

12, January 2018

The answers to the questionnaire of the Special Rapporteur on the independence of judges and lawyers (12, December 2017) prepared by the Ministry of Justice of the Republic of Poland.

Re. 1.

In the Polish legal system, candidates for judges and higher judicial posts are selected and assessed by the National Council of the Judiciary and appointed to their posts by the President of the Republic of Poland.

The Minister of Justice is responsible for transferring a judge to another post. However, the transfer of a judge to another post may occur only upon his/her consent, subject to the exceptions related to the cancellation of the post caused by the change in courts organization, cancellation of a given court or branch division or transfer of the seat of a court or inadmissibility of holding the post of a judge in a given court or under the decision of a disciplinary court.

Disciplinary courts are responsible for suspending judges and removing them from their offices.

In the Polish legal system, the work of judges is not subject to periodic assessment.

The above-mentioned issues are regulated by the Constitution of the Republic of Poland (hereinafter referred to as the "Constitution of the Republic of Poland"), the Act of 27 July 2001 Law on Common Courts Organization (Journal of Laws of the Republic of Poland of 2018, item 23) and the Act of 12 May 2011 on the National Council of the Judiciary (uniform text in the Journal of Laws of the Republic of Poland of 2016, item 976, as amended).

Re. 2.

The National Council of the Judiciary consists of:

- 1) the First President of the Supreme Court, Minister of Justice, President of the Chief Administrative Court and person appointed by the President of the Republic of Poland;
- 2) fifteen members appointed from amongst the judges of the Supreme Court, common courts, administrative courts and military courts and
- 3) four members chosen by the lower house of the Polish Parliament (Sejm) from amongst the MPs and two members chosen by the upper house of the Polish Parliament (Senate) from amongst the senators.

In 2017, the annual budget of the National Council of the Judiciary amounted to PLN 14,147,000.

Re. 3.

(a) and (c)

In the Polish legal system, an appointment to the post of a judge is regarded as professional promotion, hence those two issues will be discussed jointly. The promotion procedure is conducted in the form of a contest. Only when an assistant judge is appointed to his/her first judicial position (district court judge), his performance at work is taken into account.

Common court judges are appointed to the posts of:

- 1) a district court judge;
- 2) a circuit court judge and
- 3) a court of appeal judge.

The statutory requirements to be met by a person applying for a post of a common court judge are laid down in Articles 61, 63 and 64 of the Law on Common Courts (hereinafter referred to as the "Law on Common Courts Organization).

Pursuant to Article 61 § 1 of the Law on Common Courts Organization, a person who:

- 1) is a Polish citizen and enjoys full civil and full public rights,
 - 2) is a person of integrity,
 - 3) has completed higher education in law in the Republic of Poland and has obtained the title of master (graduate), or has completed higher education in law abroad recognized in the Republic of Poland,
 - 4) has the ability to perform duties of a judge, as regards health condition,
 - 5) has attained 29 years of age,
 - 6) has passed a judicial or prosecutor exam and
 - 7) in his/her capacity of an assistant judge has worked as a judge for at least three years,
- may be a district court judge.

A graduate of the National School of Judiciary and Public Prosecution who has completed judicial or public prosecutor apprenticeship and has passed a judicial or public prosecutor exam may be appointed as assistant judge by the Minister of Justice. According to the Polish legal system, public servants are appointed to the judicial positions on the basis of objective criteria, such as exams. Firstly, a contest for apprenticeship is conducted in the form of an exam. Then, once the apprenticeship is completed, those who reach the best results of their professional exam have priority in admission to the post of an assistant judge. Assistant judges are appointed by the Minister of Justice, whilst the National Council of the Judiciary decides on the issue of entrusting assistant judges with the competencies required to carry out judicial tasks. Having completed an assistant judge training course, an assistant judge is proposed to be nominated a judge in so far as his/her service raises no objections.

The number of years of experience, professional skills, (quantitative) performance at work, results achieved at work, grades and other criteria, such as integrity and reputation are taken into account for the purposes of promotion. Candidates for judicial positions are assessed by the National Council of the Judiciary.

Pursuant to Article 63 of the Law on Common Courts Organization:

- 1) a district court judge or a military garrison court judge who has held the post of district court judge or military garrison court judge or the post of public prosecutor for at least four years or
- 2) a public prosecutor who has held the post of a public prosecutor or a judge for at least four years

can be appointed a regional court judge.

Pursuant to Article 64 of the Law on Common Courts Organization:

- 1) a common court judge or a military court judge who has held the post of a judge or the post of a public prosecutor for at least ten years or
- 2) a public prosecutor who has held the post of a public prosecutor or a judge for at least ten years

can be appointed a court of appeal judge.

Regardless of the foregoing, other legal professionals (advocates, legal counsels, notaries) as well as persons holding certain posts (administrative court judges, persons holding certain posts at the General Counsel to the Republic of Poland or employees of a Polish university, Polish Academy of Sciences or a research and science institute or other science facility holding the academic title of a professor or a Ph.D. in legal sciences) can also be appointed for judicial posts in courts of all instances. However, they can only be appointed for judicial posts if they have been in service for a period prescribed by the Act. Their professional and scientific achievements are subject to assessment by the National Council of the Judiciary.

During the transitional period (by 2024), persons employed by the courts as court referendaries or assistants to a judge can apply for judicial positions, provided they have been in service for a period prescribed by the Act and passed judicial exam. The required period depends on the professional qualifications (completing the general apprenticeship, attorney at law apprenticeship, legal counsel apprenticeship or notarial apprenticeship, and passing a relevant exam) and position held (court referendary or assistant to a judge).

(b)

Pursuant to Article 178 of the Constitution of the Republic of Poland, judges, within the exercise of their office, are independent and subject only to the Constitution of the Republic of Poland and the Acts. The foregoing provision lays down the rule of judicial independence.

The Constitution provides for a number of guarantees of judicial independence, such as the following:

- 1) judges are appointed by the President of the Republic on the motion of the National Council of the Judiciary;
- 2) judges are appointed for an indefinite period, which is why they cannot be appointed for a specific term of office;
- 3) judges cannot be removed from their posts [with the exceptions laid down in point (e)];
- 4) judges cannot be transferred from their posts [with the exceptions laid down in point (d)];
- 5) judges enjoy immunity (art. 181);
- 6) appropriate financial situation is ensured to judges;
- 7) judges are apolitical which is connected with a ban on political party membership, trade union membership and ban on conducting any public activity incompatible with judicial independence;
- 8) judicial position cannot be combined with a representative's mandate (of an MP or senator), also as a consequence of the division and balance of power and
- 9) political position of the National Council of the Judiciary safeguards the independence of courts and judges, as laid down in Article 186 of the Constitution.

During active service, judges can receive financial support to satisfy their accommodation needs, have additional annual leave (6 or 12 days, depending on the years of service), receive jubilee bonuses and may take special rehabilitation leave or health leave.

Having reached a certain age (60 years in the case of women and 65 in the case of men), judges generally proceed to retirement (*stan spoczynku*), i.e. special retirement which is more advantageous than retirement under the general social insurance scheme.

(d)

Pursuant to Article 180 of the Constitution, judges are not removable or transferable and can only be recalled from office, suspended from office, transferred to another bench or position against their will by virtue of a court judgment and only in the cases prescribed by the Act. However, where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his/her full remuneration.

The foregoing provision complies with Article 75 § 1 of the Law on Common Courts Organization, according to which transfer of a judge to another post may occur upon the decision of the Minister of Justice or upon the judge's consent. A consent to the transfer to another post is not required in the event:

- 1) of cancellation of the post caused by the change in courts organization, cancellation of a given court or branch division or a transfer of the seat of a court,
- 2) of inadmissibility of holding the post of a judge in a given court as a result of entering into the state of matrimony between judges or creation of family connection,
- 3) that it is required, as regards the authority of the post, under the decision of a disciplinary court, issued at the request of the board of a competent court or of the National Council of the Judiciary or
- 4) of a disciplinary penalty against a judge.

Where a judge is transferred to another post as a consequence of organizational changes or changes of his/her personal situation, he/she can appeal to the Supreme Court. Otherwise, a disciplinary court participates in the transfer procedure.

(e)

A judge can only be recalled from his office by virtue of a court judgment and only in the instances prescribed by the Act, for example:

- 1) if a disciplinary court decides to recall a judge from his office;
- 2) if a valid judgment is issued against a judge, as a result of which (as prescribed by the Act) he/she loses his/her post, the disciplinary court notifies the Minister of Justice thereof and the Minister of Justice decides to recall the judge from office.

A judge can only be called to criminal responsibility with the permission of a competent disciplinary court.

Disciplinary proceedings can be initiated against a judge who commits a disciplinary offence laid down in Article 107 § 1 and 2 of the Law on Common Courts Organization. Disciplinary offences include: misconduct in service comprising a gross violation of the provisions of law and breach of the authority of the office of judge, other misconduct in service and his/her conduct before taking his/her post of a judge if he/she failed in the duty of a civil servant or appears to be unworthy to hold a judicial post or if a judge commits an offence (Article 81 of the Law on Common Courts Organization).

Disciplinary proceedings are instituted against a retired judge who breaches the authority of the office of judge upon retiring or breaches the authority of the office of judge when performing the office (Article 104 § 1 and 2 of the Law on Common Courts Organization).

Furthermore, disciplinary proceedings are instituted against a military judge who is found guilty of the violation of the military discipline and honour and authority of the soldier.

The disciplinary proceedings are instituted and conducted at pre-litigation stage by the disciplinary commissioner (in cases concerning appellate court judges, presidents and vice presidents of regional courts) or competent deputy of the disciplinary commissioner (at the appellate or regional court) in cases concerning other judges.

The disciplinary commissioner (deputy disciplinary commissioner) undertakes initial disciplinary actions on his/her own initiative or at the request of the Minister of Justice, president of the appellate or regional court or board of the appellate or regional court or the National Council of the Judiciary. Under explanatory proceedings, circumstances indispensable for establishing the attributes of misconduct are preliminarily explained and explanations of the judge are received.

Having completed the explanatory proceedings, the disciplinary commissioner (deputy disciplinary commissioner): issues a decision to institute disciplinary proceedings and provides the judge concerned with charges if there are grounds to institute disciplinary proceedings (Article 114 § 2 of the Law on Common Courts Organization) or issues a decision to refuse the institution of disciplinary proceedings if he/she does not find sufficient grounds for instituting the same (Article 114 § 5 of the Law on Common Courts Organization). The accused and the body which moved for initiation of disciplinary proceedings and the competent board are entitled to lodge a complaint with the disciplinary court pursuant to a decision to refuse to institute the disciplinary proceedings or decision to discontinue the disciplinary proceedings (Article 114 § 6 of the Law on Common Courts Organization).

The disciplinary courts include (Article 110 § 1 of the Law on Common Courts Organization): the courts of appeal (in the lower instance) and the Supreme Court (in the higher instance).

Disciplinary penalties include (Article 109 § 1 of the Law on Common Courts Organization): an admonition, reprimand, reduction of basic remuneration of a judge by 5%–20% for the period from six months to two years, dismissal from the function held (president, head of division, inspector, disciplinary commissioner), transfer to another place of service (to another equivalent court) and dismissal from the office. In the cases of retired judges, the penalties include (Article 104 § 3 of the Law on Common Courts Organization): admonition, reprimand, suspension of salary increase for the period from one year to three years, deprivation of the right to retire and the right to the retirement pay. Furthermore, in case of a disciplinary misconduct or an offence of lesser gravity, the disciplinary court may refrain from imposing a penalty (Article 109 § 5 of the Law on Common Courts Organization).

The accused, the disciplinary commissioner, as well as the National Council of the Judiciary and the Minister of Justice may appeal against the disciplinary court judgements rendered in the lower instance (court of appeal) (Article 121 of the Law on Common Courts Organization). The appeal is considered by the disciplinary court of higher instance, i.e. the Supreme Court.

The Minister of Justice executes the judgement as regards penalties of transferring a judge to another place of service or dismissal of a judge from the office and the president of the regional court and the president of the court of appeal execute judgement as regards penalties of admonition, reprimand and dismissal from their functions with respect to judges of such courts (Article 123 § 3 of the Law on Common Courts Organization).

A disciplinary penalty is erased upon the lapse of five years from the validation of the judgement adjudicating a penalty stipulated in Article 109 § 1 items 1-4 of the Law on Common Courts Organization in such a way that the Minister of Justice orders the removal of the judgement from the personal files of the judge if within that period no convicting judgement was rendered

against the person subject to the penalty. In such an event, copies of all convicting judgements can only be removed from the personal files of a judge simultaneously.