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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

POLAND

DRAFT LAW

ON

RESTORING THE RIGHT TO AN INDEPENDENT AND IMPARTIAL TRIBUNAL ESTABLISHED BY LAW BY REGULATING THE EFFECTS OF RESOLUTIONS OF THE NATIONAL COUNCIL OF THE JUDICIARY ADOPTED IN THE YEARS 2018-2025 AND EXPLANATORY REPORT*

(*) Unofficial translation

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I. DRAFT LAW

Draft (Dec 2025)

ACT
of
on restoring the right to an independent and impartial tribunal established by law by regulating the effects of resolutions of the National Council of the Judiciary adopted in the years 2018–2025[1), 2)]

In a spirit of responsibility for the protection of human rights and freedoms, the restoration of the constitutional rule of law, the implementation of the fundamental principles, standards and values of a democratic state governed by the rule of law, the guarantee of the independence of all judges, the restoration of the functioning of courts established by law and the assurance of the full independence of the judiciary, undermined by the deprivation of the constitutional identity of the National Council of the Judiciary in 2018–2025, as well as in order to overcome the unprecedented crisis of the judiciary in Poland and to implement numerous rulings of the European Court of Human Rights, the Court of Justice of the European Union, the Supreme Court and the Supreme Administrative Court, striving above all to ensure that citizens and all individuals have the right to a court, a sense of legal certainty and trust in judges and courts, the following is hereby enacted:

Chapter 1

General provision

Article 1. The Act regulates the effects of resolutions adopted in individual cases by the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026.

Chapter 2

Effects of resolutions adopted in individual cases by the National Council of the Judiciary operating in the period from 7 March 2018 to 13 May 2026.

Art. 2. 1. Resolutions of the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026 on submitting a motion for appointment to the office of judge of the Supreme Court, a judge of the Court of Appeal, a judge of the Regional Court, a judge of the District Court, a judge of the Supreme Administrative Court, a judge of the Provincial Administrative Court, a judge of the Regional Military Court or a judge of the Garrison Military Court shall be deprived of legal force.

2. The provision of paragraph 1 shall not apply to the resolutions referred to in Article 1, insofar as they constituted the basis for the appointment of:

1) a district court judge in accordance with the procedure specified in Article 106xa of the Act of 27 July 2001 – Law on the System of Common Courts (Journal of Laws of 2024, item 334, as amended[3]);

[1] This Act implements the judgment of the European Court of Human Rights of 11 November 2023 in case 50849/21 Wałęsa v. Poland.
[2] 2This Act amends the following Acts: the Act of 17 November 1964 – Code of Civil Procedure, the Act of 21 August 1997 – Law on the System of Military Courts, the Act of 27 July 2001– Law on the System of Common Courts, the Act of 25 July 2002 – Law on the System of Administrative Courts, the Act of 12 May 2011 on the National Council of the Judiciary, the Act of 8 December 2017 on the Supreme Court, the Act of 6 March 2018 on the Ombudsman for Small and Medium-sized Enterprises, the Act of 30 August 2019 on the State Commission for Counteracting Sexual Abuse of Minors under 15 Years of Age, and the Act of 20 December 2019 amending the Act – Law on the System of Common Courts, the Act on the Supreme Court and certain other acts.
[3] Amendments to the consolidated text of the aforementioned Act were published in the Journal of Laws of 2024, item 1907, and of 2025 items 526, 820, 1172, 1178 and 1609.

2) a district court judge whose eligibility to apply for appointment to the office of judge resulted from Article 15(11), Article 18 or Article 20(1) of the Act of 11 May 2017 amending the Act on the National School of Judiciary and Public Prosecution, the Act – Law on the System of Common Courts and certain other acts (Journal of Laws, item 1139 and of 2018, item 1433);
3) a judge of a provincial administrative court whose eligibility to apply for appointment to the office of judge resulted from holding the position of assistant judge in a provincial administrative court, for which he or she submitted his or her candidacy before the date of entry into force of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3);
4) a judge who resigned from office and then returned to office and to his or her previous position, if he or she took up the previous position in a manner other than as a result of a request for appointment as a judge submitted to the President of the Republic of Poland by the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026, or in the manner referred to in points 1–3.

Art. 3. 1. A person who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Art. 2(1), held the position of judge to which they were appointed in a manner other than as a result of a motion for appointment of a judge, submitted to the President of the Republic of Poland by the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026, or on the basis of the resolution referred to in Article 2(2), shall return to the office of judge in that position on the date of entry into force of this Act, subject to Article 10(1) and Article 13(1) and (4).

2. The employment relationship of a judge in the position referred to in paragraph 1 shall be deemed uninterrupted.

3. The period of service in the judicial position to which the person referred to in paragraph 1 was appointed on the basis of the resolution referred to in Article 2(1) shall be included in the period on the basis of which the right to a higher basic salary is acquired.

4. The person referred to in paragraph 1 shall be entitled to the basic salary at the rate at which they received it in their last position referred to in paragraph 1. If the period of employment in that position since acquiring the entitlement to that rate, taking into account the period referred to in paragraph 3, justifies the acquisition by the person referred to in paragraph 1 of the entitlement to a basic salary at a higher rate, they shall be entitled to a basic salary at that rate.

Article 4. 1. Within two years of the entry into force of this Act:
1) a judge of a common court referred to in Article 3(1) shall be delegated to perform judicial duties in the district court or court of appeal where he or she held a position as a result of the resolution referred to in Article 2(1) or to which he or she was transferred;
2) a judge of a provincial administrative court referred to in Article 3(1) shall be delegated to perform judicial duties in the Supreme Administrative Court in which he or she held a position as a result of the resolution referred to in Article 2(1);
3) a judge of a military garrison court referred to in Article 3(1) shall be delegated to perform judicial duties in the military district court in which he held a position pursuant to the resolution referred to in Article 2(1) or to which he was transferred.

2. The commencement of the period of delegation referred to in paragraph 1 shall be confirmed by the president of the court to which the judge has been delegated. The commencement of activities during the period of delegation shall not require a new division of activities to be established.

3. The judge referred to in paragraph 1 shall be entitled to remuneration at the basic salary rate for the position of judge in the court where the delegated judge performs his or her duties.

The provisions of Article 91a of the Act of 27 July 2001 – Law on the System of Common Courts shall apply.

4. The judge referred to in paragraph 1 may resign from the delegation with six months' notice.

5. After the end of the secondment referred to in paragraph 1, the judge shall be obliged to take action in cases assigned to his or her previous place of work until their completion and shall retain jurisdiction in this respect.

6. The president of the competent court of appeal shall delegate the judge referred to in paragraph 1(1) for an indefinite period at his request, for an indefinite period to continue to perform the duties of a judge at his current place of work after the expiry of the period specified in paragraph 1, if the judge is participating in proceedings for appointment to the office of judge referred to in Article 29(1).

7. The President of the Supreme Administrative Court shall delegate the judge referred to in paragraph 1(2) for an indefinite period at his request, to continue to perform the duties of a judge at his current place of employment after the expiry of the period specified in paragraph 1, if the judge is participating in proceedings for appointment to the office of judge referred to in Article 29(1).

8. The Minister of Justice, in consultation with the Minister of National Defence, shall delegate the judge referred to in paragraph 1(3) for an indefinite period at his request, to continue to perform the duties of a judge at his current place of employment after the expiry of the period specified in paragraph 1, if the judge is participating in proceedings for appointment to the office of judge referred to in Article 29(1).

9. The delegation referred to in paragraphs 6–8 shall cease upon the judge's resignation with three months' notice or upon the final conclusion of the proceedings referred to in Article 29 in relation to the judge. shall cease upon the judge's resignation with three months' notice or upon the final conclusion of the proceedings referred to in Article 29(1) in relation to the judge, unless a resolution has been adopted to submit a motion for the appointment of that judge to the office of the court to which he or she is delegated.

10. Article 40 § 3 of the Act of 8 December 2017 on the Supreme Court (Journal of Laws of 2024, item 622) shall not apply to the secondment to the Supreme Administrative Court referred to in paragraph 1(2).

11. Article 46 § 1 of the Act of 27 July 2001 – Law on the System of Common Courts shall not apply to judges delegated pursuant to paragraph 1.

Article 5. 1. The employment relationship of a person who, immediately prior to their appointment to the office of judge on the basis of the resolution referred to in Article 2(1), did not hold the position of judge to which they were appointed in a manner other than as a result of a motion for the appointment of a judge submitted to the President of the Republic of Poland by the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026, or on the basis of the resolution referred to in Article 2(2), shall cease on the date of entry into force of this Act.

2. Contributions shall be paid to the Social Insurance Institution on the remuneration paid to the person referred to in paragraph 1, in the position of judge until the date of entry into force of this Act, from which no social insurance contributions were paid, in accordance with the rules laid down in Article 91 § 10–12 of the Act of 27 July 2001 – Law on the System of Common Courts, unless he or she was appointed to the position of prosecutor pursuant to Article 7.

3. A person who has been appointed to professional military service in connection with taking up the position of a military court judge, to which they were appointed on the basis of the resolution referred to in Article 2(1), shall be released from that service by operation of law on the date of entry into force of this Act. The president of the competent military district court or the competent military garrison court shall confirm the discharge of the soldier from professional military service by means of a personnel order issued for record-keeping purposes. The provisions of Articles 236, 458 and 459 of the Act of 11 March 2022 on the Defence of the Fatherland (Journal of Laws of 2025, items 825, 1014 and 1080) shall not apply.

Article 6. 1. The president of the competent court of appeal or the competent provincial administrative court shall appoint the person referred to in Article 5(1), at their request, to the position of court clerk in the common court or administrative court in which that person held the office of judge, within 7 days of the date of submission of the request.

2. The request referred to in paragraph 1 shall be submitted within one month of the date of entry into force of this Act.
entry into force of this Act. A late application shall have no legal effect.

3. The employment relationship as a court clerk shall be deemed to have commenced on the date of entry into force of this Act.

4. The provisions of paragraphs 1 and 2 shall not apply to persons who have been appointed to the office of judge of the Supreme Court or judge of the Supreme Administrative Court.

Article 7. 1. A person referred to in Article 5(1) who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), held the position of prosecutor, may, upon request submitted within one month of the date of entry into force of this Act, be appointed to their previous position as prosecutor, unless, on the basis of the request referred to in Article 6(1), they have been appointed to the position of court clerk. The provisions of Article 132 § 5 and 6 of the Act of 28 January 2016 – Law on the Public Prosecutor's Office (Journal of Laws of 2024, item 390 and of 2025, items 304 and 1178) shall apply.

2. The employment relationship of the person referred to in paragraph 1 in the position of prosecutor shall commence upon delivery of the notice of appointment.

3. The period of service in the judicial position to which the person referred to in paragraph 1 was appointed on the basis of the resolution referred to in Article 2(1) shall be included in the period on the basis of which the right to a higher basic salary is acquired.

4. The person referred to in paragraph 1, appointed to the position of prosecutor, shall be entitled to the basic salary at the rate at which they received it when last holding the position of prosecutor referred to in paragraph 1. If the period of service in that position since acquiring the entitlement to that rate, taking into account the period referred to in paragraph 3, justifies the acquisition by the person referred to in paragraph 1 of the entitlement to a basic salary at a higher rate, they shall be entitled to a basic salary at that rate.

5. If the employment relationship with the prosecutor is not established in accordance with the procedure specified in paragraph 1, the contribution for that period provided for in the provisions of the Act of 13 October 1998 on the social insurance system shall be paid from the remuneration paid for the position of prosecutor and judge from which no social insurance contributions were paid (Journal of Laws of 2025, item 350, as amended[4]) shall be transferred to the Social Insurance Institution on the terms specified in Article 91 § 10-12 of the Act of 27

[4] Amendments to the consolidated text of the aforementioned Act were published in the Journal of Laws of 2025, items 620, 622, 769, 820, 1083, 1160, 1216, 1409, 1413 and 1423.

July 2001 - Law on the System of Common Courts and in Article 126 § 2 of the Act of 28 January 2016 - Law on the Public Prosecutor's Office.

The Prosecutor General shall notify the president of the competent court of the obligation to transfer funds.

Article 8. 1. A person referred to in Article 5(1) who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), practised as a barrister, may apply for entry on the list of barristers on the terms specified in the Act of 26 May 1982 – Law on the Bar (Journal of Laws of 2024, item 1564 and of 2025, item 1172).

2. A person referred to in Article 5(1) who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), practised as a legal adviser, may apply for entry on the list of legal advisers on the terms specified in the Act of 6 July 1982 on legal advisers (Journal of Laws of 2024, item 499 and of 2025, item 1172).

3. A person referred to in Article 5(1) who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), practised as a notary, may apply for appointment to the office of notary on the terms specified in the Act of 14 February 1991 – Notarial Law (Journal of Laws of 2024, item 1001, and of 2025, items 479, 1669 and 1793).

Article 9. 1. A person referred to in Article 5(1) who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), held the position of President, Vice-President or Legal Adviser of the General Prosecutor's Office of the Republic of Poland, may, upon request submitted to the President of the General Prosecutor's Office of the Republic of Poland within one month from the date of entry into force of this Act, be employed as a counsellor of the General Prosecutor's Office of the Republic of Poland, unless they do not meet the conditions for employment in these positions specified in separate regulations.

2. A person referred to in Article 5(1) who, immediately prior to their appointment to the office of judge of a provincial administrative court on the basis of the resolution referred to in Article 2(1), held a position in a public institution related to the application or creation of administrative law, may, upon request submitted to the head of the relevant public institution within one month of the date of entry into force of this Act, return to their previous position, unless they do not meet the conditions for holding that position as specified in separate regulations.

3. The provisions of paragraphs 1 and 2 shall not apply if the person referred to in those provisions has been appointed to the position of court clerk on the basis of the application referred to in Article 6(1).

Article 10. 1. A person referred to in Article 3(1) who has retired or been transferred to retirement shall, on the date of entry into force of this Act, become a retired judge in the position held immediately prior to their appointment to the office of judge on the basis of the resolution referred to in Article 2(1).

2. The retirement allowance for the person referred to in paragraph 1 shall, as of the date of entry into force of this Act, be set at 75% of the basic salary and seniority allowance which would have been received on the date of retirement or transfer to retirement in the position of judge held immediately prior to appointment to the office of judge on the basis of the resolution referred to in Article 2(1), taking into account the current basis for that remuneration. The provisions of Article 3(2)-(4) shall apply accordingly.

3. The person referred to in paragraph 1 may use the title of a retired judge, consisting of the name of the judicial position held immediately prior to appointment to the office of judge on the basis of the resolution referred to in Article 2(1) and the words "in retirement".

Article 11. 1. A person referred to in Article 5(1) who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), held the position of prosecutor, and then, as a judge, retired or was transferred to retirement, shall become a retired prosecutor on the date of entry into force of this Act, subject to Article 13(2) and (4).

2. The retirement allowance of the person referred to in paragraph 1 shall, as of the date of entry into force of this Act, be set at 75% of the basic salary and seniority allowance which would have been received on the date of retirement or transfer to retirement from the position of prosecutor held immediately prior to appointment to the office of judge on the basis of the resolution referred to in Article 2(1), taking into account the current basis for that remuneration. The provisions of Article 7(3) and (4) shall apply accordingly.

Article 12. 1. A person referred to in Article 5(1) who, immediately prior to their appointment to the office of judge on the basis of the resolution referred to in Article 2(1), did not hold the position of judge or prosecutor, and then, as a judge, retired or was retired, shall lose, on the date of entry into force of this Act, the right to retirement and to retirement remuneration.

2. The person referred to in paragraph 1 shall acquire the right to a retirement or disability pension on the terms specified in the Act of 17 December 1998 on retirement and disability pensions from the Social Insurance Fund (Journal of Laws of 2025, item 1749).

3. Contributions shall be paid to the Social Insurance Institution from the remuneration paid to the person referred to in paragraph 1 in the position of a judge from which no social insurance contributions were paid, in accordance with the rules laid down in Article 91 § 10-12 of the Act of 27 July 2001 – Law on the System of Common Courts.

4. The provisions of Articles 8 and 9 shall apply to the person referred to in paragraph 1.

Article 13. 1. A person referred to in Article 3(1) who has been retired pursuant to Article 10(4) of the Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts (Journal of Laws of 2022, item 1259) shall, on the date of entry into force of this Act, lose the right to retirement and to a retirement pension and shall return to the office of judge in the position held immediately prior to appointment to the office of judge on the basis of the resolution referred to in Article 2(1). The provisions of Article 3(2)-(4) shall apply.
2. A person referred to in Article 5(1) who has been retired pursuant to Article 10(4) of the Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts shall, as of the date of entry into force of this Act, lose their entitlement to retirement and to retirement benefits.

3. Article 29(1)-(3) shall apply to the persons referred to in paragraphs 1 and 2 and to the judicial positions they hold. These persons shall participate in the proceedings for appointment to the office of judge of the Supreme Court on the terms specified in Article 30(2)-(5).

4. The provisions of paragraphs 1-3 shall not apply to persons who, on the date of entry into force of this Act, are entitled to retire on grounds of age. In the case of such persons, Articles 10 and 11 shall apply.

5. A person referred to in paragraph 2 who, immediately prior to their appointment to the office of judge on the basis of the resolution referred to in Article 2(1), held the position of prosecutor, may submit an application for appointment to the position of prosecutor in accordance with

the procedure and rules specified in Article 7(1). The provisions of Article 7(2) and (3) shall apply.

6. Article 12(2)-(4) shall apply to persons referred to in paragraph 2 who, immediately prior to their appointment to the office of judge on the basis of the resolution referred to in Article 2(1), did not hold the position of judge or prosecutor.

Article 14. 1. The Minister of Justice shall immediately publish in the Official Journal of the Republic of Poland, Monitor Polski, a list of persons affected by the effects referred to in Article 3(1), Article 5(1), Article 10(1) and Article 11(1) of this Act.

Article 12(1) and Article 13(1), (2) and (4). The list shall include:

1) the first name, surname, position and date of appointment to that position of each person affected by those effects;
2) an indication of the specific effects and their legal basis.

2. Errors in the announcement, in the scope of the data specified in paragraph 1(1), shall be corrected by the Minister shall correct by way of a notice.

3. The announcements referred to in paragraphs 1 and 2 shall not be subject to appeal to the administrative court.

4. For the purposes of drawing up the list referred to in paragraph 1, the Minister of Justice may request from public authorities documents, information and explanations regarding the data referred to in paragraph 1.

5. The president of the competent court shall immediately notify the president of the Social Insurance Institution of the occurrence of the effects referred to in Article 5(2), Article 7(5) and Article 12(3).

Article 15. 1. A person affected by the effects arising under this Act may lodge an appeal with the Supreme Court against the entry in the register referred to in Article 14(1) with regard to the correctness of the determination of the effects of this Act in relation to that person. The appeal may concern an omission from the register.

2. The appeal referred to in paragraph 1 may also be lodged by the competent president of the court which is the current place of employment of the person referred to in paragraph 1.

3. The appeal referred to in paragraph 1 shall meet the requirements laid down in the Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws of 2024, item 1568, as amended[5] for a pleading) and shall also contain:

1) the designation of the entry against which it is lodged, indicating the scope of the appeal;
2) presentation of allegations concerning irregularities in the list of effects resulting from this Act;
3) justification of the allegations;
4) a request to remove the entry from the list, indicating, if necessary, the correct description of the effects of this Act in relation to the appellant.

4. The appeal shall be lodged directly with the Supreme Court within two weeks of the date of the announcement referred to in Article 14(1). It shall not be possible to restore the time limit for lodging an appeal.

[5] Amendments to the consolidated text of the aforementioned Act were published in Journal of Laws of 2024, item 1841 and of 2025, items 620, 1172, 1302, 1518 and 1661.

5. The lodging of an appeal shall not suspend the effects of this Act.

6. The Labour, Social Insurance and Public Affairs Chamber of the Supreme Court shall have jurisdiction over appeals. The case shall be assigned to a judge in the order in which the appeal was received and taking into account the alphabetical order of the names of all judges of the Supreme Court on the list kept for this purpose by the President of the Supreme Court who heads the Labour, Social Insurance and Public Affairs Chamber.

7. The Supreme Court shall hear the appeal in a panel of five judges appointed from among all judges of the Supreme Court and judges delegated to perform judicial functions in the Supreme Court, taking into account the second sentence of paragraph 6. The panel hearing the appeal shall be chaired by a judge of the Supreme Court holding a position in the Civil Chamber or in the Labour, Social Insurance and Public Affairs Chamber. A delegated judge may not be the reporting judge.

8. The provision of paragraph 6 shall apply mutatis mutandis to a motion to recuse a judge from hearing an appeal.

9. An appeal that does not meet the formal requirements, is late, is lodged by an unauthorised person or is inadmissible for other reasons shall be dismissed by the Supreme Court sitting as a single judge. An appeal that does not meet the formal requirements shall be dismissed without a request for its correction or supplementation.

10. The Supreme Court shall decide on the appeal immediately, no later than within one month from the date of filing the appeal in cases concerning persons appointed to the office of Supreme Court judge, and in other cases no later than within two months from the date of filing the appeal.

11. If the appeal is upheld, the Supreme Court shall revoke the entry in the register or revoke the entry in the register in order to correctly determine in the register the effects of this Act in relation to the appellant. If an appeal concerning an omission in the register is upheld, the Supreme Court shall order an entry to be made in the register.

12. In matters of appeals not regulated by this Act, the provisions of the Act of 17 November 1964 – Code of Civil Procedure on cassation appeals shall apply accordingly, with the exception of Article 871 and Article 3989 of that Act. The Supreme Court shall examine the case in non-contentious proceedings. The proceedings shall be free of court fees.

Article 16. 1. The Minister of Justice shall immediately announce in the Official Journal of the Republic of Poland, Monitor Polski, the Supreme Court's revocation of the entry in the register referred to in Article 14(1). The announcement shall include the date and reference number of the Supreme Court's ruling.

2. In the event that the Supreme Court revokes an entry in the register in order to correctly determine the effects of this Act in relation to the appellant, or orders the Minister of Justice to make an entry in the register, the Minister shall issue a supplementary announcement referred to in Article 14(1) with regard to the appellant. The announcement shall include the first name, surname, position and date of appointment to that position of the appellant and shall indicate the specific effects and their legal basis. The provision of Article 15 shall apply.

Article 17. Family members of a person who died after being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), who acquired the right to a family allowance before the date of entry into force of this Act, shall retain that right on the terms applicable on the date of its acquisition.

Article 18. 1. The persons referred to in Article 3(1) shall not be entitled to cash equivalent for days of unused annual leave. They shall retain the right to use this leave in the position to which they have been reinstated.

2. Persons referred to in Article 5(1) shall be entitled to an equivalent for days of unused leave. The amount of the equivalent shall be calculated taking into account the amount of remuneration paid to those persons on the date of entry into force of this Act, increased by the equivalent of social security contributions. The provision of Article 5(2) shall apply.

Article 19. 1. Persons referred to in Article 3(1) who, on the day preceding the entry into force of this Act, are on sick leave or rehabilitation leave, shall retain the right to such leave in the position to which they have been reinstated. The remuneration due during the leave shall be determined taking into account the remuneration due to a judge in the position to which he or she has been reinstated, taking into account the current basis for that remuneration.

2. Persons referred to in Article 5(1) who, on the day preceding the entry into force of this Act, were on sick leave or rehabilitation leave shall lose their right to the remaining part of their leave on the date of entry into force of this Act.

Article 20. 1. A person referred to in Article 3(1) who is pregnant on the date of entry into force of this Act shall be entitled, until the date of childbirth and on account of her inability to work during maternity leave, to the remuneration to which she was entitled on the day preceding the entry into force of this Act.

2. A person referred to in Article 5(1) who is pregnant on the date of entry into force of this Act shall be entitled, but not longer than until the date of childbirth, to maternity benefit in the amount of the remuneration received on the day preceding the entry into force of this Act, increased by the equivalent of social security contributions, subject to paragraph 3. That person shall be entitled to maternity leave on the terms provided for in the Act of 26 June 1974 – Labour Code (Journal of Laws of 2025, items 277, 807, 1423 and 1661). The maternity allowance during maternity leave shall be equal to the remuneration to which that person was entitled on the day preceding the entry into force of this Act, increased by the equivalent of the social security contribution.

3. A person referred to in paragraph 2 who, between the end of the third month of pregnancy and the date of childbirth, was appointed to the position of court clerk pursuant to Article 6(1) or appointed to the position of prosecutor pursuant to Article 7(1), or reinstated to her previous position pursuant to Article 9, shall be entitled, in the period from the date of appointment, appointment or reinstatement to the position until the date of childbirth, to a benefit equal to the difference between the remuneration to which she was entitled on the day preceding the entry into force of this Act, increased by the equivalent of the social security contribution, and, respectively, the remuneration or maternity allowance paid to her in the position of court clerk or prosecutor or in the position to which she was reinstated pursuant to Article 9. Entities representing the employer shall be obliged to immediately notify the president of the court in which the person held the position of judge until the date of entry into force of this Act of the commencement of employment by that person. representing the employer shall immediately notify the president of the court in which that person held the position of judge until the date of entry into force of this Act. The benefit constituting the difference referred to in the preceding sentence shall be paid by the court in which the person entitled to the benefit held the position of judge until the date of entry into force of this Act. The provision of Article 5(2) shall apply.
4. A person referred to in Article 3(1) who, on the date of entry into force of this Act, was not performing work due to paternity leave or leave referred to in Article 180 § 5, 7 or 12-15 of the Act of 26 June 1974 - Labour Code, shall be entitled to remuneration until the end of the leave in the amount to which they were entitled on the day preceding the entry into force of this Act.

5. A person referred to in Article 5(1) who, on the date of entry into force of this Act, was not performing work due to paternity leave or leave referred to in Article 180 § 5, 7 or 12-15 of the Act of 26 June 1974 – Labour Code, shall be entitled to maternity allowance until the end of the leave in the amount of the remuneration to which she was entitled on the day preceding the entry into force of this Act, increased by the equivalent of the social security contribution.

6. The persons referred to in paragraphs 2, 3 and 5 shall, after the date of entry into force of this Act, be subject to social insurance and health insurance for the period of receiving maternity allowance, and the allowance paid to them shall be reduced by the pension and disability insurance contribution and the health insurance contribution. In this case, the entity registering for insurance and paying the allowance shall be the court in which the person held the position of judge on the date of entry into force of this Act.

7. In matters not regulated by this Act, the provisions of Chapter 6 of the Act of 29 June 1999 on cash benefits from social insurance in the event of sickness and maternity shall apply accordingly to the benefits referred to in paragraphs 2 and 5-6 (Journal of Laws of 2025, items 501 and 1083).

8. The provisions of Articles 33–36 of the Act of 13 October 1998 on the social insurance system shall apply accordingly to the registration for health and social insurance referred to in paragraph 6.

Article 21. 1. A person referred to in Article 3(1) shall retain the right to parental leave granted to them before the date of entry into force of this Act on the terms and conditions applicable on the day preceding the entry into force of this Act.

2. A person referred to in Article 5(1) who, on the day preceding the entry into force of this Act, is on parental leave granted by a court, retains the right to use that leave to the extent to which it was granted. If, on the day preceding the entry into force of this Act, the person concerned combined the use of leave with part-time work, the amount of leave remaining to be taken after the date of entry into force of this Act shall be calculated in accordance with the rules laid down in Article 182^{1f} § 3 of the Act of 26 June 1974 – Labour Code. Maternity benefit shall be determined for the period from the date of entry into force of this Act until the end of the leave granted, with the basis for calculating the benefit being the remuneration to which the person was entitled on the day preceding the entry into force of this Act, in the amount previously received, increased by the equivalent of social security contributions. The person does not retain the right to take leave combined with work.

3. In matters not regulated by this Act, the provisions of Chapter 6 of the Act of 29 June 1999 on cash benefits from social insurance in the event of sickness and maternity shall apply accordingly to the allowance referred to in paragraph 2.

4. Article 20(6) and (8) shall apply accordingly to the persons referred to in paragraph 2.

Article 22. The provisions of Articles 20 and 21 shall apply accordingly to persons who, on the date of entry into force of this Act, were on leave on the terms of maternity leave and parental leave referred to in Article 183 of the Act of 26 June 1974 – Labour Code.

Article 23. 1. A person referred to in Article 3(1) who, on the date of entry into force of this Act, exercised the right referred to in Article 83a of the Act of 27 July 2001 – Law on the System of Common Courts, shall exercise this right on the same terms in the position to which they have been reinstated, with the proviso that the amount of remuneration shall be calculated in proportion to the remuneration payable for that position.

2. If a person referred to in Article 5(1) has been granted parental leave which has not expired on the date of entry into force of this Act, such leave shall be deemed to have been granted

until the day preceding the entry into force of this Act. In this case, the application for parental leave shall not be included in the number of applications referred to in Article 186 § 8 of the Act of 26 June 1974 – Labour Code.

Article 24. A loan to meet housing needs, referred to in Article 96 § 1 of the Act of 27 July 2001 – Law on the System of Common Courts, granted to a person referred to in Article 5(1), shall be repaid within 2 years from the date of entry into force of this Act.

this Act, together with interest at an annual rate equal to the average annual rate of increase in the consumer price index, as specified annually in the budget act, but not higher than the reference rate of the National Bank of Poland, taking into account any repayments made. Repayment may be made in monthly instalments or in a single payment.

Art. 25. 1. As of the date of entry into force of this Act, the resolutions referred to in Art. 2(1) shall not constitute grounds for appointment to the office of judge of the Supreme Court, a judge of the Court of Appeal, a judge of the Regional Court, a judge of the District Court, a judge of the Supreme Administrative Court, a judge of the Provincial Administrative Court, a judge of the Military Regional Court or a judge of the Military Garrison Court.

2. The provision of paragraph 1 shall not apply to resolutions of the National Council of the Judiciary on the submission of a motion for appointment, on the basis of which a person referred to in Article 15(11), Article 18 or Article 20(1) of the Act of 11 May has been nominated to hold the office of:

1) a district court judge, a person referred to in Article 15(11), Article 18 or Article 20(1) of the Act of 11 May 2017 amending the Act on the National School of Judiciary and Public Prosecution, the Act – Law on the System of Common Courts and certain other acts;
2) a person holding the position of assistant judge was nominated for the position of district court judge;
3) a person holding the position of assistant judge in a provincial administrative court was presented for the position of judge of a provincial administrative court, for which they had submitted their candidacy before the date of entry into force of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts;
4) a judge was presented by a person returning to that position, unless that person was appointed to the position of judge as a result of the resolution referred to in Article 2(1).

Article 26. 1. If a person who, as a result of the resolution referred to in Article 2(1), took up the position of judge and then resigned from office, declares their intention to return to the office of judge and their previous position, the National Council of the Judiciary shall:

1) in the case of a person who, immediately prior to being appointed to the office of judge on the basis of the resolution referred to in Article 2(1), held the position of judge to which they were appointed in a manner other than as a result of a motion for appointment as a judge submitted to the President of the Republic of Poland by the National Council Judiciary operating in the period from 7 March 2018 to 13 May 2026, or on the basis of the resolution referred to in Article 2(2) – shall submit a request for appointment to that position, unless she does not meet the conditions for appointment to the office of judge specified in separate regulations;
2) in the case of a person who, on the date of adoption of the resolution referred to in Article 2(1), did not hold the position of judge, shall refuse to submit an application for appointment to the office of judge.

2. The provision of paragraph 1 shall not apply in the cases referred to in Article 2(2).

Article 27. 1. The National Council of the Judiciary shall dismiss a judge from the secondment referred to in Article 4(1) at the request of the President of the National Council of the Judiciary, the president of the competent court of appeal in relation to judges performing judicial functions in courts within the area of appeal, the President of the Supreme

Administrative Court in relation to judges performing judicial functions in the Supreme Administrative Court, or the competent disciplinary spokesperson, if this is required in order to maintain the perception of the court as an impartial and independent body.

2. In the case referred to in paragraph 1, a judge may appeal against a resolution of the National Council of the Judiciary to the Supreme Court in accordance with the procedure laid down in the Act of 12 May 2011 on the National Council of the Judiciary (Journal of Laws of 2024, item 1186). The lodging of an appeal shall not suspend the effectiveness of the resolution.

3. In the case referred to in paragraph 1, the provision of Article 4(5) shall not apply.

Article 28. 1. Individual cases other than cases concerning the submission of a motion for appointment to the office of judge of the Supreme Court, a judge of the Court of Appeal, a judge of the Regional Court, a judge of the District Court, a judge of the Supreme Administrative Court, a judge of the Provincial Administrative Court, a judge of the Regional Military Court or a judge of the Garrison Military Court, decided by resolutions of the National Council of the Judiciary referred to in Article 1 shall be reconsidered at the request of a participant in the proceedings submitted within 6 months from the date of the first meeting of the National Council of the Judiciary acting in the composition formed after the end of the joint term of office of persons elected on 12 May 2022 by the Sejm to the National Council of the Judiciary pursuant to Article 9a(1) of the Act of 12 May 2011 on the National Council of the Judiciary.

2. Proceedings conducted as a result of an appeal against a resolution adopted in the case referred to in paragraph 1, initiated and not completed before the date of entry into force of this Act, shall be discontinued by the Supreme Court if a request referred to in paragraph 1 is submitted.

3. The provisions of paragraphs 1 and 2 shall not apply to resolutions concerning:
1) submitting a motion to appoint an examined trainee judge or trainee prosecutor to the position of assistant judge in a common court;
2) submitting a motion for appointment to the position of assistant judge in an administrative court.

Chapter 3

Re-conducting proceedings concerning appointment to the office of judge

Art. 29. 1. A judicial position taken up as a result of the resolution referred to in Art. 2(1) shall become vacant on the date of entry into force of this Act. The proceedings for appointment to the office of judge in that position shall be conducted again.

2. A judicial position filled as a result of the resolution referred to in Article 2(1) in the abolished chambers of the Supreme Court shall become a vacant judicial position in the Supreme Court on the date of entry into force of this Act.

3. The Minister of Justice shall announce the vacant judicial positions referred to in paragraphs 1 and 2 in the Official Journal of the Republic of Poland, Monitor Polski, no earlier than two weeks after the date of entry into force of this Act. Vacant judicial positions in the same common court, military court, provincial administrative court and in the same chamber of the Supreme Court or the same chamber of the Supreme Administrative Court shall be announced jointly, unless this is not possible or expedient. The provisions of Article 31 § 1 of the Act of 8 December 2017 on the Supreme Court and Article 6a § 2a of the Act of 25 July 2002 – Law on the System of Administrative Courts (Journal of Laws of 2024, item 1267) shall not apply.

4. The provisions of paragraphs 1–3 shall not apply if the person who took up the position of judge as a result of the resolution referred to in Article 2(1) has died, resigned from office or their employment relationship has expired, has retired or been transferred to retirement, subject to Article 13(3), or has subsequently taken up another judicial position as a result of the resolution referred to in Article 2(1).

Article 30. 1. Any person who meets the requirements for holding the position specified in the provisions referred to in Article 31 may apply for a vacant judicial position in the proceedings referred to in Article 29(1).

2. A person who has assumed the position of judge as a result of the resolution referred to in Article 2(1) shall participate in the proceedings referred to in Article 29(1) concerning appointment to the position of judge in the court in which he or she held the position as a result of that resolution. A person who has taken up the position of judge more than once as a result of the resolution referred to in Article 2(1) shall participate in the proceedings referred to in Article 29(1) concerning the appointment to the office of judge in the court in which he or she held the position as a result of the first resolution concerning him or her, referred to in Article 2(1), and if there is no vacant judicial position in that court, such a position shall be created and announced on the basis of Article 29(3). The President of the National Council of the Judiciary shall notify the person concerned of the recommencement of proceedings in this matter.

3. A person appointed on the basis of the resolution referred to in Article 2(1) to hold office as a judge in a abolished chamber of the Supreme Court shall participate in the proceedings referred to in Article 29(1) concerning appointment to hold office as a judge in the Supreme Court. Within two weeks of the date of delivery of the notification from the President of the National Council of the Judiciary on the resumption of proceedings in this matter, that person shall submit a statement indicating the chamber of the Supreme Court to which they are applying for appointment to the office of judge. If no statement is submitted or if it is submitted after the deadline, the National Council of the Judiciary shall discontinue the proceedings in relation to the person concerned.

4. A person participating in the proceedings referred to in Article 29(1) may not apply for another vacant judicial position until the proceedings have been completed. Such an application shall be left unexamined.

Article 31. 1. In matters not regulated by this Act, nominations for vacant judicial positions and proceedings for appointment to such positions shall be conducted in relation to vacant positions:

1) in the Supreme Court, pursuant to the Act of 8 December 2017 on the Supreme Court;
2) in common courts pursuant to the Act of 27 July 2001 – Law on the System of of Common Courts;
3) in the Supreme Administrative Court and provincial administrative courts on the on the basis of the Act of 25 July 2002 – Law on the System of Administrative Courts;
4) in military courts pursuant to the Act of 21 August 1997 – Law on the System of of Military Courts (Journal of Laws of 2025, item 1614).

2. In the case of persons referred to in Article 30(2) and (3), the requirements concerning the length of professional experience necessary to take up the position of judge shall be assessed on the basis of the provisions in force on the date of submission of the application for the position of judge to which the person concerned has been appointed on the basis of the resolution referred to in Article 2(1).

3. A person referred to in Article 30(2) and (3) may supplement their application for a vacant judicial position within one month of the date of delivery of the notification from the President of the National Council of the Judiciary regarding the reopening of the proceedings for appointment to the office of judge. In the case of such a person, activities undertaken in a

judicial position held as a result of the resolution referred to in Article 2(1) shall not be taken into account when assessing their qualifications for the office of judge.

Article 32. 1. The National Council of the Judiciary operating in the period from 7 March 2018 to 13 May 2026 shall be excluded from the proceedings referred to in Article 29(1) and from other activities specified in this Act.

2. The National Council of the Judiciary shall consider candidates in the proceedings referred to in Article 29(1) in accordance with the procedure laid down in the Act of 12 May 2011 on the National Council of the Judiciary.

Chapter 4

Appeals against decisions issued by persons appointed to the office of judge as a result of resolutions adopted by the National Council of the Judiciary operating in the period from 7 March 2018 to 13 May 2026.

Article 33. 1. In cases heard on the basis of the Act of 17 November 1964 – Code of Civil Procedure, which were finally concluded before the date of entry into force of this Act, a judgment or decision on the merits of the case issued by a common court with the participation of a person referred to in Article 3(1) or Article 5(1) shall be set aside at the request of a party or participant in the proceedings who:

1) at the time appropriate for filing a motion to recuse a judge, they raised objections as to the correctness of the composition of the court of first instance or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, circumstances related to their appointment to the office of judge, and subsequently based their appeal allegations on this ground, or
2) lodged a complaint with the European Court of Human Rights alleging that the judgment had been delivered by a court that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the European Court of Human Rights has been postponed until the adoption of the remedial measures required by the operative part of the pilot judgment.

2. The provision of paragraph 1 shall apply to judgments and decisions ruling on the merits of the case, concluding proceedings issued before the date of entry into force of this Act by a court of second instance with the participation of a person referred to in Article 3(1) or Article 5(1), if a party or participant in the proceedings:

1) at the time appropriate for submitting a request for the exclusion of a judge, raised objections as to the correctness of the composition of the court of second instance or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, due to circumstances related to their appointment to the office of judge, or
2) they lodged a complaint with the European Court of Human Rights alleging that the court had issued a ruling that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the European Court of Human Rights has been postponed until the adoption of the corrective measures required by the operative part of the pilot judgment.

3. The court of second instance shall be competent to examine the application referred to in paragraphs 1 and 2 instance.

4. The application referred to in paragraphs 1 and 2 shall be submitted to the competent court within one month of the date of publication of the list referred to in Article 14(1). In the cases referred to in paragraph 1(2) and paragraph 2(2), a copy of the information from the European Court of Human Rights on the decision to postpone the examination of the complaint shall be attached to the application.

5. If the application referred to in paragraph 1 is granted, the court of second instance shall set aside the appeal ruling and the ruling of the court of first instance and refer the case back to that court for reconsideration, and in the case of the application referred to in paragraph 2 , it shall set aside the ruling on the appeal covered by the application and re-examine the case in appeal proceedings.

6. If the motion referred to in paragraph 1 or 2 concerns a ruling that has caused irreversible legal consequences, the court shall refrain from granting the motion and shall limit itself to stating that the ruling was issued in violation of the law and indicating the circumstances on the basis of which it issued such a decision. In this case, the ruling issued as a result of the motion shall be treated as a ruling issued in proceedings initiated by a complaint alleging the unlawfulness of a final ruling.

7. To the proceedings concerning the request referred to in paragraphs 1 and 2, to the extent not regulated by this Act, the provisions of the Act of 17 November 1964 – Code of Civil Procedure on the reopening of proceedings shall apply accordingly. These proceedings shall be free of court fees.

8. In cases heard on the basis of the Act of 17 November 1964 – Code of Civil Procedure, which were finally concluded before the date of entry into force of this Act, a judgment or decision ruling on the merits of the case concerning an appeal, a cassation complaint, a complaint for the resumption of proceedings, a complaint for a declaration of the unlawfulness of a final judgment, or a motion by the Prosecutor General for the annulment of a judgment pursuant to Article 96 of the Act of 8 December 2017 on the Supreme Court, issued by the Supreme Court with the participation of the person referred to in Article 3(1) or Article 5(1), shall be set aside at the request of a party or participant in the proceedings.

9. The provision of paragraph 8 shall not apply to rulings overturning the contested ruling in whole or in part and referring the case back to a lower court for reconsideration.

10. The Supreme Court shall have jurisdiction to hear the request referred to in paragraph 8.

11. If the request referred to in paragraph 8 is granted, the Supreme Court shall revoke the ruling covered by the request and re-examine the case.

12. In the case referred to in paragraph 8, the provisions of paragraphs 4, 6 and 7 shall apply accordingly. Article 871§ 1 of the Act of 17 November 1964 – Code of Civil Procedure shall not apply in proceedings before the Supreme Court.

13. Article 390 § 2, Article 39817§ 2 and Article 39820of the Act of 17 November 1964 – Code of Civil Procedure shall not apply to judgments of the Supreme Court issued with the participation of a person referred to in Article 3(1) or Article 5(1).

14. In cases heard on the basis of the Act of 17 November 1964 – Code of Civil Procedure, after the entry into force of this Act, it shall not be possible to request the reopening of proceedings concluded with a ruling issued with the participation of a person referred to referred to in Article 3(1) or Article 5(1), for the reasons referred to in paragraphs 1 and 8. This shall not apply to cases for the reopening of proceedings initiated and not concluded before the date of entry into force of this Act.

15. In appeal proceedings in cases heard on the basis of the Act of 17 November 1964 – Code of Civil Procedure, the court shall set aside the contested judgment or decision on the merits of the case issued before the date of entry into force of this Act with the participation of the person referred to in Article 3(1) or Article 5(1), and shall refer the case back to the court of first instance for reconsideration due to circumstances related to the appointment to the office of judge only if if, at the time appropriate for submitting a motion to recuse a judge, a party or

participant in the proceedings raised objections on this basis as to the correctness of the composition of the court or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, and subsequently based their appeal on those objections.

16. In cassation proceedings in cases heard on the basis of the Act of 17 November 1964 – Code of Civil Procedure, the Supreme Court shall overturn judgments or decisions on the merits of the case issued before the date of entry into force of this Act with the participation of the person referred to in Article 3(1) or Article 5(1), and shall refer the case for re-examination to a court of second or first instance due to circumstances related to appointment to the office of judge only if the party or participant in the proceedings raised objections at the appropriate time for filing a motion to recuse the judge regarding the correctness of the composition of the court or the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, and subsequently based their cassation appeal on this ground.

17. In the event of a concurrence of the motion referred to in paragraph 1 or 2 with a cassation appeal based on the grounds referred to in paragraph 16, the court in which the case files are located shall take action. The Supreme Court may return the case files to the court competent to examine the motion referred to in paragraph 1 or 2.

18. If the motion referred to in paragraphs 1, 2 and 8 is granted, and the appeal is granted on the grounds referred to in paragraph 15, or the cassation complaint is granted on the grounds referred to in paragraph 16, the competent court shall hear the case in a different composition.
19. The provisions of paragraphs 2–18 shall apply mutatis mutandis to judgments on the merits of the case issued by a court in proceedings conducted on the basis of the Act of 17 November 1964 – Code of civil procedure at effect of appeals from rulings in disciplinary proceedings.

20. The provisions of paragraphs 1–18 shall not apply to judgments issued in proceedings conducted pursuant to the Act of 28 February 2003 – Bankruptcy Law (Journal of Laws of 2025, items 614, 1085, 1170 and 1172) and the Act of 15 May 2015 – Restructuring Law (Journal of Laws of 2024, item 1428 and of 2025, items 1085, 1170 and 1172), with the exception of judgments on the merits of the case issued in proceedings concerning the imposition of a ban on conducting business activity.

Art. 34. 1. In cases heard on the basis of the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2025, items 46, 304, 1178 and 1420), the Act of 24 August 2001 – Code of Procedure in Misdemeanour Cases (Journal of Laws of 2025, items 860, 1178, 1661, 1814 and 1818) and the Act of 10 September 1999 – Fiscal Penal Code (Journal of Laws of 2025, items 633), which were legally concluded before the date of entry into force of this Act, a ruling concluding court proceedings or disciplinary proceedings issued by a common court or military court involving a person referred to in Article 3(1) or Article 5(1) shall be revoked at the request of a party who:

1) at the time appropriate for submitting a request for the exclusion of a judge, raised objections as to the correctness of the composition of the court of first instance or as to the independence and impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, raised objections in an appeal on the basis of circumstances related to his appointment to the office of judge, or
2) lodged a complaint with the European Court of Human Rights alleging that the judgment had been delivered by a court that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the European Court of Human Rights has been postponed until the adoption of the remedial measures required by the operative part of the pilot judgment.

2. The provision of paragraph 1 shall apply to judgments concluding court proceedings or disciplinary proceedings issued before the date of entry into force of this Act by a common court or military court of second instance involving a person referred to in Article 3(1) or Article 5(1), if the party:

1) at the time appropriate for submitting a request for the exclusion of a judge, raised objections as to the correctness of the composition of the court of second instance or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, on the basis of due to circumstances related to his or her appointment to the office of judge and subsequently lodged an appeal on this basis, unless he or she was not entitled to appeal against a final decision, or
2) lodged a complaint with the European Court of Human Rights alleging that the court had issued a ruling that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the European Court of Human Rights was postponed until the adoption of the corrective measures required by the operative part of the pilot judgment.

3. The applications referred to in paragraphs 1 and 2 shall be submitted to the competent court within one month of the date of publication of the list referred to in Article 14(1). In the cases referred to in paragraph 1(2) and paragraph 2(2), a copy of the European Court of Human Rights' decision to postpone the examination of the complaint shall be attached to the application.

4. If the application referred to in paragraph 1 is granted, the court shall set aside the final judgment and the judgment of the court of first instance and refer the case back to that court for reconsideration, or set aside the final judgment and the judgment of the court of first instance and discontinue the proceedings if the proceedings cannot continue.

5. If the motion referred to in paragraph 2 is granted, the court shall set aside the final decision and refer the case to the court of appeal for reconsideration, or set aside the final decision and discontinue the proceedings if the proceedings cannot continue.

6. In order to determine the competent court and to proceed with the motions referred to in paragraphs 1 and 2, in matters not regulated by this Act, the provisions of the Act of 6 June 1997 – Code of Criminal Procedure on the resumption of court proceedings shall apply accordingly, with the exception of Articles 435, 542, Article 545 § 2 and Article 546. The proceedings shall be free of court fees.

7. In cases heard on the basis of the Act of 6 June 1997 – Code of Criminal Procedure, the Act of 24 August 2001 – Code of Procedure in Misdemeanour Cases, and the Act of 10 September 1999 – Fiscal Penal Code, which were finally concluded before the date of entry into force of this Act, a ruling on a complaint, appeal, cassation or reopening of proceedings, or a motion by the Prosecutor General to invalidate a ruling pursuant to Article 96 of the Act of 8 December 2017 on the Supreme Court, issued by the Supreme Court with the participation of the person referred to in Article 3(1) or Article 5(1), shall be repealed at the request of a party.

8. The provision of paragraph 7 shall not apply to rulings overturning the contested ruling in whole or in part and referring the case back to a lower court for reconsideration.

9. In the case referred to in paragraph 7, the provisions of paragraphs 3-6 shall apply accordingly.

10. Article 441 § 3 of the Act of 6 June 1997 – Code of Criminal Procedure shall not apply to resolutions of the Supreme Court issued with the participation of a person referred to in Article 3(1) or Article 5(1).

11. In cases heard on the basis of the Act of 6 June 1997 – Code of Criminal Procedure, the Act of 24 August 2001 – Code of Procedure in Misdemeanour Cases, and the Act of 10 September 1999 – Fiscal Penal Code, after the entry into force of this Act, it shall not be possible to request the reopening of proceedings concluded with a ruling issued with the participation of the person referred to in Article 3(1) or Article 5(1) for the reasons referred to in paragraphs 1, 2 and 7. This shall not apply to cases for the reopening of proceedings initiated and not concluded before the date of entry into force of this Act, in which a party requested the reopening of proceedings ex officio on the basis of Article 542 § 3 of the Act of 6 June 1997 – Code of Criminal Procedure.

12. In appeal proceedings in cases heard on the basis of the Act of 6 June 1997 – Code of Criminal Procedure, the Act of 24 August 2001 – Code of Procedure in Misdemeanour Cases, and the Act of 10 September 1999 – the Fiscal Penal Code, the court shall set aside the contested decision concluding the court proceedings or disciplinary proceedings issued before the date of entry into force of this Act with the participation of the person referred to in Article 3(1) or Article 5(1), and shall refer the case back to the court of first instance for reconsideration due to circumstances related to her appointment to the office of judge only if when, at the time appropriate for submitting a motion to recuse a judge, a party raised objections on this basis as to the correctness of the composition of the court or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, and subsequently based its objections in the appeal on this ground.

13. When overturning the contested decision in the case referred to in paragraph 12, the appellate court shall not apply Article 435 of the Act of 6 June 1997 – Code of Criminal Procedure.

14. After the ruling has been overturned as a result of the motion referred to in sections 1, 2 and 7, as well as after the ruling has been overturned in the proceedings referred to in section 12, in the retrial, Article 443 of the Act of 6 June 1997 – Code of Criminal Procedure shall apply if the ruling was overturned as a result of a motion or appeal filed in favour of the defendant.

15. In cassation proceedings in cases heard on the basis of the Act of 6 June 1997 – Code of Criminal Procedure and the Act of 10 September 1999 – Fiscal Penal Code The Supreme Court shall repeal judgments issued before the date of entry into force of this Act involving a person referred to in Article 3(1) or Article 5(1), and shall refer the case for re-examination to the court of second instance or the court of first instance, or shall discontinue the proceedings due to circumstances related to her appointment to the office of judge only if if, at the time appropriate for submitting a motion to recuse a judge, a party raised objections on this basis as to the correctness of the composition of the court or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, and subsequently based its cassation appeal on this ground.

16. When overturning the contested ruling in the case referred to in paragraph 15, the Supreme Court shall not apply Article 435 of the Act of 6 June 1997 – Code of Criminal Procedure. After the ruling has been overturned in retrial proceedings, Article 443 of the Act of 6 June 1997 – Code of Criminal Procedure shall apply if the ruling was overturned as a result of a cassation appeal lodged solely in favour of the convicted person.

17. In the event of a concurrence of the motion referred to in paragraph 1 or 2 with the cassation referred to in paragraph 15, the court in which the case files are located shall take action. The Supreme Court may return the case files to the court competent to examine the motion referred to in paragraph 1 or 2.

18. If the motion referred to in paragraphs 1, 2 and 7 and the appeal referred to in paragraph 12 or the cassation appeal referred to in paragraph 15 are upheld, the court to which the case has been referred for re-examination shall examine it in a different composition.

Art. 35. 1. In cases heard on the basis of the Act of 30 August 2002 – Law on proceedings before administrative courts (Journal of Laws of 2024, items 935 and 1685, and of 2025, items 769 and 1427), which were finally concluded in a provincial administrative court before the date of entry into force of this Act, a judgment or decision concluding the proceedings in the case, issued by a provincial administrative court with the participation of the person referred to in Article 3(1) or Article 5(1), shall be set aside at the request of a party or participant in the proceedings who:

1) at the time appropriate for filing a motion to recuse a judge, they raised objections as to the correctness of the composition of the court or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, due to circumstances related to their appointment to the office of judge, and subsequently based their cassation appeal on these allegations, or
2) lodged a complaint with the European Court of Human Rights alleging that the court had issued a ruling that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the European Court of Human Rights has been postponed until the adoption of the corrective measures required by the operative part of the pilot judgment.

2. The Supreme Administrative Court shall have jurisdiction to examine the application referred to in paragraph 1. Administrative Court shall be competent to examine the application referred to in paragraph 1.

3. The application referred to in paragraph 1 shall be submitted to the Supreme Administrative Court within one month of the date of publication of the list referred to in Article 14(1). In the case referred to in paragraph 1(2), a copy of the information from the European Court of Human Rights on the decision to postpone the examination of the complaint shall be attached to the application.

4. If the application referred to in paragraph 1 is granted, the Supreme Administrative Court shall set aside the ruling on the cassation complaint and set aside the ruling of the provincial administrative court covered by the application and refer the case back to that court for reconsideration. The judges who heard the cassation appeal against the ruling to which the request relates shall be excluded from adjudicating in the proceedings initiated by that request.

5. If the motion referred to in paragraph 1 concerns a ruling which has had irreversible legal effects, the Supreme Administrative Court shall refrain from overturning it and shall limit itself to stating that the ruling was issued in violation of the law and indicating the circumstances which led it to issue such a ruling. In this case, the ruling issued as a result of the motion shall be treated as a ruling issued in proceedings initiated by a complaint alleging the unlawfulness of a final ruling.

6. The provisions of paragraphs 1-4 shall not apply to final judgments of provincial administrative courts upholding the complaint in its entirety.

7. To the proceedings concerning the request referred to in paragraph 1, to the extent not regulated in this Act, the provisions of the Act of 30 August 2002 – Law on proceedings before administrative courts on the reopening of proceedings, with the exception of Article 175 § 1, shall apply accordingly. These proceedings shall be free of court fees.

8. In cases heard on the basis of the Act of 30 August 2002 – Law on proceedings before administrative courts, which were finally concluded before the date of entry into force of this Act, the judgment on the merits of the case, a judgment on a cassation appeal, a judgment on an appeal for the resumption of proceedings, an appeal for a declaration of the unlawfulness of a final judgment, or a motion by the President of the Supreme Administrative Court for the annulment of a final judgment pursuant to Article 172 of the Act of 30 August 2002 – Law on proceedings before administrative courts, issued by the Supreme Administrative Court with

the participation of the person referred to in Article 3(1) or Article 5(1), shall be repealed at the request of a party or participant in the proceedings.

9. The provision of paragraph 8 shall not apply to rulings repealing the contested ruling in whole or in part and referring the case back to the provincial administrative court for reconsideration.

10. If the request referred to in paragraph 8 is granted, the Supreme Administrative Court shall revoke the ruling covered by the request and re-examine the case. Judges who participated in issuing the ruling to which the request relates shall be excluded from adjudicating in the proceedings initiated by that request.

11. In the case referred to in paragraph 8, the provisions of paragraphs 2–3, 5 and 7 shall apply mutatis mutandis.

12. Article 190 of the Act of 30 August 2002 – Law on proceedings before administrative courts shall not apply to judgments of the Supreme Administrative Court issued with the participation of a person referred to in Article 3(1) or Article 5(1).

13. In cases heard on the basis of the Act of 30 August 2002 – Law on proceedings before administrative courts, after the entry into force of this Act, it shall not be possible to request the reopening of proceedings concluded with a ruling issued with the participation of a person referred to in Article 3(1) or Article 5(1) for the reasons referred to in paragraphs 1 and 8. This shall not apply to cases for the reopening of proceedings initiated and not concluded before the date of entry into force of this Act.

14. In appeal proceedings in cases heard on the basis of the Act of 30 August 2002 – Law on proceedings before administrative courts, the Supreme. The Administrative Court shall overturn the contested judgment or decision concluding the proceedings in the case challenged by a cassation appeal issued before the date of entry into force of this Act with the participation of a person referred to in Article 3(1) or Article 5(1), and shall refer the case for re-examination to the provincial administrative court due to circumstances related to the appointment to the office of judge only if when a party or participant in the proceedings, at the appropriate time for submitting a request for the exclusion of a judge, raised objections on this ground as to the correctness of the composition of the court or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, and subsequently based their cassation appeal on these allegations.

15. If the cassation appeal contains the objections referred to in paragraph 14, the provincial administrative court, if it finds that the conditions for considering the objection have been met, shall, before submitting the files to the Supreme Administrative Court, set aside the contested decision and hear the case at the same session. The adjudicating panel shall be appointed by lot, excluding the judges who participated in the contested decision. The provisions of Article 179a of the Act of 30 August 2002 – Law on proceedings before administrative courts shall apply accordingly.

16. If the request referred to in paragraphs 1 and 8 is granted, the provincial administrative court to which the case has been referred for reconsideration shall hear it in a different composition.

Article 36. 1. In cases finally concluded before the date of entry into force of this Act by the disciplinary court referred to in Article 48 § 1 of the Act of 25 July 2002 – Law on the System of Administrative Courts, the accused may, within one month of the date of publication of the list referred to in Article 14(1), submit a request for the revocation of the judgment or resolution if they were issued by a disciplinary court of first instance with the participation of a person referred to in Article 3(1) or Article 5(1).

2. The provision of paragraph 1 shall apply accordingly if the disciplinary court of second instance ruled before the date of entry into force of this Act with the participation of a person referred to in Article 3(1) or Article 5(1).

3. The provision of paragraph 2 shall not apply if the disciplinary court of second instance has overturned the judgment or resolution of the court of first instance.

4. The motion referred to in paragraphs 1 and 2 shall be examined by the Supreme Administrative Court – a disciplinary court of second instance. The provisions of Article 48 § 2 and 3 of the Act of 25 July 2002 – Law on the System of Administrative Courts shall apply to the appointment of the panel, with the proviso that judges who participated in issuing the ruling covered by the motion and who examined the appeal against the judgment or resolution issued with the participation of the person referred to in Article 3(1) or Article 5(1) shall be excluded from the draw.

5. Taking into account the request referred to in paragraph 1 or 2, the disciplinary court of second instance shall, depending on the circumstances, set aside the judgment or resolution issued by the disciplinary court of second instance and decide on the appeal or discontinue the proceedings, or shall overturn the judgment or resolution issued by the disciplinary court of second instance and overturn the judgment or resolution of the disciplinary court of first instance and refer the case to the disciplinary court of first instance for reconsideration. The decision may not be to the detriment of the accused.

6. If the request referred to in paragraph 1 or 2 is granted, the competent disciplinary court shall hear the case in a different composition.

7. In appeal proceedings, the Supreme Administrative Court – the disciplinary court of second instance – shall overturn the contested judgment or resolution issued before the date of entry into force of this Act with the participation of the person referred to in Article 3(1) or Article 5(1), and shall refer the case back to the disciplinary court of first instance for reconsideration due to circumstances related to her appointment to the office of judge only if the accused, at the time appropriate for filing a motion to recuse the judge, raised objections on this basis as to the correctness of the composition of the court or as to the independence or impartiality of the person referred to in Article 3(1) or Article 5(1) participating in that composition, and subsequently based the objections in the appeal on this ground. The provision of paragraph 6 shall apply.

8. In matters not regulated by the proceedings referred to in paragraphs 1-7, the provisions of Chapter 56 of the Act of 6 June 1997 - Code of Criminal Procedure shall apply accordingly.

Art. 37. 1. Persons referred to in Art. 3(1) shall be excluded by virtue of law from examining applications referred to in Art. 33(1), (2) and (8), Article 34(1), (2) and (7), Article 35(1) and (8) and Article 36(1) and (2), and from examining appeals referred to in Article 33(15), Article 34(12) and Article 36(7), as well as cassation appeals referred to in Article 33(16) and Article 35(14), and cassation referred to in Article 34(15).

2. The provisions of Articles 33–36 shall not apply to judgments issued with the participation of persons referred to referred to in Article 2(2).

Art. 38. 1. Resolutions of the Supreme Court adopted with the participation of a person referred to in Art. 3(1) or Art. 5(1) shall not have the force of law and shall not be subject to the procedure specified in Art. 88 of the Act of 8 December 2017 on the Supreme Court.

2. Art. 187 § 2 and Art. 269 § 1 of the Act of 30 August 2002 – Law on proceedings before administrative courts shall not apply to resolutions of the Supreme Administrative Court adopted with the participation of a person referred to in Art. 3(1) or Art. 5(1).

Art. 39. 1. A ruling of the Supreme Court on an extraordinary appeal issued with the participation of a person referred to in Art. 3(1) or Art. 5(1) shall be subject to revocation at the request of a party or other participant in the proceedings submitted within one month from the date of entry into force of this Act.

2. Proceedings concerning the request referred to in paragraph 1 shall be free of court fees. Proceedings concerning this request, in matters not regulated by this Act, shall apply accordingly in the case of:

1) civil cases – the provisions of the Act of 17 November 1964 – Code of Civil Procedure;
2) criminal cases – the provisions of the Act of 6 June 1997 – Code of Criminal Procedure.

3. If the ruling is overturned as a result of the motion referred to in paragraph 1, the Supreme Court shall re-examine the extraordinary appeal.

Chapter 5

Amendments to the provisions

Article 40. The Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws of 2024, items 1568 and 1841, and of 2025, items 620, 1172, 1302, 1518 and 1661) shall be amended as follows:

1) Article 48 § 3 shall read as follows:
"§ 3. A judge who participated in issuing a ruling covered by a complaint for retrial may not rule on that complaint.";
2) Article 388^3 is repealed;
3) Article 398^1 shall read as follows:
"Article 398^1. § 1. A party, the Prosecutor General, the Ombudsman

The Ombudsman, the Children's Ombudsman, the Financial Ombudsman, the Ombudsman for Small and Medium-sized Enterprises or the Patient Ombudsman may lodge a cassation appeal with the Supreme Court, unless a specific provision provides otherwise.

§ 2. The lodging of a cassation appeal by a party precludes, within the scope of the appeal, the lodging of a cassation appeal by the Prosecutor General, the Ombudsman, the Children's Ombudsman, the Financial Ombudsman, the Ombudsman for Small and Medium-Sized Enterprises or the Patient Ombudsman.";

4) in Article 626^{11} § 2 and 3 shall read as follows:

"§ 2. In the event of a cassation appeal being lodged, a note of the cassation appeal shall be made ex officio immediately after the interested party has submitted a notification of the lodging of the appeal.

§ 3. Article 626^7shall apply mutatis mutandis to the entry of an appeal and a cassation appeal.";

5) after Article 678, Article 678^1shall be added, reading as follows:

"Article 678^1 § 1. The court shall revoke a final decision confirming the acquisition of inheritance if a final decision confirming the acquisition of inheritance has already been issued in relation to the same inheritance. The court may also revoke it ex officio.

§ 2. In the case referred to in § 1, the court which ruled as the court of first instance in the proceedings in which the final decision subject to revocation was issued shall have jurisdiction.

§ 3. The court shall summon the participants in the proceedings in which a final decision on the acquisition of inheritance was made, the revocation of which is the subject of the proceedings.

§ 4. The court shall examine only the fact of issuing another final decision on the confirmation of inheritance with regard to the same inheritance.

§ 5. The court may issue a decision in closed session.

§ 6. The court's decision may be appealed.

§ 7. The provisions of § 1–6 shall apply accordingly to the confirmation of the acquisition of the subject of a specific bequest.

Art. 41. In the Act of 21 August 1997 – Law on the System of Military Courts (Journal of Laws of 2025, item 1614), Article 23 § 1 shall read as follows:

"§ 1. Judges of military courts shall be appointed to judicial office by the President of the Republic of Poland, at the request of the National Council of the Judiciary, within three months of the date of submission of the request to the President of the Republic of Poland."

Art. 42. In the Act of 27 July 2001 – Law on the System of Common Courts (Journal of Laws of 2024, items 334, 1907 and of 2025, items 526, 820, 1172, 1178 and 1609), Article 55 § 1 shall read as follows:

“§ 1. Judges of common courts shall be appointed to judicial office by the President of the Republic of Poland, at the request of the National Council of the Judiciary, within three months of the date of submission of the request to the President of the Republic of Poland.”

Art. 43. In the Act of 25 July 2002 – Law on the System of Administrative Courts (Journal of Laws of 2024, item 1267), Article 5 § 1 shall read as follows:

"§ 1. Judges of administrative courts shall be appointed to office by the President of the Republic of Poland, at the request of the National Council of the Judiciary, within three months of the date of submission of the request to the President of the Republic of Poland."

Article 44. The Act of 12 May 2011 on the National Council of the Judiciary (Journal of Laws of 2024, item 1186) shall be amended as follows:

1) in Article 44(1), the second sentence shall be repealed;
2) Article 44a shall read as follows:
   "Article 44a. The Council shall submit to the President of the Republic of Poland a resolution containing a motion to appoint a judge or assistant judge to office, together with a justification";
3) in Article 44b, the second sentence shall be repealed;
4) Articles 45a–45c shall be repealed.

Article 45. The Act of 8 December 2017 on the Supreme Court (Journal of Laws of 2024, item 622) shall be amended as follows:

1) in Article 1, point 1 shall read as follows:

“1) administering justice by ensuring the legality and uniformity of the jurisprudence of common courts and military courts by hearing appeals and adopting resolutions resolving legal issues;”;

2) in Article 3:

a) point 3 shall read as follows:

"3) the Minister of Labour, Social Security and Public Affairs."

b) point 4 is repealed;

3) in Article 22a:

a) § 1 shall read as follows:

“§ 1. The Professional Liability Chamber shall be composed of 11 judges appointed to adjudicate in the Professional Liability Chamber for the term referred to in Article 22b § 1 or Article 22c § 3, by the First President of the Supreme Court from among the judges of the Supreme Court selected by lot at a meeting of the Supreme Court College."

b) in § 2, the words "three times greater than the number" shall be deleted,

c) in § 4, the words "Press Officer, Deputy Press Officer" are deleted,

d) § 7 and 8 shall be repealed;

4) in Article 22c:

a) in § 1, point 3, the words "Press Officer or Deputy Press Officer" shall be deleted,

b) in § 2, the second sentence shall read as follows:

"The provisions of Article 22a shall apply accordingly to the supplementary draw and the appointment of judges to adjudicate in the Professional Responsibility Chamber.";

5) in Article 23, the existing content shall be designated as § 1 and § 2 shall be added, reading as follows:

“§ 2. The Chamber shall also have jurisdiction over complaints concerning the excessive length of proceedings in the cases referred to in § 1 before the court of appeal and complaints concerning the excessive length of proceedings before the Supreme Court in the cases referred to in Article 25 § 1.”;

6) in Article 24, the existing text shall be designated as § 1 and § 2 shall be added, reading as follows:

“§ 2. The Chamber shall also have jurisdiction over complaints concerning the excessive length of proceedings in cases referred to in § 1 before the court of appeal.”;

7) Article 25 shall read as follows:

"Art. 25. § 1. The Labour, Social Insurance and Public Affairs Chamber shall have jurisdiction over matters relating to labour law, social insurance and public affairs, including matters relating to public procurement and registration, with the exception of matters relating to the registration of entrepreneurs and the registration of pledges, as well as matters relating to competition and consumer protection and unfair practices

unfairly exploiting contractual advantage, as well as matters relating to the regulation of energy, telecommunications and postal services, rail transport and the regulation of the water and sewage market.

§ 2. The Labour, Social Insurance and Public Affairs Chamber shall also have jurisdiction to hear:

1) election protests and protests against the validity of national referendums and constitutional referendums, and determining the validity of elections and referendums, as well as cases in which appeals have been lodged against resolutions of the State Electoral Commission;

2) appeals against resolutions of the National Council of the Judiciary in cases provided for in specific regulations;

3) cases in which an appeal has been lodged against a decision of the President of the National Broadcasting Council Radio and Television have been lodged;

4) cases in which appeals have been lodged against decisions of the State Commission for the Prevention of Sexual Abuse of Minors under 15 Years of Age;

5) cases in which an appeal has been lodged against an administrative decision of the State Commission for the Investigation of Russian Influence on the Internal Security of the Republic of Poland in 2007–2022, referred to in Article 36(1) of the Act of 14 April 2023 on the State Commission for the Investigation of Russian Influence on the Internal Security of the Republic of Poland in 2007–2022 (Journal of Laws of 2024, item 548);

6) cases concerning the retirement of a Supreme Court judge;

7) complaints concerning the excessive length of proceedings before a court of appeal in cases referred to in Article 25 § 1;

8) complaints concerning excessive length of proceedings before the in in cases referred to in Article 23 § 1 and in cases referred to in Article 24 § 1;

9) other matters within the scope of public law not reserved for the jurisdiction of other chambers of the Supreme Court.”;

8) Article 26 shall be repealed;

9) in Article 29:

a) § 1 shall read as follows:

"§ 1. The President of the Republic of Poland shall appoint judges to the Supreme Court, at the request of the National Council of the Judiciary, within three months of the date of submission of the request to the President of the Republic of Poland."

b) § 2 and 3 shall be repealed;

10) in Article 82, § 2–5 shall be repealed;

11) Articles 89–95 shall be repealed.

Article 46. In the Act of 6 March 2018 on the Ombudsman for Small and Medium-sized Enterprises (Journal of Laws of 2023, item 1668 and of 2025, item 769), in Article 9(1), point 6 shall be repealed.

Article 47. In the Act of 30 August 2019 on the State Commission for Counteracting Sexual Abuse of Minors under 15 Years of Age (Journal of Laws of 2024, item 94), Article 3(2)(4) shall read as follows:

"4) submitting requests to the Prosecutor General to appeal against a final judgment concluding a case concerning the offences referred to in Article 1(2) and to place the proceedings under special supervision;".

Article 48. In the Act of 20 December 2019 amending the Act – Law on the System of Common Courts, the Act on the Supreme Court and certain other acts (Journal of Laws of 2020, items 190 and 568), Article 12 shall be repealed.

Chapter 6

Transitional and Adaptation Provisions

Article 49. Proceedings before the National Council of the Judiciary concerning appointment to the office of judge of the Supreme Court, judge of the court of appeal, judge of the regional court, judge of the district court, judge of the Supreme Administrative Court, judge of a provincial administrative court, judge of a district military court or judge of a garrison military court, initiated and not completed before the date of entry into force of this Act, shall be discontinued by operation of law on the date of entry into force of this Act.

Art. 50. 1. Proceedings before the Supreme Court conducted as a result of an appeal against a resolution on a motion for appointment to the office of judge, referred to in Article 1, initiated and not completed before the date of entry into force of this Act, shall be discontinued by operation of law on the date of entry into force of this Act.

2. In the case referred to in paragraph 1, the provisions of Articles 29-31 shall apply accordingly. A person in respect of whom a resolution has been adopted to submit a motion for appointment to the office of judge shall participate in the renewed proceedings concerning appointment to that office.

3. The provisions of paragraphs 1 and 2 shall not apply to proceedings concerning an appeal against a resolution in which:

1) a person referred to in Article 15(11), Article 18 or Article 20(1) of the Act of 11 May 2017 amending the Act on the National School of Judiciary and Public Prosecution, the Act – Law on the System of Common Courts and certain other acts;
2) a request for appointment to the office of district court judge was refused to a person holding the position of court assessor;
3) a request for appointment to the office of provincial administrative court judge was refused to a person holding the position of court assessor in a provincial administrative court, for which they had submitted their candidacy before the date of entry into force of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts;
4) a request for appointment to the office of judge shall be refused to a person returning to that office, unless that person has been appointed to the office of judge pursuant to the resolution referred to in Article 2(1).

Article 51. 1. The Extraordinary Control and Public Affairs Chamber shall be abolished in the Supreme Court.

2. The term of office of the President of the Supreme Court supervising the work of the Extraordinary Control and Public Affairs Chamber shall expire.

and Public Affairs.

3. The membership of the members and deputy members of the Supreme Court College elected by the assembly of judges of the Extraordinary Control and Public Affairs Chamber shall cease.

4. The Labour and Social Insurance Chamber of the Supreme Court shall become the Labour, Social Insurance and Public Affairs Chamber of the Supreme Court, and the President of the Supreme Court supervising the work of the Labour and Social Insurance Chamber of the Supreme Court shall become the President of the Supreme Court supervising the work of the Labour, Social Insurance and Public Affairs Chamber of the Supreme Court.

5. The judges of the Supreme Court adjudicating in the Labour and Social Insurance Chamber shall become judges adjudicating in the Labour, Social Insurance and Public Affairs Chamber of the Supreme Court.

6. If, in connection with the effect referred to in Article 3(1) or Article 5(1), the position of First President of the Supreme Court remains vacant, until the First President of the Supreme Court is appointed, his duties and powers shall be exercised by the judge of the Supreme Court with the longest service as a judge.

7. If, in connection with the occurrence of the effect referred to in Article 3(1) or Article 5(1), the position of President of the Supreme Court is not filled, until the appointment of the President of the Supreme Court, his duties and powers shall be exercised by the judge of the Supreme Court adjudicating in the relevant chamber with the longest service as a judge.

8. Judges who have been appointed to adjudicate in the Professional Responsibility Chamber shall continue to adjudicate in that chamber until the end of the term of office referred to in Article 22b § 1 or Article 22c § 3 of the Act amended in Article 45, unless they are affected by the effect referred to in Article 3(1) or Article 5(1).

Article 52. 1. Cases initiated and not completed before the date of entry into force of this Act in the Extraordinary Control and Public Affairs Chamber of the Supreme Court shall be transferred by the First President of the Supreme Court within 14 days of the entry into force of this Act to the chambers of the Supreme Court competent to hear them in accordance with the provisions of the Act amended in Article 45, as amended by this Act.

2. All procedural steps in the cases referred to in paragraph 1 shall be repeated.

3. The cases referred to in paragraph 1, initiated as a result of an extraordinary appeal, shall be examined. The Supreme Court shall examine these cases in a panel of two Supreme Court judges and one Supreme Court lay judge. If the extraordinary appeal concerns a ruling issued as a result of proceedings in which the Supreme Court issued the ruling, the case shall be examined by the Supreme Court composed of five Supreme Court judges and two Supreme Court lay judges.

Article 53. 1. When examining extraordinary appeals lodged with the Extraordinary Control and Public Affairs Chamber and referred to the relevant chambers of the Supreme Court, as well as when re-examining an extraordinary appeal referred to in Article 39(3), Articles 89, 90–93 and 95 of the Act amended in Article 45 shall apply in their current wording.

2. The admission of an extraordinary appeal on the basis specified in Article 89 § 1 point 3 of the Act amended in Article 45, in its current wording, shall be inadmissible.

Article 54. 1. Within six months of the date of entry into force of this Act, the First President of the Supreme Court may propose new terms and conditions of employment and

remuneration to employees of the Supreme Court who, on the date of entry into force of this Act, perform tasks in the Extraordinary Control and Public Affairs Chamber, taking into account their qualifications, their work history and the needs arising from the workload of individual chambers of the Supreme Court.

2. The employees referred to in paragraph 1 shall, within 14 days of receiving the proposal for new terms and conditions of employment, submit a statement of acceptance or refusal of the proposed terms and conditions. Failure to submit a statement within this period shall be tantamount to refusal to accept the new terms and conditions of employment.

3. If the proposed terms and conditions of employment and remuneration are not accepted, the employment relationship shall be terminated at the end of a period equal to the notice period, counting from the month following the month in which the employee submitted a statement of refusal to accept the proposed terms and conditions, or from the date on which he or she could have submitted such a statement. Termination of the employment relationship in this manner shall have the same consequences for the employee as those provided for in labour law in the event of termination of the employment relationship by the employer with notice.

4. The First President of the Supreme Court shall terminate the employment relationships of the employees referred to in paragraph 1 who are not offered new terms and conditions of employment.

5. Employees whose employment relationship is terminated shall be entitled to severance pay determined in accordance with the rules laid down in Article 8 of the Act of 13 March 2003 on special rules for terminating employment relationships with employees for reasons not related to the employees (Journal of Laws of 2025, items 570 and 1661).

Art. 55. 1. A person referred to in Art. 15(11), Art. 18 or Art. 19(1–4) of the Act of 11 May 2017 amending the Act on the National School of Judiciary and Public Prosecution, the Act – Law on the System of Common Courts and certain other acts (Journal of Laws, item 1139 and item 1443 of 2018) may be appointed to the position of district court judge if they meet the requirements specified in Article 61 § 1 points 1–6 of the Act of 27 July 2001 – Law on the System of Common Courts and submits her candidacy for this position.

2. For applications and assessment of the qualifications of court clerks, judges' assistants and assistant prosecutors who have applied for vacant judicial positions announced after the date of entry into force of this Act, the provisions of the Act amended in Article 42 and the implementing provisions issued on the basis of Article 57i § 4 of that Act, in the wording in force on 20 June 2017, shall apply.

3. The collection, certification and storage of documents on the basis of which the qualifications of a candidate for the position of assistant judge are assessed shall be governed by the implementing provisions issued on the basis of Article 57i § 4(2) of the Act amended in Article 42, as in force on 20 June 2017.

Chapter 7

Final provision

Article 56. The Act shall enter into force 30 days after its publication, with the exception of Article 14, which shall enter into force 14 days after its publication.

II. EXPLANATORY REPORT

I. Subject matter and purpose of the Act

The subject matter of the Act is to restore the right to an independent and impartial tribunal established by law by regulating the effects of resolutions in individual cases adopted by the National Council of the Judiciary, operating in the period from 7 March 2018 to 13 May 2026. The composition of the National Council of the Judiciary during the above-mentioned period was determined on the basis of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3; hereinafter referred to as the "Act of 8 December 2017").

Guaranteeing citizens the right to an independent and impartial tribunal established by law, and with it ensuring the independence of courts and judges, was the fundamental, consensus-based goal of the political transformation after 1989. This consensus included fundamental solutions regarding the appointment of judges by the President of the Republic of Poland at the request of the National Council of the Judiciary, which was to safeguard the independence of the courts and judges as a body independent of the political authorities. This body was to represent the judicial self-government as well as the legislative and executive powers.

These principles were undermined by the Act of 8 December 2017. With its adoption and the election of judges who are not representatives of the judicial community to the National Council of the Judiciary, the National Council of the Judiciary lost its constitutional identity. The flawed nature of the nomination proceedings before the current Council began with a violation of the constitutional principle of selecting its judicial members, as set out in Article 187 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended; hereinafter referred to as the Constitution of the Republic of Poland). This was exacerbated by the manner in which the Council made decisions on the selection of candidates for vacant judicial positions and by the restriction – also as a result of amendments to other acts made in 2017–2023 – of the possibility of a substantive assessment of these candidates in conditions of open competition for judicial positions.

As a result of the amendments adopted in the Act of 8 December 2017 and the amendments to other acts made between 2017 and 2023, the Republic of Poland became the first country against which the European Commission decided to conduct proceedings on the basis of the Communication "A new EU framework to strengthen the rule of law". When this did not produce the expected result, the Commission decided, also for the first time, to initiate the procedure under Article 7(1) TEU in order to determine that the Republic of Poland had caused a clear risk of a serious breach of the rule of law under Article 2 TEU. The Commission has decided, also for the first time in history, to bring actions before the Court of Justice of the European Union concerning the failure to ensure the independence and impartiality of national courts, including, in particular, the national court of last instance within the meaning of the third paragraph of Article 267 of the Treaty on the Functioning of the European Union (OJ EU C 202 of 2016, p. 47; hereinafter referred to as: TFEU) – i.e. the Polish Supreme Court – pursuant to Article 19(1), second paragraph, TEU and Article 47 of the Charter of Fundamental Rights of the European Union (OJ EU C 202 of 2016, p. 389; hereinafter referred to as: CFR). Polish and foreign courts began to refer preliminary questions to the Court of Justice of the European Union pursuant to Article 267 TFEU, in which successive elements of the Polish state's actions towards the judiciary were assessed as violating EU standards. As a result of these questions, the CJEU ruled – also for the first time in the history of European integration – that the principle of mutual trust cannot be applied to a Member State such as Poland in the context of a European arrest warrant due to the existence of a real risk of violation of the fundamental right to a fair trial, guaranteed by Article 47(2) of the Charter of Fundamental Rights of the European Union, due to systemic or general deficiencies in the independence of the judiciary (CJEU judgment of 25 July 2016 in Minister for Justice and Equality v LM, C-216/18 PPU).

All this means that it is currently impossible to guarantee the parties in every case the right to an independent and impartial tribunal established by law. The systemic nature of this violation has been confirmed in numerous judgments of domestic courts and international tribunals (see, for example, the judgments of the ECtHR of 22 July 2021, Reczkowicz v. Poland, application no. 43447/19; of 8 November 2021, Dolińska-Ficek and Ozimek v. Poland, applications nos. 49868/19 and 57511/19; of 3 February 2022, Advance Pharma sp. z o.o. v. Poland, application no. 1469/20; judgments of the CJEU of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, AK v National Council of the Judiciary and CP and DO v Supreme Court, EU:C:2019:982; of 2 March 2021 in case C-824/18, A.B., C.D., E.F., G.H. and I.J. v Krajowa Rada Sądownictwa, EU:C:2021:153; of 6 October 2021, C-487/19, W.Ż., EU:C:2021:798; of 4 September 2025, C-225/22, "R" S.A. v AW "T" sp. z o.o., EU:C:2025:649; resolution of the Supreme Court, full composition of the Supreme Court – Civil, Criminal and Labour and Social Insurance Chamber of 23 January 2020, BSA I-4110-1/20, OSNKW 2020, No. 2, item 7), and in particular in the pilot judgment of the ECtHR in the case of Wałęsa v. Poland, which this draft aims to implement.

The latest CJEU case law also emphasises that a court composed of at least one judge appointed in circumstances giving rise to reasonable doubts as to their independence, impartiality and prior establishment by statute must be considered defective, and the decisions taken by a court sitting in such a composition cannot be considered binding. In its judgment of 4 September 2025 in Case C-225/22 (R S.A. v AW T sp. z o.o.), referring to the judgment of the Extraordinary Control and Public Affairs Chamber of the Supreme Court, the CJEU indicated that a national court is not bound by a judgment of a higher national court if at least one of the judges sitting in that panel does not meet the requirements of independence, impartiality and prior appointment by statute, and that such a judgment must be considered null and void. Furthermore, the CJEU ruled that national law provisions which exclude the possibility for a court to review the correctness of the composition of the adjudicating panel are incompatible with Article 19(1), second paragraph, TEU, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union. The position contained in the cited CJEU judgment in Case C-225/22 has been fully taken into account in the case law of the Supreme Court. In a resolution having the force of a legal principle, the 7-judge panel of the Labour and Social Insurance Chamber of the Supreme Court of 24 September 2025 (ref. no. III PZP 1/25) clearly stated that judgments issued by the Extraordinary Control and Public Affairs Chamber of the Supreme Court in a panel including even one judge appointed at the request of the National Council of the Judiciary formed in accordance with the provisions of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts, should be considered null and void (non-existent), as they were issued by a court that did not meet the requirements of the TEU, the ECHR and the Constitution of the Republic of Poland.

The finding that the current Council is not identical to the National Council of the Judiciary as a constitutional body justifies comprehensive regulation of the effects of the current Council's resolutions. The European Court of Human Rights clearly pointed to the need for such action in the above-mentioned pilot judgment in the case of Wałęsa v. Poland. It is also recognised in the Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and Rule of Law (DGI) on European standards governing the status of judges of 14 October 2024, CDL-AD(2024)029, Opinion No. 1206/2024 (hereinafter referred to as: "the Venice Commission's opinion of 14 October 2024"). Furthermore, according to this opinion, there have been no comparable situations in the past to the systemic violation of the rule of law in Poland, which means that the recommendations resulting from this opinion and based on the Council of Europe's acquis relating to significantly different violations of the rule of law should also be adapted to this extraordinary situation and the circumstances of the Polish legal order. In this light, the broad recognition and freedom of choice of measures indicated by the ECtHR in its pilot judgment in the case of Wałęsa v. Poland, by means of which the Republic of Poland can fulfil its obligations under European standards, including ECtHR judgments, should also be understood.

This is all the more important given that the justice system is currently experiencing its most serious crisis since 1989, the consequences of which may have a negative impact on the ability of citizens to effectively protect and enforce their rights in the coming years, as pointed out by the Supreme Audit Office in its report of 1 October 2024 information on the results of the audit "Ensuring the efficient functioning of the justice system" (KPB.430.2.2024). The Supreme Audit Office clearly states that the manner in which the Minister of Justice undertook legislative measures in 2018–2023 had a negative impact on the stability of the law and, consequently, on the efficiency of the justice system (p. 9 of the audit report). Furthermore, according to the findings of the Supreme Audit Office, the actions taken during this period by the Minister of Justice in the area of the organisation of common courts and the management of their staff did not, overall, bring clear and unambiguous benefits to the efficiency of the common courts.

It should be emphasised that the loss of constitutional identity by the current Council means that the appointments by the President of the Republic of Poland of persons whom the Council has nominated for judicial positions are not based on the constitutional basis specified in Article 179 of the Constitution of the Republic of Poland, but are made solely on the basis of statutory provisions. The unconstitutional nature of such appointments means that the judges who have received them do not enjoy the guarantees afforded to judges appointed on the basis of the Constitution of the Republic of Poland, referred to in Article 180 of the Constitution of the Republic of Poland (cf. the judgment of the Constitutional Tribunal of 8 May 2012, K 7/10). *Ex iniuria ius non oritur.*

The Act takes into account the recommendations contained in the opinion of the Venice Commission of 14 October 2024, which, referring to the Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the law on the National Council of the Judiciary issued on 8 May 2024, CDL-PI(2024)009, Opinion No. 1181/2024 (hereinafter referred to as: “the urgent opinion of the Venice Commission of 8 May 2024”) – it was stated that “the requirement of security of tenure can only apply if the relevant appointment, nomination or election has been made in accordance with the Constitution and European standards. A different position would mean that the government could ignore or circumvent constitutional provisions on appointment and then invoke the constitutional principle of security of tenure to make such an appointment irreversible, which would be a situation that would undermine the rule of law" (point 15 of the Venice Commission's opinion of 14 October 2024). This passage must be considered in the context of the ECtHR judgment of 1 December 2020, Guðmundur Andri Ástráðsson v. Iceland, application no. 26374/18, which stated that finding that a court is not a court established by law may have significant consequences for the principles of legal certainty and the irremovability of judges, which must be carefully observed in view of the objectives they serve. Adherence to these principles at all costs and at the expense of the requirement of a court established by law may, in certain circumstances, cause even greater damage to the rule of law and public confidence in the administration of justice. As in all cases where the fundamental principles of the Convention conflict, they must be weighed to determine whether there is an urgent need – of a significant and convincing nature – justifying a departure from the principles of legal certainty and res judicata and the irremovability of judges in the circumstances of the particular case.

It is clear from the above position that, although the principle of irremovability is an important aspect of the rule of law and the independence of the judiciary, there may be circumstances in which persons appointed to judicial positions do not enjoy such protection. This is the case, as assumed in the draft law, especially when the appointment was made in a manner contrary to Article 179 of the Polish Constitution, as in the case of the National Council of the Judiciary operating between 7 March 2018 and 13 May 2026. Maintaining such appointments in force would therefore lead to the perpetuation of a situation contrary to these standards.

The draft law resolves this dilemma by developing existing international standards with respect for the achievements of European legal culture and the national constitutional order, referring in particular to the constitutional principles for the appointment of judges set out in Article 179 of the Constitution of the Republic of Poland.

The Act regulates the effects of resolutions of the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026, and does so in a manner that is as proportionate as possible, taking into account the outcome of balancing the various and conflicting values that must be considered in this regard.

First and foremost, the Act aims to restore the legitimacy of persons appointed to the office of judge at the request of the current Council to administer justice as an independent and impartial tribunal established by law. The draft provides that this will be achieved through comprehensive statutory regulation of the effects of the resolutions of the current Council. These effects vary depending on the legal situation of persons appointed as judges between 2018 and 2025 at the request of the flawed National Council of the Judiciary.

The basic solution is to reinstate approximately 1,200 judges who applied for appointment to another court or a higher court to their positions in the court where they took office in accordance with Article 179 of the Polish Constitution, until the final conclusion of the re-conducted proceedings concerning appointments to judicial positions, which were concluded with resolutions of the flawed Council. In these proceedings, conducted before a properly constituted National Council of the Judiciary and under the supervision of the Supreme Court, the status of this category of persons will be finally determined.

This solution cannot be applied to persons whose first appointment to the office of judge was contrary to Article 179 of the Constitution of the Republic of Poland. However, taking into account the legal situation in which these persons found themselves, it is necessary to differentiate the effects that are to apply to them. With regard to a group of approximately 1,200 novice judges applying for judicial appointments as court assessors, court clerks, judicial assistants and other persons who have passed the judicial examination, the draft law does not provide for any changes in the status of these persons. These persons will retain their office and judicial position (see Article 2(2) of the draft, according to which the deprivation of legal force of resolutions adopted in individual cases by the National Council of the Judiciary acting during the period from 7 March 2018 to 13 May 2026, does not include resolutions adopted in relation to the persons referred to in that provision). At the same time, the proposed regulation will prevent any future challenges to the status of the persons referred to in Article 2(2) of the draft act as duly appointed judges. The adopted solutions confirming the status of this group of judges take into account the fact that these persons found themselves in a coercive situation and could not withdraw from participation in the competition due to the risk of losing their right to hold the office of judge. Importantly, in the case of assessors in common courts, the role of the National Council of the Judiciary was limited, and its resolutions did not constitute a decision on the competition for vacant judicial positions. It is precisely this special situation in terms of equal access to public service, guaranteed by Article 60 of the Polish Constitution, justifies the exclusion of the above-mentioned category of persons from the regulation adopted in the draft Article 2(1), which provides for the deprivation of legal force of resolutions of the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026, adopted in individual cases.

However, the above solution cannot cover a group of approximately 350 people in common courts and a specific group of people in the Supreme Court and the Supreme Administrative Court, who were not only appointed to the office of judge in violation of Article 179 of the Polish Constitution, but also found themselves in a different situation than the aforementioned court assessors, referendaries or assistants to judges. This category consists primarily of persons who applied for the office of judge while being prosecutors, barristers, legal advisers, advisers to the General Prosecutor's Office, notaries or academics. These persons may only obtain the

legitimacy to administer justice as an independent and impartial tribunal established by law by re-conducting the proceedings for the position of judge, because – unlike in the case of the above-mentioned category of persons – there is no constitutional justification for subjecting the status of this category of persons to statutory validation. At the same time, due to the appointment of these persons being contrary to Article 179 of the Polish Constitution, their employment relationship is not protected under Article 180 of the Polish Constitution. This allows us to assume that it ceases by virtue of the law and may be re-established as a result of re-conducting proceedings for the position of judge. During the period of the re-conduct of the proceedings, these persons may obtain employment in the judiciary in positions of court clerks not related to the administration of justice. This guarantees the stability of their employment until a final decision on their status is made in the repeated competition proceedings. Then, depending on the outcome of the proceedings, these persons will take up the office of judge or continue their employment as court clerks, if they do not resign from this employment.

The aim of the project is to adopt solutions which, while ensuring restoration of compliance with the Polish Constitution, will guarantee the efficient and uninterrupted functioning of the judiciary during the transition period. For this reason, a system of delegation of judges from common, administrative and military courts has been envisaged, allowing them to adjudicate in their new positions for a period of two years and then to complete the cases they have begun.

Furthermore, solutions are proposed to ensure that rulings issued by judges appointed with the participation of a flawed National Council of the Judiciary will, in principle, remain in force and can only be challenged if precisely defined conditions are met. In this way, the draft strikes a balance between the stability of court rulings and the right of the parties to have their case heard by an independent and impartial tribunal established by law. Against this background, the drafters consider the position on the effects of rulings by flawed judges, expressed by the Organisation for Security and Cooperation in Europe (note from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) of 12 August 2024, No. JUD-POL/508/2024 [NR], publication address https://www.osce.org/odihr/574897). This position indicates that the assessment of the effects of rulings by judges appointed in a flawed manner should include a balancing test between the individual's right to a court established by law and the requirements of the public interest in legal certainty, including the stability of rulings and respect for the principle of res judicata. At the same time, referring to the case law of the ECtHR, it was emphasised that, over time, as part of the necessary process of weighing up interests, the preservation of legal certainty will become increasingly important in relation to the right of a party to a court established by law. Recognising the institution of a request for reconsideration of a case as an adequate instrument for remedying judgments issued by a defective panel, the ODIHR pointed to the need to clearly define the legal basis for reconsideration or reopening of proceedings and the requirements for their admissibility, the need to limit the possibility of reopening proceedings by requiring a reasonable time limit to be observed, as well as the existence and functioning of substantive and procedural safeguards in the national legal system, which may prevent abuse the procedure in question. The solutions adopted in the draft act take the above assumptions into account.

Thus, the draft not only aims to restore the values of the rule of law, but is also consistent with them. It restores guarantees of access to an independent and impartial tribunal established by law, takes into account the need to ensure the stability of judgments, and provides judges appointed with the participation of the flawed National Council of the Judiciary with respect for their right to effective legal protection and equal access to public service, and guarantees that persons who refrained from participating in competitions for vacant judicial positions due to the loss of constitutional identity by the current Council will be able to apply for the office of judge in repeated competition proceedings aimed at selecting candidates who best meet the requirements in this regard.

The Act also amends other legal acts, such as: the Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws of 2024, items 1568, 1841 and of 2025, items 620, 1172, 1302, 1518 and 1661), the Act of 8 December 2017 on the Supreme Court (Journal of Laws of 2024, item 622), the Act of 21 August 1997 – Law on the System of Military Courts (Journal of Laws of 2025, item 1614), Act of 27 July 2001 – Law on the System of Common Courts (Journal of Laws of 2024, items 334, 1907 and of 2025, items 526, 820, 1172, 1178 and 1609), the Act of 25 July 2002 – Law on the System of Administrative Courts (Journal of Laws of 2024, item 1267), the Act of 20 December 2019 amending the Act – Law on the System of Common Courts, the Act on the Supreme Court and certain other acts (Journal of Laws of 2020, items 190 and 568), the Act of 6 March 2018 on the Ombudsman for Small and Medium-sized Enterprises (Journal of Laws of 2023, item 1668 and of 2025, item 769), the Act of 30 August 2019 on the State Commission for Counteracting Sexual Abuse of Minors under 15 Years of Age (Journal of Laws of 2024, item 94). The solutions proposed in this regard do not negate the need for comprehensive regulation of the matters covered by these acts in order to fully restore constitutional order, improve the state of the justice system and ensure its effective functioning. Recognising the need to take such action, the scope of the amendments introduced by this Act has been limited to those modifications that are necessary to achieve the objectives of the draft. Priority in this Act has been given to restoring the right of the parties in any proceedings to an independent and impartial tribunal established by law.

II. Compliance of proposed regulations with the and and international law

Although certain measures have already been taken, there is no doubt that the existing legal situation, characterised by deepening systemic flaws, is contrary to Polish law and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It does not guarantee the full independence of the judiciary, threatens the right to effective judicial protection, and does not ensure adequate protection of individual rights and freedoms. Comprehensive regulation by means of a law on the status of defectively appointed persons is part of the process of repairing the judicial system, restoring its constitutional role and ensuring that adjudication is entrusted to persons who meet substantive and ethical requirements.

It should be emphasised that neither the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights, nor EU law and the Court of Justice of the European Union provide precise guidance on how to resolve systemic flaws. Regulating this issue is the competence and responsibility of the Polish legislature, which retains the freedom to choose the means by which it will fulfil its obligations arising from the enforcement of European court judgments (see the pilot judgment in Wałęsa v. Poland, paragraph 332). In doing so, it must comply with the rules of its own Constitution, the standards resulting from the case law of the European Court of Human Rights and EU law.

In view of the above, the draft provides for the effects of the resolutions of the current Council to be regulated in two stages. In the first stage, following the entry into force of the Act, the judgments of national courts and international tribunals referred to in point I of the recitals will be implemented. This will result in the statutory restoration of the legitimacy of persons appointed at the request of the current Council to the office of judge as an independent and impartial tribunal established by law, or the termination of the employment relationship of those persons.

In the case of judges referred to in Article 2(2) of the draft act, the restoration of their legitimacy to administer justice will be permanent. However, with regard to other persons appointed to the office of judge at the request of the current Council, the restoration of their legitimacy to administer justice will be determined by the outcome of the second stage, which will consist of re-conducting proceedings in concerning appointments to judicial positions concluded with resolutions of a defectively constituted Council (with regard to a group of approximately 1,200 judges who participated in the promotion procedure with the participation

of an incorrectly constituted National Council of the Judiciary). In these proceedings, already conducted before a properly constituted National Council of the Judiciary and under the supervision of the Supreme Court, the status of individual persons covered by the scope of the Act will ultimately be decided. In this way, the draft aims to resolve the paradox of a judge unable to judge, which currently exists in the Polish legal system. Its sources are as follows.

The systemic flaws in the judicial appointment procedure described in point I of the recitals mean that the participation of a person appointed at the request of the National Council of the Judiciary operating between 7 March 2018 and 13 May 2026 in the examination of cases of individuals who have the right to a court hearing will lead to a violation of that right. This thesis clearly follows from the case law of national courts and international tribunals already presented, and in particular from the pilot judgment of the ECtHR in the case of Wałęsa v. Poland, which is implemented by this Act.

The Court of Justice of the European Union did not recognise the issue of defective appointments as a violation of Article 19 TEU. The problem of defective appointments to the office of judge stems from the fact that the National Council of the Judiciary was established in a manner inconsistent with the Polish Constitution, and not – as in previous cases of the use of this institution in other countries – from phenomena that can be assessed individually in relation to the conduct of a specific judge (e.g. corruption or cooperation with an undemocratic regime). In other words, the paradox of a judge who cannot judge stems from the constitutional defectiveness of the procedure by which he obtained his current status, and not from his individual qualifications.

Any attempt to individually assess the qualifications of persons who have taken up positions on the basis of resolutions of the current Council would, given the number of appointments made at its request, lead to to many years of paralysis in court proceedings, which could also create the impression that judges are only concerned with their own affairs and not with resolving disputes, which is the purpose of the justice system. The crisis situation in the justice system and the obligation to ensure the efficiency and speed of court proceedings argue against this solution.

The verifying body would also have to have investigative powers to determine what non-merit-based factors influenced the current Council's resolution, which would further prolong the verification process.

Finally, the individual verification procedure carries the risk of retaliation. For these reasons, the draft advocates the use of objective criteria, without conducting an individual assessment of the qualifications of persons appointed at the request of the current Council. This also avoids public stigmatisation and stigmatisation of persons subject to individual assessment, which could pose a threat to their dignity and personal rights.

Based on the existing case law of the European Court of Human Rights, there is no justification for differentiating between the status of judges of the Supreme Court and judges of common courts and other courts. To date, neither the European Court of Human Rights nor the Court of Justice of the European Union has ruled on such a differentiation in the assessment and consequences of defects.

The constitutional basis for the proposed solutions is based on the arguments contained in the judgment of the Constitutional Tribunal of 8 May 2012, ref. no. K 7/10. The analogy between the so-called horizontal promotions, which were the subject of the Constitutional Tribunal's assessment, and appointments at the request of the current Council, is that in both cases Article 179 of the Constitution of the Republic of Poland did not constitute the legal basis for the request of the National Council of the Judiciary and the decision of the President of the Republic of Poland to appoint a judge. Neither in case law nor in literature has the constitutional admissibility of the statutory removal of judges from office, adopted in this

judgment, been questioned, obtained at the request of the National Council of the Judiciary and completed by appointment by the President of the Republic of Poland, when the appointment was made solely on the basis of the Act, and not Article 179 of the Constitution of the Republic of Poland. Reference to this precedent is all the more justified in the current situation, where appointments at the request of the current Council were made in violation of the Constitution of the Republic of Poland and international standards.

In its judgment of 8 May 2012, ref. no. K 7/10, the Constitutional Tribunal unequivocally stated that the appointment of judges within the meaning of Article 179 of the Polish Constitution is based on cooperation between the President of Poland, as the body with a direct social mandate, and the National Council of the Judiciary, i.e. a body which, according to the intention of the framers of the Constitution, is to safeguard the independence of the courts and judges, and the current Council does not meet this requirement. Therefore, the loss of constitutional identity by the current Council, both in terms of its composition and its ability to safeguard the independence and impartiality of judges, means that resolutions on submitting proposals to the President of the Republic of Poland for the appointment of a judge have no legal effect. This circumstance should be taken into account by The President of the Republic of Poland, who, pursuant to Article 126 of the Constitution of the Republic of Poland, is responsible for ensuring compliance with the Constitution. If, despite this, the President of the Republic of Poland accepts a motion from a body that is not the National Council of the Judiciary within the meaning of Article 186(1) of the Constitution of the Republic of Poland, such a motion is based solely on statutory provisions, and the act of appointing a judge by the President of the Republic of Poland on the basis of such a motion is not an appointment within the meaning of Article 179 of the Constitution of the Republic of Poland. Thus, the guarantees of irremovability under Article 180 of the Constitution of the Republic of Poland do not apply to persons appointed at the request of the current Council, as these guarantees apply only to judges within the constitutional meaning. The office of a judge established solely by statute is unknown under Chapter VIII of the Constitution of the Republic of Poland. Only the guarantees under Article 60 of the Constitution of the Republic of Poland apply to it. It is therefore permissible for the legislator to regulate the effects of appointments made on the basis of a statute but which did not constitute appointments within the meaning of Article 179 of the Constitution of the Republic of Poland.

The assumptions adopted are consistent with the interference in the principle of the irremovability of judges that is permissible under international standards. Thus, even if we assume – purely for the sake of argument – that the proposed solutions lead to such interference (which is not the case, however, because the appointments of the President of the Republic of Poland under consideration did not constitute appointments within the meaning of Article 179 of the Constitution of the Republic of Poland), the case law of the European Court of Human Rights allows for the dismissal of judges as a means of restoring the rule of law violated as a result of systemic flaws in appointments, which is precisely the situation currently prevailing in Poland.

This exception is made in order to avoid perpetuating a situation that is contrary to the rule of law, which would result from strictly adhering to the standard of the irremovability of judges in a situation where the appointment to the office of judge was made in violation of constitutional principles or European standards. As the Venice Commission rightly noted in its opinion of 14 October 2024: "A different position would mean that the government could disregard or circumvent the constitutional provisions on appointment and then invoke the constitutional principle of security of tenure to make such an appointment irreversible, which would be contrary to the principle of the rule of law" (point 15 of the opinion). This position was taken by the Court of Justice of the European Union in a case directly concerning Poland, namely in its judgment of 24 June 2019, C-619/18, where it stated that ‘the principle of irremovability requires, in particular, that judges be able to remain in office until they reach the mandatory retirement age or the expiry of the term of office, if it is temporary in nature. Although this principle is not absolute, it may, in accordance with the principle of

proportionality, be subject to exceptions only if they are justified by overriding and legally justified reasons" (point 76). This allows us to assume that if the appointment to a judicial position was flawed in the light of constitutional standards, the protection of the permanence of such a relationship, which would result from compliance with the principle of irremovability, is significantly weaker and must give way to other objectively justified and serious objectives (see A. Sajó, The Limits of Judicial Irremovability from the Perspective of the Restoration of the Rule of Law: *A View from Strasbourg*, [in:] *Rule of Law in Europe*, ed. F. Marques, P. Pinto de Albuquerque, Cham 2024, pp. 57–59). Such interference therefore requires an objective need and the adoption of proportionate solutions.

In light of the above comments, it must be concluded that the starting point for systemic reform of the judiciary and regulation of the status of improperly appointed judges must be the assumption that judges appointed by the National Council of the Judiciary operating between 7 March 2018 to 13 May 2026, as judges appointed solely on the basis of the Act and not the Constitution of the Republic of Poland, are not absolutely protected by the guarantee of irremovability of judges provided for in the Constitution of the Republic of Poland and in European standards.

III. The draft regulations take into account the position of the Venice Commission.

The proposed solutions take into account the positions contained in the opinion of the Venice Commission of 14 October 2024.

For reasons explained in more detail below, the Drafting Committee advocates statutory regulation of the status of persons appointed to judicial positions to the greatest extent possible as a solution that would avoid prolonged paralysis of the judicial system and restore, within a reasonable time, the right to an independent and impartial tribunal established by law.

With regard to the opinion of the Venice Commission, it should be emphasised that it did not take a position on the admissibility of statutory regulation of the return to previous positions by persons holding the office of judge or practising another legal profession (point 33 of the opinion). However, it criticised the possibility of declaring by law that all appointments made by the current Council within a specified time frame are invalid ex tunc (point 49 of the opinion). However, as explained in point I of the recitals, the proposed mechanism does not provide for this. On the contrary, the draft regulates the effects of the current Council's resolutions *ex nunc* and refers to the main recommendations of the Venice Commission on how to restore the rule of law (point 18 of the opinion). Thus:

a) the draft, which is particularly important in the light of the Venice Commission's opinion of 14 October 2024, avoids a prolonged paralysis of the judicial system, which results, on the one hand, from the proposed mechanism of statutory delegation and, on the other hand, from the relatively short time needed to achieve the effects of the law.

It should be clarified that the drafters considered an alternative solution, which was reflected in the draft prepared by the Commission for the Codification of the Judicial System and the Public Prosecutor's Office, providing for the regulation of the effects of resolutions adopted by the current Council by entrusting this task to the National Council of the Judiciary, which is independent of the executive and legislative branches. The formula proposed in the alternative draft for solving the problem of defective judicial appointments involved grouping, i.e. the properly constituted National Council of the Judiciary adopting resolutions collectively in relation to persons affected by the same effects, divided into persons holding positions in the Supreme Court, in common courts, in administrative courts and in military courts. This formula was intended to enable the Council to make assessments within individual groups, thus directly taking into account the recommendations formulated in the opinion of the Venice Commission of 14 October 2014. The draft provided for differentiated effects in relation to persons eligible for individual groups. The effects were determined taking into account the

gravity of the violation in relation to the legal situation of the candidates classified in particular groups, as well as the awareness of the need to ensure the efficient functioning of the judicial system and to guarantee protection against a further deepening of its crisis.

This solution has been abandoned in the present draft, which proposes the broadest possible statutory regulation of the effects of resolutions of the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026. (*ex lege* option) This solution is supported by the desire to restore the right to an independent and impartial tribunal established by law within a reasonable time, which would not be possible if this task were entrusted to a properly constituted National Council of the Judiciary in relation to all groups of judges whose status requires rehabilitation.

For these reasons, the drafters decided to adopt the option of statutory regulation of the effects of resolutions of the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026, which, as explained in more detail in point XI of the recitals , should allow for the completion of most of the repeated competitions before the National Council of the Judiciary at the turn of 2027 and 2028.

b) the draft implements the rulings of national courts and international tribunals referred to in point I of the recitals. In this sense, the systemic flaw is also an element of the individualised assessment of a specific judge expected by the Venice Commission, as discussed in more detail in point II of the recitals;

c) with regard to the category of novice judges, the draft provides for ex lege confirmation, as of the date of entry into force, of the validity of applications for their appointment to judicial positions made on the basis of resolutions adopted by the flawed National Council of the Judiciary, as discussed in more detail in point IV of the grounds;

d) the draft implements the position of the Venice Commission also insofar as it differentiates the status of these persons, taking into account their legal situation, and determines in a proportionate manner the consequences of a defective appointment to the office of judge depending on that situation;

e) the proposed consequences for the group of judges who took part in the promotion procedure before the improperly constituted National Council of the Judiciary will apply ex nunc upon the entry into force of the Act, and their maintenance will depend on a final decision in proceedings conducted again – by a National Council of the Judiciary that is independent of the legislative and executive authorities and has been properly constituted – concerning appointments to judicial positions that were previously concluded by resolutions of the defectively constituted Council;

f) the notification by the Minister of Justice that a specific person is subject to the effects of the proposed Act will be subject to appeal to the Supreme Court, which already provides a basis for judicial review of the proposed solutions, and thus ensuring access to the courts for persons affected by the proposed effects, as discussed in more detail in point V of the explanatory memorandum.

It should be clarified that the drafters assume that judicial review of the effects specified in the bill can be fully carried out in the context of repeated competitive proceedings for vacant judicial positions, because the opening of these competitions and the participation of persons appointed to the office of judge at the request of the current Council is intrinsically linked to the vacancy of judicial positions. It should be emphasised that although, from a technical and legal point of view, the concept of repeated competitive (nomination) procedures has been used here, in terms of the composition of the group of entities participating in these procedures and the criteria taken into account in these competitions, the National Council of the Judiciary has been given the possibility to decide to maintain the effects resulting from the Act.

The use of such a technical and legal construct is justified, on the one hand, by the desire to efficiently and quickly regulate the effects of the resolutions of the current Council and, on the other hand, by the desire to ensure that the assessment of individual qualifications for the position of judge is carried out in conditions of transparent competition for vacant judicial positions. Weighing these values, the draft assumes that the assessment of individual competences for the position of judge cannot be carried out *in abstracto*, but must take into account a comparison with other potential candidates for the position, which corresponds to the model adopted in Poland for selecting candidates for judicial positions in conditions of competition. What is particularly important is that in an assessment carried out *in abstracto*, i.e. in the absence of other candidates, it is difficult for the National Council of the Judiciary to carry out a substantive assessment of candidates in a manner that is open and transparent to individuals (future parties to proceedings). This solution is also justified by the guarantee of equal access to public service for those judges who, due to the flawed status of the National Council of the Judiciary, refrained from participating in promotion competitions;

g) the re-running of competitions will allow the National Council of the Judiciary to assess the individual qualifications of candidates for the position of judge. This assessment will take place in conditions of open competition in order to ensure that justice is administered by persons who meet the highest substantive criteria;

h) the draft provides that judges who took up their first judicial position in accordance with the standard set out in Article 179 of the Polish Constitution and then changed their place of service within the same branch of the judiciary will be delegated by law to perform judicial duties in the court where they currently hold positions or to which they have been transferred; such statutory delegation is to last two years (with the possibility of resignation with six months' notice) and may be extended for the judge's request, provided that the judge participates in the repeated competition. Thus, the draft allows judges who have decided to participate in repeated proceedings to continue adjudicating in the court where they took up their position until the competition is decided, provided that this is justified by the needs of the administration of justice and the will of the judge himself. This makes it possible to limit the negative effects of a change of place of employment for a judge affected by the Act until the outcome of the repeated competition. This is all the more so as the draft provides for a solution ensuring that judges delegated to a higher court receive remuneration at the rate applicable to the place of employment in the court where the delegated judge performs his or her duties. Importantly, the adoption of such a solution also protects the parties to the proceedings from the effects of a ruling issued by a person who has been improperly appointed to the office of judge, because in this case *the* judge's *vote* to adjudicate at their current place of employment no longer results from an improper appointment at the request of the current Council, but from the original act of appointment based on Article 179 of the Constitution of the Republic of Poland and the delegation based on the proposed act.

IV. The effects of resolutions adopted by the National Council of the Judiciary acting in the period from 7 March 2018 to 13 May 2026.

The consequence of the constitutional invalidity of appointments made at the request of the National Council of the Judiciary, which – as explained in point I of the grounds – has lost its constitutional identity, leading to the President of the Republic of Poland making appointments solely on the basis of the provisions of the Act and not Article 179 of the Constitution of the Republic of Poland, is the possibility of regulating the effects of the resolutions of the current Council by means of an Act.

This is reflected in Article 2(1) of the draft, which provides that the resolutions of the current Council on the submission of a motion for appointment to the office of judge of the Supreme Court, a judge of the Court of Appeal, a judge of the Regional Court, a judge of the District Court, a judge of the Supreme Administrative Court, a judge of the Provincial Administrative

Court, a judge of the Regional Military Court or a judge of the Garrison Military Court, shall be deprived of legal force. In this way, the draft implements the requirement resulting from the rulings of national courts and international tribunals to restore the rule of law by regulating *ex nunc* the effects of defective appointments made by the current Council. The legal effects of depriving the resolutions of the National Council of the Judiciary of legal force, formed in such a way that the persons appointed by the President of the Republic of Poland to its do not constitute an independent and impartial tribunal established by law are specified in subsequent provisions of the Act.

An analysis of the situation of persons appointed to the office of judge on the basis of these resolutions justifies grouping them into the following main categories:

a) persons who are assessors in common courts appointed to the position of district court judge;
b) persons who are assessors in provincial administrative courts appointed to the position of judge of a provincial administrative court;
c) persons who are court clerks and assistants to judges who have passed the judicial examination and were eligible to apply for appointment as a judge within 5 years of passing the examination or by 21 June 2024, appointed to the position of district court judge;
d) persons exercising their right to return to the profession of judge,
e) persons who are judges appointed to their first position on the basis of Article 179 of the Constitution of the Republic of Poland and who are applying to the current Council for appointment to the office of judge in another court or in a higher court;
f) persons applying for appointment to the office of judge who have not previously been judges;
g) persons applying for appointment to the office of judge of the Supreme Court or judge of the Supreme Administrative Court who have not previously been judges;
h) persons appointed to the position of judge who have retired or been transferred to retirement.

The draft introduces differentiated effects with regard to persons eligible for the above-mentioned groups. These effects were determined taking into account the gravity of the violation in relation to the legal situation of the candidates included in each group, as well as the need to ensure the efficient functioning of the judicial system and to protect it from further crisis. This solution is based on a mechanism of proportional weighting of values, as pointed out by the Venice Commission in its opinion of 14 October 2024.

IV.1 Novice judges, judges exercising their right to return to the profession of judge

The draft provides that in the case of persons who are assistant judges (points (a) and (b) above), persons who are court clerks and assistants to judges (point (c) above) and persons exercising their right to return to the profession of judge (point d above), their appointment to the position of judge will be confirmed *ex lege* on the date of entry into force of the Act (Article 2(2) in conjunction with paragraph 1), with the effect of preventing any future challenges to their status as duly appointed judges.

The above-mentioned effect will cover a total of approximately 1,200 persons. The largest subgroup in this number (682 persons in common courts and approximately 100 persons in administrative courts) are persons appointed to the position of judge after completing their judicial traineeship. In their case, it is important to note that they did not participate in competitions involving the improperly appointed National Council of the Judiciary, as they were only transferred from the position of judicial assessor to that of judge. In addition to judges after judicial traineeship, this group mainly includes novice judges who passed the judicial exam, did not undergo traineeship, and worked in courts as court clerks (approximately 280 persons) or judge's assistants (approximately 120 persons) before taking up the office of

judge. In order not to lose their right to take up the position of judge as a result of passing the judicial exam, they were forced to appear in the nomination procedure before the National Council of the Judiciary within the time limit specified by law.

The drafters' solution takes into account the fact that, on the one hand, these persons, after passing the judicial examination, represent a high level of substantive preparation for the office of judge, and on the other hand, found themselves in a coercive situation and could not withdraw from participating in the competition proceedings before the defective National Council of the Judiciary due to the risk of losing their right to hold the office of judge. Thus, the drafters, taking as their criterion the forced situation of persons who were compelled by their legal situation to initiate and conduct the nomination process before the flawed National Council of the Judiciary, indicated in Article 2(2) of the Act the groups of current judges who are not affected by the effects described in Article 2(1) of the Act.

This group includes:

1. district court judges appointed to the office of judge in accordance with the procedure specified in Article 106xa of the Act of 27 July 2001 – Law on the System of Common Courts, i.e. assessors, who had to apply for appointment to the office of judge due to the expiry of the time limit specified by law;
2. district court judges whose eligibility to apply for appointment to judicial office was based on Article 15(11), Article 18 or Article 20(1) of the Act of 11 May 2017 amending the Act on the National School of Judiciary and Public Prosecution, the Act – Law on the System of Common Courts and Certain Other Acts (Journal of Laws of 2017, item 1139 and of 2018, item 1443), i.e. persons who have obtained the right to apply for the office of judge in connection with passing the examination, but have not completed their judicial traineeship, including former clerks and assistants to judges;
3. judges of provincial administrative courts whose eligibility to apply for appointment to the office of judge resulted from holding the position of assistant judge in a provincial administrative court, for which the candidacy was submitted before the date of entry into force of the Act of 8 December 2017;
4. judges who resigned from office and then returned to office and their previous position, if they took up their previous position in a manner other than as a result of a request for appointment as a judge submitted to the President of the Republic of Poland by the National Council of the Judiciary operating between 7 March 2018 to 13 May 2026, or in the manner referred to in points 1–3 above.

In the case of assessors (both in common and administrative courts), it is also important to note that the role of the National Council of the Judiciary was very limited, and its resolutions did not constitute a decision on the competition for vacant judicial positions. It should be emphasised that, under the current legal framework, only a positive result in the judicial examination determines whether a candidate obtains the position of assessor. All graduates of the National School of Judiciary and Public Prosecution are guaranteed assessor positions by the Minister of Justice and do not participate in competitive procedures. What is more, failure to obtain an assessor position results in the need to reimburse the costs of education during the application process. It should also be noted that during the many years of operation of the judicial assessor institution in its current form, in the course of examining hundreds of applications for the conversion of assessor positions into judicial positions, there has been only one case of a person not being presented for appointment to a position after completing their judicial assessor training judge[1]. This demonstrates the symbolic role of the National

[1] This case is described in a table on page 44 of the information available at website https://krs.pl/pl/dzialalnosc/sprawozdania/1369-informacje-o-dzialalnosci-krs-w-2020-r-2.html). Characteristically, the candidacy was rejected not on the basis of a substantive assessment, but due to doubts about the ethical attitude of the person running for the office of judge. It should be noted that the National Council of the Judiciary, composed in accordance with the constitutional standard (before its term of office was interrupted due to an unconstitutional change in the procedure for selecting judges-members of the NCJ by the Act

Council of the Judiciary in relation to the appointment of assessors to judicial positions. Pursuant to Article 106i § 8 of the Act of 27 July 2001 – Law on the System of Common Courts: "A judicial assessor shall perform the duties of a judge for a period of 4 years from the date of taking up the position of assessor", and if a judicial position is not taken up during this period, his or her further vote to adjudicate shall expire. Moreover, if these persons did not decide to participate in the competition procedures before the unconstitutionally formed National Council of the Judiciary, they would lose the rights resulting from passing the judicial examination.

Another significant part of this group consists of individuals who, prior to their appointment as judges, had already worked in the judicial system (primarily as court clerks or judges' assistants) and had passed the judicial examination. The fact that these individuals passed the judicial examination, which is considered the most difficult legal examination in Poland, confirms the high and specific qualifications of individuals from the aforementioned groups to hold the office of judge. Their continued work in the justice system, either as judicial assistants (whose primary task is to draft orders, rulings or their justifications[2], which is the essence of a judge's work outside the courtroom) or as court clerks (who perform tasks in the field of broadly understood legal protection[3]), allowed them to consolidate the practical application of the knowledge acquired during their preparation for the judicial examination. If these persons had not decided to participate in the competition procedures before the unconstitutionally formed National Council of the Judiciary, they would have lost the rights resulting from passing the judicial examination. According to the rules established by the Act of 11 May 2017 amending the Act on the National School of Judiciary and Public Prosecution, the Act on the System of Common Courts and certain other acts (Journal of Laws, item 1139 and item 1443 of 2018), court clerks and judicial assistants who have obtained the right to be appointed as the position of district court judge, retain this right for 7 years from the date of entry into force of this Act (Article 18(1) of the Act). Court clerks and judicial assistants who passed the judicial examination after the entry into force of the aforementioned Act may be appointed to the position of district court judge within 5 years from the date of passing the judicial examination (Article 20(1) of the Act). It is this factor and the time pressure that distinguishes their situation from that of judges who decided to participate in competitions for higher judicial positions, or persons practising other legal professions who did not pass the judicial examination and derived their eligibility to take up the office of judge from their professional practice in other legal professions. These persons were not under time pressure resulting from the regulations and could wait with applying for judicial positions until the National Council of the Judiciary was restored to its constitutional form.

The drafters decided to include in this group of judges also provincial administrative court judges who took up their positions as assistant judges in these courts, provided that their assistantship began before the amendments to the National Council of the Judiciary Act were made on the basis of the Act of 8 December 2017. In a situation where these persons participated in the competition procedure for the position of assessor before the National Council of the Judiciary was still functioning properly, and later only their position was transformed, as in the case of assessors in common courts, the role of the flawed National Council of the Judiciary was also symbolic in this case of taking up judicial positions.

This group also included judges who returned to office after resigning from their judicial positions[4]. It is important to note here that they were originally appointed to the judicial

of 8 December 2017), never questioned the candidacy of a person applying for the office of judge after completing their probationary period.

[2] See § 2 of the Regulation of the Minister of Justice of 8 November 2012 on the activities of judicial assistants (Journal of Laws, item 1270).

[3] See Article 2 § 2 of the Act of 27 July 2001 – Law on the System of Common Courts.

[4] This applies to a group of judges who resigned from office in connection with their appointment, nomination or election to perform functions in state bodies, local government, the diplomatic service, consular service or in international and supranational organisations operating on the basis of international agreements ratified by the Republic of Poland, and who subsequently return to the judicial service (Article 89 § 2 and § 3 of the Act of 27 July 2001 – Law on the System of Common Courts).

positions they resigned from at the request of the National Council of the Judiciary, operating in accordance with the Polish Constitution. The role of the new, legally flawed National Council of the Judiciary was also marginal in this case. It should be added here that this legal situation may apply to only a few judges at most.

The special situation regarding equal access to public service, guaranteed by Article 60 of the Polish Constitution, justifies recognising the validity of the appointments of these persons – made with the participation of the unconstitutionally constituted National Council of the Judiciary – to judicial positions. At the same time, as has been pointed out many times, this effect will occur *ex lege* upon the entry into force of the proposed act (Article 2(2) in conjunction with paragraph 1). The indicated group of judges retains their office and judicial position from the time of their appointment to office. If these persons had not applied for the conversion of their status to that of a judge within the time limit specified by law, they would have lost access to public service in the form of the possibility of holding the office of judge. All judges listed in Article 2(2) of the Act, in view of the coercive legal situation in which they find themselves through no fault of their own, should not bear the consequences of the establishment of a law that is contrary to the Polish Constitution and, consequently, should not be deprived of the opportunity to administer justice as judges. An alternative to the adopted solution, which assumes *ex lege* confirmation of the correctness of the status of the above-mentioned group of judges, would be to assume that these persons should go through the entire nomination process from the beginning, which, firstly, would violate the right of citizens to a court, which also includes the right to efficient examination of a case, and, secondly, would mean that it would be legitimate to refrain from administering justice until the nomination process had been completed by the judges in question. The group in question accounts for approximately 10% of the total number of judges in the common courts in Poland, and, in addition, they adjudicate in courts of first instance, i.e. those which receive the largest number of all court cases. Furthermore, given that these are judges adjudicating in district courts, it is practically impossible to replace them, even by means of so-called horizontal delegations (from other equivalent courts), as all district courts throughout the country are struggling with an insufficient number of adjudicators. At the same time, the confirmation ex lege of the validity of appointments to the office of judge of the indicated group of judges, as provided for in the draft provisions, clearly excludes, in any respect the possibility of challenging decisions made with the participation of these persons in the years 2018-2025 on the grounds of alleged defective composition of the court, which is motivated precisely by ensuring and protecting the legal security of citizens.

In such challenging circumstances, when the justice system cannot afford to have such a large number of judges administering justice and conducting hundreds of thousands of proceedings, a fully adequate and appropriate solution is to reorganise the status of judges under the provisions of the draft law.

listed in Article 2(2) who took office with the participation of the unconstitutionally constituted National Council of the Judiciary. It should be emphasised that this solution is a one-off measure and is motivated by the special situation that has arisen as a result of the National Council of the Judiciary operating since 2018 in a manner inconsistent with Article 187(1) of the Polish Constitution. Given the large number of judges who require confirmation of their flawed investiture, only such a solution is capable of reconciling the need to provide the judges in question with *a* constitutionally based *vote* to adjudicate and the needs of the judicial system, from which approximately 1,000 active adjudicators cannot be excluded without significant detriment to citizens. It should also be added that the European Commission for Democracy through Law (Venice Commission), in its opinion of 14 October 2024 in case no. CDL-AD(2024)029, also noted that the European Court of Human Rights, in its pilot judgment of 11 November 2023 in case 50849/21 Wałęsa v. Poland, did not determine how to "deal" with the status of improperly appointed judges. Poland is free to choose the legal instruments it will create and use for this purpose, provided that the measures used in this

process comply with the European Convention on Human Rights and the general requirements of the rule of law (point 12 of the opinion).

With regard to current judicial assessors, there is no need to regulate their status specifically, as they will be able to obtain judicial appointments from the future National Council of the Judiciary, which will be formed in accordance with constitutional and convention standards.

IV.2 Persons who are judges applying for appointment to the office of judge in another court or in a higher court.

With regard to persons who are judges applying for appointment to the office of judge in another court or in a higher court (point e above), the draft provides for their reinstatement to the positions entrusted to them in accordance with Article 179 of the Constitution of the Republic of Poland. This group numbers approximately 1,100 persons. In relation to them, the draft follows the rule of return, as a judge who was originally correctly *appointed* may only lose their position in the situations and in the manner specified in Article 180 of the Constitution of the Republic of Poland. At the constitutional level, such a judge has already been correctly appointed to the office of judge and his or her employment relationship, within which he or she administered justice, was originally correctly established. In this respect, he or she is protected by the guarantees of Article 180 of the Constitution of the Republic of Poland. In order to regain the correctly granted legitimacy to administer justice, the judge should therefore return to his place of employment at the court indicated to him in the decision of the President of the Republic of Poland issued on the basis of Article 179 of the Constitution of the Republic of Poland, based on a properly formulated motion of the National Council of the Judiciary.

The above will lead to modifications, by way of an act of law, to the effects of the President of the Republic of Poland's decision to appoint a judge. As a rule, such modifications are permissible in situations specified in Article 180 of the Constitution of the Republic of Poland. However, the effects of decisions of the President of the Republic of Poland issued without a basis in Article 179 of the Constitution of the Republic of Poland may be subject to modification to a greater extent if this is justified by the need to implement constitutional principles. This justifies the adoption of solutions that will allow the place of employment to be determined in such a way that a person appointed to office at the request of the current Council, from a judge appointed solely on the basis of the Act, becomes again a judge appointed on a constitutional basis.

It should be emphasised that the Polish Constitution does not require that the principle of return be implemented only within courts of a given type, and in particular does not prohibit the return of a person appointed to the office of judge in the Supreme Court or the Supreme Administrative Court to a common court. A different assessment would have to lead to the conclusion that the employment relationship of these persons ceases. However, the draft does not go that far, given that Articles 175, 179 and 180(1) of the Constitution of the Republic of Poland only stipulate that, at the request of the National Council of the Judiciary, the President of the Republic of Poland appoints a judge for an indefinite term and entrusts him or her *with the power* to administer justice. The Constitution of the Republic of Poland does not specify the content of the decision of the President of the Republic of Poland with regard to the place and scope of a judge's administration of justice. The basis for determining the place and scope of the administration of justice is the law. Finally, the Constitution of the Republic of Poland does not provide for separate procedures for appointing judges of common courts to the Supreme Court or administrative courts. Therefore, since it is the statute that provides the legal basis for the President of the Republic of Poland to specify in his decision the type of court to which a given person is appointed, the statute may also specify the court to which that judge returns. There are no constitutional obstacles to the principle of return expressed in the statute consisting in the reinstatement of a judge to a court of a different type (e.g. from the Supreme Court to a common court).

IV.3 Persons who, with the participation of an improperly constituted National Council of the Judiciary, entered the judicial profession from other legal professions.

However, this solution cannot apply to a group of approximately 350 people in common courts and a group of 80 people in the Supreme Court and the Supreme Administrative Court, who were not originally correctly *appointed* and were from the outset judges appointed solely on the basis of the Act (points f and g above). This category consists primarily of persons who applied for the office of judge while being prosecutors, barristers, legal advisers, notaries or academics. The members of this group were in a different position from the aforementioned assistant judges, clerks or assistants to judges, because in their case the right to apply for appointment to the office of judge was not granted for a period specified by law, but was of an indefinite nature. This justifies a different outcome for these persons. This outcome is the termination of their employment as judges. For the reasons discussed in point II of the recitals, this solution should be considered acceptable in the light of both constitutional and international standards.

Notwithstanding the above, the draft takes into account the need to regulate the effects of the termination of the employment relationship as a judge by virtue of the Act in a manner that is as proportionate as possible, which is reflected in the regulations protecting the rights of persons affected by these effects, discussed in detail in point VI of the recitals.

On the basis of the criteria set out above, the Act also specifies the effects on persons who have retired or been transferred to retirement (point (h) above).

As indicated in point I of the recitals, the draft provides that the National Council of the Judiciary, under the supervision of the Supreme Court, will decide on the maintenance of the effects of the Act by ruling in reopened proceedings concerning appointments to judicial positions, which were currently concluded by resolutions of the defectively constituted Council.

Regardless of this, as explained in point V of the recitals, the draft provides for a separate instrument of judicial review already at the stage when the effects of the Act are taking place.

V. Judicial review at the stage of the effects of the Act

The draft law assumes that the effects it provides for concerning the status of judges appointed at the request of the National Council of the Judiciary formed on the basis of Article 9a of the Act of 8 December 2017 will take effect by operation of law upon the entry into force of the Act. The occurrence of these effects in relation to individual judges will be determined by the Minister of Justice, who is required by the draft to publish in the Official Journal of the Republic of Poland Monitor Polski a list containing the first names, surnames, positions and dates of appointment to those positions of each of the judges, together with an indication of the effects of the Act and their legal basis. In light of the draft, the Minister of Justice's action is purely informative. On the basis of the published list, all entities and authorities for which it is legally relevant will be able to learn about the effects arising directly from the Act in relation to a specific judge. Above all, however, this solution serves to officially confirm the legal consequences for the judge concerned. The entry in the list published by the Minister of Justice will authoritatively state the legal situation of the judge listed in connection with the entry into force of the Act.

The draft act contains solutions that modify, to varying degrees, the employment relationship of persons appointed to the office of judge and, in exceptional circumstances, provide for the termination of that relationship by operation of law. Due to the importance and scope of the impact of these solutions on the personal and professional rights of these persons, the draft assumes that the issue of the effects resulting from the Act should be subject to direct judicial review. This is also in line with the suggestion contained in the opinion of the

Venice Commission of 14 October 2024, which expressed the view that persons appointed to judicial office should have the right to seek judicial review of the invalidity of their appointment or promotion if the decision to invalidate it was not taken by a judicial authority, and that the fact of appealing against a decision does not necessarily have to result in the suspension of its execution for the duration of the judicial proceedings (point 36).

In implementation of these recommendations, the draft contains separate provisions setting out the rules for the exercise by the persons concerned of their right of access to the courts and regulating the procedure for conducting proceedings in such cases. In this respect, the draft provides for the admissibility of an appeal by the person concerned to the Supreme Court in order to examine the correctness of the determination in the entry in the register, announced by the Minister of Justice, of the effects of the Act in relation to that person. With reference to the position expressed in the resolution of the full bench of the Supreme Court of 14 January 2014 (BSA-I-4110-4/13), the draft assumes that the actions of the Minister of Justice concerning the status of judges cannot be classified as a form of public administration and do not constitute a decision in an administrative case, but relate to the sphere of constitutional law, which may indicate the Minister of Justice as the holder of a specific competence affecting the content of a judge's employment relationship. Nevertheless, in order to avoid any doubts that may arise in this regard, the draft stipulates that no appeal to the administrative court shall be lodged against the announcement of the Minister of Justice specifying the effects of the Act. However, following the model of the solution in force in Article 74 § 4 of the Act of 27 July 2001 – Law on the System of Common Courts, it has been decided that the Supreme Court should be the court competent to review the manner in which the Minister of Justice determines the effects of the Act. De lege lata, the Supreme Court is also the body appointed to review resolutions adopted by the National Council of the Judiciary in individual cases concerning judges (Article 44(1) of the Act of 12 May 2011 on the National Council of the Judiciary). These regulations confirm that the Supreme Court is treated in the national legal system as the court competent in matters concerning the status of judges and the performance of their duties, which justifies entrusting this Court with reviewing the effects that are to occur in relation to judges on the basis of the proposed Act.

The draft stipulates that appeals to the Supreme Court should be lodged within two weeks of the announcement made by the Minister of Justice, and that lodging an appeal will not suspend the effects of the Act, which takes into account the position expressed in the opinion of the Venice Commission of 14 October 2024. In the proceedings conducted in connection with the appeal, the correctness of the effects indicated by the Minister of Justice in the published entry in the register will be subject to review. When considering the appeal, the Supreme Court will be entitled to declare that the appellant has been wrongly included in the group of persons affected by the effects of the Act. In such a situation, the Supreme Court, upholding the appeal, will revoke the entry in the register and thus terminate the proceedings in relation to a person who should not have been included by the Minister of Justice in the published register. On the other hand, if the Act is justified in relation to the appellant, and at the same time incorrect determination of the consequences arising from this Act, the Supreme Court will be obliged to revoke the entry in the register in order to correctly determine these consequences in the register. Such a ruling, pursuant to the applicable Article 365 § 1 of the Code of Civil Procedure, will be binding on the Minister of Justice, and as a result of its issuance, pursuant to the proposed provisions, there will be an obligation to re-announce the register correctly specifying the consequences for the appellant, taking into account the results of the proceedings before the Supreme Court. According to the draft, the person concerned will have the right to appeal to the Supreme Court on general terms against the re-entry in the published list.

With regard to the regime of cases conducted as a result of appeals, the draft provides that the Supreme Court should take action on the basis of the relevant provisions of the Act of 17 November 1964 - Code of Civil Procedure concerning cassation appeals. The decision issued in these cases will concern only the legal sphere of the person who lodged the appeal, while

the Minister of Justice, as the authority determining the effects of the Act and applying its provisions in this respect, cannot be considered an interested party in the case. Therefore, it was considered appropriate to refer the cases brought as a result of appeals to non-contentious proceedings, which are organised in such a way as to enable the case to be heard and a decision to be issued even in the absence of a legal opponent of the person initiating the proceedings before the court.

Due to the importance of matters concerning the correctness of determining the effects introduced by the Act and the precedent nature of the solutions applied, the draft introduces special regulations concerning the composition of the Supreme Court that will hear appeals. The draft provides that appeals will be heard by a qualified panel of five judges appointed from among all Supreme Court judges, as well as judges delegated to perform judicial functions in the Supreme Court, with the reporting judge being determined according to the order in which the appeal was received and taking into account the alphabetical order of the names of all Supreme Court judges on the list kept for this purpose. A judge delegated to the Supreme Court may not be the reporting judge. The panel hearing the appeal will be chaired by a judge of the Supreme Court holding a position in the Civil Chamber or in the Labour, Social Security and Public Affairs Chamber, which is related to the fact that the proceedings in the case will be conducted on the basis of the relevant provisions of the Code of Civil Procedure.

In order to ensure the proper efficiency of proceedings before the Supreme Court and to achieve the related stabilisation of legal relations in the field of judicial appointments, the draft provides that it will not be permissible to restore the deadline for lodging an appeal, and that appeals that do not meet the formal requirements will be rejected without a request for correction or supplementation. To achieve the same objective, the draft introduces indicative deadlines to ensure the proper dynamics of the Supreme Court's activities. According to the draft, the Supreme Court will be required to decide on an appeal no later than one month from the date of its submission in cases concerning persons appointed to the office of Supreme Court judge, and in other cases no later than two months from that date.

VI. Re-examination of appointments to judicial positions covered by resolutions of the flawed National Council of the Judiciary

The second from designed by the act stages of restoring the right to an independent and impartial tribunal established under the law consists in re-conducting proceedings (hereinafter also referred to as "competitions") in relation to positions that were filled on the basis of resolutions of the flawed National Council of the Judiciary in 2018-2025. This stage is intrinsically linked to the adopted structure of the regulation of the effects of the resolutions of the current Council by way of an act on persons who are judges applying for appointment to the office of judge in another court or in a higher court, because it is only in these proceedings – conducted before the properly constituted National Council of the Judiciary and under the supervision of the Supreme Court – will the status of the various categories of persons covered by the scope of the Act be finally determined. This is reflected in Article 29 of the draft, which provides for the re-conduct of proceedings for appointment to the office of judge in a position covered by a resolution of the current Council.

In this respect, the draft refers to Iceland's experience with the execution of the judgment of the Grand Chamber of the ECtHR of 1 December 2020 in the case of Guðmundur Andri Ástráðsson v. Iceland (application no. 26374/18). It should therefore be noted that in Iceland, where the aforementioned judgment was enforced, a new competition procedure was implemented in connection with the challenge to the validity of judicial appointments.

It should be clarified that there are significant structural differences between the proposed repeat (repeated) proceedings for appointments to judicial positions and new competitions for these positions. The drafters assume that judicial review of the effects specified in the Act may take place within the framework of repeated competitions for vacant judicial positions, which

is not possible in the case of new competitions. This would not be possible if "new" competitions were announced on general terms, rather than repeated as is the case in the draft. Moreover, in repeated competitions, the same achievements and accomplishments of a given person are subject to assessment as in the original proceedings, with the possibility of also presenting new accomplishments, which is of guarantee significance. At the same time, persons affected by the effects of the Act participate in competitions by virtue of law and do not have to apply for them, but may withdraw from them. Finally, the requirements regarding the length of professional experience necessary to hold the position of judge are assessed on the basis of the provisions in force on the date of application for the judicial position to which the person was appointed on the basis of a resolution of the current Council, which also has a guarantee function.

The draft assumes that regardless of the type of court, vacancies should be announced by the Minister of Justice. The need to coordinate numerous proceedings concerning positions in different courts justifies concentrating the competence to announce vacancies in a single body. The efficient conduct of these competitions is ensured by consolidating all competitions conducted for the same court or the same chamber of the Supreme Court or the Supreme Administrative Court by announcing them jointly, unless this is not possible or expedient. This will reduce the number of competitions announced, allow for joint decisions on candidates applying for positions in the same court, and finally enable competitions for individual courts to be announced in stages. This means, for example, that the Minister of Justice will be able to announce vacancies first in courts within one appellate area, and only after candidates have applied for them or after the proceedings have been completed will he announce vacancies in courts within the next appellate area. In this way, the proposed solutions minimise the negative impact of repeated competitions on the efficiency of court proceedings. It is not required that all vacancies positions filled as a result of repeated proceedings be announced at the same time.

Persons who have taken up the office of judge at the request of the current Council will, as a rule, participate in the repeated proceedings by virtue of law, while retaining the option of withdrawing from the competition. In this regard, the proposed changes to the structure of the Supreme Court leading to the liquidation of the chamber of the Supreme Court in which the judicial position was originally held have been taken into account by allowing candidates to apply for a competition announced for a vacant position in another chamber of the Supreme Court.

The proposed solutions also allow participation in competitions not only to persons in relation to whom the resolutions of the current Council will be repealed in accordance with the procedure and rules set out in the draft, but also to other candidates who meet the requirements for a given position, regardless of whether they participated in the original competitions or not. This will allow those persons who refrained from participating in the proceedings due to the loss of the current Council's constitutional identity and other changes resulting in the unreliability of the competitions to participate in the competitions.

Resolutions of the National Council of the Judiciary adopted in repeated competitions will be subject to appeal to the Supreme Court, which will ensure judicial control of the proposed mechanism. The possibility of appealing against resolutions of the National Council of the Judiciary to the Supreme Court stems from Article 44(1) of the Act on the National Council of the Judiciary.

This solution assumes that the assessment of individual competences to hold the position of judge will be carried out in repeated competition proceedings under conditions of open competition in order to ensure that justice is administered by persons meeting the highest substantive criteria. It should not be forgotten that between 2018 and August 2023, only one candidate applied in over 557 competitions. As many as 45% of these competitions were held for appeal courts, i.e. the highest courts in the common court system (Helsinki Foundation for

Human Rights, *Appointments in 2018–2023 at the request of the so-called "new" National Council of the Judiciary*, Warsaw 2023, pp. 7–8).

In order to guarantee the rights of persons holding judicial positions at the request of the flawed National Council of the Judiciary and taking into account the specific nature of their situation, it was agreed that in their case, the requirements regarding the length of professional experience necessary to take up a position would be assessed on the basis of the regulations in force on the date of submission of the application. The draft therefore preserves the rights of these persons and guarantees them access to the competition regardless of changes in the requirements for taking up office.

VII. Protection of the rights of persons whose employment relationship is terminated until the outcome of the re-competition for the vacant judicial position

Point IV of the explanatory memorandum states that the drafters recognise the need to regulate the effects of the termination of employment as a judge in a manner that is as proportionate as possible, while preserving the protection of those rights that have been definitively acquired and introducing social measures to protect persons in difficult personal circumstances.

Firstly, when determining the status of persons whose employment relationship as judges is terminated, the drafters were guided by the basic rule of returning to their previous position. The list of these positions takes into account the categories of persons eligible to participate in competitions for vacant judicial positions. Thus:

a) persons who, on the date of the adoption of the resolution by the current Council on the submission of a motion for appointment to the position of judge, held the position of legal adviser to the General Prosecutor's Office of the Republic of Poland, have the right, at their request, to return to their previous position or to a position equivalent to their previous one;
b) persons who, on the date of adoption of the resolution by the current Council on the submission of a motion for appointment to the position of judge, held a position in a public institution related to the application or creation of administrative law, have the right, at their request, to return to their previous position;
c) persons who, on the date of adoption of the resolution by the current Council on the submission of a motion for appointment to the position of judge, held the position of prosecutor, may apply for appointment, at their request, to their previous position of prosecutor. The purpose of this solution stems from the fact that the public prosecutor's office is a fundamental element of the system of law enforcement and protection. The efficiency and proper functioning of the system justify the return of judges appointed exclusively by statute to the public prosecutor's office;
d) A different solution was adopted in relation to persons who, on the date of adoption of the resolution by the current Council on submitting a motion for appointment to the position of judge, were practising as barristers, legal advisers or notaries. These persons may apply for be entered on the relevant list or be appointed on the terms specified in separate regulations. In this respect, the implementation of the rule of return is limited by the autonomy of legal self-governments guaranteed by Article 17(1) of the Constitution of the Republic of Poland. It was therefore decided that entry or appointment should be preceded by an appropriate resolution of the professional self-government body.

Secondly, the implementation of the proposed right of return to a previously held position is excluded if a person whose employment relationship ceased with the entry into force of the Act takes advantage of the possibility of being appointed to the position of court clerk. In this respect, the rule of return is replaced by the possibility of remaining in the judiciary in non-

judicial positions, which do not involve the administration of justice but the provision of legal protection in other ways.

On the one hand, the above constitutes a protective solution, allowing for the continuation of professional work in the judiciary until the outcome of the repeated competition for the vacant judicial position (as already mentioned in point V of the recitals) and, on the other hand, mitigates the effects of the termination of employment by virtue of the Act, as the appointment to the position of court clerk will be indefinite. It should be emphasised that the remuneration of court clerks is stable and is determined in proportion to the remuneration of judges.[5] They therefore offer the possibility of continuing professional work for those who do not intend to exercise their rights under the proposed return rule.

With regard to the procedure for taking up the position of a court clerk, the draft provides that the president of the competent court of appeal or the competent administrative court will appoint such a person, at their request, to the position of a court clerk in the common or administrative court where that person held the office of judge. These provisions do not apply to persons appointed to the office of judge of the Supreme Court or the Supreme Administrative Court, as the proceedings for appointment to these positions were affected by qualified defects and, moreover, there are no court clerks in these courts.

Thirdly, the draft regulates the social consequences of the termination of employment as a judge, in particular with regard to maternity, paternity, parental and childcare leave, as well as loans granted to meet housing needs. The draft also provides for family members to retain their right to family allowances on the terms applicable on the date of its creation. The assumption was to regulate this matter as comprehensively as possible in a manner that ensures the protection of those rights that have been definitively acquired and for which there are no constitutional reasons for revoking them (Articles 16-23 of the draft).

Regardless of the above solutions, it should be noted once again that the draft provides for the right to judicial review of the termination of employment and does not preclude the re-establishment of that relationship if the same candidate is selected in a repeat competition.

VIII. Regulations to ensure the smooth functioning of the judiciary during the transition period

As explained in point I of the recitals, the draft aims to guarantee the efficient and, as far as possible, uninterrupted functioning of the judiciary during the period of repeated competitions. For this reason, a system of statutory delegations is proposed.

The draft provides that judges who took up their first judicial position on the basis of Article 179 of the Polish Constitution and then changed their place of service within the same branch of the judiciary will be delegated by virtue of the Act to perform judicial duties in the court where they currently hold positions or to which they have been transferred. In this case, the judge's vote to adjudicate at their current place of employment does not result from a defective appointment at the request of the current Council, but from the original act of appointment based on Article 179 of the Constitution of the Republic of Poland and the delegation resulting from the proposed bill.

The above solution applies to judges of common courts who, at the request of the current Council, hold positions in a district court or a court of appeal, judges of provincial administrative courts who hold positions in the Supreme Administrative Court, and judges of military courts who hold positions in a military district court. Their statutory delegation is to last two years, with the scope of the delegation also includes the completion of cases that the

[5] Pursuant to Article 151b § 4 of the Act of 27 July 2001 – Law on the System of Common Courts, the basic salary of a court clerk is 75% of the basic salary of a district court judge.

judges have commenced during this period. A judge may resign from the statutory delegation with six months' notice.

The period of delegation may also be extended indefinitely by the president of the competent court or the Minister of Justice in the case of military courts at the request of the judge, provided that the judge is participating in a repeat competition. Such delegation shall cease upon the judge's resignation with three months' notice or upon the final conclusion of the repeated competition, unless the judge is nominated for appointment to the court to which he or she is delegated. Thus, the draft allows judges who have decided to participate in repeated proceedings to continue to adjudicate in the court where they have taken up their position until the competition is decided, provided that this is justified by the needs of the administration of justice and the will of the judge himself.

The exception applies only to those persons whose continued adjudication in their position would be incompatible with the perception of the court as an impartial or independent body. In such cases, the National Council of the Judiciary will be entitled to dismiss a judge from the delegation at the request of the President of the National Council of the Judiciary, the president of the competent court and the disciplinary spokesperson (draft Article 27(1) of the Act).

Given the statutory nature of the proposed delegation, its minimum duration and its importance for maintaining the efficient functioning of the justice system during the transition period, a solution is proposed to ensure that judges delegated to a higher court receive remuneration at the basic salary rate for the position of judge in the court where the delegated judge performs his or her duties (draft Article 4(3) of the Act).

IX. Special grounds for repealing a ruling issued with the participation of a person appointed at the request of a flawed National Council of the Judiciary

The draft provides the parties or other participants in court proceedings with a special legal remedy enabling them to challenge judgments issued with the participation of persons appointed to judicial positions at the request of the current Council.

In terms of structure, the proposed solution provides for granting this remedy to parties or participants in proceedings who, at the time appropriate for submitting a motion to recuse a judge, raised objections as to the correctness of the composition of the court of first instance or the independence or impartiality of a person participating in that composition, in relation to whom the current Council adopted a resolution to submit a motion for appointment, due to circumstances related to that person's appointment to the office of judge, and subsequently lodged appeals on that basis. The right to make such a request also applies to a party who has lodged a complaint with the European Court of Human Rights alleging that a judgment was issued by a court that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the European Court of Human Rights has been postponed until the adoption of the corrective measures required by the operative part of the pilot judgment.

However, these requirements will not apply to judgments of the Supreme Court and judgments of the Supreme Administrative Court that decide on the merits of a case and conclusively terminate proceedings, as well as disciplinary judgments concerning judges of administrative courts.

The proposed solutions refer to the position expressed in the justification for the resolution of the three chambers of the Supreme Court of 23 January 2020, BSA I-4110-1/20, that "the attitude of the parties presented in the course of the proceedings, indicating no reservations as to the independence and impartiality of the judge, cannot remain without influence on the subsequent assessment of whether there has been a violation of the standard of impartiality

and independence of the court conducting the proceedings, with the effect of recognising that the court was constituted unlawfully." The draft therefore assumes that the right to challenge a ruling – in a manner corresponding in principle to the regulations on the reopening of court proceedings – cannot be exercised in such procedural situations where a party or participant in the proceedings raises procedural objections (motions, appeals) concerning the adjudicating panel only because of their procedural interest at a specific stage of the proceedings, and therefore their procedural activity aimed at challenging the correctness of the adjudicating panel in the case resulted from a procedural tactic aimed at achieving the expected content of the ruling, regardless of the composition of the court. This assumption therefore guarantees, on the one hand, the right of a party or participant in proceedings to have their case finally decided by a court within the meaning of the Constitution (Article 45(1) of the Constitution of the Republic of Poland) and, on the other hand, ensuring the principle of legal certainty and the validity of final judgments (*res judicata*), guarantees other participants in the proceedings that a final judgment will only be overturned in exceptional circumstances, and therefore when, in the course of the proceedings, the party genuinely sought – regardless of the ruling issued – to have the case heard by a court with the characteristics of a court established by law, independent and impartial.

It should be borne in mind that adopting a different solution would necessitate the review of all rulings issued with the participation of judges appointed at the request of the current Council. Such provisions would in fact reward not those parties or participants in the proceedings who actively sought, by all available means, to shape the composition of the adjudicating panel so that it had the characteristics of a court, but those parties or participants in the proceedings who raised objections to the composition. all available means to shape the composition of the adjudicating panel so that it had the characteristics of a court, but those parties or participants in the proceedings who raised their objections to the composition only when the ruling was not in line with their expectations. It is also easy to see that such a solution would have drastic social consequences, as it would undermine the stability of rulings and negatively affect citizens' trust in the justice system. Reopening such a large number of court cases would not only be an organisational problem for the courts, but above all for the parties to the proceedings, which would also entail additional financial costs for them. For these reasons, the draft provides for limiting the possibility of challenging judgments only to those parties and participants who raised objections at the appropriate time regarding the independence or impartiality of the judge in connection with his appointment.

With regard to the constitutional basis of the proposed mechanism, it should be emphasised that the Constitutional Tribunal has ruled on the issue of limiting the possibility of reopening proceedings in a specific case if the violation of the right to a court is related to its constitutional position (see the Constitutional Tribunal's judgment of 24 October 2007, ref. no. SK 7/06). The nature of such a violation – unlike violations of a substantive or procedural nature – gives the legislator greater freedom in determining the consequences of a violation of the right to a court established by law. It requires weighing different constitutional principles, on the one hand the principle of legal certainty and on the other hand the right to a court.

In the opinion of the drafters, the adopted technique of weighing values ensures the possibility of seeking a reasonable balance in specific court proceedings and the circumstances of a specific dispute. This is particularly important if the repeal of a ruling issued by a defective authority affects parties to court disputes who are in a horizontal relationship with each other (and therefore not in a state-individual relationship). By applying the proposed mechanism, national courts will be able to take into account all the principles underlying the national and EU legal order, such as the principle of legal certainty, the principle of res judicata, or the principle of legitimate expectations in the specific circumstances of the case being decided.

Thus, the proposed admissibility of challenging judgments:

a) applies only to judgments issued before the Act entered into force;
b) applies to rulings issued in cases that have been concluded and are pending; however, the draft distinguishes between the procedures for both categories of rulings;
c) is possible only at the request of a party or other participant in the proceedings;
d) is possible provided that the party raises objections to the correctness of the composition of the court at the appropriate time for the proceedings or if the party has lodged a complaint with the European Court of Human Rights alleging that the ruling was issued by a court that did not meet the requirement of an independent and impartial tribunal established by law, and the examination of the complaint by the Court has been postponed in connection with a pilot judgment procedure.

The draft assumes that the effects of final and non-appealable judgments will be recognised and respected in legal transactions, unless different consequences result from judgments issued by international courts in specific cases (see, for example, the CJEU judgment of 6 October 2021, C-487/19 W.Ż., paragraph 160, in joined cases of 13 July 2023, C-615/20 and C-671/20 YP and others, paragraphs 65-66).

Furthermore, with the exception of cases heard on the basis of the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2025, items 46, 304, 1178 and 1420), the Act of 24 August 2001 – Code of Procedure in Misdemeanour Cases (Journal of Laws of 2025, items 860, 1178, 1661, 1814 and 1818) and the Act of 10 September 1999 – Fiscal Penal Code (Journal of Laws of 2025, items 633), in order to protect the stability of judgments, it was assumed that if a final judgment or decision on the merits of the case had irreversible legal consequences, the court would limit itself to stating that the judgments had been issued in violation of the law and indicating the circumstances on the basis of which it had issued such a decision. In such a case, however, the party will be able to claim compensation for damage caused by the issuance of such a ruling without first finding that the ruling is unlawful in separate court proceedings.

The model of the adopted solution for challenging a final ruling can be summarised in the context of criminal cases. In a situation where a final judgement has been handed down as a result of the examination of the case in the first and/or second instance by a panel including a person appointed to the position of judge at the request of the current Council, in order for a party to effectively request the revocation of a final judgment, it must demonstrate that, during the proceedings, at the appropriate time for such a request, it submitted a request for the exclusion of that person from the composition of the relevant court (first and/or second instance), and then, if such a request was not granted, raised an appropriate objection to the composition of the court in the appeal or cassation proceedings, unless the party was not entitled to cassation (e.g. in cases where a common court ruled in disciplinary proceedings). Failure to meet both of these conditions in relation to a ruling issued by a common court or military court will not lead to the reversal of a final ruling. Rulings granting the request will lead to the reversal of the final ruling and the repetition of the proceedings before the correct composition of the court of first or second instance. A different regulation is provided for in the case of rulings issued by the Supreme Court composed of a person appointed to the position of judge at the request of the current Council. Due to the fact that such rulings are not subject to appeal, in order to challenge a ruling concluding court proceedings, it is sufficient to demonstrate in the submitted request that the party requested the exclusion of such a person from the court composition at the appropriate time.

The draft also regulates the procedure in cases that are at the appeal and cassation stages. In pending appeal proceedings, a ruling issued in the first instance by a common court or military court will also be overturned only if the party submitted a motion to exclude the judge at the appropriate time in the proceedings and then raised an objection on this basis in the appeal. The same requirement applies to cassation proceedings.

A special solution is being designed with regard to Supreme Court rulings on extraordinary appeals, which are to be revoked at the request of the parties or another participant in the proceedings submitted within one month of the date of entry into force of the Act. The consideration of this request is not subject to any additional conditions. This is dictated by the finding in the pilot judgment of the European Court of Human Rights in the case of Wałęsa v. Poland that the extraordinary appeal regulation is incompatible with the provisions of the European Convention on Human Rights.

The proposed mechanism is fully in line with the case law of the European Court of Human Rights and the opinion of the Venice Commission of 14 October 2024. With regard to the legal and practical consequences for final judgments already issued by panels of judges appointed at the request of the current Council, and the effects of such judgments in the Polish legal system, the ECtHR has already noted that one of the options to be considered by the respondent State is to include in the necessary general measures the conclusions of the Supreme Court concerning the application of its interpretative resolution of 23 January 2020 with regard to the Supreme Court and other courts and with regard to the judgments delivered by the panels in question (see Advance Pharma sp. z o.o. v. Poland, §§ 364–365). The mechanism proposed in the draft law meets this requirement and, in addition, enables the implementation of the Venice Commission's guidelines on respecting the principle of res judicata and finding that a fundamentally flawed composition is the reason why the principle of res judicata may be broken (point 41 of the Venice Commission’s opinion of 14 October 2024). The proposed mechanism also makes it possible to strike a balance in each individual case between breaking the principle of legal certainty and ensuring effective judicial protection for the party concerned and protecting other values underlying the provisions applicable in a particular case (points 42 and 45 of the opinion). The possibility of applying the mechanism is also granted for a limited period of time (point 43 of the opinion) to parties who have invoked the defectiveness of the composition (point 45 of the opinion). However, the requirement to determine the impact of the defectiveness of the composition on a specific procedure is not justified in the case law of the ECtHR (points 44-45 of the opinion).

X. Amendments to the Supreme Court Act

X.1. Changes to the structure of the Supreme Court

The most significant changes in the Act amending the Act on the Supreme Court concern changes in the structure of the Supreme Court. The amendments to the Act of 8 December 2017 on the Supreme Court are a result of the need to adapt the current legal regulations to the international norms binding on Poland (Article 9 of the Constitution of the Republic of Poland), whose relationship to the applicable laws results from Article 91(2) and (3) of the Constitution of the Republic of Poland. The well-known case law of international courts has set Poland several tasks with regard to the functioning of the Supreme Court. These relate in particular to resolving the issue of the status of the Extraordinary Control and Public Affairs Chamber, together with the system of disciplinary responsibility of judges, as well as the manner of regulating extraordinary appeals. The draft addresses all of these issues.

With regard to the structure of the Supreme Court, it should be noted that the separation of the Supreme Court into five chambers, as provided for in the current Supreme Court Act of 2017, is contrary to Polish constitutional tradition. There is also no substantive or functional justification for maintaining the Extraordinary Control and Public Affairs Chamber. The draft therefore provides for its abolition (Article 51 of the Act).

The ECHR ruled on the systemic nature of violations of the right to a court in proceedings conducted by the Extraordinary Control and Public Affairs Chamber, which is separate from the organisational structure of the Supreme Court, in its pilot judgment of 23 November 2023 in the case of Wałęsa v. Poland. The judgment found that Poland had violated Article 6(1) of the Convention with regard to the applicant's right to an independent and impartial tribunal

established by law and with regard to legal certainty. The key factor that led to the finding of a violation of Article 6(1) of the Convention was the lack of independence of the Extraordinary Control and Public Affairs Chamber of the Supreme Court (IKNiSP) (paragraph 6b of the judgment), and thus the fact that this chamber does not have the characteristics of a court.

With regard to the Extraordinary Control and Public Affairs Chamber, composed entirely of judges appointed at the request of the current Council, it should be recalled that its creation was primarily linked to the institution of extraordinary appeals, whose main function is to review final court rulings, including those issued in proceedings already decided by the Supreme Court, on the basis of general and vague criteria. In judicial practice, extraordinary appeals significantly interfere with the principle of stability of judgments, and in this context it is difficult to see an extension of the right to a court, since the stability of court judgments is a guarantee of the right to a court (see point X.2 below). In particular, in its judgment of 24 October 2007, ref. no. SK 7/06, the Constitutional Tribunal expressed the view that finality is in itself a constitutional value, and that any challenge to finality must be subject to careful weighing of values. In this context, it must be concluded that in the case of the extraordinary appeal, the values were not properly weighed. As an extraordinary remedy, an extraordinary appeal is another exception to the concept of the validity of judgments in its negative and positive sense. The introduction of extraordinary appeals into the legal system was not accompanied by any reflection on how this institution should be systematically linked to other legal remedies serving challenging final judgments, known in civil and criminal procedure, with which the extraordinary appeal currently interacts in various unclear ways.

The ECtHR judgment in Wałęsa v. Poland identified fundamental flaws in the extraordinary appeal procedure (paras. 228-239 and 323(c)). In view of such significant procedural reservations, i.e. the freedom of the authorities concerned to interpret the grounds for the complaint, the use of the complaint procedure as a ‘simple appeal under cover’, allowing the adjudicating authority to re-examine the case, including the facts (paragraphs 232-235), it is appropriate to remove this measure from the legal system, also considering that the procedural law system provides instruments for correcting final decisions that violate the law.

If we also take into account that this Chamber reviews resolutions adopted in nomination proceedings conducted before the current Council, including for vacant judicial positions in the Supreme Court, this Chamber can be described as a kind of special court, which has been granted exclusive competence to decide de facto on the composition of the Supreme Court, and in some cases also on the correctness of decisions made in other chambers of that court. This chamber also has extraordinary powers to assess the independence of the court or the independence of a judge, which were challenged by the CJEU judgment of 5 June 2023, C-204/21. In this form, therefore, it has no raison d'être in the Supreme Court.

In view of the above, it is proposed that the Extraordinary Control and Public Affairs Chamber be abolished and that cases falling within its jurisdiction be transferred to other chambers according to their subject matter, as transformed under the draft. The second of these solutions is established by the proposed Article 52(1).

At the same time, the drafters have granted persons appointed to judicial positions in the abolished Extraordinary Control and Public Affairs Chamber the right to apply for vacant positions in other chambers of the Supreme Court (draft Article 30(3)).

With regard to the Professional Liability Chamber, changes are envisaged in the manner of selecting judges adjudicating in this Chamber. It is proposed (in the amended provisions of Articles 22a and 22c) to replace the mechanism of drawing lots for three times the number of Supreme Court judges to be appointed, from among whom the President of the Republic of Poland makes the final selection and appointment of judges to adjudicate in the Professional Liability Chamber Professional Responsibility, with a mechanism whereby Supreme Court judges will be selected by lot to adjudicate in the Professional Responsibility Chamber in

exactly the same number as there are positions to be filled, and each judge selected by lot will be appointed to adjudicate in that Chamber by the First President of the Supreme Court. The proposed amendments deprive the executive branch of influence over the composition of the Chamber. In addition, it is proposed to exclude the Press Spokesperson and Deputy Press Spokesperson from the group of judges who do not participate in the draw, as, in the opinion of the drafters, the performance of these functions does not prevent them from adjudicating in the Professional Responsibility Chamber.

The changes concerning the method of selecting judges appointed to adjudicate in the Professional Responsibility Chamber will apply after the expiry of the term of office of judges who were appointed to this chamber on the basis of the provisions currently in force (draft Article 51(8)). However, in the above case, the principle of continuation of the term of office does not apply to judges who, upon the entry into force of the Act, will cease to serve as judges of the Supreme Court due to the effect referred to in Article 3(1) (return to their previous judicial position) or in Article 5(1) (termination of employment as a judge). In such a case, the supplementary appointment of judges to adjudicate in the Professional Responsibility Chamber for the period until the end of the current term of office will be made in accordance with the new provisions.

The draft act also contains transitional provisions concerning the assumption of the duties and powers of the First President of the Supreme Court and the Presidents of the Supreme Court in a situation where, due to the effect referred to in Article 3(1) or Article 5(1), the position of First President of the Supreme Court or President of the Supreme Court is vacant. The provisions of the bill indicate that in such a case, until the First President of the Supreme Court or President of the Supreme Court is appointed, their duties will be performed - respectively - the Supreme Court judge with the longest service as a judge (draft Article 51(6)) or the Supreme Court judge adjudicating in a given chamber with the longest service as a judge (draft Article 51(7)). The adopted rules of substitution correspond to the currently applicable provisions regulating the substitution of the First President of the Supreme Court (see Article 14 § 2 of the Act of 8 December 2017 on the Supreme Court), as well as regulating the performance in substitute duties President of the of the Supreme Court supervising the work of the Disciplinary Chamber (Article 130 of this Act).

X.2. Extraordinary appeal

The establishment of the Extraordinary Control and Public Affairs Chamber, composed exclusively of judges appointed at the request of the current Council, was primarily related to the establishment of an extraordinary appeal measure, whose main task is to review final court rulings, including judgments issued in proceedings in which the Supreme Court has already ruled, on the basis of general and vague criteria.

The extraordinary appeal, as a new remedy previously unknown in this form in both Polish civil and criminal procedure, was introduced into the legal system by the Supreme Court Act of 8 December 2017. The intention of the legislator was to fill the gap resulting from the narrow scope of constitutional complaints in the model adopted in Article 79 of the Polish Constitution. Both constitutional complaints and extraordinary appeals are intended to serve the same purpose, namely to protect the freedoms and human rights defined and guaranteed in the Polish Constitution. In view of the so-called narrow model of constitutional complaints adopted on the basis of the Constitution of the Republic of Poland, the practice of this means of protection indicates that this legal instrument is not sufficient to ensure an adequate level of protection of human rights and civil liberties and rights. Therefore, motivated by the need to supplement the scope of protection provided by constitutional complaints, the legislator introduced the institution of extraordinary complaints into the legal system.

However, from the outset, this measure has been criticised by legal scholars and the Constitutional Tribunal, as it has been accused of having overly broad and vague grounds for

its application, allowing for the reversal of final judgments. In judicial practice, extraordinary appeals interfere with the principle of stability of judgments. Against this background, the position expressed by the Constitutional Tribunal in its judgment of 24 October 2007, ref. no. SK 7/06, remains fully valid, according to which finality is a constitutional value in itself, and any challenge to finality must always be subject to careful consideration.

The Polish legal system provides for both ordinary and extraordinary remedies allowing for the review of final judgments. These include cassation appeals in civil proceedings or cassation in criminal proceedings, as well as depending on the type of court proceedings - a complaint or a motion to reopen proceedings, and the Supreme Court Act itself additionally contains a provision concerning a motion to invalidate a final court ruling, which is a traditional feature of Polish law. The parties may also, under the rules set out in Article 417^1 § 2 of the Act of 23 April 1964 - Civil Code (Journal of Laws of 2025, items 1071, 1172 and 1508), claim compensation for damage caused by a final and binding judgment that is unlawful.

As an extraordinary remedy, an extraordinary appeal is therefore another exception to the concept of finality of judgments, in its negative and positive sense. Unfortunately, the introduction of extraordinary appeals into the legal system was not accompanied by sufficiently in-depth reflection on how this institution should be systematically linked to other legal remedies for challenging final judgments, known in civil and criminal procedure, with which the extraordinary appeal currently interacts in various unclear ways.

The allegations made in relation to the extraordinary appeal were largely shared by the ECtHR. In its landmark judgment in Wałęsa v. Poland, the ECtHR identified fundamental flaws in the extraordinary appeal procedure (paras. 228-239 and para. 323(c)). In particular, the ECtHR found that the requirement linking the effectiveness of the complaint to the pursuit of "social justice" opens the door to arbitrariness and creates a risk *of misuse of the legal remedy and abuse of process*. The solution allowing the Supreme Court to review the findings of fact in appeal proceedings undermines the stability of final court judgments and individuals' trust in final judgments, constituting an *"ordinary appeal in disguise"*.

Given such significant procedural reservations, i.e. the freedom of the authorities concerned to interpret the grounds for appeal, the use of the appeal procedure as "ordinary appeal in disguise", which allows the adjudicating authority to re-examine the case, including the facts (paragraphs 232-235), it is advisable to remove this appeal measure from the legal system. This is also justified in view of the fact that the procedural law system provides for other instruments to correct final decisions that violate the law.

The abolition of the extraordinary appeal institution will result in amendments to the Code of Civil Procedure, including the removal of references to this institution (amendments to Article 48 § 3 and Article 626^{11}, as well as repeal of Article 388^3) and the introduction of solutions taking into account the positive aspects of the current application of extraordinary appeals. These are:

1) extending the list of authorities entitled to lodge a cassation appeal;
2) the introduction of a mechanism to prevent the existence of more than one final order of succession in the legal system.

The draft provides for a new wording of Article 398^1 of the Code of Civil Procedure. In this regard, it is envisaged to supplement the list of authorities entitled to lodge cassation appeals with the Financial Ombudsman, the Ombudsman for Small and Medium-sized Enterprises and the Patient Ombudsman. This change results primarily from the planned abolition of the institution of extraordinary appeals and the resulting need to ensure that public authorities can take appropriate action in the event of cassation appeals. The authorities that have been added to the list of authorities authorised to lodge cassation appeals belong to the category of legal protection authorities. Their constitutional nature therefore brings them closer to the authorities that already have such powers under the current legal framework.

The draft also provides for the addition of Article 678^1 to the Code of Civil Procedure, establishing the jurisdiction of the court to revoke a final decision on the confirmation of inheritance if a final decision on the confirmation of inheritance has already been issued in the same inheritance case. The introduction of such solutions into the legal system is also a consequence of the planned abolition of the institution of extraordinary appeal. This regulation aims to establish clear procedural rules enabling the removal of duplicate rulings on the same case from the legal system, thereby ensuring greater legal certainty and stability.

XI. Amendments to other acts

The draft also provides for amendments to the following acts: the Act of 21 August 1997 – Law on the System of Military Courts (amendment to Article 23 § 1 of this Act), the Act of 27 July 2001 – Law on the System of Common Courts (amendment to Article 55 § 1 of this Act), the Act of 25 July 2002 – Law on the System of Administrative Courts (amendment to Article 5 § 1 of this Act), the Act of 12 May 2011 on the National Council of the Judiciary (amendment to Articles 44-44b and repeal of Articles 45a-45c of this Act) and the Act of 20 December 2019 amending the Act – Law on the System of Common Courts, the Act on the Supreme Court and certain other acts (repeal of Article 12 of this Act).

The amendments provided for in the Act on the System of Military Courts, the Act on the System of Common Courts and the Act on the System of Administrative Courts are uniform in nature, clarifying the provisions specifying the procedure for the appointment of judges of the relevant courts by the President of the Republic of Poland. In their current wording, these provisions amounted to an incomplete repetition of the competence standard contained in Article 179 of the Constitution. It is proposed to supplement these provisions with an indication that the President of the Republic of Poland appoints judges to office within three months of the date of submission of the proposal by the National Council of the Judiciary. The proposed regulations are intended to counteract situations in which the procedure for appointing judges to common courts, administrative courts and military courts is excessively prolonged. It should be noted that the procedure for appointing judges is provided for in the Constitution. Despite its fundamental importance for ensuring the staffing of the judiciary, the last stage of this procedure does not have a clearly defined time frame under the current legal framework. The proposed provisions clarify the constitutionally defined procedure for appointing judges by specifying the period during which the President of the Republic of Poland appoints the judges indicated in the motion of the National Council of the Judiciary. The entry into force of the proposed amendments is important from the point of view of those involved in the nomination procedure, as these amendments are aimed at avoiding prolonged uncertainty regarding appointments to judicial positions in situations where the National Council of the Judiciary has already submitted a proposal to the President of the Republic of Poland for appointment to such a position. However, the adopted solutions are equally aimed at ensuring the efficiency of the nomination procedure, which translates into an adequate number of judges. The latter aspect – given that the current number of adjudicating judges is insufficient – is also important from the point of view of ensuring citizens' access to justice (Article 45 of the Constitution).

The Act on the National Council of the Judiciary introduced changes consisting of:

a) granting the right to appeal to the Supreme Court against resolutions of the National Council of the Judiciary (hereinafter referred to as the NCJ) in individual cases concerning appointment to the office of Supreme Court judge (amendment to Article 44(1) of the Act on the National Council of the Judiciary). Under the current legal framework, the legislator grants participants in proceedings concerning appointment to judicial office the possibility to appeal against a resolution of the National Council of the Judiciary that is contrary to law. However, this right is not available to participants in proceedings concerning appointment to the position of Supreme Court judge. This regulation therefore denies access to judicial review of resolutions of the National Council of the Judiciary adopted in the procedure for appointment to the position of

Supreme Court judge (which is contrary to Article 45 of the Constitution) and also leads to differentiation between participants in proceedings concerning appointment to judicial office (contrary to Article 32(1) of the Constitution). In view of the above, the drafters restore the right to appeal to participants in proceedings concerning appointment to the position of Supreme Court judge.

b) repeal of the provision according to which the resolution of the National Council of the Judiciary submitted to the President of the Republic of Poland containing a motion for appointment to the position of judge or assistant judge (a motion for appointment to the position of assistant judge in a common court), documentation of the proceedings in the case must be attached, and information about other candidates for the position of judge or assistant judge must be provided, together with an assessment of all candidates (amendment to Articles 44a and 44b of the Act on the National Council of the Judiciary). The proposed amendment aims to bring the procedure for appointing judges into line with the provisions of Article 179 of the Constitution. The provision in question stipulates that the National Council of the Judiciary shall submit proposals for the appointment of judges to the President of the Republic of Poland. However, other documents and materials related to the procedure for appointing judges are not subject to submission to the President under Article 179 of the Constitution.

c) repeal of the provision excluding the National Council of the Judiciary's power to reconsider a case concerning a resolution of the National Council of the Judiciary containing a proposal for appointment to the position of judge or a proposal for appointment to the position of assessor in a common court in the event of the appointment of one of the persons indicated in the resolution to the above-mentioned position – to the extent that it concerns appointment to that position (Article 45a of the Act on the National Council of the Judiciary). Therefore, under the current legal framework, there is no provision for the re-examination of a case concerning a resolution of the National Council of the Judiciary containing a motion for appointment (nomination) to the above-mentioned positions in the scope of relating to a person who, on the basis of that resolution, took up the office of judge or assistant judge. The above solution thus excludes the indicated group of NRS resolutions from the possibility of reconsideration, even though these resolutions may be flawed or other circumstances may exist that justify their reconsideration. Strengthening the implementation of the principle of legality and the good of justice justifies the introduction of the possibility of reconsidering the case also in relation to the above-mentioned group of KRS resolutions. It should be noted that the decision of the President of the Republic of Poland on the appointment of a judge and the decision of the President of the Republic of Poland on the appointment of a judicial assessor to a common court do not remedy any irregularities that may have affected the proceedings within the National Council of the Judiciary. In the opinion of the drafters, the fact of taking up the position of judge or assessor in a common court cannot therefore preclude the possibility of reconsidering the case concerning the resolution containing the motion for appointment to the above-mentioned position. Similar considerations argue in favour of repealing the provision providing for the discontinuation by operation of law of proceedings concerning an appeal against a resolution of the National Council of the Judiciary in an individual case concerning appointment to the position of judge in a situation where the President of the Republic of Poland has already appointed the person concerned to the position of judge (Article 45b of the Act on the National Council of the Judiciary), as well as repealing the provision excluding the possibility of reopening proceedings before the National Council of the Judiciary or challenging a resolution of the National Council of the Judiciary containing a motion for appointment to the position of judge if the person presented to the President of the Republic of Poland met the formal conditions required by the Constitution to hold office on the date of adoption of the resolution by the National Council of the Judiciary (Article 45c of the Act on the National Council of the Judiciary).

Within the scope of the Act of 20 December 2019 amending the Act – Law on the System of Common Courts, the Act on the Supreme Court and certain other acts (hereinafter: the amending act of 20 December 2019), the drafters provide for the repeal of Article 12 of

that Act. The above provision was of an interim nature and provided for: 1) the retroactive application of Article 45c of the Act on the National Council of the Judiciary to proceedings and resolutions adopted by the National Council of the Judiciary before the date of entry into force of the amending act of 20 December 2019; 2) the deprivation of legal effect of provisional decisions issued before the date of entry into force of the amending Act of 20 December 2019 in proceedings concerning an appeal against a resolution of the National Council of the Judiciary on the appointment to the office of judge; 3) invalidity of proceedings concerning appeals against resolutions of the National Council of the Judiciary in individual cases concerning appointment to the office of judge of the Supreme Court, conducted in violation of Article 3 of the Act of 26 April 2019 amending the Act on the National Judiciary and the Act on the System of Administrative Courts; 4) deprivation of legal effects of judicial actions taken before the date of the amendment of 20 December 2019 without the participation of the person concerned, in connection with the examination of an appeal against a resolution of the National Council of the Judiciary in an individual case concerning appointment to the office of judge.

The repeal of the above provision is a consequence of the drafters' planned repeal of Article 45c of the Act on the National Court Register (in relation to the repealed Article 12(1) of the amending act of 20 December 2019), and also aims to revoke the legal effects resulting from the transitional provisions contained in Article 12(2)-(4) of the amending Act of 20 December 2019.

XII. Entry into force and implementation of the Act

The proposed mechanism for restoring the right to an independent and impartial tribunal established by law by regulating the effects of the resolutions of the current National Council of the Judiciary provides for a new competition procedure for judicial positions filled in 2018-2025 with the participation of the unconstitutionally constituted National Council of the Judiciary. The new competition procedure will be conducted by the National Council of the Judiciary formed in accordance with constitutional standards and under the supervision of the Supreme Court. At the same time, the first stage of changes related to restoring the right to an independent and impartial tribunal will be implemented by virtue of the Act, by depriving the resolutions of the National Council of the Judiciary from 2018-2025 concerning applications for appointment to the position of judge (with the exception of resolutions adopted in relation to judges referred to in Article 2(2) of the Act) will be deprived of their legal effect. This means that it is not necessary to establish a properly constituted Council in order to achieve the objectives of the first stage. At the same time, the basic objectives of the project to restore the right to an independent and impartial tribunal established by law will be achieved as soon as the Act enters into force.

Even before the new, properly constituted National Council of the Judiciary is established, it will also be possible for the Minister of Justice to announce competitions for vacant judicial positions and to commence the first stage of this procedure which involves candidates applying and being assessed in individual courts. This stage takes an average of about nine months, which means that it will be completed by the time the new Council should be constituted. Until then, the current, flawed Council will continue to operate, which does not safeguard the independence of the courts and judges and is therefore unable to carry out the tasks set out in the draft.

In the opinion of the drafters, priority should be given to restoring the rule of law in the Supreme Court so that it can efficiently and with a full complement of staff carry out its constitutional and statutory tasks, including reviewing the Council's resolutions in competitions repeated on the basis of the Act.

With regard to vacancies in other courts, it should be assumed that competitions will be announced gradually from the date of entry into force of the draft act. The duration of these proceedings is determined by three factors:

a) activities undertaken in the competition procedure, including those related to the assessment of candidates, directly in common, administrative and military courts, which, based on previous experience, should be estimated to take at least 9 months on average;
b) activities undertaken in the competition procedure before the National Council of the Judiciary, concluded with the adoption of resolutions to present candidates for vacant judicial positions to the President of the Republic of Poland;
c) the possibility of appealing against resolutions of the National Council of the Judiciary to the Supreme Court, which delays the completion of competition proceedings and the awarding of the first judicial appointments.

In view of the above, the completion of most of the repeated competitions before the National Council of the Judiciary should be estimated at the turn of 2027 and 2028. During this time, the statutory delegation of judges proposed in the draft will also be completed.

It should be emphasised that the above schedule assumes that the National Council of the Judiciary and the Supreme Court will meet the deadlines specified in the bill and that the competition proceedings will be conducted efficiently at the stage of the Minister of Justice announcing vacant positions, the nomination and evaluation of candidates in individual courts, the selection of candidates by the National Council of the Judiciary, the examination of appeals by the Supreme Court and the making of appointments by the President of the Republic of Poland. Delays at any of these stages will result in a postponement of the effects of the Act in relation to the adopted schedule.