**Questionnaire of the Special Rapporteur on the independence of judges and lawyers**

1. **Please indicate whether there is a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?**

The National Council of the Judiciary of Poland (“KRS”) plays a key role in the selection and promotion of judges in Poland. The functions and composition of KRS are laid down in the Constitution and the Act of 12 May 2011 (consolidated text: Journal of Laws of 2016, item 976, as amended, “KRS Act”).

According to Article 186 of the Constitution of the Republic of Poland, the National Council of the Judiciary of Poland safeguards the independence of courts and judges. KRS may request the Constitutional Tribunal to examine the compliance of normative acts with the Constitution to the extent that they concern the independence of courts and judges.

The composition of KRS is defined in Article 187 of the Constitution, which provides that KRS shall be composed of:

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

2) 15 members chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;

3) 4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.

According to Article 187(2) of the Constitution, KRS shall choose, from amongst its members, a chairperson and two deputy chairpersons.

According to Article 187(3) of the Constitution, the term of office of KRS members is 4 years.

According to Article 187(4) of the Constitution, the organisational structure, the scope of activity and procedures for work of KRS, as well as the manner of choosing its members, are specified by statute.

1. **Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget).**

The KRS Act lays down the procedure of election of KRS members. The key stages of the procedure are presented below. The procedure has been largely modified under the Act of 8 December 2017 amending the Act on the National Council of the Judiciary of Poland and certain other Acts (Journal of Laws of 2018, item 3). The Act took effect on 17 January 2018. Before the effective date of the Act, judges were elected as KRS members for a term of office of 4 years by the competent general assemblies of judges of a certain level. According to Article 11 of the KRS Act (now revoked), 15 judges – KRS members were elected by judges through the general assemblies or meetings of judges. Thus, 2 KRS members were elected by the General Assembly of the Judges of the Supreme Court from amongst the judges of the Supreme Court; another 2 KRS members were elected by the General Assembly of the Judges of the Supreme Administrative Court jointly with representatives of general assemblies of regional administrative courts from amongst the judges of the administrative courts; another 2 KRS members were elected by a meeting of representatives of meetings of the judges of appeal courts from amongst those judges; 8 judges – KRS members were elected by a meeting of representatives of general assemblies of the judges of the regions; one judge – KRS member was elected by the Assembly of the Judges of Military Courts.

At this time, following the amendments under the Act of 8 December 2017, the Parliament elects 15 judges as KRS members. According to the new Article 11a(1) and (2) of the KRS Act, the Speaker of the Sejm publishes an announcement on the opening of the procedure of nominating candidates for KRS members in the Official Journal of the Republic of Poland *Monitor Polski*. Eligible to nominate a candidate for a KRS member are groups of at least:

1) 2000 citizens of the Republic of Poland who are over 18 years of age, have the full legal capacity and enjoy full public rights;

2) 25 judges other than retired judges.

Each nomination may only be for one candidate for KRS member. The eligible groups may put forth more than one nomination.

According to Article 11a(4)-(9) of the KRS Act, candidates for KRS members are proposed to the Speaker of the Sejm within 30 days of the date of the announcement. The nomination shall include information about the candidate, their previous functions and social activity, as well as other material events which occurred during the candidate’s mandate as a judge. The nomination shall include the candidate’s consent to stand for election. The Speaker of the Sejm requests the president of the candidate’s court in writing to draft and provide, within 7 days, information including the candidate’s key judgments, including socially relevant and precedent judgments, as well as other relevant information about the candidate’s professional conduct, mainly identified during audits and vetting. Where the nomination concerns a court president, the information is provided by the president of a court of higher instance for a candidate for a KRS member who is a president of a district court, regional court or garrison military court, or by the vice president or deputy president of the court for a candidate who is the president of an appeal court, regional administrative court or circuit military court.

If such information is not presented in due time, the Speaker of the Sejm requests the candidate for KRS member in writing to provide such information within 7 days. If such information is not presented by the candidate for KRS member in due time, the Speaker of the Sejm rejects the nomination. The relevant decision together with grounds is delivered immediately to the proxy and the candidate for KRS member. The information about the candidate is attached by the Speaker of the Sejm to the nomination.

Article 11b of the KRS Act provides for a procedure of public review of nominations of judges as candidates for KRS members. The procedure is complex and may involve the State Electoral Commission and the Supreme Court as the body responsible for examination of appeals against the rejection of nominations of KRS candidates.

Article 11d of the KRS Act defines the first stage of the election of judges as KRS members. Party caucuses in the Sejm may select candidates for KRS members from amongst the judges nominated as described above. Each caucus may select no more than 9 KRS members. If the total number of candidates selected by the caucuses is less than 15, the Bureau of the Sejm selects the outstanding number of candidates from amongst the candidates nominated according to Article 11a. The final list of 15 candidates for KRS members is drawn up by the competent Sejm committee from amongst the candidates selected by the caucuses. The list must include at least one candidate selected by each caucus, active within 60 days after the first session of the Sejm of the term of office when the election takes place. According to Article 11d(4) of the KRS Act, if a caucus decides not to select KRS candidates from amongst the nominated judges within 7 days in response to a call issued by the Speaker of the Sejm, the final list of candidates does not have to include any candidate judge selected by such caucus.

According to Article 11d(5) of the KRS Act, KRS members are elected by the Sejm for a joint term of office of 4 years. KRS members are elected at the next session of the Sejm by a majority of 3/5 of votes in the presence of at least one-half of the statutory number of Deputies in a vote for the list of candidates referred to above.

According to Article 11d(6) of the KRS Act, if KRS members are not elected according to Article 11d(5), the Sejm elects KRS members by an absolute majority of votes in the presence of at least one-half of the statutory number of Deputies in a vote for the list of candidates referred to above.

If 15 KRS members are not elected according to Article 11d(1)-(6) of the KRS Act, the procedure of nomination of candidates and election of KRS members is repeated.

According to Article 11e of the KRS Act, if a mandate of a KRS member expires before the end of the term of office of the KRS member elected from amongst the judges, the Speaker of the Sejm immediately publishes an announcement on the opening of the procedure of nominating candidates for KRS member following the expiration of the mandate in the Official Journal of the Republic of Poland *Monitor Polski*. The term of office of the KRS member elected following the expiration of a mandate ends on the date when the term of office of the KRS members elected from amongst the judges expires.

Concerning the final part of the question about the number of KRS employees, their qualifications, and KRS’s budget, such information is not available to the Supreme Court. Please request such information directly from KRS.

**3. Please provide detailed information on the legislation and practice existing in your country in relation to:**

1. **The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);**
2. **Introduction**

The judge appointment procedure under the Polish legal system is a complex multi-staged process where competences are shared between courts, KRS, the Minister of Justice, and the President of the Republic of Poland. The appointment which completes the procedure is, according to Article 179 of the Constitution of the Republic of Poland, a power of the President of the Republic of Poland, who appoints judges at the request of the National Council of the Judiciary of Poland. Prior stages are the responsibility of bodies of common courts acting pursuant to statutes and implementing regulations.

1. **Formal requirements**

Articles 61 to 64 of the Act of 27 July 2001 – Law on the Common Court System (consolidated text: Journal of Laws of 2016, item 2062, as amended, “LCCS”) [available online as Act of 27 July Law on Common Courts Organisation] define a list of formal requirements for candidates for the office of a judge. According to the requirements, eligible as candidates for the office of a judge are individuals who have exclusively Polish citizenship, enjoy full civil rights, have not been sentenced for an intentional criminal offence prosecuted by public indictment; are of good character; have completed university education in law in Poland with the MA degree or university education in law abroad recognised in Poland; are more than 29 years of age; have passed the examination of a judge or prosecutor and have worked as a judge trainee performing the functions of a judge for at least 3 years (Article 61(1) LCCS). The requirement of passing the examination for a judge and working as a judge trainee for 3 years does not apply to individuals who have worked as a judge of an administrative court or military court, worked as a prosecutor, worked in a Polish higher school, the Polish Academy of Sciences, a research institute or other science institute, and hold the title of Professor or the degree of Dr hab. in law, worked as an attorney-at-law, legal counsel or notary public for at least 3 years, or worked as the president, vice president or counsel at the State Treasury Solicitor’s Office of the Republic of Poland for at least 3 years. As an additional requirement, the period of work in the aforementioned professions is the last 5 years prior to the nomination as a candidate for the office of a judge (Article 61(2) LCCS).

Furthermore, Article 117 of the new Act on the Supreme Court provides that a judge or trainee judge who does not meet the requirement of having exclusively Polish citizenship at the effective date of the Act (3 April 2018) shall renounce the foreign citizenship within 6 months after the effective date of the Act or their employment shall be terminated.

1. **Nominating candidates, appraising their qualifications**

The Minister of Justice publishes the number of vacant positions of a judge for which recruitment is open. Candidates apply to the presidents of the relevant courts. The president of a court notifies the Minister of Justice by providing the candidate’s application form (Article 57ae LCCS). The procedure is handled in an ICT system. The president of the court who has received an application form checks that the candidate meets the requirements and the formal conditions and requests a judge or judges to draft an appraisal of the candidate. The candidate may raise comments about the appraisal of their qualifications with the court president. The president of an appeal court presents a candidate for a vacant office of a judge of an appeal court or regional court together with an appraisal of qualifications and the candidate’s comments, if any, to the college of the appeal court for opinion and subsequently to the general assembly of appeal judges for opinion. The same procedure concerning the office of a judge of a district court is initiated by the president of the regional court (Article 57ah LCCS). The general assembly of appeal judges issues opinions on candidates for the position of a judge of an appeal court or regional court in their jurisdiction (Article 34(1) LCCS).

The appraisal of the qualifications of a candidate for the position of a judge of a common court, a judge of an administrative court or a judge of a military court includes a review of the quality of judgments and the efficiency and effectiveness of performance and work organisation in the examination of cases and other tasks and functions, taking into account the workload and complexity of tasks, the process of professional development, as well as professional conduct including personal conduct and organisational culture, and respect for the rights of parties and participants of proceedings when examining cases or performing other tasks or functions. The appraisal of qualifications is based on a review of the files of at least 20 cases of different categories selected randomly from the list attached to the candidate’s application, as well as the files of at least 10 cases that are not on the list, including cases where the candidate’s ruling was overturned or the ruling was overturned and the case was referred for re-examination, as well as cases where proceedings were found to be excessively lengthy or the legally valid judgment was found to be illegal (Article 57b LCCS). The same procedure, taking into account the specificity of the profession, applies where the candidate works as a prosecutor (Article 57e LCCS), attorney-at-law, legal counsel, notary public, or counsel at the State Treasury Solicitor’s Office of the Republic of Poland (Article 57f LCCS) or holds the title of Professor or the degree of Dr hab. in law (Article 57g LCCS). The appraisal of the qualifications of a candidate for a vacant position of a judge takes into account the personal aptitude of the candidate for the profession of the judge as well as the candidate’s compliance with the professional code of ethics. The specific provisions governing the terms and conditions of appraisal of the qualifications of candidates are defined by the Minister of Justice, after asking the opinion of KRS, in implementing regulations (Article 57i LCCS).[[1]](#footnote-1)

If more than one candidate is proposed for a vacant position of a judge, all candidates are reviewed at the same session of the assembly. The general assembly of appeal judges or general assemblies of the judges of a region issue opinion on proposed candidates in a vote and present all proposed candidates to the president of the court together with the number of votes cast (Article 58(1)-(2) LCCS). For candidates for the first position of a judge in their career, the president of the court enquires about each candidate with the Regional Police Chief or the Warsaw Metropolitan Police Chief (Article 58(3) LCCS). Approved candidates are presented to the National Council of the Judiciary of Poland together with the appraisal of their qualifications and the opinion of the relevant court college and information obtained by the court president according to Article 58(3) LCCS. Documentation is submitted via the ICT system (Article 58(4) LCCS).

1. **Procedure before the National Council of the Judiciary of Poland**

The next part of the judge appointment procedure takes place before KRS. According to the KRS Act, the powers of KRS include the review and evaluation of candidates for the office of a judge of a common court, administrative court or military court or the office of a trainee judge of an administrative court (Article 3(1)(1) of the KRS Act). Following a review and evaluation of candidates, KRS submits appointment requests to the President of the Republic of Poland (Article 3(1)(2) of the KRS Act). According to Article 3(1)(2a) of the KRS Act, KRS may raise an objection against a trainee judge being appointed a judge of a common court.

The evaluation of candidates is linked with KRS’s power to approve professional codes of conduct for judges and trainee judges[[2]](#footnote-2) and to ensure their enforcement (Article 3(1)(3) of the KRS Act). In this connection, KRS may order an audit or vetting of a court or judge or trainee judge whose individual case is pending before KRS (Article 5 of the KRS Act). An audit or vetting cannot violate judicial independence. The college of the (appeal/regional) court reviews findings of court audits and vetting, issues opinions on personnel matters concerning judges and takes a position in the case of a judge violating the code of conduct (Articles 29 and 31 LCCS).

The same code of conduct also applies where a team (of three to five KRS members) draws up a list of recommended candidates if there are two or more candidates for the position of a judge or trainee judge. The team ranks candidates on the list depending mainly on the evaluation of qualifications of the candidates, taking into account their professional experience, including experience in the application of the law, scientific track record, opinions of superiors, recommendations, publications and other documents attached to the application (Article 35(2)(2) of the KRS Act). If a candidate for the office of a judge is nominated by persons working in other legal professions (attorney-at-law, legal counsel, notary public, prosecutor, counsel, senior counsel or vice president of the State Treasury Solicitor’s Office of the Republic of Poland), representatives of professional self-governance institutions or the State Treasury Solicitor’s Office may participate in the meeting of the team with an advisory role (Article 36 of the KRS Act). If there are more than one candidate for a given position, KRS reviews and evaluates all candidates at the same time (Article 37(1) of the KRS Act). The full names of the candidates, the opinions of the team and the KRS resolution together with grounds are published in the Public Information Bulletin (Article 37(2) of the KRS Act).

According to Article 8 of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary of Poland and certain other Acts, individual cases of appointment to the office of a judge or trainee judge which are opened but not closed with a KRS resolution before the effective date of the amending Act shall be re-examined under the new provisions; cases opened but not closed before the effective date of the amending Act with a request filed with the President of the Republic of Poland to appoint a judge of the Supreme Court shall be stayed (Article 113 of the Act on the Supreme Court).

1. **Appointment of a judge by the President of the Republic of Poland**

According to Article 44a of the KRS Act added under the Act of 8 December 2017, KRS presents a resolution and a request to appoint a judge for office together with the relevant documentation to the President of the Republic of Poland. The President of the Republic of Poland appoints the judge for office and determines the place of employment (seat) of the judge within one month of the date of the request (Article 55 LCCS). On appointment, the judge takes an oath before the President of the Republic of Poland (Article 66 LCCS). The employment of the judge commences on delivery of the appointment (Article 65 LCCS).

1. **Appointment of a judge of the Supreme Court**

The new Act of 8 December 2017 on the Supreme Court (Journal of Laws of 2018, item 5, “SC Act”), which takes effect on 3 April 2018, largely modifies the existing process of appointment of judges of the Supreme Court and matters related to the principle of irremovability of judges.

Pursuant to Article 4 of the SC Act, the President of the Republic of Poland shall determine, in communication with KRS, by way of a regulation, the number of positions of judges of the Supreme Court and their assignment to the Chambers of the Supreme Court. Chapter 4 of the SC Act provides a list of criteria to be met by candidates for judges of the Supreme Court. Eligible as candidates for judges of the Supreme Court are individuals who have exclusively Polish citizenship, enjoy full civil and public rights; have not been sentenced for an intentional criminal offence prosecuted by public indictment or an intentional tax offence and have not been issued a legally valid judgment conditionally staying criminal proceedings concerning an intentional criminal offence prosecuted by public indictment or an intentional tax offence; are more than 40 years of age; are of good character; have completed university education in law in Poland with the MA degree or university education in law abroad recognised in Poland; have advanced legal expertise; their health status makes them capable of performing the functions of a judge; have worked for at least 10 years as a judge, prosecutor, president, vice president or counsel at the State Treasury Solicitor’s Office of the Republic of Poland or worked for at least 10 years as an attorney-at-law, legal counsel or notary public (this requirement does not apply to those who hold the title of Professor or the degree of Dr hab. in law, see Article 30(2) of the SC Act) and were not an official, employee or associate of the state security services referred to in Article 5 of the Act of 18 December 1998 on the Institute of National Remembrance – Committee for the Prosecution of Crimes against the Polish Nation (criterion applicable to those born before 1 August 1972). The period of employment is combined for different positions and different professions (Article 30 of the SC Act).

According to the amended procedure, the President of the Republic of Poland, after having asked the opinion of the First President of the Supreme Court, announces the number of vacant positions of judges. Candidates are proposed to the National Council of the Judiciary of Poland in completed application forms. The application form template is defined by the President of the Republic of Poland by way of a regulation (Article 31(4) of the SC Act).

The President of the Republic of Poland appoints a judge to the vacant position of a judge of the Supreme Court at the request of KRS (Article 29 of the SC Act). The employment of a judge of the Supreme Court commences on delivery of the appointment. Refusal to accept the appointment is tantamount to resignation from the office of a judge of the Supreme Court (Article 33 of the SC Act). Appointment is completed when the judge takes an oath before the President of the Republic of Poland; refusal to take the oath is tantamount to resignation from the office (Article 34 of the SC Act).

1. **Condition of service and security of tenure of judges**
2. **Condition of service**

Judges formally report to the president of the court, who assigns functions to judges and relieves them of such functions (Article 21 LCCS). The assignment of judges to court divisions, the scope of their responsibilities and their participation in the distribution of cases, as well as office hours, are defined by the president of an appeal court in the appeal court and the president of a regional court in the regional court and the district courts in the region, after asking the opinion of the college of the relevant court (Article 22a LCCS).

Concerning the conditions of service of a judge in the context of independence of judges, it is important to understand the systemic position of the president of the court, who is the formal superior of judges.

In the light of the currently applicable law,[[3]](#footnote-3) presidents of courts are appointed by the Minister of Justice from amongst the judges of an appeal court or regional court (president of an appeal court, president of a regional court) or from amongst the judges of a regional court or district court (president of a district court). Upon appointment, the Minister of Justice presents the appointed president of the court to the relevant general assembly of appeal judges or judges of the region or district. Subsequently, acting at the request of the president of the court, the Minister of Justice appoints the vice president of the court (Articles 23 to 25 LCCS).

The president and the vice president of a court may be dismissed by the Minister of Justice during the term of office if any of the four conditions defined in Article 27(1) LCCS are met: in the event of gross or persistent failure to perform official duties; in the event that the mandate cannot continue for other reasons which are in conflict with the interests of the judicial system; in the event of manifestly poor performance in the exercise of administrative supervision or work organisation in the court or in courts of a lower level; in the event of resignation from office. The president or vice president of a court is dismissed after asking the opinion of KRS. KRS’s negative opinion concerning a request of the Minister of Justice is binding if the KRS resolution is passed by a majority of 2/3 of votes.

According to Article 17 of the Act of 12 July 2017 amending the Act – Law on the Common Court System (Journal of Laws of 2017, item 1452), the Minister of Justice may dismiss the president of any court within six months after the effective date of the Act, i.e., until 12 February 2018, without having to respect the requirements laid down in Article 27 LCCS. The Minister of Justice has exercised this option with respect to several dozen court presidents until the end of January 2018.

It should be noted that the powers of the Minister to exercise supervision of administrative functions by court presidents are a potential means of exerting direct pressure which limits judicial independence of judges by way of financial and psychological pressure, as well as a means of exerting direct pressure on judges who combine the function of court president or vice president with the adjudicating function. According to Article 37ga LCCS, the Minister of Justice may issue a written reprimand to the president or vice president of an appeal court if the Minister of Justice identifies any deficiencies in the management of the court, internal administrative supervision or performance of other administrative functions, and require that they be amended. A reprimand may be accompanied by a reduction of the function-related allowance in proportion to the severity of the deficiency, ranging from 15% to 50% of the allowance amount, for a period from one to six months. If a reprimand is revoked, the allowance is reimbursed in the full amount (Article 37ga (1) and (5) LCCS). KRS examines any objections raised by the president or vice president of a court against a reprimand issued by the Minister of Justice. The same procedure applies to the obligation of the president of an appeal court to prepare an annual report on the activity of the appeal courts to the extent of exercised functions. Upon its approval by the general assembly of appeal judges, the report is presented to the Minister of Justice for assessment. Negative assessment of an annual report may result in a reduction of the function-related allowance ranging from 15% to 50% of the allowance amount; a positive assessment may result in an increase for a period up to one year of the function-related allowance up to 150% of the allowance amount, governed by other implementing regulations[[4]](#footnote-4) (Article 37h (1), (3), (11) and (12) LCCS).

According to Article 178(2) of the Constitution of the Republic of Poland, judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office. The constitutional provisions concerning the remuneration of judges consistent with the dignity of their office are clarified in Article 91 LCCS which provides that the amount of remuneration of judges in equivalent positions of a judge may vary depending on their seniority and functions. The basic remuneration of a judge is determined on the basis of a rate as a multiple of the basic remuneration equal to the average remuneration published in the official journal by the President of the Central Statistical Office (GUS). The system of remuneration rates results in different remuneration amounts paid to judges of district, regional and appeal courts. The remuneration amount, rates, jubilee bonuses and function-related allowances of judges of the Supreme Court are regulated in Articles 48 and 49 of the SC Act.

It should be noted that where a judge is delegated to perform administrative functions at the Ministry of Justice and where a judge of the Supreme Court has a place of residence outside the city of the seat of the Supreme Court (Warsaw), the judge is entitled to free-of-charge accommodation, reimbursement of the cost of travel, and an expatriation allowance (Article 53 of the SC Act).

Judges of the Supreme Court are subject to rules derived from a Regulation of the President of the Republic of Poland, who determines, after asking the opinion of the College of the Supreme Court, the rules of the Supreme Court, the internal organisation of the Supreme Court and the internal code of conduct (Article 4 of the SC Act). It should be noted that according to Article 112 of the Act, the President of the Republic of Poland defines the first rules of the Supreme Court issued after the effective date of the Act without having to ask the opinion of the College of the Supreme Court.

1. **Security of tenure of judges**
	1. **Background**

Judges cannot be removed from office in accordance with the Polish Constitution (Article 180(1) of the Constitution of the Republic of Poland). A judge may be retired as a result of illness or infirmity which prevents him from discharging the duties of his office but only under a procedure specified by statute (Article 180(3)). The retirement age is laid down in a statute. Separate rules apply where judges are retired as a result of change or liquidation of court regions; in that case, they may be retired with the right to full remuneration.

According to the Polish Constitution, judges are independent and subject only to the Constitution and statutes (Article 178(1) of the Constitution of the Republic of Poland). This norm clarifies the obligation of public authorities to act on the basis and within the limits of the law.

The Constitution provides safeguards of independence in that its provisions apply directly (Article 8(2)). It should be noted that the Constitution provides that judges are independent of implementing regulations issued by the executive. In addition, in their judgments, judges are required to apply international agreements ratified upon prior consent granted by statute (Article 91(2) of the Constitution of the Republic of Poland) and law established by international organisations, which have precedence in the event of conflict with statutes (Article 91(3)).

* 1. **Retirement**

The irremovability of judges is linked to the issue of retirement, raised in Article 180 of the Constitution of the Republic of Poland. It is a form of social security of judges outside the realm of the social security system, financed directly from the state budget. It is different from pension benefits of other professions in that judges remain liable under disciplinary regulations (see Article 104 of LCCS) and may return to the profession. The Law on the Common Court System provides that judges retire when they turn 60 (women) or 65 years of age (men). However, judges may remain in office under applicable procedures.

Requests to retire a judge and requests of retired judges to be reinstated (Article 3(2)(2)-(3)) are examined by KRS.

According to Article 38(1) of the KRS Act, requests to retire a judge before retirement age should include grounds. The request should be accompanied by documents confirming the circumstances which give rise to retirement, such as a certificate from an expert physician of the Social Security Institution (ZUS) and a medical committee, a detailed list of periods out of office due to an illness and a paid health leave, or a medical certificate and report on the judge’s health status. If the system of courts or the territory of court district changes, retirement requires the submission of documents enumerating such circumstances and clarifying the reasons why the judge is not to be transferred to another court (Article 38 of the KRS Act). Request for reinstatement of a retired judge also requires grounds (Article 39 of the KRS Act). Likewise, a KRS resolution in an individual case requires grounds (Article 42(1) of the KRS Act). Participants of the procedure may appeal to the Supreme Court against a KRS resolution within two weeks of being served the resolution if the resolution is illegal. No appeals may be filed under the law against requests to retire a judge.

According to the Law on the Common Court System, judges retire when they turn 60 (women) or 65 years of age (men). According to the regulations effective as of 12 August 2017, a judge may remain in office subject to prior submission of a declaration of the intention to remain in office to the Minister of Justice provided that the Minister of Justice approves the request taking into account rational management of human resources of common courts and the needs arising from the workload of specific courts. The approval by the Minister of Justice authorises a judge to remain in office until the age of 70 (Article 69 LCCS).

Likewise, Article 37 of the SC Act provides that judges of the Supreme Court retire when they turn 65 unless they present a declaration of the intention to remain in office. The President of the Republic of Poland, after asking the opinion of the First President of the Supreme Court and, optionally, the opinion of the National Council of the Judiciary of Poland, may extend the mandate of a judge of the Supreme Court for another three years but not more than twice.

A request to retire a judge or examine a judge’s incapacity to remain in office may be filed by the interested judge or the relevant court college; in the case of judges of a regional or appeal court, requests may be filed by the Minister of Justice (Article 70 LCCS). Retirement of a judge due to his health status preventing him from remaining in office is decided by KRS in a resolution passed in the same procedure. Retirement of a judge of the Supreme Court is declared by the President of the Republic of Poland (Article 38 of the SC Act).

New legal norms applicable to the retirement of judges of the Supreme Court, including termination of the mandate of the First President of the Supreme Court enshrined in the Constitution, are laid down in Article 111 of the SC Act, which provides that judges of the Supreme Court who are more than 65 years of age at the effective date of the Act or turn 65 within three months after the effective date of the Act shall be retired *ex lege* unless they submit a declaration and a health certificate confirming that they are fit for office within one month after the effective date of the Act and the President of the Republic of Poland approves their continued mandate as a judge of the Supreme Court. This new regulation arouses serious doubts as to whether it is compatible with the principle of irremovability of judges enshrined in the Constitution of the Republic of Poland. Furthermore, it terminates, by way of a statute, the mandate of the First President of the Supreme Court enshrined in the Constitution.

Article 111(2) allows other judges to retire by presenting a declaration to the President of the Republic of Poland. According to Article 111(3), all judges of the Supreme Court who adjudicate in the Military Chamber are to be retired by operation of the statute. Considering that the current First President of the Supreme Court Professor Małgorzata Gersdorf will be subject to the provisions of Article 111(1), the President of the Republic of Poland will delegate a judge of the Supreme Court to serve as acting president of the Chamber or of the Supreme Court until such time that the elected President takes office.

* 1. **Judicial immunity**

Safeguards of the tenure of judges include among others judicial immunity (Article 181 of the Constitution of the Republic of Poland). A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible or deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order immediate release of the person detained (Article 181 of the Constitution of the Republic of Poland, Article 80 LCCS, Article 55 of the SC Act). In the event of reasonable suspicion of a criminal offence committed by a judge, the disciplinary court passes a resolution to the effect that the judge may be held criminally responsible (Article 80(2c) LCCS). Judges only have disciplinary liability for non-criminal offences (Article 81(1) LCCS).

1. **Promotion of judges**

There are no specific regulations governing the promotion of judges. The legal norms concerning the appointment of judges also apply to the promotion of judges. The differences between the appointment of judges and the promotion of judges arise from the structure of the Polish system of common courts which requires that a candidate may take the office of a judge of a court of higher instance if he holds the office of a judge at the time of the nomination and meets additional criteria in addition to those enumerated in Article 61 LCCS. For instance, a candidate for the office of a judge of an appeal court must have been in employment for a period of 10 years (Article 64 LCCS). A candidate for the office of a judge of a regional court must have been in employment for at least four years as a judge of a district court, judge of a garrison military court or prosecutor. Likewise, regulations differentiate between the required periods of professional employment depending on the court instance for representatives of the other professions enumerated in the regulations (Article 63 LCCS). It should be noted that a sufficiently long period of employment (10 years) formally allows a judge of a district court to be promoted to the office of a judge of an appeal court bypassing the position of a judge of a regional court (Article 64 LCCS).

The transitional provisions of the new Act on the Supreme Court of December 2017 authorise the Minister of Justice to delegate to the Supreme Court a judge of a common court with a seniority of at least 10 years at the request of a judge who presides over the Supreme Court or a Chamber of the Supreme Court, nominated by the President of the Republic of Poland as an executive authority (Article 114 of the SC Act). These provisions open a specific career path.

1. **Transfer of judges**

Dismissal of a judge from office, suspension, transfer to another seat or another position without the consent of the judge require a court decision and are only allowed in cases defined in a statute (Article 180(2) of the Constitution of the Republic of Poland).

The specific conditions of transferring judges are laid down in Article 75 of the Act – Law on the Common Court System. It provides that a judge may be transferred to another place of employment only with the consent of the judge. Exceptionally, a judge may be transferred without his consent if his position, court division or entire court is liquidated; if the judge cannot hold the office of a judge in a court because it employs the judge’s relative or kin or spouse; and by decision of the disciplinary court (Article 75(2)(1)-(4) LCCS). Transfer decisions are issued by the Minister of Justice and the judge may appeal to the Supreme Court. Transfers are also allowed for discretionary reasons, such as rational allocation of human resources of common courts, needs arising from the workload of specific courts, and circumstances arising from the grounds for the judge’s request for a transfer. According to Article 76 LCCS, judges are entitled for reimbursement of the cost of the transfer if the transfer is not initiated by the judge or may be entitled to reimbursement of the cost if the transfer is initiated by the Minister of Justice, save for cases of disciplinary transfers. Furthermore, the Minister of Justice may delegate a judge, with the consent of the judge, to perform the function of a judge or administrative functions (Article 77 LCCS). The provisions govern in detail the financial consequences of delegation. It should be noted that judges may not refuse to perform administrative functions by virtue of judicial independence but may request the order to be issued in writing (Article 79 LCCS).

The Minister of Justice acting at the request of the First President of the Supreme Court may delegate judges to perform the functions of a judge in the Supreme Court for a period not longer than two years provided that the judge’s period of employment is at least 10 years and the total number of judges delegated to the Supreme Court is not more than 30% of all judges of the Supreme Court (Article 40 of the SC Act).

The transfer of a judge to another court division requires the consent of the judge unless the judge adjudicates cases of the same scope in the new division or none of the judges of the division consents to the transfer or the judge to be transferred is employed in the land and mortgage register division or the economic division. Judges may appeal against a transfer to another court division to the college of the administrative court (Article 22a(1), (2), (4a), (5) and (6) LCCS). Judges of the Supreme Court may be transferred to another Chamber with their consent. Judges may be transferred to adjudicate in another Chamber or to participate in the examination of a specific case in another Chamber without their consent for up to 6 months in the year (Article 35 of the SC Act).

1. **Disciplinary proceedings against judges**
2. **Criteria of disciplinary liability**

Disciplinary proceedings against judges have been largely modified under the Act of 8 December 2017 on the Supreme Court. The section below presents disciplinary regulations which have been enacted and take effect on 3 April 2018. Judges have disciplinary liability for professional misconduct, including manifest and gross violation of the law and offending the dignity of the office (disciplinary offences). Judges have disciplinary liability for misconduct before taking office if such misconduct caused them to fail in the performance of the obligations of a public office or made them unfit for the office of a judge (Article 107 LCCS). Disciplinary penalties include: (1) warning, (2) reprimand, (3) reduction of the basic remuneration by 5%-50% for a period from 6 months to 2 years, (4) dismissal from the function, (5) transfer to another place of employment, (6) dismissal from the office of a judge. A penalty other than dismissal from office makes the judge ineligible for promotion to a higher office of a judge for a period of 5 years, makes the judge ineligible to sit on the court college, adjudicate in the disciplinary court or be appointed president or vice president of the court and head of a local branch of the court. Transfer to another place of employment implies a transfer of the judge to another place of employment in (1) a district court in another appeal jurisdiction – for judges of a district court, (2) a regional court in another appeal jurisdiction – for judges of a regional court, (3) another appeal court – for judges of an appeal court. The penalty of dismissal from office makes the penalised judge ineligible for reinstatement to the office of a judge. In the event of minor disciplinary misconduct or offence, the disciplinary court may waive the penalty (Article 109 LCCS).

Professional misconduct is subject to a limitation period of 5 years. If disciplinary proceedings are opened before the end of 5 years, professional misconduct is subject to a limitation period of 8 years. However, if disciplinary misconduct is a criminal offence, it is subject to a limitation period at least as long as the limitation period applicable under the Criminal Code. The statute of limitations is suspended for the period of the disciplinary proceedings from the date of the application submitted to the disciplinary court to the date of the legally valid decision closing the disciplinary proceedings. However, this does not apply where a judge is held liable under disciplinary regulations for a non-criminal offence or tax offence (Article 108 LCCS).

**2. Bodies of disciplinary proceedings**

Judge disciplinary cases are, in first instance, adjudicated by disciplinary courts within appeal courts (by a bench of three judges) or by the Supreme Court in a bench comprised of two judges of the Disciplinary Chamber and one juror of the Supreme Court. The Disciplinary Chamber of the Supreme Court adjudicates in first instance only in cases of disciplinary misconduct which is an intentional criminal offence prosecuted by public indictment or intentional tax offence and cases referred by the Supreme Court for examination of a disciplinary case and identification of misconduct. The Supreme Court adjudicates in second instance in a bench comprised of two judges of the Disciplinary Chamber and one juror of the Supreme Court. The disciplinary court competent to examine a case is appointed by the President of the Supreme Court heading the Disciplinary Chamber at the request of the disciplinary prosecutor (Article 110 LCCS). Judges of disciplinary courts within appeal courts are appointed by the Minister of Justice, after having asked the opinion of KRS, for a six-year term of office from amongst judges of common courts with at least a ten-year track record as adjudicators (Article 110a LCCS). The president of a disciplinary court within an appeal court is appointed from amongst the judges of the disciplinary court by the President of the Supreme Court heading the Disciplinary Chamber. The term of office of the president of a disciplinary court within an appeal court is three years (Article 110b LCCS). The bench of a disciplinary court is selected randomly from the list of all judges of the court provided that the bench of the court includes at least one judge who regularly adjudicates in criminal cases. The bench of a disciplinary court is chaired by the most senior judge who regularly adjudicates in criminal cases (Article 111 LCCS).

The Minister of Justice appoints judges as judges of disciplinary courts within appeal courts and appoints the Disciplinary Prosecutor of Judges of Common Courts as well as two Deputy Disciplinary Prosecutors of Judges of Common Courts for a four-year term of office (Article 112 (3) LCCS). The Disciplinary Prosecutor of Judges of Common Courts appointed by the Minister of Justice appoints a deputy disciplinary prosecutor of a regional court and a deputy disciplinary prosecutor within an appeal court (Article 112 (6)-(13) LCCS). The Minister of Justice has the power to appoint a “super” disciplinary prosecutor, known as the Disciplinary Prosecutor of the Minister of Justice, to press charges in a specific case. According to Article 112b LCCS, the appointment of a “super” disciplinary prosecutor excludes the participation of other disciplinary prosecutors in the case. The Disciplinary Prosecutor of the Minister of Justice is appointed from amongst judges of common courts or the Supreme Court. In cases of disciplinary misconduct which is an intentional criminal offence prosecuted by public indictment, the Disciplinary Prosecutor of the Minister of Justice may be appointed also from amongst prosecutors nominated by the National Prosecutor. In justified cases, in particular in the event of death or prolonged inability to serve in the function of Disciplinary Prosecutor of the Minister of Justice, the Minister of Justice appoints another judge or, in the case of disciplinary misconduct which is an intentional criminal offence prosecuted by public indictment, a judge or prosecutor. The Disciplinary Prosecutor of the Minister of Justice may initiate proceedings at the request of the Minister of Justice or join pending proceedings. The appointment of the Disciplinary Prosecutor of the Minister of Justice is tantamount to an order to initiate investigative proceedings or disciplinary proceedings (Article 112b (2)-(4) LCCS).

**3. Course of disciplinary proceedings**

According to Article 114 LCCS, a disciplinary prosecutor opens investigative proceedings at the request of the Minister of Justice, the president of an appeal court or the president of a regional court, the college of an appeal court or the college of a regional court, the National Council of the Judiciary of Poland, or by his own initiative, following preliminary investigation of circumstances necessary to identify a disciplinary offence. The investigative proceedings should be completed within 30 days of being initiated by the disciplinary prosecutor. During the investigative proceedings, the disciplinary prosecutor may summon the judge to make a written statement concerning the subject matter of the proceedings within 14 days of the date of the summons. The disciplinary prosecutor may accept an oral statement from the judge. Failure of the judge to make the statement does not suspend the proceedings. If the investigative proceedings give grounds to open disciplinary proceedings, the disciplinary prosecutor opens the disciplinary proceedings and prepares a written statement of disciplinary charges. The statement of charges must be immediately served to the accused. The disciplinary prosecutor submits the statement and summons the accused to present written clarifications and motions as to evidence within 14 days after the date when the statement of disciplinary charges is served. Otherwise, the disciplinary prosecutor may refuse to review motions as to evidence submitted by the accused after that date, unless the accused demonstrates that he had previously had no knowledge of such evidence. The disciplinary prosecutor may accept and, at the request of the accused, must accept clarifications of the accused provided in an interview. Failure to present clarifications in due time and failure to appear at an interview scheduled by the disciplinary prosecutor does not suspend the proceedings. The Minister of Justice may raise objections against the decision of the disciplinary prosecutor refusing to open disciplinary proceedings. Such objections obligate the disciplinary prosecutor to open disciplinary proceedings, and any guidance of the Minister of Justice as to the further course of action is binding to the disciplinary prosecutor (Article 114(9) LCCS).

Disciplinary proceedings are public. According to Article 116 (2) and (3) LCCS, the disciplinary court may order non-public proceedings on grounds of morality, state security and public order or to protect privacy of parties or other important private interest; however, the disciplinary judgment is public.

The procedural guarantees available to the accused in disciplinary proceedings have been largely undermined as compared to previously applicable regulations. A range of time limits have been imposed for the accused to present evidence in defence. According to Article 115 (2) and (3) LCCS, the disciplinary court summons parties to a hearing and requests them to present motions as to evidence within 14 days of being served the summons. Motions as to evidence submitted after the time limit may remain unexamined by the disciplinary court unless the party can prove that the motion could not have been submitted within the time limit for reasons beyond the control of the party. The disciplinary court requests the accused to present clarifications in writing and to name the defence lawyer, if any, within the same time limit. Failure to provide clarifications within the time limit does not suspend the proceedings. According to Article 115a(3) LCCS, the proceedings may continue in the excused absence of the notified accused or his lawyer provided that this is not in conflict with the interests of the disciplinary proceedings. The disciplinary court may issue a judgment without a hearing if it decides on the basis of the evidence submitted by the disciplinary prosecutor that the circumstances of the case and the guilt of the accused are evident. A judgment issued without a hearing may only impose a disciplinary penalty other than dismissal from office and transfer to another place of employment. The accused, the disciplinary prosecutor, the National Council of the Judiciary of Poland and the Minister of Justice may appeal against a judgment issued without a hearing (Article 115b(4) LCCS). According to Article 115c LCCS, evidence collected by means of surveillance for the purposes of criminal proceedings is admissible in disciplinary proceedings.

The accused, the disciplinary prosecutor, the National Council of the Judiciary of Poland and the Minister of Justice may appeal against a disciplinary judgment issued by a court of first instance and against a decision and order precluding a judgment. Appeals may be filed within 30 days after the date when each party eligible to file an appeal is served the decision or order. Appeals should be examined within two months. Article 454 of the Code of Criminal Procedure does not apply to disciplinary proceedings, which implies that an appeal court may overturn a judgment acquitting the accused in disciplinary proceedings or staying the proceedings, and impose a disciplinary penalty. In that case, the accused may appeal to another bench of the same court (Article 122(2) LCCS). According to Article 121(6) LCCS, the appeal court examines the disciplinary case at a hearing on the basis of evidence on file unless it decides that the proper examination of the case requires evidence in the form of clarifications of the accused, testimony of witnesses, expert opinions or other relevant evidence. Cassation of legally valid disciplinary judgments is not available. However, proceedings may be reopened at the request of KRS, the First President of the Supreme Court or the Minister of Justice. Disciplinary proceedings may be reopened against the accused if the proceedings were stayed or the judgement was issued as a result of a criminal offence or new circumstances or evidence become available within 5 years after the proceedings were stayed or the judgement was issued if such circumstances or evidence could justify a conviction or a more severe penalty (Article 126(1) LCCS).

\*

This summary of matters of judicial independence is not exhaustive. In particular, other separate regulations in the Polish legal system apply to judges of administrative courts,[[5]](#footnote-5) judges of military courts,[[6]](#footnote-6) and judges of the Constitutional Tribunal.[[7]](#footnote-7) However, the presented legal status applies to all of them as *pars pro toto*, especially considering that the Act – Law on the Common Court System applies accordingly[[8]](#footnote-8) to these categories of judges.

**4. The answer to Question 4 is included in the answer to Question 3 above.**

Prepared by: Aleksander Grebieniow, M. Wąsek-Wiaderek

1. Regulation of the Minister of Justice of 3 September 2015 concerning documents which form the basis of the appraisal of qualifications of a judge trainee as a candidate for a vacant position of a judge (Journal of Laws of 2015, item 1370) and the Regulation of the Minister of Justice of 25 August 2015 concerning the appraisal of qualifications of a candidate for a vacant position of a judge (consolidated text: Journal of Laws of 2016, item 1889). [↑](#footnote-ref-1)
2. Resolution 25/2017 of the National Council of the Judiciary of Poland of 13 January 2017 on the publication of the consolidated text of the Professional Code of Ethics of Judges and Trainee Judges <http://www.krs.pl/admin/files/dls-zzezs/sed2.pdf> [16.01.2018]. [↑](#footnote-ref-2)
3. Act of 12 July 2017 amending the Act – Law on the Common Court System and certain other Acts (Journal of Laws of 2017, item 1452). [↑](#footnote-ref-3)
4. Regulation of the Minister of Justice of 23 June 2009 on functions and the method of determination of function-related benefits of judges (consolidated text: Journal of Laws of 2013, item 151). [↑](#footnote-ref-4)
5. Act of 25 July 2002 – Law on the Common Court System (consolidated text: Journal of Laws of 2017, item 2188). [↑](#footnote-ref-5)
6. Act of 21 August 1997 – Law on the Military Court System (consolidated text: Journal of Laws of 2017, item 2243). [↑](#footnote-ref-6)
7. Act of 30 November 2016 on the status of judges of the Constitutional Tribunal (Journal of Laws of 2016, item 2073; of 2017, item 1947). [↑](#footnote-ref-7)
8. Provisions of the Law on the Common Court System apply indirectly to the Supreme Administrative Court and the Constitutional Tribunal: they apply to the Supreme Court; subsequently, the provisions of the Act on the Supreme Court apply accordingly. See Article 49 of the Law on the Administrative Court System; Article 10(1) of the Act on the Supreme Court; Article 19 of the Act on the status of judges of the Constitutional Tribunal. [↑](#footnote-ref-8)