

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

FIRST SECTION

CASE OF SADOMSKI v. POLAND

(Application no. 56297/21)

JUDGMENT

Art 6 § 1 (civil) • Access to court • President of Poland's appointment of judges to the Supreme Court's Civil Chamber, despite binding interim order staying the implementation of the resolution they were based on and pending its judicial review, and legislature's intervention ruling out the right to judicial review in such cases • Art 6 applicable • Applicant, a rejected candidate, had a civil right under domestic law of equal access to a judicial post • Domestic proceedings "decisive" for right at issue • First condition of the *Eskelinen* test not met • Findings in *Advance Pharma sp. z o.o v. Poland* relevant and directly applicable • Actions of both the executive and legislative powers extinguished the judicial review of the applicant's case depriving the domestic rulings in his favour of all practical effects to his detriment

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 May 2025

FINAL

09/08/2025

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



In the case of Sadomski v. Poland,

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

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

Having regard to:

the application (no. 56297/21) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Jacek Roman Sadomski ("the applicant"), on 5 November 2021;

the decision to give notice to the Polish Government ("the Government") of the complaints under Article 6 § 1 of the Convention concerning the competition procedure before the National Council of the Judiciary and the subsequent proceedings before the Supreme Administrative Court, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 1 April 2025,

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

INTRODUCTION

1. The case concerns proceedings aimed at reviewing a resolution of the National Council of the Judiciary which served as the basis for the appointment of seven candidates to judicial posts in the Civil Chamber of the Supreme Court and the rejection of other candidates, including the applicant. It raises an issue under Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Marki. He was represented by Mr M. Gajdus, a lawyer practising in Warsaw.

3. The Polish Government ("the Government") were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is a judge who has worked at the Warsaw Court of Appeal since 2013.

I. COMPETITION FOR JUDICIAL POSTS IN THE CIVIL CHAMBER OF THE SUPREME COURT

6. On 24 May 2018 the President of the Republic announced that there were forty-four vacant positions in the Supreme Court, seven of which were in its Civil Chamber (see also *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, § 26, 3 February 2022). The announcement was published on 29 June 2018.

7. Twenty-seven candidates, including the applicant, applied for the posts in the Civil Chamber.

8. The competition procedure was conducted by the National Council of the Judiciary ("the NCJ") as established under the Act of 8 December 2017 Amending the Act on the NCJ and Certain Other Acts ("the 2017 Amending Act").

II. RESOLUTION NO. 330/2018 OF THE NATIONAL COUNCIL OF THE JUDICIARY

9. On 28 August 2018 the NCJ issued resolution no. 330/2018 recommending seven candidates[1] to be appointed judges in the Civil Chamber of the Supreme Court (the first point of the resolution). The NCJ decided not to recommend other candidates (the second point of the resolution), including the applicant (see *Advance Pharma sp. z o.o*, cited above, § 34). The resolution contained clear information to the effect that participants in the competition could lodge an appeal with the Supreme Administrative Court.

10. The process for notifying the successful candidates of resolution no. 330/2018 began on 13 September 2018. They were notified in the course of September 2018.

III. APPEAL LODGED BY THE APPLICANT AGAINST RESOLUTION NO. 330/2018

11. On various dates, some candidates who had not been recommended by the NCJ, including the applicant, lodged appeals (odwołanie) with the Supreme Administrative Court against resolution no. 330/2018 of the NCJ. The applicant lodged his on 1 October 2018 *via* the NCJ, as required by the relevant legislation. He argued that (1) the President's announcement of vacant positions in the Supreme Court had been issued without the

[1] Those persons were Ms M. Manowska (subsequently appointed the First President of the Supreme Court), Mr J. Grela, Mr M. Krajewski, Ms J. Misztal-Konecka, Mr T. Szanciło, Mr K. Zaradkiewicz and Ms B. Janiszewska. The above-mentioned persons, save for Ms Janiszewska, are the applicants before the Court (see *Manowska v. Poland and Other applications* (dec.), nos. 51455/21 and five others, 9 May 2025).

countersignature of the Prime Minister, and thus in breach of Article 144 § 2 of the Constitution; (2) the judicial members of the NCJ had been elected to it in breach of the Constitution; (3) the competition procedure before the NCJ had been flawed and the selection made by that body had violated the constitutional right of equal access to public service; and (4) the competition procedure had been designed in such a manner that he was deprived of an effective remedy.

12. In lodging his appeal, the applicant relied on section 44(1a) of the Act of 12 May 2011 on the NCJ ("Act on the NCJ") which provided, at the relevant time, that in individual cases concerning appointments to the office of judge of the Supreme Court such an appeal could be lodged with the Supreme Administrative Court.

13. During the competition – and thus prior to the above-mentioned appeals being lodged – subsections (1b) and (4) were added to section 44 of the Act on the NCJ by the Act of 20 July 2018 Amending the Act on the Organisation of Ordinary Courts and Certain Other Statutes, which entered into force on 27 July 2018. Subsection (1b) provided that unless all the participants in a procedure (including those who had received a recommendation) challenged the NCJ's resolution in individual cases concerning appointments to the office of judge of the Supreme Court, that resolution would become final in its entirety (see also *Advance Pharma sp. z o.o,* cited above, § 100).

14. The NCJ did not forward the appeals against resolution no. 330/2018 to the Supreme Administrative Court until 9 November 2018.

IV. INTERIM ORDERS STAYING IMPLEMENTATION OF RESOLUTION NO. 330/2018

15. On 20 September 2018 one of the other participants in the competition lodged an application for an interim order with the Supreme Administrative Court prior to lodging an appeal seeking that NCJ resolution no. 330/2018 be set aside. On 27 September 2018 the Supreme Administrative Court issued an interim order staying the implementation of the impugned resolution both in the part recommending seven candidates for appointment to the Civil Chamber of the Supreme Court and in the part not recommending the appellant (case no. II GW 27/18). The decision to issue the order was reported by the national media the next day. The interim order was served on the representative of the participant concerned and on the NCJ.

16. On 1 October 2018 the applicant applied directly to the Supreme Administrative Court for an interim order to stay the implementation of NCJ resolution no. 330/2018.

17. On 8 October 2018 the Supreme Administrative Court (case no. II GW 31/18) issued an interim order staying the implementation of that resolution both in the part recommending seven candidates for appointment

to the Civil Chamber of the Supreme Court and in the part not recommending the applicant. The court held that the stay was possible because the condition that enforcement of the decision could cause irreparable harm to a party had been met. It also noted that the applicant's appeal against the resolution had not been transmitted by the NCJ to the Supreme Administrative Court (see paragraph 14 above).

18. The Supreme Administrative Court ordered that the interim order be served on the applicant's representative and on the NCJ.

19. On 8 October 2018 the Chairperson of the NCJ submitted resolution no. 330/2018 to the President of the Republic.

20. On 9 October 2018 the applicant transmitted the interim decision of 8 October 2018 to the NCJ and the President of the Republic, informing them that it was binding and enforceable.

V. APPOINTMENT BY THE PRESIDENT OF THE REPUBLIC OF PERSONS RECOMMENDED BY THE NCJ

21. On 10 October 2018, while the appeals were pending and in spite of the Supreme Administrative Court's orders to stay the implementation of resolution no. 330/2018, the President of the Republic decided to appoint the candidates recommended by the NCJ in that resolution. On the same day the President handed them the letters of appointment and administered the oath of office to them (see also *Advance Pharma sp. z o.o*, cited above, § 35).

VI. SUPREME ADMINISTRATIVE COURT'S REQUEST FOR A PRELIMINARY RULING BY THE CJEU

22. On 21 November 2018 the Supreme Administrative Court made a request to the Court of Justice of the European Union ("the CJEU") for a preliminary ruling in the case brought by the applicant (case no. II GOK 2/18). It took the view that the recent amendments to the Act on the NCJ (see paragraph 13 above) precluded in practice the effectiveness of an appeal lodged by a participant who had not been put forward for appointment (see also *Advance Pharma sp. z o.o*, cited above, §§ 46-48).

VII. CONSTITUTIONAL COURT'S JUDGMENT OF 25 MARCH 2019 AND SUBSEQUENT LEGISLATIVE AMENDMENTS

23. In its judgment of 25 March 2019 (case no. K 12/18) the Constitutional Court held, *inter alia*, that section 44(1a) of the Act on the NCJ concerning the procedure for the judicial review of individual resolutions of the NCJ on the selection of judges was incompatible with Article 184 of the Constitution (for more details see *Grzęda v. Poland* [GC], no. 43572/18, §§ 60-62, 15 March 2022). In the reasoning of the judgment, the

Constitutional Court found that all proceedings conducted on the basis of the unconstitutional provision, which it struck down, should be terminated.

24. Subsequently, section 44 was modified by the Act of 26 April 2019 Amending the Act on the NCJ and the Act on the System of Administrative Courts, which entered into force on 23 May 2019. Section 44(1b) was repealed and section 44(1) was amended with a view to excluding the right of appeal in individual cases regarding appointments to the office of judge of the Supreme Court. The law retained the possibility of lodging an appeal in cases regarding appointments to the office of judge of the ordinary courts. Furthermore, section 3 of the Act of 26 April 2019 stipulated that "proceedings in cases concerning appeals against NCJ resolutions in individual cases regarding appointments to the office of judge of the Supreme Court, which have been initiated but not concluded before this Act comes into force, shall be discontinued by operation of law" (see also *Advance Pharma sp. z o.o*, cited above, § 101).

25. On 14 May 2019 the Prosecutor General requested the Supreme Administrative Court to discontinue the proceedings initiated by appeals against the NCJ's resolutions, having regard to the Constitutional Court's judgment of 25 March 2019.

VIII. FURTHER REQUEST BY THE SUPREME ADMINISTRATIVE COURT TO THE CJEU AND THE SUBSEQUENT CJEU JUDGMENT OF 2 MARCH 2021

26. Considering that it had been deprived of its jurisdiction over the issues which formed the subject matter of the request for a preliminary ruling that it had previously made to the CJEU, the Supreme Administrative Court, in a complementary request for a preliminary ruling of 26 June 2019, sought that court's opinion on the compatibility of the new rules introduced by the Act of 26 April 2019, when the applicant's request for judicial review had been pending, with EU law.

27. On 2 March 2021 the CJEU delivered a judgment in the case of A.B. and Others (Appointment of judges to the Supreme Court – Actions), C-824/18, EU:C:2021:153 (see also *Advance Pharma sp. z o.o*, cited above, §§ 207-09), holding in the operative part, in so far as relevant, as follows:

> "1. Where amendments are made to the national legal system which, first, deprive a national court of its jurisdiction to rule in the first and last instance on appeals lodged by candidates for positions as judges at a court such as the [Polish] Supreme Court against decisions of a body such as the [NCJ] not to put forward their application, but to put forward that of other candidates to the President of the Republic of Poland for appointment to such positions, which, secondly, declare such appeals to be discontinued by operation of law while they are still pending, ruling out the possibility of their being continued or lodged again, and which, thirdly, in so doing, deprive such a national court of the possibility of obtaining an answer to the questions that it has referred to the Court for a preliminary ruling:

...

– the second subparagraph of Article 19(1) [of the Treaty on European Union – "the TEU")] must be interpreted as precluding such amendments where it is apparent – a matter which it is for the referring court to assess on the basis of all the relevant factors – that those amendments are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges appointed, by the President of the Republic of Poland, on the basis of those decisions of the [NCJ], to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

Where it is proved that those articles have been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply the amendments at issue, whether they are of a legislative or constitutional origin, and, consequently, to continue to assume the jurisdiction previously vested in it to hear disputes referred to it before those amendments were made.

2. The second subparagraph of Article 19(1) TEU must be interpreted as precluding provisions amending the state of national law in force under which:

– notwithstanding the fact that a candidate for a position as judge at a court such as the Supreme Court lodges an appeal against the decision of a body such as the [NCJ] not to accept his or her application, but to put forward that of other candidates to the President of the Republic of Poland, that decision is final inasmuch as it puts forward those other candidates, with the result that that appeal does not preclude the appointment of those other candidates by the President of the Republic of Poland and that any annulment of that decision inasmuch as it did not put forward the appellant for appointment may not lead to a fresh assessment of the appellant's situation for the purposes of any assignment of the position concerned, and

– moreover, such an appeal may not be based on an allegation that there was an incorrect assessment of the candidates' fulfilment of the criteria taken into account when a decision on the presentation of the proposal for appointment was made,

where it is apparent – a matter which it is for the referring court to assess on the basis of all the relevant factors – that those provisions are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of the judges thus appointed, by the President of the Republic of Poland, on the basis of the decisions of the [NCJ], to external factors, in particular, to the direct or indirect influence of the legislature and the executive, and as to their neutrality with respect to the interests before them and, thus, may lead to those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law.

Where it is proved that the second subparagraph of Article 19(1) TEU has been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply those provisions and to apply instead the national provisions previously in force while itself exercising the judicial review envisaged by those latter provisions."

IX. SUPREME ADMINISTRATIVE COURT'S JUDGMENT OF 6 MAY 2021

28. On 6 May 2021, the Supreme Administrative Court gave its judgment on the merits in the case brought by the applicant (case no. II GOK 2/18). The court dismissed the Prosecutor General's request for the discontinuation of the proceedings before it. On the merits it (i) set aside NCJ resolution no. 330/2018 in the part concerning the recommendation of seven candidates for appointment to the Civil Chamber of the Supreme Court, and (ii) set aside resolution no. 330/2018 in the part concerning the NCJ's refusal to recommend other candidates in so far as it concerned the applicant (and discontinued the proceedings before the NCJ in that last respect).

29. In the judgment, the Supreme Administrative Court held, pursuant to, *inter alia*, the CJEU judgment of 2 March 2021 (see paragraph 27 above), that the NCJ did not offer guarantees of independence from the legislative and executive branches of power in the appointment process for the judges. The Supreme Administrative Court found that the proceedings before the NCJ concerned the right of access to public service on equal terms, as provided in Article 60 of the Constitution, and that this right belonged to the category of constitutional rights and freedoms protected by the absolute prohibition against denying access to court, as expressed in Article 77 § 2 of the Constitution of the Republic of Poland.

30. Furthermore, the Supreme Administrative Court found that the amendments introduced by the Acts of 20 July 2018 and 26 April 2019 (see, respectively, paragraphs 13 and 24 above) had been intended to prevent any judicial review of appointments to the Supreme Court made with the involvement of the NCJ as established under the 2017 Amending Act:

> "7.2 ... Thus, the consequence of this internal logic of the mechanism of appeals against the NCJ's resolutions – when it comes to its purpose, which is also discussed further below – was not only to nullify the possibility of the competent court conducting a real review of the conduct of the competition procedure for a vacancy in the Supreme Court, but also, if not above all, to make it impossible to conduct any judicial review of appointments to the Supreme Court once the NCJ was constituted in its new composition. The mechanism in question made it impossible to ensure an effective judicial review of the NCJ's resolutions in individual cases concerning appointments to the position of judge of the Supreme Court, at least to the extent that it could be established that there had been no excess of powers or abuse of authority, violation of the law or manifest error of judgment.
>
> In particular, the mechanism in question provided that the Supreme Administrative Court's setting aside of the resolution of the National Council of the Judiciary in so far as it did not recommend an [applicant] for appointment to the office of judge of the Supreme Court was to have the sole effect of accepting the application of the participant in the competition (who had lodged an appeal against the resolution) for appointment to a vacant judicial post in the Supreme Court in respect of which, on the date of the decision of the Supreme Administrative Court, the proceedings before the NCJ had not been completed, or, in the absence of such proceedings, [accepting him or her] for the next vacant judicial post in the Supreme Court covered by the notice. Such an outcome

> in the appeal proceedings – which, moreover, has all the characteristics of a kind of consolation prize, and indeed one that is uncertain by virtue of the fact that the situation referred to in the aforementioned provision may or may not arise – could therefore certainly not be regarded as satisfying the requirements of an effective remedy."

For that reason, the court decided to disapply the above-mentioned amendments.

31. It further held that – in view of the fact that the right to a court and effective legal protection, in the sense deriving from Article 45 § 1 in conjunction with Article 78 and Article 77 § 2 of the Constitution of the Republic of Poland, was identical to the right to a court and effective legal protection in the sense deriving from EU law (Article 19(1) of the TEU and Article 47 of the Charter of Fundamental Rights) and Article 6 of the Convention – it was justified to conclude that the failure to ensure judicial review in individual cases concerning appointments to the office of judge of the Supreme Court, including in cases already pending before the Supreme Administrative Court, did not comply with the EU standard or the corresponding constitutional and Convention standards.

32. The court also noted that the actions of the NCJ in the case under consideration showed that it had intentionally and directly sought to make it impossible for the Supreme Administrative Court to carry out a judicial review of the resolution to recommend (and not to recommend) various candidates to the Civil Chamber of the Supreme Court. The NCJ had only transmitted the applicant's appeal, which he had lodged on 1 October, to the Supreme Administrative Court on 9 November 2018, while in the meantime it had transmitted the resolution to the President for him to appoint the recommended candidates (see paragraphs 14 and 29 above).

33. The Supreme Administrative Court also agreed with the finding of the Supreme Court contained, *inter alia*, in its resolution of 23 January 2020 (for details thereof see *Grzęda*, cited above, §§ 110-16), that the President's announcement of vacancies at the Supreme Court required a countersignature of the Prime Minister to be valid.

34. Considering the effects of its judgment on the appointments made by the President of the Republic, the Supreme Administrative Court held that:

> "9. It should also be emphasised and clarified that the consequences of the ruling in this case do not relate to the validity and effectiveness of presidential appointments to the office of judge of the Supreme Court made on the basis of recommendations submitted by the NCJ in the resolution under review.
>
> Under the law as it currently stands, such [appointments] are not subject to judicial review and are not revocable (paragraphs 133 and 145 of the CJEU's judgment of 19 November 2019 and paragraphs 122 and 128 of the CJEU's judgment of 2 March 2021)."

35. The Supreme Administrative Court gave judgments in three other cases concerning appointments to the Civil Chamber of the Supreme Court on the basis of resolution no. 330/2018 (two on 6 May 2021,

nos. II GOK 3/18 and II GOK 5/18, and one on 13 May 2021, no. II GOK 4/18), in which it noted that the impugned resolution, in so far as it recommended some candidates, had already been set aside by the judgment issued in the case of the applicant (no. II GOK 2/18). The reasoning in those cases was essentially identical to that provided in the judgment in the case of the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

36. The relevant legal framework and practice is set out in detail in the Court's judgments in the cases of *Advance Pharma sp. z o.o* (cited above, §§ 95-225), *Grzęda* (cited above, §§ 64-167) and *Wałęsa v. Poland* (no. 50849/21, §§ 106-21, 23 November 2023).

THE LAW

I. PRELIMINARY REMARKS

37. The instant case is another one in a series of cases concerning the overhaul of the judiciary which was initiated in 2017 and has been implemented by successive amending laws (for the most recent overview of the Court's case-law on the matter see *Wałęsa v. Poland*, no. 50849/21, §§ 2-4, 23 November 2023).

38. It is the second case, after *Dolińska-Ficek and Ozimek v. Poland* (nos. 49868/19 and 57511/19, 8 November 2021), which has come before the Court raising the issue of judicial appointments. In that first case the applicants had applied for judicial posts in common courts (that is other than the Supreme Court) and when they were not recommended by the new NCJ they had complained to the Supreme Court, as provided for by law. The applicants' main grievance in that case had lain in the composition of the body competent to examine the complaints, that is the Chamber of Extraordinary Review and Public Affairs, which the Court ultimately found had not constituted a "tribunal established by law" (ibid., § 354).

39. The instant case differs from that of *Dolińska-Ficek and Ozimek* in so far as the applicant did not raise any allegations concerning, as such, the body which ultimately dealt with his complaint, namely the Supreme Administrative Court. Rather, he complained that the right to a judicial review, originally secured by law for complaints concerning competitions for posts at the Supreme Court and common courts alike, had been gradually limited in respect of those at the Supreme Court as the competition was underway. The Court has previously had a chance to review this very appointment procedure, and the judicial review afforded to its participants, in the case *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022, albeit from a different angle that of a party to a set of proceedings examined

by persons appointed to the Supreme Court in the procedure at issue. The findings made by the Court in that case will nevertheless be of relevance for the assessment of the applicant's complaint in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PROCEEDINGS BEFORE THE SUPREME ADMINISTRATIVE COURT

40. The applicant complained under Article 6 § 1 of the Convention that the scope of the judicial review in his case had been insufficient and could not have ensured the effective protection of his rights. Notably, in this respect he cited his right of equal access to public service stemming from Article 60 of the Constitution. He further contended that, although the Supreme Administrative Court had allowed his appeal and set aside NCJ resolution no. 330/2018, its judgment had had no practical effect for him and thus could not be regarded as having been an effective judicial remedy. In that context, the applicant referred to (1) the legislative amendments to the Act on the NCJ which were allegedly intended to prevent effective judicial review of appointments to the Supreme Court and (2) the President of the Republic's decision to appoint the seven candidates recommended by the NCJ in breach of the Supreme Administrative Court's interim orders staying the implementation of the impugned resolution.

41. The applicant relied on Article 6 § 1 of the Convention, which, in its relevant part, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention in the context of the judgment of the Constitutional Court of 10 March 2022 in case no. K 7/21

(a) The parties' submissions

42. The Government argued that the application should be considered incompatible *ratione materiae* with the Convention on account of the alleged effect of the judgment of the Constitutional Court of 10 March 2022 in case no. K 7/21 which found Article 6 § 1 of the Convention to be incompatible with various provisions of the Constitution (for details of that judgment see *Wałęsa*, cited above, §§ 107-08).

43. Relying on arguments identical to those raised in *Wałęsa*, the Government contended that the judgment in question should be regarded as an emanation of the "constitutionally justified objection" against the Court's authority of a judicial and interpretative nature, thus making Article 6 of the

Convention inapplicable to the present case (see *Wałęsa*, cited above, §§ 134-38).

44. In reply, the applicant submitted that the Constitutional Court was not authorised to issue rulings regulating the jurisdiction of this Court and that the judgment relied upon by the Government should be considered legally ineffective.

(b) The Court's assessment

45. The Court notes that it has previously dealt in detail with the Government's arguments as to the alleged effects of the judgment of the Constitutional Court of 10 March 2022 in the case of *Wałęsa* (cited above, §§ 140-45).

46. Seeing no reason to depart from the findings made in that case, the Court reiterates that (i) the Court alone is competent to decide on its jurisdiction to interpret and apply the Convention and the Protocols thereto (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 293, ECHR 2005-III), and (ii) the Constitutional Court's judgment cannot be considered anything other than an attempt to restrict the Court's jurisdiction under Articles 19 and 32 of the Convention, undermining the rule-of-law standards.

47. Consequently, the Government's objection as to the applicability of Article 6 of the Convention in the present case based on the judgment of the Constitutional Court of 10 March 2022 in case no. K 7/21 must be dismissed.

2. Applicability of Article 6 of the Convention, under its civil head, to a dispute concerning appointment to a judicial post

(a) The parties' submissions

48. The Government contended that Article 6 § 1 of the Convention was not applicable under its civil limb to the proceedings under review, arguing that: (i) under Polish law, there was no right to exercise public authority, and in particular no substantive right to be appointed by the President of the Republic of Poland as a judge; (ii) in any event, the right to apply for a public office was not of a civil but of a public-law nature, and thus excluded from the scope of application of Article 6 § 1 of the Convention, leading to the conclusion that (iii) there was no genuine and serious "dispute" in the case at hand, which concerned the existence of an alleged civil right of the applicant to be appointed as a judge of the Supreme Court.

49. The applicant disagreed with the Government's arguments and maintained that Article 6 § 1 of the Convention applied to his case.

(b) The Court's assessment

(i) General principles

50. The relevant general principles concerning the applicability of Article 6 of the Convention in the context of disputes concerning the appointment, career and dismissal of judges were summarised by the Court in the cases of *Baka v. Hungary* [GC] (no. 20261/12, §§ 100-06, 23 June 2016) and *Grzęda v. Poland* [GC] (no. 43572/18, §§ 257-64, 15 March 2022); see also *Dolińska-Ficek and Ozimek* (cited above, §§ 220-28).

(ii) Application of these principles to the present case

51. In the light of the relevant general principles, in order to determine the applicability of Article 6 to the proceedings before the Supreme Administrative Court, the Court needs to examine (i) the existence of the right relied upon by the applicant; (ii) whether the right in question was a "civil" one within the meaning of that Convention provision, and (iii) whether there was a "genuine" and "serious" dispute about that right.

(α) Existence of a right

52. The Court recalls that, contrary to the Government's assertions, the applicant has not claimed before it the right to exercise public authority, or – more specifically – to be appointed as a judge of the Supreme Court by the President of Poland. Rather, both in his domestic appeal and in his application lodged with this Court, he explicitly cited the right of equal access to public service (see paragraph 40 above).

53. The Court observes that it has previously found that Polish law, and in particular Article 60 of the Constitution, provided for the right of equal access to public service (see *Dolińska-Ficek and Ozimek*, cited above, §§ 82 and 230-31). Moreover, the Supreme Administrative Court, in its judgment of 6 May 2021 given in the applicant's case, found the complaint to be justified, explicitly citing in that connection the right of equal access to public service based on Article 60 of the Constitution (see paragraph 29 above).

54. Consequently, the applicant had a right of access, on an equality basis, to public office – in his case to the judiciary; the right in question being recognised by Polish law and protected by the Constitution, as confirmed by the Supreme Administrative Court in the proceedings under review.

(β) Civil nature of the right – the *Eskelinen* test

55. The next issue to be determined is whether the right claimed by the applicant was a "civil" one within the autonomous meaning of Article 6 § 1.

56. In their written submissions the Government relied on the argument that the applicant had no right to exercise public authority (see paragraph 48 above) in order to argue that it served no useful purpose to conduct the test

developed in the case of *Vilho Eskelinen and Others v. Finland* [GC] (no. 63235/00, ECHR 2007-II) in the instant case. Consequently, the Government did not address this issue in their submissions. Nor did the applicant make any comments on this matter.

57. In this connection the Court notes that, in the case of *Dolińska-Ficek and Ozimek* (cited above, § 231), it has previously found that the right claimed by the applicant in the instant case, that is to say the right of equal access to a judicial post, is a civil one. However, an important distinction is to be made between the two cases: while in *Dolińska-Ficek and Ozimek* the applicants – candidates for judicial posts in the common courts – had undisputed access to a court (with the legitimacy of the specific body competent to conduct the review being contested by the applicants), the issue in the instant case lies in the fact that, even though the applicant's appeal was ultimately examined by the Supreme Administrative Court, the domestic provisions governing access to a court were subject to amendments while the relevant proceedings were pending.

58. That being said, the Court reiterates that the *Eskelinen* test, aimed at determining the nature of the right at stake, comprises two cumulative conditions which have to be met for the State to rely before the Court on an applicant's status as a civil servant to exclude the protection embodied in Article 6: (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) the exclusion must be justified on objective grounds in the State's interest (see *Vilho Eskelinen and Others*, cited above, § 62 and also *Grzęda*, cited above, § 292).

59. Whilst the Court stated in *Vilho Eskelinen and Others* (cited above, § 61) that its reasoning in that case was limited to the situation of civil servants, it has extended the application of the criteria established in that judgment to various disputes concerning judges including those relating to career/promotion. It has noted that although the judiciary is not part of the ordinary civil service, it is considered part of typical public service (see *Baka*, cited above, § 104).

60. Concerning the first condition of the *Eskelinen* test, the Court finds it appropriate to stress that prior to the proceedings at issue and even at the time when the vacancies at the Supreme Court had already been announced by the President of the Republic (see paragraphs 6 and 12 above), the right of access to a court in matters concerning appointments to posts in the Supreme Court was undisputed in domestic law. In this connection, the Court recalls that the NCJ itself provided, in resolution no. 330/2018, clear information to the effect that participants in the competition could lodge an appeal with the Supreme Administrative Court (see paragraph 9 above). Some of the impugned measures, that is the legislative amendments aimed at limiting and, further, extinguishing the right of judicial review (see paragraphs 13 and 24 above), were introduced after the competition had gotten underway, and others only after the applicant had lodged his appeal.

61. The Court reiterates that, as previously stated in the *Baka* judgment, it must determine whether access to a court had been excluded under domestic law before, rather than at the time, the impugned measure concerning the applicant was adopted. To hold otherwise would mean that the impugned measure itself, which constituted the alleged interference with the applicant's "right", could at the same time be the legal basis for the exclusion of the applicant's claim from access to a court (see *Baka*, cited above, § 116, and *Gloveli v. Georgia*, no. 18952/18, § 46, 7 April 2022.

62. Thus, since the measures complained of by the applicant were taken after the competition for appointments to the Supreme Court had already begun, the Court is not satisfied that national law "excluded access to a court" for a claim concerning equal access to public service (in this case, a post in the Supreme Court) in the applicant's case.

63. Moreover, the Court reiterates in this connection the fundamental principle according to which it is for the national authorities, notably the courts, to interpret and apply domestic law (see *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018 and the case-law referenced therein). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

64. Against that background, the Court notes that the Supreme Administrative Court, following the guidance of the CJEU (see paragraph 27 above), decided to disapply the provisions aimed at limiting the applicant's access to a court (see paragraph 30 above). Considering that that interpretation was neither arbitrary nor manifestly unreasonable, the Court is satisfied that the domestic provisions, as interpreted and applied by the domestic court in the applicant's case, did not exclude the right of judicial review in respect of appointments to posts in the Supreme Court.

65. Thus, the first condition of the *Eskelinen* test has not been met. As the two conditions are cumulative, one not being met is sufficient to find that the right had been of a civil nature, without there being any need to consider the other limb of the test (see *Baka*, § 118 and *Grzęda*, § 328, both cited above).

(γ) Genuine and serious dispute

66. The Court finds that, by lodging an appeal against NCJ resolution no. 330/2018, the applicant initiated a "dispute", embodied in the proceedings before the Supreme Administrative Court, over the above-mentioned right.

67. That being said, the Court reiterates that for a dispute to be considered genuine and serious, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Grzęda*, cited above, § 257, among many authorities). In this connection, in its case-law concerning promotion procedures in the judiciary, the Court has held that

relevant proceedings initiated by the unsuccessful candidate were decisive for the fairness of the judicial selection and appointment procedure in so far as they could lead to the annulment of the contested decision and the reconsideration of the applicant's application for the post (see *Gloveli, cited above,* § 42 and the case-law referenced therein).

68. Against that background, the Court highlights that the crux of the complaint under review lies in the fact that, while the applicant's allegations concerning the competition procedure were examined by the Supreme Administrative Court which first issued a binding interim order and, subsequently, did set aside the impugned resolution of the NCJ, these favourable rulings did not lead to reconsideration of the applicant's candidacy.

69. Having regard to the above, the Court considers that in the particular circumstances of the present case, the issue of the "decisive" character of the domestic proceedings is so closely linked with the substance of the applicant's complaint under Article 6 § 1 of the Convention, that is to say the allegation that the scope of judicial review afforded to him had been insufficient, that the objection as to applicability of that Article should be joined to the merits.

3. Non-exhaustion of domestic remedies

(a) The parties' submissions

70. The Government contended that the applicant had failed to exhaust domestic remedies which were available to him, namely a constitutional complaint paired with a civil action for compensation.

71. In the Government's view, the applicant, by complaining about the limitation of judicial review in his case, was essentially contesting the 2019 amendments of the relevant provisions (see paragraph 24 above), in so far as they eliminated the possibility for judicial review in his case. Furthermore, the Government submitted that the Supreme Administrative Court, in its judgment of 6 May 2021, had referred to the "normative aspect" of the above-mentioned amendment. Based on that reasoning, the Government argued that it was open for the applicant to lodge a complaint with the Constitutional Court (as permitted by Article 79 § 1 of the Constitution; see *Wałęsa*, cited above, § 58). The Government concluded that, had he obtained a favourable judgment of the Constitutional Court, the applicant would have been able to lodge a compensation claim in respect of damage incurred as a result of a final decision given on the basis of provisions which were found to be incompatible with the Constitution, under Section 417^1 § 2 of the Civil Code (see *Pająk and Others v. Poland*, nos. 25226/18 and 3 others, § 38, 24 October 2023).

72. Based on those arguments, the Government contended that the application should be declared inadmissible owing to the non-exhaustion of domestic remedies.

73. The applicant disagreed with the Government and, relying on the Court's case-law, contended that he had been under no obligation to use domestic remedies which were ineffective.

74. Concerning the constitutional complaint, the applicant referred to the Court's findings in the case of *Advance Pharma sp. z o.o* (cited above) that the constitutional complaint was no longer an effective remedy, especially in cases related to the rule of law crisis. As regards an action under Section 417^1 of the Civil Code, the applicant argued that that could not be considered a remedy for his grievances as it could not have resulted in any changes to the impugned resolution of the NCJ.

(b) The Court's assessment

75. At the outset, the Court notes that the Government have not mentioned any specific legal provisions directly applied in the applicant's case which he could possibly have challenged as unconstitutional.

76. The Court would reiterate that, as regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 143, 27 November 2023, with further references, and *Juszczyszyn v. Poland*, no. 35599/20, § 241, 6 October 2022).

77. Given the general nature of the Government's objection, the burden of proof does not seem to have been satisfied in the present case.

78. Furthermore, the Court reiterates its position on preliminary objections as to non-exhaustion of domestic remedies involving a constitutional complaint which have been raised in similar terms in other Polish cases concerning the independence of the judiciary (see *Wałęsa*, cited above, §§ 152-53, and the case-law referenced therein), notably that the recent trend of the Constitutional Court's case-law indicated that that body was essentially determined to preserve the new judicial appointment procedure involving the recomposed NCJ (which the applicant aimed to have reviewed in the instant case).

79. In so far as the Government raised the possibility for the applicant to bring an action for damages under Section 417^1 of the Civil Code, the Court observes, considering its findings above regarding a possible constitutional complaint, that the Government's assertions concerning the civil action, the

exercise of which would depend on the prior success of the constitutional complaint in question, remain speculative. The Court notes that the remedy cited by the Government could only have had a compensatory effect, and thus could not have produced any effect capable of addressing the applicant's complaint regarding the alleged lack of sufficient judicial review in his case.

80. In the light of the foregoing, the Court dismisses the Government's objection regarding the applicant's failure to lodge a constitutional complaint paired with a civil action for compensation.

4. Conclusions as to admissibility

81. 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

82. The applicant contended that his appeal, even before he had lodged it, had not been an effective remedy (as noted by the Supreme Administrative Court itself – see paragraph 30 above), because the legislative amendments introduced by the Act of 20 July 2018 sought to render the impugned resolution final and binding unless all the participants (including the successful ones) appealed against it. He further argued that the Constitutional Court's judgment of 25 March 2019 (see paragraph 23 above) and the Act of 26 April 2019 (see paragraph 24 above) were aimed at further limiting and ultimately extinguishing the possibility of obtaining a judicial review of the NCJ resolution. Relying on the Court's case-law the applicant concluded that the right of access to a court had been rendered illusory as the domestic legal system had allowed a final, binding judicial decision to remain inoperative to his detriment, and that the guarantees under Article 6 had been rendered devoid of purpose as the authorities had not complied with that final judgment.

83. The Government asserted that since the judgment of the Supreme Administrative Court had upheld the applicant's claim as raised before that court, his appeal had to be considered an effective remedy. Notwithstanding the above, the Government reiterated their position concerning the non-civil status of the right at stake as well as the impossibility for the domestic courts to challenge judicial appointments effected by the President of the Republic (as observed by the Supreme Administrative Court itself).

84. Addressing the applicant's allegations concerning the Constitutional Court's judgment and the subsequent legislative amendments, the Government contended that they were aimed at implementing the principle of separation and balancing of powers. In the Government's view, the

previous procedure – where the Supreme Administrative Court could effectively stay the appointment of a recommended candidate pending the review proceedings – *de facto* deprived the NCJ of its exclusive competence to submit recommendations to the President of the Republic.

2. The Court's assessment

(a) General principles

85. The Court reiterates that Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States (see *Advance Pharma sp. z o.o*, cited above, § 331).

86. The Court further reiterates that, for the determination of civil rights and obligations by a "tribunal" to satisfy Article 6 § 1 of the Convention, the "tribunal" in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, § 52*, Reports of Judgments and Decisions* 1996-VI; *Chevrol v. France*, no. 49636/99, § 77, ECHR 2003-III; and *I.D. v. Bulgaria*, no. 43578/98, § 45, 28 April 2005).

87. Both the Commission and the Court have acknowledged in their case-law that the requirement that a court or tribunal should have "full jurisdiction" will be satisfied where it is found that the judicial body in question has exercised "sufficient jurisdiction" or provided "sufficient review" in the proceedings before it (see *Sigma Radio Television Ltd v. Cyprus*, nos. 32181/04 and 35122/05, § 152, 21 July 2011, and the case-law cited therein). Thus, the requirement of full jurisdiction has been given an autonomous definition in the light of the object and purpose of the Convention, one that does not necessarily depend on the legal characterisation in domestic law.

88. The Court has considered it generally inherent in the notion of judicial review that, if a ground of appeal is upheld, the reviewing court must have the power to quash the impugned decision, and either take a fresh decision or remit the case to the same body or a different body (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, §§ 32 and 34, ECHR 2002-IV, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 125, ECHR 2013).

89. The Court reaffirms that the right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative, to the detriment of one party. The execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Sharxhi and Others v. Albania*, no. 10613/16, § 92, 11 January 2018). Otherwise, the provisions of Article 6 § 1 of the

Convention would be deprived of all useful effect (see C.*M. v. Belgium*, no. 67957/12, § 55, 13 March 2018, and the references therein).

90. This applies, by definition, to the implementation of judicial decisions on interim measures that remain in force until a final decision determining the case before a court has been given (see *Sharxhi and Others*, cited above, § 92, and *Camara v. Belgium*, no. 49255/22, § 105, 18 July 2023). To hold otherwise would mean delivering a binding, albeit transitional, judicial decision that is devoid of purpose and meaning (ibid., § 105, see also, *Advance Pharma sp. z o.o*, cited above, § 331 and *Dolińska-Ficek and Ozimek*, cited above, § 328).

91. The burden of ensuring compliance with a judgment against a State lies primarily with the authorities of the State in question, starting from the date on which the judgment becomes binding and enforceable (see *Burdov v. Russia* (no. 2), no. 33509/04, § 69, ECHR 2009, and *Arbačiauskienė v. Lithuania*, no. 2971/08, § 86, 1 March 2016).

92. The above-noted principles are of even greater importance within the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant's civil rights. By lodging an application for judicial review with the State's highest administrative court the litigant seeks not only the annulment of the impugned decision but also and above all the removal of its effects. The effective protection of a party to such proceedings and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with a judgment of that court. The Court reiterates in this connection that the administrative authorities form one element of a State subject to the rule of law and that their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply with a judgment against the State, or even delay in doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Hornsby*, cited above, § 41; *Cıngıllı Holding A.Ş. and Cıngıllıoğlu v. Turkey*, nos. 31833/06 and 37538/06, § 38, 21 July 2015; and *Kural v. Türkiye*, no. 84388/17, § 64, 19 March 2024).

(b) Application of these principles to the present case

93. At the outset the Court notes that it has previously established, albeit in a different context, in the case of *Advance Pharma sp. z o.o* (cited above) that, on two counts, there had been a manifest breach of the domestic law which adversely affected the fundamental rules of procedure for the appointment of judges to the Civil Chamber of the Supreme Court (ibid., § 349).

Firstly, the procedure for judicial appointments involving the recomposed NCJ, as established under the 2017 Amending Act, which the Court has previously found was a body lacking independence from the legislature and

executive, was contrary to the law and to standards deriving from the Court's case-law (ibid., §§ 321 and 335).

Secondly, both the legislature's interference with the pending judicial review of the legality of NCJ resolution no. 330/2018 and the President of Poland's appointment of seven judges to the Civil Chamber on the basis of the contested resolution, notwithstanding that its implementation had been stayed pending appeals contesting its legality, amounted to a manifest breach of the domestic law. Conduct of the State's highest executive authority which, by deliberate actions disregarding a binding judicial decision and through *faits accomplis*, interferes with the course of justice in order to vitiate and render meaningless a pending judicial review of the appointment of judges, has previously been characterised by the Court as blatant defiance of the rule of law (ibid., § 334).

94. In addition to the above, the Court finds it important to note that the Constitutional Court, by way of the judgment of 25 March 2019, and the NCJ itself, by, *inter alia*, delaying the transmission of the applicant's appeal of 1 October 2018, while swiftly transmitting its resolution no. 330/2018 to the President of the Republic for appointment of the recommended candidates, acted with a similar intention of limiting the right to judicial review of all the persons not recommended for appointment to the Supreme Court in general, and to the applicant in particular.

95. Against that background, the Court observes that, had it not been for the determination of the Supreme Administrative Court in examining the case before it, the applicant's right to judicial review of the impugned NCJ resolution would in all likelihood have been limited even further. In this connection, the Court notes that by persevering in interpreting and applying domestic law in a manner that aimed at giving full effect to the Convention the Supreme Administrative Court has duly fulfilled its responsibility stemming from the principle of subsidiarity (*Grzęda*, cited above, § 324).

96. Assessing all the above circumstances as a whole, the Court considers that the judicial review, as it was actually conducted by the domestic court, was not sufficient from the standpoint of Article 6 § 1 of the Convention. Both the interference with the pending judicial review of the contested NCJ resolution and the President of the Republic's filling of the relevant judicial posts despite the binding interim order, which the Court previously established were manifest breaches of domestic law (in *Advance Pharma sp. z o.o*, cited above, § 334), are sufficient to conclude that, first, the interim order and then the final judgment of the Supreme Administrative Court (in the applicant's favour) were rendered inoperative to the applicant's detriment, thus depriving the domestic rulings of all practical effects.

97. The Court reiterates its finding that, in the circumstances of the case, the question whether the proceedings before the Supreme Administrative Court were "decisive" for the applicant's civil rights was closely linked to the substance of his complaint (see paragraph 69 above). It considers that, in a

situation such as the one under review, where the authorities of the Respondent State took actions aimed at limiting and extinguishing the judicial review of the applicant's complaint concerning a civil right, the resulting ineffectiveness of the domestic proceedings cannot serve as basis for finding that the domestic proceedings were not "decisive" for the right in question. To hold otherwise would mean that extinguishing pending judicial proceedings at the domestic level could at the same time be the legal basis for depriving an applicant of the protection stemming from Article 6 § 1.

98. Consequently, the Court dismisses the Government's preliminary objection of the complaint's incompatibility *ratione materiae* with the civil limb of Article 6 § 1 of the Convention and finds that there has been a violation of that provision as regards the scope of the judicial review in the present case.

III. REMAINING COMPLAINT

99. The applicant also complained, under Article 6 § 1 of the Convention, that the proceedings before the NCJ had been unfair.

100. Having regard to the facts of the case and in the light of all the material in its possession as well as its findings concerning the scope of the judicial review of the applicant's case, the Court considers that, since it has examined the main legal questions raised in the present application, there is no need to give a separate ruling on the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references to the Court's case-law).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicant made no claims for pecuniary damage and claimed one euro (EUR) in respect of non-pecuniary damage.

103. The Government asked the Court to reject the applicant's claims since, in their view, the application was inadmissible, and no violation of the Convention had occurred.

104. Were the Court to find a violation of the Convention in the present case, the Government submitted that the applicant had not provided any documentation regarding the alleged non-pecuniary damage.

105. Having regard to the circumstances of the case, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that may have been sustained by the applicant.

B. Costs and expenses

106. The applicant, represented by a lawyer of his choosing, did not make any claims in respect of the costs and expenses incurred before the domestic courts or those incurred before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government's preliminary objections as to (i) the application's alleged incompatibility *ratione materiae*, characterised in paragraphs 42-43 above, with the Convention and (ii) the alleged non-exhaustion of domestic remedies;

2. *Decides* to join to the merits and *dismisses* the Government's preliminary objection of the complaint's incompatibility *ratione materiae* with the civil limb of Article 6 § 1 of the Convention;

3. *Declares* the complaint under Article 6 § 1 of the Convention as regards the proceedings before the Supreme Administrative Court admissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint under Article 6 of the Convention;

6. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 9 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Adamska-Gallant is annexed to this judgment.

CONCURRING OPINION OF JUDGE ADAMSKA-GALLANT

I agree with the judgment in the present case, in which the Court found a violation of Article 6 § 1 of the Convention. However, I would like to make some further comments regarding the reasons why the judicial review in the applicant's case was inadequate from the perspective of the principle of the right to a fair hearing.

As stated in paragraph 96 of the judgment, the Court found that the judicial review of the contested decision of the National Council of the Judiciary (NCJ), carried out by the domestic court, did not satisfy the requirements of Article 6 § 1 of the Convention. This was because the interference with that review while it was pending had the effect of rendering the interim order and then the final judgment of the Supreme Administrative Court – in the applicant's favour – inoperative to the applicant's detriment, thus depriving the domestic decisions of all practical effects.

The interference with the judicial review of the applicant's appeal was also a result of the Constitutional Court's judgment of 25 March 2019, which was followed by legislative amendments aimed at excluding the right to appeal in individual cases concerning the appointment of judges to the Supreme Court (see paragraphs 23 and 24 of the judgment). At the time this law entered into force, the applicant's appeal against the NCJ's decision was still pending before the Supreme Administrative Court. Despite an application by the Prosecutor General, the Supreme Administrative Court decided not to discontinue the proceedings, thus fulfilling its responsibility under the principle of subsidiarity, as underlined by the Court (see paragraph 95). When the Supreme Administrative Court issued the final judgment in favour of the applicant, having taken into account the judgment of the Court of Justice of the European Union of 2 March 2021 in *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), its effects were limited merely to declaring that the applicant's rights had been violated; there were no practical consequences.

The observance of formalised rules of procedure, through which parties secure the determination of a dispute, is valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and respect for the court. The right of access to a court can be impaired when the rules cease to serve the aims of "legal certainty" and the "proper administration of justice" and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 96 and 98, 5 April 2018).

In conclusion, the legislative amendments, combined with the *de facto* actions of the State authorities, were aimed at preventing the applicant from having his case determined by the court. As a result, the final judgment of the

Supreme Administrative Court was rendered ineffective to the applicant's detriment. The applicant was thus deprived of an effective remedy and protection of his rights, and received only illusory protection, contrary to what is required by the Convention.