**Reply of the Polish Government to the questionnaire of the Special Rapporteur on the independence of judges and lawyers**

1. **Please provide information on the way the legal profession is organized and regulated in your country. What are the legal bases for the establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provision protecting the rights of lawyers to freely join or create a local, national or international association, and mention the existing associations.**

The attorney and legal adviser professions are organised on the basis of the self-governance rule, as legally justified in the Constitution of the Republic of Poland. Under Article 17(1) of the Constitution, professional self-governing bodies representing persons exercising professions of public trust and safeguarding the due and proper exercise of said professions within the boundaries of public interest and to protect it may be established by an act of law.

Detailed regulations concerning the attorney profession have been stipulated under the Act of 26 May 1982 on the Advocate’s Profession (*Journal of Laws* of 2017 item 2368, as amended); detailed regulations concerning the legal adviser profession have been stipulated in the Act of 6 July 1982 on Legal Advisers (*Journal of Laws* of 2017 item 1870, as amended). Furthermore, regulations concerning both professions have been stipulated in the Act of 5 July 2002 concerning the provision of legal assistance by foreign lawyers in the Republic of Poland (*Journal of Laws* of 2016 item 1874).

As a rule, persons who meet the following criteria may become attorneys/ legal advisers:

1) they are of impeccable moral character, his/ her former behaviour warranting the due and proper exercise of the attorney/ legal adviser profession;

2) they enjoy full civic rights and full legal capacity;

3) they graduated from a law faculty with an M.A. university degree awarded in the Republic of Poland, or from a foreign law faculty whose curriculum and degree are recognised by the Republic of Poland;

4) they completed attorney/ legal adviser training in the Republic of Poland and passed the attorney/ legal adviser final examination.

Furthermore, corporate law stipulations waive the obligation of completing legal training and passing a professional examination for persons exercising specific legal professions or holding an appropriate academic degree or specific legal professional experience; the above applies in particular to judges, prosecutors, notaries, professors and habilitated doctors of legal sciences, and to representatives of other professional groups with sufficient legal experience, usually no shorter than three years.

The acts additionally provide for the option of waiving the legal training obligation while upholding the obligation of passing the professional attorney/ legal adviser examination. The above applies in particular to doctors of legal sciences, and to representatives of other professional groups with sufficient legal experience, no shorter than four years.

The listed acts guarantee that the self-governing principle is exercised with regard to both professions.

Pursuant to the Act on the Advocate’s Profession, the Bar association is organised under the rules of a professional self-governing body and comprises all attorneys and attorney applicants in training.

Bar association responsibilities include the following:

1) providing conditions for the performance of statutory tasks by the Bar association;

2) representing the Bar and safeguarding its rights;

3) supervising the enforcement of legal provisions in the field of exercising the attorney profession;

4) improving professional skills of attorneys and educating attorney applicants in training;

5) defining and disseminating rules of professional ethics, and securing their enforcement;

6) co-operating with local government agencies in providing free of charge legal assistance;

7) managing and administering the Bar association’s assets (Articles 1-3).

Bar association bodies include the following: the National Bar Convention, the Supreme Bar Council, the High Disciplinary Court, the Disciplinary Ombudsperson of the Bar Association, and the High Audit Committee. Only attorneys may be members of the Bar association governing bodies (Article 9).

A bar chamber comprises attorneys and applicant attorneys in training with registered business seats in the operating territory of the chamber, said territory duly stipulated by the Supreme Bar Council in recognition of the territorial division of court administration, in particular.

Bar chamber bodies include the following: 1) chamber assembly of attorneys practicing the legal profession and delegates of other attorneys; 2) regional bar council; 3) disciplinary court; 4) disciplinary ombudsperson; 5) audit committee (Articles 38-39).

The Supreme Bar Council, bar councils and bar law firms are legal persons (Article 10).

As stipulated in the Act on Legal Advisers, legal advisers are organised under self-governing professional body rules. Self-governing body organisational units recognised as legal persons include regional chambers of legal advisers and the National Chamber of Legal Advisers (Article 5(1) and (2)).

The self-governing body is independent in discharging its tasks, subject only to the law. Membership of a self-governing body is compulsory for legal advisers and legal adviser applicants in training.

Responsibilities of the self-governing body include the following, in particular:

1) participating in the process of setting out conditions for the performance of statutory tasks by legal advisers;

2) representing legal advisers and legal adviser applicants in training and protecting their professional interest; 3) participating in the process of establishing and enforcing legal provisions;

4) preparing legal adviser applicants in training for the due and proper exercising of the legal adviser profession, and improving professional skills of legal advisers;

5) supervising the due and proper exercising of the profession by legal advisers and legal adviser applicants in training;

6) co-operating with local government agencies in providing free of charge legal assistance;

7) researching the field of legal assistance practice (Articles 40-41).

Self-governing body authorities include the following: the National Convention of Legal Advisers, the National Council of Legal Advisers, the High Audit Committee, the High Disciplinary Court, the Supreme Disciplinary Ombudsperson, the assembly of a regional chamber of legal advisers, the board of a regional chamber of legal advisers, the regional audit committee, the regional disciplinary court, and the disciplinary ombudsperson. Self-governing body authority members may include legal advisers only (Article 42).

1. **Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:**
   1. **The exact denomination of the body;**
   2. **The legal basis for its establishment (e.g. constitutional provisions; ordinary law or other);**
   3. **Whether the association has been established as an ‘independent’ and self-governing association;**
   4. **The composition and appointment process of the executive body of the association.**

The legislative branch of government authority plays a key role in regulating the attorney and legal adviser professions. The related role of professional self-governing bodies is opinion-forming in nature.

Under Article 58(9) of the Act on the Advocate’s Profession, the Supreme Bar Council’s responsibilities include issuing of opinions concerning draft legislation, and submission of motions and postulates with regard to the process of establishing and applying the law.

Likewise, under Article 60(2) of the Act on Legal Advisers, responsibilities of the National Council of Legal Advisers include issuing of opinions concerning draft legislation, and submission of motions with regard to statutory regulations.

Professional self-governing bodies of attorneys and legal advisers are independent in discharging their tasks, subject to the law only.

The Supreme Bar Council comprises the following: 1) the president of the Supreme Bar Council; 2) attorneys duly elected by the National Bar Convention, their number reflecting the number of regional bar council deans, no more than eight attorneys representing the same chamber; 3) regional bar council deans.

Elections to bar association bodies, bar council bodies, and bar law firms are held in secret ballot, with no restriction as to the number of candidates.

The National Council of Legal Advisers comprises its president and members duly elected by the National Convention of Legal Advisers, and members directly elected by regional chamber assemblies, one member per chamber.

Elections of legal adviser self-governing bodies are held in secret ballot, with no restriction as to the number of candidates.

1. **Please provide information on the relationship between the association of lawyers and the Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and/or the judiciary in relation to the establishment and functioning of this association.**

The Minister of Justice exercises oversight of the operation of self-governing bodies of the attorney and legal adviser professions as to their scope and forms stipulated under the following acts: the Act on the Advocate’s Profession, the Act on Legal Advisers, and acts concerning the provision of legal assistance by foreign lawyers in the Republic of Poland; the minister is charged with the following, in particular:

1) Specifying (by ordinance) the official attire of attorneys and legal advisers attending judicial trials, in recognition of said attire’s necessary ceremonious nature to reflect tradition and solemnity of the court;

2) specifying (by ordinance), in consultation with the Supreme Bar Council, the rates of attorney and legal adviser fees charged for legal action before the judiciary, minimum fee rates, and detailed rules of covering costs of any unpaid legal assistance provided by ex officio attorneys and/or legal advisers;

3) oversight of the exercise by self-governing bodies of the obligation to check whether attorneys and legal advisers complied with the requirement to insure themselves against third-party liability, and participating in the process of defining the scope and rules of compulsory insurance for attorneys and legal advisers;

4) auditing the lawfulness and justifiability of resolutions passed by self-governing bodies within the scope of their legislative authority, including the filing of applications with the Supreme Court to quash unlawful resolutions;

5) applying to supreme self-governing body authorities (the National Bar Convention, the Supreme Bar Council, the National Convention of Legal Advisers, or the National Council of Legal Advisers) to pass resolutions with regard to specific issues falling under their competencies;

6) examining cases concerning entries to attorney and legal adviser lists and attorney and legal adviser applicant lists, including analyses of list entry-related resolutions and documents and personal candidate files submitted, drafting decisions of objection to attorney and legal adviser list or attorney and legal adviser applicant list entries, and examining appeals from self-governing body resolutions to refuse entry to attorney and legal adviser lists;

7) organising and supervising entrance examinations to attorney and legal adviser applicant training programmes, attorney and legal adviser final examinations, and skill tests for candidates from European Union member states, said candidates applying for an attorney and legal adviser list entry;

8) oversight of disciplinary proceedings against attorneys, legal advisers, and/or attorney and legal adviser applicants in training by auditing disciplinary authority decisions submitted to the Ministry and filing appeals against said decisions, cassation motions to the Supreme Court included;

9) issuing orders to initiate disciplinary proceedings in case of related public interest arising;

10) responding to complaints concerning activities of attorneys and legal advisers, and monitoring complaint proceedings conducted before attorneys’ and legal advisers’ self-governing bodies.

1. **Please provide information on the role that professional associations of lawyers play with regard to:**
   1. **The admission process to the legal profession and the licensing of lawyers;**

Participation in an attorney/ legal adviser training programme and passing the attorney/ legal adviser final examination remain the simplest way into the attorney/ legal adviser profession.

Entrance examination:

a) state entrance examinations in single-choice test format to the attorney/ legal adviser training programme are organised by the Minister of Justice in co-operation with the respective attorney and legal adviser self-governing bodies;

b) the Minister of Justice appoints teams of authors of test questions included in the entrance examinations to the attorney/ legal adviser training programme; each team comprises i.a. attorneys and legal advisers;

c) the Minister of Justice appoints separate examination committees for purposes of each entrance examination, said committees comprising i.a. representatives of attorney and legal adviser self-governing bodies, respectively.

The training programme:

a) having successfully passed the entrance examination makes the candidate eligible to be put on the applicants’ training list, the entry duly handled by self-governing bodies of the respective legal profession upon motion by the eligible applicant;

b) attorney/ legal adviser training programmes are operated by respective attorney or legal adviser self-governing bodies;

c) the rules of attending attorney/ legal adviser training programmes have been duly specified under the Act on the Advocate’s Profession and the Act on Legal Advisers, the detailed programme curriculum defined under rules of attending attorney/ legal adviser training programmes duly resolved by self-governing bodies of legal professions;

d) completing the training programme makes the applicant eligible to take the respective final attorney or legal adviser professional examination.

Professional examinations:

a) attorney and legal adviser self-governing bodies are active participants of the process of designing and holding professional examinations (for attorneys and legal advisers, respectively) taken by persons who had completed the training programme and by persons allowed to take the examination without the need to attend a training programme (holders of the doctor of legal sciences academic degree, or with appropriate professional experience as required by law);

b) at the early stage of examination design, the Minister of Justice – in consultation with self-governing bodies of legal professions – sets the examination date, and the territorial competencies of individual examination committees;

c) representatives of the aforementioned self-governing bodies of legal professions – as joint state and public participation agents – duly indicated by aforementioned self-governing bodies form part of the following units duly appointed by the Minister of Justice: teams responsible for the drafting of examination tasks and problems, examination committees holding the examinations, and second-degree examination committees responsible for examining appeals from examination results;

d) relevant self-governing bodies of legal professions provide administrative and technical support services for purposes of examination committee activities;

e) the process of holding professional examinations is stipulated in detail in aforementioned provisions of the Act on the Advocate’s Profession and the Act on Legal Advisers, and in implementation regulations duly passed on the basis thereof.

* 1. **The conduct of disciplinary proceedings against lawyers;**

Cases of inappropriate activities engaged in by attorneys and legal advisers fall under the competencies of the respective attorneys’ and legal advisers’ self-governing bodies. Self-governing bodies of both communities are competent to handle disciplinary proceedings against representatives of the attorney and legal adviser professions, respectively.

Disciplinary cases concerning attorneys are handled by disciplinary ombudspersons, the Disciplinary Ombudsperson of the Bar Association, disciplinary courts of bar chambers, and the High Disciplinary Court.

The disciplinary ombudsperson acts as prosecutor in proceedings before the disciplinary court of a bar chamber; the Disciplinary Ombudsperson of the Bar Association acts as prosecutor in proceedings before the High Disciplinary Court. At both levels, ombudspersons may be joined by their deputies performing tasks duly assigned to them by ombudspersons.

The following bodies rule on disciplinary cases: 1) disciplinary courts of bar chambers; 2) the High Disciplinary Court. Disciplinary courts are independent in their rulings.

Similar bodies exist in self-governing bodies of legal advisers.

* 1. **The provision of legal aid;**

Legal assistance is provided directly by attorneys and legal advisers. Self-governing bodies are charged with overseeing due and proper exercise of the legal profession by attorneys and legal advisers, respectively; with establishing and disseminating the rules of professional ethics; with co-operating with local government agencies in providing free-of-charge legal assistance; and researching the field of legal assistance practice.

* 1. **The protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;**

During and in conjunction with the discharge of professional duties, attorneys and legal advisers enjoy legal protection, as do judges and prosecutors.

Abuse of the freedom of speech and expression, recognised as insult or defamation of a party, his/her attorney-in-fact, his/her defence lawyer, guardian, witness, expert witness or translator, which is an offence prosecuted upon motion of the injured person, shall be prosecuted in disciplinary proceedings only.

* 1. **The development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.**

Pursuant to Article 17(1) of the Constitution of the Republic of Poland, professional self-governing bodies representing persons exercising professions of public trust and safeguarding the due and proper exercise of the said professions within the boundaries of public interest and to protect it may be established by an act of law. Self-governing body’s functions in the form of representation of persons exercising a profession of public trust, attorneys and legal advisers included, comprise i.a. the right to submit legislative proposals and opinions concerning draft legislation. Self-governing bodies and associations of attorneys and legal advisers have been very active in the respective field, with both professions increasingly highlighting the need to expand their involvement in the legislative process before a bill becomes law.

Pursuant to Article 58(9) of the Act of 26 May 1982 on the Advocate’s Profession (*Journal of Laws* of 2017 item 2368, as amended), Supreme Bar Council responsibilities include the issuing of opinions concerning draft legislation, and submission of motions and postulates with regard to the process of establishing and applying the law. Ostensibly, the potential scope of the subject matter of the draft legislation with respect to which opinions are issued may be found in Article 1(1) of the Act on the Advocate’s Profession, which provides that the Bar is called to provide legal assistance, to collaborate in protecting civil rights and freedoms, and to create and apply the law.

Similarly, pursuant to provisions of Article 60(2) of the Act of 6 July 1982 on Legal Advisers (*Journal of Laws* of 2017 item 1870, as amended), responsibilities of the National Council of Legal Advisers include the issuing of opinions concerning draft legislation, and submission of motions with regard to statutory regulations.

Importantly, besides being vested with the general power to issue opinions on draft laws, in many situations specified by the law, self-governing bodies of attorneys and legal advisers are required to participate in the enactment of a specific piece of legislation. Examples include the obligation of the Minister of Justice – duly stipulated under Article 16(2) and (3) of the Act on the Advocate’s Profession and Article 225(2) and (3) of the Act on Legal Advisers – to issue implementing regulations stipulating the rates of attorney and legal adviser fees charged for their actions taken before justice administration bodies, upon consulting with the Supreme Bar Council and the National Council of Legal Advisers. The obligation of the Minister of Justice to consult with the aforementioned bodies (or one of them) is also provided for in i.a. statutory authorisations referred to in Article 29(2), Article 75b (12) and Article 75d (2) of the Act on the Advocate’s Profession, and in Article 223(2), Article 334(2), and Article 335(12) of the Act on Legal Advisers.

Regulations concerning the authority of self-governing bodies of attorneys and legal advisers to issue legal opinion correlate with regulations concerning the governmental legislative process duly described under resolution of the Council of Ministers of 29 October 2013 – Workplace Regulations of the Council of Ministers (Official Journal of the Republic of Poland (M.P.) 2016 item 1006, as amended). With regard to drafting government documents (including draft laws), the Workplace Regulations provide for a separate stage during which draft laws are submitted to government administration agencies or other state bodies and institutions to which the draft law applies, as well as to other entities duly specified in separate legal provisions, self-governing professional bodies included (Article 38 of the Operating Rules and Regulations of the Council of Ministers). Concurrently, the government administrative agency responsible for draft conciliation (applicant agency) is obligated to discuss the results of the consulting and opinion process in a consultation report (§51(1)(1) of the Workplace Regulations of the Council of Ministers). Such report should identify the entities that have submitted their opinions, and contain a description of all opinions submitted and how they were received by the applicant authority (§51(2) of the Workplace Regulations of the Council of Ministers).

The possibility of taking a position during the legislative process at the stage of public consultations on a draft law by associations and other organisations representing attorneys and legal advisers (such as the Alliance of Self-Governing Bodies of Associations of Legal Professions) is a separate matter. Pursuant to §36 of the Workplace Regulations of the Council of Ministers, the applicant authority, accounting for the contents of the draft principles of a bill, of a draft bill or of a draft ordinance, and for other circumstances, such as the importance of the draft bill and its projected social and economic consequences, the level of its complexity and its urgency, presents the draft bill for public consultations; the option includes the submission of such draft bill to social organisations or other entities and/or institutions concerned so that they can present their respective positions in line with the guidelines on public consultations, if such guidelines were provided for by the Council of Ministers or one of its auxiliary bodies. Similarly to the process of submitting opinions, public consultation results should be discussed in a consultation report.

1. **Is membership in the professional association of lawyers mandatory to practice law in your country? In case membership is a prerequisite to practice law, please provide detailed information on the measures the State has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory.**

Self-governing body membership is compulsory for attorneys and legal advisers. There is no shortage of attorneys or legal advisers in the territory of Poland.