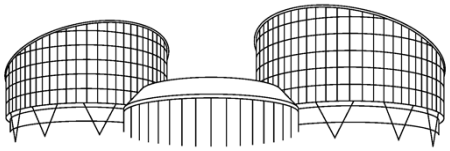

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BILIŃSKI v. POLAND

(Application no. 13278/20)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Inability of district court judge to have recourse to judicial review of his non-consensual transfer between two divisions of the same court, each adjudicating a different area of law • Art 6 applicable under its civil head • In specific case-circumstances, existence of a dispute over the "right" of a member of the judiciary to be protected against arbitrary transfer between the two divisions of the same court • First condition of the *Eskelinen* test satisfied • Second condition of the *Eskelinen* test not met since exclusion of a judicial review of the transfer decision not justified on objective grounds in the State's interest • Lack of independence of the reformed National Council of Judiciary • Insufficient procedural safeguards • Very essence of right of access to court impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 January 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 Biliński v. Poland,

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

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

Having regard to:

the application (no. 13278/20) 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 Łukasz Biliński ("the applicant"), on 23 November 2019;

the decision to give notice to the Polish Government ("the Government") of the complaints under Article 6 § 1 of the Convention concerning his right of access to a court, fair hearing and subjective right to judicial independence, and to declare inadmissible the remainder of the application;

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

the comments submitted by the Commissioner for Human Rights of the Republic of Poland, the Judges for Judges Foundation (the Netherlands) jointly with Professor L. Pech, the Helsinki Foundation for Human Rights (Poland), and the Polish Judges' Association Iustitia, all having been granted leave to intervene by the President of the Section;

Having deliberated in private on 9 December 2025,

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

INTRODUCTION

1. The case raises issues under Article 6 § 1 of the Convention and concerns the transfer of the applicant, who is a judge, between two divisions of the same court against his will, the ensuing proceedings before the National Council of the Judiciary (the "NCJ"), and the lack of judicial review of the NCJ's resolution in the matter.

LEGAL CONTEXT OF THE CASE

2. The instant application belongs to a series of cases concerning the overhaul of the judiciary which was initiated in 2017 and has been implemented by successive amending laws (for an overview of the Court's

case-law on the matter see *Wałęsa v. Poland*, no. 50849/21, §§ 2-4, 23 November 2023).

3. The Court has previously given judgment in cases involving various measures taken against judges (both disciplinary and criminal: see *Juszczyszyn v. Poland*, no. 35599/20, 6 October 2022, for an example of the former, and *Tuleya v. Poland*, nos. 21181/19 and 51751/20, 6 July 2023, for a case involving both). The instant case differs from the previous ones in so far as it concerns a novel issue of an allegedly arbitrary transfer of the applicant judge between two divisions of one court and the right to judicial review of the decision in that respect.

THE FACTS

4. The applicant was born in 1977 and lives in Warsaw. He was represented by Ms M. Mączka-Pacholak, a lawyer practising in Warsaw.

5. The Government were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

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

7. In 2005 the applicant qualified as a prosecutor. Between 2006 and 2016 he practised as an advocate. On 3 February 2016 he was appointed a district court judge at the Warsaw-Śródmieście District Court. The applicant was assigned to Criminal Division XI of that court, dealing exclusively with administrative offences (*wykroczenia*).

I. BACKGROUND TO THE CASE

8. Between 2018 and June 2019 the applicant examined a few hundred cases involving administrative offences relating to the exercise of freedom of assembly and expression. He ruled, *inter alia*, in cases relating to counter-demonstrations to a monthly commemorative event for the victims of the 2010 crash of the Polish government plane in Smolensk ("the monthly Smolensk commemoration", see *Siedlecka v. Poland*, no. 13375/18, § 1, 31 July 2025) and demonstrations against the then Government's reforms of the judiciary.

9. The applicant's rulings, in which he referred to the constitutional and Convention standards of freedom of expression and assembly, attracted significant media and public interest. In public debate, the applicant's rulings were perceived as unfavourable to the Government. Politicians from the ruling party made public statements criticising the applicant's rulings.

10. At the relevant time, the Warsaw-Śródmieście District Court's President was Judge M. Mitera, appointed to that post in February 2018 by Minister of Justice Z. Ziobro (for background information on the latter, see *Wałęsa v. Poland*, no. 50849/21, § 13, 23 November 2023). Before that appointment, Judge M. Mitera had been seconded to the Ministry of Justice

under Minister Z. Ziobro since 2016. He also served as a member of the recomposed NCJ (for additional context see *Wałęsa*, cited above, § 4, and the case-law cited therein), between March 2018 and 2022, and as its spokesperson, between April 2018 and January 2021.

II. THE APPLICANT'S TRANSFER

11. On 3 December 2018 and 18 January 2019 the applicant requested that the President of the District Court transfer him to another criminal division of that court to enable him to deal with cases other than administrative offences with a view to broadening his qualifications and professional experience. Those requests were not granted.

12. On 29 March 2019 the Minister of Justice issued an order abolishing certain divisions in fourteen district courts in Poland, including Criminal Division XI of the Warsaw-Śródmieście District Court (hereinafter referred to as "the District Court") with effect from 1 July 2019.

13. On 17 June 2019 the Vice-President of the District Court requested the Board (*Kolegium*) of the Warsaw Regional Court (a higher court) to give its opinion on the applicant's transfer to Family and Juvenile Division III ("the Family Division") of the District Court in connection with the abolition of Criminal Division XI, as required by law (see paragraph 39 below). The applicant did not consent to his proposed transfer. On the same day, the applicant requested the Board to adjourn the examination of the case (scheduled for the following day) to enable him to present his observations.

14. On 27 June 2019 the President of the District Court informed the applicant that, owing to the abolition of Criminal Division XI and in the absence of an opinion of the Board concerning his transfer, he was to be provisionally transferred to the unit of administrative offences in Criminal Division V of the District Court with effect from 1 July 2019, pending the Board's opinion.

15. On 2 July 2019 the Board decided to postpone giving its opinion on the request for the applicant's transfer to the Family Division until the Court of Justice of the European Union ("the CJEU") had given a preliminary ruling in the joined cases *A.K. and Others* (nos. C-585/18, C-624/18 and C-625/18) concerning, *inter alia*, the independence of the NCJ.

16. On 3 July 2019 the President of the District Court decided to transfer the applicant to the Family Division of that court, with effect from 1 July 2019, in view of the abolition of the Criminal Division XI. The decision did not specify the legal grounds for the transfer.

17. On the same day the applicant wrote to the President of the District Court requesting an explanation of the decision on his transfer which, in his view, was in manifest breach of section 22a(1) and (4) of the Act of 27 July 2001 on the Organisation of the Ordinary Courts (*ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych*; hereinafter "the 2001 Act")

applicable at the relevant time. He also pointed out that a decision on the transfer of a judge could not be taken without an opinion of the Board, and that in his case the Board had postponed giving its opinion.

III. APPEAL TO THE NATIONAL COUNCIL OF THE JUDICIARY AND SUBSEQUENT EVENTS

18. On 10 July 2019 the applicant lodged an appeal with the NCJ against the decision on his transfer. He alleged that there had been:

1) a manifest breach of section 22a(1) and (4) taken in conjunction with section 31(1)(4) of the 2001 Act in that the decision on his transfer had been taken without having obtained the necessary opinion of the Board of the Warsaw Regional Court;

2) a breach of section 22a(1) and (4c) of the 2001 Act because the statutory criteria of length of service and specialisation had been disregarded, which further amounted to a breach of Article 6 § 1 of the Convention in the proceedings, which were of a quasi-disciplinary nature;

3) a breach of Article 178 § 1 of the Constitution, Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 § 1 of the Convention in that the decision on his transfer had infringed his judicial independence and breached the prohibition on the arbitrary transfer of a judge from one division to another.

19. The applicant requested the NCJ to postpone the examination of his appeal until the CJEU had given its preliminary ruling in the case mentioned in paragraph 15 above. He also requested that Judge M. Mitera be excluded from the examination of his appeal by the NCJ.

20. On 15 and 16 July 2019 the applicant's lawyers requested permission for them and the applicant to attend the session of the NCJ at which the applicant's appeal would be examined. They also requested access to the case file. The NCJ replied that it had not decided to summon the applicant or his representative to take part in the session.

21. On 18 July 2019 the Polish Commissioner for Human Rights requested that the President of the District Court explain the reasons justifying the applicant's transfer to the Family Division. The Commissioner noted with concern that: (i) the applicant was the only judge of the abolished Criminal Division to be transferred to the Family Division, with the others joining the ranks of the remaining Criminal Divisions of that court; (ii) at the same time, actions were taken to transfer an experienced judge of the Family Division, against her will, to a Civil Division of the same court; (iii) as submitted by the applicant, other judges of the abolished Criminal Division had shorter judicial experience in that division. In his reply, the President of the District Court stated that the decision bore no connection to the applicant's exercise of his judicial functions.

22. On 22 July 2019 the President of the Warsaw Regional Court annulled the decisions of 27 June and 3 July 2019 on the applicant's transfer (see paragraphs 14 and 16 above and paragraph 42 below). She found that those administrative actions had been taken without the mandatory opinion of the Board of the Regional Court having been obtained, contrary to section 22a(1) of the 2001 Act (see paragraph 39 below), and as such had been unlawful. The decision of 22 July 2019 was immediately communicated to the President of the District Court.

23. On 24 July 2019 the applicant's lawyer informed the NCJ that the decision of 3 July 2019 had been annulled. She submitted that, in those circumstances, the proceedings concerning the appeal against that decision were devoid of purpose.

24. On 25 July 2019 the applicant's lawyer asked the NCJ that Judges M. Nawacki and R. Puchalski be excluded from the examination of the applicant's appeal on account of statements they had made on the internet portal sedziowie.net. In those statements they had presented their views on the statutory conditions justifying a transfer of a judge from one division to another, with Judge R. Puchalski specifically discussing the applicant's case.

25. The NCJ dismissed the applicant's appeal by a resolution of 25 July 2019, based on section 22a(5) and (6) of the 2001 Act. The applicant's lawyer was notified of the resolution on 31 July 2019. It did not include any reasons or information on the composition of the panel which had adopted the resolution. It would appear that the NCJ disregarded the decision of the President of the Warsaw Regional Court of 22 July 2019 annulling the impugned decision of 3 July 2019.

26. On 26 July 2019 the President of the District Court applied to the President of the Warsaw Court of Appeal to have the annulment decision of 22 July 2019 set aside. On 16 September 2019 the President of the Warsaw Court of Appeal informed him that there were no legal grounds for setting aside the annulment decision of 22 July 2019.

27. Despite the annulment of the applicant's transfer to the Family Division, he was *de facto* assigned there.

28. On 9 October 2019 the applicant was informed of the composition of the NCJ panel which had decided on his appeal after having filed a request for access to that information under the relevant law. He was informed that the three-member panel that examined his appeal had been composed of Judges M. Nawacki and R. Puchalski (see paragraph 24 above) and Senator S. Gogacz.

29. The applicant remained assigned to the Family Division of the District Court at the time of the latest submissions. He did not submit that the transfer had resulted in a change in his salary.

IV. INTRODUCTION OF THE APPLICATION TO THE COURT

30. On 23 November 2019 the applicant dispatched a parcel containing the original application form *via* the Polish State postal operator – Polish Post (*Poczta Polska*). While the parcel appears to have reached France, it was never delivered to the Court.

31. On 24 February 2020 the Court received a letter from the applicant's lawyer dated 17 February 2020, describing facts relevant to the application which had arisen since the dispatch of the original application form.

32. On 28 February 2020 the Court informed the applicant's lawyer that no application under the applicant's name had ever been received and that the applicant should submit a copy of the application with appendices, accompanied by documents confirming the date of the original dispatch of the application form.

33. On the same day, the applicant's lawyer lodged a complaint with Polish Post regarding the disappearance of the parcel dispatched on 23 November 2019.

34. On 2 March 2020 the applicant's lawyer sent the Court a parcel containing a copy of the original application with appendices and documents concerning the original dispatch date, including a copy of a postal document confirming the original date of dispatch and a copy of the complaint lodged with Polish Post by the applicant's lawyer. The parcel reached the Court on 10 March 2020 (and that date was imprinted on the copy of the application form by means of a date stamp).

35. On 21 May 2020 Polish Post found the complaint lodged by the applicant's lawyer on 28 February 2020 to be well-founded, as the original parcel dispatched on 23 November 2019 was considered to have been lost in transit after having arrived in France.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Domestic law

1. Domestic law already summarised

36. The relevant provisions of the domestic law concerning the functioning of the judiciary and the NCJ were summarised in the Court's previous judgments in the cases of *Reczkowicz v. Poland* (no. 43447/19, §§ 59-70, 22 July 2021); *Advance Pharma sp. z o.o. v. Poland* (no. 1469/20, §§ 95-104, 3 February 2022); *Grzęda v. Poland* ([GC], no. 43572/18, §§ 64-76, 15 March 2022); *Juszczyszyn v. Poland* (cited above, §§ 83-94); and *Pająk and Others v. Poland* (nos. 25226/18 and 3 others, § 22, 24 October 2023).

2. The Act of 27 July 2001 on the Organisation of the Ordinary Courts

(a) Provisions concerning division of duties, including the assignment of judges to divisions

37. The relevant provisions 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"), before 10 August 2018, in so far as relevant provided as follows:

Section 22a

"1. The ... president of the [relevant] regional court, with respect to [that] regional court and to the district courts operating within [its] judicial circuit, shall determine – no later than at the end of November each year, and following consultation with the board (*kolegium*) of the competent court – the division of duties, which shall specify:

(1) the assignment of judges ... to the divisions of the court;

(2) the scope of responsibilities of judges ... and the manner in which they participate in the allocation of cases; ...

- taking into account the specialisation of judges ... in adjudicating particular types of cases, the need to ensure the proper distribution of personnel across court divisions, the [need to] balance distribution of their responsibilities, and the necessity of guaranteeing the efficient conduct of judicial proceedings.

...

4. The president of the [relevant] court may, at any time, establish a new division of duties, in whole or in part, if justified by the considerations set out in subsection 1. ...

4a. The transfer of a judge to another division of the court requires the judge's consent.

4b. The transfer of a judge to another division may take place without their consent if:

(1) the transfer concerns a division competent to hear cases within the same area of law;

(2) no other judge in the division from which the transfer would take place has agreed to be transferred; ...

4c. Subsection 4b points (1) and (2) does not apply to a judge who has been transferred to another division without his or her consent within the previous three years. When transferring a judge without his or her consent in the case referred to in subsection 4b point (2), particular consideration shall be given to the length of service of judges in the division from which the transfer is to take place.

5. Where a judge ... is subject to a change in the division of duties resulting in a modification of their responsibilities – particularly through transfer to another division of the court – they may lodge an appeal (*odwołanie*) with the board of the [relevant] court of appeal within seven days from the date on which they receive their modified duties.

6. The board of the court shall, without delay, adopt a resolution either granting or dismissing the appeal, taking into account the considerations set out in subsection 1. Prior to adopting its resolution, the board shall hear the judge [in question] ..., provided that the appeal includes such a request and the judge ... is able to attend the session of

the board. Until such resolution is adopted, the judge ... shall continue to perform their previous duties."

Section 31

"1. The board of the [competent] regional court shall perform the tasks set forth in statute, and in addition:

...

4) it shall issue opinions in [staff] matters concerning ... judges of the regional court [and] judges of the district courts ..."

38. The Act of 20 July 2018 amending the Act on the Organisation of Ordinary Courts and Certain Other Acts (*ustawa z dnia 20 lipca 2018 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw*), introduced the amendments (which entered into force on 10 August 2018) to the relevant provisions of the 2001 Act, as presented in the following paragraphs.

39. The division of duties in district courts was henceforth to be determined by the president of the competent district court (rather than by the president of the regional court), following consultation with the board of the regional court (amending section 22a(1) in conjunction with the unchanged section 31(1)(4) of the 2001 Act, as cited in paragraph 37 above).

40. The body competent to hear appeals against changes in the division of duties which result in a modification of a judge's responsibilities was also changed, with the boards of respective courts being replaced by the NCJ, henceforth the sole competent appellate body. The right to an appeal was explicitly excluded, *inter alia,* in cases where the transfer concerned a division having jurisdiction over the same type of cases as the judge's previous division (section 22a(5) of the 2001 Act).

41. The appellate procedure (section 22a(6) of the 2001 Act) was also amended. Appeals were now to be lodged through the president of the relevant court that had enacted the contested change, who was obliged to forward the appeal to the NCJ within 14 days, accompanied by a statement of his or her position on the matter. Furthermore, it was expressly provided that the NCJ was not required to provide written reasons for its resolutions on such matters. The former requirement to hear the judge concerned before the adoption of a resolution – where they so requested and were available – was removed. No further appeal lies against the NCJ resolution.

(b) Provisions on administrative supervision by presidents of regional courts

42. The relevant provisions of the 2001 Act regarding the administrative supervision, by presidents of regional courts, over the administrative activities of district courts operating within their areas of responsibility, provide as follows:

Section 37

"1. The president of the court may delegate tasks pertaining to internal administrative supervision to a judicial inspector, and – subject to section 37c – to the vice-president of the court, the head of division, or, in duly justified cases, to another designated judge ... Persons entrusted with internal administrative supervision shall be entitled to review judicial activities, request explanations and rectification of irregularities, and attend hearings held in camera.

...

3. The president of the court shall annul administrative measures (*czynności administracyjne*) that are unlawful, detrimental to the efficiency of judicial proceedings, or otherwise inappropriate."

Section 37a

"2. The president of the regional court shall exercise internal administrative supervision over the administrative activities of the regional court and of the district courts operating within its judicial area."

B. Domestic practice

1. Domestic practice already summarised

43. The relevant domestic practice concerning the functioning of the judiciary and the NCJ was summarised in the judgments in cases of *Reczkowicz* (§§ 71-125) *Advance Pharma sp. z o.o.* (§§ 110-69), *Grzęda* (§§ 77-119) and *Juszczyszyn* (§§ 95-106), all cited above.

2. Domestic case-law concerning admissibility of appeals against transfer of judges

44. On 25 September 2019 the Supreme Court, in a panel of the Chamber of Extraordinary Review and Public Affairs (the "CERPA", see *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, §§ 353-54, 8 November 2021), gave a decision in case no. I NO 42/19 concerning an appeal lodged by a judge against a change in the division of her duties (that is to say, her transfer from a criminal to a civil division of the same court). The appellant alleged that the amendment to the 2001 Act which explicitly excluded the right of appeal against relevant NCJ resolutions (see paragraph 41 above) had been unconstitutional. Nevertheless, applying the impugned new wording of section 22a(6) of the 2001 Act, the CERPA rejected the appeal as inadmissible.

45. The CERPA of the Supreme Court followed the same approach in its later decisions (e.g. decision of 9 June 2020, case no. I NO 173/19, decision of 8 December 2020, case no. I NO 76/20).

II. INTERNATIONAL MATERIAL

A. Material already summarised

46. The relevant international material is set out in the judgments of *Bilgen v. Turkey* (no. 1571/07, §§ 32-38, 9 March 2021); *Reczkowicz* (cited above, §§ 126-76); *Advance Pharma sp. z o.o.* (cited above, §§ 170-225); *Grzęda* (cited above, §§ 120-67); *Juszczyszyn* (cited above, §§ 107-29); and *Pająk and Others* (cited above, §§ 54-79).

B. Council of Europe

Venice Commission's 2017 Opinion on the Draft Act Amending the 2001 Act

47. The 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 the Venice Commission adopted at its 113th Plenary Session (Venice, 8-9 December 2017, CDL-AD(2017)031), read, in so far as relevant, as follows:

> "**2. Powers of the presidents of the courts**
>
> 121. As shown above, the [Minister of Justice] has broad powers vis-à-vis court presidents. These powers are particularly important because of the special role played by the court presidents in the Polish judicial system.
>
> 122. Article 22 § 1 (1) (b) of the Act (which remained unchanged) provides that the president 'acts as a superior to judges' and staff of the court. Presidents of the courts are entitled to dismiss the heads of divisions, their deputies, the heads of sections and inspecting judges – and that may be done despite the opinion of the board of the court (the amended Article 11 § 3). They are competent to assign judges to the divisions and set out their duties (Article 22a § 1 (1)). Presidents of appeal courts have the power [to] issue 'written remarks' to lower courts' presidents concerning 'errors in the management of the court', which may entail a financial penalty (Article 37e).
>
> 123. Most importantly, court presidents have vast (and loosely defined) power related to the assignment of cases to judges, withdrawing of cases, and altering the composition of the benches. Thus, for example, under Article 45 (which remained unchanged) presidents of the courts may replace a judge hearing a case with another judge, for the sake of the 'the efficiency of proceedings'. Under the amended Article 47 § 1 a court president may assign one or two additional judges to a case, if this case 'is likely to last longer'. Under Article 47b (unchanged) the president may alter the composition of a bench 'if it is impossible to hear the case in the current composition or due to a long-term obstacle to the case being heard in the current composition' (see §§ 1 and 3). It appears that the presidents may use these powers unchecked.
>
> 124. The list of powers enjoyed by the court presidents in Poland may be continued: they order internal inspections covering 'all activities of the court', appoint inspecting judges (Article 37), 'verify the efficiency of proceedings in individual cases' (Article 37b), etc.

125. In short, in Poland courts presidents have extensive and in a number of instances even excessive powers. This is a source of concern by itself; but this is particularly worrying in the light of the hierarchical system of relations between court presidents of different levels and their subordinate position vis-à-vis the [Minister of Justice]. The Venice Commission reiterates that the [Minister of Justice] is responsible for setting and implementing penal policies and, at the same time, has vast powers vis-à-vis court presidents. In such a model, the [Minister of Justice] may be tempted to use court presidents as a channel to put pressure on the whole judiciary.

126. This danger may be attenuated if the NCJ substitutes for the role hitherto ascribed to the [Minister of Justice]. However, that solution would work only under condition that the NCJ is not itself under the total control of the parliamentary majority, and has a balanced composition, which would require abandoning the reform of the NCJ currently proposed."

C. European Union

Judgment of the Court of Justice of the European Union (Grand Chamber) in the case of W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), C-487/19, EU:C:2021:798

48. Mr W.Ż. was, at the relevant time, a judge adjudicating at the Cracow Regional Court. On 27 August 2018 the President of that court decided to transfer W.Ż. from a second-instance civil division to a first-instance civil division of the court. Mr W.Ż. considered his transfer to be a *de facto* demotion and appealed against this decision to the NCJ.

49. When the NCJ issued a resolution in which it decided to discontinue the proceedings in W.Ż.'s case, he lodged a further appeal with the Supreme Court (for more details of that case, see *Advance Pharma sp. z o.o.*, cited above, §§ 144-49 and §§ 214-16). While the case was pending, the Supreme Court lodged a request with the CJEU for a preliminary ruling.

50. On 6 October 2021 the CJEU delivered its judgment (*W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798) in which it made the following observations concerning the transfer of W.Ż.:

"114 Transfers without consent of a judge to another court, or, as is the case in the main proceedings, the transfer without consent of a judge between two divisions of the same court are also potentially capable of undermining the principles of the irremovability of judges and judicial independence.

115 Such transfers may constitute a way of exercising control over the content of judicial decisions because they are liable not only to affect the scope of the activities allocated to judges and the handling of cases entrusted to them, but also to have significant consequences on the life and career of those persons and, thus, to have effects similar to those of a disciplinary sanction.

116 Having examined various international instruments dealing with the issue of judicial transfers, the European Court of Human Rights thus noted that such instruments sought to confirm the existence of a right of members of the judiciary to protection from

arbitrary transfer, as a corollary to judicial independence. In that regard, that court *inter alia* stressed the importance of procedural safeguards and the possibility of a judicial remedy concerning decisions affecting the careers of judges, including their status, and in particular decisions to transfer them without their consent, in order to ensure that their independence is not compromised by undue external influences (see, to that effect, ECtHR, 9 March 2021, *Bilgen v. Turkey*, CE:ECHR:2021:0309JUD000157107, §§ 63 and 96).

117 In the light of the foregoing, it must be held that the requirement of judicial independence arising from second subparagraph of Article 19(1) [of the Treaty on European Union], read in the light of Article 47 of the Charter, requires that the rules applicable to transfer without the consent of such judges present, like the rules governing disciplinary matters, in particular the necessary guarantees to prevent any risk of that independence being jeopardised by direct or indirect external interventions. It follows that the rules and principles recalled in paragraph 113 of the present judgment relating to the disciplinary regime applicable to judges must, *mutatis mutandis*, also apply so far as concerns such rules concerning transfers.

118 It is thus important that, even where such transfer measures without consent are, as in the context of the case in the main proceedings, adopted by the president of the court to which the judge who is the subject of those measures belongs outside the disciplinary regime applicable to judges, those measures may only be ordered on legitimate grounds, in particular relating to distribution of available resources to ensure the proper administration of justice, and that such decisions may be legally challenged in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence.

119 As regards the context of the case in the main proceedings, the [Polish Commissioner for Human Rights], *inter alia*, submitted to the Court, first, that the transfer decision challenged by W.Ż[.] is considered by the latter to constitute an unjustified demotion, since he was transferred from a civil division of a regional court ruling on appeal to a civil division of the same court ruling at first instance, second, that W.Ż[.] was a member of and spokesperson for the former [NCJ] and was known for having publicly criticised the recent Polish justice reforms and, third, that the president of the court who decided on the transfer at issue in the main proceedings was appointed by the Minister for Justice on a discretionary basis under Article 24(1) of the Law on the organisation of the ordinary courts, as a replacement for the previous president of that court whose term of office was however still ongoing. Noting that the action brought by W.Ż[.] against that transfer decision was discontinued by the resolution at issue, the [Commissioner] also stated, in that context, echoing the doubts expressed by the referring court in that regard, that the new [NCJ] which adopted that resolution did not constitute an independent body.

120 Although it does not fall within the jurisdiction of the Court, hearing, as in the case, a request for a preliminary ruling, to confirm the extent to which those circumstances, or certain of them, have in fact been established, it remains, in any event, in order to ensure the possibility of an effective judicial remedy in respect of a decision to transfer a judge without consent, such as that at issue in the main proceedings, necessary for an independent and impartial tribunal established by law to be able, in accordance with a procedure that fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, to review the validity of that decision and that of the decision not to adjudicate of a body such as the [NCJ] concerning the challenge brought against that transfer decision."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE REVIEW OF THE DECISION ON THE APPLICANT'S TRANSFER

51. The applicant complained under Article 6 § 1 of the Convention that his right to safeguard and respect his individual independence by the State authorities and his right to have the decision on his transfer reviewed by an independent and impartial body had not been respected in the proceedings concerning his transfer, both as regards the proceedings held before the NCJ and in so far as there had been no judicial review of the NCJ's resolution of 25 July 2019 dismissing his appeal against the transfer.

The relevant part of Article 6 § 1 of the Convention 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 of the Convention, under its civil head, to a dispute concerning a judge's transfer to another division within one court

(a) The parties' submissions

(i) The Government's submissions

52. The Government contended that Article 6 § 1 of the Convention was not applicable under its civil limb to the proceedings at issue. Firstly, they argued that there was no subjective right for a judge "to hold a specific position in a particular court" under Polish law. Secondly, the Government contended that the right claimed by the applicant was not of civil but of a public-law nature, and thus excluded from the scope of application of Article 6 § 1 of the Convention under the conditions specified in the case of *Vilho Eskelinen and Others v. Finland* [GC] (no. 63235/00, ECHR 2007-II). In that context, the Government submitted that both criteria under the *Eskelinen* test were satisfied as (1) the domestic law expressly excluded judicial review of NCJ resolutions on appeals lodged by judges against the division of their duties, including transfer to other divisions within a court, and (2) this exclusion had been justified on objective grounds in the State's interest, specifically to ensure the efficient and effective management of judicial personnel.

(ii) The applicant's submissions

53. The applicant responded by maintaining that Article 6 § 1 of the Convention under its civil limb was applicable to the impugned proceedings. He conceded that domestic law did not provide for a judge's subjective right to hold a specific position in a particular court but contended that he had never relied upon such a right. Instead, he relied on the right to have his individual independence respected and safeguarded as well as the procedural right of access to a court in case of arbitrary changes to his professional situation, which in his case concerned a transfer to another division within the District Court. Concerning the nature of the right at issue, the applicant referred to the Court's *Eskelinen* case-law applying Article 6 of the Convention to various disputes regarding judges. The applicant conceded that the first condition of the *Eskelinen* test had been met (in so far as no judicial review of the transfer decision was available under domestic law) but disagreed as to the allegedly justified character of the exclusion. In that context, the applicant submitted that he had never contested the need for court presidents to undertake administrative or managerial decisions aimed at ensuring the proper administration of justice, and argued that those decisions, in so far as they pertained to the assigning of judicial duties to individual judges, should be subject to strict review by an independent court. Such review should take into account the observance of procedural rules in order to exclude arbitrariness and any lack of compliance with applicable laws. Against that background, the applicant argued that, in his view, the Government had not only failed to demonstrate any objective reasons which would justify the exclusion of judicial review but, on the contrary, that the following circumstances of his case reinforced the necessity of guaranteeing him the right to a court: (i) the arbitrary appointment of the President of the District Court by the Minister of Justice, (ii) violations of procedure regarding the decision on the applicant's transfer, and (iii) the examination of his appeal by the recomposed NCJ also being in breach of the applicable laws and the principles of fairness and independence.

(iii) Further submissions from the parties

54. In his additional submissions, the applicant relied on what he deemed to be newly discovered factual information regarding his case, namely press articles published on 17 May 2022 which reported that, back in 2019, judges with links to the Ministry of Justice discussed the applicant's case in a group chat on a messaging application. According to the articles, on 2 March 2019, one member of the group wrote: "Do something about that Biliński." In response, another member, identified by the journalists as Judge M. Mitera (that is, the President of the District Court – see paragraph 10 above), reportedly replied: "I will transfer him to the Family [Division]... or [rather] to the MoJ [Ministry of Justice]?".

55. The applicant submitted that the discussion took place at a time when the applicant was still adjudicating in the Criminal Division XI of the District Court and gave judgments acquitting protesters participating in anti-Government events and assemblies.

56. Based on the above, the applicant contended that the messages published by the media demonstrated the true motives underlying his transfer. The applicant emphasized that the correspondence took place before the order of the Minister of Justice abolishing Criminal Division XI, in which the applicant adjudicated (see paragraph 12 above).

57. In response, the Government contested the applicant's submissions which they considered to be far-reaching assumptions. The Government further submitted that domestic courts gave rulings in connection with the articles. However, no documents or even details indicating that any of those rulings concerned the elements cited by the applicant were provided by the Government. In conclusion, the Government argued that the Court should not rely on the press articles cited by the applicant.

(b) The Court's assessment

(i) General principles

58. 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 in that connection the cases of *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 v. Turkey* (no. 1571/07, §§ 47-52 and 65-68, 9 March 2021).

(ii) Application of these principles to the present case

59. In the light of the relevant general principles, in order to determine the applicability of Article 6 to the proceedings concerning the applicant's transfer, the Court needs to examine (i) the existence of the right upon which the applicant relied, and which can be said, at least on arguable grounds, to be recognised under domestic law and (ii) whether the right in question was a "civil" one within the meaning of that Convention provision.

(α) Existence of a right

60. The Court acknowledges that, contrary to the Government's assertions, the applicant has not claimed before it the right to hold a specific position within a particular court or – more specifically – a general right not to be transferred to another division of a particular court. Instead, he relied

upon the right to respect for and protection of his individual independence, as well as his procedural right of access to a court to challenge any arbitrary changes to his professional situation. The Court further notes that, in his appeal lodged with the NCJ (see paragraph 18 above), the applicant expressly complained that the transfer decision had infringed his judicial independence and the prohibition of the arbitrary transfer of a judge from one division to another.

61. The case therefore concerns, from the standpoint of Article 6 § 1 of the Convention, a member of the judiciary's right of access to a court and his right to a fair procedure in order to complain about the legitimacy of his non-consensual transfer between different divisions of the same court, which affected the conditions of his employment (compare with *Bilgen*, cited above, § 57). Thus, in the determination of whether the applicant could arguably rely on a "right" so as to bring into play the applicability of Article 6 of the Convention, the issue is not whether a right to a guarantee of jurisdictional specialisation existed in the Polish legal system, but whether there is an arguable basis on which one could claim a right to be protected against an arbitrary transfer between two divisions of one court, each dealing with a different area of law (ibid.).

62. 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, § 165, with further references). It has similarly already found no reason why this consideration should not also be applied in cases concerning the right of access to a court for members of the judiciary in matters concerning their status or career (see *Bilgen*, cited above, § 58). Given the prominent place that the judiciary occupies among State organs in a democratic society and the growing importance attached to the separation of powers and to the necessity of safeguarding the independence of the judiciary (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 196, 6 November 2018), the Court must be particularly attentive to the protection of members of the judiciary against measures affecting their status or career that can threaten their judicial independence and autonomy (see *Bilgen*, cited above, § 58).

63. Turning to the provisions of domestic law, the Court notes that Article 180 of the Polish Constitution provides for the principle of irremovability of judges. In particular, the second paragraph of that constitutional provision specifically states that "dismissal of a judge from office, suspension from office, or transfer to another court or position against his or her will, may only occur by virtue of a court judgment and only in those instances prescribed by statute". While it is not for this Court to determine whether assigning a judge against his or her will to another division of the same court should be considered a "transfer to another position" under that

provision of the Constitution, it notes that the principles of independence of the judiciary (stemming directly from Article 173 of the Constitution) and the security of tenure of judges (as guaranteed in the above-cited Article 180 thereof) are well-rooted in domestic law. With that being stated, the Court further notes that the Constitution provides that the Republic of Poland is a democratic State governed by the rule of law (Article 2), with organs of public authority functioning on the basis of, and within the limits of, the law (Article 7). Finally, the Constitution provides (in Article 77 § 2) that "statutes may not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights".

64. In that connection, the Court finds important the provisions of the 2001 Act in so far as they regulate the attribution of duties to judges, and in particular the assignment of judges to divisions (see paragraphs 37-41 above). At the outset, the Court notes with concern that the 2018 amendments to the 2001 Act (see paragraphs 38-41 above) appear to have extended the powers of court presidents (which had been considered extensive in the relevant Venice Commission opinion even before the adoption of the amendments – see paragraph 47 above), while also limiting the rights of judges affected by their decisions, notably as regards the right to appeal in general and the specific procedural rights within the modified appellate procedure (see paragraphs 40-41 above).

65. With the above being stated, the Court emphasises that even in the amended version, applicable to the applicant's situation, the 2001 Act still required, as a general rule, that a transfer between divisions be made with consent of the judge concerned (Section 22a (4a) of the 2001 Act). It was only in limited circumstances, that a transfer without consent was allowed. In that respect, the Court notes with concern the circumstances cited by the Polish Commissioner for Human Rights in his letter to the President of the District Court (see paragraph 21 above) in so far as it appeared that an experienced judge of the Family Division had been transferred, against her will, to the Civil Division of the same court, thus presumably creating a vacancy to be filled by the applicant's transfer.

66. When the above provisions are read in the light of the constitutional guarantees mentioned above, it cannot be argued that the President of the District Court had unfettered discretion in the matter of transfer of judges so as to allow him to transfer the applicant against his will and without providing any reasons (see paragraph 16 above). The Court notes, in this respect, the applicant's argument as observed by the Commissioner for Human Rights (see paragraph 21 above), that the applicant had not been the judge with the shortest duration of service in his original division and that, therefore, no proper consideration was given to that fact when deciding on the applicant's transfer, as required by Section 22a(4c) of the 2001 Act. The Court finds that, on this basis and in the absence of written reasons addressing that issue, the applicant, whose performance and conduct were not called into question,

could argue that his transfer was not in compliance with the provisions of domestic law (compare with *Bilgen*, cited above, § 61).

67. Against that background, the Court reiterates that it has previously recognised a right, supported by international norms, of a member of the judiciary to protection against an arbitrary transfer (see *Bilgen*, cited above, § 63), albeit between two distinct courts. Therefore, it remains to be seen whether that right may cover transfers between two divisions of the same court.

68. In that respect, the Court fully agrees with the findings of the CJEU, made in the latter's judgment of 6 October 2021 (in the case of *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*; see paragraphs 48-50 above), that a transfer of a judge, without his or her consent, between two divisions of the same court, is potentially capable of undermining the principles of the irremovability of judges and judicial independence.

69. The present case concerns the applicant's involuntary transfer from one division of a court to another division of that court, each dealing with a different area of law. Referring to both, its own findings in *Bilgen* (cited above, § 63), as well as those of the CJEU in the case cited above, the Court considers that the protection of judicial independence requires that the same level of safeguards against involuntary transfers of members of the judiciary apply to transfers between two divisions of the same court dealing with a different area of law and to transfers between distinct courts.

70. That being said, the Court emphasises that the case under review concerns a transfer between two divisions of the same court competent to hear cases within different areas of law, and that the case of *W.Ż.* (as referred to in paragraphs 48-50 above) concerned a transfer between two divisions of the same court competent to hear cases within the same area of law but on different levels of jurisdiction. The Court notes, by contrast, that in the specific context of the Polish judiciary it is also possible to transfer judges between two divisions of the same court which, while being distinct on an organisational level, are competent to hear cases within the same area of law and at the same level of jurisdiction. In such case, while it is not the Court's task to examine the question of involuntary transfers of judges in the abstract, the Court recognises that the level of safeguards discussed in paragraph 69 above might not be required. In that context, the Court finds it relevant to reiterate that it has already found that Article 6 of the Convention did not apply to a temporary secondment of a magistrate without a significant change in the nature of his or her tasks and functions (see *Vanchev v. Bulgaria* (dec.), no. 28003/15, §§ 35-37, 30 January 2024).

71. Turning to the circumstances of the instant case, the Court notes that the applicant, who previously adjudicated in a Criminal Division of the District Court, was transferred – against his will – to the Family Division of that court, which resulted in him hearing cases in a different area of law.

72. Nevertheless, in order for the applicant to be able to rely on the right to protection against arbitrary transfer, the Court must first determine whether, in the specific circumstances of the instant case, he could legitimately suspect that there was an element of arbitrariness in his transfer, since only such legitimate suspicion could provide an arguable basis on which the right to be protected against arbitrary transfer could be claimed (see *Bilgen*, cited above, § 61).

73. In that respect, the Court deems the following circumstances relied upon by the applicant to be noteworthy. First, the applicant gave rulings in several cases which attracted public attention as well as criticism from the representatives of the then Government (see paragraphs 8-9 above). Second, the President of the District Court at the relevant time had served, before his appointment to that post, as a seconded judge in the Ministry of Justice under Minister of Justice Z. Ziobro (see paragraph 10 above) who abolished the Criminal Division XI of the relevant District Court (see paragraph 12 above). Third, the President of the District Court proceeded with the transfer notwithstanding the fact that the Board of the Warsaw Regional Court had postponed giving its opinion on the transfer request (see paragraph 15 above). Fourth, the Commissioner for Human Rights raised valid concerns regarding the circumstances of the transfer in his letter to the President of the District Court, to which he did not receive a response which could be deemed to have duly addressed those concerns (see paragraphs 21, and 51-52 above).

74. The Court considers that in view of the combined circumstances listed above, the applicant could legitimately suspect an element of arbitrariness in his transfer at the relevant time. The Court notes, with great concern, the media reports cited by the applicant in his submissions (see paragraph 54 above). However, seeing as the circumstances referred to in paragraph 73 above were sufficient for a legitimate suspicion of an element of arbitrariness in the applicant's transfer, the Court does not find it necessary to address the allegations made in said media reports or the conclusions drawn therefrom by the applicant.

75. Consequently, in the specific circumstances of the instant case, the applicant could rely on a right to protection against an arbitrary transfer between two divisions of the District Court.

76. In the light of the above considerations, it follows that a dispute ("*contestation*" in French) over a "right" for the purposes of Article 6 § 1 can be said to have existed in the instant case. It remains to be determined whether the nature of the right in question was civil.

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

77. 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. 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; 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).

78. The Court notes that the parties agreed that the domestic law as applicable at the relevant time expressly excluded judicial review of decisions concerning the involuntary transfer of a judge between divisions of the same court, and that – consequently – the first condition of the *Eskelinen* test was met. The Court sees no reason to further examine this issue since, in any event, there are grounds on which to rule that the second condition of the *Eskelinen* test was not satisfied.

79. In assessing whether the exclusion of access to a court was based on objective grounds in the State's interest, it is not enough to establish that the civil servant in question participated in the exercise of public power or that there existed a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is for the respondent Government to show that the subject matter of the dispute in issue was related to the exercise of State power or that it had called into question that "special bond of trust and loyalty" (see *Vilho Eskelinen and Others*, cited above, § 62).

80. In *Bilgen* (cited above), the Court found that it would not be justified to exclude members of the judiciary from the protection of Article 6 of the Convention in matters concerning the conditions of their employment on the basis of the special bond of loyalty and trust to the State. In reaching that finding, the Court stated that, while the employment relationship between a civil servant and the State can traditionally be defined as one based on trust and loyalty to the executive branch in so far as employees of the State are required to implement government policies, the same does not hold true for members of the judiciary, who play a different and more independent role because of their duty to provide checks on government wrongdoing and abuse of power. Their employment relationship with the State must therefore be understood in the light of the specific guarantees essential for judicial independence and the principle of irremovability of judges. Thus, when referring to the special trust and loyalty that they must observe, it is loyalty to the rule of law and democracy and not to holders of State power. This complex aspect of the employment relationship between a judge and the State makes it necessary for members of the judiciary to be sufficiently distanced from other branches of the State in the performance of their duties, so that they can deliver decisions *a fortiori* on the basis of the requirements of law and justice, without fear or favour. It would be a fallacy to assume that judges can uphold the rule of law and give effect to the Convention if domestic law deprives them of the guarantees of the Articles of the Convention on matters directly touching their individual independence and impartiality (see the above-cited cases of *Bilgen*, § 79, and *Grzęda*, § 264).

81. The Court therefore does not accept the Government's plea that the exclusion of a judicial review of the decision on the applicant's transfer can be justified on the basis of the exercise of State sovereignty. The Court observes, in that respect, that no reasons were given for the impugned decision ordering the applicant's transfer. Consequently, the Court concludes that it has not been shown that the subject matter of the dispute was related to the use of sovereign State power (compare *Bilgen*, cited above, § 80). It therefore follows that Article 6 is applicable *ratione materiae* to the present case.

2. Compliance with the time-limit

(a) The parties' submissions

82. The Government contended that the applicant had submitted his application outside the six-month[1] time-limit laid down in Article 35 § 1 of the Convention. They submitted that the applicant's lawyer had been notified on 31 July 2019 of the NCJ's resolution of 25 July 2019 and that the six-month time-limit for the introduction of an application had begun to run on 1 August 2019 and expired on 1 February 2020. The Government further pointed out that the application form bore a stamp from the Court's Registry indicating 10 March 2020 as the date of receipt, which was outside the prescribed time-limit.

83. The applicant responded that the original application form had been dispatched on 23 November 2019, which was still within the time-limit, and that he had provided the Court with all the requested documents, including those concerning his complaint lodged with Polish Post.

(b) The Court's assessment

84. The Court reiterates that, according to Article 35 § 1 of the Convention, as it stood before the entry into force of Protocol No. 15 to the Convention (1 August 2021), the Court could only deal with the matter if the relevant complaint was raised within a period of six months (see *Cassar v. Malta* (dec.), no. 14179/21, § 30, 18 June 2024).

85. The Court observes that the NCJ's resolution of 25 July 2019 was notified to the applicant's lawyer on 31 July 2019. The six-month time-limit, were it to be counted from that event, started to run the next day, that is on 1 August 2019 and expired, contrary to the Government's submissions (see paragraph 82 above), on 31 January 2020, at midnight (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 60, 29 June 2012).

[1] Protocol No. 15 to the Convention has shortened to four months from the final domestic decision 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 final domestic decision was taken prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

86. The Court reiterates that, when lodging their applications, applicants are expected to take reasonable steps to inform themselves, *inter alia*, about the time-limit provided for in Article 35 § 1 of the Convention and act accordingly to comply with that time-limit (see *Sabri Güneş*, cited above, § 61). However, applicants cannot be held responsible for any delays that may affect their correspondence with the Court in transit; to hold otherwise would mean unjustifiably shortening the six-month period set forth in Article 35 § 1 of the Convention and negatively affecting the right of individual petition (see *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, § 70, 4 July 2013). The Court previously held that the date of the postmark recording on which day the application was sent is treated as the date of the application, and not the date of receipt stamped on the application (see, for example, *Brežec v. Croatia*, no. 7177/10, § 29, 18 July 2013). Therefore, it is the dispatch date which is of relevance to the time-limit laid down by Article 35 § 1 of the Convention (see *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 117, ECHR 2015).

87. The Court notes that the applicant has provided it with evidence that the parcel containing his application form was dispatched on 23 November 2019 and that it was lost in transit. The Court finds that, as in the case of delays which may affect their correspondence in transit (see *Anchugov and Gladkov*, cited above, § 70), applicants cannot be held responsible for the loss of their parcel by a postal operator. All the more so where, as in the present case, the postal service unequivocally confirmed the applicant's submissions as regards the loss in transit (see paragraph 35 above).

88. What remains to be ascertained is whether the applicant, having learned of the difficulties in delivering the parcel, acted accordingly (see, *mutatis mutandis*, *Sabri Güneş*, cited above, § 61) and pursued his interests diligently (see *Cassar*, cited above, § 40).

89. The Court notes in that connection that, when informed by the Court that the original application form had not been received, the applicant's lawyer lodged a complaint with the postal operator on the same day and sent the Court a copy of the original form, along with the relevant postal documents, within three days (see paragraphs 32-34 above). The Court considers that by doing so the applicant diligently pursued his interests (compare and contrast with *Cassar*, cited above, § 40, where the applicant's lawyer took more than two weeks to resubmit an application form returned by the postal service and provided no explanation for the delay). Therefore, the Court is satisfied that the applicant acted appropriately in the circumstances and that the application should be considered as having been introduced on 23 November 2019.

90. In these circumstances, the Court needs not reach a definitive conclusion on whether the six-month time-limit should be counted from the notification of the NCJ's resolution on the applicant's lawyer (see paragraph 85 above), or from the date on which the decision of the President

of the District Court was taken (see paragraph 16 above), that is 3 July 2019, since, in any event, the application form was introduced within six months from that earlier date as well.

91. Therefore, the Government's objection must be dismissed.

3. Conclusions as to admissibility

92. 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 applicant

93. The applicant argued that he had been deprived of an effective review of his involuntary transfer by an independent and impartial body. He submitted, first, that the NCJ failed to meet the standards of independence and, second, that its resolution was, as a matter of domestic law, non-justiciable and therefore not amenable to review by a court.

(b) The Government

94. Concerning the nature of the NCJ, the Government argued, relying on the Supreme Court's decision of 25 September 2019 (case no. I NO 42/19; see paragraph 44 above), that the NCJ (i) was not and had never been an authority of judicial self-government, (ii) belonged to neither of the three branches of government defined in the Polish Constitution, (iii) was not an administrative authority, and (iv) was an authority of a special nature and role in the tripartite government system and it could not substitute for a court. On that last note, the Government argued that the determination by the NCJ of a particular category of cases could not be equated with proceedings requiring the procedural guarantees inherent in the right to a fair trial.

The Government, relying on submissions the Supreme Court had forwarded to them in the context of the present proceedings, maintained that the 2017 changes to the NCJ's selection process were constitutionally sound, did not undermine judicial independence, and should not, in themselves, be grounds for finding Convention violations related to non-voluntary judicial transfers or appointments.

(c) Third parties

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

95. The Commissioner submitted that judicial independence – guaranteed both by the Convention and the Polish Constitution (Articles 45(1) and

178(1)) – should be interpreted to include a judge's right to protection from an arbitrary transfer. In that respect, the Commissioner relied on the Court's judgment in *Bilgen* (cited above) and on the CJEU's judgment in the case of *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (see paragraphs 48-50 above) to contend that judges should enjoy protection from arbitrary transfers and that the lack of judicial review of a non-voluntary transfer was not compatible with the rule of law or Article 6 of the Convention.

96. Concerning the NCJ, the Commissioner reiterated that one of its essential tasks was, pursuant to Article 186(1) of the Polish Constitution, upholding the independence of courts and judges. In order to evaluate whether the NCJ met the necessary requirements to fulfil this task, the Commissioner submitted that the following considerations were essential: (a) the nature of the changes introduced by the Amending Act of 12 July 2017 on the National Council of the Judiciary and certain other statutes (*Ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw* – "the 2017 Amending Act"); (b) the process by which the members of the recomposed NCJ were elected; and (c) the activities of the recomposed NCJ after re-staffing.

97. With respect to point (a) above, the Commissioner stressed that fifteen of the judicial posts, previously elected by other judges, were now elected by the *Sejm*, contrary to their constitutional role and the previous case-law of the Constitutional Court (judgment of 18 July 2007, K 25/07; for details thereof, see *Grzęda*, cited above, §§ 82-85). In consequence, after the enactment of the 2017 Amending Act the legislative and executive branches elected twenty-three out of twenty-five members of the NCJ, which granted those branches excessive influence over the process of appointments to the Supreme Court. At the same time the constitutionally protected four-year term of office of members of the NCJ had been prematurely terminated. The Commissioner also pointed to a general boycott of the elections to the new NCJ by judges, as a result of which out of a total of 10,000 Polish judges eligible for election, only eighteen candidates had in fact applied for the fifteen positions. Moreover, the transparency of the process had been heavily compromised by the authorities as they had refused to disclose the lists of support for the candidates in spite of a binding ruling by the Supreme Administrative Court ordering their disclosure (judgment of 28 June 2019, case no. I OSK 4282/18).

98. The Commissioner further submitted that the members of the recomposed NCJ included persons with strong links to the executive, namely judges seconded to the Ministry of Justice and judges who had been recently appointed by the Minister of Justice to the posts of president and vice-president of various courts. The Supreme Court in its resolution of 23 January 2020 had established that Judge M. Nawacki had been elected to the NCJ in breach of the 2017 Amending Act as he had not obtained the required number

of signatures to support his candidature. The NCJ had not intervened in cases of judges who had been prosecuted in politically motivated disciplinary or criminal proceedings. The NCJ had taken actions aimed at legitimising its own status by applying to the Constitutional Court to confirm the constitutionality of the 2017 Amending Act. As a result, the Commissioner concluded that the NCJ no longer fulfilled its constitutional role as guardian of judicial independence.

99. Concluding his remarks, the Commissioner reiterated that the NCJ had previously been found by the Court, in the case of *Reczkowicz* (cited above), to lack sufficient independence and submitted, therefore, that a procedure concerning a judge's transfer that involved the NCJ would fail to meet the requirements of the Convention unless there was a right of appeal against its decisions to an independent and impartial tribunal established by law.

(ii) Judges for Judges Foundation and Professor L. Pech

100. The interveners focused on the stance of the European Union on the rule-of-law crisis in Poland and referred to the key findings made by the European Commission and the European Parliament in relation to the new NCJ.

101. The interveners outlined the findings of the European Commission, and the European Parliament as regards the legislative changes made to the judicial system including, *inter alia*, (i) the lack of effective constitutional review, (ii) changes made to the structure of the Supreme Court, (iii) the introduction of the extraordinary appeal procedure, and (iv) the arbitrary dismissal of ordinary court presidents. They further provided an overview of the CJEU's key judgments regarding legislative changes targeting the Polish judiciary and judges.

102. Their conclusion was that in the time since the European Commission had activated its pre-Article 7 TEU procedure in January 2016 until the time when their intervention was submitted, the rule of law situation in Poland had gone from bad to worse. At the relevant time the authorities were actively organising a process of systemic non-compliance with the CJEU's rulings, but also with the Court's judgments relating to judicial independence, through, *inter alia*, the active collusion of unlawfully appointed judges and the Constitutional Court, in a broader context where the violation of the fundamental principles underlying the EU legal order had been "legalised" by Poland's "muzzle law" (see *Grzęda*, cited above, § 25). In their opinion, judicial independence had to be understood as having been structurally disabled by the Polish authorities.

(iii) The Helsinki Foundation for Human Rights

103. The Helsinki Foundation for Human Rights ("the Helsinki Foundation") submitted that the case under review raised two central issues concerning the situation of the judiciary in Poland and the interpretation of Article 6 of the Convention. They were, in its view: (i) the recognition of a subjective right of judges to have their independence safeguarded and respected, and (ii) the scope and significance of protection afforded to judges against so-called "internal" threats to their independence.

104. The intervener reiterated that the Polish Constitutional Court had expressly rejected the existence of a subjective right of judges to protect their independence. By contrast, the Inter-American Court of Human Rights had acknowledged that there was a subjective right of judges to respect for their irremovability. The intervener submitted that in the European context, certain commentators had argued that a subjective right of judges to have their independence safeguarded and respected could, and indeed should, be derived from Article 6 § 1 of the Convention.

105. The Helsinki Foundation further argued that, absent such recognition, judicial independence was primarily protected indirectly – either through the individual's right to be heard by an independent and impartial tribunal under Article 6, or through judges' individual rights such as access to a court, freedom of expression, or respect for private life. However, not all threats to judicial independence could be effectively addressed within those frameworks.

106. In the intervener's view, recognition of a subjective right of judges would therefore enhance the protection of judicial independence, which constituted a prerequisite for the effective functioning of the system of domestic protection of human rights. For such protection to be meaningful, it had to extend not only to preventing external interferences by the legislative or executive branches, but also to shielding judges from undue pressure exerted by their peers, in particular court presidents.

107. The Helsinki Foundation concluded that, in the specific context of Poland, safeguarding the independence of individual judges against "internal" threats was of particular importance given the legislative reforms that had significantly increased the powers of the Minister of Justice in the appointment and dismissal of court presidents.

(iv) The Polish Judges' Association Iustitia

108. The intervener presented an overview of the Court's and the CJEU's case-law on matters pertaining to: (i) the working conditions of judges, and (ii) the status of the NCJ. It further argued that Article 6 § 1 of the Convention had to be interpreted in such a way as to recognise a right for judges to have their individual independence safeguarded and respected by the State.

2. The Court's assessment

(a) General principles

109. The Court reiterates that the right to a fair hearing must be construed in the light of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights. Everyone has the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect only (see, among other authorities, *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 126, 21 June 2016; and *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 113, 15 March 2018).

110. The Court further observes that an authority which is not classified as one of the courts of a given State may nevertheless, for the purposes of Article 6 § 1, fall within the concept of a "tribunal" in the substantive sense of this expression (see *Sramek v. Austria*, 22 October 1984, § 36, Series A no. 84). A court or tribunal is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law, with full jurisdiction, and after proceedings conducted in a prescribed manner (ibid., and see *Cyprus v. Turkey* [GC], no. 25781/94, § 233, ECHR 2001-IV). A power of decision is inherent in the very notion of "tribunal" within the meaning of the Convention. The proceedings must provide the "determination by a tribunal of the matters in dispute", as required by Article 6 (see *Benthem v. the Netherlands*, 23 October 1985, § 40, Series A no. 97; *Bilgen*, cited above, § 73; and *Eminağaoğlu*, cited above, § 90). For the purposes of Article 6 § 1 a tribunal need not be a court of law integrated within the standard judicial machinery. It may be set up to deal with a specific subject matter which can be appropriately administered outside the ordinary court system (see *Rolf Gustafson v. Sweden,* 1 July 1997, § 45, *Reports of Judgments and Decisions* 1997-IV). Moreover, only an institution that has full jurisdiction and satisfies a number of requirements, such as independence from the executive and also from the parties, merits the designation "tribunal" within the meaning of Article 6 § 1 (see *Beaumartin v. France*, 24 November 1994, § 38, Series A no. 296-B).

111. Furthermore, the Court would refer to the general principles on the requirements of an "independent and impartial tribunal" at the stages of the determination and review of a case, as described in *Denisov v. Ukraine* [GC] (no. 76639/11, §§ 60-65, 25 September 2018), and with regard to the concept of a "tribunal established by law", *Guðmundur Andri Ástráðsson v. Iceland* [GC] (no. 26374/18, §§ 218-34, 1 December 2020).

112. The Court reiterates that where Article 6 § 1 of the Convention falls to be applied, as in the present case, to proceedings affecting the conditions of employment of a judge, the Convention requires, at a minimum, the operation of one of two mechanisms: either the professional bodies entrusted with determining such matters themselves satisfy the requirements of Article 6, or, if they do not, the proceedings before them are subject to subsequent review by a judicial body exercising full jurisdiction and offering the safeguards of that provision (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58; *Fazia Ali v. the United Kingdom*, no. 40378/10, § 75, 20 October 2015; *Eminağaoğlu*, cited above, §§ 94 and 103; and *Catană v. the Republic of Moldova*, no. 43237/13, § 61, 21 February 2023).

113. Lastly, the Court reiterates that it has already found that the NCJ, as established under the 2017 Amending Act, no longer offered sufficient guarantees of independence from the legislative or executive powers (see *Dolińska-Ficek and Ozimek*, cited above, §§ 290-320 and *Wałęsa v. Poland*, no. 50849/21, § 169, 23 November 2023).

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

114. At the outset, the Court considers it important to note that the decision on the applicant's transfer was subsequently annulled by the President of the Regional Court (see paragraph 22 above). However, that annulment appears to have produced no effects on the applicant's situation as he remained assigned to the Family Division (see paragraph 29 above). With the above being stated, the Court considers that the main issue in the instant complaint is the lack of review, by an independent and impartial body, of the decision to transfer the applicant, against his will, between two divisions of the same court dealing with a different area of law. It is therefore necessary to examine the whole of the proceedings aimed at a review of the applicant's transfer in order to address the question whether he had an opportunity to submit the transfer at issue to a review satisfying the requirements of Article 6 § 1 of the Convention.

115. First, the Court notes the Government's argument that the NCJ was not a judicial body and that it enjoyed a special status within the tripartite government system. Nevertheless, the Court reiterates that it has already applied Article 6 to proceedings before similar bodies in other States (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 103-31, ECHR 2013; *Denisov*, cited above, §§ 55-82; *Eminağaoğlu*, cited above, §§ 98-102; *Catană*, cited above, §§ 73-85; and *Suren Antonyan v. Armenia*, no. 20140/23, §§ 101-19, 23 January 2025). Consequently, a review of the applicant's transfer carried out by a body which is not a court integrated within the standard judicial machinery, such as the NCJ, could in principle satisfy the requirements of review under Article 6 § 1 (for a recent example of such finding, see *Suren Antonyan*, cited above, §§ 120-29).

116. That being said, the Court emphasises the distinction to be made between the NCJ (i) as regulated by the Polish Constitution, and (ii) as operating at the material time, after being recomposed under the 2017 Amending Act. The Court reiterates that it previously established that the recomposed NCJ was not an independent body (see paragraph 113 above and the case-law cited therein). Consequently, even if the Court were to accept that the NCJ could be regarded as a "tribunal" for the purposes of a review of the applicant's transfer, the established lack of independence of that body as it currently stands is sufficient for the Court to conclude that the review of the applicant's transfer as effected by the NCJ did not satisfy the requirements of Article 6 § 1.

117. This conclusion is further supported by the fact that very few safeguards were offered in the proceedings before the NCJ (compare with *Eminağaoğlu*, cited above, § 99). Firstly, the Court notes that the applicant was never heard in the course of those proceedings and could not participate – himself or *via* his representatives – in the session of the NCJ concerning his case (see paragraphs 20 and 41 above). Secondly, the Court observes that the applicant had no possibility to learn the motives behind the NCJ's resolution, as it gave no reasons whatsoever. The Court finds the lack of reasons particularly striking, especially given the fact that the original decision ordering the applicant's transfer had been annulled by the President of the Warsaw Regional Court and the NCJ had been made aware of that fact (see paragraphs 22-23 and 25). Additionally, the Court notes with concern that both of the aforementioned deficiencies of the proceedings were apparently brought about by the legislative amendment enacted in 2018, which limited the procedural safeguards available to judges affected by a transfer decision (see paragraphs 37 and 41 above).

118. The foregoing considerations are sufficient to enable the Court to conclude that the recomposed NCJ cannot be regarded as an independent "tribunal" within the meaning of Article 6 § 1 of the Convention.

119. In application of its settled case-law (see paragraph 112 above), the Court reiterates that whenever a body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1. That, however, was not the case here, as the domestic law expressly excluded judicial review of the relevant NCJ resolutions (see paragraphs 41, 52 and 78 above).

120. In the light of the foregoing, the Court concludes that the impugned transfer of the applicant between two divisions of the District Court adjudicating different areas of law was not reviewed by any body exercising judicial functions or by an ordinary court. In these circumstances, the Court concludes that the respondent State has impaired the very essence of the applicant's right of access to a court.

121. Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of the breach of the applicant's right to review, by a tribunal, of the decision on his transfer.

II. REMAINING COMPLAINTS

122. Lastly, the applicant complained under Article 6 § 1 of the Convention that the decision on his transfer was taken in breach of domestic law, constituted an interference with his subjective right to independence as a judge, and that the proceedings before the NCJ had been unfair.

123. Having regard to the facts of the case and in the light of all the material in its possession as well as its findings made under Article 6 § 1 of the Convention above concerning the proceedings before the NCJ and the absence of judicial review, 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).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage flowing from the suffering and distress occasioned by the violation of his rights. He submitted that the transfer had deprived him of the possibility of adjudicating in cases pertaining to criminal and administrative offences and had been perceived, by himself and his peers, as a repressive attempt to influence his independence as a judge, owing to political motivations of the President of the District Court. The applicant further argued that the highly opaque and allegedly unfair proceedings before the NCJ had been a source of significant disappointment. Moreover, the applicant submitted that while the proceedings before the NCJ were pending his second son was born. As a result of the transfer the applicant had not been able to focus on his family life but had had to devote his attention to the ongoing proceedings, which had resulted in a sense of injustice.

126. 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. The Government further argued that the amount claimed was exorbitant and unsubstantiated.

127. The Court, having regard to the circumstances of the case, the nature of the violation found and its just-satisfaction awards in similar cases, awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

128. The applicant also claimed EUR 18,000, inclusive of VAT, for the costs and expenses incurred before the Court. He submitted a copy of the legal services agreement of 10 May 2021 between him and the law firm Pietrzak Sidor and Partners along with a pro-forma invoice of 6 October 2021.

129. The Government argued that the amount claimed did not meet the requirements of adequacy and necessity.

130. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000 covering costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the lack of review by a tribunal of the decision on the applicant's transfer admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the applicant's right to review by a tribunal of the decision on his transfer;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President