

## ACT

of 12 May 2011

### on the National Council of the Judiciary

(Journal of Laws of 2019.84 of 23rd May 2019, as amended)

#### Chapter 1 General provisions

**Article 1.** The Act regulates the competencies, method of selecting the members, the structure and proceedings before the National Council of the Judiciary, hereinafter referred to as "Council".

**Article 2.** The provisions of the Code of administrative procedure do not apply in proceedings before the Council.

#### Chapter 2 Competencies and structure of the Council

**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;
- 9) *(repealed)*
- 10) supervising the processing of personal data by the Constitutional Tribunal, Tribunal of State, Supreme Court, Supreme Administrative Court and courts of appeal within the framework of their proceedings.

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.

**Article 4.** The Council presents information to the Sejm, the Senate and the President of the Republic of Poland, not later than by 31 May of the following year, on the annual activity of the Council as well as postulates concerning current matters and needs of the justice system. No voting is carried out in the Sejm and the Senate on this information.

**Article 5. 1.** The Council may decree that the following be conducted:

- 1) visitation at the court or its organizational unit;
  - 2) inspection at the court;
  - 3) inspection of the career of a judge or a trainee judge, whose individual matter is to be addressed by the Council.
2. Actions referred to in section 1 may not interfere with areas in which the judges and trainee judges are independent.
3. The activities referred to in par. 1 may be carried out by members of the Council or by judges delegated to the Council Office on the basis of separate regulations.

**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 18 shall apply accordingly.

**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 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 for a common four-year term of office.

2. When making the selection referred to in paragraph 1, the Sejm, as far as possible, shall take into consideration the need to have the representation of judges of specific types and levels of courts in the Council.

3. 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.

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

**Article 11.** *(repealed)*

**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 Speaker 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 a group of at least:

1) 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) 25 judges, excluding retired judges.

3. One submission may include only one candidate for a member of the Council. Entities referred to in paragraph 2 may make more than one submission.

4. A candidate for a member of the Council is submitted to the Speaker 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 Speaker of the Sejm, within three days from the receipt of a candidate submission, shall turn in writing to the president of the court competent for the submitted candidate, and in the case the submission concerns the president:

1) of a district, regional or military garrison court – to the president of the court of higher instance,

2) of a court of appeal, a voivodeship administrative court or a military regional court – to the vice-president or deputy president of that court

– with a request for drafting and delivery, within seven days from the receipt of the request, of information including the adjudicating experience of the candidate, 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 the information referred to in paragraph 6 is not drafted within the time limit referred to in paragraph 6, the Speaker of the Sejm shall turn in writing to the candidate for a member of the Council for preparation of that information within seven days from the receipt of the Speaker's request. The candidate shall submit a copy of the information about their adjudicating experience drafted by them to the president of the relevant court, the president of the court of higher instance or a vice-president or deputy president of the court of appeal, a Voivodeship administrative court or a military regional court.

8. In the case of failure to draft the information referred to in paragraph 6 by the candidate for a member of the Council within the time limit referred to in paragraph 7, the Speaker of the Sejm refuses to accept the submission. A decision in this regard together with the statement of grounds shall be immediately delivered to the attorney-in-fact and the candidate for a member of the Council.

9. The Speaker of the Sejm annexes the information referred to in paragraph 6 to the candidate's submission.

**Article 11b.** 1. The submission 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.

2. 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).

3. In the event of any doubts regarding the validity of the required number of signatures, the Speaker 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.

4. Within 14 days of receipt of the request from the Speaker of the Sejm, the State Election Commission shall decide whether the required number of signatures was provided.

5. 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 Speaker 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.

6. The decision may be appealed against by the attorney-in-fact before the Supreme Court within three days of service of the decision. The Supreme Court shall consider the appeal within three days in non-contentious proceedings in a bench of three judges. As a result of consideration of the appeal, the Supreme Court shall change or sustain the decision appealed against. The decision of the Supreme Court may not be subject to any legal remedy. In the case of failure of the Supreme Court to consider the appeal within three days, the proceedings before the Supreme Court are discontinued ex lege, and the decision of the Speaker of the Sejm on refusal to accept the submission is binding.

7. 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).

8. Within 3 days of receipt of the submission referred to in Article 11a(2)(2), the Speaker 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 Speaker 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.

9. 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 Speaker of the Sejm by means of an order. An order of the Speaker 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 Speaker of the Sejm to the members of the Sejm and made public, with an exception of attachments.

**Article 11d.** 1. The Speaker of the Sejm turns to parliamentary clubs with request for indication, within seven days, of candidates for members of the Council.

2. A parliamentary club shall indicate, from among judges whose candidacies had been submitted according to Article 11a, no more than nine candidates for members of the Council.

3. If the total number of candidates indicated by parliamentary clubs is lower than fifteen, the Sejm Presidium shall indicate, from among the candidates submitted according to Article 11a, candidates in the number that is missing to fifteen.

4. The appropriate Sejm commission shall determine a list of candidates selecting, from among the candidates indicated according to paragraphs 2 and 3, fifteen candidates for members of the Council, with the proviso that the list of candidates shall take into account at least one candidate indicated by every parliamentary club that had acted within sixty days from the first Sejm meeting in the term of office, during which the selection is made, if the candidate has been indicated by the club as part of the indication referred to in paragraph 2.

5. The Sejm selects members of the Council for a common four-year term of office at the closest meeting of the Sejm, by a majority of 3/5 of votes, in the presence of at least half of the statutory number of members of the Sejm, by voting on the list of candidates referred to in paragraph 4.

6. In the case of failure to select members of the Council in accordance with paragraph 5, the Sejm shall select members of the Council by an absolute majority of votes, in the presence of at least half of the statutory number of members of the Sejm, by voting on the list of candidates referred to in paragraph 4.

7. If, as a result of application of the procedure referred to in paragraphs 1–6, fifteen members of the Council are not selected, provisions of Articles 11a–11d shall apply accordingly.

**Article 11e.** 1. If it is necessary to select another person to take a mandate of a member of the Council prior to the expiry of the term of office of a member of the Council selected from among judges, the Speaker of the Sejm shall announce immediately in the Official Gazette of the Republic of Poland "Monitor Polski" that the procedure for nominating candidates for a post of a member of the Council has commenced, due to a need to fill the vacant post. The provisions of Article 11a(2)–(9), Article 11b and Article 11c shall apply accordingly.

2. In the case referred to in paragraph 1, the selection of a member of the Council selected from among judges shall be governed by the provisions of Article 9a(1) and (2) and Article 11d accordingly.

3. A term of office of the member of the Council selected for the vacant position shall expire upon the expiry of the term of office of the members of the Council selected from among judges.

**Article 12.** *(repealed)*

**Article 13.** *(repealed)*

**Article 14.** 1. The mandate of the appointed member of the Council expires before the term of office is up in the event of:

- 1) death;
- 2) renunciation of the mandate;
- 3) expiry of the mandate of the Deputy or Senator;
- 4) appointment of the judge to another judicial post, except for the appointment of the judge of the district court to the post of the judge of the circuit court, the military judge of the garrison court to the post of the judge of the military circuit court or the judge of the voivodship administrative court to the post of the judge of the Supreme Administrative Court;

- 5) expiry or termination of the judge's service relationship;

- 6) when the judge retires or is retired.

2. Renunciation of the mandate in the Council becomes effective the moment the Chairman of the Council is informed about this in writing. The Chairman immediately notifies the body which appointed the member.

3. A new member of the Council from among members of the Sejm or senators should be selected within two months after the expiry of mandate.

**Article 15.** The Council's bodies are the Chairman and the Praesidium of the Council.

**Article 16.** 1. The Council appoints the Chairman, two deputy chairmen and three members of the Praesidium of the Council from among its body.

2. The term of office of each member of the Praesidium of the Council lasts four years. Members of the Praesidium of the Council cannot fulfil their functions for more than two terms of office.

3. The Praesidium of the Council manages the work of the Council and ensures proper functioning of the Council between the plenary meetings, and, in particular, draws up draft agendas for the Council's plenary meetings.

4. In emergency situations requiring that actions be undertaken between the Council's plenary meetings, the Praesidium of the Council may take actions on its behalf which are reserved for the competencies of the Council, except for dealing with individual matters.

5. Should the Praesidium of the Council take actions in accordance with the procedure stipulated in par. 4, the Chairman presents the matter to the Council during the upcoming plenary meeting.

**Article 17.** 1. The Chairman represents the Council and organizes its work, and, in particular:

1) convenes the meetings of the Council, chairs the meetings and exercises supervision over the course thereof;

2) signs the Council's resolutions;

3) gives orders to correct evident typographical errors in the Council's resolutions and their justifications;

4) tables motions before the Council to re-examine the case;

5) performs activities commissioned by the Council.

2. The Deputy chairmen:

1) during the Chairman's absence, substitute in for him in performing the activities specified in par. 1 and in Article 16 par. 5;

2) perform other activities by proxy of the Chairman.

3. The distribution of the activities referred to in par. 2 between the deputy chairmen is determined by the Chairman who informs the Council about it.

4. Should the Chairman and the deputy chairmen be absent, the meetings of the Council are chaired and the Council's resolutions are signed by the oldest member of the Praesidium of the Council.

**Article 18.** 1. Should the post of a member of the Praesidium of the Council become vacant, the Council fills in that vacancy during the upcoming meeting.

2. The Chairman, the deputy chairmen and other members of the Praesidium of the Council are appointed separately, with the number of candidates being unlimited.

3. If, during the first ballot, none of the candidates receives the required majority of votes, the candidate who received the least number of votes during the preceding ballot is excluded from each subsequent ballot.

**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;

2) budgetary committee, whose task is to annually:

a) draw up the draft resolution containing a plan of revenues and expenses of the Council and resolutions containing the petitions referred to in Article 178 § 3 of the Act of 27 July 2001 - Law on the organization of common law courts (Journal of Laws No. 98, item 1070, as amended<sup>2)</sup>) and Article 4 § 4 of the Act of 21 August 1997 - Law on the organization of

- military courts (Journal of Laws of 2007, No. 226, item 1676, as amended<sup>3</sup>),
- b) examine the data contained in the declarations of the presidents of courts of appeal and the presidents of military circuit courts concerning their financial status for the purpose of the Council analysing these declarations by 30 June of each year;
- 3) the committee for visitations and inspection, whose task is to prepare draft resolutions on the visitation of court or its organisational units, court inspection or career inspection regarding a judge or a trainee judge;
- 4) the committee for professional ethics of judges and trainee judges, whose task is to prepare draft resolutions on the set of principles of professional ethics of judges and trainee judges and to supervise observance thereof.
2. The Council may appoint other issue commissions.

**Article 20.** 1. The Council deliberates during plenary meetings. Sessions are transmitted via the Internet unless the Council resolves on exclusion of openness of the meeting. The Council shall exclude openness of the meeting in full or in part if the openness may lead to disclosure of information subject to protection pursuant to rules specified in the Act of 5 August 2010 on protection of classified information (Journal of Laws of 2016, Items 1167 and 1948, and of 2017, Item 935) or violate an important private interest by disclosing information referred to in Article 27(1) of the Act of 29 August 1997 on personal data protection (Journal of Laws of 2016, Item 922).

2. The plenary meetings of the Council are convened by the Chairman of the Council on "as needed" basis, at least once every two months. Moreover, the plenary meetings of the Council are convened at the request of at least one third of its members and at the request of the Minister of Justice.

3. The first meeting of the Council after the post of the Chairman becomes vacant is convened by the First President of the Supreme Court, who chairs the meetings until a new Chairman is appointed.

**Article 21.** 1. In order for the resolutions of the Council to be valid the presence of at least half of the Council's composition is required.

2. The Council adopts resolutions by absolute majority of votes cast in an open ballot. The ballot may be secret at the request of the Council's member.

2a. In justified cases, the Chairperson of the Council may order that the voting by circulation via e-mail be conducted. The Chairperson of the Council shall provide any materials containing personal data in a manner that ensures protection thereof and notify the members of the Council of the mode of voting and the strict time-limit by which the declaration of voting "for", "against" or the declaration of abstention should be sent to an e-mail address specified by the Chairperson of the Council.

2b. In the case of adopting a resolution by circulation, there is no possibility of ordering a secret voting.

2c. Voting by circulation shall be effective if at least half of the members of the Council cast their votes by the time-limit specified for voting.

3. The ballot may be repeated in the event of a breach of the rules of conduct, on the basis of a resolution of the Council adopted at the request of a member of the Council made at the latest on a day stipulated as the deadline for making reservations to the minutes from the meeting.

**Article 22.** 1. The Council shall lay down specific procedure in the rules, including the use of an information and communication system that supports the procedure for appointment to the post of a judge referred to in the Act of 27 July 2001 – Law on Common Courts Organisation, hereinafter referred to as the "ICT system".

1a. When determining a detailed mode of work, the Council shall base its decision on the need to ensure access to information about the procedure before the Council, as well as exhaustive information about candidates and reasons for which a request for an appointment to the office of a judge or an assistant judge is filed.

2. The Council's regulations are subject to notification in the Official Journal of the Republic of Poland "Monitor Polski".

**Article 23.** The Council uses a seal with the image of the eagle representing the emblem of the Republic of Poland.

**Article 24.** 1. The Council performs its tasks through the Council Office, hereinafter referred to as "Office".

2. The Office is managed by the Chief appointed and dismissed by the Chairman of the Council after obtaining an opinion from the Praesidium of the Council.

3. The organization and the way the Office operates are defined by the regulations adopted by the Council.

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.

**Article 25.** 1. The Council may designate a member of the Council being a judge, upon his consent, to perform permanent duties in the Office. The designation is made for a specified period of time.

2. The judge delegated to perform duties in the Office is subject to the provisions of Article 78 § 2-4 of the Act of 27 July 2001 - Law on the organization of common law courts. The value of allowances is determined by the Minister of Justice at the Chairman's request.

**Article 26.** For performing the duties on the Council members of the Council receive:

1) allowances for every day of participation in plenary meetings and other work of the Council in the amount equal to 20% of the basis for determining the judge's base salary referred to in Article 91 § 1c of the Act of 27 July 2001 - Law on the organization of common law courts;

2) reimbursement of the travel and accommodation expenses on terms stipulated in the regulations issued on the basis of Article 775 § 2 of the Act of 26 June 1974 - The labour code (Journal of Laws of 1998, No. 21, Item 94, as amended<sup>4</sup>) in accordance with the rules governing domestic business trips.

**Article 27.** 1. The operating expenses of the Council shall be covered from the state budget. The Council provides conditions for the work of the disciplinary proceedings representative in matters concerning judges and trainee judges of common courts as well as the disciplinary proceedings representative in matters concerning judges of military courts.

2. The Council's revenues and expenses constitute a separate part of the State Budget.

3. The administrator of the budgetary part corresponding to the Council is the Chairman of the Council.

4. The draft plan of the revenues and expenses adopted by the Council is forwarded by the Chairman of the Council to the minister in charge of the budget for the purpose of being incorporated into the draft budgetary act on the basis of Article 139 par. 2 of the Act of 27 August 2009 on public finance (Journal of Laws No. 157, Item 1240, as amended<sup>5</sup>).

### **Chapter 3**

#### **Proceedings before the Council**

**Article 28.** 1. Member of the Council is excluded by virtue of the law from cases:

1) which concern him;

2) which concern his spouse, relatives or kinsmen in direct line, lateral relatives within the fourth degree of consanguinity and lateral kinsmen within the second degree of consanguinity;

3) persons associated with him due to adoption, guardianship or wardship and in cases in which he was or is a proxy.

2. The reasons for the exclusion remain in force after the cessation of marriage, adoption, guardianship or wardship that justifies it.

3. The Council excludes the member at his request or at the request of the person whose case is subject to a review if there is a circumstance of a kind that it could cause a justified doubt as to the member's impartiality in the given case.

**Article 29.** 1. In individual cases the person whose rights or obligations the Council's resolution is supposed to concern is a party to the proceedings before the Council.

2. The party to the proceedings is informed about the date of the meeting during which his case will be considered.

**Article 30.** 1. In individual cases, should it be determined that there are documents missing which make it impossible to consider the case, the Chairman orders for them to be supplemented within the required deadline, under the pain of the petition not being reviewed.

2. If personal files are required for the individual case to be considered, the Chairman asks that they be presented to the Council. The competent body or institution is obliged to present the files immediately to the Council.

2a. In individual matters concerning the appointment to the post of a judge of common court, the Chairperson of the Council shall request the submission of personal files of a candidate and other documents to the authorities and institutions covered by the ICT system via the ICT system. The candidate's personal files and documents requested by the Chairperson of the Council may be submitted via the ICT system.

**Article 31.** 1. The Chairman shall appoint a team whose task is to prepare the individual case to be considered during the Council's meeting. The team shall be composed of three members of the Council. In justified cases, the Chairman may appoint a team with more members than three.

1a. The team shall not be composed exclusively of:

1) judges

2) members of Sejm and senators.

2. Judges of the court with the activities of which the case is associated and of the court operating in the same judicial district cannot be members of the team.

2a. When appointing the team referred to in paragraph 1, the Chairperson of the Council shall notify the Minister of Justice of the appointment of the team and inform about specific cases forwarded to the team to be prepared for consideration at the Council's meeting. Changes in the composition of the team do not require notification of the Minister of Justice.

2b. Within 21 days of receipt of the information referred to in paragraph 2a, the Minister of Justice may present the Council with their opinion on a specific case. Prior to the expiry of the time-limit for the presentation of the opinion by the Minister of Justice, the team shall not adopt a stance referred to in Article 34(1).

2c. If the Minister of Justice fails to present an opinion on a specific case within the time-limit referred to in paragraph 2b, the work of the team shall not be withheld.

2d. The opinion referred to in paragraph 2b or information about failure to present the opinion shall be attached to the documentation of proceedings in this regard.

3. The designated member of the Council may be excluded from the team. The Council decides about the exclusion at the member's request.

**Article 32.** 1. Correspondence concerning cases being examined by the Council is delivered to the parties to the proceedings against confirmation of receipt.

1a. Letters and other documents in individual matters reviewed by the Council and concerning the appointment to the post of a judge of common court, as well as Council resolutions adopted in those matters shall be delivered to the candidates via the ICT

system. The notifications shall be deemed effective as soon as the candidate logs in to the ICT system or within 14 days of uploading a letter into the ICT system.

1b. The provision of par. 1a shall apply *mutatis mutandis* to the individual cases considered by the Council regarding the appointment to the office of a judge of the Supreme Court, as far as the capabilities of the ICT system permit.

2. Resolutions of the Council are delivered in the form of copies authenticated by the Council Office.

3. The case files are available to the parties to the proceedings taking into account the regulations concerning protection of confidential information and protection of personal data. The parties to the proceedings may inspect the case files and make copies or excerpts of such files. Upon a written request the party to the proceedings may receive copies and excerpts of the files confirmed by the Council Office to be true copies of the originals.

**Article 33.** 1. In individual cases the Council adopts resolutions after a thorough consideration of the case, on the basis of available documentation and clarifications provided by the parties to the proceedings or other parties, if such have been submitted.

2. In justified cases the Council may request that the party to the proceedings appear in person or that it provide written clarifications or supplement the materials required in the case. The provision of Article 30 par. 2 applies accordingly.

3. Explanations of the candidate for the post of a judge of common court and any supplementary materials may also be submitted via the ICT system.

**Article 34.** 1. In preparing the candidates to be appointed for the post of a judge or a trainee judge to be reviewed and assessed at the Council meeting, the team assumes a position by an absolute majority of votes in the presence of all its members.

2. The ballot in the cases referred to in par. 1 is open unless the team decides by a majority of votes to hold it in secrecy.

3. The stance of the team in the cases referred to in par. 1 must be justified.

4. The meetings of the team in the cases referred to in par. 1 are minuted.

**Article 35.** 1. If more than one candidate applied for the position of a judge or a trainee judge, the team drafts a list of recommended candidates.

2. When determining the order of the candidates on the list the team relies, above all, on the assessment of the qualifications of the candidates, and, moreover, takes into account:

1) professional experience, including experience in the application of legal regulations, academic achievements, opinions of supervisors, recommendations, publications and other documents attached to the submission card;

2) opinion from the board of a competent court and evaluation of a competent general assembly of judges.

3. The lack of documents referred to in par. 2, shall not prevent the list of recommended candidates from being developed.

**Article 36.** 1. In cases where the post of a judge or a trainee judge is applied for by candidates being advocates, legal counsels, notaries, public prosecutors, counsel or senior counsel to or a vice-president of the General Counsel to the Republic of Poland, the following bodies or authorities shall be notified about the team meeting: Supreme Bar Council, National Council of Legal Counsels, National Council of Notaries, the National Council of Public Prosecutors at the Prosecutor General's Office, President of the General Counsel to the Republic of Poland.

2. In the case referred to in par. 1 the representative of the Supreme Bar Council, the National Council for Legal Counsels, National Council of Notaries, the National Council of Public Prosecutors at the Prosecutor General's Office, the President of the General Counsel to the Republic of Poland may participate in the team's meeting with an advisory vote.

**Article 37.** 1. If more than one candidate has applied for the judicial post, the Council

reviews and evaluates all candidatures jointly. In this case the Council adopts a resolution deciding about the submission of the petition to appoint the person to fulfil the office of the judge with respect to all candidates.

1a. If the post of a trainee judge is applied for by more than one candidate, the Council reviews and assesses all submitted candidates jointly. In this case, the Council adopts a resolution regarding the presentation of a motion for appointment to the post of trainee judge in relation to all candidates.

2. The first and last names of the candidates, the stance of the team and the resolution of the Council, together with its justification, are published in the Public Information Bulletin.

**Article 37a.** 1. If a trainee judge has applied for a judicial position, the resolution not to present the motion for appointment to the office of the judge may be taken only after the consideration of the assessment of the qualifications referred to in Art. 5 sec. In this case, the vetting of the work of the trainee judge shall be carried out by three inspecting judges by lot from among the judges of the prosecutors from the area of appeal court other than the one in whose jurisdiction the judicial office is located, within a period of not more than sixty days.

2. The inspecting judges shall, after consideration, uphold the assessment of the qualifications of the trainee judge, or make a different assessment. The position of the inspecting judges shall be made in writing with reasons and shall be delivered to the trainee judge.

3. Comments of the trainee judge lodged after the deadline referred to in Art. 106xa § 4 of the Act of July 27, 2001 - The Law on the Common Courts Organisation are left unresolved.

**Article 38.** 1. The petition to retire the judge should contain a justification.

2. The petition should be accompanied by documents presenting the circumstances constituting the basis for retiring the judge, and, in particular:

1) the ruling of the Social Insurance Institution's certifying physician and of the medical board, if such had been issued;

2) a detailed summary of the periods when the judge did not fulfil his function due to an illness or leave to recover;

3) the medical certificates and rulings concerning the judge's health condition.

3. If consideration of the case calls for specific information, the Council may ask a court expert or several experts or to a competent scientific or scientific research Institute for an opinion.

4. The petition to retire the judge due to a change in the organization of courts or change in the boundaries of courts' circuits should be accompanied by documents describing those circumstances, including the clarification of the reasons for not relocating the judge to another court.

**Article 39.** The petition to reinstate the judge to the judicial post should contain a justification. Appropriate documents should be attached to the petition. Article 38 applies accordingly.

**Article 40.** 1. The Council decides to commence proceedings or refuses to consider the petition as regards ascertainment of the circumstances stipulated in Article 7 par. 1 items 1-5, par. 2 and par. 3 and in Article 8 par. 1 of the Act of 17 December 1997 amending the Act - Law on the organization of common law courts and certain other acts (Journal of Laws of 1998, No. 98, Item 607 and of 2001, No. 98, item 1070) by way of a resolution.

2. A copy of the resolution is sent to the petitioner and the judge concerned or to a member of his family together with a copy of the petition. A copy of the resolution on commencing proceedings is also sent to the organizational unit paying the judge's salary or family remuneration.

3. When delivering a copy of the resolution on commencing proceedings to the judge or a member of his family, the Council advises them about the tenor of Article 7 par. 3 of the Act referred to in par. 1, asking them to provide written clarifications and motions for evidence and sets an appropriate deadline for that purpose.

4. After a futile lapse of the deadline referred to in par. 3, and after the team conducts explanatory proceedings, the Council adopts a resolution ascertaining the circumstances referred to in Article 7 par. 1 items 1-5, par. 2 and par. 3 and in Article 8 par. 1 of the Act referred to in par. 1, or refusing to ascertain them.

**Article 41.** The Council discontinues proceedings if adoption of the resolution becomes redundant or inadmissible.

**Article 42.** 1. The Council's resolutions concerning individual cases must be justified.

2. The justification of the resolution is drawn up within one month of its adoption.

3. Resolutions concerning individual matters are delivered to the parties to the proceedings together with the justification and advice on how to lodge an appeal with the Supreme Court.

**Article 43.** 1. The Council's resolution becomes legally binding if it is not appealable.

2. If the resolution referred to in Article 37 section 1 has not been appealed against by all participants to the procedure, the resolution becomes legally binding in the part concerning the decision on abstaining from presenting a motion for appointment to the post of a judge in relation to the participants to the procedure who have not brought an appeal.

**Article 44.** 1. The party to the proceedings may appeal to the Supreme Court on the grounds of contradiction of the Council's resolution with the law, unless separate regulations stipulate otherwise. The appeal does not apply in individual cases regarding the appointment to the office of a judge of the Supreme Court.

1a. *(ceased to apply)*

1b. *(repealed)*

2. The appeal is lodged through the Chairman within two weeks of day of delivery of the resolution together with the justification.

3. To proceedings before the Supreme Court, the provisions of the Act of 17 November 1964 - the Civil Procedure Code (Journal of Laws of 2016, Item 1822, as amended<sup>1</sup>), regarding the cassation appeal shall apply. Provisions of Article 87 of that Act shall not apply.

4. *(repealed)*

**Article 44a.** The Council shall submit to the President of the Republic of Poland a resolution containing a request to appoint a judge or an assistant judge together with the statement of grounds, information about other candidates for a position of a judge or an assistant judge and the assessments of all candidates. The documentation of proceedings in this regard shall be attached to the resolution.

**Article 45.** 1. Should new circumstances be disclosed, the Council may, ex officio or at the request of the party to the proceedings, re-examine the case.

2. In the event that new circumstances concerning a person referred to in the motion for appointment to the post of a judge or an trainee judge, as presented to the President of the Republic of Poland, are disclosed, a request for re-examination of a particular matter may also be filed by the President of the Republic of Poland.

3. The Council decides about re-examining the case or refusing to do so by way of a

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<sup>1</sup> Changes of the consolidated text of the Act were published in the Journal of Laws of 2016, Items 1823, 1860, 1948, 2138, 2199, 2260 and 2261 and the Journal of Laws of 2017, items 67, 85, 187, 768, 933, 1133, 1136, 1452, 1475, 1596, 1727, 1883, 2180, 2245 and 2491,

resolution.

#### **Chapter 4**

##### **Amendments to the current regulations**

**Article 46.** In the Act of 17 December 1997 amending the Act - Law on the organization of common law courts and certain other acts (Journal of Laws of 1998, No. 98, item 607 and of 2001, No. 98, Item 1070) In Article 7 par. 4 shall read:

- "4. The circumstances referred to in par. 1 items 1-5, par. 2 and 3 with respect to the judges or members of their families are ascertained by the National Council of the Judiciary by way of a resolution. The motion to adopt the resolution may be tabled by the Minister of Justice, as well as the person repressed for its activities towards independence or protection of human rights, and should this person pass away - its spouse, siblings or children. The concerned parties can appeal the decision to the administrative court."

**Article 47.** In the Act of 27 July 2001 - Law on the organization of common law courts (Journal of Laws No. 98, item 1070, as amended) In Article 70 after § 3 section § 3a shall be added, which reads:

- "§ 3a. The judge or the board of a competent court concerned may appeal the ruling of the certifying physician referred to in § 1 and 2 to the medical board of the Social Insurance Institution within 14 days of the day on which this ruling is delivered."

**Article 48.** In the Act of 25 July 2002 - Law on the organization of administrative courts (Journal of Laws No. 153, item 1269, of 2005, No. 169, item 1417, of 2009, No. 219, item 1706 and of 2010, No. 36, item 196) the following amendments are introduced:

1) In Article 21:

a) § 1 shall read:

- "§ 1. The president and vice-president of the court in the voivodship administrative court is appointed by the President of the Supreme Administrative Court from among the judges of the voivodship administrative court or the Supreme Administrative Court after obtaining an opinion from the general meeting of that court.",

b) § 3 and 4 shall read:

- "§ 3. Should the general meeting issue a negative opinion about the candidate, the President of the Supreme Administrative Court may appoint him after obtaining a positive opinion from the National Council of the Judiciary. A negative opinion from the National Council of the Judiciary is binding for the President of the Supreme Administrative Court.

- § 4. If, within thirty days of the day on which the President of the Supreme Administrative Court presents his intention to appoint a judge to the post of the president of the court, despite of a negative opinion of the general meeting of that court, the National Council of the Judiciary does not issue an opinion, the opinion shall be considered to be positive."

2) In Article 21a in § 2 the first sentence shall read:

"The president and vice-president of the court in the voivodship administrative court is dismissed after obtaining an opinion from the general meeting of that court and the National Council of the Judiciary.";

3) § 3 shall be annulled in Article 46.

**Article 49.** In the Act of 23 November 2002 on the Supreme Court (Journal of Laws No. 240, item 2052, as amended) § 7 In Article 31 shall read:

- "§ 7. If the petition to retire the judge was submitted by the Supreme Court Board, that Board may also lodge an appeal."

#### **Chapter 5**

##### **Interim and miscellaneous regulations**

**Article 50.** The term of office of the members of the Council and the Praesidium of the

Council appointed on the basis of previous regulations lasts until the end of the period for which they have been appointed.

**Article 51.** The Act of 27 July 2001 on the National Council of the Judiciary (Journal of Laws of 2010, No. 11, Item 67) is hereby repealed.

**Article 52.** This Act comes into force after a lapse of 30 days of it being published.