates, other than the power to appoint a representative to sit on the NCJ and thus to participate in the selection process.

127. The intervening association submitted that it was possible to recognise the President of the Republic as an authority that carried out public-administration tasks and to recognise as administrative decisions his refusals to appoint the applicants to vacant judicial posts. Such decisions had had the same effect as any administrative decision and should therefore have been adopted in a manner consistent with the applicable administrative procedures.

Consequently, the above-mentioned decisions should have been reasoned and subject to review.

128. Iustitia pointed out that not only were judges not explicitly excluded from enjoying the right of access to a court, but also that the fact that they were members of the judiciary (and independent of the other branches of government) constituted a further argument in favour of such access. When assessing any justification put forward by the State for excluding judges from enjoying the right of access to a court in respect of issues relating to their career and their irremovability from office, consideration should be given to the public interest in preserving the role, independence and integrity of the judicial branch of government in a democratic State governed by the rule of law. Although an individual judge might be the immediate beneficiary of the full protection of his or her rights under Article 6, that protection ultimately benefited all persons entitled to an “independent and impartial tribunal”. Transparency in the appointment of judges and compliance with the law – in particular human rights law – was crucial in order to prevent the executive and legislative branches from unduly influencing the independence of judges.

(b) The Court’s assessment

(i) General principles

129. The relevant general principles concerning the applicability of Article 6 of the Convention within the context of disputes concerning the appointment, career and dismissal of judges have been summarised by the Court in *Baka* (cited above, §§ 100-06) and – more recently, also within the Polish context – in *Grzęda v. Poland* ([GC], 43572/18, §§ 257-64, 15 March 2022); see also *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, §§ 220-28, 8 November 2021; *Gumenyuk and Others v. Ukraine*, no. 11423/19, §§ 44-59, 22 July 2021; *Eminağaoğlu v. Turkey*, no. 76521/12, §§ 59-63, 9 March 2021; and *Bilgen*, cited above, §§ 47-52 and §§ 65-68, 9 March 2021.

(ii) Application of the general principles in the present case

130. In the light of the relevant general principles, in order to determine the applicability of Article 6 in the present case, the Court needs to examine (i) the existence of a right; (ii) whether there was a “genuine” and “serious” dispute about a right; and (iii) whether the right in question was “civil” within the meaning of that provision (see *Grzęda*, cited above, § 257; *Gloveli v. Georgia*, no. 18952/18, § 35, 7 April 2022; *Sadowski v. Poland*, no. 56297/21, § 51, 9 May 2025; and *Misiūnas v. Lithuania*, no. 38687/22, § 85, 7 October 2025).

(α) Existence of a right

131. In order for Article 6 to be applicable under its civil head, there must be a dispute over a right which can be said, at least on arguable grounds, to be recognised under domestic law (see *Grzęda*, cited above, § 257). The Court reiterates that the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 100, 19 September 2017 and the case-law cited therein).

132. It is to be noted that, contrary to the Government's contention, the applicants have not claimed before the Court the right to exercise public authority; specifically, they have not claimed a substantive right to be appointed by the President of the Republic to the post of judge (compare and contrast *Manowska and Others v. Poland* (dec.), nos. 51455/21 and five others, § 100, 1 April 2025, where the applicants essentially claimed to have a right to be appointed to judicial posts at the Supreme Court and to work as Supreme Court judges). The applicants conceded that no "right to become a judge" existed in the Polish legal system.

133. The Court notes that the right on which the applicants relied was the right of equal access to public service set out by Article 60 of the Polish Constitution (see paragraph 26 above), which expressly provides the right of access to public service on the basis of the principle of equality. The applicants have additionally cited, in this respect, Article 25(c) of the ICCPR (see paragraph 62 above).

134. In order to determine whether the applicants had such a right in the present case, the Court must first analyse the actual nature of the complaints that they lodged with the domestic authorities (see *Bilgen*, § 54, and *Gloveli*, § 36, both cited above).

135. In the domestic proceedings, the applicants raised complaints about the breach of their right of equal access to public service by the President's refusal to appoint them to judicial posts (see paragraphs 15, and 23 in conjunction with 19 above). On that basis, they complained that the decisions rejecting their candidacies, which had not contained any reasoning, had been arbitrary and thus contrary to the guarantees inherent in Article 60 of the Constitution. The Court therefore considers that the crux of the proceedings in question was the right to a fair procedure in the examination of an application for a judicial post (see, *mutatis mutandis*, *Gloveli*, cited above, § 38, and the case-law cited therein). It should be noted in this connection that the Court has accepted, in its case-law, that the right to a lawful and fair promotion procedure could be considered as constituting a recognised right in domestic law, at least arguably, where the national Constitution in question and its interpretation by the Constitutional Court provided the right of equal access to public service (see *Stylianidis v. Cyprus* (dec), no. 24269/18, § 41, 8 February 2024 and the case-law cited therein).

136. Against that background, the Court observes that it has previously found that Polish law – and in particular Article 60 of the Constitution – provides the right of equal access to public service within the context of the judiciary. In *Dolińska-Ficek and Ozimek*, (cited above, §§ 82 and 230-31), and in *Sadowski* (cited above, § 53) the Court relied on Article 60 of the Constitution to characterise the applicant’s complaints about judicial recruitment and appointments as raising a dispute over a “right” within the meaning of Article 6 – namely the substantive right of access, on the basis of equality, to public office (and specifically to the judiciary). A notable difference between the above-mentioned cases and the one under review is that, in the former, the applicants were afforded some form of procedural review of the substantive right in question (with the “quality” of that review forming the main issue in those cases); conversely, the central issue in the case at hand is that the applicants, who argued that under the same Article 60 of the Constitution they had the substantive right of equal access to judicial posts, were nevertheless not afforded any procedural review.

137. The Court further observes that, while the Constitutional Court has declined to review the constitutional complaints lodged by the applicants on the merits (see paragraphs 20 and 25 above), it had previously given rulings which clearly confirmed that the right of equal access to public service (as provided by Article 60 of the Constitution) applied to the proceedings concerning the filling of judicial posts (see the Constitutional Court judgments of 29 November 2007 and 27 May 2008 referred to in paragraphs 46 and 47 above). At this juncture, the Court considers it appropriate to reiterate, in line with those judgments, that in the Polish legal order: (i) the right of equal access to public service includes the right to apply for a specific post within that service, including in the judiciary, (ii) while public authorities are entitled to establish specific conditions of access to particular branches of the service, they must also ensure adequate guarantees as to the lawfulness of decisions taken in that regard, (iii) any form of arbitrariness or unfettered discretion in the sphere of judicial appointments must be excluded. Taken together, these elements demonstrate that Polish constitutional law not only enshrines a general principle of equal access to judicial office, but also requires that decisions on that matter be taken through a transparent procedure offering candidates protection against arbitrary refusal.

138. Against that background, the Court notes that, at the relevant time, the applicants were sitting junior judges who had been formally admitted to the competition and confirmed by the NCJ as fulfilling all statutory requirements to participate in the relevant judicial appointment procedure (see paragraphs 6, 8 and 37 above). In the Court’s view, the applicants – as members of the judiciary (see paragraph 155 below) and as eligible candidates who had successfully passed all statutory thresholds – could claim to fall within the scope of the constitutional guarantees stemming from

Article 60 of the Constitution. To hold otherwise – namely that the right guaranteed by that provision extends only up to the final stage before the National Council of the Judiciary and ceases to apply to the stage before the President of the Republic – would deprive it of any practical effect.

139. The Court notes in this connection that for a “right” to trigger the application of Article 6 § 1 of the Convention, it is sufficient to show that the applicant could arguably claim an entitlement under national law. As noted in *Grzęda* (cited above), 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 had he been given access to a court (*ibid.*, § 268). Indeed, in *Grzęda* (cited above, § 286), the Court recognised the existence of a civil right to serve a full term of four years as a judicial member of the NCJ arising from the Constitution and ordinary legislation – even though the Government argued that domestic law expressly excluded access to any court in disputes concerning that right.

140. In *Misiūnas* (cited above, §§ 87-88), the Court accepted that, under Lithuanian law, a former judge enjoyed an arguable “right to a fair procedure in the examination of an application by a former judge for a judicial post”, which derived from the relevant statutory framework on eligibility. The Court essentially held, in that case, that where the domestic legislation conferred a structured opportunity to be considered for judicial office upon candidates who meet clearly defined legal criteria, this generated a legitimate expectation that their applications would be examined in accordance with a lawful, non-arbitrary procedure (*ibid.*, §§ 88 and 110). In the present case, similarly to the facts in *Misiūnas* (cited above, § 88) and unlike those in *Gloveli* (cited above, § 40), the Government did not argue that the applicants did not satisfy the statutory requirements for participation in a judicial appointment procedure. Moreover, given that the NCJ clearly confirmed that the applicants had satisfied all statutory requirements to participate in the judicial appointment procedure, the Court finds that the discretion exercised by the President of the Republic at the final stage of appointment does not negate the arguability of the applicants’ argument that they had fulfilled all the statutory requirements to be appointed to the posts for which they had been put forward (see, *mutatis mutandis*, *Oktay Alkan v. Türkiye*, no. 24492/21, § 41, 20 June 2023).

141. In the light of the foregoing, and having regard to the terms of Article 60 of the Constitution (which provides the right of access to public service based on the principle of equality), as interpreted by the Constitutional Court (see paragraph 137 above), the Court finds that in the present case the applicants could claim, on at least arguable grounds under Polish law, a right to a fair procedure in the examination of an application for a judicial post – including the right to be protected against arbitrary rejections (see, *mutatis*

mutandis, the above-cited cases of *Gloveli*, §§ 38 and 41, and *Misiūnas*, §§ 88-89).

(β) “Genuine” and “serious” dispute

142. The Court considers that the dispute was “genuine” and “serious” as it concerned access to public service on the basis of the principles of equality, and in particular of the fairness of the judicial selection and appointment procedure – despite the fact that the domestic courts had not allowed the applicants’ appeals (see, *mutatis mutandis*, *Fiume v. Italy*, no. 20774/05, § 35, 30 June 2009; *Gloveli*, cited above, § 42, *Frezadou v. Greece*, no. 2683/12, § 26, 8 November 2018,; and *Misiūnas*, cited above, § 90).

(γ) “Civil” nature of the right: the *Eskelinen* test

143. It remains to be determined whether the nature of the right in question was civil (within the autonomous meaning of Article 6 § 1), in the light of the criteria developed in *Vilho Eskelinen and Others* (cited above; see also *Gloveli*, § 42, and *Misiūnas*, § 90, both cited above). The Court reiterates that the *Eskelinen* test, which aims at determining the nature of the right at stake, comprises two cumulative conditions which have to be met in order for the State to be able to rely before the Court on an applicant’s status as a civil servant to exclude the protection embodied in Article 6, namely: (i) the State in its national law must have excluded access to a court for the post or category of staff in question; and (ii) such exclusion must be justified on objective grounds in the State’s interest (see *Vilho Eskelinen and Others*, § 62 and *Grzęda*, § 292, both cited above).

– *The first condition of the Eskelinen test*

144. The Court will now examine the first condition of the *Eskelinen* test – that is, whether national law “expressly excluded” the right of access to a court in respect of the post or category of staff in question (see *Vilho Eskelinen*, cited above, § 62), or whether, even without an express provision to this effect, it has been clearly shown that domestic law excludes access to a court for the type of dispute in question (see *Grzęda*, cited above, § 292).

145. The Court would begin by noting that the instant case concerns an appointment to a judicial post and that it has already had an opportunity to apply the *Eskelinen* test in a similar context. Notably, in its previous case-law, the Court has analysed scenarios including: (i) appointments of sitting judges to other positions within the judiciary (see, among other authorities, *Juričić v. Croatia*, no. 58222/09, §§ 52-57, 26 July 2011; *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, 9 October 2012; and *Sadomski*, cited above, §§ 55-65), (ii) appointments (including reappointments) of persons who had been serving as judges in the past (see

the above-cited cases of *Gloveli*, §§ 43-52; and *Misiūnas*, §§ 91-97), and (iii) initial appointments to judicial posts of candidate judges who had completed their judicial training (see *Oktay Alkan*, cited above, §§ 49-58).

146. Against that background, the Court notes that the situation of the applicants in the case under review does not fit squarely within any of the scenarios cited above.

Firstly, the applicants were not merely external candidates seeking initial access to the judiciary but sitting junior judges who already exercised judicial functions essentially identical to those of fully qualified judges, on the basis of a statutory regime which treated the junior-judge post as an integral, albeit initial, stage of a “standard” judicial career (that is one that did not involve becoming a judge on the basis of experience acquired in another legal profession or in legal academia).

Secondly, unlike in cases concerning purely internal promotion or the transfer of fully appointed judges, their situation combined two elements: on the one hand, they already were part of the judiciary and carried out adjudicatory functions, while, on the other hand, the posts for which they had applied were the first fully independent judicial offices for which service as a junior judge for a minimum period was a statutory precondition.

Thirdly, their position also differed from that of former judges seeking reappointment (as in *Misiūnas*), because the applicants’ entitlement to be considered for judicial posts arose directly and continuously from their existing junior-judge status and from the detailed statutory framework governing progression from that status to full judicial office (including a thorough, and recent, examination by various bodies of the fulfilment of all legal requirements), rather than from a past mandate.

147. Turning to the parties’ arguments, the Court notes the Government’s argument that the right of access to a court in respect of a candidate for a judicial post was excluded by Polish constitutional law and by the principle of the separation of powers (see paragraphs 102–103 above). The applicants disputed this assertion and argued that domestic law did not expressly deny the right of access to a court altogether to persons whose candidacies for judicial posts had been rejected (see paragraph 115 above).

148. The Court notes the opposing views of the parties as to whether the first condition of the *Eskelinen* test has been satisfied here. It further notes that the case under review differs from those previously examined, in respect of Poland, as regards the civil nature of the right of access to a judicial post, in so far as in those cases the applicants’ complaints pertained to the review of resolutions taken by the recomposed NCJ (that is, they pertained to the first stage of the appointment procedure). In the case of *Dolińska-Ficek and Ozimek* (cited above, § 231) the applicants – candidates for judicial posts who had not been put forward by the NCJ – had undisputed access to a court in order for the relevant NCJ resolution to be reviewed (with the legitimacy of the specific judicial body competent to conduct the review having been

contested by the applicants in that case). Furthermore, in *Sadomski* (cited above, §§ 57-65) the applicant's access to a court – in order to secure a review of an NCJ resolution refusing to submit a motion for his appointment to a judicial post – was constrained by legislative amendments after the relevant selection procedure had been set in motion. In the present case, however, notwithstanding the fact that the case-law of administrative courts on the matter became well-established after the events giving rise to the complaints of the applicants (see paragraphs 54-55 above), there were no statutory provisions or case-law at the time of the events in question that clearly and unambiguously set out the issue of gaining access to a court in order to challenge the President of the Republic's refusal to appoint candidates to judicial positions.

149. Notwithstanding the above, the Court considers that this question can be left open, since in any event – for the reasons set out below – the second condition has not been met (compare *Grzęda*, cited above, § 294).

– *The second condition of the Eskelinen test*

150. The Court will now examine whether, in the present case, denying the applicants the right of access to a court could have been justified on objective grounds as being in the State's interest.

151. In this connection, the Court has on many occasions emphasised the special role in society of the judiciary which – as the guarantor of justice, a fundamental value in a State governed by the rule of law – must enjoy public confidence if it is to be successful in carrying out its duties (see *Baka*, cited above, § 164, with further references; see also *Eminağaoğlu*, §§ 76 and 78, and *Bilgen*, § 58, both cited above). Given the prominent place that the judiciary occupies among State organs in a democratic society and the 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, with further references), the Court must be particularly attentive to the protection of members of the judiciary against measures affecting their status or careers that could threaten their judicial independence and autonomy. The Court has stated that judicial independence is a prerequisite of the rule of law (see *Guðmundur Andri Ástráðsson*, cited above, § 239) and that judges can uphold the rule of law and give effect to the Convention only if domestic law does not deprive them of the guarantees of the Articles of the Convention regarding matters directly touching upon their individual independence and impartiality (see *Grzęda*, cited above, § 264). In this connection, as far as the characterisation of a court as “independent” within the meaning of Article 6 § 1 is concerned, it has held that regard must be had, *inter alia*, to the manner of the appointment of its members (see, for instance, *Ramos Nunes de Carvalho e Sá*, § 144, and *Guðmundur Andri Ástráðsson*, § 230, both cited above). As stated by the Court in *Guðmundur Andri Ástráðsson*, there appears to be a considerable

consensus among the member States that the requirement of a “tribunal established by law” encompasses the process of the initial appointment of a judge to office (*ibid.*, § 228).

152. The Court observes that objective criteria accompanied by a transparent process are regarded as the standard in the selection, appointment and promotion of judges as a safeguard of judicial independence and autonomy, so as to avoid arbitrary interference or the improper use of discretion (see *Bilgen*, cited above, § 63). In that connection, in its previous case-law the Court has referred to paragraph 25 of Opinion. no. 1 (2001) of the Consultative Council of European Judges (CCJE), which recommends that “the authorities responsible in member States for making and advising on appointments and promotions should now introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection and career of judges are based on merit, having regard to qualifications, integrity, ability and efficiency” and has highlighted the importance of a rigorous process for the appointment of ordinary judges in order to ensure that the most qualified candidates – both in terms of technical competence and moral integrity – are appointed to judicial posts (see *Guðmundur Andri Ástráðsson*, cited above, §§ 221-22). The Court has also stated that domestic law needs to be couched in unequivocal terms, to the extent possible, so as not to allow arbitrary interferences in the appointment process, including by the executive (*ibid.*, § 230). In this connection, the Court notes that there exists a clear link between the integrity of the judicial appointment process and the requirement of judicial independence set out in Article 6 § 1 (see *Thiam*, no. 80018/12, §§ 81-82, 18 October 2018; see also *Gloveli*, cited above, § 50 *in fine*).

153. The Court further emphasises that arbitrariness entails a negation of the rule of law (see *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 145, 21 June 2016) and cannot be tolerated in respect of procedural rights any more than in respect of substantive rights. In that sense, the Convention is essentially a rule-of-law instrument (see *Grzęda*, cited above, § 339). The Court further reiterates the observation that it made in *Bilgen* (cited above, § 63), that – without calling into question the legitimacy of existing systems for the appointment of judges in the member States – the right of a member of the judiciary to protection against, *inter alia*, an arbitrary appointment is supported by international norms as a corollary of judicial independence.

154. More recently and in respect of Poland, the Court has also found that members of the judiciary should enjoy protection from arbitrariness from the legislative and executive power – notably in connection with a decision on a judge’s right to remain in office past a certain age (see *Pajak and Others v. Poland*, nos. 25226/18 and 3 others, § 139, 24 October 2023), and within the context of the transfer of a judge against his will effected between different divisions of the same court (see *Biliński v. Poland*, no. 13278/20, §§ 60-69, 15 January 2026).

155. Turning to the circumstances of the case under review, the Court notes that the Government acknowledged that the decision by the President of the Republic to decline to appoint the applicants to judicial posts had not been reviewed (and nor had it been open to review) by any body exercising judicial powers. However, the Government essentially argued that the exclusion of the possibility of seeking judicial review had nevertheless been called for under the circumstances underlying the instant case, given the exclusive constitutional competences and the role of the President of the Republic in the appointment of judges (see paragraph 103 above; compare *Misiūnas*, cited above, §§ 70 and 108).

156. The Court notes that a similar (albeit not uniform) interpretation arises from the domestic case-law regarding such matters – both that given in the proceedings concerning the applicants, and that in other cases. Administrative courts, as already noted above (see paragraph 148 above), have developed a rather coherent approach in that they have deemed the decisions of the President of the Republic to fall outside their jurisdiction (as delineated in the 2002 Act – see paragraphs 52-58 above). The Court notes, however, that in some instances (see paragraph 53 and 57 above) administrative courts have gone beyond that finding and made important observations on the danger that would be posed to the constitutional principle of equal access to public service (and of the independence of the judiciary in general) if the President of the Republic were to have unlimited power to refuse judicial appointments. As regards the rulings of the Constitutional Court arising from the President's decision to refuse to appoint the applicants, the Court cannot but reiterate its concern (see paragraph 93 above) as to the lack of consistency between the decisions given in the two sets of proceedings. That said, the Court notes the findings of the Constitutional Court recorded in the judgment of 5 June 2012 (see paragraph 51 above) – notably in so far as they characterise the nature of the presidential competence as an emphasis on the independence of the judiciary from the other branches of the government, exercised within the boundaries of the principles and values expressed in the Constitution rather than an authorisation for the President of the Republic to act completely freely.

157. The Court notes the Government's argument that, at the relevant time, the applicants had been working as junior judges (see paragraph 6 above) and thus had not been fully qualified judges benefitting from the same guarantees of independence as the latter. In fact, the question of (the lack of) independence of junior judges as regulated at the material time has already been examined by this Court in *Henryk Urban and Ryszard Urban* (cited above). However, that being stated, in view of the legislation applicable at the material time (see paragraph 40-43 above) there can be no doubt that junior judges in general (and the applicants in the instant case in particular) were members of the judiciary, to whom the relevant guarantees of independence should in principle have applied. Moreover, even if the

applicants had not already been members of the judiciary (that is, for example, if they had applied for the vacant judicial positions on the basis of their previous experience in different legal professions), their appointment process would, by law, have had to benefit from the same level of protection against arbitrariness (see *Guðmundur Andri Ástráðsson*, § 230, and *Baka*, § 105, both cited above; see also *Oktay Alkan*, [cited above](#), § 58).

158. Against this background, the Court considers that, in view of the particular circumstances of the present case, the decision to refuse to appoint the applicants (junior judges who met the statutory eligibility requirements) without providing any reasons, and the absence of any judicial review of that decision, cannot be regarded – given the importance of the protection of judicial independence – as having been in the interests of a State governed by the rule of law (see *Misiūnas*, [cited above](#), § 96). The Court refers in this connection to the relevant international standards, which likewise state that any decision concerning the selection and career of judges – or at least the procedure under which such a decision is made – should be amenable to judicial review (*ibid.*; see also, *mutatis mutandis*, *Gloveli*, cited above, §§ 24–29). The Court notes, at the same time, that it is not called upon to review the judicial appointment systems that are in place in the various Council of Europe member States. As already noted in its case-law, there are a variety of different systems in Europe employed for the selection and appointment of judges, and what is decisive is that appointees be free from influence or pressure when carrying out their adjudicatory role (see *Guðmundur Andri Ástráðsson*, cited above, § 207, and *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, § 252, 7 May 2021). The question is always whether, in a given case, the requirements of the Convention are met (see *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, § 193, ECHR 2003-VI, and *Henryk Urban and Ryszard Urban*, cited above, § 46).

159. Concerning the Government’s argument as to the institutional balance, the Court is not persuaded that the considerations invoked disclose “objective grounds in the State’s interest” capable of justifying the complete exclusion of the applicants’ right of access to a court. While preserving the proper balance between the executive and the judiciary and taking account of the democratic legitimacy of the President are undoubtedly legitimate aims, they cannot, in and of themselves, warrant placing decisions on judicial appointments entirely beyond judicial scrutiny. In the Court’s view, a review of the lawfulness and non-arbitrary character of such decisions does not upset the institutional balance or negate presidential powers; on the contrary, it reinforces the principle of the rule of law and the appearance of independence of the judiciary. Accordingly, the Government have not shown that denying the applicants any avenue of judicial review was strictly necessary for the preservation of institutional balance or in order to safeguard interests with a higher priority.

160. The Court finds, accordingly, that the second condition of the *Eskelinen* test – namely, that denying the right of access to a court to the applicants must be justified on objective grounds as being in the State's interest – has not been met.

161. It follows that the Government's objection must be rejected and Article 6 § 1 of the Convention is applicable under its civil head.

2. Conclusion as to admissibility

162. The Court notes that this 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 applicants

163. The applicants submitted that, as a result of rulings rendered against them by the Supreme Administrative Court and the Constitutional Court, they had been deprived of their right of access to a court in respect of their grievances concerning the President of the Republic's refusal to appoint them to judicial positions. They argued that, for reasons beyond their control, their claims in that regard had not been examined on their merits by any of the courts involved, which had been particularly formalistic in their assessment of the applicants' respective situations. They further argued that the Constitutional Court's application of the conditions for the admissibility of constitutional complaints in its subsequent decisions given in the second set of proceedings had been inconsistent with its earlier stance and that, in any event, the grounds cited in rejecting their complaints had been unconvincing and unjustified.

164. The applicants further argued that, contrary to the findings of the Constitutional Court, they had not challenged the President of the Republic's application of section 55 (1) of the 2001 Act, but rather the very wording of that legislative provision, in so far as it could be interpreted as authorising the head of State to reject a candidate for the office of judge without any justification and without any judicial review. They stated that the subject matter of their second constitutional complaint had related to the argument that (i) the absence of any obligation on the part of the President of the Republic to give reasons for refusing to appoint a candidate to the office of judge and (ii) the fact that a presidential decision on that point was not subject to review (not only by the administrative courts but in general) contravened the Constitution. They emphasised the importance of the possibility of a presidential decision (refusing to appoint a candidate to the office of judge) being subject to judicial review, given its significance not only for their

fundamental rights but also for overall fairness in respect of the recruitment process of judges, which was crucial for preserving judicial independence. They contended that the denial of access to a court in their case had been contrary to the principle of a democratic State governed by the rule of law. They argued that, as a result of the above-noted approach taken by the domestic courts, they had been denied justice for reasons that could not be objectively justified by any legitimate aim; that had led to their right of access to a court being violated in its very essence.

(b) The Government

165. The Government have not made any observations other than those set out above.

(c) The third-party interveners

(i) The Commissioner for Human Rights of the Republic of Poland

166. The third-party intervener stated that the institutional and procedural framework for the recruitment of judges was laid down in the relevant provisions of the Constitution. It further stated that the Constitution also clarified the division of powers between, on the one hand, the NCJ (which was responsible for assessing applications) and, on the other hand, the President of the Republic (who, at the NCJ's motion, was to appoint a person put forward for the position of judge). A decision taken by the NCJ on whether to put forward a candidate for appointment was subject to appeal before the Supreme Court.

167. The intervener argued that the role assigned to the President of the Republic in the procedure for recruiting judges was not autonomous and that, under the Constitution, only the NCJ – and not the President – had the power to select and evaluate candidates. He further asserted that the involvement of the head of State in the recruitment process for judges was sufficiently guaranteed by the possibility for the head of State to appoint his own representative to the NCJ, and by the participation of that representative in the NCJ's activities relating to the selection and evaluation of candidates. To deem that the head of State had discretionary powers in matters of appointment was contrary to the principles of separation of powers and legality set out in the Constitution.

168. The intervener submitted that any presidential decision should be accompanied by a statement of reasons. In that regard, the intervener argued that the President acted on the motion of the NCJ (expressed in the form of a resolution, which was the result of an in-depth assessment of the candidate). Such a resolution created a presumption in favour of the candidate's compatibility with the relevant requirements. Consequently, a refusal by the President to appoint a candidate who had received a positive motion from the

NCJ could not be discretionary but could only be based on the constitutional premises implicit in the appointment of judges.

169. The appointment of a judge by the President of the Republic highlighted the relationship between judges and the State and the importance of judicial functions. Consequently, it could be seen as strengthening the protection of judicial independence against political factors. By contrast, an arbitrary refusal to appoint a judge rendered this objective null and void.

170. The intervener emphasised the need to ensure that the process of recruiting judges was transparent, and based on objective material criteria and fair procedural rules. Those characteristics helped to maintain the confidence of parties to the court proceedings in the representatives of the judiciary. The lack of any reasoning in the presidential decision called into question the entire recruitment process and risked undermining the confidence of the general public in the State.

171. For those reasons, the intervener submitted that a presidential decision to refuse to appoint a candidate to the position of judge could only be made for compelling reasons and had to be duly justified in order that both the candidate concerned and the public could be informed as to why the head of State had taken that decision. The question of whether that decision had been based on legitimate grounds and accompanied by the required reasoning could be amenable to judicial review. Such a review should focus in particular on those aspects of the contested decision regarding which the President had reached conclusions that were different from those of the NCJ.

172. The exclusion of the possibility of seeking judicial review in the matter of judicial appointments could not in any way be justified by the position of the President of the Republic in the hierarchy of the State. The intervener argued that it was precisely the set of principles underlying the rule of law in a democracy that required that no public authority – including the President of the Republic – be placed above the law.

173. Lastly, the intervener argued that, once a candidate for the position of judge had met all the requirements for that position, passed all the recruitment tests and received a positive assessment from the NCJ, a refusal to appoint him or her to the position sought would constitute a flagrant violation of the law and would amount to an arbitrary interference (on the part of the relevant representative of the executive) in an area of responsibility reserved for the judicial authority.

(ii) The Polish Judges' Association Iustitia

174. In the intervener's view, the present case concerned not only the individual situation of the applicants but also issues of the utmost importance relating to the independence of the judiciary and the separation of powers.

175. The intervener argued that the decision by which the President of the Republic had unfairly and arbitrarily refused to appoint candidates to the office of judge had set a dangerous precedent in this area and had made the

judiciary even more dependent on the executive. It argued that the decision in question had been manifestly contrary to the principle of the separation of powers. It added that the powers of the head of State in relation to the appointment of judges were being used as a tool to politicise the recruitment process and to subject Polish judges to the will of the representatives of the legislative and executive authorities, thereby undermining the independence of the judiciary.

176. Iustitia submitted that an analysis of the Polish model for recruiting judges indicated that the President of the Republic had no powers to reassess applications submitted to him by the NCJ for appointment. The head of State's participation in the process of assessing candidates was guaranteed by the presence of his representative on the NCJ. The model in question precluded any arbitrary decision-making in this regard by the head of State.

177. The intervener further submitted that any discretionary refusal of the President of the Republic to appoint a candidate to the office of judge constituted a real threat to the judicial protection of citizens – both at national and European level. Any violation of the rules of appointment that consisted of the increased involvement of political bodies in the process of appointing judges could jeopardise the independence of the judiciary. Such violations constituted a serious threat to the legitimacy of the judiciary – especially since in a democratic State the legitimacy of judges depended heavily on public confidence in their neutrality, objectivity and impartiality and their lack of political affiliation.

178. Concluding its remarks, the intervening association stated that the applicants had been entitled under the Polish Constitution to protection against the President's discretionary refusal to appoint them to vacant posts. In the intervener's view, that refusal – in conjunction with their having been deprived of access to a court – had to be considered incompatible with the rule of law.

2. *The Court's assessment*

(a) **General principles**

179. The right of access to a court was established as an aspect of the right to a fair hearing that was guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court found the right of access to a court to constitute an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of the arbitrary exercise of power that underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018, with further references).

180. In respect of matters that fall within the ambit of the Convention, according to the Court's case-law, where there is no access to an independent and impartial court, the question of compliance with the rule of law will always arise (see *Grzęda*, cited above, § 343). However, the Court has itself acknowledged that the right of access to the courts is not absolute and may be subject to limitations that do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. However, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Baka*, § 120, and *Zubac*, § 78, both cited above).

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

181. The Court has left open the question whether the first condition of the *Eskelinen* test has been fulfilled, taking account of the opposing views of the parties on that issue and since, in any event, it has concluded that the second condition has not been met (see paragraph 149 above). However, the Court reiterates that the Government have consistently argued that national law excluded beyond all doubts the applicants' access to judicial review of the presidential refusal to appoint them (see paragraphs 102-104 above). Therefore, the Court is now called upon to assess whether the lack of access to the domestic courts – in order to obtain an examination of the genuine and serious dispute over the applicants' arguable right to a fair procedure, free from arbitrary rejections, in the examination of an application for a judicial post (see paragraph 141 above) – was justified in conformity with the general principles in the Court's case-law (see paragraph 180 above; compare with *Grzęda*, cited above, § 344).

182. Given that the second limb of the *Eskelinen* test has already been answered, in the negative, the Court refers to its analysis with regard to the issue of the applicability of Article 6 § 1 (see paragraphs 150-161 above), and observes that the Government have not provided any additional reasons justifying the absence of judicial review, but have simply maintained their arguments as to the alleged inapplicability of Article 6 to the case (see paragraph 165 above).

183. With that being stated, the Court considers it appropriate to emphasise that, when seeking appointment to judicial posts, the applicants obtained all the necessary clearances and, subsequently, underwent a selection procedure in the course of which their candidacies were reviewed and approved by various bodies (see paragraphs 8, 35-36, and 41-42 above). Having assessed the applicants' candidacies on the basis of competency and integrity criteria, the NCJ then submitted a motion for the President of the Republic to appoint the applicants to the relevant vacant judicial posts (see paragraphs 8 and 37 above; compare *Gloveli*, § 58, and *Misiūnas*, § 110, both cited above). These elements lead the Court to hold that the applicants could

have had a legitimate and reasonable expectation that their applications for posts of judges would be given proper consideration, subject to transparent and objective evaluation devoid of arbitrariness (see, *mutatis mutandis*, *Guðmundur Andri Ástráðsson*, cited above, § 230; see also *Misiūnas*, cited above, § 110).

184. The Court strongly emphasises the importance that international and Council of Europe instruments (see, notably, paragraphs 64-65 and 67 above) – as well as the case-law of international courts and practice of other international bodies – attach to procedural fairness in cases involving the selection, appointment and career of judges (see *Oktay Alkan*, cited above, §§ 28-29 and 32-34; see also *Guðmundur Andri Ástráðsson*, §§ 207, 215 and 226-27, and *Baka*, § 165, both cited above). In this connection, the Court pays particular attention to the fact that the applicants were given absolutely no reasons for the President of the Republic's decision refusing to appoint them (see paragraph 11 above), which, in practice, clearly did not follow the motion of the NCJ; most importantly, they were presented with no kind of official decision capable of being challenged in court (compare *Misiūnas*, cited above, § 111). Consequently, it was legitimate for the applicants to suspect an element of arbitrariness in the presidential decision (see, *mutatis mutandis*, *Bilgen*, cited above, § 61). However, the Court does not rule out the possibility that in accordance with domestic law, the President of the Republic could exceptionally submit a request inviting the NCJ to reconsider its motion to appoint a judge, provided that this request is duly reasoned.

185. Turning to the circumstances of the case under review, the Court considers that in matters where the career – and specifically the very appointment – of a judge is at stake, there should be weighty reasons exceptionally justifying the absence of any judicial review (see, *mutatis mutandis*, *Bilgen*, § 96, and *Oktay Alkan*, § 69, both cited above). However, no such reasons have been provided to the Court in the instant case (see paragraphs 158-159 above). The Court considers it important to emphasise that the issue in the instant case lies in the fact that the decision of the President of the Republic – which: (i) refused to appoint candidates for judicial posts despite a positive motion of the NCJ; (ii) did not contain reasons, and (iii) bore the *prima facie* appearances of arbitrariness – was not subject to any form of review that could assess the allegations raised by the applicants in that latter regard. The Court emphasises, in this connection, that the judicial review of the President's decision must strictly be independent but notes that the scope of such review may legitimately be limited (see *Ramos Nunes de Carvalho e Sá*, cited above, § 178), bearing in mind that the right at stake is the right to a fair procedure free from arbitrary rejections in the examination of an application for a judicial post and not the right to be appointed (see paragraph 141 above).

186. Taking into account the above-noted factors and the particular circumstances of the case under review, the Court concludes that: (i) the

applicants had a domestically-established general right of equal access to public service within the judiciary (see paragraph 136 above), (ii) the general right in question (given the specific circumstances of their case) took the form of the right to a fair procedure in the examination of an application for a judicial post – including the right to be protected against arbitrary rejection (see paragraph 141 above), (iii) given that they were not informed of the reasons for the decision refusing their appointment and not afforded access to any subsequent review, the applicants were not afforded the necessary protection against what could legitimately be suspected as arbitrariness in the contested decision of the President of the Republic, and (iv) the essence of the applicants' right of access to a court has therefore been impaired (see *Grzęda*, § 349, and *Baka*, § 121, both cited above).

187. There has accordingly been a violation of the applicants' right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

188. The applicants additionally complained under Article 13 of the Convention that they had been deprived of an effective remedy in respect of the violation of their right of access to a court. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

189. The Court notes that the complaint under Article 13 is essentially the same as that under Article 6 § 1. It reiterates that the safeguards of Article 6 § 1, implying the full panoply of a judicial procedure, are stricter than (and absorb) those of Article 13 (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI).

190. Consequently, the Court finds that it is not necessary to examine separately the admissibility and merits of the complaint under Article 13 of the Convention (see *Grzęda*, cited above, § 353).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

191. 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

192. Each of the applicants claimed 20,000 euros (EUR) in respect of non-pecuniary damage as compensation for the suffering and distress relating to the violation of their rights. These applicants emphasised that, as a result of the unjustified and unsupported refusal to appoint them to an office for which they were duly qualified, they had suffered stress, humiliation, a feeling of injustice and helplessness. They further argued that since they had neither the means to challenge the refusal in court nor to learn the reasons behind it, they had effectively been deprived of the ability to defend their dignity and reputation. That was due, in the opinion of the applicants, to the fact that the decision of the President of the Republic had disqualified them – in the eyes of the judicial community and of the general public – both as people aspiring to serve in judicial office and as lawyers and public servants. They argued that the impugned decision of the President had been and was still an object of comment – not only within the judicial community (and more broadly, in legal circles) but also in the media. The applicants contended that their professional achievements (hitherto confirmed by their positive track records) and the NCJ's motion that they be appointed to judicial office had essentially been called into question. They further submitted that the refusal, the lack of any reasons therefor and the absence of any judicial review thereof had given rise to a sense of depression and frustration, a lack of professional prospects and a feeling of disappointment in the Polish State.

193. The Government submitted that the claims made by the applicants were groundless, since they had been raised in a case that should have been declared inadmissible. Accordingly, the Government invited the Court to reject as a whole the claims in that respect. Alternatively, should the Court establish otherwise and find a violation in the case, the Government submitted that finding a violation should be regarded as constituting sufficient just satisfaction.

194. The Court considers that the applicants must have sustained non-pecuniary damage for which that the finding of a violation of the Convention does not constitute a sufficient remedy. 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 each of the applicants EUR 13,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount (see *Baka*, cited above, § 191).

B. Costs and expenses

195. The applicants did not make a claim for costs and expenses. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint under Article 6 § 1 of the Convention admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 13,000 (thirteen thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (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;
6. *Dismisses* the remainder of the claim for just satisfaction made by the applicants.

Done in English, and notified in writing on 21 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President

SOBCZYŃSKA AND OTHERS v. POLAND JUDGMENT

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth	Represented by
1.	62765/14	Sobczyńska v. Poland	07/09/2014	Aleksandra SOBCZYŃSKA 1974	Marcin CIEMIŃSKI
2.	62769/14	Klepacz v. Poland	07/09/2014	Adrian KLEPACZ 1974	Marcin CIEMIŃSKI
3.	62772/14	Brukiewicz v. Poland	07/09/2014	Rafał BRUKIEWICZ 1967	Marcin CIEMIŃSKI