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

**POLAND**

**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)?**

* 1. **Denomination**

The body which has broad competences in the above-mentioned areas is called the **National Council of the Judiciary** [hereinafter NCJ] **(**in Polish: **Krajowa Rada Sądownictwa** [KRS]).

* 1. **Legal basis**

Its general legal basis is the Constitution of the Republic of Poland of 2 April 1997 (articles 179, 186 and 187).

More detailed provisions are contained in the Act of 12 May 2011 on the National Council of the Judiciary, Act of 27 July 2001 – Law on Common Courts Organisation [hereinafter: USP], as well as other acts, concerning military courts, Supreme Court and administrative courts. The Council also issues its bylaws concerning the technical details of its functioning and procedures[[1]](#footnote-1)

Caveat: as for suspending and removing judges from office or transferring them against their will, this can only be done in the course (and as a result) of disciplinary proceedings, in which NCJ’s role is limited. More on disciplinary proceedings can be found in the reply to the question 3e).

**2.** **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**).

**2.1**. **Composition**

Council consists of 25 members.

The most general provisions can be found in the Constitution, Art. 187:

*“1. The National Council of the Judiciary shall be composed as follows:*

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;*
2. ***15 judges*** *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.*
4. *The National Council of the Judiciary shall choose, from amongst its members, a chairperson and two deputy chairpersons.*
5. *The term of office of those chosen as members of the National Council of the Judiciary shall be 4 years.(…) ”.*

Whilst as of 15 January 2018 the new procedure of appointment of the elected members of the Council comes into force (which was opposed against as “unconstitutional” by the Council, judicial environment and various national and international organizations, institutions and NGO’s, as well as the Commissioner for Human Rights), first off, the procedure of election of the current composition of the Council will be presented.

**2.1.1. Pre-2018 procedure:**

The procedure was described in detail in the Articles 7-14 of the Act on the National Council of the Judiciary (see below, also attached separately). In general, there are 4 members ex officio (Art. 7). The president of the Republic of Poland appoints one member of the Council in a discretional manner (there are no detailed requirements for this person), which can be dismissed at anytime:

***“Article  7.****The First President of the Supreme Court, the President of the Supreme Administrative Court and the Minister of Justice are members of the Council for the duration of holding these functions.*

***Article  8.****1.  The person appointed by the President of the Republic of Poland fulfils its functions on the Council without specifying the term of office and can be dismissed at any time.*

*2.  The mandate of the person appointed by the President expires at the latest within three months after the end of the term of office of the President or after the office of the President of the Republic of Poland is vacated.*

***Article  9.****1.  The Sejm appoints four members of the Council from among its Deputies for a period of four years.*

*2.  The Senate appoints two members of the Council from among the senators for a period of four years.*

*3.  Members of the Council appointed by the Sejm and the Senate fulfil their functions until new members are appointed.*

***Article  10.****A judge may hold the function of an appointed member of the Council only for two terms of office.*

***Article  11.****1.  The General Assembly of Judges of the Supreme Court appoints two members of the Council from among the judges of that Court.*

*2.  The General Assembly of Judges of the Supreme Administrative Court, together with the representatives of general meetings of the voivodship administrative courts, appoints two members of the Council from among the judges of administrative courts.*

*3.  The assembly of representatives of assemblies of judges of courts of appeal appoints two members of the Council from among its body.*

*4.  The assembly of representatives of general meetings of circuit courts’ judges appoints eight members of the Council from among its body.*

*5.  The Assembly of Judges of Military Courts appoints one member of the Council from among its body.”*

**2.1.2 Procedure in force since 15 January 2018:**

There is an important and complete change with regard to 15 judicial members of the NCJ. They will be appointed by the Sejm (lower chamber of the parliament) by the majority of 3/5 votes (in the presence of at least half of the statutory number of members of the Sejm,) from among the candidates presented by the group of at least 25 judges or at least 2000 citizens. Each of the parliamentary clubs will be able to choose up to **nine** candidates for Member of the Council from the judges indicated by citizens or group judges.

The detailed provisions concerning the election process and candidates’ assessment criteria are as follows (articles 9a-11 of the Act on the National Council of the Judiciary):

*1) “Article 9a. 1. The* ***Sejm selects fifteen members of the Council from among the judges of the Supreme Court, common courts, administrative courts and military courts by the majority of 3/5 of vote,*** *for a****common four-year term of office*.**

* 1. *When making the selection referred to in paragraph 1,* ***the Sejm, as far as possible, shall take into consideration the need to have in the Council the representation of judges of specific types and levels of courts****.*
	2. *The common term of office of new members of the Council selected from among the judges shall commence on the day following the day on which the last of the new members is selected. The members of the Council of the previous term of office shall perform their functions until the common term of office of new members of the Council begins.”;*
1. *Article 11 shall be repealed;*
2. *After Article 11, the following Articles 11a–11e shall be inserted:*

*“Article 11a. 1. No earlier than 120 days and no later than 90 days prior to the expiry of the term of office of the Council’s members selected from among judges, the Marshal of the Sejm shall announce in the Official Gazette of the Republic of Poland “Monitor Polski” that the procedure of submitting candidates for the members of the Council is commenced.*

*2. Entities entitled to submit a candidate for a member of the Council are:*

*1)* ***a group of at least 2,000 citizens of the Republic of Poland who are at least 18 years old, enjoy full capacity to perform acts in law and have all public rights****;*

*2)* ***a group of at least 25 judges, excluding retired judges****.*

*3. A* ***submission includes only one candidate*** *for a member of the Council.* *The entities referred to in paragraph 2,* ***may submit more than one application****.*

1. *A candidate for a member of the Council is submitted to the Marshal of the Sejm within 30 days after the announcement referred to in paragraph 1 is published.*

*5.The candidate* ***submission includes information about the candidate, functions previously held by the candidate and social activity undertaken, as well as other significant events that took place in the period in which the candidate has been holding a judge's office****. The judge’s consent for being a candidate shall be attached to the submission.*

*6. The Marshal of the Sejm, within three days from the date of receipt of the candidate's application, shall communicate in writing to the president of the court competent with regard to the proposed candidate, and in case the notification concerns the president:*

*1) of district court, district court or military garrison court - to the president of a higher court,*

*2) of the court of appeal, a provincial administrative court or a military district court - to the vice-president or deputy president of this court*

*- with a request to prepare and transmit, within seven days from the date of receipt of the application, information including the candidate's judicial background, including* ***socially important or precedent rulings, as well as significant information on the culture of executing the office, in particular disclosed during visits or lustration proceedings****.*

*7. In the event that the information referred to in paragraph 6, will not be submitted within the time limit referred to in paragraph 6, the Marshal of the Sejm shall write in writing to the candidate for a member of the Council to draw up such information, within seven days from the date of receipt of the request of the Marshal of the Sejm. A copy of the information prepared by him / her for a member of the Council shall be forwarded to the president of the court competent for the proposed candidate, the president of the higher court or the vice president or deputy president of the court of appeal, regional administrative court or military circuit court, respectively.*

*8. If the information referred to in para. 6, by a candidate for a member of the Council within the time limit referred to in para. 7, shall not be submitted, the Marshal of the Sejm shall decline to accept the application. The decision in this case along with the justification shall be served forthwith to the proxy and the candidate for a member of the Counci himself.*

*9. The information referred to in para. 6, shall be attached to the candidate's application by the Marshal of the Sejm.*

*Article 11b. 1. The submission referred to in Article 11a(2) shall be made in writing by an attorney-in-fact. The attorney-in-fact is a person specified in the written declaration of first 15 persons from the list.*

1. *A list of citizens supporting the submission, including their names, surnames, residence addresses, personal identification numbers (PESEL) and hand-written signatures, shall be attached to the submission referred to in Article 11a(2)(1).*
2. *In the event of any doubts regarding the validity of the required number of signatures, the Marshal of the Sejm shall address the State Election Commission within 3 days of receipt of the submission and the State Election Commission shall decide whether the required number of signatures was provided.*
3. *Within 14 days of receipt of the request from the Marshal of the Sejm, the State Election Commission shall decide whether the required number of signatures was provided.*
4. *If, as a result of the procedure referred to in paragraph 4 above, it is disclosed that the number of valid signatures provided by the supporters of the submission is lower than the number required under statutes, the Marshal of the Sejm shall refuse to accept the submission. A decision in this regard together with the statement of grounds shall be immediately delivered to the attorney-in-fact.*
5. *The decision may be appealed against by the attorney-in-fact before the Supreme Court within 3 days of service of the decision. The Supreme Court shall consider the appeal within 3 days in non-contentious proceedings in a bench of 3 judges. The decision of the Supreme Court shall not be subject to any legal remedy.*
6. *A list of judges supporting the submission, including their names, surnames, residence addresses, personal identification numbers (PESEL) and hand-written signatures, shall be attached to the submission referred to in Article 11a(2)(2).*
7. *Within 3 days of receipt of the submission referred to in Article 11a(2)(2), the Marshal of the Sejm shall request that the Minister of Justice confirm that the persons filing the submission have a judge's status. Within 3 days of receipt of the request from the Marshal of the Sejm, the Minister of Justice shall confirm a judge’s status of the persons filing the submission. The provisions of paragraph 5 and 6 shall apply accordingly.*
8. *The sample submission, the sample list of citizens and the sample list of judges submitting a candidate for a member of the Council shall be established by the Marshal of the Sejm by means of an order. An order of the Marshal of the Sejm shall be published in the Official Gazette of the Republic of Poland “Monitor Polski”.*

*Article 11c. Any submissions filed in accordance with Article 11a and Article 11b shall be immediately forwarded by the Marshal of the Sejm to the members of the Sejm and made public, with exception of attachments.*

*Article 11d. 1. The Marshal of the Sejm shall appeal to the parliamentary deputies' clubs to indicate, within seven days, candidates for members of the Council.*

*2. The deputies' club indicates no more than nine candidates for members of the Counci,l from among the judges whose candidacies have been nominated pursuant to art. 11a,.*

*3. If the total number of candidates indicated by the deputies' clubs is less than fifteen, the Presidium of the Sejm shall indicate, from among candidates proposed under Art. 11a, candidates in the number missing up to fifteen.*

*4. The competent parliamentary committee shall determine the list of candidates by selecting, from among candidates indicated in the procedure of para. 2 and 3, fifteen candidates for members of the Council, provided that the list includes at least one candidate indicated by each parliamentary club that acted within sixty days of the first sitting of the Sejm's term of office during which election is made, if the candidate this was indicated by the club as part of the indication referred to in paragraph 2.*

*5. The Sejm shall elect members of the Council for a joint four-year term at the next sitting of the Sejm by a majority of 3/5 of votes in the presence of at least half of the statutory number of deputies, voting on the list of candidates referred to in para. 4.*

*6. In the event of failure to elect the members of the Council in the manner specified in para. 5, the Sejm shall elect the members of the Council by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, by voting on the list of candidates referred to in para. 4.*

*7. If, as a result of applying the procedure referred to in para. 1-6, fifteen members of the Council will not be elected, the provisions of art. 11a-11d will be applied accordingly.*

*Article 11e. 1. If, before the end of the term of office of a member of the Board, a member of the Council needs to be re-appointed, the Marshal of the Sejm shall promptly announce in the Official Gazette of the Republic of Poland "Monitor Polski" that the procedure for nominating candidates for a member of the Council has commenced. The provisions of art. 11a para. 2-9, art. 11b and art. 11c shall apply accordingly.*

*2. In the case referred to in paragraph 1, the provisions of art. 9a paragraph 1 and 2 and art. 11d shall be applied.*

*3. The term of office of the member of the Council elected with regard to the need to re-fill the mandate, shall expire on the day of termination of the term of office of the Council members elected from among the judges. ";*

*(...)*

*4) Articles 12 and 13 shall be repealed”*

* 1. **Human and financial resources of the Council**

Annual budget of the Council in 2017 was 14,1 million PLN (approximately € 3,4 million).

The number of the employees in the Office of the National Council of the Judiciary of Poland is about 60. Their qualifications concerning the education and seniority on relevant position vary (according to the Rules of remuneration[[2]](#footnote-2)). In general, for most of the employees (particularly those on higher positions and dealing with cases substantially) higher education and relevant work experience is compulsory, whilst separate provisions concerning education are in force for the most of typically technical staff.

So far, the employees of the Office have been subject to the regulations concerning civil servants (Act of 16 September 1982 on Civil Servants), which was substantiated by the fact that the Council is not strictly a body of judicial power as such (as it contains representatives of all three branches of state power). It has to be mentioned, though, that according to the new text of the corresponding Article 24(4) of the Act on the National Council of the Judiciary (in force from 15.01.2018 on): “*4. The provisions of the Act of 18 December 1998 on the employees of courts and public prosecutor’s offices (Journal of Laws of 2017, items 246 and 1139) shall apply to the employees of the Office, except for the requirement of completing public-official internship in a court or a public prosecutor’s office as referred to in Article 2(7) of the Act.*”. It is hard to predict, how these new rules will function in practice, the Council[[3]](#footnote-3) however criticised this provision as superfluous and partially contrary to the specifics of the Office's work.

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

(a) **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**);

**According to the *USP*:**

*Article 55. § 1. The President of the Republic of Poland, at the request of the National Council of the Judiciary, appoints common court judges to the office of a judge*

*§ 2. Common court judges are appointed to the posts of:*

1. *a district court judge;*
2. *a regional court judge;*
3. *an appeal court judge.*

*§ 3. When appointing a judge to the office, the President of the Republic of Poland indicates the place of service (the seat) of the judge. The place of service of a judge may be changed without the change of the post in cases and as per the procedure provided for in Article 75.*

 **The following documents should be submitted (article 57 of the USP):**

*§ 6. An applicant for a post of a judge fills in an application sheet for a vacant post of a judge in the iCt system, affixes an electronic signature generated by the system, a signature confirmed by a trusted ePUAP profile, or a signature verified by a qualified certificate and then files the application via the system with the president of the competent court.*

*§ 7. To the application sheet, the applicant for a post of a judge attaches the information issued by the National Criminal Record relating to such an applicant and a certificate confirming the ability to perform the duties of a judge on account of the health condition, subject to Article 58(4a). An applicant born before 1 August 1972 shall also attach a hard copy of the statement referred to in Article 7(1) of the Act of 18 October 2006 on the Disclosure of Information on Documents of State Security Agencies from the period between the years 1944-1990 and the Content of such Documents (Journal of Laws of 2016, item 1721) or the information referred to in Article 7(3a) of said Act. The application sheet is also accompanied by a statement concerning the consent or refusal to the use of the documents relating to the applicant in other proceedings concerning the appointment to the office of a judge.*

*§ 8. The following statements included in the application sheet: on enjoying full civil and full public rights, on pending proceedings related to an offence or a fiscal offence, on punishment in disciplinary proceedings, on pending disciplinary proceedings and on the ruling referred to in Article 30(1) of the Act of 11 April 1997 on Disclosing Work for or Service in the State’s Security Services or Collaboration with Them between 1944 and 1990 by Persons Exercising Public Functions (Journal of Laws of 1999, item 428, as amended) becoming final, as well as the statement that no other proceedings concerning the appointment to the office of a judge are pending with respect to the applicant the applicant makes under pain of criminal liability for false testimony.*

*§ 9. The Minister of Justice, after consulting the National Council of the Judiciary, specifies, by way of regulation, the scope of data contained in the application sheet for a vacant post of a judge, taking into consideration that the data should enable verification, to the necessary extent, of the fulfilment of conditions that the candidates for the post of a judge are required to fulfil under the act.*

*§ 10. The Minister of Justice, in consultation with the minister competent for health matters, after consulting the National Council of the Judiciary, specifies, by regulation, a detailed scope and manner of carrying out medical and psychological examinations of candidates for the post of a judge and the necessary qualifications of doctors and psychologists entitled to carry out such examinations and issue certificates on the ability to perform the duties of a judge, as well as the time limits for the use of such certificates in proceedings concerning the appointment to the office of a judge, bearing in mind that proper evaluation of the ability of candidates to accede to the post of a judge, taking the nature of the post into account, should be ensured.*

*Article 57a. (...)*

*§ 2. A candidate for a vacant post of a judge holding the post of a public prosecutor attaches to the application sheet a list of case file numbers of one hundred court cases in which they conducted or supervised preparatory proceedings, drew up indictments or legal remedies or appeared before the court or filed pleadings, and where the number of such cases is lower - a list of case file numbers of all cases.*

*§ 3. A candidate for a vacant post of a judge who pursues the profession of an advocate or a legal counsel or holds the post of a counsel for the General Counsel to the Republic of Poland attaches to the application sheet a list of case file numbers of one hundred court cases of various categories in which they acted as a legal representative in litigation, and where they appeared in a smaller number of cases - a list of case file numbers of all cases, including the indication of the court before which the cases were or are pending, as well as copies of all, however not more than one hundred, legal opinions and other documents prepared in relation to the application or drafting of the law; a senior counsel and counsel for the General Counsel to the Republic of Poland additionally attach their superior’s opinion.*

*§ 4. A candidate for a vacant post of a judge who pursues the profession of a notary attaches to the application sheet a list of one hundred notary deeds covering various categories of cases, and where the number of such deeds drawn up by the notary is lower - a list of all deeds.*

*§ 5. A candidate for a vacant post of a judge who holds the academic title of professor or the academic degree of PhD in law attaches to the application sheet a list of publications along with opinions of reviewers and, if applicable, copies of legal opinions drawn up and characteristics of achievements as regards training of personnel or of academic achievements.*

*§ 6. (repealed).*

*§ 7. A candidate for a vacant post of a judge who holds the post of a judge or public prosecutor, and who in the period preceding the announcement was delegated to perform administrative actions in the Ministry of Justice or another organisational unit under the authority or supervision of the Minister of Justice, the Chancellery of the President of the*

*Republic of Poland, or an office supporting the minister competent for foreign affairs, attaches to the application sheet a list of case file numbers of one hundred court cases referred to in Article 57a(1) or (2) or cases registered in the candidate's unit or supervised by them during the delegation period, as well as a description of duties performed during the delegation period along with the superior’s opinion.*

*§ 8. The provision of Article 57a(7) applies accordingly in the case of delegation to perform:*

1. *actions in the Office of the National Council of the Judiciary;*
2. *actions or conduct training sessions in the National School of Judiciary and Public Prosecution;*
3. *duties in an international judicial non-governmental organisation;*
4. *duties or a specific function outside the territory of the Republic of Poland as part of actions undertaken by international or supranational organisations and international teams acting on the basis of international agreements, including agreements constituting international organisations ratified by the Republic of Poland.*

**Requirements for the lowest tier of common courts are as follows (Article 61 of USP**):

*Article 61. § 1. The post of a district court judge may be assigned to 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 a master’s degree, or has completed higher education in law abroad recognised in theRepublic of Poland;*
4. *is able, as regards their health condition, to perform the duties of a judge;*
5. *attained the age of 29 years;*
6. *has passed a judicial or prosecutor exam;*
7. *holding the post of a trainee judge, carried out the duties of a judge for at least three years.*

*§ 2. Requirements laid down in Article 61(1) items 6 and 7 do not apply to a person who prior to the appointment:*

1. *held the post of an administrative court judge or a military court judge;*
2. *held the post of a public prosecutor;*
3. *worked at a Polish university, the Polish Academy of Sciences or in a research institute or*

*other science facility, and holds the academic title of professor or the academic degree of*

*PhD in legal sciences;*

1. *practised the profession of an advocate, a legal counsel or a notary - for at least three years;*
2. *held the post of the president or vice president, or counsel at the General Counsel to the Republic of Poland - for at least three years.*

*§ 3. (repealed).*

*§ 4. (repealed).*

*§ 5. A person who held one of the posts specified in Article 61(2) items 2-4 during the period of five years preceding the application for a vacant post of judge may be appointed to the post of a district court judge.*

Some categories of candidates may lodge their candidature directly to a higher tier of court (regional court, court of appeal or even the Supreme Court – in this last case, persons who have served, for at least ten years, as public prosecutor, president, vice-president, senior adviser or adviser to the General Public Prosecutor’s Office of the State Treasury, or have worked for such period in Poland as an advocate, legal adviser or notary publicas well as person persons who were employed by Polish higher education institutions, the Polish Academy of Sciences, scientific research institutes or any other research establishments as professors or doctors habilitated of law [without 10 year requirement]):

(...)

*Article 63(...)*

*§ 2. Also, a person who fulfils the requirements specified in Article 61(1) items 1-4 may be appointed to the post of a regional court judge, provided that such a person:*

1. *practised the profession of an advocate, a legal counsel or a notary - for at least six years; 1a) held the post of the president or vice president of, or counsel for the General Counsel to*

*the Republic of Poland - for at least six years;*

1. *worked at a Polish university, the Polish Academy of Sciences or in a research institute or other science facility, and holds the academic title of professor or the academic degree of PhD in legal sciences;*
2. *held the post of an administrative court judge or a military regional court judge.*

*§ 3. A person who practised the profession or held the post specified in Article 63(2) during the period of three years preceding the appointment may be appointed to the post of a regional court judge.*

*Article 64 (...)*

*§ 1a. Also, a public prosecutor who has held the post of a public prosecutor or a judge for a period of at least ten years may be appointed to the post of an appeal court judge.*

*§ 2. Also, a person who fulfils the requirements specified in Article 61(1) items 1-4 may be appointed to the post of an appeal court judge, provided that such a person:*

1. *practised the profession of an advocate, a legal counsel or a notary for at least ten years; 1a) held the post of the President or vice president of, or counsel for the General Counsel to*

*the Republic of Poland - for at least ten years;*

1. *worked at a Polish university, the Polish Academy of Sciences or in a research institute or other science facility, and holds the academic title of professor or the academic degree of PhD in legal sciences;*
2. *held the post of an administrative court judge.*

*§ 3. A person who practised the profession or held the post specified in Article 64(2) during the period of three years preceding the appointment may be appointed to the post of an appeal court judge.*

(b) **Condition of service and security of tenure of judges**;

Both issues are regulated in a general way and guaranteed in the Constitution (see extract below).

***Article 178***

1. *Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.*
2. *Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.*
3. *A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.*

***Article 179***

*Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.*

***Article 180***

1. *Judges shall not be removable.*
2. *Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.*
3. *A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute. (…)“*

In 2016, the institution of trainee judge (“*asesor*”) – judge for a trial period of up to 5 years, has been re-introduced[[4]](#footnote-4), and as of late 2017, first group of trainee judges has been appointed to perform functions in common courts, as well as in administrative courts (slightly earlier). The institution had been abolished in May 2009 due to judgement of Constitutional Tribunal no. SK 7/06 of 24.10.2007 – at the time the trainee judges were nominated by the Minister of Justice which was found incompatible with the above provisions of the Constitution.

Currently, trainee judges are appointed by the Minister of Justice for an indefinite period, on the basis of lists referred to in Article 33a(11) and Article 33b(9) of the Act of 23 January 2009 on the National School of the Judiciary and Public Prosecution (from among its graduates).

The Minister of Justice presents the National Council of the Judiciary with the list of appointed trainee judges, together with the information, provided by the Director of the National School of the Judiciary and Public Prosecution, and the request to entrust the duties of a judge. If the National Council of the Judiciary, within one month from the date of presenting the list and request, does not raise an objection, the trainee judge performs the duties of a judge for a period of 4 years from the date of the expiry of the monthly period and, in the case of an objection, from the date of quashing the resolution expressing an objection.

(c) **Promotion of judges**

The selection procedure is similar to the one in the event of first appointment (see b) above), and the role of the NCJ is decisive. The President appoints the candidate selected by the Council of the contest procedure.

As for additional requirements, the Law on the Common Courts Organisation states that:

*Article 57a. § 1. A candidate for a vacant post of a judge holding the post of a common court judge, an administrative court judge, a military court judge attaches to the application sheet a list of case file numbers of one hundred court cases of various categories in the hearing of which they participated, and where the number of such cases is lower - a list of case file numbers of all cases.*

*Article 63. § 1. A district court judge or a military garrison court judge who held the post of a district court judge or a military garrison court judge or the post of a public prosecutor for at least four years may be appointed to the post of a regional court judge.*

*§ 1a. Also, a public prosecutor who held the post of a public prosecutor or a judge for at least four years may be appointed to the post of a regional court judge.*

 *(...)*

*Article 64. § 1. A common court judge or a military court judge who held the post of a judge or a public prosecutor for a period of at least ten years may be appointed to the post of an appeal court judge.*

(d) **Transfer of judges**

Transfer of judges to a judicial position in another court may only occur in three situations:

i) on judge’s own demand – by a motion sent to the Minister of Justice, having previously obtained the consent of his current court and the court he/she wants to be transferred to.

The number of such motions of judges (around 70% of them are rejected) is increasing with each year: 72 in 2013, 138 in 2014, 210 in 2015, 240 in 2016. As the Ministry of Justice claims[[5]](#footnote-5), it happens usually when the judges who were unsuccessful in obtaining the position in the desired location (for instance, in big city), having been finally appointed to a certain position, soon after decide to apply for a transfer to a primarily desired location). Therefore, a limitation to 1 motion in three years has been introduced in 2017 (although, if within this 3-year period, another judicial position in the same court has been vacated, the Minister may propose the judge who wanted to be transferred there, to do so)[[6]](#footnote-6)

ii) in case of reorganization of the court system or changes to the boundaries of court districts[[7]](#footnote-7)

iii) as a result of disciplinary proceedings (this is one of most serious penalties from the catalogue).

(e) **Disciplinary proceedings against judges**

The disciplinary courts in Poland are:

- courts of appeal (11; as first instance)

- Supreme Court (as 2nd instance, or 1st and 2nd instance – for judges of Supreme Court); since spring of 2018, a separate Disciplinary Chamber of the Supreme Court will be created.

**What is the role played by the national organ or mechanism with regard to the issues referred to above?**

Council is the most important organ in the process of judicial appointment (described above)

b) Competencies of Council in this regard are described on the Constitution (article 186):

1. *The National Council of the Judiciary shall safeguard the independence of courts and judges.*
2. *The National Council of the Judiciary may make application to the Constitutional Tribunal regarding the conformity to the Constitution of normative acts to the extent to which they relate to the independence of courts and judges.*

More detailed competencies are described in the Article 3 of the Act on the National Council of the Judiciary:

***“****Article  3.  1.  The competencies of the Council include:*

*1) review and assessment of candidates for the post of judges of the Supreme Court and common courts, administrative and military courts and for the post of trainee judges in administrative courts;*

*2) presenting to the President of the Republic of Poland motions for appointment of judges of the Supreme Court, common courts, administrative and military courts and the appointment of trainee judges in administrative courts;*

*2a) expressing its objection with regard to the exercising of judicial duties in the courts by the trainee judges;*

*3) resolving on a set of principles of professional ethics of judges and trainee judges and ensuring their observance;*

*4) passing opinions on the condition of the judiciary and trainee judges;*

*5) expressing opinions on matters concerning the judiciary, judges and trainee judges, brought under its agenda by the President of the Republic of Poland, other public authorities or bodies of judicial self-government;*

*6) giving opinions on draft legislation concerning the judiciary, judges and trainee judges, and presenting proposals in this regard;*

*7) expressing opinion on the program of training as part of the judges’ training period, the scope and manner of conducting the judges’ training period entry contests and judges’ exams;*

*8)      expressing opinion on annual schedules of training and professional education of judges, trainee judges and court officers.*

*2.  Moreover, the Council performs other tasks stipulated in Acts, in particular:*

*1)      it adopts resolutions regarding applications to the Constitutional Tribunal to examine compliance with the Constitution of the Republic of Poland of normative acts within the scope concerning independence of courts and judges;*

*2)      it considers applications for retirement of judges;*

 *3)      it considers applications of retired judges to return to judicial post;*

*4)      appoints the disciplinary proceedings representative for matters regarding judges of common courts and trainee judges and the disciplinary proceedings representative for matters regarding judges of military courts;*

*5)      it expresses opinion on appointment and dismissal of presidents and deputy presidents of common courts and military courts;*

*6)      (repealed)*

*7)      it names one member of the Programming Board of the Polish National School of Judiciary and Public Prosecution;*

*8)      it expresses opinion on the appointment and dismissal of the Director of the Polish National School of Judiciary and Public Prosecution.*

c) Council is the most important organ in the process of judicial promotion (described above)

d) Transfer of judges: no particular role of NCJ.

e) The role of Council in disciplinary matters of judges is generally limited to election of disciplinary proceedings representative (who acts as a prosecutor in disciplinary cases concerning judges), a right to appeal 1st instance disciplinary court rulings[[8]](#footnote-8) as well as presenting the disciplinary representative the motion for initiating the disciplinary procedure against the judge or trainee judge[[9]](#footnote-9). The Council prepares the collection of principles of professional ethics of judges and trainee judges and ensures their observance[[10]](#footnote-10). The breach of this collection of principles (code of ethics, also attached) is often a basis for institution of disciplinary proceedings.

**4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:**

1. **and (c) N/A (NCJ plays a role in the above)**
2. **Transfer and promotion of judges;**

For promotion, see reply above (the role of the NCJ is decisive).

As for the transfer to another court at request of the judge himself:

A motion must be sent by the judge to the Minister of Justice, after prior consent of current court and the court he/she wants to be transferred to. The Minister has the right to refuse his consent.

1. See *Resolution of the National Council of the Judiciary No. 125/2015 of 6 February 2015 on “Rules of Specific Procedure of the National Council of the Judiciary”* and other bylaws, internal regulations, ordinances etc. [↑](#footnote-ref-1)
2. Ordinance no. 7/2015 of the Chairman of the NCJ on rules of remuneration of staff of the Council’s Office [↑](#footnote-ref-2)
3. See Council’s *Opinion of 31.10.2017 on the presidential draft act amending the Act on the National Council of the Judiciary and various other acts*, p. 14 [↑](#footnote-ref-3)
4. See Articles 106h – 106zg of the attached Law on the common courts system and Art. 5 (3), 5(4) and 29 of the Law on the system of administrative courts. [↑](#footnote-ref-4)
5. See <http://www.rp.pl/Sedziowie-i-sady/301139985-Przenosiny-sedziow-na-inne-miejsce-sluzbowe-maja-byc-ograniczone.html> [↑](#footnote-ref-5)
6. See Art. 75b of the Law on common courts organisation: “*§ 4. The request of the judge to transfer to another place of service that does not meet the requirements referred to in Article 75b(2) shall be disregarded. If the request is not taken into account, the judge may submit another transfer request no earlier than after 3 years, unless the reason for not taking into account the request was merely the lack of sufficient number of vacant judicial posts in relation to the number of requests. A request lodged before this deadline shall be disregarded.*

*§ 5. The Minister of Justice may, ex officio, request a judge who has previously requested to be transferred to another place of service, to express consent to being transferred to the requested or other place of service.”* [↑](#footnote-ref-6)
7. Article 180(4) of the Constitution: “*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 full remuneration.”* [↑](#footnote-ref-7)
8. See the Act on the National Council of the Judiciary: “**Article  6.**  The Council shall elect the disciplinary proceedings representative for matters concerning judges of common courts and trainee judges after the submission of candidates by the general assembly of judges of courts of appeal and the disciplinary proceedings representative for matters concerning judges of military courts after the submission of candidates by the Assembly of Judges of Military Courts. (…)” **Article  19.**  1.  The Council appoints permanent committees from among its members:

    1)      the committee for disciplinary responsibility of judges and trainee judges, whose task is to analyse the judgments of the disciplinary courts, to submit to the Council motions for disciplinary actions, to appeal against the decisions of disciplinary courts and disciplinary proceedings representatives and to demand the resumption of disciplinary proceedings; [↑](#footnote-ref-8)
9. Article 114 of the Law on Courts’ Organisation: “*The disciplinary prosecutor undertakes disciplinary actions at the request of the Minister of Justice, the president of the court of appeal or of the regional court and the board of the court of appeal or of the regional court, at the request of the National Council of the Judiciary”* [↑](#footnote-ref-9)
10. See the Article 3.1 3) of the Act on the National Council of the Judiciary [↑](#footnote-ref-10)