



Strasbourg, 17 April 2026

**CDL-REF(2026)013**

Engl. only

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

**POLAND**

**EXPLANATORY MEMORANDUM**  
**TO**  
**THE DRAFT LAW ON REINSTATING THE RIGHT TO A FAIR TRIAL**  
**AND HEARING THE CASE WITHOUT UNDUE DELAY**

## I. Reasons for introducing the regulation

Pursuant to Article 1 of the Constitution of the Republic of Poland, “The Republic of Poland shall be the common good of all its citizens.” This is a fundamental constitutional principle opening Chapter I of the Constitution entitled “The Republic”, which defines the basic value of the State and indicates who is its sovereign and beneficiary. This principle resolves the dilemma of whether the individual exists for the State or the State for the individual – in favour of the State’s subservient role towards the individual. This means that all actions of public authorities, including the executive and legislative branches, should be oriented toward achieving positive outcomes for society as a whole, and not only for selected groups or individuals. For public authorities, the principle of the common good constitutes a general clause and an axiological foundation (a system of values) for their activity. Article 1 of the Constitution is a fundamental norm that gives meaning to the entire legal system, indicating that the State exists in order to serve its citizens and to ensure conditions for their comprehensive development, while at the same time requiring their cooperation and responsibility for the community.

The principle of a democratic state ruled by law expressed in Article 2 of the Constitution is the basic assumption from which the right to a fair trial is derived, and which is then specified in Articles 45 and 77(2) of the Constitution. The right to a fair trial is therefore one of the most important guarantees for the implementation of the idea of the state ruled by law.

The draft Act aims to ensure full implementation of the constitutional right to a fair trial referred to in Article 45(1) of the Constitution of the Republic of Poland, according to which: “Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.” The right to a fair trial is one of the fundamental subjective rights of the individual and, at the same time, a fundamental guarantee of legality in a democratic state ruled by law. The constitutional right to a fair trial has two complementary dimensions (aspects): positive and negative. The positive aspect includes directives obliging the legislator to properly shape the system of justice in its institutional and procedural dimensions and to ensure its effective functioning. The negative aspect of the right to a fair trial is expressed in the prohibition of closing or excessively limiting access to justice (Article 45(1) in conjunction with Article 77(2) of the Constitution).

The right to a fair trial and its constitutional significance has repeatedly been the subject of statements of the Constitutional Tribunal. In particular, the Tribunal held that the right to a fair trial, arising from Article 45(1) of the Constitution, is one of the fundamental rights of the individual and one of the fundamental guarantees of the rule of law. The constitutional right to a fair trial consists, in particular, of: 1) the right of access to a court, i.e., the right to initiate proceedings before a court (independent and impartial); 2) the right to a properly shaped judicial procedure compliant with the requirements of fairness and openness; 3) the right to a fair trial judgment, i.e., the right to obtain a binding resolution of the case by a court (see judgments of the Constitutional Tribunal of: 9 June 1998, ref. no. K 28/97, and 16 March 1999, ref. no. SK 19/98, OTK ZU no. 3/1999, item 36). Confirming its existing case-law, the Tribunal expanded upon it in the judgment of 24 October 2007 in the case ref. no. SK 7/06 (OTK ZU no. 9/A/2007, item 108), namely by holding that the constitutional right to a fair trial also includes a fourth important element – the right to an appropriately shaped system and position of the bodies adjudicating cases. The Tribunal repeated this view in the judgment of 14 November 2007 (ref. no. SK 16/05, OTK ZU no. 10/A/2007, item 124).

The current crisis of the system of justice is a consequence of the lack of acceptance, on the part of certain members of the judicial community and the political option currently exercising power, of the reforms and binding legal provisions introduced in Poland since 2017, including above all changes to the model for shaping the composition of the National Council of the Judiciary. The current crisis of the system of justice has led to a complete dysfunction of the system of disciplinary and criminal liability of judges. The lack of acceptance by part of the judicial community of the binding provisions of the Constitution and statutes regulating the system of courts and tribunals, as well as the procedures for the appointment of a judge and the nomination of an associate judge, leads to the questioning – devoid of any legal basis – of the constitutional status and investiture of judges appointed since 2018, and to taking actions contrary to the law, including the setting aside of judgments. This, in turn, leads to depriving the individual of the right to an impartial and independent court, to protracted proceedings, to weakening citizens' trust in the administration of justice, to the destruction of constitutional state bodies, and undermines the security of the Polish State.

Destructive actions within the system of justice in Poland consisting in questioning by a narrow but influential group of judges the status and circumstances of the appointment of judges or the nomination of associate judges since 2018 meet with public outrage and disapproval. Recently, a judgment of the Court of Appeal in Poznań was widely publicised, in which that court set aside a sentence of life imprisonment for a man accused of murdering his daughters and wife – solely due to the presence, in the first-instance panel, of a judge appointed after 2017. The judgment was issued with a gross violation of the principles of equity and justice and met with decisive and justified public criticism due to the need to repeat the entire evidentiary phase of the trial, to the detriment of the victims' closest family members, especially since the judge sitting in the higher instance had originally issued a positive opinion in the promotion procedure of the judge whose judgment he set aside. Earlier, higher courts also set aside judgments solely due to the status of the judge adjudicating at first instance (and not on substantive grounds) in cases of defendants accused of the brutal murder of women (the so-called "Bloody Tulip" case before the Court of Appeal in Szczecin), in a case of a defendant accused of raping a 14-year-old girl (Court of Appeal in Poznań), or in a case of a man convicted of a road-traffic homicide (Supreme Court), in which, after the judgment was set aside, the applied preventive measure of pre-trial detention was revoked. Public opinion was also outraged by judgments setting aside judgments in cases of serious offences where limitation periods for prosecution were at risk of expiring, resulting in discontinuance of proceedings.

The President of the Republic of Poland notes a real problem occurring in particular in courts dealing with criminal cases (including the Criminal Chamber of the Supreme Court), where some judges groundlessly set aside judgments issued by judges adjudicating in lower instances due to questioning their status. Similar setting aside of judgments occurs in civil and commercial cases or in administrative courts. The President of the Republic of Poland also notes that, under the pretext of "restoring the rule of law", authorities, including courts, act without a legal basis, in breach of the principle of legality, and undertake actions that negate the idea of the state ruled by law. Their aim is to eliminate the past changes in the law which introduced full democratic legitimacy of the National Council of the Judiciary, made the competition procedure for candidates for judicial office more objective, and removed the real influence of a narrow group of judges on staffing policy in favour of the democratic mandate of the Nation.

We are also currently dealing with the instrumentalisation of law, meaning its use in the political interest of those in power in order to achieve specific aims. This manifests itself primarily in selecting judicial decisions that public authorities recognise as existing depending on political needs, or in leaving vacant judicial posts unfilled. Such a situation leads to citizens' uncertainty towards the State and the binding law and results in the fact that the guarantees of a fair trial are in practice not implemented on many levels. A threat to the functioning of the State and to the implementation of the principle of citizens' access to a court becomes real due to the growing rule-of-law crisis caused by a series of actions of authorities and courts that constitute an unlawful usurpation of the competences of constitutional state bodies, contrary to the principle of legality. An expression of this usurpation is the extra-constitutional and extra-statutory mode of verifying court panels with the participation of judges appointed to office on the motion of the National Council of the Judiciary formed on the basis of the provisions 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).

Since December 2023, the Minister of Justice – a representative of the current governing coalition – has not fulfilled the statutory obligation to ensure proper staffing in common courts, i.e., the obligation to initiate a competition procedure for vacant judicial posts, and has been reducing the number of judicial posts despite growing staffing needs. Moreover, the Minister of Justice called on the Presidents of the Courts of Appeal to suspend qualification proceedings for candidates for the post of judge. These actions lead to insufficient staffing of judges and, from the citizen's perspective, infringe the right to a fair trial in the aspect of the right to have a case examined without undue delay. In addition, questioning the status of judges, inadmissible motions to recuse judges and impartiality tests lead to protracted proceedings and will certainly, in the future, generate the need for the State Treasury to pay compensation to citizens harmed by excessive length of proceedings. Already now, in some courts, hearing dates are being scheduled for 2032.

In 2024-2025 there was an unjustified restriction of the limit of judicial posts through the liquidation of 315 vacant posts, which directly affects the duration of judicial proceedings. As of 31 May 2025, the number of serving judges was as follows: 9,154 judges of common courts and 42 judges of military courts remained in active service. According to data as at 31 May 2025: 162 judges of common courts were aged 63, 1 military-court judge was aged 63; 142 judges of common courts were aged 64, 1 military-court judge was aged 64. 191 judges of common courts were aged 65 and above (only among those remaining in active service). Some judges, despite having reached the age of 65 and lacking the required consent of the National Council of the Judiciary, continue to perform adjudicatory activities contrary to Article 69 § 1b, third sentence of the Act of 27 July 2001 – Law on the System of Common Courts (*Prawo o ustroju sądów powszechnych*, hereinafter also: "u.s.p."). There remain 123 such judges. The above data show that in the course of the next year, approximately 500 judges – about 5.5% of all judges – will leave judicial service due to retirement. The breach of the obligation to promptly announce competitions by the Minister of Justice will inevitably, in the near future, lead to the complete collapse of the system of justice and a failure to realise the constitutional right to a fair trial.

The actual actions are accompanied by legislative activity of the Minister of Justice, who, by means of regulations encroaching directly upon statutory matters, seeks to exclude judges appointed with the participation of the National Council of the Judiciary formed under the Act

of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other Acts from adjudicating in certain cases and departs from the system of random case assignment. Moreover, despite judgments of the Constitutional Tribunal removing such regulations from the legal system as unconstitutional, courts and judges do not respect them (see judgment of the Constitutional Tribunal of 16 May 2024, ref. no. U 1/24).

An expression of unlawful actions undertaken in breach of Article 69 § 1 u.s.p. is the attitude of judges who, despite reaching the age of 65, and thus being *de facto* retired judges, administer justice and adjudicate without previously declaring to the National Council of the Judiciary their will to continue holding office, and without the Council granting consent to continue holding office. In common courts, justice is currently administered by approximately 100 judges who, due to failure to meet the conditions cited, remain in retirement, and this attitude is not met with an appropriate response from the Minister of Justice and court presidents.

In light of the constitutional principle of legality referred to in Article 7 of the Constitution, public authorities may act only within the limits expressly permitted by law on the basis of competence norms. The basis for all actions of public authorities must be competence norms, taking into account the directive prohibiting the presumption of competences. The requirement expressed in Article 7 of the Constitution is addressed to public authorities in the broad sense, i.e., both state bodies and other public authorities exercising public power, including courts. (P. Tuleja, *Komentarz do art. 7 Konstytucji*, [w:] *Konstytucja RP [Commentary to Article 7 of the Constitution, [in:] Constitution of the Republic of Poland]*, Vol. I, p. 303). The principle of legality has repeatedly been the subject of statements of the Constitutional Tribunal. The Tribunal emphasised, inter alia, that: “[...] the principle of legality expressed in Article 7 of the Constitution imposes first of all on state bodies the obligation to act in accordance with binding competence provisions, interpreted strictly and rejecting, with respect to public authorities, the principle ‘what is not prohibited is permitted’. It is inadmissible for public authorities to act without a legal basis or beyond its limits. Public authorities are also obliged to diligently perform the tasks entrusted to them” (cf. judgment of the Constitutional Tribunal of 12 June 2002, ref. no. P 13/01).

The judicial nomination procedure is a matter of constitutional law, and the appointment of a national judge belongs to the constitutional matter of Member States and concerns a key issue for every state: the creation and staffing of its constitutional bodies. In the Polish constitutional order, the appointment of a judge is a prerogative of the President of the Republic of Poland, as repeatedly confirmed by the Constitutional Tribunal (cf. judgments in cases ref. nos. K 18/09, K 8/17, P 22/19 and P 13/19) and by the Court of Justice of the European Union (cf. judgments in cases C-585/18, C-624/18 and C-625/18, para. 135, para. 143; C-508/19, para. 81; C-824/18, para. 128).

The Constitutional Tribunal, in numerous rulings, removed from the legal system unconstitutional legal norms that constituted the basis for questioning the status of judges on account of the structure of the nomination procedure (cf. e.g., judgments of the Constitutional Tribunal of: 2 June 2020, ref. no. P 13/19; 21 April 2020, ref. no. U 2/20; 14 July 2021, ref. no. P 7/20). The principle of binding force of the rulings of the Constitutional Tribunal implies that courts may not, arbitrarily and in disregard of those judgments, interpret provisions and derive legal norms in a manner inconsistent with the binding effect of the Tribunal’s judgment. The Constitutional Tribunal held that no court has competence to assess the procedure of

appointment to judicial office and to create criteria for such assessment on the basis of a resolution of the Supreme Court (cf. e.g., decision of the Constitutional Tribunal of 21 April 2020, ref. no. Kpt 1/20, and judgment of the Constitutional Tribunal of 23 February 2022, ref. no. P 10/19). A court has neither constitutional nor statutory competences to review the procedure for appointing members of the National Council of the Judiciary. Such competences also cannot be derived from EU law (cf. judgments of the Constitutional Tribunal of: 7 October 2021, ref. no. K 3/21, and 23 February 2022, ref. no. P 10/19).

Pursuant to Article 144(3)(17) of the Constitution, the prerogatives of the President of the Republic of Poland include appointing judges. Articles 179 and 144(3)(17) of the Constitution regulate competences and the basic procedural principles for appointing judges in the Republic of Poland. They primarily entail the exclusive competence of the President to decide on filling judicial office – competence not subject to review by any state body – and the exclusive competence of the National Council of the Judiciary to present candidates for judges to the President. The procedure and scope of responsibility of the constitutional bodies in question, as thus established, may not be undermined by any activity of state bodies.

A consequence of locating the prerogative of the President of the Republic of Poland in the provisions of the Constitution is, in light of the hierarchical system of sources of law (Article 87(1) of the Constitution) and Article 8(1) of the Constitution, the conclusion that a statutory provision, and even more so a provision of a lower-ranking act within the constitutional system of sources of law, may in no way restrict the President's right to appoint a specific person to judicial office on the motion of the National Council of the Judiciary. The procedure determined by Article 179 in conjunction with Article 144(3)(17) of the Constitution excludes the participation of other bodies in the appointment of judges and in the proceedings preceding such appointment at the intermediate stage between the adoption of the relevant resolution by the National Council of the Judiciary and the issuance of an official act by the President. In Polish legislation, as a result of a constitutional prohibition, there is no procedure enabling the setting aside or reviewing acts issued in the exercise by the President of his prerogatives. The Constitution not only does not contain such a procedure, but also does not allow it to be created at the statutory level, and even more so in acts placed lower in the hierarchy of the constitutional system of sources of law (cf. judgment of the Constitutional Tribunal of 7 October 2021, ref. no. K 3/17). The competence to appoint judges is, under Article 144(3)(17) of the Constitution, a prerogative of the President, and thus belongs to the sphere of his exclusive authority and responsibility. The constitutional standard is complemented by the constitutional role of the President as the supreme representative of the Republic of Poland, specified in Article 126(1) of the Constitution (see judgment of the Constitutional Tribunal of 5 June 2012, ref. no. K 18/09, OTK ZU no. 6/A/2012, item 63). The Constitutional Tribunal has emphasised in its case-law that Article 179 of the Constitution is a sufficient basis for exercising the President's competence provided therein to appoint judges. With respect to the nomination act, Article 179 of the Constitution is applied directly as an autonomous legal basis for the President's official act. The appointment of judges constitutes a competence based directly on Article 179 of the Constitution, the interpretation of which is significantly influenced by the qualification of this competence as a prerogative, and on Article 126(1) of the Constitution insofar as it provides that the President is the supreme representative of the State (see judgment of the Constitutional Tribunal of 7 October 2021, ref. no. K 3/17).

In the judgment of 2 June 2020, ref. no. P 13/19 (OTK ZU A/2020, item 45), the Constitutional Tribunal held that Article 49 § 1 of the Code of Civil Procedure, insofar as it allows examination

of a motion to recuse a judge on the ground of raising circumstances of defectiveness of the appointment of the judge by the President of the Republic of Poland on the motion of the National Council of the Judiciary (under the new rules), is inconsistent with Article 179 of the Constitution (see also judgment of the Constitutional Tribunal of 4 March 2020, ref. no. P 22/19, OTK ZU A/2020, item 31). In an analogous case, under the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2020, item 30; currently Journal of Laws of 2022, item 1375), the Constitutional Tribunal, starting from the judgment ref. no. U 2/20 and the decision ref. no. Kpt 1/20, has consistently held that, in the Polish legal system, a judge is a person who has received the nomination act from the President of the Republic of Poland, and the grounds for removing a judge from adjudicating must follow from the Constitution and the legislation based on it (cf. judgment of the Constitutional Tribunal ref. no. P 7/20, part III, para. 6.8).

The assessment of the effectiveness of the appointment of a judge, in view of the constitutional structure of the National Council of the Judiciary under the Polish Constitution goes beyond the matter transferred by Poland under the Treaty of Accession to EU bodies. It therefore does not have binding force in the territory of the Republic of Poland, as confirmed by the judgment of the Constitutional Tribunal of 7 October 2021 (ref. no. K 3/21). The case-law of the Court of Justice of the European Union and of the European Court of Human Rights has created ultra vires, extra-treaty legal norms which constitute the legal basis for actions undertaken by judges contesting the reform of the National Council of the Judiciary, including refusal to perform tasks in the administration of justice, setting aside judgments due to an allegedly improper composition of a court panel including judges appointed on the motion of the National Council of the Judiciary since 2018, excluding them from examining cases, transferring them to other divisions, changing allocation of duties, and stigmatisation. The judgments of the CJEU and the ECtHR were issued on the basis of legal norms whose conformity with the Constitution was challenged by the Constitutional Tribunal in judgments ref. nos. K 3/21, K 6/21 and K 7/21.

Pursuant to Article 190(1) of the Constitution, judgments of the Constitutional Tribunal have universally binding force and are final. Consequently, a normative act whose inconsistency with the constitutional review standard has been established, by the Constitutional Tribunal loses its binding force on the day of publication of the Tribunal's judgment, or on another date indicated by the Tribunal in the judgment, pursuant to Article 190(3) of the Constitution. The indicated constitutional principle imposes on all state bodies the obligation to comply with the judgments of the Constitutional Tribunal. The essence of the above constitutional regulation is undoubtedly the removal of an unconstitutional norm from the legal system, and that principle provides no exceptions. Ignoring the judgments of the Constitutional Tribunal leads to a breach of the principle of a democratic state ruled by law and of fundamental constitutional principles, and to destabilisation of the administration of justice.

Despite numerous judgments of the Constitutional Tribunal, there has been no restoration of the constitutional and legal order, because judicial panels still do not respect binding judgments of the Constitutional Tribunal and the binding provisions, and the escalation of these events has recently reached an increasingly broader scale and leads to the elimination of judgments on the basis of usurpation of competences and entirely without any legal basis.

As indicated above, setting aside judgments due to the composition of the court in which judges appointed on the motion of the National Council of the Judiciary since 2018 adjudicate,

shocks public opinion, especially in criminal and family cases. However, the scale of unlawful acts undertaken by appellate courts is increasing. By way of an additional example, one may point to judgments in which a court decision was set aside due to the participation in the panel of a judge appointed since 2018, issued in cases: in the Supreme Court: ref. no. II KK 97/25, ref. no. IV KK 130/24, ref. no. I KK 86/24, ref. no. I KK 240/23, ref. no. III KK 29/25, ref. no. III KK 204/24 (the case concerns attempted homicide (Article 13 § 1 of the Penal Code in conjunction with Article 148 § 1 of the Penal Code), ref. no. III KK 251/24 (the case concerns attempted rape of a minor under 15 years of age and an offence under Article 200 § 1 of the Penal Code and Article 13 § 1 in conjunction with Article 197 § 1 of the Penal Code), ref. no. III KK 561/24, ref. no. III KK 619/24, ref. no. III KK 620/24, ref. no. III KK 643/24; in the Court of Appeal in Warsaw: ref. no. II AKa 71/24 (ref. no. of the Regional Court: XII K 204/19), ref. no. II AKa 492/24 (ref. no. of the Regional Court: XII K 113/23), ref. no. II AKa 78/24 (ref. no. of the Regional Court: XII K 104/23), ref. no. II AKa 75/25 (ref. no. of the Regional Court: VIII K 57/22), ref. no. II AKa 494/23 (ref. no. of the Regional Court: VIII K 208/22), ref. no. II AKa 478/24 (ref. no. of the Regional Court: VIII K 195/22), ref. no. II AKa 178/24 (ref. no. of the Regional Court: VIII K 193/22), ref. no. II AKa 51/23 (ref. no. of the Regional Court: XVIII K 99/22), ref. no. II AKa 23/25 (ref. no. of the Regional Court: XVIII K 215/24), ref. no. II AKa 461/23 (the case concerns homicide in a complex factual state; assistance of US law-enforcement authorities was used). In the Court of Appeal in Poznań, judgments were issued setting aside judgments of Regional Courts in cases ref. nos.: II AKa 47/23, II AKa 131/22, II AKa 160/24, II AKa 238/22, II AKa 292/23, II AKz 573/24, II AKa 287/23 II Ak 697/24, II AKa 102/23; II AKa 223/24; II AKa 12/25; II AKa 160/24; II AKa 47/23; II AKa 131/22; II AKa 260/24; II AKa 238/22; II AKa 292/23; II AKa 573/24.

In the case-law of the Supreme Court it is also indicated that, in the Polish legal order, there is no verification (validation, reconfirmation, “vetting”, etc.) procedure that would involve, at any stage after the appointment of a judge, a re-assessment of whether the judge was appointed to office in a procedure burdened with real or alleged defects, or even whether the judge met the criteria necessary for his/her appointment. Under Article 179 of the Constitution, the nomination procedure is closed by the appointment by the President of the Republic of Poland, and any possible subsequent “verifications” would require not an appropriate statutory regulation, but an amendment to the provisions of the Constitution. Such regulations currently – *de constitutione lata (de lege fundamentale lata)* – do not exist. The above conclusion results from the fact that any “verification” concerning the effects of the acts necessary for appointing a judge – both the resolution of the National Council of the Judiciary and the act of appointment by the President of the Republic of Poland – would in fact interfere with the sphere regulated in this respect directly in the Constitution itself. Fundamental constitutional values and principles stand in opposition to such a procedure, if it were to be introduced in provisions of sub-constitutional rank – namely the rule-of-law principle (protection of acquired rights, legal certainty), the right to an independent court and, ancillary to it, the interests of justice, as well as the irremovability of judges (cf. decision of the Supreme Court of 12 March 2025, I CSK 2368/24, LEX no. 3854792). Courts and judges do not have competence to question constitutional state bodies, including the National Council of the Judiciary, and to derive from an assessment of its statutory structure the non-existence of that body as a constitutional body due to alleged insufficient guarantees of independence from legislative and executive authorities in the procedure of appointing judges.

Pursuant to Article 2 of the Constitution, the Republic of Poland is a democratic state ruled by law. This formula contains two principles linked to each other but at the same time distinct: the

principle of the state ruled by law and the principle of a democratic state, according to which every public authority should derive its empowerment from the will of citizens as the sovereign (Article 4 of the Constitution).

The principle of a democratic state ruled by law means that all state bodies must have democratic legitimacy, and, according to the principle of exercising authority set out in Article 4(1) of the Constitution, such legitimacy is obtained in direct elections in which all eligible citizens participate or indirectly through their representatives, who, pursuant to Article 104(1) of the Constitution, are Deputies to the Sejm. The indirect exercise of power by the Nation is thus expressed in the creative function of the Sejm, which is empowered to create state institutions by statute and is also empowered to elect members of those bodies and institutions.

Depriving citizens of the right to choose, through their representatives in the Sejm, violates the fundamental principle of a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland) and the principle of the sovereignty of the Nation, according to which the Nation exercises power directly or through its representatives (Article 4(1) and (2) of the Constitution).

The principle of a democratic state ruled by law, the principle of the sovereignty of the Nation, and the exercise of power directly and/or through representatives, also imply a prohibition on transferring from the Nation's representatives – the Sejm – the power to create state bodies to other entities. In the judgment of 31 May 2004 (ref. no. K 15/04, OTK-A 2004, no. 5, item 47), the Constitutional Tribunal held that “Article 4 of the Constitution formulates the principle of the supremacy of the Nation, the content of which is recognition of the will of the Nation as the only source of authority and the manner of legitimising the exercise of authority. It means that an individual, a social group or an organisation may not be the source of authority in the Republic of Poland. (...) The Constitution uses the concept of the Nation in a political sense, not an ethnic one, and, in the understanding of constitutional norms, the basis of which is the preamble to the Constitution stating ‘We, the Polish Nation – all citizens of the Republic’, the concept of the Nation defines a community formed by citizens of the Republic.”

The National Council of the Judiciary was introduced into the Polish legal order as a result of an amendment to the Constitution of the Polish People's Republic of 7 April 1989. The structure of the National Council of the Judiciary was the result of political negotiations and arrangements of the Round Table, preceded by earlier informal arrangements in Magdalenka. Those arrangements formed the basis for the assumptions of the Act of 20 December 1989 on the National Council of the Judiciary, as politicians expressed in numerous statements during the Sejm sittings of 13 and 16 November 1989. Key findings regarding the future system of judicial power amounted to abandoning the lustration of judges and creating a system in which judges themselves would decide on the personal composition of the judicial corps. Already at that time, a small number of objections were raised regarding the unequal treatment of judges of district and voivodship courts in the procedure for submitting candidates to the National Council of the Judiciary, as well as an objection concerning the method of electing judge members of the Council exclusively by judges, without the participation of representatives of society. The first National Council of the Judiciary included judges of common courts appointed by the Council of State of the Polish People's Republic during the

period of communist state<sup>1</sup> who swore “to protect and strengthen the order based on the social, economic and political constitutional principles of People’s Poland.”<sup>2</sup> From the beginning, the National Council of the Judiciary was shaped on the basis of a corporatist, intra-professional model for electing its members, which over subsequent years led to phenomena far removed from the constitutional role of the Council as the “guardian of the independence of judges.”

The mechanism for electing judge members until 2018 remained the same and *de facto* meant that, in order to obtain a mandate in the National Council of the Judiciary, it was sufficient to secure the support of a small group of representatives of the judicial community. Of the 25 members of the Council, 15 were judges elected in a non-transparent and non-public procedure, solely by a narrow group of judges, without the participation of any factor reflecting the will of the Nation, which constituted a negation of the constitutional principle of exercising supreme authority by the Nation. The Council was dominated by judges from the highest instances, with the omission of line judges and with an overrepresentation of judges of the Supreme Court and the Supreme Administrative Court.

The manner of shaping the National Council of the Judiciary that functioned until the end of 2017 was not compatible with the Constitution, and the manner of the Council’s functioning indicated its subordination to a narrow group of judicial oligarchs, whose acceptance determined the possibility of judicial promotions. The inconsistency with the Constitution of fundamental solutions concerning the competition procedure conducted by the National Council of the Judiciary was confirmed by the Constitutional Tribunal in numerous rulings (cf. judgments of the Constitutional Tribunal of: 24 January 2007, ref. no. SK 7/06; 18 July 2007, ref. no. K 25/07; 29 November 2007, ref. no. SK 43/06; 16 April 2008, ref. no. K 40/07; 27 May 2008, ref. no. SK 57/06; 19 November 2009, ref. no. K 62/07; 20 June 2017, ref. no. K 5/17; and 25 March 2019, ref. no. K 12/18). In those judgments, the Tribunal held, *inter alia*, that the lack of appeals against the Council’s resolutions concerning the presentation of candidates to the President for judicial office is inconsistent with Article 45(1) and Article 77(2) in conjunction with Article 60 of the Constitution; that the Council’s resolutions require reasoning and service on the person concerned; that resolutions concerning a candidacy which did not receive an assessment justifying inclusion in a motion to the President of the Republic of Poland also require reasoning and service; and that determining the rules of the competition procedure in a regulation is inconsistent with Article 187(4) in conjunction with Article 2 of the Constitution. The Constitutional Tribunal indicated that the most important issues related to the Council’s proceedings should be regulated in a normative act of statutory rank, and not – as provided for by the challenged provision – in an act issued by an executive authority. The Constitutional Tribunal also challenged the provision enabling the Minister of Justice, with the consent of the college of a regional court, to entrust an associate judge with performing judicial functions in a district court for a fixed period not exceeding four years. The Constitutional Tribunal held that such regulation violates the constitutional right to a fair trial, because associate judges do not have sufficient guarantees of independence necessary to ensure the right to an impartial and independent court, and there is no oversight by the National Council of the Judiciary

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<sup>1</sup> Pursuant to the Constitution of the Polish People’s Republic of 1952, judges were appointed and dismissed by the Council of State. A. Rzepliński indicated that the aforementioned provisions introduced “a barbaric institution, from the point of view of independence of judges, of the dismissal of a judge not giving a guarantee” (A. Rzepliński, *Sądownictwo w Polsce Ludowej*, Warsaw 1989, p. 41).

<sup>2</sup> Article 1(c) of the Decree of 6 October 1948 on the wording of the oath of ministers, state officials, judges and prosecutors, and officers of the public security service (Journal of Laws no. 49, item 370).

(which constituted a significant breach in the constitutional model of entrusting judicial power). In the judgment ref. no. K 5/17, the Constitutional Tribunal emphasised that the Constitution does not stipulate that members of the Council may be judges elected by judges. Article 187(1)(2) of the Constitution only provides that those persons are elected from among judges. However, the constitution-maker did not indicate who is to elect those judges. Thus, the Constitution indicates who may be elected a member of the National Council of the Judiciary, but does not specify how to elect judge members of the Council. The Constitutional Tribunal also held that differentiating the method of selecting judges of individual levels of common and administrative courts introduces unjustified discrimination of judges. The Constitutional Tribunal ruled that the norm contained in Article 13(3) of the Act on the National Council of the Judiciary was inconsistent with Article 187(3) of the Constitution, insofar as it was understood to mean that the term of office of judge members of the Council was individual. The indicated case-law of the Constitutional Tribunal, having universally binding force pursuant to Article 190(1) of the Constitution, authorises the conclusion that the manner in which the National Council of the Judiciary functioned from its creation in 1989 was, in various respects, inconsistent with constitutional standards, which leads to the conclusion that the competition procedure for judicial office during the period in which the Act on the Council was in force was burdened with defects. The consequence of derogation from the legal system of statutory solutions inconsistent with the Constitution was the legislator's response in the form of statutory amendments to the Act on the Council in 2017.

The essence of the amendments introduced by the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other Acts was to replace the unconstitutional corporate-curial model of the Council with a democratic model based on citizens' right to shape, directly or indirectly, the composition of all authorities in accordance with the constitutional principle under which supreme authority in the Republic of Poland belongs to the Nation, which exercises it through its representatives or directly (Article 4(1) and (2) of the Constitution).

The Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other Acts introduced into the Act on the Council Article 9a providing that the Sejm elects, from among judges of the Supreme Court, common courts, administrative courts and military courts, fifteen members of the Council for a joint four-year term. The essence of the amendment was a change in the method of electing judges to the Council, who had previously been elected by judicial bodies. The Constitutional Tribunal indicated that the Constitution leaves the legislator a wide margin of discretion as to the method of electing members of the Council from among judges. Article 187(1) of the Constitution does not determine a preferred model for electing judges to the Council. The minimum that must be ensured is the election of 15 judges from among judges of the Supreme Court, common courts, administrative courts and military courts (see judgment of the Constitutional Tribunal of 20 June 2017, ref. no. K 5/17, OTK ZU A/2017, item 48). In the judgment ref. no. K 12/18, the Constitutional Tribunal held that Article 9a of the Act on the Council is consistent with Article 187(1)(2) and (4) in conjunction with Article 2, Article 10(1) and Article 173, and with Article 186(1) of the Constitution.

The democratic model of the National Council of the Judiciary introduced by the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other Acts was not accepted by part of the judicial community, because it deprived them of exclusive influence over the staffing of the Council, and replaced the discretionary nature of the

competition and promotion procedure with objective and transparent standards with a guarantee of judicial review. The reasons for this state of affairs have their roots in historical conditions reaching back to the period of the State's functioning under the communist regime and the subsequent stages of the political transformation initiated in 1989 during the Round Table talks.

In light of the final and universally binding judgments of the Constitutional Tribunal (Article 190(1) of the Constitution), there are no normative grounds for undermining the constitutional empowerment of the National Council of the Judiciary formed in the mode specified by the provisions of the Act of 8 December 2017, and its powers to perform tasks in the area of the administration of justice, as well as for questioning the validity and effectiveness of judicial appointments made by the President of the Republic of Poland within his exclusive prerogative not subject to verification, on the basis of a recommendation issued by that body (see also, *inter alia*: decision of the Constitutional Tribunal of 3 June 2008, ref. no. Kpt 1/08; and judgment of the Constitutional Tribunal of 25 June 2012, ref. no. K 18/09).

As indicated above, in recent years there has been a growing trend of judges refusing to administer justice by refusing to participate in adjudicating panels with judges appointed on the motion of the Council since 2018, questioning judgments issued by other judges or assessors appointed on the motion of the Council after 2018, motivated not by substantive grounds but by an unfounded assessment of the manner of their appointment or an alleged lack of independence. Such actions lead to destabilisation of the administration of justice, breach of the constitutional principles of legal certainty and citizens' trust in judicial decisions. In a democratic state ruled by law, a judge, as a person appointed by the President of the Republic of Poland to judicial office, is obliged to perform adjudicatory duties within the limits of law. Refusal to perform them constitutes a manifestation of a gross breach of the principles of judicial service and undermines the authority of courts.

To summarise, the progressing anarchisation of the system of justice in recent years, and the undertaking by judges and panels under the pretext of "restoring the rule of law" of actions and acts with a gross, culpable and intentional breach of law in the form of the events described above, makes it necessary for the President of the Republic of Poland, as the guardian of the Constitution, to undertake a legislative initiative in order to restore proper constitutional order in the State, prevent further anarchisation, unlawfulness and impunity of public officials administering justice contrary to law and to the judicial oath.

Given the lack to date of normative, effective instruments serving to enforce respect for the binding law and to counteract usurpation of competences under the pretext of administering justice, it is necessary to seek tools and introduce the legal constructions contained in this draft Act, the purpose of which is to ensure respect for the constitutional order, proper balance of powers, guarantees of the citizen's right to a fair trial, and to rebuild citizens' trust in the courts.

The need to undertake the legislative initiative is justified by the necessity to protect the constitutional order and eliminate the effects of actions contrary to the constitutional foundations of the State. The escalation of anti-constitutional and anti-statutory actions undertaken by some courts in recent times strikes at the foundations of the State and the good of citizens, and above all violates the principle of an individual's trust in the courts. It

undermines the institutional guarantees of the functioning of the judiciary and the implementation of the right to a fair trial.

## **II. Objective and scope of the proposed solutions**

The objective of this Act is to restore the real right of an individual to a court and to create coherent and unambiguous regulations with respect to:

- a) guarantees of implementation of the right to an impartial, independent and autonomous court, ensuring examination of a case without undue delay by an independent and impartial court;
- b) restoration of proper constitutional order and balance of powers in accordance with the principle expressed in Article 10 of the Constitution;
- c) determination of the legal effects of judgments issued in a manner contrary to the Constitution or a statute;
- d) strengthening citizens' trust in the system of justice and the social legitimacy of judicial decisions;
- e) ensuring continuity, stability and proper functioning of the system of justice by unambiguously determining the legal effects of situations in which a judge intentionally refuses to perform his/her constitutional duties consisting in administering justice;
- f) introducing judges' responsibility for the performance of tasks entrusted to them, including liability in damages;
- g) eliminating from the system of justice phenomena consisting in refusal to adjudicate for non-substantive reasons or resulting from an incorrect, individual assessment of the status of other judges or associate judges;
- h) creating proper disciplinary instruments by extending the catalogue of disciplinary delicts;
- i) creating legal bases for criminal liability for undertaking actions aimed at changing or posing a threat of a significant violation of the constitutional system of the Republic of Poland, hindering the functioning of a constitutional body, or persistent activity aimed directly at realising that objective through violating constitutional or statutory norms;
- j) creating legal bases for criminal liability for persistently questioning statutory powers of constitutional bodies, rulings issued by those bodies and constitutional and statutory actions undertaken by them; questioning the binding force of, disregarding or refusing to apply the Constitution or a statute insofar as it regulates the system of courts, the procedure of appointing a judge or nominating an associate judge;
- k) abolishing the procedural institution of the test of a judge's impartiality;
- l) introducing amendments to provisions regulating the system of courts with respect to notices of vacant judicial posts and initiating the nomination procedure for candidates for judicial office.

The draft Act introduces provisions of a guarantee nature. It comprehensively regulates issues related to the implementation of the right to a fair trial, indicating judges' duties and the limits of independence of judges in relation to respect for the Constitution and statutes.

In Chapter One, the draft Act contains general provisions defining the subject matter of the Act, its objective and definitions.

In Chapter Two entitled "Implementation of the citizen's right to a fair trial and the system of justice by a judge", the draft Act defines the principles of administering justice with reference

to the constitutional principle that judges are subject to the Constitution and statutes. The Act also defines the duties of a judge, compliance with which ensures the existence of constitutional order in the State. The provisions contained in Chapter Two are of a guarantee and preventive nature, and their purpose is to ensure respect for the Constitution of the Republic of Poland, the constitutional principles of the State, stability and legal certainty, and proper functioning of the administration of justice. These provisions are intended to prevent the current unlawful actions of judges questioning the status of other judges, the binding force of constitutional and statutory provisions concerning the system of courts and tribunals, the status of judges and associate judges, as well as judgments of the Constitutional Tribunal and resolutions of the National Council of the Judiciary. The provisions also aim to ensure implementation of the right to a fair trial by preventing the setting aside of judgments for non-substantive reasons relating solely to unfounded questioning of the attribute of impartiality or independence by a judge forming a court panel, solely due to the competition procedure before the National Council of the Judiciary since 2018. The solutions contained in Chapter Two aim to restore the balance between the principle of independence of judges and the constitutional principle of legality (Article 7 of the Constitution), according to which public authorities act on the basis of and within the limits of law.

Articles (4)-(6) of the draft Act introduce fundamental and absolute obligations related to administering justice, constituting a response to the unlawful actions of courts and judges and associate judges described in this explanatory memorandum. Obligations were therefore introduced to restore the prohibition on a judge questioning the binding force of, disregarding or refusing to apply the Constitution and statutes in the scope concerning the system of courts and the procedure of appointing judges and nominating associate judges.

The principle introduced in Article 5 § 1, constitutes a direct extension of the constitutional norm specified in Article 178(1) of the Constitution, according to which judges, in the exercise of their office, are subject only to the Constitution and statutes. The purpose of the provision is to counteract the practice of judges independently assessing the constitutionality of systemic and procedural provisions, which constitutes interference with the competences of the Constitutional Tribunal and a breach of the principle of separation and balance of powers. Consolidation of this statutory norm is intended to restore uniform application of law and certainty of adjudication. The proposed provision does not limit judges' independence in adjudicating individual cases, but, on the contrary, restores its proper limits consistent with the Constitution and the principle of separation of powers. The aim of the regulation is to eliminate situations in which a judge, acting outside the scope of his/her competences, enters the domain of constitutional bodies, which violates the principle of legality and weakens the authority of courts.

In Article 5 § 2, the draft Act introduces a prohibition on a judge questioning the existence of constitutional state bodies and undermining their competences and empowerment. This concerns in particular the Constitutional Tribunal and the National Council of the Judiciary, but also other bodies specified in the Constitution. The purpose of the provision is to ensure respect for constitutional authorities and prevent attempts by judicial authorities to limit their constitutional competences. This principle strengthens the foundations of the state ruled by law and prevents courts from usurping the competences of other public authorities.

In Article 5 § 3, the Act prohibits judges from questioning the rulings of the Constitutional Tribunal, undermining their existence, effectiveness or binding force. The formulated

prohibition directly refers to Article 190 of the Constitution, which provides that rulings of the Constitutional Tribunal have universally binding force and are final. Introducing this regulation aims to counteract practices consisting in disregarding, not recognising, considering as invalid, or questioning the legal basis of the Tribunal's rulings. Statutory confirmation of the absolute binding force of rulings of the Constitutional Tribunal serves to restore the coherence of the legal system and ensure its uniform interpretation. Failure to respect binding judgments of the Constitutional Tribunal, which in its rulings repeatedly since 2007 stated that solutions concerning the co-optation-corporate system functioning before 2018 were incompatible with the Constitution of the Republic of Poland (see judgments of the Constitutional Tribunal of: 29 November 2007, ref. no. SK 43/06, OTK ZU no. 10/A/2007, item 130; 27 May 2008, ref. no. SK 57/06, OTK ZU no. 4/A/2008, item 63; and 19 November 2009, ref. no. K 62/07, OTK ZU no. 10/A/2009, item 149). According to the judgment of the Constitutional Tribunal in the case ref. no. K 7/21: "Neither domestic nor international bodies may negate the effects of a published judgment of the Constitutional Tribunal, i.e., its impact on the system of sources of law, which such a judgment produced, in particular as regards confirming or rebutting the presumption of constitutionality of the challenged provisions and their continued binding force or derogation from the domestic legal system. If from Article 6(1), first sentence, of the Convention one can derive a norm allowing the ECtHR or domestic courts to examine whether the condition of a 'tribunal established by law' is met while disregarding judgments of the Constitutional Tribunal which assessed the constitutionality of provisions concerning the organisation of the judiciary or the jurisdiction of courts, as well as provisions concerning the composition of the National Council of the Judiciary, which participates in the process of appointing judges by directing appropriate motions to the President of the Republic of Poland, then that norm violates the principle of the finality of judgments of the Constitutional Tribunal and their universally binding nature."

In Article 5 § 4, the draft Act introduces another absolute prohibition concerning a key issue related to the assessment of the effectiveness of resolutions of the National Council of the Judiciary adopted in the period from 5 March 2018 to 13 May 2026, as well as their disregard, treating as invalid or non-existent, and questioning the legal basis for their adoption. The purpose of this regulation is to normatively and effectively counteract unlawful attempts to undermine judicial nominations granted on the motion of the National Council of the Judiciary, due to an adjudicatory practice inconsistent with the Constitution and the case-law of the Constitutional Tribunal. Establishing this norm is of an ordering and stabilising nature, as it restores legal certainty and the protection of acquired rights of judges and citizens.

Article 6 § 2 of the draft Act introduces, a principle according to which no court or other public authority may make findings or assessments concerning the legality of the appointment of a judge or the nomination of an associate judge, nor assess the entitlement resulting from such appointment to perform tasks in the administration of justice. The proposed regulation aims to guarantee the irremovability of judges and to protect the prerogative of the President of the Republic of Poland defined in Article 179 of the Constitution, according to which judges are appointed by the President on the motion of the National Council of the Judiciary. It thus safeguards the irremovability of a judge and the continuity of the functioning of the administration of justice. The Supreme Court, referring to questioning the status of judges, indicated that "currently, questioning in practice the status of judges serves primarily the pursuit of political objectives. This, in turn, cannot but affect the assessment of the independence and impartiality of judges who not only support but actively participate in such actions, thereby undermining the democratic foundations of the system of the Republic" (cf.

decisions of the Supreme Court of: 21 June 2024, ref. no. III CB 44/24; 3 August 2024, ref. no. III CN 26/24; and judgment of the Supreme Court of 21 November 2023, ref. no. II KK 469/22; as well as judgments of the Constitutional Tribunal of: 16 May 2024, ref. no. U 1/24; and 19 June 2024, ref. no. K 7/24). The CJEU has repeatedly stated in its case-law concerning the Polish system of justice that the mere fact that judges are appointed by the President of the Republic of Poland cannot cause those members to be dependent on that body or raise doubts as to their impartiality, if, after appointment, those persons are not subject to any pressure and do not receive instructions in the performance of their duties (see CJEU judgment of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court), ECLI:EU:C:2019:982, para. 133; see also CJEU judgments of: 2 March 2021, A.B. and Others (Appointment of Supreme Court Judges – Appeal), C-824/18, EU:C:2021:153, para. 122; 20 April 2021, Republika, ECLI:EU:C:2021:311, para. 56; 15 July 2021, C-791/21, European Commission v Republic of Poland, ECLI:EU:C:2021:596, para. 97). According to the CJEU's case-law, the circumstance that a body such as the National Council of the Judiciary participating in the process of appointing judges consists predominantly of members elected by the legislature cannot, in itself, lead to doubts as to the independence of judges selected in that process (see similarly CJEU judgment of 9 July 2020, Land Hessen, C-272/19, EU:C:2020:535, paras 55-56).

Article 6 § 3 of the draft Act introduces a prohibition on setting aside, disregarding, treating as non-existent or in any way questioning judgments issued with the participation of a judge or an associate judge on the ground of an assessment of the legality of their appointment. The purpose of this provision is to protect the stability of judicial decisions and ensure legal security for the parties to proceedings. In judicial practice in recent years, a number of judgments were issued in which, due to a judge's participation in a competition procedure before the National Council of the Judiciary in the composition formed since 2018, judgments were set aside for non-substantive reasons. Such actions by the system of justice constitute an unlawful act, lead to a breach of the principle of legal certainty and undermine the authority of the administration of justice. The drafter holds that the effectiveness of the appointment of judges and assessors and the force of judgments issued with their participation may not be assessed by courts or other bodies, as this would lead to endless destabilisation of the adjudicatory system.

The regulations contained in Article 6 of the draft Act are of key importance for the constitutional and legal certainty of the State and are consistent with the Constitution, in particular with Article 7 (principle of legality), Article 10 (separation of powers), Article 45 (right to a fair trial), Article 173 (independence of courts) and Article 179 (appointment of judges by the President of the Republic of Poland). Article 6 of the draft Act does not limit independence of judges, but specifies its boundaries in a manner ensuring respect for the constitutional order of the State and the rights of the individual.

The purpose of Article 7 is to ensure protection of the constitutional legal order and guarantee the stability of judicial decisions by eliminating from legal circulation acts and decisions issued in breach of constitutional principles. The provision introduces a sanction of nullity by operation of law with respect to judicial acts and decisions the basis of which was questioning the status of a person appointed to judicial office or nominated as an associate judge, as well as with respect to actions taken in breach of the statutory jurisdiction of the chambers of the Supreme Court or the Supreme Administrative Court. This solution is of an ordering and stabilising

nature – it eliminates from legal circulation decisions contrary to the Constitution and systemic statutes which unlawfully undermined the status of judges and assessors. The legislator thereby restores uniformity of adjudication, protection of the individual's right to a fair trial established in accordance with statute, and legal certainty – foundations of a democratic state ruled by law (Articles 2 and 45 of the Constitution). Article 7 § 1 of the draft Act introduces the principle of nullity by operation of law (*ipso iure*) of judicial acts, decisions and actions based on questioning or assessing the status of a person appointed to judicial office or nominated as an associate judge. This aims to eliminate practices whereby courts or individual judges, relying on their own interpretation of constitutional norms, exceeding the constitutional competences of courts and infringing the prerogative of the President, assessed the correctness of the nomination process of other judges or assessors. This unlawful practice leads to the loss of guarantees for implementing the right to a fair trial. Applying the sanction of nullity by operation of law to such decisions has both a preventive and remedial character – it prevents further deepening of legal chaos and removes from circulation the effects of actions contrary to constitutional principles of appointing judges. The regulation protects the principle of judges' independence and the authority of courts, because it prevents instrumental undermining of nomination appointments, and guarantees stabilisation of judicial office and its irremovability. In § 2, an analogous sanction of nullity by operation of law is introduced with respect to acts and decisions issued in breach of statutes defining the jurisdiction of the chambers of the Supreme Court and the Supreme Administrative Court. This provision is protective and restores constitutional order by stating that any breach of the statutes on the system of the Supreme Court or the Supreme Administrative Court with respect to the jurisdiction of chambers results in nullity by operation of law of actions and decisions issued contrary to those statutes. This solution guarantees uniform functioning of the courts of the highest instances, prevents jurisdictional disputes and ensures the citizen's right to reliable, stable judicial proceedings.

In the drafter's view, Article 7 of the draft Act is of key importance for preserving legal certainty, continuity of case-law and protection of the authority of the administration of justice. Introducing the sanction of nullity by operation of law eliminates from circulation judgments and actions contrary to the Constitution, restores institutional order and guarantees that the system of justice will be exercised by courts in accordance with statute.

The purpose of the proposed Article 9 is to strengthen transparency, impartiality and public trust in the system of justice by introducing an obligation for a judge, upon a party's request in the course of proceedings before a court and a tribunal, to disclose certain information concerning organisational membership, activity in associations and foundations and – in historical scope – in political parties. The proposed provision is a response to the judgment of the CJEU of 5 June 2023 (C-204/21). In that judgment, the CJEU held that Article 88a of the Law on the System of Common Courts, Article 45 § 3 of the Act on the Supreme Court and Article 8 § 2 of the Law on the System of Administrative Courts infringe, inter alia, Article 6(1), first subparagraph, points (c) and (e), Article 6(3) and Article 9(1) of the GDPR and Articles 7 and 8(1) of the Charter of Fundamental Rights of the European Union – insofar as they relate to the collection and electronic publication of personal data regarding current or former membership in an association or functions currently or previously performed in such an association or in a non-profit foundation. The CJEU challenged the solution allowing electronic publication of personal data containing information on identified natural persons, which infringes the fundamental right under Article 7 of the Charter to respect for private life, and, in this context, the fact that those data may be linked to professional activity is irrelevant. At the

same time, public disclosure of such data constitutes processing of personal data within the scope of Article 8 of the Charter (see similarly CJEU judgment of 22 November 2022, Luxembourg Business Registers, C-37/20 and C-601/20, EU:C:2022:912, para. 38 and the case-law cited there). The objective declared by the Republic of Poland of guaranteeing political neutrality and impartiality of judges and limiting the risk that they might be influenced in performing their tasks for reasons related to private or political interests, undoubtedly is, as emphasised in para. 340 of that judgment, in the public interest and is therefore legally justified (see analogously CJEU judgment of 1 August 2022, Vyriausioji tarnybinės etikos komisija, C-184/20, EU:C:2022:601, paras 75-76). The same applies to the objective of strengthening individuals' trust as to the existence of such impartiality.

The CJEU has repeatedly emphasised that the requirement of independence and impartiality of courts, which constitutes an integral part of adjudication, falls within the essence of the fundamental right to effective judicial protection and to a fair trial, which is of fundamental importance as a guarantee of protection of all rights that individuals derive from EU law and of preserving the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law (see similarly CJEU judgments of 20 April 2021, Repubblica, C-896/19, EU:C:2021:311, para. 51 and the case-law cited there; and 29 March 2022, Getin Noble Bank, C-132/20, EU:C:2022:235, para. 94 and the case-law cited there). According to settled case-law, the guarantees of independence and impartiality required under EU law thus require the existence of rules, in particular as to the composition of the judicial body and the grounds for excluding its members, capable of excluding, in the minds of individuals, any reasonable doubt as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (see similarly CJEU judgment of 29 March 2022, Getin Noble Bank, C-132/20, EU:C:2022:235, para. 95 and the case-law cited there). As recalled in para. 95 of that judgment, those rules should in particular make it possible to exclude more indirect forms of influence that may weigh on the decisions of those judges and thus prevent a lack of visible signs of independence or impartiality, which could undermine the trust that the judiciary should inspire in individuals in a democratic society.

In the CJEU's view, the challenged national provisions, assuming that they indeed pursue the general-interest objective declared by the Republic of Poland, are suitable for achieving that objective; however, it must be considered whether that objective could be reasonably achieved in an equally effective manner by other measures that infringe to a lesser extent the judges' rights to respect for private life and to protection of personal data, and whether the interference at issue is not disproportionate in relation to that objective, which requires, in particular, balancing the importance of that objective against the seriousness of that interference.

Taking the CJEU's position into account, the proposed Article 9 introduces an obligation to submit a statement of identical personal and material scope with significant exceptions. First, the proposed solution excludes an obligatory requirement to submit the statement. Second, the obligation arises as a result of a motion by the parties during proceedings before a court or tribunal. Finally, the information contained in the statement remains in the case file and is not publicly disclosed in electronic form. The regulation increases the standards of impartiality and transparency. It introduces a mechanism enabling parties to judicial proceedings to assess potential circumstances that may raise doubts as to the impartiality of a judge in a given case and serves to disclose facts that may be relevant to the parties' trust in the adjudicating panel. The principle of a judge's impartiality is one of the pillars of the right to a fair trial guaranteed by Article 45 of the Constitution. An element of the right to a fair trial is the

principle of impartiality, which has repeatedly been analysed in the case-law of the Constitutional Tribunal and European tribunals. In the case-law of the Constitutional Tribunal, it has repeatedly been indicated that independence of judges places emphasis on the absence not only of actual but also apparent dependence of courts (judges) in their adjudicatory activity on factors other than the requirements of law. Independence in the objective aspect is assessed by examining whether objective facts may raise doubts as to maintaining such independence. What is at stake is the trust that courts must inspire in society, and above all in the parties to proceedings. A judge is an arbiter in social conflicts, which requires a special credit of public trust. A judge deprived of such trust cannot properly resolve conflicts and serve the maintenance of public peace (cf. judgment of the Constitutional Tribunal of 24 October 2007, ref. no. SK 7/06, OTK ZU no. 9A/2007, item 108). The literature emphasises that the concept of “independence” consists of many elements, such as: 1) impartiality towards participants in proceedings, 2) independence from non-judicial bodies, 3) the judge’s autonomy vis-à-vis authority, 4) independence from political factors, 5) internal independence of the judge (see Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji RP [The right to a fair trial in the light of the Constitution of the Republic of Poland]*, Państwo i Prawo 1997, no. 11-12, pp. 99-100). Similarly, the Supreme Court emphasised that “the institution of recusal of a judge serves equally to ensure the real impartiality of the court and to strengthen the authority of the system of justice by removing even the appearance of impartiality” (cf. decision of the Supreme Court of 3 November 2021, ref. no. IV KO 86/21).

The purpose of the proposed Article 10 is to ensure continuity and effectiveness of administering justice and to guarantee that every judge performs the constitutional duties entrusted to him/her in a manner consistent with statute and the principle of loyalty to the Republic of Poland. The proposed provision states that an intentional refusal by a judge to administer justice is tantamount to resignation from judicial office, i.e., has the effect of terminating the service relationship by operation of law. The regulation is of a disciplinary and guarantee nature and constitutes a response to cases in which judges refuse to adjudicate or undertake adjudicatory actions relying on their own assessments of the legality of a judge’s status, the correctness of appointments of other judges or assessors. Such actions lead to paralysis of the administration of justice, breach of the citizen’s right to a fair trial (Article 45 of the Constitution), and undermining the principles of legality and separation of powers (Articles 7 and 10 of the Constitution).

The proposed Article 10 is of a sanative and preventive character. First, it eliminates from legal circulation decisions on the exclusion of a judge issued in excess of statutory powers. Second, it prevents further use of this practice in the future, protecting against destabilisation of adjudicating panels and prolongation of proceedings for reasons lacking legal basis. Third, it restores full respect for the President’s prerogative to appoint judges (Article 144(3)(17) of the Constitution). Fourth, it guarantees the citizen a real right to a fair trial and to have his/her case examined by a judge entitled to adjudicate, without the risk of arbitrary exclusion for systemic reasons.

The proposed Article 10 introduces a closed catalogue of cases deemed by the legislator to constitute an intentional refusal to administer justice, and defines it precisely. This means the legislator does not allow other cases that by operation of law would have the effect of resignation from office by a judge. The proposed solution constitutes the legislator’s response to the progressing destruction of the administration of justice, manifested in actual and procedural actions of judges and courts in various adjudicating panels, leading to a breach of

the judicial oath. A judge's duty is to serve the Nation and administer justice in the name of the Republic of Poland. An intentional refusal to fulfil this fundamental duty, especially combined with questioning constitutional bodies, not recognising and disregarding binding provisions and judgments of the Constitutional Tribunal, is tantamount to resignation from office.

Article 11 of the draft Act emphasises, under this specific Act, that a judge and an associate judge may not belong to a political party or a trade union. Furthermore, a judge and an associate judge may not belong to an association, including a professional and political association, whose statute contains an obligation for its members to comply with resolutions of the bodies or authorities of that association, nor conduct public activity incompatible with the principles of independence of courts and of judges.

Article 12 of the draft Act introduces joint and several civil-law liability of a judge or an associate judge and the State Treasury for damage caused to an individual by issuing a final judgment referred to in Article 7 § 1 and § 2. In the drafter's view, such an additional civil-law sanction will counteract issuing judgments with a gross breach of law, and at the same time will allow effective redress of damage caused to an individual by issuing such judgments.

Chapter 3 of the draft regulates disciplinary liability of judges and assessors for breaches of obligations arising from the Act. It defines a catalogue of disciplinary offences, including actions consisting in questioning the status of judges or constitutional bodies, as well as political activity inconsistent with the principle of independence of judges.

The drafter recognises the need to specifically define actions of judges or associate judges for which they bear disciplinary liability. They essentially include all behaviours consisting in questioning the systemic correctness of the functioning of the system of justice of the Republic of Poland, to the detriment of parties and participants in proceedings. The catalogue of acts constituting an offence against the dignity of office also includes questioning judgments of the Constitutional Tribunal, which is the only body competent to assess the constitutionality of law enacted in Poland.

The drafter took into account that, with respect to disciplinary liability of judges and associate judges, the binding provisions providing for disciplinary liability apply (Article 14 § 3), with disciplinary limitation periods being extended (Article 14 § 1) exclusively in relation to acts specified in Article 14 of the draft Act due to their greater social harmfulness.

Chapter 4 of the draft introduces criminal liability for actions undermining the constitutional system of the State and the proper functioning of bodies of the administration of justice. These provisions aim to ensure systemic protection of courts and to prevent deliberate breaches of law by public officials.

The drafter takes the view that actions striking at the constitutional order of the Republic of Poland and questioning bodies and the status of judges are acts of very high social harmfulness. They cause destabilisation of the functioning of the State, generate chaos and intensify the harm suffered by parties and participants in proceedings. In this state of affairs, disciplinary liability is insufficient, and the need to protect the constitutional order and the stability of the functioning of the State requires enactment of appropriate provisions providing for criminal liability.

The proposed provisions introduce two new offences, covering acts committed by public officials (including judges, prosecutors, officers of the Internal Security Agency, etc. – Article 115 § 13 of the Penal Code).

The first of the proposed offences covers questioning the constitutional and statutory powers of the President of the Republic of Poland, the Constitutional Tribunal, the National Council of the Judiciary and the Tribunal of State, acts or judgments issued by these bodies or constitutional and statutory actions undertaken by them (punishable by imprisonment from 6 months to 5 years). A condition of criminal liability is the “persistent” nature of the public official’s actions. In the case-law of the Supreme Court, the element of “persistence” has been repeatedly interpreted and is characterised inter alia by repetitiveness or durability of maintaining a given state (cf. decision of the Supreme Court of 28 November 2013, ref. no. I KZP 11/13, “Biuletyn SN” 2014, no. 1, item 16). As regards the subjective element, the act may be committed only intentionally. In § 2 of Article 15, a qualified type of the offence is defined (punishable by imprisonment from 1 year to 10 years), in which the perpetrator acts in order to obtain a material or personal benefit, i.e., with direct intent of a specific purpose (*dolus directus coloratus*). In § 3, it is provided that a public official shall not be held criminally liable if he/she acts within his/her statutory or constitutional powers. This concerns situations in which a proper and competent body examines, e.g., legal remedies submitted in the prescribed procedure (e.g., the Supreme Court examining complaints against individual resolutions of the National Council of the Judiciary, the Constitutional Tribunal ruling on the conformity of a statute with the Constitution, etc.).

In Article 16 § 1, the drafter proposes introducing a new offence consisting in a public official questioning the binding force of, disregarding or refusing to apply the Constitution or statutes in the scope regulating the system of courts and the procedure of appointing a judge or nominating an associate judge. This concerns only actions of a public official (including a judge) who does so “in the scope of his/her professional or official duties or powers.” It therefore does not cover, e.g., public statements or private assessments by a given person.

Similarly, in § 2 of Article 16, the drafter provided for criminal liability of a public official who makes findings or assessments regarding the legality of appointing a judge or nominating an associate judge, or the entitlement resulting from such appointment to perform tasks in the administration of justice. The perpetrator must also do so “in the scope of his/her professional or official duties or powers.”

In the case of the new prohibited acts, as defined in Article 16, the subjective elements include only intentional conduct, and the penalty could be imprisonment from 6 months to 5 years.

Chapter 5 of the draft Act contains necessary amendments to the binding statutes on the system of common, administrative and military courts and the Supreme Court, intended to adapt those acts to the new principles and restore the coherence of the system.

A new solution in the draft Act is abandoning the provisions contained in all systemic statutes of courts concerning examination of whether a judge meets the criterion of impartiality due to circumstances related to appointment and his/her conduct after appointment in a specific case.

By the Act of 9 June 2022 amending the Act on the Supreme Court and certain other Acts (Journal of Laws item 1259), a separate procedure was introduced into the Act on the Supreme

Court, the Law on the System of Common Courts, the Law on the System of Administrative Courts and the Act on Military Courts for examining, on the motion of an entitled entity, the requirements of a judge's impartiality and independence. In the explanatory memorandum to the draft Act (Sejm print no. 2011, 9th term of the Sejm), it was indicated that the matter contained in the proposed Act is not covered by EU law. Nevertheless, the content of provisions introducing into Polish law a new, previously unknown – neither to the Polish nor to other legal orders – institution of a test of independence of judges and impartiality undoubtedly refers to the CJEU's case-law in cases concerning the Polish administration of justice, initiated by a series of preliminary questions. As already indicated in this explanatory memorandum, in its case-law on the Polish administration of justice, the CJEU has repeatedly stated that the mere fact that judges are appointed by the President of the Republic of Poland cannot cause those members to be dependent on that body or raise doubts as to their impartiality, if, after appointment, those persons are not subject to any pressure and do not receive instructions in performing their duties (see CJEU judgment of 19 November 2019 in joined cases C-585/18, C-624/18 and C-625/18, A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court), ECLI:EU:C:2019:982, para. 133; see also CJEU judgments of: 2 March 2021, A.B. and Others (Appointment of Supreme Court Judges – Appeal), C-824/18, EU:C:2021:153, para. 122; 20 April 2021, Repubblica, ECLI:EU:C:2021:311, para. 56; 15 July 2021, C-791/21, European Commission v Republic of Poland, ECLI:EU:C:2021:596, para. 97).

According to the CJEU's case-law, the circumstance that a body, such as the National Council of the Judiciary, participating in the process of appointing judges, consists predominantly of members elected by the legislature, cannot, in itself, lead to doubts as to the independence of judges selected in that process (see similarly CJEU judgment of 9 July 2020, Land Hessen, C-272/19, EU:C:2020:535, paras 55-56). The introduced provisions, despite the lack of explicit indication of this circumstance in the explanatory memorandum to the draft Act, are intended to reconcile the standard of Polish law in the scope of admissibility of verifying a judge's independence and impartiality with the conclusions arising from the above CJEU judgments.

The provisions governing the impartiality test do not specify the standard of independence or impartiality. They do not define what independence and impartiality mean under the statute, nor what their breach may or should consist in. They also do not indicate whether the only criterion for assessing a lack of independence and impartiality is the judge's own conduct or other circumstances independent of the judge.

The introduced solution raises numerous doubts in practice. The provisions contained in the systemic statutes raise doubts as to the above assumptions; by interpretation it is not possible to identify the meanings of the terms "requirements of independence and impartiality", "circumstances accompanying the appointment", "conduct after appointment". The lack of precise and clear provisions on the criteria for meeting the requirements of independence and impartiality, at least on the theoretical level, combined with the concept of an abstract test of impartiality, makes it possible to exclude a judge in any case pending before a court and, consequently, from effective administration of justice.

In the drafter's view, the above doubts that have emerged in practice justify the need to abandon the institution of the test of impartiality. Procedural provisions in the Polish legal system contain sufficient instruments to guarantee fulfilment of the criterion of impartiality by judges and associate judges.

The draft Act also introduces amendments to the Act of 17 June 2004 on a complaint about infringement of a party's right to have a case examined in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings without undue delay (Journal of Laws of 2023, item 1725).

In connection with the aim of the Act – regulation and restoration of the proper functioning of courts in Poland – the drafter sees the need to protect the citizen against actions of courts that cause excessive length of proceedings. Setting aside judgments and decisions by some judges who question the status of other judges and associate judges obviously causes excessive length of pending proceedings, which must – generally – be conducted from the beginning. This violates the constitutional right of everyone to have a case examined “without undue delay”. As a consequence of setting aside a judgment and rehearing a case, the party or participant in proceedings not only faces prolonged proceedings but also must appear again in court, e.g., to give explanations or testimony, and must bear relevant costs (e.g., costs of a counsel or defence counsel). The drafter clearly notes these consequences and the deficiencies in current legislation, which should be supplemented by enacting appropriate provisions.

First, the draft Act assumes extending application of the statute also to proceedings initiated by a motion to affix an enforcement clause, which is justified by protecting the party who holds an enforcement title, which should quickly obtain an enforcement clause in order to direct it to enforcement. A significant change is provided for in Article 2 of that Act by adding section 3 introducing the principle that, if a judgment is set aside as a result of an appellate court's assessment of the status or manner of appointment of another judge or the nomination of an associate judge, the rule is that the court hearing the complaint about excessive length of proceedings will uphold the complaint and will award an appropriate sum of money in an amount not lower than PLN 6,000 and not higher than PLN 40,000 (new Article 12(4a)). The court is relieved of the obligation to uphold the complaint where the party or participant in proceedings contributed to the excessive length of proceedings by their own conduct, in particular by demanding or questioning the status or circumstances of appointment or nomination of a judge or an associate judge. The drafter recognises that, in such a case, awarding an appropriate sum of money would be inequitable.

Due to the significant passage of time since the legislator set the amounts that a court may award as compensation for excessive length of proceedings, the draft Act provides for their amendment and increase from PLN 2,000 to PLN 4,000 (minimum amount) and from PLN 20,000 to PLN 40,000 (maximum amount). Additional rates for excessive length in Article 12(4) are also increased, which the drafter set at PLN 1,000.

Chapter 6 contains transitional and final provisions intended to ensure effective implementation of the new normative solutions while at the same time guaranteeing protection of the stability of pending court proceedings. These regulations respond to the urgent need to restore constitutional order and eliminate the effects of unlawful actions that have occurred in recent years in the area of the administration of justice.

According to the general principle expressed in the transitional provisions, the Act will apply to all proceedings instituted and not concluded on the date of its entry into force. This means that new legal mechanisms, in particular provisions aimed at protecting the right to a fair trial, will

also apply to pending proceedings. This solution is important for restoring uniformity in adjudication and ensuring that citizens enjoy real protection of their procedural rights without the need to wait for completion of existing proceedings under a defective regime.

The Act introduces a 30-day period from the date of its entry into force, within which a party or participant in proceedings may submit a motion for a judge or an associate judge to submit a special statement (referred to in Article 9 § 1 of the Act), if the party was previously informed of the adjudicating panel. This provision implements the principle of equality of parties and ensures they have the possibility to raise doubts as to the fulfilment of statutory requirements by the court panel – however within a clearly defined period, so as not to destabilise proceedings.

The Act confirms the principle of non-retroactivity of law with respect to disciplinary liability. Therefore, acts committed before the date of entry into force of the Act will be assessed under the existing disciplinary provisions. This guarantees respect for the basic principles of the state ruled by law and constitutional guarantees of citizens' rights – also of public officials.

The draft Act assumes automatic discontinuance of proceedings instituted before the date of entry into force of the Act that concern examination of whether a judge meets the requirements of independence and impartiality – if that analysis includes circumstances accompanying his/her appointment or his/her conduct after appointment. The discontinuance occurs by operation of law. The purpose of this provision is to counteract continuation of unfounded practices of undermining the status of constitutional state bodies and to eliminate practices destabilising the administration of justice.

An analogous solution is provided for proceedings instituted before the Extraordinary Control and Public Affairs Chamber of the Supreme Court. All motions and statements concerning recusal of judges, designation of another court due to alleged lack of independence of the adjudicating panel, shall be also discontinued by operation of law on the date of entry into force of the Act. This solution is sanative in character and aims to cut off the practice of instrumental use of procedures to question constitutionally appointed judges and paralyse court proceedings.

The draft Act also regulates the publication of notices of the President of the Republic of Poland concerning vacant judicial and assessor posts, issued before the date of entry into force of the Act but not published in the official journal of the Republic of Poland "Monitor Polski" by that date. The intention of the legislator is to ensure continuity and effectiveness of nomination procedures, even in the event of formal delays in publication of notices in the traditional official mode.

According to the proposed provisions, such notices – regardless of whether they concern vacant judge positions in individual chambers of the Supreme Court or judicial and assessor positions in common or administrative courts – will be published in the Public Information Bulletin (*Biuletyn Informacji Publicznej*, BIP) on the subject page of the Chancellery of the President of the Republic of Poland. Such a solution constitutes a substitute measure for publication in "Monitor Polski", while guaranteeing immediate and universal access to public information.

This change is technical and ordering in nature, yet of significant constitutional and practical importance. Above all, it enables efficient initiation of the procedure of appointing judges, preventing paralysis of competition proceedings for reasons independent of the parties. Moreover, publication in the BIP preserves transparency of the executive authority's actions, while eliminating the risk of allegations of failure to effectively publish the notice, as an element required to initiate the nomination procedure.

This regulation should be understood as implementing the constitutional principles of legality and citizens' access to public information, as well as an expression of the legislator's concern for the stability of staffing procedures in the judiciary.

Thanks to this regulation, notices of the President of the Republic of Poland that were not published in "Monitor Polski" before the date of entry into force of the Act do not lose force nor require reissuance. They are effectively made available to the public via the BIP system, which allows maintaining continuity of nomination processes, respect for the principle of citizens' trust in the State, and proper functioning of the judiciary. In this way, the legislator strengthens transparency and effectiveness of the State's action in the area of filling judicial offices.

### **III. Social, financial and economic effects of introducing the Act, including the impact on small and medium-sized enterprises**

The introduction of the drafted Act is a response to the deepening constitutional crisis in the administration of justice, which in recent years has increasingly affected not only the functioning of courts but also social stability and the security of economic turnover. The scope of the solutions contained in the Act, aimed at guaranteeing citizens the real right to a fair trial, restoring constitutional order, systemic balance of powers and eliminating the state of legal anarchy in courts, will have a multi-dimensional impact on society and the economy.

In the social aspect, the entry into force of the Act will restore the basic sense of justice and citizens' trust in the State. In recent years, serious violations of constitutional standards of the state ruled by law have occurred, as evidenced by an unprecedented scale of actions consisting in refusal to adjudicate by some judges, contesting the status of other judges, and undermining the validity of judgments solely on the basis of the date of appointment of a member of the court panel. Such actions led to institutional chaos, serious delays in proceedings, destabilisation of case-law and a decline of the authority of the administration of justice. Citizens' loss of trust in courts means, de facto, loss of faith in the State's ability to protect their rights and freedoms. The Act, as a legislative measure aimed at restoring constitutional order and excluding behaviours contrary to the principle of legality, constitutes a response to these growing irregularities. Its enactment will enable rebuilding social trust, which is a sine qua non condition for the functioning of any democratic political community.

In the financial and economic dimension, the draft Act seeks to remove significant barriers to the effective functioning of the judiciary, the effects of which have been realistically felt by citizens and entrepreneurs. Repeated setting aside of final judgments, prolonged trials, and even the limitation of claims or punishability, generated losses, whose burden was largely borne by the parties to proceedings – both individual citizens and economic entities. It should be emphasised that prolonged court proceedings also mean increased burdens on the state budget – related to the costs of repeated hearings, expert opinions, excessive length of

proceedings and growing compensation claims for infringement of the right to have a case examined within a reasonable time.

The proposed provisions, which include, inter alia, unambiguous regulations on the legal effects of rulings issued without respect for constitutional principles, introduction of rules of disciplinary and criminal liability for refusal to administer justice, and elimination of grounds for arbitrary exclusion of judges, will contribute to increasing the efficiency of proceedings and rationalising public expenditure.

Of particular importance in the economic context is the Act's impact on small and medium-sized enterprises, which are most exposed to the negative effects of legal uncertainty and judicial delays. For this group of market participants, every month of waiting for a judgment, every set-aside judgment, and every necessity to pursue claims again means tangible costs – both financial and organisational. Instability of adjudication affects creditworthiness, financial liquidity and contractors' trust. Entrepreneurs, unable to count on a quick and predictable resolution of a commercial dispute, often abandon investments, reduce employment, move operations abroad or limit expansion. The draft Act, by restoring guarantees of the constitutional right to a fair trial – understood as a real, efficient and substantive process before an independent and impartial court – will constitute a foundation for rebuilding legal certainty and predictability of the business environment.

As a result, the Act will improve the conditions for conducting business activity in Poland, which is particularly important in a period of economic slowdown and increased geopolitical uncertainty. It will also increase the State's investment attractiveness, attracting domestic and foreign investors who expect strong and stable institutions of the state ruled by law. Transparency and stability of the legal system are a basic factor of competitiveness of any state in the global market.

In summary, the entry into force of the Act will bring positive effects in three key dimensions: social – through rebuilding citizens' trust in courts and the State; financial – through reducing the costs of legal chaos and improving the efficiency of the judiciary; and economic – through strengthening conditions for the development of small and medium-sized enterprises and restoring predictability of the legal environment. The draft Act therefore responds to fundamental socio-economic needs of the State, creating the basis for further rebuilding the authority of public institutions and proper functioning of a democratic state ruled by law.

#### **IV. Financial effects**

The proposed changes to the Act of 17 June 2004 aimed at strengthening protection of citizens' right to have their case examined without undue delay will cause an increase in budgetary costs related to paid compensation. Particular emphasis is placed on situations where excessive length of proceedings occurs as a result of actions of courts leading to setting aside decisions on non-substantive grounds – especially those concerning questioning the status of a judge or an associate judge. Such events necessitate conducting proceedings again from the beginning, which not only prolongs the duration of a case but also generates additional burdens for citizens and the administration of justice.

In response to these phenomena, the draft Act provides for changes to the amount of compensation awarded for established excessive length of proceedings. The existing financial

thresholds (from PLN 2,000 to PLN 20,000) were set many years ago and do not reflect current economic conditions and the realities of courts' functioning. The proposed increase of the minimum compensation to PLN 4,000 and the maximum to PLN 40,000 aims to increase the real effectiveness of the protective measure provided for in the Act and to better compensate the party for the inconvenience associated with excessive length.

In addition, a presumption of excessive length is introduced in cases where a judgment was set aside as a result of undermining the status of a judge or assessor. In such a case, the court will, as a rule, be obliged to uphold the complaint and award an appropriate monetary amount – subject to the reservation that if the party itself contributed to the excessive length (e.g., by initiating allegations as to the status of the adjudicating judge), this obligation will not apply.

Although the effect of introducing the Act will be a potential increase in compensation payments, it should be noted that there are currently no publicly available, precise data enabling a full estimation of how many cases per year could meet the new criteria qualifying them as excessively lengthy on this basis. The variability of judicial practice and the lack of a uniform register containing detailed statistical data on the causes of excessive length make it difficult to prepare accurate budgetary forecasts.

Therefore, it should be assumed that the proposed changes may affect state budget expenditure; however, due to the limited availability of data, it is currently not possible to present a full and unambiguous analysis of their scale. Potential financial consequences will largely depend on judicial practice in applying the new provisions and on the number of cases in which complaints based on the grounds indicated in the draft are submitted.

The drafter remains aware of the need to monitor these effects after the Act's entry into force

and, if necessary, is prepared to propose additional systemic or organisational solutions supporting implementation of its objectives while maintaining the stability of public finances.

## **V. Public consultations**

The submitted draft Act was not subject to direct public consultations.

The draft Act is not contrary to European Union law.

The draft Act does not require submission to the competent bodies and institutions of the European Union, including the European Central Bank, for the purpose of obtaining an opinion, making a notification, consultations or arrangements.

There is no possibility of taking alternative measures, as compared to the draft Act, enabling achievement of the intended objective.

The proposed provisions comply with the principles of proportionality and of justified and non-discriminatory character. The provisions of the draft Act are justified by overriding reasons of general interest and thus do not go beyond what is necessary.

The draft Act does not contain technical regulations within the meaning of the Regulation of the Council of Ministers of 23 December 2002 on the functioning of the national system for the notification of standards and legal acts (Journal of Laws item 2039 and of 2004, item 597), and therefore is not subject to notification.

The draft Act does not contain regulatory provisions or provisions defining requirements relating to the provision of cross-border services within the meaning of the Act of 22 December 2015 on the rules for recognition of professional qualifications acquired in Member States of the European Union (Journal of Laws of 2023, item 334).