



Strasbourg, 14 January 2020

CDL-REF(2020)003

Opinion No. 977/2020

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

POLAND

ACT

**ON THE NATIONAL COUNCIL
OF THE JUDICIARY**

of 12 May 2011

with amendments of 20 December 2019

() Unofficial translation*

ACT
of 12 May 2011
on the National Council of the Judiciary

Chapter 1
General provisions

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

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

Chapter 2
Competencies and structure of the Council

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

- 1) the examination and assessment of candidates for judicial posts in the Supreme Court and judicial posts in ordinary courts, administrative courts and military courts, and for the position of assistant judges in administrative courts;
 - 2) the submission to the President of the Republic of Poland of requests for appointment of judges to the Supreme Court, ordinary courts, administrative courts and military courts, and for appointment of assistant judges to administrative courts;
 - 2a) sending the President of the Republic of Poland proposals to appoint trainee judges and trainee prosecutors who have passed their examinations to assistant judges' posts in ordinary courts;
 - 3) resolving on a set of principles of professional ethics of judges and trainee judges and ensuring their observance;
 - 4) passing opinions on the condition of the judiciary and trainee judges;
 - 5) expressing opinions on matters concerning the judiciary, judges and trainee judges, brought under its agenda by the President of the Republic of Poland, other public authorities or bodies of judicial self-government;
 - 6) giving opinions on draft legislation concerning the judiciary, judges and trainee judges, and presenting proposals in this regard;
 - 7) expressing opinion on the program of training as part of the judges' training period, the scope and manner of conducting the judges' training period entry contests and judges' exams;
 - 8) expressing opinion on annual schedules of training and professional education of judges, trainee judges and court officers.
2. Moreover, the Council performs other tasks stipulated in Acts, in particular:
- 1) it adopts resolutions regarding applications to the Constitutional Tribunal to examine compliance with the Constitution of the Republic of Poland of normative acts within the scope concerning independence of courts and judges;
 - 2) it considers applications for retirement of judges;
 - 3) it considers applications of retired judges to return to judicial post;
 - 4) appoints the disciplinary proceedings representative for matters regarding judges of common courts and trainee judges and the disciplinary proceedings representative for matters regarding judges of military courts;
 - 5) it expresses opinion on the dismissal of presidents and deputy presidents of common courts and military courts;

- 6) (repealed)
- 7) shall nominate one member of the Programme Board for the National School of Judiciary and Public Prosecution;
- 8) shall express an opinion on the appointment and dismissal of a Director of the National School of Judiciary and Public Prosecution.

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

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

- 1) visitation at the court or its organizational unit;
- 2) inspection at the court;
- 3) inspection of the career of a judge or an trainee judge, whose individual matter is to be addressed by the Council.

2. Actions referred to in section 1 may not interfere with areas in which the judges and trainee judges are independent.

3. The activities referred to in par. 1 may be carried out by members of the Council or by judges delegated to the Council Office on the basis of separate regulations.

Article 6. The Council shall elect the disciplinary proceedings representative for matters concerning judges of common courts and trainee judges after the submission of candidates by the general assembly of judges of courts of appeal and the disciplinary proceedings representative for matters concerning judges of military courts after the submission of candidates by the Assembly of Judges of Military Courts. Article 18 shall apply accordingly.

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

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

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

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

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

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

Article 9a. 1. The Sejm shall elect fifteen members of the Council, for a joint four-year term, from among judges of the Supreme Court, the common courts, the administrative courts and the military courts.

2. When conducting the election referred to in paragraph 1, the Sejm shall take all possible account of the need for the Council to represent judges of courts of different types and levels.

3. The joint term of office of the new members elected to the Council from among judges shall begin the day after their election. The members of the previous Council shall perform their functions until the day on which the joint term of office of the new members of Council begins.

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

Article 11. (repealed)

Article 11a. 1. No earlier than 120 days and no later than 90 days before the end of the term of office of the members of the Council elected from among judges the Marshal of the Sejm shall announce the start of the procedure for nominating candidates for membership of the Council in the Official Gazette of the Republic of Poland 'Monitor Polski'.

2. The entities authorised to nominate candidates for membership of the Council shall be a group of at least:

- 1) 2 000 nationals of the Republic of Poland who are over 18 years of age, have full legal capacity and enjoy full public rights;
- 2) 25 judges, excluding retired judges.

3. A nomination shall concern only one candidate for membership of the Council. The entities referred to in paragraph 2 may submit more than one nomination.

4. A candidate for membership of the Council shall be nominated to the Marshal of the Sejm no more than 30 days after the publication of the notice referred to in paragraph 1.

5. A candidate's nomination shall include information on the candidate, the functions and social action performed to date and other key events in the course of the candidate's performance of the office of judge. The judge's consent to being a candidate shall be annexed to the nomination.

6. No more than three days after receiving the nomination of a candidate the Marshal of the Sejm shall write to the president of the court competent for the candidate nominated or, where the nomination concerns the president of:

- 1) a district court, regional court or garrison military court, to the president of the higher instance,
- 2) an appeal court, provincial administrative court or regional military court, to the deputy president of that court,

requesting that they draw up, no more than seven days after service of the request, information on the candidate's rulings, covering rulings of social significance or setting a precedent, and key information concerning their workplace culture, as manifested above all during inspections and lustration.

7. If the information referred to in paragraph 6 is not drawn up within the time-limit referred to in paragraph 6, the Marshal of the Sejm shall write to the candidate for membership of the Council, asking that candidate to draw up the information within seven days of service of the Marshal's request. The candidate for membership of the Council shall send a copy of the information they have drawn up to, as appropriate, the president of the court competent for the candidate, the president of the higher instance or the deputy president of the appeal court, provincial administrative court or regional military court.

8. If a candidate for membership of the Council fails to draw up the information referred to in paragraph 6 within the time-limit referred to in paragraph 7, the Marshal of the Sejm shall refuse to accept the nomination. The decision in this matter and the grounds shall be served on the agent and the candidate for membership of the Council without delay.

9. The Marshal of the Sejm shall annex the information referred to in paragraph 6 to the candidate's nomination.

Article 11b. 1. A candidate shall be nominated in writing by an agent. The agent shall be a person indicated in a written statement by the first 15 persons on the list.

2. A list of citizens supporting a nomination, containing their names, surnames, addresses and Social Security identification numbers (PESEL) and personally deposited signatures, shall be annexed to the nomination of a candidate by the entity referred to in Article 11a(2)(1).

3. In the event of doubts as to whether the requisite number of signatures have been duly deposited, the Marshal of the Sejm shall, no more than three days after receiving the nomination, write to the State Election Commission to ask it to confirm whether the requisite number of signatures have been deposited.

4. The State Election Commission shall confirm whether the requisite number of signatures have been deposited no more than 14 days after receiving the Marshal of the Sejm's letter.

5. If the enquiry referred to in paragraph 4 shows that the number of signatures duly deposited by citizens supporting a nomination is lower than that required by statute, the Marshal of the Sejm shall refuse to accept the nomination. The decision in this matter and the grounds shall be served on the agent without delay.

6. The agent may challenge this decision before the Supreme Court no more than three days after service. A three-member bench of the Supreme Court shall examine the appeal within three days in non-contentious proceedings. After examining the appeal the Supreme Court shall either amend or uphold the contested decision. The Supreme Court's decision shall not be subject to appeal. If the appeal is not examined by the Supreme Court within three days, the proceedings before the Supreme Court shall automatically be discontinued and the decision of the Marshal of the Sejm refusing to accept the nomination shall be binding.

7. A list of judges supporting a nomination, containing their names, surnames, places of service and Social Security identification numbers (PESEL) and personally deposited signatures, shall be annexed by the entity referred to in Article 11a(2)(2) to the candidate's nomination.

8. No more than three days after receiving the nomination of a candidate by an entity referred to in Article 11a(2)(2), the Marshal of the Sejm shall ask the Minister for Justice to confirm that the persons supporting the nomination have the status of judge. The Minister for Justice shall confirm that the persons supporting the nomination have judge's status no more than three days after receiving the Marshal of the Sejm's letter. Paragraphs 5 and 6 shall apply *mutatis mutandis*.

9. The Marshal of the Sejm shall lay down in an order the models for the nomination of a candidate and for the lists of citizens and judges supporting the nomination of a candidate for membership of the Council. The order of the Marshal of the Sejm shall be published in the Official Gazette of the Republic of Poland 'Monitor Polski'.

Article 11c. The Marshal of the Sejm shall immediately forward nominations of candidates made in accordance with Articles 11a and 11b to the deputies of the Sejm and publish them with their annexes.

Article 11d. 1. The Marshall of the Sejm shall ask parliamentary groups to name candidates for membership of the Council within seven days.

2. A parliamentary group shall name, from among the judges nominated under Article 11a, no more than nine candidates for membership of the Council.

3. If the total number of candidates nominated by parliamentary groups is fewer than 15, the Praesidium of the Sejm shall name, from among the judges nominated under Article 11a, candidates to bring the number up to 15.

4. The relevant Sejm committee shall establish the list of candidates by electing, from among the candidates named under the procedure laid down in paragraphs 2 and 3, 15 candidates for membership of the Council, provided the list includes at least one candidate named by each parliamentary group which has acted within 60 days of the first session of the Sejm during whose term of office the election takes place, as long as that candidate was named by the group under the procedure set out in paragraph 2.

5. Voting on the list of candidates referred to in paragraph 4, the Sejm shall at its next session elect, by a 3/5 majority in the presence of at least half the statutory number of deputies, the members of the Council for a joint four-year term.

6. If members are not elected to the Council under the procedure laid down in paragraph 5, the Sejm shall elect the members of the Council by an absolute majority in the presence of at least half the statutory number of deputies.

7. If the procedure laid down in paragraphs 1 to 6 fails to result in the election of 15 members to the Council, Articles 11a to 11d shall be applied *mutatis mutandis*.

Article 11e. 1. If a member of the Council elected from among judges has to be replaced before the end of their term, the Marshal of the Sejm shall immediately announce the start of the procedure for nominating candidates to fill the vacant post on the Council in the Official Gazette of the Republic of Poland 'Monitor Polski'. Articles 11a(2) to (9), 11b and 11c shall apply mutatis mutandis.

2. In the case referred to in paragraph 1, Articles 9a(1) and (2) and 11d shall apply to the election of a member of the Council.

3. The term of office of a member of the Council elected to a vacant post shall expire on the date of expiry of the term of office of the members of the Council elected from among judges.

Article 12. (repealed)

Article 13. (repealed)

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

- 1) death;
- 2) renunciation of the mandate;
- 3) expiry of the mandate of the Deputy or Senator;
- 4) (repealed)
- 5) expiry or termination of the judge's service relationship;
- 6) when the judge retires or is retired.

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

3. The election of a new member of the Council from among deputies or senators must be completed within two months of the day on which the term of office expires.

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

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

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

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

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

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

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

- 1) convenes the meetings of the Council, chairs the meetings and exercises supervision over the course thereof;
- 2) signs the Council's resolutions;
- 3) gives orders to correct evident typographical errors in the Council's resolutions and their justifications;
- 4) tables motions before the Council to re-examine the case;

- 5) performs activities commissioned by the Council.
2. The Deputy chairmen:
- 1) during the Chairman's absence, substitute in for him in performing the activities specified in par. 1 and in Article 16 par. 5;
 - 2) perform other activities by proxy of the Chairman.
3. The distribution of the activities referred to in par. 2 between the deputy chairmen is determined by the Chairman who informs the Council about it.
4. Should the Chairman and the deputy chairmen be absent, the meetings of the Council are chaired and the Council's resolutions are signed by the oldest member of the Praesidium of the Council.

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

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

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

Article 19. 1. The Council appoints permanent committees from among its members:

1) the committee for disciplinary responsibility of judges and trainee judges, whose task is to analyse the judgments of the disciplinary courts, to submit to the Council motions for disciplinary actions, to appeal against the decisions of disciplinary courts and disciplinary proceedings representatives and to demand the resumption of disciplinary proceedings;

2) budgetary committee, whose task is to annually:

a) draw up the draft resolution containing a plan of revenues and expenses of the Council and resolutions containing the petitions referred to in Article 178 § 3 of the Act of 27 July 2001 - Law on the organization of common law courts (Journal of Laws No. 98, item 1070, as amended) and Article 4 § 4 of the Act of 21 August 1997 - Law on the organization of military courts (Journal of Laws of 2007, No. 226, item 1676, as amended),

b) examine the data contained in the declarations of the presidents of courts of appeal and the presidents of military circuit courts concerning their financial status for the purpose of the Council analysing these declarations by 30 June of each year;

3) the committee for visitations and inspection, whose task is to prepare draft resolutions on the visitation of court or its organisational units, court inspection or career inspection regarding a judge or an trainee judge;

4) the committee for professional ethics of judges and trainee judges, whose task is to prepare draft resolutions on the set of principles of professional ethics of judges and trainee judges and to supervise observance thereof.

2. The Council may appoint other issue commissions.

Article 20. 1. The Council deliberates during plenary meetings. Deliberations shall be broadcast over the Internet, unless the Council adopts a resolution ordering that they be held in camera. The Council shall hold all or part of a hearing in camera if publicity might result in the disclosure of information subject to protection under the rules laid down in the Protection of Confidential Information Act of 5 August 2010 (Journal of Laws 2016, items 1167 and 1948, 2017, item 935) or the violation of a significant private interest through the disclosure of data referred to in Article 27(1) of the Personal Data Protection Act of 29 August 1997 (Journal of Laws 2016, item 922).

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

3. Where the post of the Chair falls vacant, the first subsequent meeting of the Council shall be convened by the First President of the Supreme Court no later than 30 days following the date when the post of the Chair falls vacant. Pending the election of the new Chair, the proceedings shall be chaired by the First President of the Supreme Court.

4. If the first meeting of the Council has not been convened in the manner referred to in paragraph 3, the first meeting of the Council shall be convened by the oldest member of the Council who is a judge or a retired judge, no later than 14 days following the expiry of the deadline referred to in paragraph 3. This judge shall chair the proceedings pending the election of the new Chair.

5. If the meeting of the Council is not convened in the manner referred to in paragraph 4, the obligation to convene the first meeting of the Council falls in turn on the next oldest members of the Council who are judges or retired judges. Paragraph 4 shall apply *mutatis mutandis*.

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

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

2a. In justified cases the President of the Council may give instructions for a circular vote to be held by electronic mail. The President of the Council shall send documents containing personal data in a form assuring their protection and shall notify the members of the Council of the voting method and of the absolute time limit by which a declaration casting a vote 'for' or 'against' or abstaining from voting is to be sent to the electronic mail address indicated by the President of the Council.

2b. In the event of a circular vote, a secret vote cannot be ordered.

2c. The circular vote shall be valid if at least half the Council's members vote within the time-limit set for reaching a position.

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

Article 22. 1. The Council shall lay down its detailed rules of procedure in a regulation, taking into account the use of a computer system supporting the process of appointing persons to judicial posts as referred to in the Common Courts Organisation Act of 27 July 2001, hereinafter 'the computer system'.

1a. When laying down its detailed rules of procedure, the Council shall be guided by the need to ensure access to information on proceedings before the Council and comprehensive information on candidates and the reasons for requesting a person's appointment to the office of judge or assistant judge.

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

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

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

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

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

4. The provisions of the Act of 18 December 1998 on public prosecution and court staff (Journal of Laws 2017, items 246 and 1139) shall apply *mutatis mutandis* to staff of the Bureau, except for the requirement to have completed a probationary period, as referred to in Article 2(7) of that Act, in a court or public prosecutor's office.

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

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

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

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

2) reimbursement of the travel and accommodation expenses on terms stipulated in the regulations issued on the basis of Article 775 § 2 of the Act of 26 June 1974 - The labour code (Journal of Laws of 1998, No. 21, item 94, as amended⁴) in accordance with the rules governing domestic business trips.

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

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

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

4. The draft plan of the revenues and expenses adopted by the Council is forwarded by the Chairman of the Council to the minister in charge of the budget for the purpose of being incorporated into the draft budgetary act on the basis of Article 139 par. 2 of the Act

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

Chapter 3

Proceedings before the Council

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

1) which concern him;

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

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

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

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

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

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

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

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

2a. In individual cases concerning appointments to the office of judge at an ordinary court, the Presiding Judge shall request the bodies and institutions covered by the computer system to provide the candidate's personal file and other documents using that system. The candidate's personal file and documents requested by the Presiding Judge may be submitted via the computer system.

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

1a. Teams must not be composed exclusively of:

- 1) judges;
- 2) deputies and senators.

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

2a. When designating a team, the President of the Council shall notify the Minister for Justice of the team's appointment and inform the Minister of the individual cases assigned to the team in preparation for their examination at a meeting of the Council. Changes of the composition of the team do not require notification of the Minister of Justice.

2b. Within 21 days of receiving the information referred to in paragraph 2a the Minister for Justice may present the Council with an opinion on an individual case. The team may not adopt positions of the kind referred to in Article 34(1) before the time-limit for the presentation of opinions by the Minister for Justice has expired.

2c. The failure of the Minister for Justice to present an opinion in an individual case within the time-limit referred to in paragraph 2b shall not suspend the team's work.

2d. The opinion referred to in paragraph 2b, or information on the failure to present such an opinion, shall be annexed to the case documents.

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

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

1a. Any letters and other documents in individual cases considered by the Council regarding the appointment as an ordinary court judge, as well as resolutions of the Council on these matters shall be delivered to candidates using the computer system. These shall be deemed to have been effectively delivered when the candidate logs on to the communication and information system, or after 14 days from the date on which the letter is entered in the computer system.

1b. Paragraph 1a shall apply mutatis mutandis to individual cases considered by the Council concerning appointment to the post of Supreme Court judge, provided this is within the capacity of the computer system.

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

3. Explanations provided by a candidate for the position of ordinary court judge and supplementary materials may also be submitted via the computer system.

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

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

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

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

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

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

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

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

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

1) professional experience, including experience of applying the law, academic achievements, opinions presented, recommendations, publications and other documents annexed to the nomination papers;

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

3. A lack of the documents referred to in paragraph 2 shall not prevent a list of recommended candidates being drawn up.

Article 36. 1. If a person applying for the post of judge or assistant judge works as an advocate, legal adviser or notary, or holds the post of prosecutor, solicitor, senior adviser or a vice-president of the General Counsel of the Republic of Poland (Prokuratoria Generalna Rzeczypospolitej Polskiej), the following shall be notified of the team meeting: Polish Bar Council, National Council of Legal Advisers (Krajowa Rada Radców Prawnych), National Notarial Council (Krajowa Rada Notarialna), National Council of Prosecutors at the Prosecutor General (Krajowa Rada Prokuratorów przy Prokuratorze Generalnym), and the President of the General Counsel of the Republic of Poland.

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

Article 37. 1. If more than one candidate has applied for the judicial post, the Council reviews and evaluates all candidatures jointly. In this case the Council adopts a resolution deciding about the submission of the petition to appoint the person to fulfil the office of the judge with respect to all candidates.

1a. If the post of an trainee judge is applied for by more than one candidate, the Council reviews and assesses all submitted candidates jointly. In this case, the Council adopts a

resolution regarding the presentation of a motion for appointment to the post of trainee judge in relation to all candidates.

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

Article 37a. 1. Where an assistant judge applies for a judge's post, a resolution not to submit a request for appointment as a judge may be adopted only after prior consideration of the comments submitted by the assessor on the qualification assessment as specified in Article 5(1)(3). In this case, the assessor's work shall be subject to lustration by three inspecting judges, selected at random from a list of inspecting judges from the appellate jurisdiction other than that where the court in which the assessor performs their duties is seated – within no more than 60 days.

2. Inspecting judges, after considering the comments, shall either uphold the qualification assessment of the assistant judge on which comments were submitted or issue a different assessment decision. Inspecting judges shall express their position in writing and, together with the justification, serve it on the assistant judge.

3. Any comments submitted by an assistant judge after the time-limit laid down in Article 106xa(4) of the Common Courts Organisation Act of 27 July 2011 shall not be examined.

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

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

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

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

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

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

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

Article 39. 1. The petition to reinstate the judge to the judicial post should contain a justification. Appropriate documents should be attached to the petition. Article 38 applies accordingly.

2. The presiding judge shall notify the Minister of Justice of the motion referred to in paragraph 1 within 14 days.

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

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

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

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

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

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

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

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

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

2. If the resolution referred to in Article 37(1) is not challenged by all parties to the proceedings, the resolution shall take effect in so far as it relates to a decision not to submit a request for appointment as a judge of the parties to the proceedings who failed to lodge an appeal, subject to Article 44(1b).

Article 44. 1. The party to the proceedings may appeal to the Supreme Court on the grounds of contradiction of the Council's resolution with the law, unless separate regulations stipulate otherwise. The appeal does not apply in cases stipulated in Article 3 par. 2 item 2 of this Act.

1a. In individual cases concerning appointment to the office of Supreme Court judge, appeals shall be made to the Supreme Administrative Court. Appeals shall not be made to the Supreme Court in such cases. An appeal to the Supreme Administrative Court shall not be based on the claim that candidates' fulfilment of the criteria taken into account when deciding whether to submit an application for appointment to the office of Supreme Court judge has not been properly assessed. The Supreme Administrative Court shall reject in camera an appeal that was subject to rejection by the Council. The Supreme Administrative Court shall examine the appeal and issue the ruling within 14 days from the day of transmission of the appeal to that Court.

1b. Unless the resolution referred to in Article 37(1) in individual cases concerning appointment to the post of Supreme Court judge is appealed by all the parties to the proceedings, the resolution shall become final insofar as it relates to the decision to submit an application for appointment to the post of Supreme Court judge, and insofar as it relates to the decision not to submit an application for appointment to the post of Supreme Court judge, in respect of those participants in the proceedings who did not appeal.

2. The appeal is lodged through the Chairman within two weeks of delivery of the resolution together with the justification. The Supreme Administrative Court shall examine an appeal and issue a decision within 14 days of receiving the appeal.

2a. All appeals lodged by participants in the same proceedings shall be examined jointly and resolved in the course of one single proceeding before the Supreme Court.

3. The provisions of the Code of Civil Procedure of 17 November 1964 (Journal of Laws 2016, item 1822, as amended) concerning the appeal in cassation shall apply to proceedings before the Supreme Court and the Supreme Administrative Court. Article 871 of the Code shall not apply.

3a. In cases concerning resolutions on appointment to the office of a judge of a common court, the Supreme Court makes the deliveries through the Council, which then makes the delivery in the manner specified in Article 32(1a).;

~~3a. In individual cases concerning the appointment as the Supreme Court judge, the repeal by the Supreme Administrative Court of the resolution of the Council regarding the non-presenting of the request for the appointment as Supreme Court judge shall be tantamount to accepting the application of the party to the proceeding, which lodged an appeal, to a vacant judicial post in the Supreme Court which, on the day when the Supreme Administrative Court issues a ruling, is still subject to proceedings before the National Council for the Judiciary, and, if the proceeding before the Council has been concluded, to a subsequent vacant judicial posts in the Supreme Court covered by the announcement.~~

4. In individual cases concerning an appointment to the post of Supreme Court judge, repeal by the Supreme Administrative Court of the National Council of the Judiciary's resolution not to submit an application for appointment to the post of Supreme Court judge shall be equivalent to accepting the application, made by the participant in the proceedings who lodged the appeal, for appointment to a vacant Supreme Court judge's post for which the proceedings before the National Council of the Judiciary have not concluded as at the day on which the Supreme Administrative Court issued the ruling, and if no such proceedings are pending, to the next vacant Supreme Court judge's post covered by the announcement.

Article 44a. The Council shall present to the President of the Republic of Poland a resolution containing a request for appointment to the office of judge or assistant judge together with the grounds, information on other candidates for the post of judge or assistant judge and an assessment of all the candidates. The case documents shall be annexed to the resolution.

Article 44b. The Council shall send the President of the Republic of Poland a resolution containing the proposal for appointment to the post of assistant judge in an ordinary court, together with the grounds. The documentation concerning the proceedings shall be annexed to the resolution.

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

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

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

Article 45a. Re-examination of a case concerning a resolution containing a motion to the President of the Republic of Poland to appoint a judge to hold office or a motion for appointment to the position of an assessor judge in a common court is unacceptable if one of the persons indicated in the resolution is appointed in the scope of the appointment to this position. The motion for reconsideration of the case referred to in Article 45, in so far as it concerns the appointment to the position, shall be left unprocessed.

Article 45b. If the President of the Republic of Poland appoints one to hold the office of a judge, proceedings in the case of an appeal against a resolution of the National Council of the Judiciary concerning an individual appointment to hold the office in this position, in the scope of a resolution containing a motion for appointment to this position, shall be discontinued by operation of law. Otherwise, if the court accepts the appeal of a person who was a participant in a case concerning candidates for office as a judge, that person may apply for office in the next proceedings for office as a judge in the same or an equivalent court, and the Council shall be obliged to take into account the circumstances set forth in the court's decision in that proceedings.

Article 45c. Resumption of proceedings before the National Council of the Judiciary or moving a resolution containing a motion to appoint a judge to the office shall not be admissible if the person presented to the President of the Republic of Poland fulfils, on the date of the adoption of the resolution by the National Council of the Judiciary, the formal conditions required for the performance of the office, as specified in the Constitution of the Republic of Poland.

Chapter 4

Amendments to the current regulations

/omissis/

Chapter 5

Interim and miscellaneous regulations

/omissis/

....